



**DUNN CARNEY**

LLP

# **The Mind and Heart of the Negotiator**

*Class One*

**Coni S. Rathbone**

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**CAB Portland**

# Like it or not, you are a negotiator...

## Negotiation is:

- Your key communication and influence tool.
- An interpersonal, decision-making process necessary whenever we cannot achieve our objectives single-handedly.
- Not just about resources – it is equally about relationships and trust.
- When did we start negotiating?  
\*Coni = 3 years old with Fred Rathbone

# Keys

1. Listen

2. Be Present

3. Prepare



# Listen



**Listening is a  
critical  
negotiation skill.**



# Listen



## Listen to Learn

- Listen actively to your counterpart's concerns.
- Resist the urge to interrupt and defend yourself.
- Ask questions aimed at drawing out the other party's core issues.
- Repeat back what you've heard.

# Listen



## Build a Habit

Less important negotiations are key to developing your skills.

Next time you find yourself disagreeing with someone, whether your significant other, a friend, or a colleague, see how many questions you can ask in a row without presenting your point of view. (Don't test your "hard" negotiating skills with your spouse – Dog House!)

# Listen



## Use Pavlovian Conditioning

If you get some kind of a reward for listening, you will do it more.

(Ice cream is always good.)



# Be Present



## Focus on the negotiation at hand

### Avoid multi-tasking

- Ignore your email, cell phone and dinner plans

### Practice being present

- Be present with your children or grandchildren



## Top 10 Dispute Resolution Skills

1. **Listen to Learn** - Listen actively to your counterpart's concerns. Resist the urge to interrupt and defend yourself. Ask questions aimed at drawing out the other party's core issues. Repeat back what you've heard.
2. **Bring Multiple Issues to the Table** - Find opportunities to make tradeoffs and concessions based on your differing interests. Present several proposals that you value, each covering multiple interests. (Tausha's settlement conference)
3. **Brainstorm Solutions Jointly** - Lessen the tension by framing your dispute-resolution effort as an opportunity to reach a solution that will satisfy all parties involved - a true win-win.



# Top 10 Dispute Resolution Skills

(continued)



- 4. Recognize Power Plays for What They Are** - Make it clear that you recognize the attempted manipulation for what it is.  
(I have done hundreds of deals ...Tectronix In house) (Positioning guys – lawyers in deals) (Alpha Players – Call them out)
- 5. Reexamine “Sacred” Issues** - Before declaring an issue to be off-limits, think about ways of settling the dispute that might honor your deepest values.

# Top 10 Dispute Resolution Skills

(continued)



**6. Guard Against Threats** - Disputants sometimes resort to threats, whether to try to get what they want or simply to be heard. When threatened, try ignoring the threat.

(Last & final offer)(Wait for the bully to stop talking “are you done yet?” )

**7. Recognize When You Need a Mediator** - When a dispute resolution effort is highly acrimonious or seems headed toward a lawsuit, it’s often smart to enlist a mediator or other unbiased third party to help manage the conflict.

(Pours out all the anger to mediator who filters)

# Top 10 Dispute Resolution Skills

(continued)



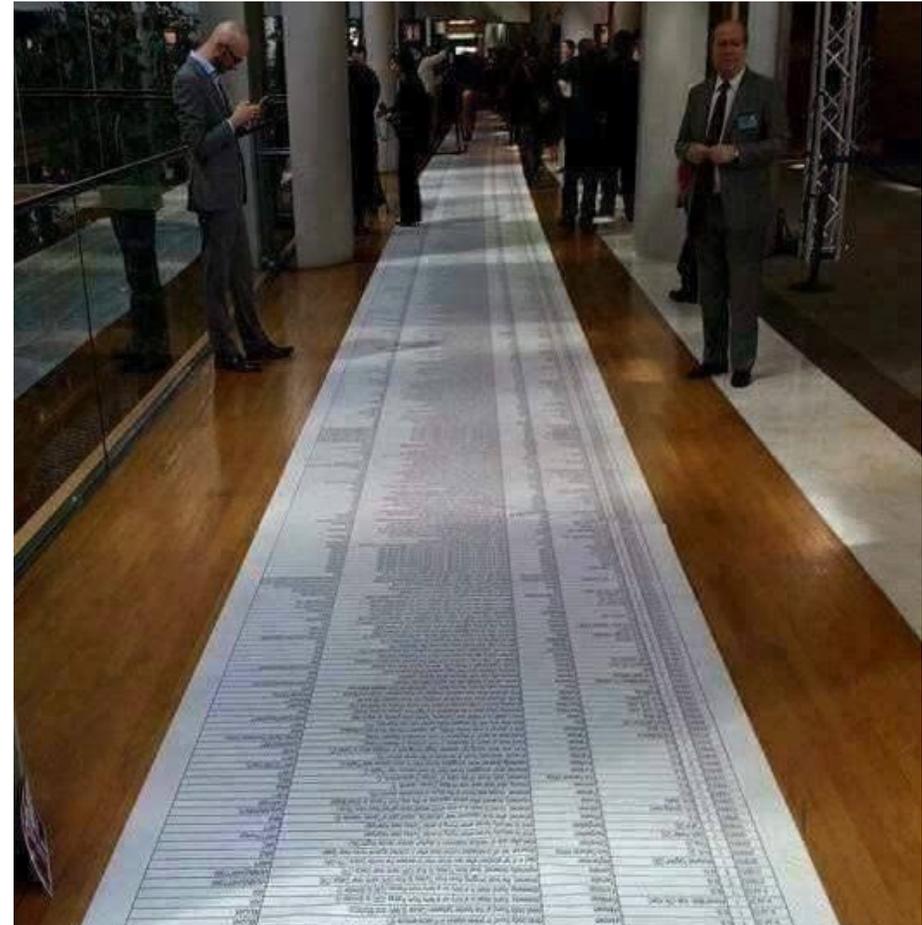
8. **Appeal to Shared Values** - Look for common ground by identifying broader values that you share with your counterpart.
9. **Center Discussions on Gains Rather than Losses** - It pays to frame discussions and proposals on what each party might gain. This type of “gain frame” can promote greater collaboration.
10. **Keep Lines of Communication Open** - Do not let that break turn into a permanent impasse.

# Prepare



**Rather than preparing  
a list of your  
arguments...**

**Develop a list of questions  
to probe your  
counterpart's interests.**





## Take this poll

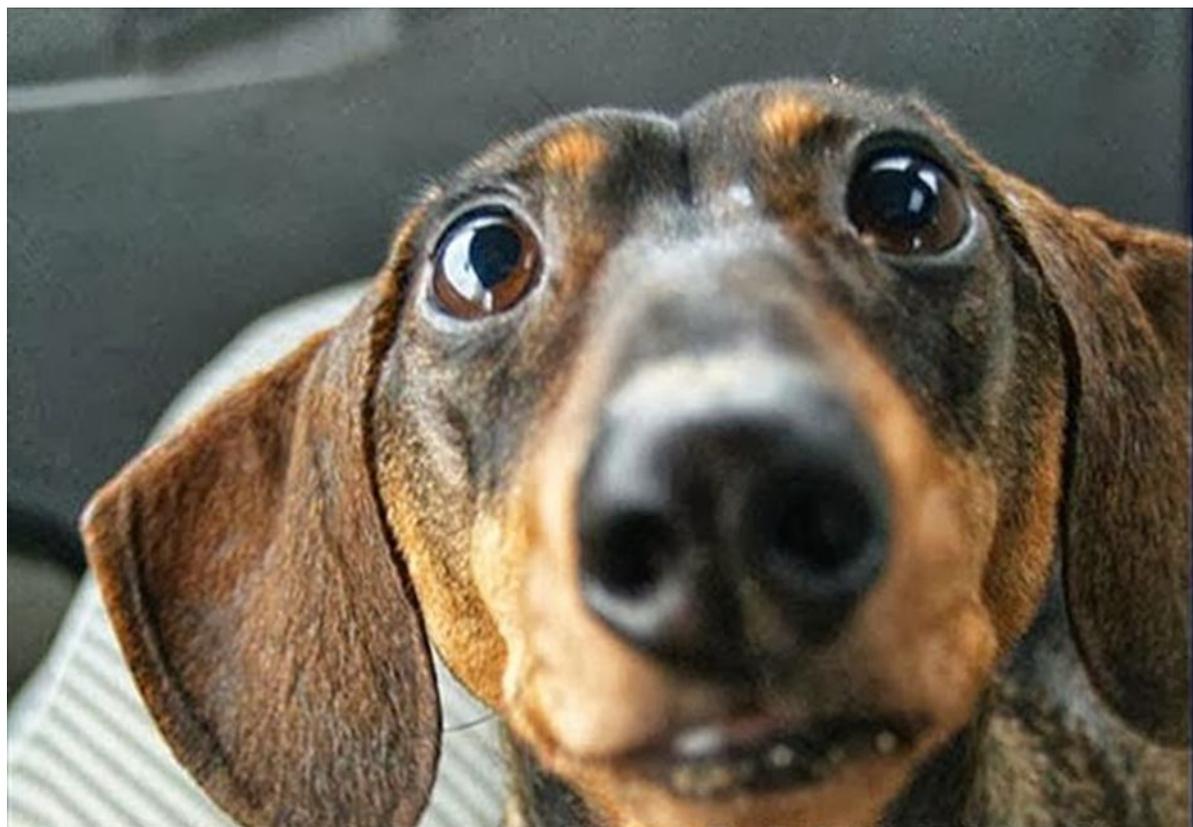
**How likely are you to write out and test your thoughts before engaging in a negotiation or difficult conversation?**

1. **Always** – It is part of my preparation.
2. **Sometimes** – It depends on the situation.
3. **Never** – I am comfortable speaking extemporaneously.



# **Script Before You Engage in a Crucial Conversation!**

Because we've all tried to wing  
it and thought...



**Wow!**

**Why did I say  
that?!**

# Preparing For Negotiations

**Use a mixed motive enterprise which involves cooperation and completion. Effective preparation utilizes 3 abilities.**

1. Self Assessment
2. Other Assessment
3. Situation Assessment





# Prepare Self Assessment

1. **What do I want** (ideal outcome)?
2. **Under aspiring** (winner's curse, offer immediately accepted).
3. **Over aspiring** (ego defensive behavior triggers competitive communication and negative perceptions of the counterpart).
4. **The grass is greener**  
(doesn't know what they want except wants what the other side does not want to give).



# Preparation Worksheet for Negotiations



Self Assessment	Assessment of other Party	Situation Assessment
<ul style="list-style-type: none"><li>• What do I want (set a target point)?</li><li>• What is my alternative to reach an agreement in this situation?</li><li>• Identify the issues in the negotiation.</li><li>• Identify the alternatives for each issue.</li><li>• Assess your risk propensity.</li><li>• Do I have an appropriate level of confidence?</li></ul>	<ul style="list-style-type: none"><li>• Who are the other parties?</li><li>• Counterparties' BATNA's.</li></ul>	<ul style="list-style-type: none"><li>• Do the negotiations involve scarce resources, ideologies, or both?</li><li>• Are time constraints or other time-related costs involved?</li><li>• Is third-party intervention a possibility?</li></ul>

\* *See full worksheet in handouts*

## Self-Assessment: What is my BATNA?

### What is my Best Alternative To a Negotiated Agreement in this situation (your BATNA)?

- BATNAs are not wishful, they are factual.
- Your BATNA is time sensitive.
- Do not let the other party manipulate your BATNA.  
*(Partners discussion, you can't get a better deal than here)*
- Negotiators should be willing to accept any set of terms superior to their BATNA.

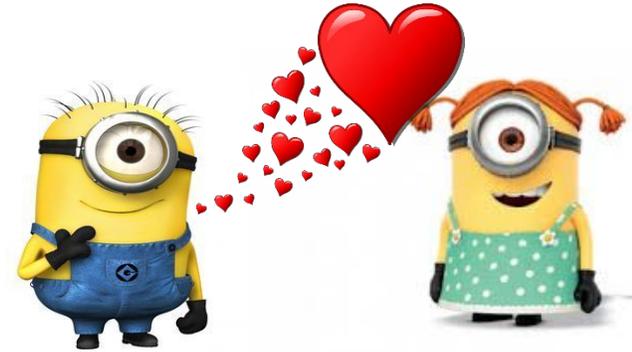


# BATNA

## Best Alternative to a Negotiated Agreement



- Falling in Love Rule: Don't do it.  
Identify 2 or 3 options of interest
- Don't confuse BATNA with aspiration
- BATNA time sensitive
- Don't let the other side manipulate or minimize your BATNA
- Determine Reservation Point
- Be aware of focal points





# Assess Your BATNA in 4 Steps

**Effective negotiators determine their BATNAs before talks begin.**

1. **List Your Alternatives** - Think about all the alternatives available to you if the current negotiation ends in an impasse. What are your no-deal options?
2. **Evaluate Your Alternatives** – Examine each option and calculate the value of pursuing each one.
3. **Establish Your BATNA** – Choose a course of action that would have the highest expected value for you. This is your BATNA. The course you should pursue if the current negotiation fails.
4. **Calculate Your Reservation Value** – Now that you know your BATNA, calculate your reservation value – the lowest valued deal you are willing to accept.



# Assess Your BATNA – Next Steps

## Take Your BATNA to the Next Level:

1. Translate your BATNA to the current deal – When negotiating, take time out for an explicit translation process to ensure that you are not giving up a good deal in hand for a BATNA in the bush.
2. Assess their BATNA with care – Most sophisticated negotiators often fail to think through the other party's BATNA as carefully and objectively as they think through their own. Asking "What will he do without a deal?" provides valuable insight.
3. Think through two-level BATNAs – Sophisticated dealmakers think through both the organization's and the individual's BATNAs.
4. (BATNA in my world is often Litigation where no one wins)



# Counterparty's BATNA

**Most important information to a negotiator**

**Research it!**

If you know the counter parties aspiration point, but not the BATNA, the aspiration point can act as an anchor.



# Negotiating Timing and BATNA



## **An Example from the Oregon Housing Market: A Seller's Market**

Buyer BATNA: Not finding a house in the right school district.

Seller BATNA: Another buyer around the corner tomorrow.

SO

Buyer makes an initial offer over the asking price for a quick "Yes!"



# Developing a Reservation Point

## Step 1: Brainstorm Your Alternative

You should consider as many alternatives as possible. The only restriction is that the alternatives must be feasible i.e., realistic. This requirement involves research on your part.

## Step 2: Evaluate Each Alternative

Order the various alternatives identified in step 1 in terms of their relative attractiveness, or value to you.

## Step 3: Attempt to Improve Your BATNA

Your bargaining position can be strengthened substantially to the extent that you have an attractive, viable BATNA.

## Step 4: Determine Your Reservation Price

Once you have determined your most attractive BATNA, it is then time to identify your reservation price. Your assessment *must* be based on facts.

# The Bargaining Zone

**The bargaining zone, or zone of possible agreements (ZOPA), is the range between negotiators' reservation points.**

- Negative Bargaining Zone
- Bargaining Surplus
- Negotiator's Surplus





# The Bargaining Zone

## Negative Bargaining Zone

A negative bargaining zone indicates that there is no positive overlap between the parties' reservation points. Because negotiations are costly to prolong, it is in both parties' interest to determine whether a positive bargaining zone is possible. If not, the parties should not waste time negotiating; instead they should pursue other alternatives.

## Bargaining Surplus

Bargaining surplus is the amount of overlap between parties' reservation points.



# The Bargaining Zone

## Negotiator's surplus

The best possible economic outcome for the negotiator is one that just meets the counterparty's reservation point, thereby inducing the other party to agree, but allows the focal negotiator to reap as much gain as possible.

The positive difference between the settlement outcome and the negotiator's reservation point is the negotiator's surplus. The total surplus of the two negotiators adds up to the size of the ZOPA or bargaining surplus.



# The Bargaining Zone

## **How do you get information about the other party's reservation point?**

"Tell me the bare minimum you would accept from us, and I'll see if I can throw in something extra."

The opponent, not to be taken in, quips, "Why don't you tell us the very maximum that you are willing to pay, and we'll see if we can shave off a bit?"



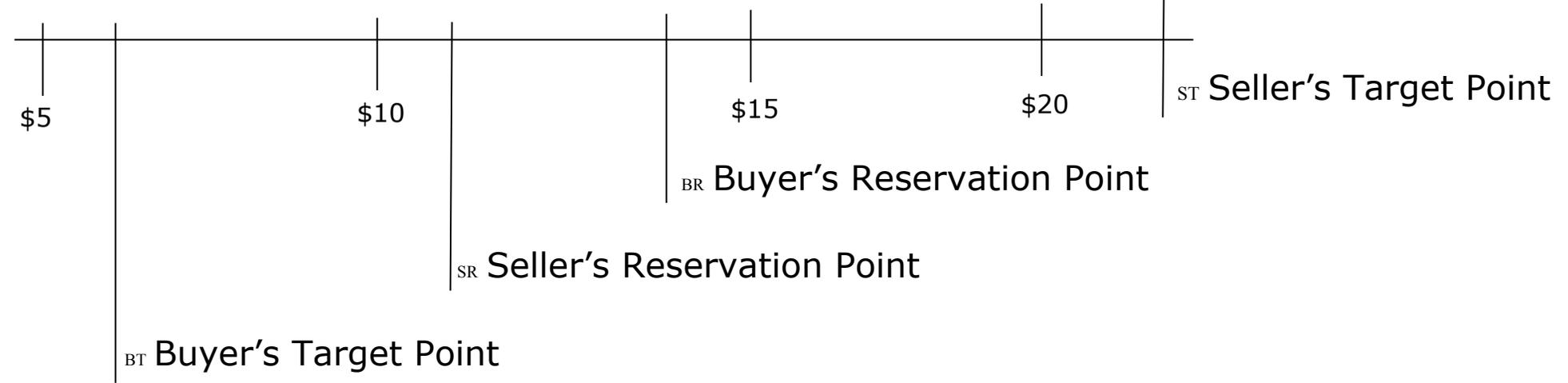
# Positive Bargaining Zone



Seller's Bargaining Range

Positive Bargaining Zone

Buyer's Bargaining Range





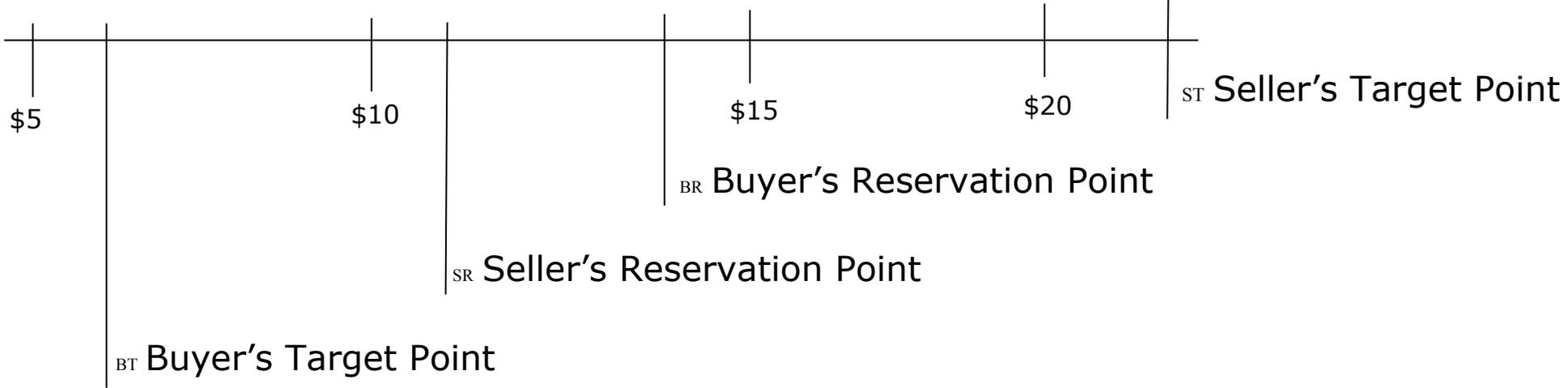
# Negative Bargaining Zone



Seller's Bargaining Range

Negative Bargaining Zone

Buyer's Bargaining Range



# Negotiations

## Five Major Mistakes Negotiators Make

1. Leaving money on the table
2. Settling for too little
3. Walking away from the table
4. Settling for terms that are worse than your best alternative
5. Being a bully





# Debunking Negotiation Myths

## **Myth 1:** Negotiations are Fixed-Sum

Most negotiations are not purely fixed-sum; most negotiations are variable-sum, meaning that if parties work together, they can create more joint value than if they are purely combative.

## **Myth 2:** You need to be either Tough or Soft

Most negotiators believe they must choose between behaving in a tough (and sometimes punitive) fashion or being “reasonable” to the point of soft and concessionary. A truly effective negotiator is neither tough as nails nor soft as pudding but rather, principled.

(TIC – Kevin example)

## **Myth 3:** Good Negotiators are Born

Most excellent negotiators are self-made. Effective negotiations require practice and feedback.



# Debunking Negotiation Myths

## **Myth 4:** Life Experience is a Great Teacher

It is partially true that experience can improve negotiation skills; in fact, experience in the absence of feedback is largely ineffective in improving negotiation skills. The second problem is that our memories tend to be selective. People are more likely to remember their successes and forget their failures or shortcomings. Experience improves our confidence, but not necessarily our accuracy.

## **Myth 5:** Good Negotiators Take Risks

A pervasive myth is what effective negotiation necessitates by taking risks and gambles. “This is my final offer” or “Take it or leave it” or using threats and bluffs. This is what we call a “tough” style of negotiation...rarely effective.

## **Myth 6:** Good Negotiators Rely on Intuition

Many seasoned negotiators believe that their negotiation style involves a lot of “gut feeling” or intuition. We believe that intuition does not serve the people well.

# The Fixed-Pie Perception

**The belief that whatever is good for one party must be bad for the counterparty.**

Results in three mindsets when preparing for negotiation:

1. Resign themselves to capitulating to the counterparty.
2. Prepare for hard bargaining with the counterparty.
3. Compromise in an attempt to reach a midpoint between opposing demands.





## The Fixed-Pie Perception

Commonly assumes that concessions are necessary by one or both parties to reach an agreement.

The fixed-pie perception is almost *always wrong* and often leads to an ineffective approach to negotiations.



## Wise Pie Slicing



- **Consistency** – Good pie-slicing includes consistency or invariance across settings, time, and contacts.
- **Simplicity** – Pie-slicing procedures should be clearly understood by the individuals who employ them and those who are affected.
- **Effectiveness** – The allocation procedure should yield a clear decision.
- **Justifiability** – Justifiable to other parties.
- **Consensus** – Group members should agree upon the method of allocation.
- **Generalizability** – The pie-slicing procedure should apply to a wide variety of situations.

## Wise Pie Slicing Conclusion



- When it comes to slicing the pie, the most valuable information is a negotiator's best alternative to reaching an agreement (BATNA).
- Determine your BATNA prior to negotiations and attempt to improve upon it;
- Determine your reservation point
- Do not reveal your reservation price and never lie about your BATNA.
- A negotiator who is well versed in the psychology of fairness is at a pie-slicing advantage in negotiation.



## Effective Pie-Expanding Strategies

- **Perspective Taking** - Taking the perspective of the other party, negotiators attempt to see the world through the counterparty's eyes and viewpoint and empathy (which is the ability to connect with another person emotionally).
- **Ask Questions** - Ask about underlying interests and questions about priorities. Negotiators who have high epistemic motivation are more likely to reach higher joint outcomes and benefit from adding and discussing more issues. (Desire to process information thoroughly & thus grasp the meaning behind other's emotions)





## Effective Pie-Expanding Strategies

- **Reveal Information About Your Interests and Priorities** - It is not whether you should reveal information but what information. Your willingness to share your interests (not your BATNA) capitalizes on the principle of reciprocity.
- **Unbundle the Issues** - Skilled negotiators are adept at expanding negotiable issues and adding issues, unbundling issues and creating new issues to transform a single issue, into multi-issue negotiations with win-win potential.



## Effective Pie-Expanding Strategies

- **Logrolling and Value-added Trade-offs** - Negotiators brainstorm their issues and interests, in order to make gains on issues they regard as the most important for making concessions on lesser-valued issues.
- **Make Package Deals, Not Single Issue Offers**



## Common Pie-Expanding Errors

**False Conflict** – Also known as illusory conflict, occurs when people believe that their interest is incompatible with the other party's interests when in fact, they are not.

**Lose-Lose Effects** – To avoid lose-lose agreements:

1. Be aware of the fixed-pie perception and not assume that their interests are opposed to the other party.
  2. Negotiators should avoid making premature concessions to the other party (i.e., conceding on issues before even being asked).
- Negotiators should develop an accurate understanding of the other party's interests – a skill we explore shortly.



# STRATEGIES

1. **Assess your BATNA and improve it** - Negotiators should spend a considerable amount of time attempting to improve their BATNA before entering into a negotiation.
2. **Determine your Reservation Point, but do not reveal it** - Many negotiators reveal their true reservation price if they trust and like the other party or desire a long-term relationship. However, we think this is ill-advised. There are many other ways to demonstrate trust and build a relationship, short of revealing your BATNA. Revealing information about a BATNA or reservation point is not a pie-expanding strategy; it is a pie-slicing strategy, and as a pie-slicing strategy it reduces a negotiator's power in a negotiation.





# STRATEGIES

*(Continued)*

- 3. Research the other party's BATNA and estimate their Reservation Point -**  
Be careful when the other party discloses; when the counterpart discloses their BATNA at the outset of negotiations, negotiators actually make less demanding offers, disclose more truthful information, and settle for less profit than when the counterpart does not disclose a BATNA.



# STRATEGIES

*(Continued)*

4. **Set high aspirations (Be realistic but optimistic)** - Your aspiration, or target point, defines the upper limit on what you can get in a negotiation. Because you will usually never get more than your first offer, your first offer represents an important anchor point in the negotiation. The final outcome of any negotiation is usually the midpoint between the first two offers that fall within the bargaining zone. When negotiators make proposals that the other party considers extreme, it may cause the chilling effect.



# STRATEGIES

*(Continued)*

**Example: long negotiation, new information learned, partner, mediation.**

Setting specific, challenging, and difficult goals results in greater profit than does setting easy or non-specific goals. The combination of high goals and cooperation is associated with the highest out-comes.

Another piece of advice: DO NOT become “anchored” by your reservation point. Many negotiators who assess their BATNA and set an appropriate reservation point fail to think about their aspiration or target point. Consequently, the reservation point acts as a psychological anchor and, in most cases, people make insufficient adjustments – they do not set their target high enough.



# STRATEGIES

*(Continued)*

5. **Make the first offer (if you are prepared)** - The party who makes the first offer obtains a better final outcome. First offers act as an anchor point and correlate at least .85 with final outcomes. Negotiators need to consider a number of factors when making an opening offer. First and foremost, an opening offer should not give away too much of the bargaining zone. Second, many people worry they will “insult” the other party. The first offer that falls within the bargaining zone acts as a powerful anchor point in negotiation. Your first offer should not be a range. Many negotiators make what we call premature concessions – they make more than one concession in a row before the other party responds or counter offers. Always wait for a response before making a further concession.



# STRATEGIES

*(Continued)*

6. **Immediately re-anchor if the other party opens first** - Counter offers do two things. First, they diminish the prominence of the counterparty's initial offer as an anchor point in the negotiation. Second, they signal your willingness to negotiate. Thinking about the opponents BATNA or reservation price or even one's own target point completely negates the powerful anchoring impact that the other part's first offer might have on you. Above all, do not adjust your BATNA based upon the counterparty's offer.



# STRATEGIES

*(Continued)*

7. **Plan your concessions** - Negotiators need to consider three things when formulating counteroffers and concessions:

- 1) **Pattern of concession** - Unilateral concessions are concessions made by one party; in contrast, bilateral concessions are made by both sides. Negotiators who make fewer and smaller concessions maximize their slice of the pie, compared to those who make larger and more frequent concessions.
- 2) **Magnitude of Concessions** - Determine how much to concede. It is unwise to make consistently greater concessions than the counterparty. The graduated reduction in tension (GRIT) model is a method in which parties avoid escalating conflict to reach a mutual settlement within the bargaining zone. The GRIT model, based on the reciprocity principle, calls for one party to make a concession and invites the other party to reciprocate by making a concession.
- 3) **Timing of Concessions** - The timing of concessions refers to whether they are



# STRATEGIES

*(Continued)*

8. **Support your offer with facts** - Ideally, present a rationale that is objective and invites the counterparty to buy into your rationale. If your proposals are labeled as “fair, “even splits,“ or “compromises,“ they carry more impact. Conversely, if your facts can be easily countered argued by the other party, you will not benefit by making arguments. Thus, it is important to be more informed than the other party.
9. **Appeal to norms of fairness** – A variety of norms of fairness exist and negotiators usually focus on norms of fairness that serve their own interests. Merely making reference to fairness can often give a negotiator an advantage.



# STRATEGIES

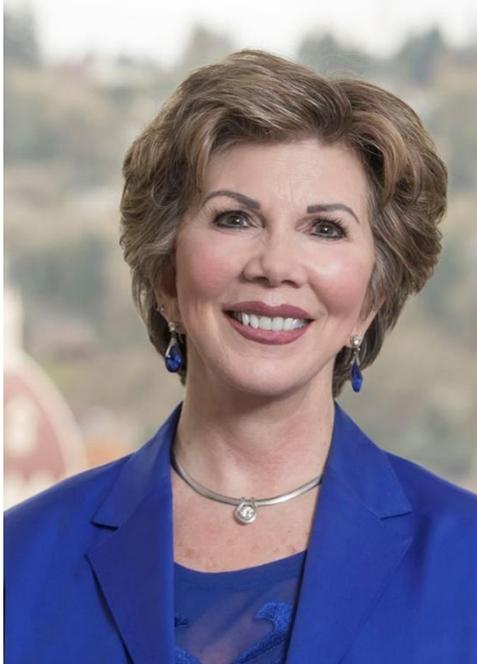
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10. **Do not fall for the “Even Split” ploy** - A common technique is the even split between whatever two offers are currently on the negotiation table. The problem is that they are based on values arrived at arbitrarily. It behooves a negotiator to begin with a high starting value and make small concessions. Often, the person who suggests the even split is in an advantageous position. Before accepting or proposing an even split, make sure the anchors are favorable to you.



## Course Materials

- *The Mind and Heart of the Negotiator* (2015) (2nd ed.). Leigh L. Thompson, Author.
- Shonk, K. (2017). *Top 10 Dispute Resolution Skills*. The Negotiation Insider - Program on Negotiation at Harvard Law School. Retrieved from <https://www.pon.harvard.edu/daily/business-negotiations/notable-negotiations/?mqsc=E3911301>
- Staff, P. (2017). *Negotiation Tips Listening Skills for Dealing with Difficult People*. The Negotiation Insider - Program on Negotiation at Harvard Law School. Retrieved from <https://www.pon.harvard.edu/daily/business-negotiations/notable-negotiations/?mqsc=E3911301>
- Shapiro, R. (2016). *Perfecting your Pitch and In Life Webinar*. Shapiro Negotiations Institute [slides 5-8]. Retrieved from <http://www.shapironegotiations.com/>
- *Program on Negotiations at Harvard Law School* (2017). Retrieved from <https://www.pon.harvard.edu>



## **Coni S. Rathbone, J.D., CRE**

Coni Rathbone is a remarkable negotiator who focuses her deal-making skills in the areas of real estate, tenant-in-common (TIC) workouts, corporate and securities law, mergers and acquisitions, and general business transactions. She is a member of Dunn Carney's Real Estate and Business Teams.

[crathbone@dunncarney.com](mailto:crathbone@dunncarney.com)

Direct: 503.417.5501

Cell: 503.704.2705

