

## Winning Negotiations Before They Begin

“Every battle is won before it is fought.”—Sun Tzu

By David Wanetick

Seasoned negotiators are well aware that negotiations are often won or lost before the players reach the negotiating table. At a minimum, negotiators should perform the following preparation before commencing formal negotiations:

- Achieve internal alignment so that your negotiating efforts will not be sabotaged by players on your side of the table.
- Score your objectives and walk-away points.
- Create a negotiating timeline.
- Insulate your negotiating team from common negotiations tactics.
- Determine the real goals of the entities and individuals with whom you will be negotiating.
- Create wedges between your opponents and their agents.
- Profile the individuals on the opposing side.
- Gather intelligence on an ongoing basis.

**Achieving Internal Alignment.** High-stakes negotiations demand a great deal of time; require enormous energy, focus, and resolve; and, are often emotionally taxing. Whether you are about to embark on a six or sixty month negotiating campaign, you should take efforts to ensure that your Herculean efforts will not be sabotaged by members of your own team. In many cases, you will need to spend as much energy negotiating alongside the table as across from it.

First, you should determine whose support you need and who could block the deal later. A sound starting point is often found by looking backwards by asking whose signatures you will need to seal the deal that you hope to negotiate. You may need sign off from your business, finance, tax, and legal directors as well as the leaders of the relevant business units. If the deal you seek would trigger legal entanglements or the violation of loan covenants, you want to know upfront. You should determine if Board approval is necessary.

One method for testing whether or not you have successfully sold your proposed deal to your organization’s key players is

to draft an internal Term-Sheet or Memorandum of Understanding which identifies the key terms you hope to achieve in your negotiations. Having the key decision makers sign off on such a term sheet will give you more confidence when you confront your counterparts and increase the probabilities of winning final internal acceptance later. Due to the expenditure of time, energy and political capital, you should wait until you receive some indication that your negotiating counterpart has similar interests and has committed to try to push through a favorable deal on their end before attempting to get your colleagues to sign an internal Memorandum of Understanding.

Thought should also be given as to which forces could block you from successfully consummating your deal or could prove to be hindrances in the successful execution of it. These internal or peripheral sources of sabotage could be leaders of any unit that could be impacted by the agreement. In licensing deals, sources of resistance are often the directors of research while in acquisitions the roadblocks could be erected by the directors of sales, marketing or manufacturing. You should exercise your peripheral vision by considering non-traditional sources of deal interference. These sources could be special interest groups (consumer groups, community activists or environmentalists, for example), unions, suppliers, customers or the media.

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Exhibit 1. Sabotage Detection Worksheet

	Their Concern	How They Will Benefit	Our Message	Timing/ Method of Conveying Message
Unions				
Research				
Sales				
Environmental Groups				

You should anticipate their objections, discern how your deal could be of benefit to these constituencies and craft position statements that could neutralize their contentions as well as determine how and when you should position your message.

Score Your Objectives and Walk-Away Points: before negotiations begin you should meet with your group to determine what you hope to achieve through negotiations. As we learned from Alice in Wonderland, if you don't know where you are going, any road will take you there. One effective method for determining your negotiating objectives is to develop a Negotiating Scorecard.

Exhibit 2 is an example of a Negotiating Scorecard prepared by a hypothetical company that seeks to license out a technology it recently invented. The licensor first must identify the terms that it wishes to receive. In our case, the licensor decided that it wants an upfront payment, a running royalty, as well as a myriad of other specific deal terms.

Negotiators should determine the relative value of each of the terms they seek. This can be accomplished by associating numerical values for each deal term. Monetary goals should be presented in terms of ranges rather than fixed targets so that negotiators can maintain maximum flexibility. (There is no point in aborting a deal because you must make a two percent concession on the asking price if you can win a corresponding concession on another deal term.) For example, our company may seek an upfront payment ranging from \$1 million to \$3 million and an attractive royalty rate ranging from 5 percent to 7 percent of the licensee's revenues. The higher the upfront fee and the royalty rate, the more points would be awarded.

Negotiating Scorecards help you determine when you have achieved a satisfactory agreement. Unless there is dramatically disproportionate negotiating power, you will not likely receive everything that you want in negotiations. However, you might be content with receiving 75 percent of your goals. Thus, in our example, you would be willing to close the deal as long as you received at least 92 points out of a possible 123. Note however, that the conditions highlighted in blue (inventor involvement and indemnification against product infringement) are walk-away points

meaning that there are some conditions so important to you that not receiving them will cause you to terminate negotiations, despite how lucrative other terms appear to be.

While Negotiating Scorecards illuminate the goal posts for the initial negotiators, they pierce through the fog that occludes the vision of replacement negotiators. In many prolonged negotiations many people are swapped in and out to negotiate on their company's behalf. Without a Negotiating Scorecard, the new negotiators are often clueless as to what the goals are.

Another benefit of a Negotiating Scorecard is that you can determine how you are faring in trading concessions. Suppose our company requests a minimum royalty but the licensee rejects such request. However, the licensee commits to giving the licensor a royalty-free grant-back. Had we not developed a

Exhibit 2. Negotiation Scorecard		
	Range	Points
<b>Upfront Payment</b>	\$1 million \$2 million \$3 million	10 20 30
<b>Royalty Rate</b>	5% 6% 7%	10 20 30
<b>Licensee Maintaining Patent Filings</b>		10
<b>Minimum Royalties</b>	<= \$250,000/yr.	15
<b>Inventor Involvement</b>	High Peripheral	15 5
<b>Grant Backs</b>	Royalty-Free Royalty	8 4
<b>Indemnity Against Product Infringement</b>		5
<b>Policing/Enforcing IP</b>		10
<b>Total Possible Score</b>		123
<b>Percent Required to Close Deal</b>		75%
<b>Required Points to Close Deal</b>		92.25
<b>Required Points to Close Deal (Rounded)</b>		92

Negotiating Scorecard, we would not have been able to determine how we fared in that round of negotiations. In our example, we lost a term that we valued at 15 points, but received a term that we valued at 8 points, so in total we lost 7 points during that round of negotiations.

## Negotiations Timeline

As the well-worn adage reminds us, time is money. The time intensity of negotiations results in a great deal of overhead being expended during the course of negotiations. Related costs include compensation for the lead negotiators and their teams as well as the compensation for other professionals (tax advisors, technical experts, valuation professionals, etc.) whose expertise is sought. Further costs include travel, opportunity costs, and assuming legal liabilities when signing off on legal documents such as Non-Disclosure Agreements.

In view of costs such as these, you must take steps to ensure that you do not waste time pursuing tortuous negotiations. Smaller companies often complain that larger companies have an ossified decision making process and suffer from excessive bureaucracy. Entrepreneurs and inventors bemoan that delays in negotiations are more painful for them than for representatives of large companies because the former may be expending their own capital during the negotiations while the employees of large companies continue to receive their weekly compensation. Larger companies often ridicule smaller companies for not being well prepared for the negotiations and

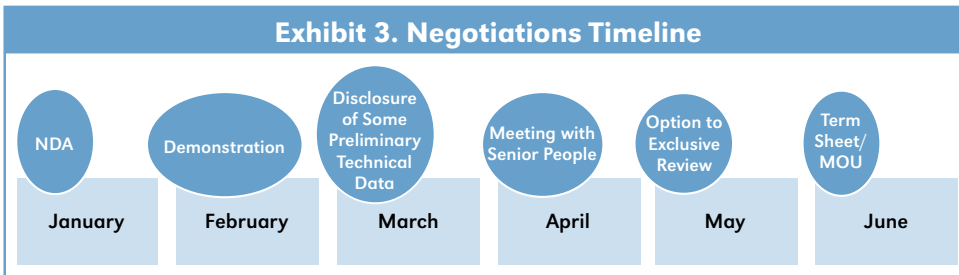
for not having bench strength in terms of employees who can play key roles in the negotiations. Executives from large companies indicate that since they have challenging performance goals to meet and lots of projects to pursue, they cannot be hamstrung by smaller companies who are too emotionally attached to their technologies or businesses to move the negotiations along at a sufficiently rapid clip.

Thus, you can develop a Negotiating Timeline to determine where you are in the negotiating process (See Exhibit 3). For instance, if you don't have a signed NDA by the end of the first month, you might want to terminate negotiations. As illustrated on the Negotiating Timeline Matrix (Exhibit 4), there should be different expectations for responsiveness on the part of your adversaries depending on whether they are a small company, large company, university, government institution or operate in a developing country.

I always recommend that negotiators make their adversaries feel their pain. One way to do this is to make it clear what your costs are of the negotiations. If you are negotiating against a company and anticipate that six months is a reasonable time to achieve the signing of the Term Sheet or Memoranda

of Understanding, you can tell the other side that your costs of negotiating to that point will be \$267,000. (See Exhibit 5.) You can indicate that you are willing to sustain that cost. However, any further delays in reaching a TermSheet will result in you reducing the payment by \$61,000 per month as this is your cost of conducting the negotiations. In fact, I am aware of a deal in which a former executive of a large pharmaceutical company was interested in licensing a compound from his former employer. Since this executive understood the science behind the compound and business proposition better than anyone,

**Exhibit 3. Negotiations Timeline**



**Exhibit 4. Negotiating Timeline Matrix**

Milestone	Small Company	Large Company	University	Government	Developing Country
	<i>number of months</i>				
NDA	1	1	2	2	3
Demonstration	2	2	3	3	4
Disclosure of Technical Data	3	3	4	5	6
Meeting with Their Senior People	4	4	5	7	8
Option for Exclusive Review	5	5	6	9	10
Term-Sheet/MOU	6	6	7	10	12

the large pharma company indicated that it would only spend \$50,000 on legal fees as this was all that was believed necessary to consummate the deal. Any fees in excess of the \$50,000 would be deducted from payments to the licensee.

## Insulate Your Team from Common Negotiating Tactics

Your team should huddle together to devise offensive negotiating strategies as well as to immunize everyone from common negotiating tactics that could be utilized by the opposing side. Simply discussing tactics that may be utilized by the opposition will render them less effective. Some of these tactics include:

**The Suggested Sit Down**—The Suggested Sit Down occurs when the opponent contacts your boss and complains about your inadequacy. Your adversary may say that you do not understand the deal, that the intricacies of the deal are beyond your intelligence, or that your lack of experience is preventing you from moving quickly enough.

**Suggested Sit Down with a Stomp Down**—The Suggested Sit Down with a Stomp Down is a more aggressive version of the Suggested Sit Down. In this rendition, the opponent expresses fatal frustration with your supposed incompetence, lack of professionalism, or arrogance. Your opponent threatens that the deal

will be called off unless you are removed.

The best way to preempt the Suggested Sit Down gambits is to have the boss accompany the primary negotiator to the initial meeting. At that meeting, the boss should firmly state that he has complete confidence in the lead negotiator and that such negotiator is solely responsible for negotiating the deal at hand.

**The End Run**—The End Run occurs when your opponent has a pre-existing relationship with one of your colleagues at your firm. The opponent is supposed to negotiate with you but rekindles his relationship with your colleague and circumvents dealing with you.

**The Ego Booster**—The Ego Booster gambit kicks in when the adversary tells you that he is very impressed with your professionalism and that they plan to tell influential people in the industry (or at your company) how professional you are. The trap associated with the Ego

**Exhibit 5. Negotiating Cost Calculator**

Compensation	Annual Cost	Monthly Salary	Percentage of Time Allocated	Costs-Months 1-6	Costs per Month After Month 6
Chief Patent Counsel	\$400,000	\$33,333	2%	\$4,000	\$667
Chief Financial Officer	\$380,000	\$31,667	2%	\$3,800	\$633
Group President	\$350,000	\$29,167	5%	\$8,750	\$1,458
Managing Director-Chief Negotiator	\$280,000	\$23,333	30%	\$42,000	\$7,000
Associate Director	\$120,000	\$10,000	30%	\$18,000	\$3,000
Assistant	\$70,000	\$5,833	30%	\$10,500	\$1,750
<b>Overhead</b>					
Rents	\$60,000	\$5,000	30%	\$9,000	\$1,500
Office Supplies	\$6,000	\$500	30%	\$900	\$150
<b>Out of Pocket Costs</b>					
Legal Fees				\$100,000	\$40,000
Valuation				\$20,000	\$2,000
Technical Valuation				\$50,000	\$3,000
<b>Total Costs-Months 1-6</b>				<b>\$266,950</b>	
<b>Total Monthly Costs to be Subtracted from Deal Value</b>					<b>\$61,158</b>

Booster is that you will be intimidated to negotiate too aggressively against your adversary for fear of losing an influential cheerleader.

**The Afterparty**—The Afterparty occurs when the opponent intimates that you would have a future at the opponent's company. The point is to attenuate your aggressiveness during the negotiations so that you will keep open the possibility of receiving a firm job offer. The senior people on your team should make clear to the junior people that the two companies have a non-solicitation clause in effect, preventing the opponent from hiring you or your colleagues. The senior managers on your team should discuss that such tactics are common ploys of the other side, but are disingenuous nonetheless. The senior people should say something to the effect that, "I would hate for you to make the mistake that the other side is serious in making you a job offer. Due to the non-solicitation clause, they can't. This is a gambit to entice you to represent our interests less aggressively. I would hate for you to take that bait, since doing so could result in an unfavorable evaluation."

**Withdrawing Carrots**—Your opponent could be making very attractive overtures to another part of your business. In the case of licensing from universities, a large company could be involved in negotiations to endow a chair or to donate laboratory equipment. The issue is that these carrots can be threatened to be withdrawn if you do not become more accommodative in negotiating a particular licensing deal. The ulterior motive of your opponent is to maneuver your colleagues to pressure you to make more concessions.

**The Lazy Lawyer**—The Lazy Lawyer ruse occurs when your opponent makes multiple, seemingly innocuous comments about the unprofessionalism and aloofness of their lawyer. Their motive is to position themselves to make the claim at closing, "Don't worry about that clause in the contract. It is just boilerplate. Our lawyer is too lazy to enforce these kinds of things." The problem is that once you sign the agreement, the lawyer becomes much more diligent.

**My Boss is a Bastard/My Boss is an Idiot**—The My Boss is a Bastard and My Boss is an Idiot are tactics designed to demonstrate that you are reasonable and that your boss is the bad cop or incompetent. In either case, one of the intentions is to block you from contacting the boss to work the Suggested Sit Down. Again, the reason you want to discuss these kinds of issues at the outset with your team is that you don't want the fact that you are going on record and accusing your boss of being a bastard or an idiot to adversely affect your career.

**Virtues of Stupidity Gambit**—There are advantages to feigning imbecility. First, you can lull your opponents into a false sense of security as they may reason that since you seem to be a negotiating push-over they may as well exert more energy in negotiating other deals with more shrewd negotiators. Second, you can get them to divulge more information. If you claim that you don't understand the terminology or line of questioning often enough, the opponent may believe that it is more expedient to educate you on a variety of issues. A final benefit of acting like a dolt is that any devious measures you take cannot be perceived to be a matter of deviousness. For example, if you forget to change a term in the agreement (to the benefit of your adversary), that can be chalked up to your lack of intelligence.

It is important that you indicate to your team, that any statements that you make regarding your depiction of your boss, the work ethic of your lawyer or own intellect are designed to win negotiating points, rather than your true assessment.

**Damsel in Distress**—The Damsel in Distress stratagem occurs when an opponent exaggerates their own lack of experience or their being thrown into the negotiations without adequate preparation. The thinking behind depicting oneself as at an unfair disadvantage is that many negotiators believe that it is unethical to take advantage of someone who has much less experience in negotiating.

Should an opponent pull the Damsel in Distress ploy with you, you should say that if the opponent is not adequately prepared for the negotiations, they should seek assistance from members of their organization. You should make it clear that their lack of preparation will not impact your negotiating position.

## Assessing the Institutional Goals of the Adversary

You should ascertain the goals of the company you are negotiating with. By reviewing their CEO's letter to shareholders, communications to the public, shifts in spending, focus of research, skills of new hires, as well as where the company is investing and divesting will shed light on the strategic direction of the company.

Successful negotiators pivot their propositions into the cross-hairs of their counterparts overarching initiatives. If the company is determined to boost revenues, indicate how your proposal will boost revenues. If your counterpart is focused on reducing costs, illustrate how you can help it achieve that end. If the organization you are negotiating with wishes to streamline operations, discuss how you can help

them achieve rationalization. If the main mission of the company is to penetrate new markets, your value proposition should dovetail with such goals. When companies initiate goals such as deriving at least 30 percent of revenues from products launched in the last three years, you should articulate how your proposition will help achieve such goal.

You should determine whether or not your counterparts have any particular pain points or motivations for completing the deal. For instance, an agency that represents star athletes can strike a more attractive sponsorship deal if their opponent is planning an initial public offering or secondary capital raise or expects to receive interest among acquirers. The sizzle of the star athlete will cause the sponsoring company to achieve a higher valuation in raising funds or on a take-out basis. Alternatively, if there is a matter that you could litigate with a target, they will be more amenable to settling the dispute if they anticipate a transaction in the near future, as they will be more desirous of removing a distraction during a critical period. Similarly, if a company has received a regulatory mandate to comply with new regulations and you offer the technology that makes such compliance possible, you will be in a stronger negotiating position than if such regulations were never promulgated. Finally, a small licensor may have significant leverage over a multi-national conglomerate if the latter has time pressure to meet a product launch and needs to incorporate the former's technology.

Skilled negotiators think through objections raised by their adversaries. For instance, when an acquirer doesn't want to pay a lot of money for a target company, the objection is not always solely a function of money. In some cases, the real resistance is timing. Closing a deal on January 1 may be much more appealing than closing a deal on December 31. In other cases, the issue is a matter of budget cycles. Approaching an acquirer shortly before it commences its capital budgeting can be much more fruitful than approaching the acquirer immediately after the capital budgeting is completed. In other cases, the key issue is avoiding setting a costly precedent. What is more important than quibbling about purchase price for a serial acquirer is often the ability to keep generous purchase prices confidential or disguised (by structuring a large part of an acquisition as an earn-out, for example).

## Create Wedges Between Your Opponents and Their Agents

You must realize that you never negotiate against a company. You only negotiate against individuals who happen to be employed by that company or are acting as agents for that company. Successful negotiators re-

alize that—despite best efforts of subterfuge—their opponents are never one unified force. You should determine what each player's individual motives, agendas, tolerances to risk and time pressures are so as to better fractionalize the opposition. You should then craft several variations of your proposition to appeal to each of the people sitting on the opposite side of the table.

The first question to consider is, "Who has decision making authority?" The answer is not always self-evident. In many cases, the decision making power is in the hands of agents such as investment bankers or licensing agents. This can occur when the agent has a threshold agreement in which the principal commits to complete a transaction negotiated by an agent so long as the price levels reach a minimum threshold.

Even when the agent does not have decision making power, there are means to take advantage of the opponents relationships with their agents. For instance, a lawyer compensated on a fixed fee basis will be less willing to spend an inordinate amount of time on the given transaction. Knowing this allows you to prolong negotiations as well as prepare the deal documents, which are usually advantageous. Also, learning about the status of an agent within the agent's firm is critical. A senior associate on the verge of becoming a partner will not want to take unnecessary risks that the deal could become derailed. This knowledge would allow you to threaten to walk away from the deal unless the agent leans on his client to make substantial concessions in your favor.

A similar question to consider is "Does the agent need to deliver a victory to keep his fees coming?" Consider an agent who is compensated on an hourly basis and has been presenting large invoices to the client, but has not yet delivered any deal milestones. In this situation, the agent will be under pressure to deliver something tangible to the client, such as an executed non-disclosure agreement, term-sheet, option agreement, right of first refusal, or memoranda of understanding. The point is, if you detect that the agents representing your opponents are in such a situation, you can win meaningful concessions from the agent in return for allowing the agent to deliver a heavily diluted milestone.

Here is another idea for creating friction between your opponent and his agent, in this case, a lawyer. Most lawyers are going to be more loyal to their law firm than to any particular client. Law firms (as well as investment banks and other agents) have distinct cultures: some more conservative and risk adverse, others more progressive and risk tolerant. A senior associate would reduce his chances for making part-

ner if his behavior does not fit with the culture of his firm. The idea is to present a dilemma to the agent of your opponent: Either represent your client better or conform to your firm’s culture so that you can keep your career on an upward trajectory. Thus, if you know that your opponent’s lawyer hails from a very conservative law firm, you should say something to your opponent and his lawyer like, “Your lawyer really needs to think outside of the box,” or “What creative remedies can your lawyer propose to overcome our impasse?” Taking the bait would be at the cost of veering away from the culture of the law firm. Failing to take your advice would not serve the client well.

On the other hand, learning that your opponent has a long-term and trusting relationship with his agent would indicate that it will be more difficult to create a wedge between the agent and the principal.

### Profile the Individuals on the Opposing Side

Another step you should take—along the lines of determining who has real decision making power—is to isolate the critical decision makers among the principals. Then determine how decisions are made within that group. For example, let’s say that we have determined that to close a licensing agreement with Company X, we need to have the Chief Counsel, Business Division Leader and Chief Financial Officer sign off on the deal. If the CFO has a tendency to go along with whatever the Chief Counsel and Business Division Leader wish to do, then you would be wise to spend most of your resources trying to persuade the Chief Counsel and Business Division Leader to embrace your deal.

Exhibit 6 illustrates that different decision makers should be presented with different kinds of information to help them make decisions. You should identify people that are known to—and respected by—the

target to convey the collateral to the decision makers.

It is of primary importance to assess how badly the other side wants the deal. There are two methods for making such a determination. You can monitor how the person behaves. For instance, if a negotiator returns your phone calls very quickly and provides you with all of his phone numbers and methods to reach him any time of day or night, he is very desirous of negotiating a deal. Other behaviors that indicate a strong desire to conclude deals include:

- The opponent takes pride in the number of deals that they have completed. They describe themselves as a “deal guy” or “deal gal.” They can quickly recite the number of, or size of, deals they concluded in recent years.
- The opponent has the attitude that he can negotiate anything.
- They are more likely to have backgrounds as investment bankers, venture capitalists or private equity professionals rather than lawyers.
- They revel in the deal process as evidenced by their regaling you with deal stories. They seem to relish testing the limits of travel-related expense accounts and meeting of industry luminaries during the deal process. They collect and prominently display deal trophies.

Another method to determine how badly someone wants a deal is to consider the context in which they operate. A key consideration here is whether or not your opponent has pressure from above to get the deal done. Even when there is no inordinate pressure from above to get any particular deal done, dealmakers are retained to do deals. Thus, all dealmakers are under pressure to complete deals. Clues as to how desirous dealmakers are to execute deals revolve around how their recent performance compares to that of their

peers. So you may ask a series of questions such as:

- **How many deals did you do last year?** How many deals did your division complete last year? How many dealmakers are in your group? If the counterpart reports that he completed two deals over the past year, and that the division completed 20 deals over the same period and there are a total of five dealmakers, each dealmaker should have completed an average of 4 deals. Thus, the targeted dealmaker is likely to be significantly behind his fellow dealmakers.

**Exhibit 6. Profile The Individuals On The Opposing Side**

Chief Patent Counsel	Division Leader	CFO
<ul style="list-style-type: none"> <li>• Primary Decision Maker</li> <li>• Legal Precedent</li> <li>• Evidence of Minimizing Risk</li> <li>• Mike Jones</li> <li>• You</li> </ul>	<ul style="list-style-type: none"> <li>• Primary Decision Maker</li> <li>• Financial Returns</li> <li>• Lots of Data, Numbers</li> <li>• Bill Lyons</li> <li>• You</li> </ul>	<ul style="list-style-type: none"> <li>• Secondary Decision Maker</li> <li>• Behavior of Peers</li> <li>• Articles, Testimonials</li> <li>• Mary Smith</li> <li>• You</li> </ul>

- **When did you last complete a deal?** If the opponent has not completed a deal recently, he may be more desirous of closing a deal.

- **How many proposed deals did you pursue last year?** If they have had a lot of broken deals and have incurred considerable sunk transactions costs, they may be more desirous of closing a deal.

- **When will you be evaluated?** The closer a negotiator is to his performance review, the more desirous he may be to report another successfully negotiated deal.

- **How long have you been with your current company?** Most new hires want to be able to demonstrate they can close a deal within 12 to 18 months of their employment. However, new hires (especially those from competing companies) and younger negotiators in general are often more aggressive negotiators since they want to prove their loyalty to their employers and talents as negotiators. They are also subject to more supervision than veteran negotiators.

- **Are you compensated based on the success of your deals?** Is such compensation based on the speed of closure? Volume of transactions? Size of deals? Strategic value? Earnings accretion?

**Intelligence Gathering.** To the extent they consider it, many negotiators believe that due diligence is a one-time event to be conducted prior to commencing the negotiations. I disagree. While intelligence gathering should definitely be conducted prior to negotiations, it should continue throughout the negotiations: The economic and competitive pictures change as do the players during long-term negotiations.

There are a number of sources to tap to gather intelligence. One place to start is with your own organization and Rolodex. You and your colleagues are most likely highly plugged into your professional communities. You should have no qualms about scouting for information on your opponent by asking your teammates and acquaintances what they know about the target and its key negotiators. A further refinement to this step is to take advantage of peer-group sharing. This refers to the fact that people have a natural tendency to share information with their peers. Your lawyers will likely be more successful chatting with fellow lawyers while your researchers will likely glean more information from other researchers.

As Yogi Berra once said, “You can see a lot just by looking.” Many professionals are surprisingly uninhibited as to what they expose about themselves on the Internet. Thus, you should scan the usual suspect sites such as LinkedIn and Facebook as well as conduct keyword searches. Other sites that can provide

you with a wealth of personal information on your targets include:

- [www.beenverified.com](http://www.beenverified.com)
- [www.BlackBookOnLine.info](http://www.BlackBookOnLine.info)
- [www.veromi.net](http://www.veromi.net)
- [www.statsoft.com](http://www.statsoft.com)
- [www.fincen.gov](http://www.fincen.gov)
- [www.zoominfo.com](http://www.zoominfo.com)
- [www accurint.com](http://www accurint.com)
- [www.knowx.com](http://www.knowx.com)

Such intelligence gathering can produce more amiable negotiations as such investigation will help you understand how to better communicate with your adversary. Developing a multi-dimensional profile of your opponent will allow you to weave relevant metaphors into your discussions. Thus your sprinkling of military, operatic, or sports metaphors during your discussions could be an amenable way to create a stronger bond.

More aggressive sources of information gathering include paying for advisors with highly specific industry knowledge (and many can be found through consulting agencies such as Gerson Lehrman) or by hiring private investigators. However, these expenses are not always necessary as your opponents can be coaxed into telling you a good bit of what you want to know.

In some situations—such as prior to investing in an emerging company or acquiring it—you can ask the principals to provide personal identification—to be used for background checks and the like—early on to see how they respond. This is a good gating mechanism as professional due diligence services are incurred at the preliminary stages of identifying potential deals, and are expensive. If the opponent refuses, he has already made quite a statement.

You should be relentless in asking your opponent questions. Even if it is obvious he won’t give you the answer, asking the question could needle a partially revealing response out of him, even if such response is in the form of body language. However, you should not ask your questions overtly or linearly. Your opponent will not want to feel as if he is being pumped for information. As terrorist interrogation techniques teach us, it is better to randomize the line of questioning so that the target will not be able to decode your line of thinking.

Among the elicitation strategies you can pursue during your discussions with negotiating opponents are:

- Tap into their job dissatisfaction. People reveal a lot when they vent. In other situations, disgruntled

employees reason that while I may not be able to convince my employer to pay me the bonus I deserve, I can get them to pay by liberally making concessions to the negotiators on the other side of the table.

- Indicate that you are willing to reciprocate in the exchange of information. You can position yourself as someone who has a tremendous wealth of valuable industry information that you are willing to share should the opponent be willing to reciprocate. Alternatively, you can flatter the opponent as though he is an expert whose insight is widely respected.
- Taunt the opponent into correcting misinformation.
- Trick the target into speaking through a different voice such as what the CEO would say or what the target would have said about industry conditions before he more carefully assessed current conditions.
- Ask for help and guidance. This technique plays to the desire on the part of some people to be good Samaritans.
- Rather than asking the target to provide you with specific numbers, seek brackets with increasingly tight ranges in later rounds of questioning. For instance, the series of questions can flow as follows:  
**Question:** Would you say your growth in China will be closer to 10 percent to 20 percent or 20

percent to 30 percent over the next three years?

**Answer:** Closer to 20 percent to 30 percent.

**Question:** (To be asked later in the conversation so as to not make the tactic apparent.) Do you think it is more likely that your company will report growth in China in the low-20 percent level or in the high-20 percent level over the next few years?

## Concluding Comments

I would like to conclude this article by circling back to the title, “Winning Negotiations Before They Begin.” One method for accomplishing this is to set demands as a precondition for beginning the negotiations; that way you have already moved a few issues to your side of the ledger even before the negotiations begin. The second point would be to come to an agreement as to how disputes will be settled at the outset. For instance, you can tell your counterpart that if your estimates of the value of intellectual property resident in an acquiree’s portfolio are too disparate, the disagreement will be settled according to a prearranged process (e.g. have a third-party valuation firm make an assessment, require the firm to use an income method, and to use a certain ‘as of’ date.) The point here is that if you can impose a method to resolve differences on the other side that is favorable to you, the results will typically be more to your liking. ■