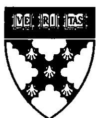
# Six Habits of Merely Effective Negotiators

by James K. Sebenius

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HBR CASE STUDY — R0104A
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Bronwyn Fryer

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Egon Zehnder

HBR AT LARGE — R0104C
**No Ordinary Boot Camp**
Noel M. Tichy

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Ram Charan

**Six Habits of Merely Effective Negotiators** — R0104E
James K. Sebenius

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David A. Thomas

**The Kinesthetic Speaker: Putting Action into Words** — R0104G
Nick Morgan

**The 2001 HBR List:** — R0104H
**Breakthrough Ideas for Today's Business Agenda**

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Leonard L. Berry

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**Is a Share Buyback Right for Your Company?**
Justin Pettit

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Jeffrey Huang

LIKE MANY EXECUTIVES, YOU KNOW A LOT ABOUT NEGOTIATING. BUT STILL YOU FALL PREY TO A SET OF COMMON ERRORS. THE BEST DEFENSE IS STAYING FOCUSED ON THE RIGHT PROBLEM TO SOLVE.

# SIX HABITS OF *Merely Effective* NEGOTIATORS

by James K. Sebenius

GLOBAL DEAL MAKERS did a staggering $3.3 trillion worth of M&A transactions in 1999 – and that's only a fraction of the capital that passed through negotiators' hands that year. Behind the deal-driven headlines, executives endlessly negotiate with customers and suppliers, with large shareholders and creditors, with prospective joint venture and alliance partners, with people inside their companies and across national borders. Indeed, wherever parties with different interests and perceptions depend on each other for results, negotiation matters. Little wonder that Bob Davis, vice chairman of Terra Lycos, has said that companies "have to make deal making a core competency."

Luckily, whether from schoolbooks or the school of hard knocks, most executives know the basics of negotiation; some are spectacularly adept. Yet high stakes and intense pressure can result in costly mistakes. Bad habits creep in, and experience can further ingrain those habits. Indeed, when I reflect on the thousands of negotiations I have participated in and studied over the years, I'm struck by how frequently even experienced negotiators leave money on the table, deadlock, damage relationships, or allow conflict to spiral. (For more on the

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rich theoretical understanding of negotiations developed by researchers over the past fifty years, see the sidebar "Academics Take a Seat at the Negotiating Table.")

There are as many specific reasons for bad outcomes in negotiations as there are individuals and deals. Yet broad classes of errors recur. In this article, I'll explore those mistakes, comparing good negotiating practice with bad. But first, let's take a closer look at the right negotiation problem that your approach must solve.

## Solving the Right Negotiation Problem

In any negotiation, each side ultimately must choose between two options: accepting a deal or taking its best no-deal option – that is, the course of action it would take if the deal were not possible. As a negotiator, you seek to advance the full set of your interests by persuading the other side to say yes – and mean it – to a proposal that meets your interests better than your best no-deal option does. And why should the other side say yes? Because the deal meets its own interests better than its best no-deal option. So, while protecting your own choice, your negotiation problem is to understand and shape your counterpart's perceived decision – deal versus no deal – so that the other side chooses *in its own interest* what you want. As Italian diplomat Daniele Vare said long ago about diplomacy, negotiation is "the art of letting them have your way."

> YOUR NEGOTIATION PROBLEM IS TO UNDERSTAND AND SHAPE YOUR COUNTERPART'S PERCEIVED DECISION SO THAT THE OTHER SIDE CHOOSES *IN ITS OWN INTEREST* WHAT YOU WANT.

This approach may seem on the surface like a recipe for manipulation. But in fact, understanding your counterpart's interests and shaping the decision so the other side agrees for its own reasons is the key to jointly creating and claiming sustainable value from a negotiation. Yet even experienced negotiators make six common mistakes that keep them from solving the right problem.

### MISTAKE 1
### *Neglecting the Other Side's Problem*

You can't negotiate effectively unless you understand your own interests and your own no-deal options. So far, so good – but there's much more to it than that. Since the other side will say yes for its reasons, not yours, agreement requires understanding and addressing your counterpart's problem as a means to solving your own.

At a minimum, you need to understand the problem from the other side's perspective. Consider a technology company, whose board of directors pressed hard to develop a hot new product shortly after it went public. The company had developed a technology for detecting leaks in underground gas tanks that was both cheaper and about 100 times more accurate than existing technologies – at a time when the Environmental Protection Agency was persuading Congress to mandate that these tanks be continuously tested. Not surprisingly, the directors thought their timing was perfect and pushed employees to commercialize and market the technology in time to meet the demand. To their dismay, the company's first sale turned out to be its only one. Quite a mystery, since the technology worked, the product was less expensive, and the regulations did come through. Imagine the sales engineers confidently negotiating with a customer for a new order: "This technology costs less and is more accurate than the competition's." Think for a moment, though, about how intended buyers might mull over their interests, especially given that EPA regulations permitted leaks of up to 1,500 gallons while the new technology could pick up an 8-ounce leak. Potential buyer: "What a technological tour de force! This handy new device will almost certainly get me into needless, expensive regulatory trouble. And create P.R. problems too. I think I'll pass, but my competition should definitely have it." From the technology company's perspective, "faster, better, cheaper" added up to a sure deal; to the other side, it looked like a headache. No deal.

Social psychologists have documented the difficulty most people have understanding the other side's perspective. From the trenches, successful negotiators concur that overcoming this self-centered tendency is critical. As Millennium Pharmaceuticals' Steve Holtzman put it after a string of deals vaulted his company from a start-up in 1993 to a major player with a $10.6 billion market cap today, "We spend a lot of time thinking about how the poor guy or woman on the other side of the table is going to have to go sell this deal to his or her boss. We spend a lot of time trying to understand how they are modeling it." And Wayne Huizenga, veteran of more than a thousand deals building Waste Management, AutoNation, and Blockbuster, distilled his extensive experience into basic advice that is often heard but even more often forgotten.

***James K. Sebenius*** *is the Gordon Donaldson Professor of Business Administration at Harvard Business School in Boston, where he led the creation of the negotiation unit. He helped found and worked at the Blackstone Group, a New York investment banking and private equity firm. He is coauthor with David Lax of the forthcoming book* 3-D Negotiation: Creating and Claiming Value for the Long Term.

## ACADEMICS TAKE A SEAT AT THE NEGOTIATING TABLE

Paralleling the growth in real-world negotiation, several generations of researchers have deepened our understanding of the process. In the 1950s and 1960s, elements of hard (win-lose) bargaining were isolated and refined: how to set aggressive targets, start high, concede slowly, and employ threats, bluffs, and commitments to positions without triggering an impasse or escalation. By the early 1980s, with the win-win revolution popularized by the book *Getting to Yes* (by Roger Fisher, William Ury, and Bruce Patton), the focus shifted from battling over the division of the pie to the means of expanding it by uncovering and reconciling underlying interests. More sophisticated analysis in Howard Raiffa's *Art and Science of Negotiation* soon transcended this simplistic "win-win versus win-lose" debate; the pie obviously had to be both expanded and divided. In *The Manager as Negotiator* (by David Lax and James Sebenius), new guidance emerged on productively managing the tension between the cooperative moves necessary to create value and the competitive moves involved in claiming it. As the 1990s progressed with work such as *Negotiating Rationally* (by Max Bazerman and Margaret Neale), the behavioral study of negotiation – describing how people actually negotiate – began to merge with the game theoretic approach, which prescribed how fully rational people should negotiate. This new synthesis – developing the best possible advice without assuming strictly rational behavior – is producing rich insights in negotiations ranging from simple two-party, one-shot, single-issue situations through complex coalitional dealings over multiple issues over time, where internal negotiations must be synchronized with external ones. Negotiation courses that explore these ideas have always been popular options at business schools, but reflecting the growing recognition of their importance, these courses are beginning to be required as part of MBA core programs at schools such as Harvard. Rather than a special skill for making major deals or resolving disputes, negotiation has become a way of life for effective executives.

"In all my years of doing deals, a few rules and lessons have emerged. Most important, always try to put yourself in the other person's shoes. It's vital to try to understand in depth what the other side really wants out of the deal."

Tough negotiators sometimes see the other side's concerns but dismiss them: "That's their problem and their issue. Let them handle it. We'll look after our own problems." This attitude can undercut your ability to profitably influence how your counterpart sees its problem.

Early in his deal-making career at Cisco Systems, Mike Volpi, now chief strategy officer, had trouble completing proposed deals, his "outward confidence" often mistaken for arrogance. Many acquisitions later, a colleague observed that "the most important part of [Volpi's] development is that he learned power doesn't come from telling people you are powerful. He went from being a guy driving the deal from his side of the table to the guy who understood the deal from the other side."

An associate of Rupert Murdoch remarked that, as a buyer, Murdoch "understands the seller – and, whatever the guy's trying to do, he crafts his offer that way." If you want to change someone's mind, you should first learn where that person's mind is. Then, together, you can try to build what my colleague Bill Ury calls a "golden bridge," spanning the gulf between where your counterpart is now and your desired end point. This is much more effective than trying to shove the other side from its position to yours. As an eighteenth-century pope once noted about Cardinal de Polignac's remarkable diplomatic skills, "This young man always seems to be of my opinion [at the start of a negotiation], and at the end of the conversation I find that I am of his." In short, the first mistake is to focus on your own problem, exclusively. Solve the other side's as the means to solving your own.

### MISTAKE 2
### *Letting Price Bulldoze Other Interests*

Negotiators who pay attention exclusively to price turn potentially cooperative deals into adversarial ones. These "reverse Midas" negotiators, as I like to call them, use hard-bargaining tactics that often leave potential joint gains unrealized. That's because, while price is an important factor in most deals, it's rarely the only one. As Felix Rohatyn, former managing partner of the investment bank, Lazard Frères, observed, "Most deals are 50% emotion and 50% economics."

There's a large body of research to support Rohatyn's view. Consider, for example, a simplified negotiation, extensively studied in academic labs, involving real money. One party is given, say, $100 to divide with another party as she likes; the second party can agree or disagree to the

arrangement. If he agrees, the $100 is divided in line with the first side's proposal; if not, neither party gets anything. A pure price logic would suggest proposing something like $99 for me, $1 for you. Although this is an extreme allocation, it still represents a position in which your counterpart gets something rather than nothing. Pure price negotiators confidently predict the other side will agree to the split; after all, they've been offered free money–it's like finding a dollar on the street and putting it in your pocket. Who wouldn't pick it up?

In reality, however, most players turn down proposals that don't let them share in at least 35% to 40% of the bounty–even when much larger stakes are involved and the amount they forfeit is significant. While these rejections are "irrational" on a pure price basis and virtually incomprehensible to reverse Midas types, studies show that when a split feels too unequal to people, they reject the spoils as unfair, are offended by the process, and perhaps try to teach the "greedy" person a lesson.

An important real-world message is embedded in these lab results: people care about much more than the absolute level of their own economic outcome; competing interests include relative results, perceived fairness, self-image, reputation, and so on. Successful negotiators, acknowledging that economics aren't everything, focus on four important nonprice factors.

**The Relationship.** Less experienced negotiators often undervalue the importance of developing working relationships with the other parties, putting the relationships at risk by overly tough tactics or simple neglect. This is especially true in cross-border deals. In much of Latin America, southern Europe, and Southeast Asia, for example, relationships–rather than transactions–can be the predominant negotiating interest when working out longer term deals. Results-oriented North Americans, Northern Europeans, and Australians often come to grief by underestimating the strength of this interest and insisting prematurely that the negotiators "get down to business."

**The Social Contract.** Similarly, negotiators tend to focus on the economic contract–equity splits, cost sharing, governance, and so on–at the expense of the social contract, or the "spirit of a deal." Going well beyond a good working relationship, the social contract governs people's expectations about the nature, extent, and duration of the venture, about process, and about the way unforeseen events will be handled. Especially in new ventures and strategic alliances, where goodwill and strong shared expectations are extremely important, negotiating a positive social contract is an important way to reinforce economic contracts. Scurrying to check founding documents when conflicts occur, which they inevitably do, can signal a badly negotiated social contract.

**The Process.** Negotiators often forget that the deal-making process can be as important as its content. The story is told of the young Tip O'Neill, who later became Speaker of the House, meeting an elderly constituent on the streets of his North Cambridge, Massachusetts, district. Surprised to learn that she was not planning to vote for him, O'Neill probed, "Haven't you known me and my family all my life?" "Yes." "Haven't I cut your grass in summer and shoveled your walk in winter?" "Yes." "Don't you agree with all my policies and positions?" "Yes." "Then why aren't you going to vote for me?" "Because you didn't ask me to." Considerable academic research confirms what O'Neill learned from this conversation: process counts. What's more, sustainable results are more often reached when all parties perceive the process as personal, respectful, straightforward, and fair.[1]

**The Interests of the Full Set of Players.** Less experienced negotiators sometimes become mesmerized by the aggregate economics of a deal and forget about the interests of players who are in a position to torpedo it. When the boards of pharmaceutical giants Glaxo and SmithKline Beecham publicly announced their merger in 1998, investors were thrilled, rapidly *increasing* the combined company's market capitalization by a stunning $20 billion. Yet despite prior agreement on who would occupy which top executive positions in the newly combined company, internal disagreement about management control and position resurfaced and sank the announced deal, and the $20 billion evaporated. (Overwhelming strategic logic ultimately drove the companies back together, but only after nearly two years had passed.) This episode confirms two related lessons. First, while favorable overall economics are generally necessary, they are often not sufficient. Second, keep all potentially influential internal players on your radar screen; don't lose sight of their interests or their capacity to affect the deal. What is "rational" for the whole may not be so for the parts.

It can be devilishly difficult to cure the reverse Midas touch. If you treat a potentially cooperative negotiation like a pure price deal, it will likely become one. Imagine a negotiator who expects a hardball, price-driven process. She initiates the bid by taking a tough preemptive position; the other side is likely to reciprocate. "Aha!" says the

PEOPLE CARE ABOUT MUCH MORE THAN THE ABSOLUTE LEVEL OF THEIR OWN ECONOMIC OUTCOME; COMPETING INTERESTS INCLUDE RELATIVE RESULTS, PERCEIVED FAIRNESS, SELF-IMAGE, REPUTATION, AND SO ON.

negotiator, her suspicions confirmed. "I *knew* this was just going to be a tough price deal."

A negotiator can often influence whether price will dominate or be kept in perspective. Consider negotiations between two companies trying to establish an equity joint venture. Among other issues, they are trying to place a value on each side's contribution to determine ownership shares. A negotiator might drive this process down two very different paths. A price-focused approach quickly isolates the valuation issue and then bangs out a resolution. Alternatively, the two sides could first flesh out a more specific shared vision for the joint venture (together envisioning the "pot of gold" they could create), probe to understand the most critical concerns of each side – including price – and craft trade-offs among the full set of issues to meet these interests. In the latter approach, price becomes a component or even an implication of a larger, longer term package, rather than the primary focus.

Some negotiations are indeed pure price deals and only about aggregate economics, but there is often much more to work with. Wise negotiators put the vital issue of price in perspective and don't straitjacket their view of the richer interests at stake. They work with the subjective as well as the objective, with the process and the relationship, with the "social contract" or spirit of a deal as well as its letter, and with the interests of the parts as well as the whole.

## MISTAKE 3
### *Letting Positions Drive Out Interests*

Three elements are at play in a negotiation. *Issues* are on the table for explicit agreement. *Positions* are one party's stands on the issues. *Interests* are underlying concerns that would be affected by the resolution. Of course, positions on issues reflect underlying interests, but they need not be identical. Suppose you're considering a job offer. The base salary will probably be an issue. Perhaps your position on that issue is that you need to earn $100,000. The interests underlying that position include your need for a good income but may also include status, security, new opportunities, and needs that can be met in ways other than salary. Yet even very experienced deal makers may see the essence of negotiation as a dance of positions. If incompatible positions finally converge, a deal is struck; if not, the negotiation ends in an impasse. By contrast, interest-driven bargainers see the process primarily as a reconciliation of underlying interests: you have one set of interests, I have another, and through joint problem solving we should be better able to meet both sets of interests and thus create new value.

Consider a dispute over a dam project. Environmentalists and farmers opposed a U.S. power company's plans to build a dam. The two sides had irreconcilable positions: "absolutely yes" and "no way." Yet these incompatible positions masked compatible interests. The farmers were worried about reduced water flow below the dam, the environmentalists were focused on the downstream habitat of the endangered whooping crane, and the power company needed new capacity and a greener image. After a costly legal stalemate, the three groups devised an interest-driven agreement that all of them considered preferable to continued court warfare. The agreement included a smaller dam built on a fast track, water flow guarantees, downstream habitat protection, and a trust fund to enhance whooping crane habitats elsewhere.

Despite the clear advantages of reconciling deeper interests, people have a built-in bias toward focusing on their own positions instead. This hardwired assumption that our interests are incompatible implies a zero-sum pie in which my gain is your loss. Research in psychology supports the mythical fixed-pie view as the norm. In a survey of 5,000 subjects in 32 negotiating studies, mostly carried out with monetary stakes, participants failed to realize compatible issues fully half of the time.[2] In real-world terms, this means that enormous value is unknowingly left uncreated as both sides walk away from money on the table.

Reverse Midas negotiators, for example, almost automatically fixate on price and bargaining positions to claim value. After the usual preliminaries, countless negotiations get serious when one side asks, "so, what's your position," or says, "here's my position." This positional approach often drives the process toward a ritual value-claiming dance. Great negotiators understand that the dance of bargaining positions is only the surface game; the real action takes place when they've probed behind positions for the full set of interests at stake. Reconciling interests to create value requires patience and a willingness to research the other side, ask many questions, and listen. It would be silly to write off either price or bargaining position; both are extremely important. And there is, of course, a limit to joint value creation. The trick is to recognize and productively manage the tension between cooperative actions needed to create value and competitive ones needed to claim it. The pie must be both expanded and divided.

## MISTAKE 4
### *Searching Too Hard for Common Ground*

Conventional wisdom says we negotiate to overcome the differences that divide us. So, typically, we're advised to find win-win agreements by searching for common ground. Common ground is generally a good thing. Yet many of the most frequently overlooked sources of value in negotiation arise from differences among the parties.

Recall the battle over the dam. The solution – a smaller dam, water flow guarantees, habitat conservation – did

## SOLVING TEDDY ROOSEVELT'S NEGOTIATION PROBLEM

Theodore Roosevelt, nearing the end of a hard-fought presidential election campaign in 1912, scheduled a final whistle-stop journey. At each stop, Roosevelt planned to clinch the crowd's votes by distributing an elegant pamphlet with a stern presidential portrait on the cover and a stirring speech, "Confession of Faith," inside. Some three million copies had been printed when a campaign worker noticed a small line under the photograph on each brochure that read, "Moffett Studios, Chicago." Since Moffett held the copyright, the unauthorized use of the photo could cost the campaign one dollar per reproduction. With no time to reprint the brochure, what was the campaign to do?

Not using the pamphlets at all would damage Roosevelt's election prospects. Yet, if they went ahead, a scandal could easily erupt very close to the election, and the campaign could be liable for an unaffordable sum. Campaign workers quickly realized they would have to negotiate with Moffett. But research by their Chicago operatives turned up bad news: although early in his career as a photographer, Moffett had been taken with the potential of this new artistic medium, he had received little recognition. Now, Moffett was financially hard up and bitterly approaching retirement with a single-minded focus on money.

Dispirited, the campaign workers approached campaign manager George Perkins, a former partner of J.P. Morgan. Perkins lost no time summoning his stenographer to dispatch the following cable to Moffett Studios: "We are planning to distribute millions of pamphlets with Roosevelt's picture on the cover. It will be great publicity for the studio whose photograph we use. How much will you pay us to use yours? Respond immediately." Shortly, Moffett replied: "We've never done this before, but under the circumstances we'd be pleased to offer you $250." Reportedly, Perkins accepted – without dickering for more.

not result from common interests but because farmers, environmentalists, and the utility had different priorities. Similarly, when Egypt and Israel were negotiating over the Sinai, their positions on where to draw the boundary were incompatible. When negotiators went beyond the opposing positions, however, they uncovered a vital difference of underlying interest and priority: the Israelis cared more about security, while the Egyptians cared more about sovereignty. The solution was a demilitarized zone under the Egyptian flag. Differences of interest or priority can open the door to unbundling different elements and giving each party what it values the most – at the least cost to the other.

Even when an issue seems purely economic, finding differences can break open deadlocked deals. Consider a small technology company and its investors, stuck in a tough negotiation with a large strategic acquirer adamant about paying much less than the asking price. On investigation, it turned out that the acquirer was actually willing to pay the higher price but was concerned about raising price expectations in a fast-moving sector in which it planned to make more acquisitions. The solution was for the two sides to agree on a modest, well-publicized initial cash purchase price; the deal included complex-sounding contingencies that virtually guaranteed a much higher price later.

Differences in forecasts can also fuel joint gains. Suppose an entrepreneur who is genuinely optimistic about the prospects of her fast-growing company faces a potential buyer who likes the company but is much more skeptical about the company's future cash flow. They have negotiated in good faith, but, at the end of the day, the two sides sharply disagree on the likely future of the company and so cannot find an acceptable sale price. Instead of seeing these different forecasts as a barrier, a savvy negotiator could use them to bridge the value gap by proposing a deal in which the buyer pays a fixed amount now and a contingent amount later on the basis of the company's fu-

Perkins's misleading approach raises ethical yellow flags and is anything but a model negotiation on how to enhance working relationships. Yet this case raises a very interesting question: why did the campaign workers find the prospect of this negotiation so difficult? Their inability to see what Perkins immediately perceived flowed from their anxious obsession with their own side's problem: their blunders so far, the high risk of losing the election, a potential $3 million exposure, an urgent deadline, and no cash to meet Moffett's likely demands for something the campaign vitally needed. Had they avoided mistake 1 by pausing for a moment and thinking about how Moffett saw his problem, they would have realized that Moffett didn't even know he had a problem. Perkins's tactical genius was to recognize the essence of the negotiator's central task: shape how your counterpart sees its problem such that it chooses what you want.

The campaign workers were paralyzed in the face of what they saw as sharply conflicting monetary interests and their pathetic BATNA. From their perspective, Moffett's only choice was how to exploit their desperation at the prospect of losing the presidency. By contrast, dodging mistake 5, Perkins immediately grasped the importance of favorably shaping Moffett's BATNA perceptions, both of the campaign's (awful) no-deal options and Moffett's (powerful) one. Perkins looked beyond price, positions, and common ground (mistakes 2, 3, and 4) and used Moffett's different interests to frame the photographer's choice as "the value of publicity and recognition." Had he assumed this would be a standard, hardball price deal by offering a small amount to start, not only would this assumption have been dead wrong but, worse, it would have been self-fulfilling.

Risky and ethically problematic? Yes...but Perkins saw his options as certain disaster versus some chance of avoiding it. And was Moffett really entitled to a $3 million windfall, avoidable had the campaign caught its oversight a week beforehand? Hard to say, but this historical footnote, which I've greatly embellished, illuminates the intersection of negotiating mistakes, tactics, and ethics.

ture performance. Properly structured with adequate incentives and monitoring mechanisms, such a contingent payment, or "earn-out," can appear quite valuable to the optimistic seller–who expects to get her higher valuation–but not very costly to the less optimistic buyer. And willingness to accept such a contingent deal may signal that the seller's confidence in the business is genuine. Both may find the deal much more attractive than walking away.

A host of other differences make up the raw material for joint gains. A less risk-averse party can "insure" a more risk-averse one. An impatient party can get most of the early money, while his more patient counterpart can get considerably more over a longer period of time. Differences in cost or revenue structure, tax status, or regulatory arrangements between two parties can be converted into gains for both. Indeed, conducting a disciplined "differences inventory" is at least as important a task as is identifying areas of common ground. After all, if we were all clones of one another, with the same interests, beliefs, attitudes toward risk and time, assets, and so on, there would be little to negotiate. While common ground helps, differences drive deals. But negotiators who don't actively search for differences rarely find them.

## MISTAKE 5
## *Neglecting BATNAs*

BATNAs–the acronym for "best alternative to a negotiated agreement" coined years ago by Roger Fisher, Bill Ury, and Bruce Patton in their book *Getting to Yes*–reflect the course of action a party would take if the proposed deal were not possible. A BATNA may involve walking away, prolonging a stalemate, approaching another potential buyer, making something in-house rather than procuring it externally, going to court rather than settling, forming a different alliance, or going on strike. BATNAs set the threshold–in terms of the full set of interests–