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NEGOTIATION IN A CRISIS

May 5, 2020

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NEGOTIATION IN A CRISIS

Agenda

- 10:00 A.M. Program Begins
11:00 A.M. Program adjourns



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May 5, 2020

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NEGOTIATING IN A CRISIS

(A WEBCAST)

by Martin E. Latz, Esq.

Adj. Professor of Law – Negotiation 1995 - 2005

Arizona State University College of Law

Indiana Continuing Legal Education Forum
May 5, 2020

LNI's faculty for this program

“Marty Latz is one of the most accomplished and persuasive negotiators I know.”
George Stephanopoulos, Host - ABC's *This Week*

Martin E. Latz, Esq.



- **Adjunct Professor of Law for Negotiation, Arizona State University College of Law 1995 - 2005**
- **Founder and CEO, Latz Negotiation, a national training, e-learning and consulting firm**
- **Developed and taught negotiation training programs for over 100,000 lawyers and business professionals around the world since 1995**
- **Negotiated for The White House nationally and internationally on the White House Advance Teams**
- **Appeared as a negotiation expert on CBS, CNN, MSNBC and FOX and has been cited in USA Today, Politico, The Economist, US News & World Report, and many others.**
- **Author, *Gain the Edge! Negotiating to Get What You Want* & *The Real Trump Deal: An Eye-Opening Look at How He Really Negotiates***
- **Negotiation columnist for various newspapers since 1999**
- **Harvard Law School, *cum laude***

www.LATZNegotiation.com

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Presentation Outline

for

LATZ NEGOTIATION INSTITUTE'S

NEGOTIATING IN A CRISIS

NEGOTIATING IN A CRISIS EXAMPLES

What Would You Do?

Lesson: Strong Relationships Pay Off in Powerful Ways!

GOALS & SCOPE

Goal: Provide practical and proven strategies and tactics to empower you to more effectively negotiate during a crisis.

Definition of crisis

“Immediate threat to physical and economic health involving unusual time of intense difficulty, trouble or danger.”

(Oxford Dictionary)

In Scope: Societal crises like pandemics, weather disasters like hurricanes, economic disasters like the Great Recession, etc.

Beyond the Scope (of this one hour webcast)

Hostage negotiations and individual business crises.

OVERALL STRATEGIC APPROACH

1. *Stop* negotiating instinctively or intuitively.
Start negotiating *strategically* based on the experts' proven research.
2. Implement *your* Crisis Plan.

U.S. President Dwight D. Eisenhower:

“Planning is Everything. The Plan is Nothing.”

LATZ'S FIVE GOLDEN RULES OF NEGOTIATION AND APPLICATION TO *NEGOTIATING IN A CRISIS*

RULE 1 INFORMATION IS POWER – SO GET IT

A. **Get Information to Set Your Goals**

In any negotiation, first find sufficient information to determine your goal(s). Then design a strategy to support it.

Set short and long-term goals.

GOAL TIP: Commit in writing with a Strategic Negotiation Plan!

B. **Develop an Information-Bargaining Strategy – Ways to Get and Share Information**

The more you learn about what both sides have and will agree to, the better you'll do.

1. Get *substantive* information – facts, interests and options
2. Get *strategic* intelligence – investigate reputation/past tactics

APPLICATION TO *NEGOTIATING IN A CRISIS*

- 1. Focus on long-term business and personal relationship**
 - a. Don't enforce everything - give some slack
 - b. Check in
 - c. Avoid hard-nosed strategies and tactics
- 2. Exhibit creativity and flexibility based on mutual interests - be transparent**

“Collaborative decision-making” Raiffa
- 3. Prioritize goals and interests**

RULE 2 MAXIMIZE YOUR LEVERAGE

- A. Determine Level of Needs (both sides)**

How much do you — and they — want it?

- B. Do the BATNA (Plan B for both sides)**

Best Alternative To a Negotiated Agreement

1. Why?
 - a. Tells you when to walk
Prevents you from making an agreement you should reject
 - b. Tells you when to sign
Accept agreement only if it's better than your best likely alternative
2. How?
Take concrete steps to strengthen your leverage

APPLICATION TO *NEGOTIATING IN A CRISIS*

1. Recognize your **Bad** Plan B Today & Emphasize your **Better** Plan B Tomorrow
2. Focus on ***Counterpart's*** Plan B

RULE 3 EMPLOY "FAIR" OBJECTIVE CRITERIA

Issue: What is "fair and reasonable"?

- A. **Find Powerful Independent Standards**
 1. Market-value/precedent power
 2. Tradition power

3. Expert- and scientific-judgment power
4. Costs and profit power
5. Professional or industry standards power

APPLICATION TO *NEGOTIATING IN A CRISIS*

1. Rely on *REAL* Standards
2. Standards *Disproportionately* Impactful During Crises

RULE 4 DESIGN AN OFFER-CONCESSION STRATEGY

Issue: What to do regarding *timing, speed* and *size* of offers and concessions?

A. Know Your Offer-Concession Patterns

1. The Timing Pattern

The longer you wait to start and between moves, the less eager you appear, and vice versa

2. The Size Pattern

Early concessions include relatively larger moves and later concessions often include relatively smaller moves

APPLICATION TO *NEGOTIATING IN A CRISIS*

1. ***Special* Patterns in a Crisis**
2. **Consider *Contingent* Deals (Susskind)**
3. **Offer Special Discounts and Strengthen Goodwill/Loyalty**

RULE 5 CONTROL THE AGENDA

Issues: ***If*** and ***when*** and ***how*** subject matters get addressed affects your results!

A. Prepare an Agenda to Start

1. **When** to meet (strong leverage?) and for **how long**
2. **What** to discuss and in what order (prioritize)
3. **With whom** to meet (decision-maker?)
4. **How** to meet (in person, e-mail, etc.)

Relationship and efficiency impact!

5. **Where** to meet (the turf battle)

Use the “Power of the Pen” - Written Agendas Work

APPLICATION TO *NEGOTIATING IN A CRISIS*

Timing and Deadlines Have a HUGE Impact

- More Condensed and Stressful
- Focus on the Long-term
- Small Steps for Immediate Needs

LESSONS LEARNED

(1)

(2)

STRATEGY QUESTIONS?

WWW.EXPERTNEGOTIATOR.COM

- ***100+ NEGOTIATION COLUMN LIBRARY***
- ***VIDEO CLIPS***
- ***COMMON QUESTIONS WITH ANSWERS***
- ***BLOG***
- ***MEDIA INTERVIEWS ON RECENT NEGOTIATIONS***

MARTY'S "PEARLS OF WISDOM"

*Please fill out evaluations, including negotiation column sign-up
Marty@LatzNegotiation.com*

Appreciate written comments!

And learn more with us on:



[LinkedIn.com/in/MartyLatz](https://www.linkedin.com/in/MartyLatz)



[Facebook.com/Marty.Latz](https://www.facebook.com/Marty.Latz)



[Twitter.com/MartyLatz](https://www.twitter.com/MartyLatz)

THANK YOU!

SUGGESTED NEGOTIATION READINGS

LATZ, Martin E., *Gain the Edge! Negotiating to Get What You Want* (St. Martin's Press, 2004)
and

The Real Trump Deal: An Eye-Opening Look at How He Really Negotiates (Life Success Press, 2018)

LATZ, Martin E., *Strategies for Negotiating in a Crisis*,
<https://www.expertnegotiator.com/tip/strategies-for-negotiating-in-a-crisis/>

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MNOOKIN, Robert, *Beyond Winning* (Harvard University Press, 2000)

MOVIUS, Hallam and SUSSKIND, Lawrence, *Built To Win* (Harvard Business School Press, May 2009)

NAJAM, Adil, *Avoid These Traps When Negotiating in a Crisis*, Harvard Business Review, March 24, 2020, www.hbr.org/2020/03/avoid-these-traps-when-negotiating-in-a-crisis

URY, William, *Getting Past No: Negotiating Your Way From Confrontation to Cooperation* (Bantam Books, 1991)

LATZ'S 5 GOLDEN RULES OF NEGOTIATION

RULE 1
INFORMATION IS POWER—
SO GET IT

Get the Info to Set Your Goals

- Set and prioritize your goals
- Determine and prioritize your counterpart's goals
- Evaluate the power of relationships

Practical Tactics for Goal-Setting

- Brainstorm to set your goals
- Be aggressive and specific
- Tie your goals to realistic standards
- *Expect* to succeed
- Commit in writing

Develop an Information Bargaining Strategy

- **Get substantive information**
 - Find facts, issues, opinions
 - Uncover interests, not positions
 - Brainstorm options
- **Get strategic intelligence**
 - Obtain sooner, not later
 - Negotiate with right person
 - Learn counterpart's past tactics

Ten Information-Gathering Tactics

1. Leave your ego at the door
2. Be sincere
3. Establish trust
4. List your information needs
5. Do the "big shmooze"
6. Ask questions
7. Use the funnel—open- to closed-ended questions
8. Actively listen and use the "power of silence"
9. Ask "why"—get to interests, not positions.
10. Evaluate and use nonverbals/ body language.

Prepare Blocking Techniques
Reevaluate Your Goals

RULE 2
MAXIMIZE YOUR
LEVERAGE

Evaluate Initial Leverage

- Find each side's need level
- Determine Best Alternative To a Negotiated Agreement (BATNA/Plan B)

Why?

- **Tells you when to walk:** Prevents you from making an agreement you should reject
- **Tells you when to sign:** Accept agreement only if it's better than your best likely alternative

How?

- **Brainstorm** alternatives to take if you don't/can't reach agreement
- **Convert** better alternatives into practical possibilities
- **Select the best** – and measure other offers against it

Leverage is Fluid

Strike While Leverage is Hot

Five Leverage-Enhancing Tactics

1. Quantify all sides' initial leverage
2. Improve your alternatives and limit their alternatives
3. Tactically share your leverage-related information
4. Communicate your leverage credibly and confidently
 - Be truthful – don't make it up
 - Be detailed
 - Provide independently verifiable alternatives
 - Explain the rationale underlying your best alternative
5. Selectively use risky leverage tactics like walkouts and threats

RULE 3
EMPLOY "FAIR"
OBJECTIVE CRITERIA

The Power of Standards and Procedures

- Creates the perception of independence and objectivity
- The more independent and objective, the more power

Powerful Standards

- Market Value Power
- Precedent Power
- Tradition Power
- Expert- and Scientific Judgment Power
- Efficiency Power
- Costs and Profit Power
- Policy Power
- Reciprocity Power
- Status Power: Title and Position
- Professional or Industry Standards Power

Powerful Procedures

- One cut, the other choose
- Take turns, draw lots, or flip a coin
- Use an independent third party, e.g., arbitrator or mediator

Harness the Power by Using These Four Critical Tactics

1. Find your most powerful standards and procedures *at the start*
2. Research standards and procedures your counterpart previously used
3. Do the "standards dance"
4. Never forget: Leverage trumps objective criteria

RULE 4
DESIGN AN OFFER-
CONCESSION STRATEGY

Know Your Offer-Concession Patterns

- Beware of the premature offer
- The longer you wait, the less eager you appear—timing pattern
- Early concessions include relatively larger moves—the size pattern

First Offer Issues

- **Advantages to first offers**
 - Set expectations
 - Elicit genuine reaction
 - Strategic advantages—leverage timing, information
- **Disadvantages to first offers**
 - Lack of information to appropriately set it
 - Other side gains information
 - Bracketing
- **Where to start**
 - First-offer expectations
 - Your original goal
 - Your most aggressive, yet reasonable, independent standard
 - "Room to move" psychology

Psychological Expectations

- Play the expectation game

Offer-Concession Nuts & Bolts

- Use specific, detailed language, explain the offer's rationale, and tie to standards
- Promote an air of finality and rigidity
- Carefully communicate your priorities and order of issues
- Learn when, how, and under what circumstances to use agents
- To bluff or not to bluff
- Closing strategies

RULE 5
CONTROL THE
AGENDA

Prepare a Substantive and Atmospheric Agenda to Start

- Setting the agenda for short-term negotiations
- Setting the long-term agenda

Negotiate the Agenda

Manage the Deadlines

- Determine what, if any, deadlines already exist
- Evaluate the deadlines' impact (deadline dynamics: urgency, timing, concession, and organization)
- Decide what type of deadlines you want (short, long, or flexible)
- Take the initiative—and set or negotiate the deadlines
Don't let them see you sweat

Apply these Agenda Control Tips and Tactics

- Use the "power of the pen"
- Preview, agree, and focus
- Just do it
- The subtle control
- Control the turf
- To phone or not to phone—consider effect on:
 - Relationship
 - Efficiency
 - Written record