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GETTING PAST NO

Negotiating in Difficult Situations

Revised Edition

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Don't Reject:

REFRAME

Craft against vice I will apply.

—William Shakespeare,
Measure for Measure

Now that you have created a favorable climate for negotiation, the next challenge is to change the game. The problem is that while you would like to discuss each side's *interests* and how to satisfy them, the other side is likely to insist on their position. While you may be flexible, they may stonewall. While you may be attacking the problem, they may be attacking you. Consider the following negotiation:

BUDGET DIRECTOR: I won't accept anything less than a ten percent cut in your budget. So let's get to it, okay?

MARKETING CHIEF: That's impossible. We can't survive on that.

BUDGET DIRECTOR: I'm sorry, but I've already told the other

department heads you'll take the cut. If you don't, all the other deals will unravel.

MARKETING CHIEF: I understand your problem, but try to understand mine. I've just instituted a new plan in my department that will bring about greater productivity and substantial cost savings—but I can't implement it with a ten percent cut. Can't we cooperate and try to arrive at a solution that's good for the company?

BUDGET DIRECTOR: That's what I want—your cooperation. Let me put you down for that cut. Deal?

MARKETING CHIEF: I'm sorry, but I just can't agree to that.

BUDGET DIRECTOR: Look, I don't want to get you into any trouble. But I need that budget cut now.

MARKETING CHIEF: Suppose we take a six percent cut. That goes a long way toward meeting your target. How about that?

BUDGET DIRECTOR: Well, that makes it easier. Now you've only got to find four percent more.

MARKETING CHIEF: Six percent is as high as I can go.

BUDGET DIRECTOR: The president is going to hear about this!

What can you do if the other person takes an inflexible position? What if the person digs in ("I won't accept anything less than ten percent"), threatens ("I don't want to get you into any trouble"), or presents you with a *fait accompli* ("I've already told the other department heads that you'll take the cut")?

Since the other side's demand seems unreasonable, your natural temptation is to reject it out of hand. You respond to their position by advancing your own. They, of course, reject your position and reassert theirs. Even if you come back with a reasonable compromise, they may interpret it as your fallback position, pocket the concession, and press you for more. Before you know it, you are once again playing their game of hardball—precisely what you wanted to avoid.

Is there any way to draw them into *your* game of problem-solving negotiation?

To Change the Game, Change the Frame

Remember the batting secret of the great home-run hitter, Sadahara Oh. Oh looked on the opposing pitcher as his *partner*, who with every pitch was serving up an *opportunity* for him to hit a home run. Oh changed the game by *reframing* the situation.

To change the negotiation game, you need to do the same thing. Do the opposite of what you may feel tempted to do. Treat your opponent like a partner. Instead of rejecting what your opponent says, accept it—and reframe it as an opportunity to talk about the problem.

Reframing means redirecting the other side's attention away from positions and toward the task of identifying interests, inventing creative options, and discussing fair standards for selecting an option. Just as you might put a new frame around an old picture, you put a problem-solving frame around the other side's positional statements. Instead of rejecting their hard-line position, you treat it as an informative contribution to the discussion. Reframe it by saying, "That's interesting. Why do you want that? Help me understand the problem you are trying to solve." The moment they answer, the focus of the conversation shifts from positions to interests. You have just changed the game.

Consider the following example: In 1979, the SALT II arms-control treaty was up for ratification in the U.S. Senate. To obtain the necessary two-thirds majority, the Senate leaders wanted to add an amendment, but this required Soviet assent. A young U.S. senator, Joseph R. Biden, Jr., was about to travel to Moscow, so the Senate leadership asked him to raise the question with Soviet Foreign Minister Andrei Gromyko.

The match in Moscow was uneven: a junior senator head to head with a hard-nosed diplomat of vast experience. Gromyko began the discussion with an eloquent hour-long disquisition on how the Soviets had always played catch-up to the Americans in the arms race. He concluded with a forceful argument for why SALT II actually favored the Americans and why, therefore, the Senate should ratify the treaty unchanged. Gromyko's position on the proposed amendment was an unequivocal *nyet*.

Then it was Biden's turn. Instead of arguing with Gromyko and taking a counterposition, he slowly and gravely said, "Mr. Gromyko, you make a very persuasive case. I agree with much of what you've said. When I go back to my colleagues in the Senate, however, and report what you've just told me, some of them—like Senator Goldwater or Senator Helms—will not be persuaded, and I'm afraid their concerns will carry weight with others." Biden went on to explain their worries. "You have more experience in these arms-control matters than anyone else alive. How would *you* advise me to respond to my colleagues' concerns?"

Gromyko could not resist the temptation to offer advice to the inexperienced young American. He started coaching him on what he should tell the skeptical senators. One by one, Biden raised the arguments that would need to be dealt with, and Gromyko grappled with each of them. In the end, appreciating perhaps for the first time how the amendment would help win wavering votes, Gromyko reversed himself and gave his consent.

Instead of *rejecting* Gromyko's position, which would have led to an argument over positions, Biden acted as if Gromyko were interested in problem-solving and asked for his advice. He *reframed* the conversation as a constructive discussion about how to meet the senators' concerns and win ratification of the treaty.

Reframing works because every message is subject to interpretation. You have the *power of positive perception*, the ability to put a problem-solving frame around whatever the other side says. They will often go along with your reinterpretation, just as Gromyko did, partly because they are surprised that you have not rejected their position and partly because they are eager to pursue their argument.

Because they are concentrating on the *outcome* of the negotiation, they may not even be aware that you have subtly changed the *process*. Instead of focusing on competing positions, you are figuring out how best to satisfy each side's interests. You don't need to ask the other side's permission. Just start to play the new game.

Reframing is one of the greatest powers you have as a negotiator. *The way to change the game is to change the frame.*

Ask Problem-Solving Questions

The most obvious way to direct the other side's attention toward the problem is to tell them about it. But making assertions can easily arouse their resistance. The better approach is to ask questions. Instead of giving the other side the right answer, try to ask the right question. Instead of trying to teach them yourself, let the problem be their teacher.

The single most valuable tool in reframing is the problem-solving question. A problem-solving question focuses attention on the interests of each side, the options for satisfying them, and the standards of fairness for resolving differences. Here are some of the most useful questions:

Ask “Why?”

Instead of treating the other side’s position as an obstacle, treat it as an opportunity. When they tell you their position, they are giving you valuable information about what they want. Invite them to tell you more by asking, “Why is it that you want that?” “What is the problem?” or “What are your concerns?” Find out what really motivates them.

How you ask something is just as important as *what* you ask. If direct questions sound confrontational, put them in an indirect form: “I’m not sure I understand why you want that,” “Help me to see why this is important to you,” or “You seem to feel pretty strongly about this—I’d be interested in understanding why.” It helps to preface your question with an acknowledgment: “I hear what you’re saying. I’m sure the company policy has a good purpose—could you please explain it to me?” In showing your interest and respect, remember that your tone, facial expressions, and body language are just as important as your words.

Asking questions to uncover interests is like peeling the layers of an onion. You uncover one layer after another, as in the following conversation:

“Why do you want to leave the job?” asked the senior partner in a New York law firm.

“Because I need more money and you can’t give me enough of a raise,” replied the young associate.

“What’s the problem?”

“Well, my wife and I just had another child, and we need to move into a larger apartment.”

“So what’s the problem?”

“We can’t find one that’s rent-controlled.”

Once the senior partner had gotten to the bottom of

the problem, he used his network to find the associate an apartment that fit the bill. The associate ended up staying with the firm for thirty more years, becoming a senior partner himself. Persistent probing of underlying interests helped produce a mutually satisfying agreement.

Don't forget the interests of the other side's constituents. The other side's hard-line position may have less to do with their own concerns than with those of their boss, board of directors, stockholders, union members, or family. Ask about *their* interests too.

Ask "Why Not?"

If the other side is reluctant to reveal their interests, take an indirect tack. If asking *why* doesn't work, try asking *why not*. Propose an option and ask "Why not do it this way?" or "What would be wrong with this approach?" People reluctant to disclose their concerns usually love to criticize. If you are immersed in a budget negotiation and ask "Why shouldn't we cut the budget for marketing?" the marketing chief may well answer, "I'll tell you why. Sales will plunge, the board will start breathing down our necks, and I'll end up typing up a new résumé." Without being aware of it, she has just given you valuable information about her interests—her concerns about sales, her worries about pressure from the board, and her fear of losing her job.

If the other side still won't reveal their interests, bring them up yourself and ask them to correct you. If you are trying to persuade a reluctant manufacturer to speed up production, you could say to him, "If I understand what you're saying, your interests are in keeping costs down, quality high, and the service reliable. Is that right?" Few people can resist the temptation to correct someone's mis-

understanding of their interests. The manufacturer may reply, "That's not exactly right. You've forgotten about..." and off he goes telling you about his interests.

If the other side still resists, it may be because they fear you will use the information to take advantage of them. To build trust and set them at ease, tell them your interests first: "I'd like to speed up production in order to take advantage of the new market. My distributors are breathing down my neck for the product, and personally, I feel my credibility is on the line. Can you tell me a little about the constraints that make it hard for you to speed up production?" If revealing your interests makes you feel vulnerable, you don't need to tell all at the start. Give the other side a little information about your interests, ask them about theirs, then give them more information, and so on. Build trust incrementally.

Ask "What If?"

The next step is to engage the other side in discussing options. To introduce a host of possible solutions *without* challenging their position, use one of the most powerful phrases in the English language: "What if?"

Suppose your customer announces, "That's all the money we have in the budget to pay for this consulting project. We can't pay a penny more!" Ask, "*What if* we were to stretch out the project so that the excess could go into next year's budget?" Or "*What if* we were to reduce the magnitude of the project to fit within your budget constraints?" Or "*What if* we can help you show your boss how the benefits to your company justify asking for a budget increase?" If you can get your customer to address any one of these questions, you will have succeeded in

changing the game. Suddenly you are exploring options together.

Turn the conversation into a brainstorming session. Take your counterpart's position and reframe it as one possible option among many. Suppose, for instance, you are having a difficult family negotiation about where to spend the Christmas holidays. Your spouse insists on going to his or her family's home. Instead of rejecting the proposal, you could say, "That's one possibility." Propose an option or two yourself and invite your spouse to suggest others: "Another possibility, of course, would be to spend it with my family. Or what if we divide it between the two—Christmas with yours and New Year's with mine? Got any other ideas?"

If your counterpart begins to criticize your options, you might say, "I'd like to hear your criticism, but can we put it off until we have all the options on the table? Then we can see which works best." Since judging inhibits creativity, invent first and evaluate later.

Ask for Their Advice

Another way to engage the other side in a discussion of options is to ask for their advice. It is probably the last thing they expect you to do. Ask "What would you suggest that I do?" "What would you do if you were in my shoes?" Or "What would you say to my constituents?" This is the approach Senator Biden took with Minister Gromyko.

It is flattering to be asked for advice. You are, in effect, acknowledging the other side's competence and status. It not only disarms them, but it also gives you a chance to educate them about your problem and the constraints facing you.

Imagine you have to get approval for an exception to company policy from a rigid bureaucrat. You anticipate that if you ask him directly, he will complain loudly about you and all the others who are trying to bend the rules. So instead you say, "Mr. Talbot, you have been recommended to me as an expert on company policy. I have a problem on which I would like to seek your advice." After explaining the situation, you ask, "How would you suggest that I proceed?"

Once the other side gets involved in your problem, they begin to develop a stake in living up to the positive and powerful role in which you have cast them. Often they will come up with a solution to your problem; Mr. Talbot may grant an exception to the policy.

If, however, he responds by reasserting the policy, acknowledge his concerns and continue to ask for his advice: "I recognize the reasons for this policy. It's important that you uphold it. Still, this project is very important for the company's future. How would you suggest we get it accomplished?" If Mr. Talbot says there is nothing *he* can do, then say, "I understand. Could you advise me about who could grant an exception?"

Asking for advice is one of the most effective ways you can change the game.

Ask "What Makes That Fair?"

The other side's position may strike you as unreasonable. Instead of rejecting it, however, you can use it as a jumping-off point for a discussion of standards of fairness. Act as if they must believe their position is fair—they usually do. Tell them: "You must have good reasons for thinking that's a fair solution. I'd like to hear them."

Suppose, for example, an important client expects free service to be thrown in with the price of the product. You may feel you can't say no without offending. Yet if you say yes, it will be an expensive decision. So you ask, "What's your thinking about what makes that fair? Does our competition throw in the service for free?" You are using a standard of fairness—in this case, market practice—so that your customer can see that the demand is unfair. As the French philosopher Blaise Pascal wrote more than three centuries ago: "People are usually more convinced by reasons they discovered by themselves than by those found by others."

In one acquisitions negotiation, the seller asked what seemed an excessively high price for the company. Instead of rejecting the price, the buyer set out to educate him. He began by asking what profits the seller expected his company to make in the first year. The seller answered, "We will do four million this year, and that equals four hundred thousand in profits." Once the buyer had this optimistic point of reference, he was able to say, "I'm sure you'll meet that goal if you say you will. After all, you're running a hell of a ship here. But the price of that ship is based on your estimate. You know better than I the number of things that can't throw that off. If you don't meet that projection, do we get a reduction in price?" By probing for the rationale behind the price, the buyer was able to win a considerable reduction without ever rejecting the price flat out.

Sometimes, to start a discussion about a fair outcome, you may need to propose a standard yourself. In the acquisitions negotiation the buyer suggested using standard accounting practice to determine a fair price. He told the seller: "My accountant has brought up a point, though I'm sure it's something you're already aware of. We're probably going to have to set up a receivables reserve of about half

a million dollars. . . . It's a sound accounting practice, considering the way your company looks. This could bring down the company's net worth and will mean we have to take a much harder look at the price tag you've put on it." The seller again lowered his price substantially.

If the other side rejects your standard, challenge them to come up with a better one. A discussion of different standards will still achieve your objective of shifting the focus from positions to fair outcomes.

Make Your Questions Open-Ended

Not just any question will do. A problem-solving question needs to be open-ended and eye-opening.

How you phrase the question determines the answer. When a company or government official says, "You can't do that; it's against our policy," you may be tempted to ask, "Can't the policy be changed?" And the answer you will undoubtedly receive is a resounding no. If you had thought about it beforehand, you might have anticipated the answer. In effect, your question set you up for a no.

Your counterpart can easily answer no to questions prefaced by "is," "isn't," "can," or "can't." So ask a question that cannot be answered by no. In other words, make it open-ended. Preface your question with "how," "why," "why not," "what," or "who." Your counterpart cannot easily answer no to questions such as "What's the purpose of this policy?" "Who has the authority to grant an exception?" and "How would you advise me to proceed?"

Too often people ask questions for which the other side has a ready-made response. Consider the example of a British arms-control negotiator who, no matter what he proposed to his Soviet counterpart, always received the

same monosyllabic answer: "Nyet." After a year of this treatment, the Briton took the Soviet aside and expressed his exasperation. The Soviet negotiator replied, "It is *just* as frustrating for me to negotiate with such inflexible instructions from Moscow. The problem is that you're always asking me questions for which I have instructions. Why don't you ask me questions for which I have *no* instructions?" Puzzled, the British diplomat nevertheless complied at their next negotiating session, posing a new, eye-opening question. The Soviet negotiator thanked him politely and told him that since he had no instructions on how to answer, he would have to return to Moscow. There, he was able to persuade his Kremlin superiors to give him the flexibility needed to reach agreement.

Taking a cue from the two diplomats, you need to ask questions for which the other side has no "instructions," no pat answer. Your questions should make them think—just as Biden's queries compelled Gromyko to contend with the senators' reservations. In considering your questions, the other side may change their thinking and become more amenable to agreement.

Tap the Power of Silence

Only half the power of a problem-solving question lies in the question itself. The other half can be found in the pregnant silence that follows as the other side struggles with the question and mulls over their answer. A common mistake is to deprive them of this creative time. If they do not respond, you may feel a growing discomfort from the silence. In normal conversation, when you see that your question has made your companion uncomfortable, you let him or her off the hook by breaking the silence.

You should resist this temptation and wait for an answer from your negotiating counterpart. After all, you have asked a perfectly legitimate question. Let the silence and discomfort do their work. The other side may eventually respond with information about their interests, or a possible option, or a relevant standard. The moment they do, they are engaged in the game of problem-solving negotiation.

Remember, it takes only one answer to get you going. So be persistent. If one question doesn't yield the results you are seeking, try another angle, just as a skillful interviewer would. If you observe the practice of successful negotiators, you will find that they ask countless questions.

Reframe Tactics

Problem-solving questions enable you to reframe the other side's position in terms of interests, options, and standards. But you also need to deal with their tactics, the stone walls, attacks, and tricks they use to get you to give in. How do you reframe their tactics so as to direct their attention toward the problem?

Go Around Stone Walls

What if your opponent takes an extreme position, tells you "Take it or leave it," or sets a rigid deadline? To go around a stone wall, you can ignore it, reinterpret it, or test it.

Ignore the stone wall. If the other side declares "Take it or leave it!" or "You have until five o'clock, or the deal is off!" you cannot be sure whether they mean it or are just bluffing. So test their seriousness by ignoring the tactic. Keep talking about the problem as if you didn't hear what they said, or change the subject altogether. If they are serious, they will repeat their message.

Reinterpret the stone wall as an aspiration. Suppose a union leader announces to you: "I've told my people that if I don't come back with a fifteen percent raise, they can have my head on a silver platter." He has locked himself in. If you challenge his commitment, you will only make it harder for him to back away. Instead, reinterpret his commitment as an aspiration and direct attention back to the problem: "We all have our aspirations, I guess. Management is under pressure from the downturn in the economy and would love to cut wages. But I think we'll both be better off being realistic and taking a hard look at the merits of the pay issue. What are other companies paying their workers for the same job?" Your reinterpretation makes it easier for him to make a graceful exit from his commitment.

Or imagine you have to deal with a rigid deadline laid down by your opponent. Instead of rejecting it, you can soften it by reinterpreting it as a target: "We would all like to conclude this negotiation by then. That would be ideal. We'd better get to work immediately." Then turn to the problem with great gusto to show your goodwill.

Take the stone wall seriously, but test it. A third approach is to test the stone wall to see if it's real. For instance, treat your opponent's deadline seriously, but as it approaches,

arrange to be called away for an urgent phone call or meeting. Hostage negotiators, for example, will find some credible but “uncontrollable” event, such as a bank holiday, that makes it impossible for them to assemble the ransom money in time to meet the terrorists’ deadline. One leading negotiator explains, “We like deadlines. The shorter, the better. Because once you’ve broken the deadline, you’ve knocked them off their game plan.”

Another way to test a stone wall without directly challenging it is to ask questions. If a car salesperson declares that the price is final, you can ask whether you could get financing or a good trade for your old car. If the salesperson begins to show flexibility, you will have determined that the price may not in fact be final.

Don’t forget that you can sometimes turn the other side’s stone wall to your advantage. If they have given you an inflexible deadline, for example, you can say, “I’d like to be able to convene the board to make you a more generous offer, but *in view of the time problem*, this is the best I can do at the moment.” Or “To meet your deadline, we’ll need your help. Can you take care of pick-up and delivery?”

Deflect Attacks

What if your opponent threatens you, insults you, or blames you for something that has gone wrong? How can you reframe an attack, shifting the focus away from you toward the problem?

Ignore the attack. One approach is to pretend you didn’t hear the attack and go on talking about the problem. Suppose you’re a union leader dealing with a difficult boss who

threatens to fire half the work force unless you give in to his demand for wage cuts. Drawing attention to the threat would just make it harder for him to back away. Replying "Don't be ridiculous. You'd never do it!" may only spur him on to prove he meant what he said. Instead, you should ignore the threat and focus on the company's financial plight: "I know you're under pressure to make your numbers look better. Tell me a little about our situation."

If the other side sees that their abusive tactics do not work, they will often stop. Take the buyer who liked to keep his vendors waiting outside his office in order to unsettle them and make them more pliable on the terms of the deal. One vendor decided to ignore the tactic, bringing a novel along to read. When the buyer finally ushered her in, the vendor made a show of reluctantly closing the book, as if she had not been inconvenienced in the slightest. When the buyer took a long phone call in the middle of the meeting, out came the novel. After two or three such meetings, the buyer realized the tactic wasn't working and stopped using it.

Reframe an attack on you as an attack on the problem. A second approach is to reinterpret the attack. Suppose you are trying to win departmental approval for a new product, and a co-worker takes you to task: "Don't you know any better than to submit a proposal that will never fly?" You could become defensive and hostile. *Or* you could ignore the personal criticism, acknowledge the point, and reinterpret it as an attack on the problem: "You may have a point there. How would you improve the proposal to make it fly?"

Your attacker is making two claims: first, that your proposal is no good; and second, that *you* are no good. You have the power to choose which claim you want to address.

By choosing the more legitimate concern about the proposal, you can effectively sidestep the personal attack and direct your opponent's attention toward the problem.

Reframe a personal attack as friendly. Another way of reframing a personal attack is to misinterpret it as friendly. Take the eighteenth-century general who had fallen into disfavor with the great Prussian warrior king, Frederick the Great. Coming upon the king, the general saluted him with the greatest respect, but Frederick turned his back. "I am happy to see that Your Majesty is no longer angry with me," murmured the general. "How so?" demanded Frederick. "Because Your Majesty has never in his life turned his back on an enemy," replied the general. Disarmed, Frederick took the general back into his favor.

In everyday life you can reframe a personal attack as a show of concern and shift the focus back to the problem. For example, if your opponent tries to unsettle you by saying "You know, you don't look too good. You sure you feel all right?" you could answer, "Thanks for your concern. I feel great now that we're getting close to agreement."

Reframe from past wrongs to future remedies. Your opponent's attack often takes the form of blame. In a discussion of the household budget, a husband accuses his wife: "You waste money on useless knickknacks! Remember that seventy-five-dollar ceramic cat you bought?" The wife retorts, "Well, what about you, Mr. Showboat, taking all your pals out for drinks last week? How much did *that* cost?" And on they go for hours, sniping about the past. The budget is forgotten.

The opportunity always exists to reframe the issue from the past to the future, from who was wrong to what can

be done about the problem. The wife can say to her husband: "Yes, Ben, we both agreed it was too much to pay for the ceramic cat. I won't make the same mistake again. Now what about next month's budget? How do we make sure we keep to it?" When your opponent criticizes you for a past incident, don't miss the opportunity to ask "How do we make sure it never happens again?" Reframe the blame as joint responsibility for tackling the problem.

Reframe from "you" and "me" to "we." When husband and wife are quarreling about their budget, all you hear is "You did this!" and "I did not!" A simple change in language from "you" and "me" to "we" can help. The wife asks, "How do *we* make sure *we* stay within the budget?" "We" creates a side-by-side stance, drawing attention to common interests and shared goals.

A simple and powerful way to reframe the situation from "you" or "me" to "we" is through body language. When people argue, they usually stand or sit face-to-face, physically expressing their confrontation. So find a natural excuse to sit side by side. Pull out a document or proposed agreement and sit down next to your counterpart to review it. Or sit next to your spouse on the sofa instead of shouting across the kitchen counter. Talking side by side will not magically transform the situation, but it will reinforce the idea that you are partners facing a tough challenge together.

Expose Tricks

The toughest tactic to reframe is a trick. Tricks take advantage of common assumptions made in good-faith negotiation—that the other side is telling the truth, that they

will deliver on their promises, that they do have the authority they imply, and that once an issue is resolved, it won't be renegotiated. Tricks are hard to reframe because they are already couched in the language of cooperation and reasonableness in order to deceive you.

You could, of course, challenge the trick directly, but the risks are high. For one thing, you might be mistaken. And even if you are right, your opponent is likely to take offense at being called a cheat or liar, and your relationship will suffer.

The alternative to rejecting the trick is to play along with it. Respond *as if* the other side were negotiating in good faith, but act a little slow and ask probing questions in order to test their sincerity. In other words, play dumb like a fox. If the other side is sincere, your questions will do no harm. If they are trying to deceive you, you will expose the trick. Since you have not confronted them, they can save face by pretending it was all a mistake or a misunderstanding.

Ask clarifying questions. Ask questions to check and clarify the other side's assertions. If you are purchasing a company and the seller has included outstanding accounts receivable in the company's net worth, say in a nonjudgmental tone, "You must have good reasons for believing that these accounts receivable will in fact be paid. I'd be interested in knowing why you think so." Check their assumptions when they quote "infallible" authorities or methodologies such as computers and spreadsheets. Don't hesitate to press a little. And watch for ambiguities in their answers as well as outright evasions. If you spot a contradiction, don't challenge it directly. Just act confused: "I'm sorry, I'm afraid I don't understand. Could you explain how this relates to what you said before?"

One way to test your suspicious is to ask the other side questions to which you already know the answers. You can learn a lot from observing how they shade their responses.

A common trick is to mislead you into believing that they have decision-making authority when they don't. You may use up all your flexibility only to discover that they have to get the approval of their boss or board, who may well ask for additional concessions. To protect yourself, ask questions early on to clarify the other side's authority:

"Am I correct in assuming you have the authority to settle this matter?" Make sure you get a specific answer. If they don't have full authority, find out who else must agree and how long it will take to get the answer.

Another common trick is the last-minute demand *after* you have reached agreement. Instead of challenging the demand, you can ask, "Are you suggesting that we reopen the negotiation?" If your opponent says no, you can say, "Well then, I think we should just stick with the agreement we've already reached." If, however, the answer is yes, you can say, "All right. We'll treat it as a joint draft to which neither side is committed. You check with your boss, and I'll check with mine, and let's meet tomorrow to discuss possible changes." If your opponent gets something extra, you should get something in return.

Make a reasonable request. You have one advantage in dealing with tricksters that you don't have with people who are openly uncooperative, and that is their stake in appearing reasonable. So take them at their word and put it to the test, thereby placing them in a dilemma. Either they live up to their pretense of cooperation or they drop the sham altogether. In other words, you can administer a "reasonable request test."

Design a reasonable request that the other side would

agree to if they were genuinely cooperative. If, for instance, you suspect they might be concealing debts that are difficult to collect, say "If you don't mind, I'd like to have my accountant look over your books and check the accounts receivable, just as a standard business routine." If the seller refuses to let your accountant go over their books, they will look uncooperative, and you can conclude that you can't rely on what they have told you.

If your opponent cites a "hard-hearted partner" as justification for an additional demand, you can make the following request: "Excuse me, Jerry. I'm not sure I understand. Did we make a mistake in not including your bankers in our previous discussions? I hate to think that I've put you on the spot here. Maybe I should get together with them and go over the terms we discussed. Can you arrange a meeting?"

Jerry now has a choice. He can let you meet with the bankers—which should give you a better sense of their objections and whether this is indeed a trick. Or he can refuse to let you meet with them—which should put you on your guard. Or he can drop the tactic altogether and stick to the original agreement. Whatever the outcome, you are free to follow up with further reasonable requests and clarifying questions.

Turn the trick to your advantage. If you see through your opponent's trick, you can often turn it to your advantage. Suppose you are representing the wife in a divorce case. The husband promises to pay child support, but you have reason to believe he will fail to do so. When you raise your concern, his lawyer protests that the husband will certainly pay.

"Are you certain?" you ask.

"Absolutely, my client is an honorable man," replies his lawyer.

“Then he will surely not object to adding a clause that in the case of three months’ nonpayment, my client will receive his equity in the house in substitution for child support.”

The more vigorously the lawyer has affirmed the husband’s reliability, the harder it will be to object.

Negotiate About the Rules of the Game

If, despite all your efforts, your opponent continues to resort to stone walls, attacks, and tricks, you need to reframe the conversation in yet another way. Recast it as a negotiation *about* the negotiation.

There are actually two “negotiations” going on. One is the negotiation about substance: the terms and conditions, dollars and cents. The second is the negotiation about the rules of the game. How is the negotiation to be conducted? If you watch parents and children, for instance, negotiating over everyday issues such as bedtime, you will observe that they are also constantly renegotiating the extent to which temper tantrums, threats, and bribes are acceptable tactics.

Usually this second negotiation remains tacit. If you haven’t been successful in changing the game, however, you need to make this negotiation explicit. You need to talk about your opponent’s behavior. Often it is sufficient simply to bring it up.

Bring It Up

People who use tactics are usually probing to see exactly what they can get away with. In order to get them to stop,

you may need to let them know you know what they are doing. Bringing up their tactic sends the message “I wasn’t born yesterday. I know the game you’re playing. Your tactic isn’t going to work.” If they want an agreement, they will drop the tactic, because using it will only make agreement more difficult to reach.

The problem is that the other side may mistake your calling attention to their tactic as an attack. The secret is to reframe their tactic as an interesting contribution rather than as an underhanded trick.

Consider an example. Liz and Pam are two young lawyers trying to buy a set of used labor-law books from two established attorneys, Bob and Charlie. At the outset of the discussion, Bob announces in a firm voice, “The very least we’ll accept for these books is \$13,000. You can take it or leave it.” Charlie, however, argues with his partner Bob: “Come on, these two are just starting out. Surely we can give them a break. How about calling it \$11,000 and leaving it at that?” A fair market price for the books would be \$7,000, but Bob and Charlie have orchestrated a little drama in which Bob plays the bad guy who sets out an extreme demand, and Charlie plays the good guy who, by contrast, appears reasonable. In many instances the extreme demand might have its intended effect of pressuring Liz and Pam into accepting Charlie’s offer for fear that Bob might change Charlie’s mind.

In this instance, however, Liz responds by saying, “That’s interesting. . . .” She pauses for a second, giving herself a chance to think. Then she suddenly bursts out laughing and exclaims admiringly, “You guys are terrific! That is the *best* good guy–bad guy routine I’ve seen in years. Did you plan it, or was it just a coincidence? Seriously now, let’s see if we can establish a *fair* price for the books.”

Bob and Charlie don’t quite know how to respond.

They can't really be offended, since Liz is complimenting them and they aren't sure whether she is serious. In any case, to pursue the tactic would be pointless. It works only when the other person is not aware of it. Having neutralized the tactic without alienating their opponents, Liz and Pam can proceed to discuss the purchase on its merits.

It is important that you bring up the tactic without appearing to attack the other side personally. Calling them liars or cheats does not make them more receptive to joint problem-solving negotiation. By showing admiration for Charlie and Bob's skill and making light of the tactic, Liz helps them save face. Her interest is not in scoring points, but in purchasing a set of law books for a fair price and in fostering a working relationship with an established law firm.

You should make it easy for the other side to drop their tactics. If they are being particularly rude, for instance, point it out by offering them an explanation or an excuse: "It sounds like you're having a rough day." If they threaten you, respond as one businesswoman did. Instead of challenging her opponent by saying "Don't threaten me," she asked in a calm and somewhat surprised tone, "You're not intending to threaten me, are you?" Her question of clarification offered her opponent a graceful way out. He took it, saying, "Who, me? No, I'm not threatening you." In case you have misinterpreted the other side's behavior, such an approach ensures that little if any harm will come of it.

Don't accuse the other side. Just make note of what they are doing. If a person constantly interrupts you, look him in the eye, use his name, and say "Mike, you interrupted me." Or ask "May I finish my sentence?" Use a nonconfrontational, matter-of-fact tone. If Mike does it

again, patiently remind him, perhaps with a little gentle prodding, “Hey, you’re interrupting me.” Think of yourself as a friend giving him some useful feedback. Call him on his behavior—nicely.

Negotiate About the Negotiation

If bringing it up isn’t sufficient, then you may need to have a full-fledged negotiation about the rules of the game.

Take your opponent aside and say, “It seems to me the way we’re negotiating isn’t going to lead to the kind of outcome we both want. We need to stop arguing about the issues and discuss the rules of the game.” More informally, you could say, “Something’s bothering me, and I’d like to talk it over with you.”

Negotiate about the process just as you would about the substance. Identify *interests*, generate *options* for how best to negotiate, and discuss *standards of fair behavior*. If, for example, your opponent refuses to talk about anything except positions, you might explain, “My interest is in achieving a mutually satisfactory agreement efficiently and amicably. As I see it, in order for us to accomplish this we have to be willing to listen to each other, share information about our interests, and brainstorm together. We ought to be able to expand the pie, not just divide it up. If I understand your interests better, I can help you meet them, and you can do the same for me. Shall we give it a try?”

Without questioning your opponent’s honesty, discuss the fairness of particular tactics: “What if *I* were to ask for additional concessions *after* we reached agreement? Would you consider that a legitimate tactic?”

Make a specific request for how you would like the

other side to change their behavior. If they continue to attack you personally, you can say calmly, "I'm willing to talk about this whenever you are willing to stop attacking me." If you are a CEO approached by a corporate raider seeking information about your company, you could say, "Look, if you're willing to rule out a hostile takeover, I'll be happy to talk candidly. Otherwise, I'll have to assume that you'll use the information I give you against me."

Once you have agreed on the rules, you can return to negotiating over the substance in a more constructive and productive manner.

The Turning Point

The turning point of the breakthrough method is when you change the game from positional bargaining to joint problem-solving. The key to changing the game is to reframe. Reframing means taking whatever your opponent says and directing it against the problem.

Consider how, in the example at the beginning of this chapter, the marketing chief might have used reframing to draw the budget director into a new game:

BUDGET DIRECTOR (*digging in to a position*): I won't accept anything less than a ten percent cut in your budget. So let's get to it, okay?

MARKETING CHIEF (*asking a problem-solving question*): I recognize the need to cut the company budget, and my department is prepared to contribute its share. Just help me understand why you need that much.

BUDGET DIRECTOR (*presenting a fait accompli and making a*

threat): The only way we can get the required savings is if each department takes a ten percent cut. I've already told the other department heads that you'll take the cut. If you don't, all the other deals will unravel and the president will hear about it.

MARKETING CHIEF (*ignoring the threat and reinterpreting the fait accompli as a problem to be solved*): I understand what you're saying. If I were to cut any less, you'd have a big problem explaining that to all the other departments, right?

BUDGET DIRECTOR (*applying pressure*): That's right. So let me put you down for that cut. Deal?

MARKETING CHIEF (*ignoring the pressure and reframing the problem as a joint opportunity*): You know, we've got a real opportunity to save more than the ten percent. It would really help the company and make both of us look very good.

BUDGET DIRECTOR: Oh, what's that?

MARKETING CHIEF (*asking for advice*): As you know, my department has just instituted a new plan that will bring about greater productivity and substantial cost savings. But there are start-up costs we've calculated at five percent of our budget. You have more experience in these matters than anyone else. How can we find the funds to implement the plan and still keep your other deals from unraveling?

BUDGET DIRECTOR: I don't know. . . .

MARKETING CHIEF (*asking a problem-solving question*): Could we explain to the other department heads that my department is taking a five percent cut this year in order to bring even greater savings next year?

BUDGET DIRECTOR: I don't think that will work.

MARKETING CHIEF (*asking a "what if" question*): What if I were to commit to a specific figure of just how much we'll save next year?

BUDGET DIRECTOR: That might help. But that still doesn't solve the problem this year of where to make up the extra savings if you take only a partial cut. Look, I see what you're getting at, but what am I going to tell the president? It's not going to fly.

MARKETING CHIEF (*asking another "what if" question*): What if I talked to the president and sold him on the idea?

BUDGET DIRECTOR: Good luck!

MARKETING CHIEF: I know. It may not be easy. But can I have your support?

BUDGET DIRECTOR: Let me see your plan again. I want to check and make sure your numbers aren't pie in the sky.

MARKETING CHIEF: I'll have it to you within the hour. Thanks for giving me this chance.

The marketing chief has not yet won the agreement she is seeking, but she has won the negotiation over the rules of the game. By reframing, she has turned a positional confrontation into a problem-solving negotiation. She and the budget director are now on their way toward negotiating a mutually satisfactory agreement.