The Art of Negotiation: What the Twenty-First Century Business Student Should Know

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Civility is not a sign of weakness, and sincerity is always subject to proof. Let us never negotiate out of fear. But let us never fear to negotiate.

–President John F. Kennedy1

I. INTRODUCTION

The art of negotiating to reach a successful conclusion is particularly critical in international conflicts such as the Cuban Missile Crisis, as referenced by President Kennedy. The importance of producing a good outcome in crises negotiations is crucial, and affirmative steps can be taken by negotiators to insure an effective process.2 Negotiation skills are equally vital for

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concluding international treaties on subjects ranging from arms agree-
ments, and rights in outer space to trade agreements.

Yet the importance of being able to negotiate effectively is not limited to international treaties or crises situations. People negotiate every day in more innocuous circumstances such as buying or selling items, deciding where to go on vacation, and outlining behavioral expectations of children, parents, spouses, and friends. Certainly in the business world, the ability to negotiate successfully is a coveted skill. Being able to negotiate effectively with an ethical compass is an even more desirable trait.

It follows, then, that the subject of dispute resolution is suitable for business law courses, and predictably the utilization of negotiation exercises is recommended by commentators. The ability to negotiate is valuable to business managers because the skills developed through practicing negotiation develop critical thinking aptitudes, analytical proficiency, and effective communication skills. Moreover, using negotiation exercises rep-

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3See David A. Koplow, Parsing Good Faith: Has the United States Violated Article VI of the Nuclear Non-Proliferation Treaty? 1993 Wis. L. Rev. 301 (discussing the Nuclear Non-Proliferation Treaty).

4See Brian Beck, The Next, Small, Step For Mankind: Fixing the Inadequacies of the International Space Law Treaty Regime to Accommodate the Modern Space Flight Industry, 19 ALB. L.J. SCI. & TECH. 1 (2009) (arguing that the current space law treaty regime is inadequate to handle the challenges of space flight in the next decade).


6See Danny Ertel, Turning Negotiation into a Corporate Capability, HARV. BUS. REV., May-June 1999, at 3 (asserting that all business relationships and initiatives are established through negotiation and that organizations that coordinate and manage negotiations effectively enhance profits).


8Peter S. Shedd, Let’s Make a Deal: To Sign or Not to Sign a Two-Part Model for Incorporating Negotiation into a Legal Studies Course, 14 J. LEGAL STUD. EDUC. 87, 87–89 (1996) (offering a negotiation exercise). Law schools develop alternate dispute resolution skills, and the American Bar Association standards require law students to receive instruction in other professional skills such as negotiation. Becky L. Jacobs, Teaching and Learning Negotiation in a Simulated Environment, 18 WIDENER L.J. 91, 93–94 (2008).

resents a student-centered approach to teaching content through active learning, in which students assume greater responsibility for their learning than the traditional lecture method of instruction. Additionally, negotiation exercises offer a unique opportunity to reinforce ethical principles and to introduce students to the concept of professionalism.

While business law professors are well versed in the legal subject matter underlying conflicts that form the basis of negotiation exercises (such as contract or employment law), they may or may not be well versed in principles of negotiation. There is a wealth of information on the bargaining process and techniques of negotiation. However, most negotiation exercises are used as a part of a legal environment of business or other law course and not a stand-alone course in conflict resolution, which would permit a more in-depth instruction in bargaining skills as well as a more comprehensive examination of the literature.

This article provides business law professors with a concise guide for students that can be used as an instructional tool prior to embarking on a negotiation simulation. It also provides a negotiation exercise that uses contemplative reflection to reinforce the lessons learned. The authors contend that there are ten basic components that structure an effective negotiation process and consequently form a negotiation instructional module that integrates ethical thought and professionalism. These components are not separate steps, but part of a dynamic whole, which will be discussed in three sections: Beginning the Process (Section II), Becoming More Skilled (Section III), and Being Persuasive (Section IV).

II. BEGINNING THE PROCESS

This section directs the students’ attention to the lens through which the negotiation experience may be viewed, to the predictable patterns in the negotiation process, and to the rules for telling the truth without telling everything.


A. Component One: Start from Where You Are

Perception frames reality. It is therefore imperative that a negotiator’s perceptions and decision-making orientation are free from, or at least sensitive to, limiting factors such as inherent bias and pride. Emotions play a powerful role in both the capacity to perceive and express feelings and in the ability to engage in clear thinking. It is important for negotiators to appreciate the emotional vocabulary of interaction, to monitor emotional cues, and to cultivate a wise emotional dialogue. Positive emotions enhance relationships, which greatly increases the potential for problem solving, so it is important to look for ways to reduce rather than enhance tensions during the session.

Negotiating style is an important element in the process and is manifest in three types: competitive, cooperative, and integrative. The objective of an adversarial style is to win a zero-sum game. This style requires a high degree of determination coupled with well-tuned aggressiveness, decisiveness, the courage to allow risks, as well as the self-confidence to curb risk taking when those risks are unwise. In contrast, the objective of a cooperative style, values fairness and building relationships.

15 To this end, a negotiator should express appreciation, along with a sense of valued recognition for contributions. Roger Fisher & Daniel Shapiro, Beyond Reason: Using Emotions As You Negotiate 28–36 (2005). The negotiator also should build affiliation or a sense of connectedness with the other parties. Id. at 53–54. It is important for the negotiator to acknowledge social and professional status. Id. at 95–111. Finally, the negotiator must develop roles that are fulfilling. Id. at 117–33. See also Erin Ryan, Building the Emotionally Learned Negotiator, 22 NEGOT. J. 209, 217–20 (2006) (discussing the effect of positive emotions in the negotiation process).
16 Donald G. Gifford, A Context-Based Theory of Strategy Selection in Legal Negotiation, 46 OHIO ST. L.J. 41, 43 (1985). These conflicting styles also may be characterized as competitive negotiation, where winning is the only goal; cooperative negotiation, where compromise is the goal; and interest-based negotiation, in which the focus is on interests rather than positions. Corey A. Giocchetti, Employment Law, Negotiation and the Business Environment: A Cooperative Collective Bargaining Negotiation of the National Hockey League Lockout of 2004, 25 J. LEGAL STUD. EDUC. 147–48 (2008).
17 For a discussion of this style, see Alex J. Hurder, The Lawyer’s Dilemma: To Be or Not To Be a Problem-Solving Negotiator, 14 CLINICAL L. REV. 253, 261–66 (2007).
while seeking mutually satisfactory solutions through gathering and sharing information. This style requires determination and some aggressiveness in order to hold high aspirations and stay sufficiently focused to achieve them. An integrative style attempts to resolve the conflict by focusing on satisfying the interests of both parties and exercising problem-solving techniques. An appropriate combination of distinctive styles may enhance the negotiation strategy.

These negotiating styles are manifested in two distinct approaches to negotiation. Principled negotiation involves identifying the underlying interests and needs of the parties, creating a range of alternatives and options, and focusing on improving the working relationship between the parties. Sometimes the pie to be divided is enlarged, benefiting both parties. Positional negotiation, on the other hand, centers upon how much one party will win and the other will lose, and agreement is through a series of limited concessions offered by both parties. The pie is viewed as being only so big and incapable of being divided such that one person receives more without the other receiving less. Since no single style or approach works best in all negotiations, the successful negotiator should be able to use a variety of methods and know when to choose each. Competitive tactics early in the

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19See Carrie Menkel-Meadow, Toward Another View of Legal Negotiation: The Structure of Problem Solving, 31 UCLA L. Rev. 754, 794–829 (1984) (proposing a problem-solving approach that identifies the parties’ underlying needs and objectives and crafts solutions by attempting to meet those needs directly or expanding the resources available). Such an interest-based style is utilized by mediators and is explored infra notes 108–13 and accompanying text.


21The method of principled negotiation is to decide issues on their merits rather than through a haggling process focused on what each side says it will and will not do. Parties learn to look for mutual gains wherever possible and, where interests conflict, to insist that the result be based on some fair standards independent of the will of either side. This method of principled negotiation is hard on the merits, soft on the people. Roger Fisher & William Ury, Getting to Yes: Negotiating Agreement Without Giving In 10–12 (2d ed. 1992); see also Mindy Batty, Note, Principled Negotiating: Breeding Success and Protecting Public Interests Behind Closed Doors, 1 Geo. J.L. & Pub. Pol’y 431 (2003) (discussing the concept of principled negotiations which explores the interests behind positions to create options for mutual gain).

22Hurder, supra note 17, at 261–64.
negotiation sometimes increase the prospects for successful use of cooperative or problem-solving tactics later in the negotiation.\(^{23}\)

Attitude, nevertheless, always remains within the total control of each negotiator and characterizes in part the role of a professional.\(^{24}\) Therefore, it is important to develop qualities of mind that people value the most in professionals: common sense; creativity; good judgment; and a sense of competency and control, not to control others, but to be able to accomplish successfully the task at hand. Such a negotiator mindset, involves subconscious concentration through the informed intuition and encourages an inquisitive approach in which the negotiator explores why things may not be what they first seem.\(^{25}\) It liberates the conscious mind so it can fully and innovatively zero in on the hard analytic skills of critical thinking and logical reasoning, skills that are still necessary for success in business and law.\(^{26}\)

Learning to control instinctive judgments and first impressions dramatically increases a person’s power of knowing what to do in the first two seconds or in the “blink of an eye.”\(^{27}\) It follows that just as negotiators can learn to think logically and deliberately, they also can learn to make quick, accurate, and intuitive decisions. Understanding principles for which one stands as an individual is useful in evaluating the values of other individuals since contrasting values can influence a negotiation.\(^{28}\) The lenses a negotiator uses, as well as the particular style or approach the negotiator chooses, form patterns that are important to decipher and understand.

\(^{23}\) DONALD G. GIFFORD, GIFFORD’S LEGAL NEGOTIATION THEORY AND APPLICATIONS 133 (2001).

\(^{24}\) Attitude determines what persons stand for as individuals, such as the commitment the duty to be competent, to be loyal, to maintain confidentiality of information, to act as a responsible citizen, to uphold the morals of both community and country, as well as the duties owed to religion, family and friends, associates, and even to oneself.


\(^{26}\) See Robert M. Lloyd, Hard Law Firm and Soft Law Schools, 83 N.C. L. REV. 667 (2005) (arguing that the failure of law schools today to develop analytical skills could cause them to slide into insignificance as an institution).


\(^{28}\) See Roy Stuckey, Understanding Casablanca: A Values-Based Approach to Legal Negotiations, 5 CLINICAL L. REV. 211 (1998) (discussing the important role that values play in the negotiation process).
B. Component Two: Recognize Patterns

Examples of symmetry and uniform proportions, routed in the timeless laws of mathematics, exist throughout the world.29 Similarly, patterns exist for life’s experiences, as well, and this concept is no less true for negotiations. Practitioners can profit by contrasting negotiations in their own field of practice with those in other areas, and they can profit by reflecting about what pattern lies within the common core.30 Looking for recurring patterns allows a negotiator to predict and plan the progression of the session. Further, the experiences of negotiators typically will fit into a pattern by which a particular sequence, when followed, always yields the best results.31 As a result, it is important to study and read broadly to create a store of ideas to enhance alternatives and ideas for solving negotiation problems. Equally important is the need to seek an understanding of the opponent’s reasoning and the patterns that exist in that logic, so as to anticipate the next move. Finally, patterns also tend to emerge in the confrontation of moral issues and ethical dilemmas, the subject of the next section.

C. Component Three: Follow the Rules

Practicing good ethical decision making is characteristic of professionalism.32 Negotiation often involves inexact, disputed reconstruction of past events and perceptions as being a primary basis for decisions. Ethical philosophy, however, does have a place in negotiation ethics because the ideal of justice is real even if in practice, it may be unattainable, and the ideal of


30See Douglas R. Hofstadter, Godel, Escher, Bach: An Eternal Golden Braid 674 (1999) (postulating that humans inherit an elusive sense for patterns involving all the mechanisms of representation of knowledge).


truth is real even if in practice, its realization is incomplete.33 Virtue, loyalty, courage, and other timeless values all remain worthy goals.34 The most serious ethical failing is not attempting to affirm such timeless values.35 Integrity should be a crucial value to a negotiator. Integrity involves discerning right from wrong and requires action based upon what is distinguished as right and wrong even in the face of adversity. Integrity requires a degree of moral reflection; moreover, a person of integrity is steadfast, trustworthy, and honors commitments.36 Trust and integrity are precious resources, easily squandered and hard to regain. They can thrive only on a foundation of respect for veracity.37

For negotiators to get past no, they must understand what lies behind the no and overcome barriers to cooperation: negative emotions, certain negotiating habits, skepticism about the benefits of agreement, perceived power, and some reactions.38 To make this journey to yes using a moral compass, it is helpful for the negotiator to recognize two stages of ethical decision making. The first stage is to distinguish the clearly unethical decisions from the ethical ones, while the second stage involves choosing between ethical values, such as truth and fairness, or truth and loyalty, in circumstances in which no single answer is absolutely right or wrong. While it is acceptable to sacrifice truth for fairness, it is unacceptable in most circumstances to sacrifice truth for success; in

33See Kevin Gibson, The New Canon of Negotiation Ethics, 87 Marq. L. Rev. 747 (2004) (asserting that negotiations present a myriad of ethical concerns should be considered against the backdrop of universal moral principles).


37Sissela Bok, Lying: Moral Choice in Public and Private Life 24 (1999). Consider lying. Lying requires a justification, while truth telling requires no justification. Liars usually weigh only the immediate harm to others from the lie against the benefits desired. The flaw in this analysis is that it underestimates two additional kinds of harm: the harm that lying does to the liars and the harm done to the general level of trust and social cooperation. Both are cumulative and hard to reverse. Id. at 24.

other words, an ethical principle should be sacrificed only for another ethical principle.

The most difficult ethical dilemma for a negotiator usually concerns misrepresentation. Negotiator misrepresentation is difficult to define because it is intertwined with the subtleties of communication and subject to a variety of substantive situations that are fact-specific. The Model Rules of Professional Conduct admonish attorneys not to “knowingly make a false statement of material fact or law.” The official comments to the rule note that under “generally accepted conventions in negotiations, certain types of statements ordinarily are not taken as statements of material fact . . . a party’s intention as to an acceptable settlement of a claim are in this category.” Further, another rule states that it is “professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” Again, the comments clarify that as a negotiator, “a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others.” Such principles and their caveats regarding misrepresentations are instructive to nonattorney negotiators as well.

Nevertheless, deception is at the core of some negotiation tactics and strategies, with a certain amount of embellishment and withholding of information almost expected. So does one negotiate ethically and bluff

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39 Other foreseeable ethical issues for negotiators can include inquiries such as whether or not the negotiator should believe that morality is relative or that one’s notion of goodness is something entirely personal to each negotiator or, if rhetoric, logic and advocacy are all one needs to insure success.

40 “The rules and ethics requirements surrounding truthfulness in negotiation . . . are far from crystal clear and appear to yield different interpretations and results depending on the circumstances of the negotiation and the person doing the interpreting.” Peter Reilly, Was Machiavelli Right? Lying in Negotiation and the Art of Defensive Self-Help, 24 OHIO ST. J. DISR. RESOL. 481, 533 (2009).


42 Id. at cmt. 2, available at http://www.abanet.org/cpr/mrpc/rule_4_1_comm.html.

43 Id. at R. 8.4(c), available at http://www.abanet.org/cpr/mrpc/rule_8_4.html.


about the bottom line while remaining truthful.\textsuperscript{46} The best approach, the right approach, and the smart approach is simply to avoid, at all costs, making any false factual statement such as “I am not authorized to go below $50,000” (when the authority is actually $40,000). An alternative non-deceptive approach would be “In my opinion, this case is worth at least $50,000 and I’m not going to recommend a lower figure at this time,” followed with an explanation justifying the position. A negotiator, nevertheless, should be guided by personal conscience and the approbation of professional peers.\textsuperscript{47}

The best practical advice on exercising good judgment involving ethics is to anticipate what situation is likely to arise and what type of moral dilemmas are likely to be presented. This advance planning not only simplifies the decisions, but also reduces the necessity of making on-the-spot calls in the heat of the moment. Judgment decisions are often rendered more difficult because of the failure to anticipate and prepare for what was looming clearly on the horizon.\textsuperscript{48} The contemplation in advance of likely dilemmas will assist the negotiator in steering a sound ethical course as the process unfolds.

In sum, it is important to review one’s moral maps before starting a negotiation, to use them as a guide, and to accept the principle that good ethics is good business. A negotiator also should practice anticipating and resolving morally complex issues before they arise and avoid unethical misrepresentation. In addition to a sound ethical grounding, the ability to decipher patterns, and to follow ethical rules, the successful negotiator must possess relevant skills.

\textsuperscript{46}For a thought-provoking examination of this issue, see Gerald B. Wetlaufer, \textit{The Ethics of Lying in Negotiations}, 75 IOWA L. REV. 1219 (1990).


\textsuperscript{48}To practice, for example, consider the following ethical questions that could arise: Is there an affirmative duty to inform the opponent of relevant facts? Of material facts? Hidden assets? What is my duty to inform my opponent of my opponent’s drafting error? To correct my opponent’s erroneous factual or legal assumptions? Which representations are of fact? Of opinion? What constitutes mere puffing? How can I ethically avoid disclosing certain information? How can pertinent information be partially disclosed?
III. BECOMING MORE SKILLED

This section emphasizes four critical components of effective negotiating: active listening with four ears; strategic planning; tactical maneuvers; and the use of open-ended questions, which is also utilized in mediation, as a negotiation tactic.

A. Component Four: Listening with Four Ears

A failure to listen effectively can derail every other negotiating skill developed, including the best strategies, the sharpest tactics, and the most honed mediation techniques. What a negotiator often encounters is not a problem to be solved, but rather an idea to be heard, a different view to be understood, or a new person with whom to become acquainted. Negotiating, like the process of teaching and learning, involves an encounter with the unexpected, along with and the elements of suspense and surprise. When listening, a negotiator must wait patiently for insight to emerge and must trust in the outcome of the process.49 Few individuals are good conversationalists because they think about what they intend to say, rather than about what the other person is saying.50 Therefore, the focus of a good conversationalist, as well as a good negotiator, should be not just to hear, but to listen. Hearing is mostly physical; listening is mostly psychological. The key to improving listening skills can be accomplished in four steps (through the four ears of listening): (1) listen to what is clearly stated, (2) listen to what is clearly not stated, (3) listen for what the other person is attempting to say but does not say, and (4) listen to what is being said to oneself.

1. Listen to What Is Clearly Being Said

The first ear involves listening actively (participating, concentrating) to gain insight into the thoughts, needs, and feelings of others. By listening actively and not mentally preparing an immediate reply, one is less likely to convey unintended nonverbal signals. Remember, one hears only the


50 “Few are agreeable in conversation, because each thinks more of what he intends to say than of what others are saying, and listens no more when he himself has a chance to speak.” Francois de La Rochefoucauld, Quotation #29463 from Classic Quotes, available at http://www.quotationspage.com/quote/29463.html (last visited June 23, 2010).
sounds to which one listens. Further, feelings and motives are critical to listening effectively, as is demonstrated by the fact that when they are absent in electronic communication, much of what otherwise would be clearly understood is lost. People are not computers, programmed to respond to impulses from others. Human beings have feelings generated by the negotiation process—feelings of mistrust, fear, and anger. In addition, it is sometimes the very smallest of subtleties, repeated over and over, which form a predictable pattern and send a clear message.

Active listening is a process of thoroughly hearing what the other person has said, and responding with a reflective statement that mirrors what has been heard. Active listening requires expertise in discussing and conferring with, as opposed to bargaining against, in order to hear what the other person is really saying. The negotiator must listen to understand rather than attempt to achieve an agreement or produce some kind of change in the other person.

2. Listen for What Obviously Is Not Being Said

The second ear involves recognizing what speech conceals and what silence reveals. “Listening is the ability to hear what people are saying or not saying as distinguished from the words they enunciate.” If one listens between the words, one will be able to discern a message and hear more than just the words. It is important to look not only for the reaction that the other person has to what you have just said, but also for what the other person ob-

51 In the words of a folk ballad, “How many ears does a man have to have to hear someone crying?” Bob Dylan, Blowin’ in the Wind, on The Freewheelin’ Bob Dylan (Sony Records 1963).
56 The Greek approach of focusing first on Ethos (culture, background, disposition, character), second on Pathos (feelings, emotions), and only later on Logos (philosophy, reason) can enhance the discernment of that message.
viously is not voicing. A reluctance to discuss one aspect of the problem is, in a sense, a hidden offer to discuss another. One should package conclusions by giving reasons first and proposals second, so as to help the other person to listen. To listen effectively, the negotiator should use small talk to warm up; should tune into the other person’s communicative manner (fast/slow, loud/soft); and should communicate through those senses (seeing, listening, feeling, touching, reasoning) to which the other is more apt to respond.

Does gender influence conversation, listening, or negotiation? While some commentators argue it does not, some gender differences could be significant. Females typically have a greater capacity to listen patiently to all of the nuances in conversation, while males tend to be more focused on the core meaning of the message. Moreover, there are innate differences in hearing, as well as seeing, between males and females. Not only is information processed differently, but females actually hear clearer than males because female hearing is more sensitive in ranges that are important in speech discrimination. Being sensitive to such nuances can assist effective communication.

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58 If instead the reverse is done, the adversary will be busy thinking about a response and may not hear one word of explanation.
59 Examples of communication senses are as follows: “You have a point there” (reason); “I hear you” (ears); “I know exactly what you mean” (reason); “I would feel the same way, too” (feelings); “I’m comfortable with that” (feelings).
60 See Amy Cohen, *Gender: An (Un)Useful Category of Prescriptive Negotiation Analysis*, 13 TEX. J. WOMEN & L. 169 (2003) (discounting the alleged role that gender plays in negotiation communication, style or success); see also Charles B. Craver, *The Impact of Gender on Clinical Negotiating Achievement*, 6 OHIO ST. J. ON DISP. RESOL. 1 (1990) (concluding that there were no statistically significant differences in negotiation performance between male and female law students).
63 Id. at 20.
64 Id. at 17. One example given is that of a forty-three-year-old man talking to his seventeen-year-old daughter. He thinks he is talking in a normal tone, but she feels he is yelling at her because she experiences his voice as being about ten times louder than what the man is
It is unwise to attempt to negotiate with someone who is angry, as that emotion may shape their perception of information. Instead, acknowledge feelings of anger first and allow emotional dialogue to precede intellectual discussion so that both parties may listen effectively. Other practical tips for affirming the listening process included using your opponent’s name as you make eye contact; focusing on issues on which you already agree to build momentum; using the word yes for unity, not dichotomy of thought; and speaking only for oneself, thereby acknowledging the other person, his or her authority, and his or her competence.

3. Listen for What the Other Person Really Wants to Say, But Doesn’t

The third ear involves listening for the essence of things. A useful reminder is to use the “e” and “a” and “r” of “ear”: explore what is not clear, acknowledge what is understood, then respond.

A useful listening tool is to capitalize on pauses to enhance communication. Pauses can provide a better idea of what other people are planning to do but are hesitant to express. The negotiator should encourage the expression of what the speaker is hesitate to articulate. Such encouragement is beneficial in two aspects: (1) logically, the negotiator gains a better insight to what the opponent is expressing and (2) emotionally, the negotiator posts a friendly gesture even before the intellectual analysis begins, which usually leads to an agreeable discussion.

Further, often what a person states is usually an imperfect representation of what that person is thinking or trying to articulate. As a result, one listens to what is said, and then makes inferences about what that person is thinking in order to penetrate the thought process behind the words. Communications in negotiations need to cover all important concerns, reveal all issues and interests, and explore likely avenues of mutual gain. Therefore, negotiators must skillfully translate what is being said into what hearing. Id at 18. Females see differently than males and are able to read facial expressions better as well. Id.

65 See Clark Freshman et al., The Lawyer-Negotiator as Mood Scientist: What We Know and Don’t Know About How Mood Relates To Successful Negotiation, 2002 J. DISR RESOL. 1 (discussing how moods may play a role negotiating).

66 See Jack Carew, You’ll Never Get No For an Answer 51–52 (1987) (describing a selling strategy that involves the communicator to listen, explore, acknowledge and respond “LAER”).
the speaker intends to say. To this end, it is sometimes helpful to use a metaphor to describe an indirect meaning.

Real listening involves being receptive to the thoughts, ideas, and emotions of the other, particularly those that are not specifically decided. Negotiators must open the lines of communication and relax. Negotiators may be hired to talk, but first, as professionals, they must listen and listen well. To listen well with the third ear, the mind of the listener must be open, nonjudgmental, and actively concentrated on understanding the other person’s message. One of the primary tasks of the listener is to stay out of the speaker’s way so the listener can discover how the speaker views the situation. “The true spirit of conversation consists in building on another man’s observation, not overturning it.”

4. Listen to What You Are Saying to Yourself

The fourth ear involves perhaps the most important part of listening: listening to one’s perceptions and the voices from within oneself, the soul’s ear. This process often involves subconscious concentration with one’s informed intuition acting as a coach. Asking questions results in opening an inner space to receive the reply. It is helpful to visualize the space created to process the reply as being similar to the scientific concept of space-time as a large web-like mat. Any large celestial body (a strong preconceived thought or feeling about the subject) exerts such a strong gravitational force that the mat (the space created to process a reply) is greatly warped. A keen observer who


72SPENCE, supra note 55, at 70–71.


finds himself steadily repelled by some apparently trifling thing in negotiations is right to give it great weight, as it may provide a clue to the mystery. Remember, “a hair or two will show where a lion is hidden; a very little key will open a very heavy door.”

Typically people seek first to be understood and tend to project their own home movies onto other people’s behavior. They prescribe their own glasses for everyone with whom they interact. Emotion can act as a filter as it hunts for evidence to prove one person wrong and another person right. To counter this tendency, negotiators should hunt for ideas that might prove their own assumptions wrong (as well as those that may prove them right) and experiment with helping an opponent to listen.

Sometimes, while listening, people send strong unintended signals, which can overpower the meaning of what they have just enunciated such as the sighs made by presidential candidate Al Gore in the first debates of the 2000 presidential election. Like the professional interviewer (the listener), who rarely sends any signals except those that are neutral or positive, the successful negotiator must be mindful and control unintended signals, while reading those sent by the adversary.

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76Stephen R. Covey, Seven Habits of Highly Effective People: Powerful Lessons in Personal Change 239 (1989).

77This truism applies outside the negotiation process as well, including doctor–patient communications. A professor at Harvard Medical School acknowledged the critical mistake many doctors make when speaking with patients: “We want to be listened to and in a high-tech age, the key to accurate diagnosis and the best insightful thinking comes from listening and language. The errors that we make in our thinking often come about because we cut off the dialogue. Most physicians interrupt a patient 18 seconds after they start talking.” Nancy Shute, How Doctors Think, U.S. News & World Re., Apr. 2, 2007, at 14.

78Al Gore explains the effect of the overriding power of his sigh while Bush was speaking:

As a college student, I wrote my senior thesis on the impact of television on the balance of power among the three branches of government. In the study, I pointed out the growing importance of visual rhetoric and body language over logic and reason. There are countless examples of this, but perhaps understandably, the first one that comes to mind is from the 2000 campaign, long before the Supreme Court decision and the hanging chads, when the controversy over my sighs in the first debate with George W. Bush created an impression on television that for many viewers outweighed whatever positive benefits I might have otherwise gained in the verbal combat of ideas and substance. A lot of good that senior thesis did me.

Using all four ears to listen to what is being communicated is a powerful strategy. Good listening not only creates relationships, which help the other person listen more intently, but it also allows the negotiator to gather more information before speaking. In addition, good listening skills allow negotiators to detect unspoken feelings and interests that are hidden behind the façade of stated positions. In sum, the negotiator must learn to listen intently when another person is speaking; to uncover what the other person is trying to say or really means; to be receptive to the thoughts, ideas, and emotions of the person speaking; to interpret the message through well-honed instincts; and to avoid sending unintentional signals while listening.

B. Component Five: Plan Strategy

Planning strategy involves focusing on a specific goal as the negotiator uses the power of purpose to prepare, plan, and practice. All three endeavors involve a great paradox. On one hand, they are highly rational and capable of study; yet, on the other hand, all three are driven by nonrational dynamics. In preparing, planning, and practicing, a negotiator should use imagination to anticipate and predict what is needed and set justifiable, yet optimistic, aspirations regarding the outcome. People are usually far more concerned with what is likely to happen in the near and distant future than with what is actually happening in the present. To this end, the negotiator must exclude some alternatives in advance or run the risk of becoming overwhelmed with possibilities. Although planning for the negotiation requires research, it is the process of creating the plan that often is more important than the actual plan. Creating the plan prepares the negotiator to expect the unexpected and to look for patterns in the process. While preparing a strategy involves programming one’s set of inner

79See infra notes 80–94 and accompanying text for a discussion of strategy planning in general.
82In other words, predict what is needed at each point, otherwise there will be far too many alternatives from which to choose. Frank Smith, UNDERSTANDING READING: A PSYCHOLINGUISTIC ANALYSIS OF READING AND LEARNING TO READ 24, 58–59 (6th ed. 2004).
signals and prioritizing goals, certain characteristics of effective preparation and practice for negotiation are universal.

First, a key element in planning strategy is to assess the balance of power.\footnote{For an informative on assessing and dealing effectively with imbalances of power in negotiations, see Robert S. Adler & Elliot M. Silverstein, \textit{When David Meets Goliath: Dealing with Power Differentials in Negotiations}, 5 Harv. Negot. L. Rev. 1 (2000).} This assessment involves not only the actual balance of power between the parties, but, more importantly, each party’s perception of that power balance. Power, like beauty, is largely a state of mind. In negotiation, perception is the reality. Sources of strength contribute to the overall balance of power. These include the balance of rewards, balance of punishment for nonreward, balance of legitimacy, balance of commitment, balance of knowledge, balance of competition, balance of uncertainty and courage, balance of time and effort, and balance of bargaining skills.\footnote{Gary Bellow, \textit{Lawyering Process: Negotiation} 22–25 (1981).}

Second, the element of surprise, while effective in warfare, is not always a good technique in a negotiation. It is important for the other side to recognize a rational pattern to the negotiator’s offers and talking points. While it is advisable to have an alternative strategy that will unleash an unexpected fact or higher/lower than anticipated offer on the opposing team, a negotiator’s main ally is a reputation for being reasonable. Sometimes negotiators will have good facts on their side, and it will be tempting to use those facts as a nuclear explosion to turn around a negotiation that is not going as planned or to kick start a negotiation that has grown stagnant. This strategy is advisable in certain circumstances, but a negotiator must not fall for this temptation routinely. Using one’s best shot only when needed is the most effective tactic.

Third, all information, internal or external, should, whenever possible, be verified.\footnote{Henry S. Kramer, \textit{Game, Set, Match: Winning the Negotiation Game} 33 (2001).} Beware of \textit{selective perception} or the tendency to evaluate information in a way that supports one’s own beliefs, assumptions, and self-image. It also is tempting to discount what is not known in favor of what is known, leading to an optimistic overconfidence in one’s chances for success. Overvaluing things that are certain, while undervaluing probable or speculative outcomes, can be dangerous.\footnote{John S. Murray et al., \textit{Negotiation} 9, 52 (1996).} As an information gatherer, the negotiator’s focus should be to get the facts straight.
Fourth, avoid attacking the opponent’s position; instead, try presenting differing interests. An opponent’s confidence is largely determined by that opponent’s own perception of tolerance for risk. Faced with this situation, one’s first response tends to be to adopt a position. However, an opponent may feel less threatened if the conflict is not identity based. Moreover, an opponent wants to feel capable of influencing behavior and is therefore more likely to make concessions when feeling competent. By acknowledging an opponent as being a tough and worthy negotiator, perhaps by coordinating a few concessions on relatively minor issues, it may become possible to induce even greater concessions.

Fifth, never rush the process. Unskilled negotiators place a dysfunctional premium on speed and harbor a psychological uneasiness about wasting time. Certainly time is valuable, and sometimes it is necessary to trade money against time. Some people, however, are far too impatient and do not allow enough time to consummate a deal or to allow the process to work. The trick is not to force a quick answer, but rather to wait patiently for a well-reasoned solution to emerge. A premature decision closes thinking to other alternatives and changes the focus from exploring options to justifying decisions. The negotiator should prepare several alternatives to present—three at a minimum. Only presenting two options could be perceived as an ultimatum. Negotiators should pause before making a proposal (presenting a price change or nonmonetary concession) package it carefully, explain the facts supporting that interpretation of the situation, and finally confidently state the proposition.

At its essence, a negotiation seeks the resolution of a conflict through making and evaluating offers for settlement. The first real offer in adversarial negotiations is often not as important as the first concession because

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88 Murray et al., supra note 86, at 7, 81, 112. Minor concessions in the beginning can signal a spirit of cooperation. For a discussion of signals, see infra notes 114–25.

89 The negotiation should proceed as necessary, without pressuring for a quick settlement for settlement’s sake alone. However, it is often wise to set a time for concluding the discussion as a means of effectively bringing the discussion to an end. If a train leaves at midnight, the passengers must be onboard, yet that reality does not necessarily dictate how preparation for the trip proceeds, nor rush that preparation.

it indicates who has the least leverage.91 Sometimes making the first offer can be of tactical advantage because it affords an opportunity to evaluate closely the other side’s response. In problem-solving negotiations, competitive or cooperative, making the first offer may influence the adversarial opponent to adopt a joint problem-solving approach.92 First offers have a powerful effect on the negotiation environment because they pull judgments toward themselves, producing a strong anchoring effect, even among very experienced negotiators.93 Furthermore, the satisfaction of the adversary often depends on the number and size of concessions extracted. Caution in making the first offer, however, is needed when the adversary has the most information about the subject of the negotiation or relevant market.94

The effectiveness of the strategy planned for the negotiation should be examined at the conclusion of the process, when the negotiator reflects on what transpired.95 Sound strategy planning must be implemented through well-chosen tactics, the subject of the next component.

C. Component Six: Anticipate Tactics

Just as strategy deals with the overall plan of the negotiation, tactics focus on the details, and implement the strategy.96 The same ingredients are present: time, power, information, and credibility. Experienced negotiators

93 For an examination of this anchoring effect, by which the initial value influences the item or claim’s worth, see Dan Orr & Chris Guthrie, Anchoring, Information, Expertise, and Negotiation: New Insights from Meta-Analysis, 21 Ohio St. J. Disr. Resol. 597 (2006).
95 Asking questions such as, “how did the plan compare with what actually transpired during the negotiations?” and “how accurately did the plan anticipate flow of information exchange, pattern of offers and concessions, and final result?” helps to evaluate the session.
96 There are three strategic dimensions in play concurrently during negotiations: (1) Tactics, which build communication and trust; (2) Deal Design, which creates greater value by dovetailing differences among the parties in a creative way so as to offer value to all sides; and (3) Setup, which involves taking the proper steps before coming to the table, before tactical interplay begins, to insure that the right parties, sequences, issues, and expectations are present at the right time. David A. Lax & James K. Sebenius, 3-D Negotiation: Powerful Tools to Change the Game in Your Most Important Deals 9–13 (2006).
use tactics to explore the possible existence of, and move toward, a mutually beneficial settlement that all can accept.97 Negotiations have a sequence: before, beginning, during, closing, and after.98 Different tactics are suitable for these separate stages.

1. Before

Before negotiations, plan for the future, look ahead, and anticipate what is likely to happen. Before starting, it is critical to understand the priorities, goals, and values of the persons being represented at the negotiating table. For example, what is their view about short-term economic gain, long-term economic security, and risk taking? Do they share the analysis of a realistic goal for settlement? Then identify the issues and develop an agenda, including the anticipated first offer and possible trade-offs. Next, analyze the position of the other side, their underlying needs, and probable tactics, and develop a strategy to present the position, not to prove its correctness, but to persuade. Finally, determine the timing of initial proposals and concessions, deadlines, ultimatums, consolidation, and closure.

2. Beginning

In beginning negotiations, the negotiator must separate exploring alternatives from deciding outcomes.99 The negotiator should invent options and brainstorm without committing.100 At the outset, effective negotiating in complex cases requires separating people from the substantive interests. Often negotiators make the mistake of letting personal animosities influence their bargaining.101 Consider using the start of the session as a fact-


98 The notion of these five steps in a sequence is not the only way to characterize the progression. Some experts have identified between four and ten steps. Ciocchetti, supra note 16, at 144–45.

99 To this end, questions such as “Have you considered?” or “Would you consider?” or “What if . . . .” are helpful in keeping both the conversation and multiple options open.

100 While generating options may reveal creative solutions such brainstorming arguably can precipitate less than optimum decision making. See Chris Guthrie, Panacea or Pandora’s Box?: The Costs of Options in Negotiation, 88 Iowa L. Rev. 60 (2003) (discussing adverse effects of option generation on a negotiator’s decision-making abilities).

101 Richard Reuben, Baseball Strike Teaches Legal Lessons, ABA J., June 1995, at 42 (discussing the need to separate people from the substantive issues in a negotiation).
finding mission in which bits and pieces of information are exchanged casually. The beginning is the time to listen and observe, and not the time for debate; a well-worded question is probably the most effective tool at this stage. It is also important to clarify the capacity of one person to act on behalf of another at the beginning and to discuss each other’s perceptions explicitly in a frank, honest manner. Communicating convincingly and willingly assertions, which the adversary would like to hear, can be one of the best tactics available. As the negotiation matures, identify areas less critical and use these issues to begin making concessions.

3. During

During the negotiation, one moves with more focus. While the beginning phase involves sparring for advantage and the closing is heavily influenced by time pressures, this middle phase is a time primarily for measured movement, exploring interests behind positions, and developing a reasoned approach. Package concessions with good reasons first so that the opponent will listen carefully, and avoid sizeable concessions early in the negotiation as such a maneuver might falsely raise an opponent’s expectations. Listen carefully for offers and hints of offers. Emotions are very effective in negotiating, but keep them under control. Remember also that patience creates a calming, cooperative environment for the resolution of differences and the emergence of successful conclusions. Patience is not a sign of weakness; rather it is leverage that can be used to think critically.


103 For example, check the language in the power of attorney or the company resolutions passed by its board of directors to determine extent of an agent’s authority to act. See William H. McClendon III, Louisiana's New Matrimonial Regime Law: Some Aspects of the Effect on Real Estate Practice, 39 La. L. Rev. 441, 472–73 (1979) (discussing the authority needed for representatives executing property transfers).

104 In addition to effective two-way communication, Fisher and Ury identified nine other essential elements in a negotiation: interests (positions/needs of the parties); options (range of possibilities); legitimacy (external criteria); relationship (working rapport); commitments (workable and reliable plans); alternatives (including each side’s BATNA [Best Alternative to a Negotiated Agreement]); listening, observing (to develop strategy); and framing (the issues). Fisher & Ury, supra note 21.
about the adversary’s position and gain insight into the best resolution for both sides.\textsuperscript{105}

4. Closing

Toward the close of the negotiation is the appropriate time to give alternatives, set deadlines for offers to expire, and make the last concession small and conditioned upon agreement. Be conscious of the end of the negotiation approaching because there is less time to correct mistakes. Delay giving monetary figures prematurely and also avoid using rounded numbers; instead, use exact numbers based on calculations. Consider referring to outside criteria to determine amounts, and continue to focus on covering all the details. A negotiator should give reasons for the final offer, be specific, and condition it on settlement. Also, proficient negotiators provide adversaries with sufficiently generous terms in order to insure a sincere acceptance of those terms and a commitment to honor them, since they are cognizant of the natural tendency for persons to experience buyer’s remorse, about a major decision just after committing it.\textsuperscript{106}

5. After

After the negotiation process, it is wise to reflect and to plan how to proceed differently next time. For example, the negotiator should review what factors were most influencing during the negotiation, what were the surprises, what the opponents did that enhanced or weakened their position, and what induced the parties to reach an agreement. The negotiator should contemplate how the little things, repeated over time, form a pattern and make a difference. The debriefing process is a catalyst to accelerate learning and gives the negotiator an opportunity to transform undesirable experiences into a successful educational process. It is also important to recognize that in reality, settlement is less a climatic end to a

\textsuperscript{105}As John Quincy Adams once said, “Patience and perseverance have a magical effect before which difficulties disappear and obstacles vanish.” Madison O’Sullivan, \textit{Magical Effect of Perseverance and Patience}, available at http://ezinearticles.com/?Magical-Effect-of-Perseverance-and-Patience&id=3092137 (last visited June 23, 2010).

conflict, but rather part of a continuing process in which the agreement must be implemented.107

**D. Component Seven: Apply Mediation Principles**

Mediation involves the intervention of a third party in the negotiation process. The principles of mediation, nevertheless, can be used very effectively in negotiation involving two parties. Mediation values collaborative, interest-based, or problem-solving skills and is designed to solve a problem rather than to conquer and win, as sometimes characterizes adversarial negotiations.108 Often the conflict has muddied the lens through which the parties view their problems; therefore, a good mediator wades through the conflicting facts and feelings, unravels the problem, poses alternatives, and leads the parties through all the uncertainty and conflict to a solution. Another goal of mediation, which is valuable in most negotiations as well, is the preservation of relationships. Disputants in business often wish to continue the relationship subsequent to the resolution of their dispute, as an ongoing relationship will further the business interests of both parties.109 Mediation is more likely than an adversarial proceeding to produce this desirable result.110

A mediator is a negotiation facilitator who suspends judgment and helps the parties recognize the value of a mutually satisfactory settlement.111 Mediation works because of the process, not because of the peo-

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109In the event of a breach of contract, “the existence of a valuable relationship between the parties is more likely to facilitate a negotiated resolution of their dispute than if no such relationship exists.” The nonbreaching party may view the relationship with the offending party as being more valuable than the individual claim arising out of the technical failure to honor the contractual provision. See Jeswald W. Salacuse, *Renegotiating Existing Agreements: How to Deal with “Life Struggling Against Form,”* 17 NEGOT. J. 311, 324 (2001).


ple involved. The mediator’s focus, therefore, is on the process, and on allowing time for the parties to determine the discussion. There are several techniques that assist the mediator in this process, and these skills can assist a negotiator as well.

The mediator uses open-ended, nonthreatening questions that expose facts and feelings, which is the information needed to resolve the conflict. Questions such as “How do you feel about what happened?” open points for discussion and resolution. Moreover, such nonthreatening questions can be very effective to show a willingness to cooperate. Mediators also help the parties to distinguish between positions and interests. Questions can be used to probe the posturing of positions in order to discover true interests and needs.112

Bargaining positions may be expressions of hurt, anger, or a desire to punish, as well as hopes for concessions. Usually parties cannot settle a dispute without modifying either the form or content of their original demands. The mediator helps the parties to distinguish their true underlying needs and interests—those things that must take place for the dispute to be settled—from their original desires and to modify their bargaining positions accordingly. As an agreement nears, the mediator, as an agent of reality, increases both party’s awareness of the other’s needs, and builds a realistic framework within which both parties can assess the costs and benefits of either continuing or resolving the conflict.

To accomplish this objective, mediators reaffirm and clarify the statements made by the parties. Negotiators, like mediators, should reframe, repackage, or restate what the parties assert by saying, “Let me be sure I understand your argument” and then restating the argument as accurately as possible so that assertions are reflected back to the parties for clarification and comprehension. Like mediators, negotiators also should harness the seething passion among the parties to motivate the parties to start building anew. Conflicting passions can be a positive magnetic force, which the negotiator must identify, normalize, and then harness to produce a productive conclusion.113

In sum, negotiators benefit from practicing the skills of a mediator, that is, being patient and allowing time for the process to work, using open-ended questions, and probing beneath the surface of ideas ex-

112Questions should be neutral, eliciting information, and nonconfrontational: “When you say you need X, what does it do for you?”

changed to decipher true interests, needs, and solutions, as opposed to attempting to alter a person’s position.

IV. BEING PERSUASIVE

This section focuses on the last three components: the subtlety of signals in communication, the classical art of persuasion, and on timeless values, the key ingredients of professionalism.

A. Component Eight: Communicate Through Signals

People see themselves primarily in the light of their intentions, which are invisible to others; on the other hand, they see others mainly in the light of their actions, which are visible, creating a situation in which misunderstanding is the order of the day.\(^{114}\) Signals sent to other people within the first seven seconds of meeting them often reveal one’s hidden agenda.\(^{115}\) The first two or three minutes of negotiating sets the tone, and gives initial clues to the other side about not only where the negotiator plans to go, but also the way in which the negotiator plans to get there. Remember also that much of communication is nonverbal, and nonverbal mannerisms contribute the impression a person makes.\(^{116}\) For example, nervousness may indicate the person is not secure in what is being said or that the person is hiding something.\(^{117}\)

Negotiators should maintain flexibility by communicating through the subtlety of signals and be tuned to signals of the need for emotional distance and perceive warnings not to overstep the other person’s personal boundaries.\(^{118}\) Listen intently to the nuances in words, particularly those


\(^{116}\)See Albert Mehrabian, Silent Messages: Implicit Communication of Emotions and Attitudes 8–39 (1980) (postulating that, instead of speech, metaphors and body language are used to explain actions and convey feelings). Making eye contact is an example of nonverbal communication, and may be appropriate for short intervals, but can be interpreting as being either threatening or attempting to show romantic interest if prolonged. Michael B. McCaskey, The Hidden Messages Managers Send, in Harvard Business Review on Effective Communication 136–37 (1999).

\(^{117}\)Alain Burrese, Negotiation Theory and Practice: Listen Up, Montana Law., Sept. 2006, at 22.

\(^{118}\)Roger Fisher & Daniel Shapiro, Beyond Reason: Using Emotions as You Negotiate 64 (2005).
that are very carefully drafted. For example, the size of each concession, as distinguished from what each side is saying in words, often signals what is to come.

People talk in rhythmic patterns, which is important to the art of persuasion. People demonstrate micromovements, which are gestures, or shifts of the body and face that are harmonized and exhibit a conversational rhythm. Also, when two people talk, their volume and pitch fall into balance, and their speech rate—the number of speech sounds per second—equalizes, as does the period of time that lapses between the moment one speaker stops talking and the moment the other speaker begins. And, like all specialized human traits, some people have much more mastery over this reflex than others; powerful or persuasive personalities can draw others into their rhythms, a talent useful in mediation and negotiations.

Fear can be a signal that is communicated during negotiations. Fear in negotiations arises in a variety of circumstances. If a negotiator faces an aggressive opponent, bargains without adequate preparation, senses that an opponent has superior bargaining power, or feels insecure about ability, it is normal to experience moderate to extreme levels of fear. In controlling emotions, think about metaemotions (the emotion a person has about emotions) because the metaemotion often influences the primary emotion being experienced; for example, a person may be happy, ashamed, or angry about being angry. To communicate more effectively and diffuse negative emotions such as fear and anger, it is useful to consider using a sketch, charts, or drawings to tell the story that must be told. When the brain is weary of its verbal chatter, making a drawing or graph is a way to increase perception of how things are seen and felt.

Also, the use of constructive ambiguity can send positive signals when agreement on all details is not possible. By avoiding discussion of specifics, a signal is still sent that a general agreement can be reached. While clarity


\[122\] See Betty Edwards, Drawing on the Right Side of the Brain 21–24 (1999) (discussing the expression of oneself through the nonverbal language of art).
and precision in communicating are often good traits, there is a time and place for ambiguity. Ambiguous statements can be used to keep talks going simply because further clarification is needed. In addition, ambiguous demands make face-saving concessions easier, because clarifying an imprecise statement is usually better than having to equivocate after making one that is too precise.\textsuperscript{123} Finally, a timeline with an impending deadline is one of the most powerful forces in negotiations.\textsuperscript{124} It sends a signal that the force of time and the expectation of a beneficial outcome are in tension. If the negotiation is not time critical, consider trying to reach a mutual agreement to establish an artificial deadline.\textsuperscript{125}

\textbf{B. Component Nine: Adopt the Art of Persuasion}

Establishing trust at the beginning of a negotiation builds a relationship, which is critical because it is difficult to negotiate without trust, and trust is essential to successful persuasion.\textsuperscript{126} Professionals need trust and must be able to rely on others acting as they say they will act, and vice versa.\textsuperscript{127} The developing of relationships is critical to the art of persuasion in negotiating. That development requires that adversaries be treated with respect, not as an object to be pushed, but rather as a person to be persuaded.\textsuperscript{128} To this end, a negotiator should use a story-telling technique that depends on facts and careful organization, not judgments and opinions; grouping key facts (with the big ideas first) into a series of verbal pictures

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\textsuperscript{124}While a timeline is not intended to rush the process, it is intended to intensify the immediate effort and the incentive to reach closure.
\textsuperscript{125}\textsc{Henry S. Kramer}, \textit{Game, Set, Match: Winning the Negotiation Game} 323 (2001).
\textsuperscript{126}Aristotle asserts that a speaker’s character may be the most effective means of persuasion. “Persuasion is achieved by the speaker’s personal character when the speech is so spoken as to make us think him credible. We believe good men more fully and more readily than other: this is true generally whatever the question is, and absolutely true where exact certainty is impossible and opinions are divided.” \textsc{2 Aristotle}, \textit{Rhetoric: Complete Works: The Revised Oxford Translation} 2155 (Jonathan Barnes ed., 1984) (W. Rhys Roberts, trans.).
\textsuperscript{128}Respecting the other party as human beings, who are deserving of fundamental dignity, should be an ethical imperative as well. \textsc{Jonathan R. Cohen}, \textit{When People Are the Means: Negotiating with Respect}, 14 Geo. J. Legal Ethics 739, 802 (2001).
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(word snapshots) allows a negotiator to persuade by showing rather than by telling.129

Dialogue is a unique form of discussion because it is a type of conversation in which there is equality, and, in the absence of coercive influences, participants respond with unreserved empathy, and it examines underlying assumptions in the open.130 It seeks a genuine openness of each party to the concerns of the other, as one person listens and responds to the other person with an authenticity that forges a bond, as distinguished from a negotiating device that seeks to overcome conflict and reach an agreement leading to action.131 These traits create a powerful potential to persuade. While dialogue creates mutual understanding and a climate conducive to decision making, nothing ruins promising dialogue and undermines decisions more than the failure to keep the two processes separate.132

In employing tactics of persuasion, negotiators are wise to consider that reactions to negative and positive consequences are not always equal. People will risk more to avoid loss than to achieve gain. This loss aversion concept explains why people tend to disfavor a loss more than they favor an equivalent gain.133 People are often unwilling to gamble for an extra margin of safety but demanded huge sums to accept added risk, a behavioral pattern that is not necessarily rational.134 The art of persuasion often involves more than shaping the other person’s perceptions; it also involves


131 Id. at 14–15.

132 Id. at 15.

133 When negotiating a major league baseball contract for a gifted pitcher, the agent chooses not to stress the benefits to be derived from this player but, instead, points out simply that the loss of this player’s skill will be “outcome-determinative” to the interested team. Tyler Kepner, In Bidding for Ace, The Cards Are Held Close to the Vest, N.Y. TIMES, Nov. 5, 2006, at sec. 8–1.

shaping a perception of the available alternatives, for example, with respect to wins and losses. In other words, “Diplomacy is the art of letting someone else have your way.”

C. Component Ten: Affirm Timeless Values

The last component of effective negotiating supports all prior components and is the critical ingredient found in professionalism: timeless values. These values include courage, loyalty, fair play, tolerance, truthfulness, persistence, and integrity. Timeless values in negotiations determine relationships; create power; and form the very basis for the most important quality, which is trust.

What constitutes a profession is difficult to define comprehensively, but all attempts include reference to a store of special training, knowledge, skills, and to the adoption of ethical standards governing the manner in which these should be employed . . . professionals can be expected to observe something more than the morality of the marketplace. . . . This duty of fairness is one owed to the profession and to society.

Predictably in their professional life, people will be confronted with a request to do something morally wrong, and while they may not get caught, they will sacrifice their self-respect if they choose the immoral path. Many people fail because they are not aware when they have reached the point in which they are still free to act according to reason and core values, and they become aware of this choice only after it is too late for a good outcome.

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135 A psychologist identified six principles of influence that can be used to persuade an adversary to agree to requests, which can be adapted to the negotiation process: liking, social proof, commitment and consistency, reciprocity, authority, and scarcity. Chris Guthrie, Principles of Influence in Negotiation, 87 MARQ. L. REV. 829, 830–36 (2004).


137 “The only thing truly worth envying is peace of mind that comes as a result of having values and adhering to them.” Harry Stein, Ethics [and Other Liabilities]: Trying to Live Right in an Amoral World 75 (1983).


139 Professionalism in Practice, ABA J., Aug. 1998, at 48, 54 (quoting William M. Hoeveler, senior judge of the U.S. District Court in Miami who presided over the Noriega trial).

140 See Erich Fromm, The Heart of Man: Its Genius for Good and Evil 133–43 (1964) (discussing how an awareness of good and evil is different from a theoretical knowledge of the
In order to make responsible choices, individuals must seek an inner freedom so as not to be overly influenced by subconscious motivations that unknowingly could direct decisions. A sound value system is the best defense against this possibility.\textsuperscript{141} Values must control emotional reactions. Frequently one’s reasoning tends to support (and not challenge) goals that spring from emotions, and emotions and feelings tend override one’s reason.\textsuperscript{142} Unless emotions commit to the goals set by one’s intellect, it is unlikely they will be accomplished; therefore, the best intellectual strategy for counteracting a possible veto by emotions is to couple a strong emotional desire to one’s intellectual desire through a strong commitment to timeless values.\textsuperscript{143}

At its essence the true goal is not just to be a good negotiator who is trying to be a moral person, but to be a moral person who is trying to be a good negotiator. The root of the word professionalism means to profess, to affirm, to validate, to confirm.\textsuperscript{144} The primary role of a professional, therefore, is to care and to find a way to communicate that feeling.\textsuperscript{145} A famous psychologist postulates that networks of individual nodes are connected via complex but understandable relationships and that any two people are connected in a social network within six degrees of separation.\textsuperscript{146} It follows, therefore, that the reputation of negotiators will precede them with amazing speed, and caution must be taken with respect to that difference, and how freedom lies in choosing between alternatives based upon an awareness of alternatives and their consequences). Consider the recent imprisonment of the prosecutor in the Medgar Evers’ murder trial in Mississippi for obstruction of justice. Wayne Drash, \textit{Civil Rights Hero Caught in Corruption Probe to Begin Serving Sentence}, available at http://www.cnn.com/2010/CRIME/01/04/mississippi.medgar.evers.prosecutor/index.html (last visited June 23, 2010).


\textsuperscript{143}Id. at 73–76, 116. Arguably, strong emotional desires are the result of the evolutionary process of natural selection, which preserves traits needed for survival, such that reasoning has a tendency to support (rather than question, contradict, or challenge) the goals set by emotional desires. This effect can result in misjudgment because the mind and reason operate behind a distorting and accommodating lens of emotion. People think they are making good, sound decisions based on a well-reasoned process, but the truth often is that people have fooled themselves. \textit{Id.} at 104. \textit{See also} Wolff, \textit{supra} note 141, at 62.

\textsuperscript{144}Merrilyn Astin Tarlton, \textit{10 Ways to Build Productive Relationships with Your Clients}, L. PRACT. MGMT., July/Aug. 1997, at 44.

\textsuperscript{145}Id.

fact. This last component of effective negotiating requires the affirmation of timeless values, a critical ingredient needed to withstand successfully professional challenges. As President Obama declared, “Our challenges may be new. The instruments with which we meet them may be new. But those values upon which our success depends—honesty and hard work, courage and fair play, tolerance and curiosity, loyalty and patriotism—these things are old. These things are true.”

V. CONCLUSION

In the midst of the Cold War President Kennedy suggested that negotiation, not confrontation, was a wise course and that civil resolution was not a sign of weakness, but must be characterized by sincerity of effort, that is, by professionalism. President Obama in his inaugural address admonished that timeless values be treasured and kept sacred. Negotiation, a routine method of reaching settlement of disputes, can be simulated in undergraduate and graduate law courses to teach ethical practices and principles. Negotiation exercises also develop a deeper level of understanding of the actual law involved in the conflict and introduce students to a set of life skills, which can be employed in countless business and personal situations.

This article presents an instructional module for professors to share with students and to assist them in understanding the negotiation process.

147 A reputation for questionable behavior would make it difficult, if not impossible, to transact future business with their adversaries and jeopardize long-term professional relationships. Charles B. Craver, Negotiation Ethics: How to Be Deceptive Without Being Dishonest/How to Be Assertive Without Being Offensive, 38 S. Tex. L. Rev. 713, 733 (1997).


150 By negotiating one or more terms of a contract, students become aware of the complexity of substantive legal concepts and the professor creates an active learning environment, where students learn by doing rather than by thinking and talking abstractly. Carol Chomsky & Maury Landsend, Using Contracts to Teach Practical Skills: Introducing Negotiation and Drafting into the Contracts Classroom, 44 St. Louis L.J. 1545, 1546 (2000).
It describes effective negotiation as the coalescence of two forces. One force is focused upon a disciplined toughness, a determined will and a skill set that permits the negotiator to assess the situation and to outthink the adversary. The other force is focused on the timeless values of integrity, civility, loyalty, truthfulness, and compassion. Together these forces illustrate the dynamic tension that exists between the ethical force of professionalism and the competitive force of the negotiator mindset. The subsequent appendix provides a sample negotiation with validation exercises that lead the student to practice and to reflect on this dynamic tension and the ten basic components of negotiation proposed in this paper.

**APPENDIX: NEGOTIATION EXERCISE**

*Endorsement Contracts and Morals Clauses*

**I. OVERVIEW**

A negotiation exercise provides students with the opportunity to experience and to practice developing negotiation skills and to reflect on the process. While role plays are an excellent way to get students involved in the learning process, it is important for instructors to clearly articulate their expectations of the students and the procedures to be followed. This particular exercise focuses on the negotiation of various clauses in an endorsement contract, including a morals clause and an early exit clause. Instructors also may include an assignment that requires students to research morals and early exit clauses and to find examples in preparation for the exercise so that it serves not only to develop a skill set, but also to reinforce substantive principles of contract law.

Contractual provisions that focus on the behavior of celebrity spokespeople or professional athletes are an integral component in endorsement and sport contracts.¹⁵¹ Such clauses are important because revelations that an endorser has drug or alcohol issues, domestic violence concerns, or is engaged in criminal activity can have far-reaching financial impacts on a com-

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pany and its products. Morals clauses operate as a condition subsequent in the contract and, if violated by the celebrity, can terminate the endorsement contract and the obligation of the company to retain the celebrity as an endorser. A broad morals clause would be applicable to a wide range of behaviors that offend the community mores or public morals or decency, which would likely cause a diminution in the value of the commercial association. Recently, Jon Gosselin’s contract with The Learning Channel (TLC) exhibited such a broad prohibition and presumably allowed TLC to terminate his contract for the show *Jon & Kate Plus 8* if he did anything inappropriate that offended social conventions or public morals or decency or would bring TLC into “public disrepute, contempt, scandal or ridicule.” On the other hand, a narrow, less restrictive morals clause would limit termination to the endorser being convicted of a felony and is more common when the endorser in question is particularly marketable, such as Tiger Woods.

In addition to the scope of the clause, another issue associated with the inclusion of a morals clause is the question of who will determine whether or not the endorser’s behavior meets the standard set by the clause. While a company will want to make that call itself as per the terms of

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The employee agrees to conduct himself with due regard to public conventions and morals, and agrees that he will not do or commit any act or thing that will tend to degrade him in society or bring him into public hatred, contempt, scorn or ridicule, or that will tend to shock, insult or offend the community or ridicule public morals or decency, or prejudice the producer or the motion picture, theatrical or radio industry in general. *Id.*


the agreement, endorsers can negotiate for an arbitrator to make that decision. Reverse morals clauses, giving the endorser an out should the company be engaged in criminal activity, is also a potential component of an endorsement contract.\(^{156}\)

An early exit clause is considered another form of protection for the company. In a multiyear contract, the early exit clause allows the company to terminate the contract without cause upon an agreement to pay a fixed amount to the other party. Such a clause gives the sponsor the means to back out of a multiyear contract should the endorser not meet expectations. Moreover, the early exit payment generally will be a reduced amount of the compensation due under the provisions of the original contract and will, therefore, save the company money overall should the contract not continue.\(^{157}\)

This contract negotiation between the fictional clothing retailer, Windbird, and the professional mountain bike rider, Ashe Birch, addresses several common provisions in endorsement contracts. Certain provisions have been negotiated and agreed upon, and those are delineated for the students. The provisions yet to be agreed on establish the negotiating points for this exercise: the term of the contract, compensation, bonuses, a morals clause, and an early exit clause. For this exercise, one or two students should be assigned for Birch and for Windbird, respectively. All students should read the Birch Windbird Scenario to set the scene for the role play and to provide general knowledge. Then each negotiator(s) should read the Confidential Information applicable to their respective party. Give the students sufficient time outside of class to become familiar with the role and the limitations provided. Set a time limit for the negotiation to be completed to encourage the students to make efficient use of their time and advise them that an agreement is expected.

### II. Birch-Windbird Scenario

Ashe Birch is a professional mountain bike rider whose past year has put her in the spotlight. A native of a small town in the mountains of North Carolina, Ashe was raised riding the mountainous terrain of western North Carolina.


\(^{157}\)Wood & Bruce, *supra* note 153.
Her love for the sport of mountain bike riding and her instinctive ability in that sport make her a natural winner. She received numerous championship awards while competing in junior divisions. Now, as an adult, her skills and focus have propelled her to national and international recognition. The past year she placed second in the U.S. National Championship in cross country and third in the Mountain Bike World Championships, a challenge rarely met by U.S. riders. Moreover, Birch is a clear choice for the U.S. Olympic mountain bike team. It is not only her athletic ability, however, that gives her an edge; Birch is focused and disciplined but is also known for her daring style and sense of humor. She appears open and friendly in a very competitive sport. Strong, attractive, and focused, Ashe Birch is a rising star.

Windbird Corporation is the retailer of clothing with its target audience in the twenty-to-thirty-year age range with a clean and contemporary image. The company has achieved considerable success in the area of high-end casual clothing. Over the past five years it has seen its market share expand, but now Windbird is ready to go to the next step; its board of directors has initiated a campaign to expand Windbird’s market. While not a retailer of sport clothing and gear, Windbird is working to attract athletes, and those who align themselves with those athletes, to its “après-sport” clothing line. Conceptually, Windbird hopes its products, featuring casual and special occasion selections, will appeal to female athletes as the clothing of choice in their down time. The new line of comfortable, environmentally friendly and stylish clothes is about ready to go into production, and Windbird hopes to launch the new products campaign with a new spokesperson. Advertisements for the new line will include print and digital mediums and will appear in sport magazines, aired during broadcasts and posted on sports-related Web sites. Windbird needs a fresh contemporary face for these ads to attract its new audience.

Windbird believes that Ashe Birch has just the qualities for which it is looking. Birch and Windbird have been in negotiations regarding a potential multiyear million dollar contract that could result in Birch being the new spokesperson for Windbird. Many areas of a potential contract have been considered and, at this session, the negotiators are discussing several outstanding provisions, including a morals clause. Windbird and Birch have reached agreement in several areas, as follows:

- Exclusivity: Birch has agreed that during the endorsement term with Windbird that she will not enter into any contracts for the endorsement of nonsports clothing or accessories.
• Territory: Both parties agree that the territory shall be worldwide.
• Arbitration: Both have agreed to binding arbitration should a contract dispute arise, with the exception of the determination of termination under the morals clause provisions.
• Athlete approval: Both parties have agreed that Birch shall have the right to approve all advertising and promotional materials used by Windbird.
• Products: Windbird and Birch have agreed on the specifics as to the products Birch will endorse.
• Name and likeness: Windbird and Ashe have agreed on the specifics regarding the use of Birch’s name and likeness during the contract term.
• Services: The number and nature of the advertisements and other promotional materials for which Windbird uses Birch have been decided.
• Personal appearances: Windbird and Birch have agreed upon the number of days per year that Birch will be required to make personal appearance on behalf of Windbird.

Windbird and Birch have not reached agreement in the following areas:

• Term of the contract.
• Compensation and bonuses.
• Morals clause.
• Early exit fee.

A signed agreement must be turned in to the instructor prior to the following date and time: _________

III. ASHE BIRCH: CONFIDENTIAL INFORMATION

While mountain biking is her life, Birch knows that for long-term financial stability, a chance to work as a spokesperson, such as the one being offered by Windbird, is an amazing opportunity. Her biking career is on the rise, and while she hates the term “cashing in,” she knows that her ability to continue to ride and live the lifestyle she loves requires her treating her sport as a business. The championship wins over the past year have positioned her to take full advantage of the business aspects of her sport, particularly with her charismatic personality. While Windbird’s interest is one that truly peaks her interest as well, she knows that as long as she handles herself well, there will be other sponsors and opportunities for her.
Birch is aware that Windbird has a short list of potential spokespeople and that she is not its only choice. On the other hand, there is some interest in her endorsement from another retailer of sporting apparel and from a bicycle manufacturer, although official negotiations have not started. Birch is somewhat concerned by the fact that these companies have not contacted her; she does not want to feel that Windbird is the only option available to her. She knows it is best for her bargaining position with Windbird for the company to believe that there are other companies interested in the marketability of the Birch name. Even so, the work with Windbird most aligns with her desires, and it is the contract she wants.

Since Birch is just beginning the sponsorship journey, she wants to be sure that no provisions in this contract jeopardize her financial security or set a precedent for future contracts she might negotiate. She wants to leave options open for her long-term professional and financial security. In line with those feelings, Birch would like her contract with Windbird to have no more than a two-year term unless the financial compensation offered by Windbird justifies a longer period, in which case she would consider a three-year term.

Compensation, of course, is a major negotiation point. Birch’s insists that the longer the contract term, the higher the annual compensation. For a one-year contract she would consider $350,000 with bonus options available, but if she agrees to a longer contract, a significant increase in annual compensation would not be out of the question. Bonuses also impact the compensation negotiations. Specifically, Birch believes she should be awarded bonuses if she should win national competitions or if she should be photographed wearing Windbird clothing. The amount expected for bonuses is flexible, the higher the compensation set, the less the bonuses. While, Birch’s position is that there should be no caps on the amount paid through bonuses, she is willing to consider a high cap.

Aware that a morals clause is common in endorsement contracts, Birch does not object to the inclusion of such a provision but does want to see the clause as narrow and least restricting as possible. Moreover, rather than leaving decisions about what conduct would constitute a termination to Windbird, Birch wants to see an arbitration provision included in the morals clause. The more broad and restrictive the clause would be, the more an arbitrator must be involved. The more narrow and less restrictive the clause, the more flexibility there is in removing an arbitration provision. Moreover, Birch feels that a reverse morals clause is not without merit. Such a clause
would give her remedies should Windbird engage in criminal activities or fraud. Birch wants this contract, but the morals clause could be a major obstacle to the negotiations. A broad and very restrictive provision could result in her deciding to sit back and contemplate other opportunities.

The early exit clause is more troublesome to Birch. If she commits to a long-term contract, she believes Windbird must make an equal commitment, and the early exit clause undermines that position. Birch would like to see such a provision excluded from the contract but is willing to compromise if the exit payment is close to the financial expectations set by the compensation clause. Birch is not entrenched in her positions and is willing to negotiate in good faith to determine whether or not she and Windbird can establish a mutually rewarding relationship.

IV. WINDBIRD CORPORATION: CONFIDENTIAL INFORMATION

Over the past five years, Windbird has been growing steadily, but recent sales figures showed that the company seemed to have hit a plateau. The competitive marketplace has made it difficult for Windbird to break into the top ranks as a retailer of casual contemporary clothing. The plan to launch a new line of “après-sport” clothing is an effort to increase not only its established market share, but to cross over into the sport marketplace. While taking a sports spokesperson focus, Windbird hopes that the new line will also appeal to those without a sport background but who want to associate with that concept. Windbird has made a major investment in the design, production, and marketing of this new line and really needs to garner as much publicity and attention as it can. Upper management believes that an up-and-coming female athlete is perfect to jump start the new campaign.

Windbird has other athletes on its short list, but Ashe Birch is its first choice. While many contractual provisions of the contract have been discussed previously by the parties, several major components of the deal are still unsettled. Windbird is willing to making a major investment in Birch, a relative unknown. Windbird is confident that Birch is the spokesperson it wants but wants a long-term commitment from Birch. Windbird favors a three-year deal, although it would be willing to go to a one-year term with the option for contract renewal if that was the only option available.

Compensation, Windbird believes, should be based on the contract term. Since it desires a long-term contract, the shorter the contract term,
the less Windbird wants to pay. A one-year term would set compensation no higher than $200,000 with a little room to move. Under a two-year term, Windbird would consider an increase in that amount. For the three-year term Windbird desires, the company is willing to pay up to $340,000 per year. With compensation set at this higher level, Windbird feels that bonuses for placing in national competitions or for publicity shots in its clothing should be set at $2,500 per bonus and capped at $25,000 per year. If agreed-upon compensation is lower, Windbird would consider raising the cap on the bonuses, particularly if a three-year term is reached, with the annual compensation under $300,000.

The early exit clause is one that Windbird views with much flexibility. It is willing to forego such a clause in a two-year contract. However, if the parties reach agreement to a three-year term, Windbird would like to see an early exit clause with a payment to Birch of half the monies due under the contract. Nevertheless, Windbird insists on the inclusion of a morals clause. Windbird is ready to make a major financial commitment but is very concerned that its new bright star, that is, Ashe Birch, could backfire. Because she is fairly new to public attention, she brings little past history to the table. While Birch has no criminal convictions, Windbird is concerned that issues, such as alcohol or drug use, could surface and sabotage its campaign and cause substantial financial losses.

Windbird takes pride in its image as the provider of clothing for active, clean-cut and upbeat twenty and thirty somethings, so a morals clause is a nonnegotiable, at least as to its inclusion in the contract. While there must be a morals clause in the contract, there is some flexibility regarding the language and restrictiveness of such a clause. Ideally, Windbird would like to see a more restrictive clause covering a wide range of behaviors that could negatively impact its image and products. Understanding that some concessions may need to be made, Windbird is in a position to allow some flexibility in agreeing to a less-restrictive morals clause and even an arbitration provision if that is what it takes to get Ashe Birch as their spokesperson. There is no doubt that Windbird is hoping these negotiations result in a mutually satisfactory agreement.

V. CONDUCTING THE EXERCISE

Prior to starting the negotiation, allow the students to consider the following questions and advise them that these questions, which track the ten
points enumerated previously, will serve as the basis for a graded reflection at the conclusion of the exercise. They should compose a reflection paper about the role play and the negotiation process using these ten prompts, and those questions that are relevant to their experience, as guidance. A structured reflection will keep students on task and focused on the negotiation process. Reflection is a major component of the exercise in that it requires the students to think critically about the negotiation role play; to make observations about their behavior and that of their opponent, and to comment on what they felt and thought before, during, and after the negotiation; and to think about their learning in the context of their own language.\textsuperscript{158} After the students complete their reflection papers, a class discussion of their experiences allows them the opportunity to see if the reactions of their classmates were similar or dissimilar to their own. It is also advisable to ask about the terms of the agreement that was reached as well as which factors were most important in influencing the process.

\section*{A. Beginning the Process}

1. \textit{Start from Where You Are}: Describe your negotiation style. Was it an adversarial or a cooperative negotiation style? What about your opponent? Which was more effective and why? Explain if your approach to the negotiation was principled, positional, or a combination of the two approaches. Which approach was more effective and why? In what way were you influenced by first impressions? How did you manage those impressions?

2. \textit{Recognize Patterns}: What patterns did you discern in the way in which you negotiated? What about your opponent’s patterns? Did certain phrases, comments, or nonverbal messages occur often during the negotiation?

3. \textit{Follow the Rules}: How was a professional or unprofessional attitude manifested? What ethical issues emerged? What, if any, misrepresentations were made? If misrepresentations were made, what factors influenced the decision to make those statements? How did you judge what was bluffing and what was misrepresentation?

B. Becoming More Skilled

1. *Listen with Four Ears*: Describe how your four ears were used during the process. What unspoken messages did your opponent reveal regarding her or his position? What nonverbal signals did your opponent convey? How did you practice listening to your opponent without thinking about your response to his or her statements? In what ways, or at what times, did you feel mistrustful or angry toward your opponent? How did small talk at commencement of the negotiation help you identify your opponent’s communicative style? If there were noticeable pauses during the negotiations, why do you think they occurred, and what did they mean? What assumptions did you make about your opponent’s conduct and/or position?

2. *Plan the Negotiation Strategy*: What did you do to prepare for the negotiation? What was your plan for the negotiation? What opportunities did you have to verify whether or not your opponent’s statements were accurate? In what ways did you feel the pace of the negotiations were either too rushed or too slow? Who made the first offer, and what was it? How did that offer affect the negotiations? Who made the first concession, and how did that affect the negotiation? What additional preparation would you now suggest?

3. *Anticipate Tactics*: In what ways was the beginning of the negotiation an opportunity to size up your opponent? How did you identify the goals and objections of the party for whom you were negotiating? How did the plan of action change as the negotiations continued? How did the negotiations become more emotional as they progressed? What tactics did you anticipate your opponent might use? Did they, and how were they either ineffective or effective? What tactics did you think about using? Did you, and were they ineffective or effective? If you were to conduct the negotiations again, what would you do differently? What factors most influenced you?

4. *Apply Mediation Principles*: What statements did you clarify with your opponent? How do you demonstrate patience toward your opponent? Give examples of reflective discourse that you used in the exercise. How did you reframe questions? Give examples. Did you find this technique effective or ineffective and why?

C. Being Persuasive

1. *Communicate Through Signals*: What nonverbal signals did your opponent communicate to you? How did you interpret those signals? How
did they influence the negotiations? Were there verbal signals communicated during the negotiation that assisted in understanding your opponent’s position? In what ways did you feel that your opponent was ambiguous as to whether or not an agreement would be reached? How did the deadline set for the negotiation impact the negotiation process?

2. Adopt the Art of Persuasion: What statements, nonverbal signals, or verbal signals did you make to attempt to persuade your opponent to your position? What did she or he communicate to attempt to persuade you? How effective were those attempts at persuasion? What factors most influenced you during the negotiations? What did your opponent do that enhanced or weakened her or his position? How would you describe your opponent’s level of openness toward you and your position? How would you describe your own level of openness?

3. Affirm Timeless Values: What actions did you take to maintain a professional attitude? How did you demonstrate respect toward your opponent? How did you demonstrate honesty in stating your position? Would your opponent describe your conduct during the negotiation as being trustworthy and honest? Would you describe your opponent’s conduct as being trustworthy and honest?