



# DISPUTE RESOLUTION ALERT

VOL. 8, NO. 2 • SPRING 2008

AN UPDATE ON WORLD DEVELOPMENTS IN MEDIATION AND ARBITRATION

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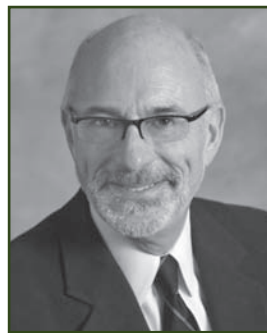
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## Negotiation Lessons from the Pawnshop



**By Jay Folberg**

My resume is loaded with Alternative Dispute Resolution credentials: law school professor and then a dean; teaching negotiation and mediation for decades on several continents; writing books and dozens of articles; negotiating and mediating land use lawsuits, commercial cases, employment issues, institutional conflicts, and many other types of disputes with up to eight-figure payouts; serving on umpteen advisory boards and “blue ribbon” commissions. But my resume is not the reason you should follow my advice about negotiation. The reason you should pay attention to what I have to say is that I am the son of a pawnbroker.

The most important lessons about negotiating and reaching agreements

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were provided by my Dad, in a pawnshop in East St. Louis. Since then, I’ve learned new, fancier names for some of the concepts I was taught as a youth, and I’ve been involved in more complicated transactions and disputes, but the pawnshop experience offered invaluable, practical lessons in how to negotiate. Here I will pass along to you some of what I learned at my Dad’s side.

### **Schmooze and Learn**

My Dad, a high school dropout, was a savvy and professional negotiator, but he didn’t come across that way. His humble and friendly manner put customers at ease. Dad was a good “schmoozer,” who listened more than he talked. He told me “we were born with one mouth and two ears so that we can listen twice as much as we speak.” If by asking questions and listening you can learn what is in the head and heart of someone, it is much more likely that you will make a personal connection, satisfy their needs, and in so doing, get what you want. If you actively allow others to express themselves, they usually will tell you what you want to know. The more you

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## Negotiation Lessons from the Pawnshop *Continued from Page 1*

talk, the less they can say, and the less you can listen and learn. Dad emphasized that you seldom learn anything new by speaking. When you do speak in a negotiation, particularly at first, do so in a way that elicits more information, directly or indirectly, or that helps build trust. Connecting with people, whether as a pawnbroker with a client or a lawyer with their opposing counsel, makes our work worthwhile. Taking the time to establish a personal connection and trust is usually time well spent.



### Soda Pops and Reciprocity

Reciprocity works. People tend to return favors and are more likely to respond positively to those who reach out by offering a small gift or show of concern. When someone seemed like a serious customer, particularly in the hot summers in East St. Louis, my Dad would ask if they would like a cold pop (a “soda” in the Midwest). This seemed to break the ice and created a sense of both trust and obligation. This is a simple lesson practiced by fruit peddlers, who offer free samples, and by law firms, where a receptionist asks, immediately upon greeting you, if you would like a cup of tea or coffee. In your legal negotiations, look for a non-costly concession to make early. Giving a little something early on will likely trigger more cooperation from the other side. My Dad’s offer of a cold pop helped turn reluctant “lookers” into more relaxed customers who were more likely to reciprocate Dad’s sincere but calculated kindness.

### The Secret Code

Legal folklore and some academic texts assert that when negotiating you should let the opponent make the first offer. However, negotiators may have an advantage if they make the first offer. First offers, like

the prices we placed on items in the pawnshop, act as an anchor point for bargaining. A pair of diamond earrings with a \$300 price tag is much more likely to sell for \$200 than if marked \$200. However, the first offer or demand should not be so exaggerated that you are laughed out of the room or that bargaining never starts because your offer (or price) is out of the bargaining zone. The important lesson is to aspire high, but have a realistic bottom line that you don’t forget. In the pawnshop the aspirational sticker price was, typically, double the amount loaned on clothing and household items; triple the amount for jewelry, musical instruments, guns, and tools. The bottom line was the amount loaned plus 10%.

Dad needed a code to keep the bottom line secret from others but clear to him and those of us who worked in the shop. He went back to his fruit peddling days and used the 10-letter code “fruitandco,” representing, from the first letter to the last, the numbers one to 10. With fruitandco in our minds, we could count to 10 with 10 separate letters forming a secret digital code.

Each item for sale in the store had a tag with the “price” written at the top for all to see and at the bottom the cost plus 10% written with the code “fruitandco” letters in smaller print. A bottom line amount of \$5.70 would be written “tno”. All of us who worked in the store knew the code and never lost money on a sale – we would walk away from the deal when we hit the bottom line. But we started every negotiation trying to hit the goal – to come as close to the marked target price as possible, which was profitable but also fair and reasonable.

### Gold Plated Perceptions

In the pawnshop, I learned that deals take place when the offer on the table leaves



everyone better off than no deal. The same is true for settlements of lawsuits. In other words, you don't get any of what you want unless the other side gets at least some of what it wants. Wants, needs, and values are matters of perception.

Pawnbrokers and lawyers try to change the other sides' perceptions through persuasion that the unredeemed item for sale (or the lawsuit) is worth more and that buying it (or paying the claim) is a good deal. The person on the other side of the store counter (or the lawsuit) points out flaws, highlights perceived better alternatives, and argues that the goods or claim is worth less than we think.

Dad was a master at the art of managing perceptions. Behind the counter displaying used watches, he kept a stack of high-end fashion magazines with glossy advertisements for expensive watches. He would deftly flip one of these magazines open while a customer was looking at a pawned watch and bring the customer's attention to the price of a new watch that resembled one in the case. (Never mind that the advertised watch was real gold and ours was gold plated.)

Similarly, a plaintiff's lawyer will be quick to compare the amount of his demand to a large verdict for a similar claim. The defense lawyer will point out why the current claim is, at best, a plated imitation of the golden facts that resulted in the big verdict and more similar to a recent case resulting in a defense verdict. By referring to carefully selected reference points by way of comparison, each negotiator will try to change the other's perception in a way that will result in a sale or settlement agreement.

## Do the BABULEW

The best thing that ever happened to boost our sales was when a jewelry store that sold only new merchandise opened in the neighborhood. Once that store opened, my dad had a tool, even better than glossy magazine ads, to deal with any customer who wanted too good of a deal. When anyone was

unsure about whether to buy at our shop, Dad would suggest that they visit the jewelry store down the street and then do the BABULEW – which stood for “Best Alternative to Buying Used from Lew.” The BABULEW comparison usually closed the sale.

This type of analysis was popularized in the best selling negotiation book, *Getting to Yes*, which emphasized the importance of knowing your “best alternative to a negotiated agreement” (BATNA). Before you decide if an offer is worth taking, compare what will happen if you don't make a deal. The better your walk-away alternative, the easier it is to walk away. In lawsuit settlement negotiations, the BATNA is usually mediocre – further delay and costs along with the prospect of a risky trial.

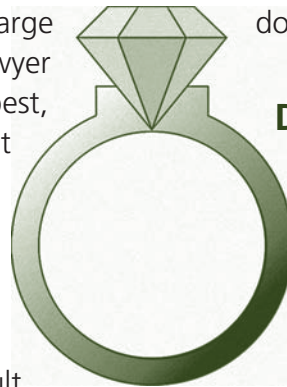
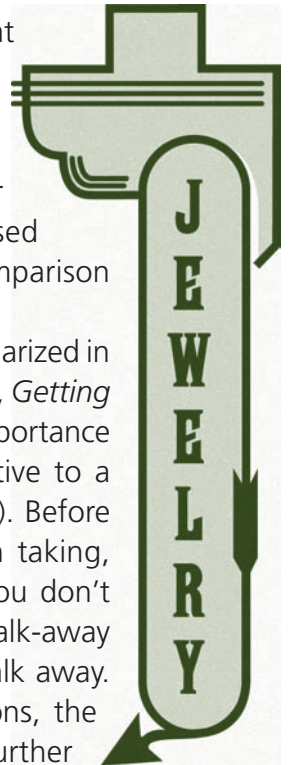
If you can point out to the other side that their walk-away alternative might not meet their interests as well as the deal you're offering, they too, might do the BABULEW.

## Diamonds for Vacuum Cleaners

My Dad focused on his customer's underlying interests rather than just the amount of money they offered. He didn't get hung up on a customer's bravado or the occasional low offer or insulting comment. Customers used monetary offers to communicate all kinds of things that had little to do with dollars. The same is true with litigants. Plaintiffs in lawsuits ask almost exclusively for dollars in their complaints and the defense invariably offers fewer dollars than the plaintiffs demand. But the dollars usually represent basic human interests. These interests might be met more creatively if better understood.

People need money to satisfy material, social, and

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## Negotiation Lessons from the Pawnshop *Continued from Page 3*

emotional needs. Finding out how the money will be used or what needs must be met is helpful to fashioning a satisfactory agreement. I remember a customer who brought in a modest diamond wedding ring to pawn. Dad wouldn't give her the amount she wanted – the ring wasn't valuable enough to justify her asking price. Instead of just saying "no," Dad asked why she was pawning the ring and for what she needed the money. She said that she was recently divorced and needed money to buy a vacuum cleaner for her housecleaning jobs. Dad had lots of unredeemed vacuum cleaners and a mutually advantageous trade was made. Focusing on needs, not just dollar demands, facilitated a deal in a situation that did not look promising.

People also have "process" interests in making deals and resolving differences in a way they consider fair or, even better, advantageous. Our customers usually thought they did well, were treated with respect, and had some fun bargaining with the pawnbroker. Dad was a master at making people believe they "bargained him down." He knew the importance of being able to come down from his opening price so that the customer could get more than a good deal – she could get the satisfaction of successfully bargaining for concessions. Dad knew it was important for customers to leave the shop feeling good – not just about the final price, but about the way they got there. The same is true for lawyers with whom you negotiate.



### Give and Take

Concessions are the incremental compromises a negotiator makes after an opening offer. Usually the concessions made are offered in return for conces-

sions from the other side. Making concessions can be done strategically, knowing that the timing, amount, and nature of concessions are a form of communication by which each side sends signals about their values and reservation points. The pattern of concessions sends a message. By carefully considering what you want to communicate, you can manage concessions to shape the message, particularly about how close you are to your bottom line. (Diminishing concessions signal you are close.) Consider the following pattern of concessions and the message my Dad was sending when selling a watch:

*"Lew, that old watch isn't worth \$100. I will give you \$50."*

*"Ok, business is slow; I can give you a 10% discount. \$90 and it's yours."*

*"It's only worth \$50."*

*"I can sell you that other watch in the case for \$50, because it isn't gold plated. This watch would cost you \$200 new."*

*"You are a good salesman, Lew. Wrap it up and I'll give you \$60."*

*"No, I can't do that. Elgin watches are in demand and I don't get them in often. If you want to take it right now, I will accept \$85. That's it."*

*"I know you are robbing me, but I will pay \$75, if you will throw in a new band for it."*

*"The band will cost you \$10, so the total will be \$95."*

*"Lew, you're going in the wrong direction."*

*"No, you're getting a real bargain and I can't come down."*

*"You don't have to come down. I'll pay \$85 with the new band."*

*"It's past our closing time and I need to go. I will let you have the band at cost for \$6, if you buy the watch now for \$85."*

*You drive a tough bargain. Here is \$90. Take it or leave it."*

*"OK, you're killing me, but I really do need to close the shop."*

The timing of concessions is critical. Concessions given in rapid succession early on may signal risk aversion or desperation. Giving away too much in the initial stages of the negotiation depletes the reserve of concessions that can be offered later when they may be more appreciated. A negotiator should space concessions because while gains feel good, they only feel good for a little while, so it's best to string them out and get the most from them.

Concessions should be made in the context of reciprocal trade-offs or exchanges rather than given simply to find the other side's point of acceptance. Remember the caution not to "bargain against yourself." Demanding a concession in return both reinforces the value of what is being conceded and signals the resolve of the negotiator making the concession. It also helps to build the process of give and take and fuel movement toward agreement.

## Leveraging Nylons and Jeans

I started working in the pawnshop after the end of World War Two. Dad had a good stock of some price controlled items in short supply after the war – particularly nylon stockings and Levi jeans. This supply gave him bargaining power in negotiating for the sale of other goods that weren't price controlled, because he could dangle the possibility of including one of these "scarce" items in a package sale with other less coveted merchandise.

Dad did not put the nylon stockings on display, despite the fact that most women wanted them. Instead, he would let it be known that he had quality stockings and would make them available if the buyer was a "good customer," i.e., one who spent a lot. "Buy this used suit and you could also get a pair of hard to find nylon stockings for your honey."

The nylon stockings and jeans gave Dad the scarce ingredient he needed to create a package that al-

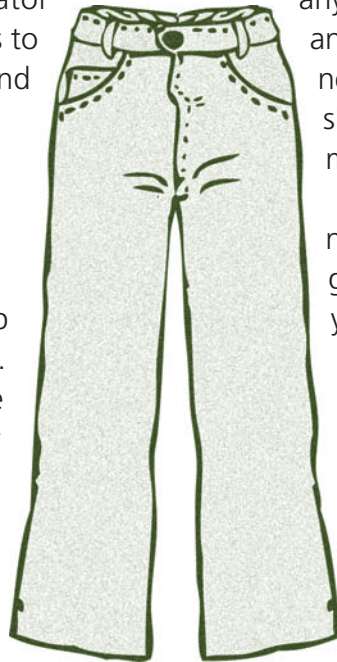
lowed him to move merchandise that was harder to sell. Both sides got what they wanted through packaging, just as you can in settlement deals. For example, in land use disputes, municipalities may allow a developer more building density or height if the developer will include more scarce affordable housing units or public amenities. Packaging works.

## Power and Commitment – Please Don't Try This

If my Dad had something in the store that a customer wanted, he had a degree of power because he controlled if the customer got it. The customer, of course, had something Dad wanted – money. In any negotiation there must a degree of power and motivation to fill a need on both sides. The negotiation process, in part, is how each side shapes the perception of their power in the mind of the other.

Power is linked to commitment. If the other negotiator perceives that you are committed to give (or not give) what he wants only if he gives you what you want, then you have power in the negotiation. A hostage taker adds credibility to his bargaining position if he shoots one of several hostages, but in so doing he also risks ending the negotiations. Similarly, lawyers who have trial experience and demonstrate a credible commitment to go to trial, will do better in negotiations than lawyers who have only settled cases. However, if her willingness to litigate is overplayed, a lawyer risks alienating the other side and forcing a trial where a settlement would have been both possible and desirable.

Dad told me a story that illustrates the power of an irrational but credible commitment or threat. A man walked into the pawnshop wanting to pawn a gun. He wanted \$50. Dad would normally hold firm not to give more than \$20 on a similar gun. The man explained that he needed \$50 to pay his rent, which was past due, and if he didn't get it he would kill



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## Negotiation Lessons from the Pawnshop *Continued from Page 5*

himself. This threat would generally not move my father to part with more money. However he looked into the man's eyes, which were bloodshot from tears, and saw a commitment that seemed real. The man got his \$50. This may have worked in my Dad's shop, but please don't try it in your next negotiation.

### Playing "What If"

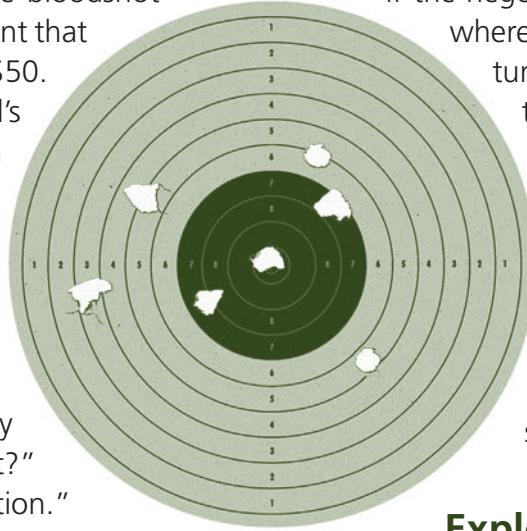
"Lew, you can't outshoot me." "Yes, I can." "No, you can't." "Want to put your money where your mouth is?" "Why not?" "Loser pays for all the ammunition." "OK."

My Dad's pawnshop became well known for offering a staple item in rough and tumble East St. Louis, unredeemed guns. We also sold ammunition for both personal weapons and hunting guns. Outside, behind the store, we had a makeshift shooting range. A brick corridor four or five feet wide, formed by the side of our building and the one next door, terminated in a brick wall, in front of which Dad layered wood and metal to absorb the bullets. Paper bulls-eye targets were regularly blasted to bits in back of the shop. My Dad was an excellent marksman.

Dad liked to challenge customers, including police officers who were regulars in the shop, to shooting matches. The deal was that the customer would pay full price for all the ammunition used, but only if they lost. Dad promised that if he lost, he would pay for the ammo. Perhaps my memory is colored by the awe I had for my father's shooting prowess, but I don't recall Dad ever losing. The ammo sale was based on who won the shooting match – a kind of "contingent agreement" – a commercial bet on an uncertain future outcome, where each perceives that they are likely to win.

If parties in a negotiation have different predictions about future events or disagreement over the

risks that will flow from concluding a deal or reaching a settlement, they may reach impasse. However, if the negotiators, like Dad, put their money where their mouths are, they can structure an agreement that builds upon these differences. In appropriate circumstances, negotiators can agree to disagree and write contingent outcomes into the deal. When are the appropriate circumstances? When the parties think the risks are worth taking and they are confident of their shooting abilities.



### Exploding Offers

Negotiations are like gas – they expand or contract to fill the space or time available. I've seen many stalled mediations conclude only when the disputants become aware that the time to make a deal or settle is running out. Sometimes the deadline is imposed by a court, and sometimes it's self imposed, like a plane to catch. As the end looms, concessions are offered and compromises are reached that would not be considered earlier.

There comes a time in some negotiations, like in sales, when one negotiator thinks it is advantageous to prevent the other side from exploring alternatives, getting more information, or having second thoughts. In these situations, the negotiator may try to impose a deadline. Introducing deadlines into a negotiation is a way to create a perception of a vanishing opportunity.

In the pawnshop we had to take inventory once a year to calculate merchandise taxes due. But just about every other week I would hear Dad close a sale late in the day by saying "we are getting close to taking inventory for the merchandise tax. Buy this right now and I will knock off another 10% so I don't have to pay tax on it." The idea that the discount was fleeting made it especially alluring. (It

was true that everyday the inventory was closer to happening and if sold before then there would be no tax due on that item.) This type of take-it-or-leave-it deadline is sometimes referred to as an “exploding offer.” Lawyers do something similar when they say “you have until 5:00 p.m. to accept this settlement offer or it’s off the table because tomorrow we start preparing for trial.”

## A Good Loser

Never celebrate a victory, at least not in the presence of your opponent. If you can leave the other side convinced they did well, there will be fewer issues going forward and less likelihood that the other side will back out of the deal. The relationship between negotiators is strengthened if no one feels they were beaten. There is value in the rapport established for future negotiations. Conversely, if an opponent or his attorney loses face, he may feel compelled to “get even” at the next opportunity.

I will never forget hearing this exchange in the pawnshop at the end of vigorous bargaining between Dad and a regular customer over the price of an electric fan on a hot summer day:

“Glen, you drive a hard bargain. You can take the fan for \$17 on one condition; don’t tell anyone how little you paid for it. I’m losing my shirt to you.”

“Stop your bellyaching, Lew. You gotta be making money. How else do you stay in business and feed your family when you always lose money selling this stuff?”

“You’re right. I lose money on almost everything I sell, but I sell so much I can afford to lose more money. It’s a matter of volume!”

Glen left the shop feeling like he had bargained well. The person you negotiate with should

always feel they got a good deal. A positive experience prevents buyer’s remorse and may bring them back for more. When appropriate, congratulate your counterpart on the agreement achieved, but not too much.

## Relationships Matter

Pawnbrokers, like lawyers, develop reputations and depend on relationships to succeed. The interest in creating or preserving a relationship is particularly important when negotiating contracts and resolving business disputes, where the parties see or once saw a benefit in working together and anticipate future transactions. In the 1965 Academy Award-nominated movie “The Pawnbroker,” an old, lonely gentleman pawned something every week just to have a reason to talk to the pawnbroker.

Some regulars at the pawnshop pawned their jewelry a few days before payday and retrieved it after getting paid. Musicians would pawn instruments between gigs and come into the shop mid-week because Dad would let them practice at impromptu jam sessions, which also drew in other customers. The relationship between my Dad and his “band of regulars” was good for the soul and good for business. Your relationship with other lawyers, including opposing counsel, is important for your long term success as a negotiator.

## Live and Learn

I can’t fully capture here all my Dad taught me about negotiation. There are too many good pawnshop stories and lessons and too little space in this newsletter. I’ve shared a few of my favorites in the hope that you learn something from my Dad that helps you negotiate better. But I hope you learn something else as well – that no matter what your background, no matter what your parents did for a living, there’s a lot to be learned from a life well-lived that can apply to the resolution of legal disputes. Mine were lessons from a pawnshop, what were yours?



## JAMS Foundation Creates Weinstein International Fellowship Program to Foster Global Use of ADR

The non-profit JAMS Foundation announced this month that it will fund fellowships annually for the Weinstein International Fellowship program. The program, named to honor the contributions of JAMS mediator Hon. Daniel Weinstein (Ret.), provides opportunities for individuals from outside of the United States to visit the U.S. to learn more about dispute resolution processes and to pursue a project of their own design that serves to advance the resolution of disputes in their home country.

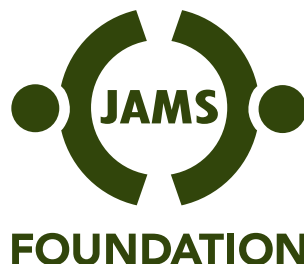
“Due to the never-ending stream of conflict worldwide, it is critical that JAMS lead the way in introducing and spreading the effective use of ADR,” said Judge Weinstein, a retired San Francisco Superior Court judge and a member of the JAMS Foundation Board of Directors. “These fellowships will help individuals who are qualified and committed to culturally relevant ADR when they return home. Facilitating the use of ADR in different countries will benefit not only the citizens of those countries but will also enhance the global ADR movement.”

Weinstein International Fellowship applicants are encouraged to be creative in developing projects that will increase the availability of dispute resolution education, training, and services in their own countries and beyond. The JAMS Foundation Board of Directors will approve up to two fellowships per year, providing up to \$25,000 per fellow in support of the project described in their application.

During their time in the U.S., depending on the nature of their project, fellows may be based in a JAMS Resolution Center or may participate in a university program. Some fellows may be affiliated with another organization or institution as part of their study.

Fellows will likely come from a country that does not have an established culture of using mediation for cases in litigation. Part of the fellow's time in the United States will be spent observing JAMS neutrals at work resolving contested cases.

More information about the Weinstein International Fellowship program and how to apply may be found at [www.jamsfoundation.org](http://www.jamsfoundation.org).



## **MADE TO STICK: WHY SOME IDEAS SURVIVE AND OTHERS DIE**

by Chip Heath  
and Dan Heath  
(Random House 2007).

**Reviewed by Richard Birke**

Remember the good old days? When Halloween was all fun? Those days are gone, and all because some maniac put a razor blade in an apple and handed it to some unsuspecting child. Now Halloween comes and goes and few trick-or-treaters ring Americans' doorbells on October 31. It's a shame.

But the biggest shame is this: It isn't true. Thorough investigation has revealed in the past 30 years that there have been only two intentional acts of dangerous Halloween treats, and both were performed by the children's caretakers – in one case a parent trying to scam an insurance company poisoned his own child and in another, the parents of a five-year-old who accidentally got into his uncle's heroin stash (and died) were trying to cover their tracks.

The moral? There are two. One is this: Taking candy from strangers is okay. It's your parents you need to worry about. And the second is this: Some ideas stick, even when they aren't true.

True ideas can stick as well. Remember when you loved movie popcorn? Then some brilliant scientist discovered that a medium-sized popcorn contains 37 grams of saturated fat, or twice what a person should have in a day. How did that become sticky? Because on the day he announced his finding, the



their movie snack habits.

What makes an idea stick? More importantly, why should readers of this newsletter care? I'll take the second question first.

Why do we care what makes an idea sticky? If you are reading this publication, you are probably someone who negotiates or mediates, who makes or receives offers to settle cases, or who makes a living making deals. Why do some of your offers stick while others don't? Why do some ideas form the basis of deals while others wither on the vine?

In 1960, Thomas Schelling wrote a book entitled

*The Strategy of Conflict*, for which he later won a Nobel Prize in Economics. In that book, he told the story of becoming separated from two friends on a road trip – in the days before cell phones. The three friends all met up at the central post office at noon on the next day, and they did so without any prior communication. They met at this place and time because it was "focal." We now know that a

good "Schelling focal point" is the most likely place for a negotiation to settle.

But what makes a point focal? Why does our attention get drawn to particular deals? For example, Schelling discovered that when participants played a game in which they were asked to divide the United States in half and their counterpart in the game chose

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**Simple**

## Worth Reading *Continued from Page 9*

exactly the same line, they would each get half the country, and if the divisions were different, neither player got anything. Nearly all the players divided the country along the Mississippi River. Why? It's not 50/50 in land or economy or resources. Why indeed – because it was focal. Schelling found that the same power lay in round numbers and in many other places that were not necessarily fair or optimal, but instead, they were focal.

This is where the Heath brothers pick up. If there are multiple possible focal points, why does one become dominant in the mind of a decision maker? The Heaths ask, "How do you create an idea that sticks, that becomes focal, that leads everyone where you want them to go?" For negotiators and mediators, this is a critical skill.

Fortunately for us, the Heaths have not only asked the question, they've answered it. They identify six traits that make an idea sticky. They are:

- One – the idea is **SIMPLE**
- Two – the idea is **UNEXPECTED**
- Three – the idea is **CONCRETE**
- Four – the idea is **CREDIBLE**
- Five – the idea touches on people's **EMOTIONS**
- Six – the idea evokes a **STORY**

The acronym? **SUCCES(s)**. So that's what we're after, sticky success.

John F. Kennedy promised to "put a man on the moon by the end of the decade." Simple? You bet (the idea, not the execution). Unexpected? In 1960 it sure was. Concrete? Moon – man – man on moon. Yes, it was concrete. Credible? The idea was not but

the messenger was. Emotional? It was exhilarating to even contemplate. A story? Of course – "man flies to moon!"



**Unexpected**

Had Kennedy instead talked about how the United States should be at least the peer of its archrival, the Soviet Union, in the race for space, and we should increase funding for NASA so as not to be behind in this race, and that we should make our best efforts to explore the skies, people might have preferred to think about sports or cars or the Cuban missile crisis ... and we might still

not have a man on the moon.

Let's look a little more deeply at the six principles.

*Simplicity* is hard. Think of an organization like ... Avis, perhaps. If their ads said "we rent good cars!" – which they do – they would have no corporate ethos. If they said "our cars are clean and reliable," that would have failed. Instead, they said "we try harder." And that simple idea translates into a corporate philosophy and a customer-oriented mantra. Simple means that you don't have five ideas. It means you have one. Great political commentators have said that "if you say three things, you haven't said anything." Pick one and hammer it home. Good messaging is, in part, saying the right thing, but also not saying anything else that mucks up the clarity.

*Unexpected* is hard if you are in advertising, but not so hard in the real world. In the day-to-day operation of a business (or a life, for that matter), most things are routine. Try humor. Try an interesting twist or approach. Use a prop, a joke, a reframing. Change timing, change players, change something. In the normal course of a negotiation



**Concrete**

not have a man on the moon.

or mediation, change something important – make two concessions in a row (small ones). Start with an apology. Do some little thing that precedes your big idea, so that the idea comes as a surprise. But remember – it's not enough just to grab someone's attention – you need to keep it. So don't dress in a clown suit unless you have a lengthy repertoire of tricks up your sleeve. Getting attention and then losing it may be worse than never getting it at all.

*Concreteness* depends on your ability to distill an idea into a set of real-world facts. Man on moon in less than 10 years. 10. Not "soon." Popcorn twice as fatty as three fatty meals. Not "quite fatty." Jared the fat boy lost 300 pounds eating Subway sandwiches. 300. Not "a whole lot." As the Heaths say, "language is often abstract, but life is not abstract." When the Nature Conservancy changed strategies from "let's protect America's lands" to "results you can walk on" (that is, every dollar donated financed the purchase of a tract of land), donations skyrocketed. A donor could celebrate a purchase in a way that she couldn't celebrate a lobbying effort regarding a regulation.

*Credibility* comes in two forms. One is messenger credibility. John Kennedy, the surgeon general, and maybe some really good mediators carry this sort of clout. The other kind of credibility comes from one's ability to conjure details. This form of internal credibility is the kind of technique that good trial lawyers use every day of every trial. They create a story that seems too true not to be true. They offer exact times and dates. They proffer vivid images. The mother who "was on the number 4 bus, wearing a nurses' uniform adorned with pictures of cats, who was carrying two dozen brown eggs and a loaf of Wonder bread" is more

credible than "a lady on her way home with some groceries."

This form of credibility is found not only in vivid details, but also in the translation of statistics into human form. Scientists trying to persuade an audience of the importance of a particular kind of accuracy stated that "it would be like throwing a rock at the sun and hitting within one-third of a mile of dead center." This did okay. In a second presentation, they said "it would be like throwing a rock from New York to LA and hitting within two-thirds of an inch." The second presentation was deemed much more credible, because

while the sun is awfully distant and one-third of a mile on the sun seems very far away, we can all imagine a rock landing here on earth, and two-thirds of an inch is, after all, quite a small target.

*Emotions* are powerful tools to make something stick. As the Heaths note, Mother Teresa once said, "if I look at the mass, I will never act. If I look at the one, I will." Personalizing things makes a huge difference. Now that charities ask you to sponsor a named child who will send you a picture and a letter, I give more. When images of teenagers in body bags were put on TV to illustrate the effects of tobacco on youth, teen smoking dropped. When ads said "Think. Don't smoke," no one responded. Saying "please don't litter" had little effect on a large group of macho citizens in the south-central US, but "Don't Mess With Texas" got their blood boiling. Now they could be mad – emotionally engaged – about litter.

And finally, we come to the *Story*. And we return to Jared, the pathetic shlub who had broken 400



**Credible**



**Emotions**

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## Worth Reading *Continued from Page 11*



pounds by his junior year in college. Jared was told that he was unlikely to make it past 35. Then he heard that Subway had “7 sandwiches under 6 grams of fat.” If you don’t remember that campaign, you are in good company. But Jared remembered it, and he lost more than 100 pounds in three months. Jared said, “Subway saved my life.” And that story is the story behind a massively successful campaign. “7 under 6” wasn’t nearly as powerful as the story of Jared because, well, 7 under 6 isn’t a story. But “Jared now weighs 180 pounds and here he is holding his old size 60 pants” is.

An idea doesn’t need to have all six attributes to be sticky any more than a pro ball player needs to be tall, fast, strong, accurate, smart, intuitive and leader-like to be successful. Having three or four of the traits is probably enough. “It’s the economy, stupid” is simple, unexpected and emotional. And sticky.

In the months ahead, we’ll no doubt see a whole lot of political ads. Which ones will stick? I know I’ll be evaluating the next batch according to the Heath Brothers’ formula, and I’ll be trying to use these techniques when I mediate and when I teach my law students. This simple guide, complete with tutorials and clinics, promises to help everyone become a generator of stickier ideas. It stuck with me and I trust it will with you as well. Sticky, and Worth Reading.



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