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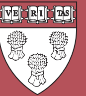

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In business disputes, negotiation doesn't mean backing down

Two recent copyright cases from the music industry highlight the benefits of negotiating rather than litigating.

Imagine that you're an up-and-coming singer who has suddenly scored the pop hit of the year. You should be on top of the world, but rumors have been flying that you and your cowriters lifted your melody from a much older song. You know you did nothing wrong—certainly not intentionally—and are frustrated by the implication that you ripped someone off. At the same time, you're worried that the other side may be able to make a strong case based on similarities between the songs if they decide to sue you for copyright infringement. A significant amount of money and your reputation are potentially at stake. What should you do, if anything?

Not one but two pop stars faced this dilemma over the past couple of years. Upon the release of his 2013 hit "Blurred Lines," singer Robin Thicke faced criticisms that the song sounded too much like Marvin Gaye's 1977 song "Got to Give It Up," which Thicke himself had cited as an inspiration. And last year, many couldn't help but notice that the melody of British crooner Sam Smith's breakout debut single, "Stay with Me," tracked closely with that of the 1989 Tom Petty hit "I Won't Back Down."

From the start, the two singers chose to handle the potential disputes in very different ways. One chose litigation and ended up losing a lengthy and public court battle. The other chose negotiation and settled the dispute quickly, quietly, and amicably. The singers' early-stage choices dramatically affected how the disputes unfolded, offering key lessons to business negotiators who are trying to decide whether to negotiate or litigate.

When musical lines blur

In March 2013, soon after releasing "Blurred Lines," Robin Thicke told *GQ* magazine that, while recording his new album with singer-songwriter Pharrell Williams and rapper T.I., he had wanted to write a song with the same groove as Gaye's "Got to Give It Up," one of his favorite songs. "Then [Williams] started playing a little something and we literally wrote the song in about a half hour and recorded it," Thicke said.

Thanks to its infectious groove and risqué video, "Blurred Lines" went on to become one of the best-selling singles of all time. But Thicke's camp apparently became worried that their overt homage to Gaye could prompt the late R&B singer's family to try to share in their success. So Thicke, Williams, and T.I. made a bold move: They preemptively sued Gaye's family for a declaratory judgment that "Blurred Lines" did not infringe on the family's copyright. Gaye's family countersued, accusing the songwriters of copying the sound and feel of "Got to Give It Up."

During the federal trial in Los Angeles, musicologists working for each side tried to guide the jury in its comparison of

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the sheet music of the two songs. To the jury, the Gaye family's lawyers emphasized Thicke's and Williams's shifting accounts of their collaboration. Thicke, for example, testified that because he had been high on drugs and alcohol during the recording process, he actually had little to do with writing "Blurred Lines" and later, jealous of Williams, had exaggerated his own contribution. On March 10, 2015, the jury ruled against Thicke and Williams (but not T.I.), granting Gaye's family $7.3 million, one of the largest damages awards ever in a music copyright case and about two-thirds of the estimated $11 million Thicke and Williams have made from "Blurred Lines."

No hard feelings

Compare this public battle to Tom Petty's resolution of a similar dispute with Sam Smith last year. "Stay with Me," the first release from Smith's debut album, became an instant hit in mid-2014, eventually selling about four million copies and winning two Grammy Awards in 2015.

Soon after the song became popular, the publishers of Tom Petty and Jeff Lynne's cowritten song "I Won't Back Down" contacted the publishers of "Stay with Me" and pointed out that the melodies of the two songs are virtually identical, the *Wall Street Journal* reports. By October, the two sides had reached an agreement: Petty and Lynne received a 12.5% writing credit on "Stay with Me" and commensurate royalties.

When news of the deal leaked this past January, both sides were quick to frame the situation as a negotiation, not a dispute. Smith's representative said in a statement that the writers of "Stay with Me" had not been familiar with "I Won't Back Down" but acknowledged the similarity between the two songs, calling it "a complete coincidence."

Smith's camp "didn't try to fight [the claim] and amicably dished out royalties," a source close to the negotiation told the website Consequence of Sound. "It wasn't a deliberate thing; musicians are just inspired by other artists and Sam and his team were quick to hold up their hand when it was officially flagged." According to the source, negotiations were conducted "behind closed doors without any mud being slung."

For his part, Petty said in a statement that he "never had any hard feelings" toward Smith. "All my years of songwriting have shown me these things can happen. … Sam's people were very understanding of our predicament and we easily came to an agreement." He added, "The word lawsuit was never even said and was never my intention."

First, negotiate

For most disputes, a clear-eyed calculation of legal fees and the risks of losing in court should motivate parties to try to negotiate a settlement rather than immediately taking it to trial, write Robert H. Mnookin, Scott R. Peppet, and Andrew S. Tulumello in their book *Beyond Winning: Negotiating to Create Value in Deals and Disputes* (Harvard University Press, 2000). By pursuing negotiation first, you position yourself to save time and money, avoid stress, and increase the odds of keeping the details of your dispute private. If agreement proves elusive, litigation remains an option.

"The word lawsuit was never even said and was never my intention."

But even when we aspire to resolve disputes as peacefully and fairly as Petty and Smith appear to have, we can end up in the type of expensive and risky litigation that unfolded between Thicke and Gaye's family. Here are three notes from the two cases that can help you negotiate a satisfying resolution to your next significant business dispute.

1. Hire lawyers who will negotiate.

Disputants often turn over too much decision-making power to their attorneys, assuming that the experts know best, according to Mnookin, Peppet, and Tulumello. But it's important to remember that your lawyer's interests

Did a clear villain overshadow a weak case?

Though many observers viewed Robin Thicke and Pharrell Williams as the villains in their case against Marvin Gaye's family, numerous legal experts criticized the ruling against them.

The recordings of "Blurred Lines" and "Got to Give It Up" have an undeniably similar sound, including their use of male falsetto and cowbell. But because Gaye copyrighted only his song's sheet music and not its recording, "sound" and "feel" weren't supposed to be considered in the trial. Some experts judged the two songs' sheet music to be no more similar than any other two songs. Arguing that the judge should have thrown out the case, Columbia Law School professor Tim Wu wrote in the *New Yorker* that Gaye's lawyers won not because they had the facts on their side but because they did a good job of contrasting the "widely revered" Gaye with the "enormously unappealing" Thicke to the jury.

Despite their efforts to be impartial, judges and juries can be just as biased as the rest of us—but the stakes of their binding decisions are much higher. All the more reason, then, to negotiate rather than litigate.

Pharrell Williams and Robin Thicke

will never be perfectly aligned with yours. Lawyers often have clear financial incentives to take a dispute to trial, especially if they are being paid by the hour and expect a long fight. In addition, lawyers may be more comfortable taking an adversarial role in the courtroom than they would be negotiating.

Look for a lawyer who will present the range of strategies available to you, including negotiation, mediation, and litigation. If your lawyer tries to talk you out of negotiation or seems only to be humoring your desire to try it, seek new counsel.

You can also increase the odds that your lawyer will get on board with negotiation by adjusting her financial incentives. You might offer her a bonus for negotiating a settlement quickly, for example, or warn that you will replace her if the dispute endures beyond a certain date.

2. Approach the dispute as a negotiation.

In dispute resolution, how parties frame their disagreement at the outset can have a significant influence on how it unfolds. According to Petty, for example, his team never even mentioned the word *lawsuit* when approaching Smith's publishers about possible copyright infringement. Instead, the Petty team appeared to assume that Smith and his cowriters had no ill intent, an attitude that encouraged a problem-solving approach.

The Thicke-Williams team's strategy couldn't have been more different. Rather than engaging the Gaye family in a dialogue, the masterminds behind "Blurred Lines" preemptively sued them instead. Not only did this decision become a public-relations disaster but also may have played poorly to the judge and jury. In a *Billboard* article written after the verdict was announced, Gaye family lawyer Richard Busch called Thicke and Williams "bullies" for filing the suit and speculated that their goal had been to intimidate the Gayes into backing down. "I bet they now regret it," Busch added.

When you feel wronged or unjustly accused, it can be tempting to approach the dispute with a combative win-lose attitude. Instead, take the high road: Assume the best about the other side, and open up a sincere conversation about what happened and how you can work together to correct it. Your counterpart may be surprised by your collaborative overtures, but she will be far more likely to cooperate on a mutually beneficial solution than if you open with a lawsuit.

3. Draw on appropriate fairness standards.

Petty and Smith may have reached a quick agreement in part because the case for copyright infringement was cut-and-dried. The melodies of Smith's and Petty-Lynne's songs track note by note, whereas the Thicke-Williams song is arguably more of a loose homage to Gaye (see the sidebar).

The clearer the facts, it stands to reason, the easier a dispute should be to resolve. That's why it pays to approach negotiations only after you've conducted significant research into the relative strength of your case. You or your legal team should investigate relevant standards, past precedent, and common practices in your industry. If, after educating yourself, you are still considering litigation, assign your lawyer to use decision-analysis tools such as decision trees and dependency diagrams to quantify the risks and opportunities of going to court, advise Mnookin, Peppet, and Tulumello in *Beyond Winning*.

At the table, remember that people view "facts" differently depending on their perspective. Rather than assuming that the other party will agree to the fairness standards you've chosen, discuss the various rules and perspectives that are available and decide jointly which to apply to your case. ■

IN NEGOTIATION, ARE TWO ANCHORS BETTER THAN ONE?

When crafted carefully, a "range offer" can lead to superior outcomes as compared with a single figure, new research suggests.

Suppose you are about to negotiate the price of your used car with a potential buyer. You know that the fair market value of the car is about $5,000–$6,000. You want to make an opening offer that is aggressive but not offensive. Should you name a specific price—say, $7,000—or suggest a price range, such as "I could sell the car to you for about $6,500 to $7,500"?

If you were to follow the most common negotiation advice, you would stick with a single figure, such as $7,000, rather than expressing your offer as a range. In the past, experts have warned negotiators not to make so-called range offers. Why? They predict that your counterpart will attend only to the endpoint of your range that favors him and negotiate from there. For example, if you offer $6,500–$7,500, the potential buyer might focus on $6,500 and negotiate downward, ignoring the $7,500 endpoint. Because a range offer is at best pointless and at worst harmful, the thinking goes, it's better to start off with a single figure (such as $7,000).

That's the conventional wisdom, but, interestingly, it appears never to have been tested by negotiation researchers—until now. In a new study in the *Journal of Personality and Social Psychology*, Columbia University professors Daniel R. Ames and Malia F. Mason find that, rather than being a money-losing strategy, expressing offers in a range—when done with care—can be an often-overlooked means of claiming more value for yourself in financial negotiations.

One or two anchors?

Opening offers have a strong effect on negotiation. The first offer made in a negotiation serves as an anchor that influences the discussion that follows, even when that anchor is extreme. Consequently, abundant negotiation research suggests that you should try to make the first offer, unless the other party knows much more than you do about the value of the item being negotiated or about relevant market or industry conditions. Your opening offer should be aggressive but not absurdly so, recommends Columbia Business School professor Adam D. Galinsky based on his research.

Turning to the question of whether a single figure or a range is more advantageous, in their new study, Ames and Mason suggest that "when it comes to first offers, two figures have the potential to be more potent anchors than one." That is, contrary to the theory that a party presented with a range offer will notice only the endpoint that serves her interests, the researchers posit that *both* endpoints in a range offer will shape the other side's perceptions of what constitutes a reasonable or feasible outcome.

When expressing offers, negotiators tend to use three different types of ranges relative to the single-figure offer they might otherwise make, such as $7,000 for the car. As you can see, the three types of ranges vary in their ambition:

1. **Bolstering range:** A bolstering range includes the single-figure offer at one end and a *more* ambitious number at the other end, such as a seller asking $7,000–$7,500 rather than $7,000 for her car.
2. **Backdown range:** A backdown range features the single-figure offer at one end and a *less* ambitious figure at the other end, such as the same seller asking $6,500–$7,000 for her car instead of $7,000.
3. **Bracketing range:** A bracketing range spans the single-figure offer, such as an offer of $6,800–$7,200 rather than $7,000 for the same car.

In a pilot study, Ames and Mason examined the types of ranges people gravitate toward in price negotiations. They asked nearly 400 U.S. participants to imagine that they were the seller in a used-car negotiation and to come up with both a single-figure offer and a range offer for the car. Of participants, 51% constructed bracketing-range offers, 29% constructed backdown-range offers, and only 17% constructed bolstering-range offers. These results hint at why range offers are often deemed ineffective. If most people construct unambitious bracketing and backdown ranges that are no more aggressive or less aggressive than the single-figure offers they would otherwise make, it's not surprising that range offers would lead to disappointing outcomes.

Why it pays to bolster

By contrast, Ames and Mason found across five experiments that bolstering ranges—those that aggressively stretch the bounds of a single-figure offer—can be highly effective in price-haggling negotiations.

In one experiment, which was conducted online, participants were assigned the role of either buyer or seller of a used car. Those playing the seller were randomly assigned to four conditions and asked to make one of the following types of opening offers: (1) a single-figure offer, (2) a bracketing-range offer, (3) a bolstering-range offer, or (4) a single-figure offer more ambitious than the one that first came to mind. This fourth condition was designed to determine whether it would be better to make a bolstering-range offer or to "bump up" the single-point offer to the

figure at the more ambitious end of the bolstering-range offer.

The pairs of buyers and sellers then engaged in a simulated negotiation in an online chat room. Consistent with the results of Ames and Mason's other experiments, buyers who received bolstering-range offers made greater concessions and more conciliatory counteroffers than did buyers who received the other types of offers. Why? Because they assumed that their sellers had more ambitious bottom lines (or *reservation prices*).

In addition, buyers faced with bolstering-range offers were more concerned than buyers who received a single-figure offer that their counterpart would perceive them as impolite if they made an assertive counteroffer. The researchers theorized that a range offer, such as $7,200–$7,500, signals greater flexibility than a single-price offer, such as $7,200. "Whereas rejecting a point offer may be the norm in many bargaining situations, responding to a range offer with a value well outside the range may feel like an affront, an overly harsh reaction to an apparent show of flexibility," write Ames and Mason. Consequently, recipients of range offers may be at pains to counter within the suggested range, a tendency that may work to your advantage when you present a bolstering range.

Interestingly, the results showed that "bump-up" offers—those that participants bumped up to a more ambitious single figure from their initial offer—did not yield better final agreements and were far more likely to lead to impasse than other types of offers, including bolstering-range offers. Thus, a bolstering range that ends with an ambitious target (such as $7,500–$8,000) may be more effective than simply offering the ambitious target ($8,000) on its own.

A useful new tool

Bolstering-range offers not only appear to lead to better outcomes in single-issue negotiations but also those who make them seem to avoid the reputational damage that often accompanies aggressive offers, Ames and Mason found in their experiments. Because ranges appear to convey flexibility and accommodation, they may offset the assertiveness conveyed by asking for more.

There are limitations to the effectiveness of bolstering-range offers, however. First, as you might expect, very wide ranges (such as $6,000–$9,000 for a used car as compared with $6,000–$7,000) did not yield significant gains as compared with more standard ranges in these experiments. Ranges of about 5% to 20% of the base figure appear to work best. In addition, bolstering ranges that started with an extreme value and extended to an even more aggressive figure (such as $8,000–$9,000 rather than $7,000–$8,000 for that used car valued at $6,000) also were not beneficial.

Overall, the research leads to the conclusion that in single-issue negotiations, range offers are not always the misguided trap that experts have long believed them to be. Ames and Mason end their study with the following advice:

- Backdown ranges are counterproductive and should be avoided.
- Bracketing ranges, which can enhance relationships, may be useful when you are particularly concerned about appearing fair-minded and nonaggressive.
- When crafted carefully, bolstering ranges can help you claim the most value without sacrificing the relationship or your reputation. ■

Bolstering women's results

Bolstering-range offers may be particularly useful to women. In their research, Hannah Riley Bowles of the Harvard Kennedy School, Linda Babcock of Carnegie Mellon University, and Lei Lai of Tulane University found that men were less inclined to work with women who initiated negotiations for higher compensation than with women who did not ask for more. Further research is needed, but the fact that Daniel R. Ames and Malia F. Mason found in their study that negotiators who use bolstering ranges gain more for themselves *and* protect their relationship with the other party suggests that such offers may help women avoid the social backlash triggered by assertive negotiating behavior.

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STOP OUTSIDERS FROM SABOTAGING YOUR DEAL

Republican senators' attempt to scuttle a U.S. agreement with Iran should remind business negotiators of the importance of managing potential deal spoilers.

A deal had been a long time coming. Back in November 2013, Iran agreed to limit its nuclear enrichment program in exchange for lighter economic sanctions from Western nations. To hammer out the details, Iran entered into talks with six nations: China, Russia, France, Germany, the United Kingdom, and the United States. Eventually, the talks became primarily bilateral between Iran and the United Sates.

After numerous delays and false starts, the U.S. and Iranian negotiating teams were reportedly optimistic this past February that they would meet a March 31 deadline for an initial deal and a June 30 deadline for a final agreement. Sounding like a Western-trained negotiator, Iran's president, Hassan Rouhani, said in a speech that his team was seeking "win-win mutual understanding," according to Reuters. "We made progress," U.S. secretary of state John Kerry said following a round of talks in Geneva in February, the New York Times *reports. Iranian foreign minister Mohammad Javad Zarif echoed that assessment, saying the two sides had reached "a better understanding."*

Then came the letter. On March 9, 47 Republican U.S. senators informed Iran's leaders in an open missive that they would consider any agreement reached as "nothing more than an executive agreement between President Obama and Ayatollah Khamenei" that could be revoked "with the stroke of a pen" by the next U.S. president or modified by Congress at any time.

The letter was roundly condemned by the White House and many commentators, who called it a publicity stunt that undermined U.S. foreign policy. President Obama suggested that, by jeopardizing talks with Iran's more moderate leaders, the letter allied the Republicans with Iranian hard-liners. Republican leaders' decision to invite Israeli prime minister Benjamin Netanyahu to speak out against the Iran deal before a joint session of Congress in March, without notifying Obama, had already proved controversial.

Zarif publicly dismissed the letter as "propaganda." But behind closed doors, Kerry and his team reportedly had to do damage control to alleviate Iranian officials' fears that Republicans could sabotage whatever deal the parties might reach. The parties managed to reach a preliminary agreement on April 2, two days after their deadline.

In negotiation, we sometimes forget that the stakes are high not only for the parties at the table but also for others who are watching from the sidelines. As this story suggests, we ignore this fact at our peril. Though the White House might not have been able to predict that Republicans in the Senate would insert themselves into the middle of the negotiations with Iran, it was a risk that Obama implicitly accepted when he decided to pursue an agreement that would not require congressional approval.

Congressional Republicans released their open letter because they felt they'd been shut out of the decision-making process on Iran. Though the U.S. Constitution requires the Senate to ratify treaties with a two-thirds vote, presidents commonly avoid this requirement by negotiating so-called executive agreements with foreign counterparts. The next president theoretically could abandon Obama's deal with Iran, as the Republicans threatened, but such a move would be a significant break from tradition. U.S. presidents typically uphold even international agreements they disagree with to preserve the nation's reputation as a trustworthy and reliable negotiating partner.

As this news story suggests, political negotiations follow specific rules that may preclude the need to involve interested bystanders in talks. By comparison, business negotiators may have greater motives and opportunities to engage with potential deal spoilers and try to get them on board.

Whether at home or at work, we've all encountered a truism about human behavior: When someone feels you're ignoring her, she will look for a way to get your attention—and you might not like how she goes about it. We look at three steps you can take to prevent an unhappy bystander from sabotaging your own negotiations.

1. Anticipate and prepare for objections.

When preparing for an important negotiation, take time to consider the various parties who could be affected by an agreement. This list might include your colleagues, the other side's colleagues, clients and customers on both sides, the public, government agencies, and so on. If you are a commercial building owner negotiating with a potential new tenant, for example, you might recognize that you could antagonize other tenants if you rent to one of their competitors or to a business that they otherwise consider undesirable.

Next, consider the interests of these relevant parties in the negotiation. What might upset or, alternatively, please them about the outcome you're envisioning? How might they respond if they are displeased by your negotiation process or outcomes? Is there a risk they could create problems for you or those you represent? Suppose you're planning to negotiate with your CEO for more resources for your department. You might recognize that another department head who is closer to the CEO than you are could get wind of your request and look for ways to claim those resources for his own team.

U.S. secretary of state John Kerry (L) and Iranian foreign minister Mohammad Javad Zarif (R) with their negotiating teams

After identifying the relevant parties, think about whether any of them warrant a role in the negotiation. Should they be present at the table? Should you seek their feedback regularly throughout the process? Should they have the right to vote on or veto any negotiated agreement you might reach?

Even if you decide that an interested party shouldn't have a direct role in your talks, there may be points you can negotiate to appease her. In your talks with your CEO, for example, you could propose involving other departments in the project you're envisioning, in part to lessen the odds that they will try to spoil the deal.

You might also launch separate negotiations with likely objectors. Between negotiations with Iran in March, for instance, John Kerry took the time to fly to Saudi Arabia to meet with its leader, King Salman, and the foreign ministers of six other Middle Eastern nations to reassure them that any agreement reached would not boost Iran's status in the region.

2. Highlight the risks of spoiling the deal.

Motivated by anger and a sense of injustice, deal spoilers often act impulsively, failing to think through how their attempted sabotage will play out. If, despite your best efforts, a potential spoiler remains suspicious of your motives and opposed to the negotiation, you could grab her attention by highlighting the risks of attempted sabotage.

To begin with, deal spoilers face a real risk of being blamed if their plans succeed. Iran expert Ellie Geranmayeh of the European Council on Foreign Relations told the *New York Times* (before a deal was reached) that if the Iran talks collapsed at the negotiating table, "the blame will nevertheless be placed on the U.S. legislators for poisoning negotiations" with their open letter. The Republican contingent could have served as a convenient scapegoat for the Obama administration if the negotiations reached an impasse. Similarly, in the business world, an individual who interferes with a deal in progress risks being ostracized within his organization or industry for his subterfuge.

In negotiation, we sometimes forget that the stakes are high not only for the parties at the table but also for others who are watching from the sidelines.

Moreover, acting out can backfire, promoting the very type of agreement a spoiler was trying to scuttle. Returning to the U.S.-Iran negotiations, before the Senate Republicans released their open letter, a solid bipartisan coalition supported legislation requiring Obama to submit any Iran deal to Congress for approval. But the letter so angered some Democrats that the Republicans may have lost the votes they would need to override a presidential veto of their bill. Reminding your potential spoiler of these and other dangers could motivate her to negotiate a mutually beneficial détente with you.

3. Work around the spoiler.

What if, despite your best efforts, a key player seems determined to remain a roadblock? In negotiations such as the Obama administration's dealings with Iran, you may choose to proceed without them and hope for the best.

In other situations, you may need to bring the reluctant party on board to reach your goals. If so, it may be time to try a *work-around*, writes Harvard Law School professor Robert C. Bordone in the January 2007 *Negotiation Briefings* article "Dealing with a Spoiler? Negotiate Around the Problem." A work-around is a strategic approach to reaching your goals by circumventing the spoiler who stands in your way.

One type of work-around that can be effective involves building coalitions that exploit what Harvard Business School professor James K. Sebenius has termed *patterns of deference*, or the common tendency of people to follow influential others on a particular path. By bringing respected parties on board, you may be able to build a coalition in support of your plan that the spoiler will find difficult to resist, advises Bordone.

If another department head in your organization remains opposed to your plans for your department, for example, identify other players who might influence him in your favor. Map these relationships backward to your target, and determine the best sequence of approach. Try to enlist these other players in your cause, and encourage them to make your case to the person holding you back. If the potential spoiler sees that your negotiation has the support of people he admires and respects, his resistance may wane. Because such efforts can backfire, however, you should be careful to enlist only those you know and trust to make your case to the potential spoiler. ■

Q: I work with a group that has completed several mergers and acquisitions on behalf of our organization in recent years. We would like to assess how well we have done and where and how we might improve. What's the best way to go about this?

A: Across all kinds of business negotiations, assessing a team's performance can yield critical insights and serve as a useful starting point for improvement efforts. Yet most organizations don't conduct negotiation assessments because they're not sure how to go about it. Here are three issues to consider:

1. Who will provide feedback, and how will it be gathered? In many settings, 360-degree feedback—that is, performance feedback from selected colleagues, stakeholders, and counterparts—is considered essential. Yet getting feedback from past negotiating counterparts is potentially problematic, as they may have a conflict of interest. Would you view a counterpart's advice to "be more flexible in meeting our needs" as genuine or manipulative? Similarly, colleagues who have not participated in talks may not have a full picture of the negotiators' work.

Moreover, asking negotiators to assess how well they have done may not yield valid information because of cognitive distortions in our perceptions of negotiation. For example, negotiators typically overestimate how much value they have claimed because they underestimate the actual size of the ZOPA (*zone of possible agreement*), researchers Richard P. Larrick and George Wu have found.

To overcome this hurdle, try to put negotiators in storytelling mode. When people tell stories about challenging negotiations, they tend to focus less on how well they did and more on the assumptions, perceptions, and theories that guided them. Consequently, storytelling can elicit more useful information than self-evaluations would. A negotiator who describes himself as collaborative, for example, might nonetheless mention that he refused to return calls to "show them we were in charge."

2. What should the assessment target? An assessment can take one or a combination of the following approaches. A *case-study approach* focuses on the structure of an agreement, or compares different agreements, to evaluate whether and how deal design was efficient in each case, given the parties' interests and alternatives. This approach can be useful in identifying the kinds of trades or terms that created and claimed value and in better designing future deals where similar dynamics and issues are in play.

A *process review* looks at the procedures and tools used to prepare for negotiations and identifies potential improvements. This is almost always a useful undertaking, since most groups will readily admit that at least some aspects of their process could be better and are eager for advice. This approach is particularly useful in matrixed leadership environments, where authority and information are distributed across groups and geography.

A *skills-gap analysis* pinpoints gaps in knowledge and behaviors that could be addressed through training or coaching. This approach can be useful when a group wants to identify learning opportunities. An assessor who has a clear theory of both negotiation and organizational development can often effectively combine approaches in ways that meet one or more of these multilevel goals.

3. How should findings be applied? The most powerful assessments serve as a basis for change on numerous levels, including tailored negotiation-skills workshops, enhanced preparation processes and tools, better communication and data-sharing procedures, realigned scorecards and incentive structures, and peer coaching and internal-review procedures during major deals. For example, after a recent detailed analysis of a dozen of its recent deals, one mergers and acquisitions group in a Fortune 500 company formed implementation teams around key actions, such as changes to processes and communications, with timelines and milestones attached to each one.

Taking time to design a negotiation assessment thoughtfully will strengthen the quality of the information it yields, leading to a better diagnosis and more impactful interventions.

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