

The "X"-Files



While you now have strength, skills, and surety going for you in your negotiations, there are still some situations that fall outside the realm



of normal negotiations. These are the unusual negotiation situations, or as we like to call them, the “X”-Files (no disrespect intended to Fox Television, Rupert Murdoch, or David Duchovny), where only an unusual response can work to your advantage. These situations occur frequently enough to mention but require you to behave contrary to your normal reactions. So we’ve tailored the responses to these very specific instances. Take note—these

situations are the exception and not the rule, so the solutions we propose are only useful in these situations. But, if you find yourself in an unusual situation where you think you have no power at all, you’ll discover some great ways to take control of a negotiation using the following techniques.

X-File 1

Powerful Players

Certain bargaining sessions may arise in which you are negotiating with a person or a company that clearly has more power over the negotiation than you do. This situation may occur when you are renting an apartment from a large managing agent who rents thousands of apartments, when you are negotiating a first contract with a large corporation that has no

reason to take you over any other competitive bidder, or when you are negotiating with a national chain or franchise that has a standard or set contract that they rarely deviate from. You feel that no matter how well you prepare and what you know about the other party, you can gain no advantage from that preparation. The other side appears to hold all the cards and you appear to hold none. It seems impossible to emerge from this negotiation with any degree of fulfillment.

Don't despair. You have options available to you. You just have to get in touch with your negotiating magic to be able to turn your cards from a pair of twos to a full house. Here's what you need to know:

Have No Fear

Negotiators can smell fear in the same way that animals can. The other side may come to the table with the idea that since their position is a strong one, they can intimidate you into accepting it with no input from you. If you approach the negotiation in a fearful manner, don't be surprised at the result. You must banish all qualms from your mind. Approach the negotiation with confidence and the honest understanding that if a large corporation is successful, it is based at least partially on a history of good relationships with all its various clients, vendors, and suppliers. Any relationship relies upon both sides coming to terms of agreement. Keep in mind that without you, there's no deal.

Argue Your Merits

If the other side tries to undermine your value to them, don't counterattack. The other side knows the power they wield during the negotiation, and they won't lose any time trying to remind you of it. They are waiting for you to try to defend your position in the deal. Letting them draw you into a conflict over who is bringing more to the bargaining table is asking for defeat. Don't play their game—let them press their advantage and



enumerate all their strengths. If you don't let it affect your underlying understanding of how negotiations work, then their attacks have no effect. Argue your merits rather than the other side's shortfalls. Use their comments as opportunities to point out where they can afford to

make concessions while at the same time acknowledging their strengths. There's a hidden treasure of information buried in their comments. Read the following exchange and see how the "powerless" party manages to get the most out of her bargaining time:

"You know, there are a hundred computer companies we could get to do our inventory processing. Your proposal sounded interesting so we decided to bring you in. But we can't agree to your price structure and your overtime requests. If you can drop the price and get rid of the overtime altogether, we can make a deal. We service over three thousand clients a year, and we have to be there for them if they need our services. Otherwise we lose our reputation. If we factor in the overtime you requested, rather than being one of the lowest bidders, you turn into one of the highest bidders. Our reputation is important and we have thousands of clients we are responsible to. So let's talk about price."

"We've heard of your reputation in the industry, and

that's one of the main reasons we wanted to send you a proposal. Your reputation is immaculate. Your clients are satisfied, and as to the hundred computer companies you could get in do your inventory, you are right. There are a hundred firms that are capable of trying to handle your inventory processing. What we bring is the same reputation in our field that you have in your field. We stand by our product one hundred percent. And that's why we included the potential overtime costs in our contract. We didn't want to tell you that in all circumstances you would be paying nearly nothing. If your needs exceed a certain level, we have to hire, train, and supervise extra people. We guarantee that your clients will not be left for a single minute without support and expert inventory processing. With us, your reputation is safe. Have you ever had an instance when you've been let down by one of your vendors?"

"Yes, and it was a disaster. We had to go out in the market, get the product ourselves, and eat a huge cost increase."

"That would never happen working with us. If we need anything to take care of your account, we pay for it, not you. And with our twenty-four-hour monitoring, not a single minute is wasted in having your control system down."

"I see why the overtime might be defensible, but we've had lower bids on price, and we need to get those down, otherwise I can't do this deal."

"We can discuss price, but I want to let you know exactly what that price includes. We have some special features that other companies don't offer. You may not care ab-

out these features now, but if you need them, you’ ll be very glad you had them...”

Do you see how the vendor isn’t arguing the value or strength of the other side’s position, but instead turning the focus of the discussion to the merits of her own product? There may be a hundred companies in that industry that have good reputations, but by listening to how much one side cares about an issue, this vendor managed to emphasize that aspect of her own company. Pick your fights carefully—argue positively.

Disappear

Point out the problem, then disappear. By “disappear,” we mean that you should make the problem—not you—the focus of everyone’s attention. For representatives of the United Nations, this method is critical to successful negotiations. Often, you can see the representatives from the two troubled countries sitting in the antechamber, sipping coffee and chatting while momentous and emotional issues are negotiated. The issues have taken center stage and the people have effectively disappeared. When you disappear, your magic begins to take effect. The energy the other side spends attacking you can be used to your advantage. Try to refocus the other side on the problem rather than on you. When the other side denigrates the value you bring to the deal, turn their atten

tion to the problem in the contract they propose. Once the other side becomes engaged with the problem in the contract, they become a partner rather than an adversary. You “disappear” as a target and the problem itself becomes a target. This requires a delicate touch. You must readjust the other side’s focus without making it apparent that you are stepping out of the way. A good idea is to begin by going over the other side’s terms point by point and having the person explain how they reached those terms. As the person spends more and more time talking about his com-

pany and his set of concerns, then you can step in with creative alternatives. By helping him get what he needs, you make an ally out of him and you encourage him to deal with the problem rather than blindly attack your position.

Use Silence

Don't assume that you have to make all the suggestions and the concessions. Particularly when you are involved in a negotiation in which the other side has more strength and positional advantage, silence can help you get stealth concessions from the other side. By letting the other side talk, you gain more information and turn the pressure on them to find a solution. The best thing you can do is encourage the other negotiator to be creative in solving his own problems. Then the other party feels that he has taken control of the negotiation and is likely to be more generous in future concessions. Use silence when you are clearly outmatched to drag the other party into a discussion of terms.

By using this negotiating magic, you will find that the unusual situation of negotiating with a more powerful party can turn into one in which you too wield a great amount of power.



X-File 2

The New Negotiation

Negotiating initial contracts or agreements with a firm or person you

have never dealt with before should be treated very gingerly. Beginning a relationship calls for extra sensitivity, because both sides are getting to know each other. Expect the best but prepare for the worst. Most people are more concerned with the second negotiation; they are willing to make whatever concessions are needed to get the initial account. But think for a minute: What kind of message are you sending to your negotiating partners? Do you think they are going to expect a change between the first and second negotiation? Do you think they will be suddenly willing to make large concessions based on the initial contract they signed? You have transmitted a message to the other side with your first negotiation. You are going to have to live with the legacy of your first negotiation.

An initial deal can be negotiated on unusual terms if that is the only way it can be struck, but during that negotiation, it is your responsibility to make it clear that in the future, new terms will be considered. For example, most credit card companies offer an introductory rate as low as



five-and-a-half percent for the first year for new customers. They write in fine print, however, that after that first year, the card reverts to a much higher rate, sometimes as high as twenty-one percent or more. If you can, you should avoid

making initial concessions to the other side without linking some future behavior to it. One tool some people use to ensure that the other side knows of these term changes is to include a second contract that either side has a right to renew when the first one expires. This second contract can provide the framework for future negotiations, even if neither side chooses to activate that second contract. The most common example of this type of clause is an "option-year" in professional sports where the

team owner can keep the services of a player for a predetermined price after the regular term of his contract has expired. “Option-year” arrangements and those like them tend to keep negotiations open and friendly.

Steven Bochco, creator of Cop Rock, Hill Street Blues, and most recently NYPD Blue, negotiated an odd agreement that allowed him to make NYPD Blue one of the most risqué shows in network TV history. He got ABC to allow partial nudity and a purported list of words that includes “mother jumper,” “hump head,” and other creative, semi-vulgar neologisms.

You also can’t be afraid to be firm and direct in what you need and what you are willing to give up. Be forthright in setting your parameters for the initial negotiation. Be honest with yourself about the likelihood that the other party will terminate the negotiation and find another company—you don’t want to shoot yourself in the foot. But in a new relationship, surprises can hurt you most. You don’t want to raise the other side’s expectations higher than you can deliver. Adjust your attitude so that it’s straightforward and positive about your chances with the new company. Letting them dictate the terms of a first contract works to no one’s advantage.

The last thing you need to do is adjust your understanding of how an initial negotiation takes place. Just because a negotiation is hard fought doesn’t mean that the other side will be less likely to consider you if you state your needs and propose strong, highly valued positions. In any initial deal, both sides have a large amount of information to convey and a great deal of communication to attend to.

If any problems result, a good question to ask yourself is, “Have we

dived into the details too early?” If you find yourself locked in position where the other side seems to disregard your need in a particular area, perhaps you should strive to use more Strategic Education. Or perhaps you need to seek more information from the other party. In a new negotiation, you want to be an active information seeker. Before the negotiation, you should make a list of all the things you need to know. Don’t be limited to that list, however. Take your cues from the answers they give. You can never be too informed when it comes to a new client.

X-File

Negotiating With Friends

When you approach a friend or a friend approaches you about beginning a business relationship, there’s a lot you will end up having to negotiate. Working with a friend or relative can be one of the most productive and personally rewarding things you do. It seems that it should do nothing but help your relationship, provide you with another layer of support, and financially reward you. But it can also be a nightmare. Like a purely professional relationship, the positive personal/business relationship only results from knowing how to negotiate with friends.

A good example of the problems lurking in any venture you enter into with friends occurred on the television show *Roseanne* from 1992 to 1994. At the beginning of 1992, Roseanne had bought a restaurant with her mother, her sister, and a friend, Nancy. The four went into the venture with only a verbal contract and with no agreement on how the business would be structured. They said they’d work out problems as they came up. By the end of the 1994 season, Roseanne had had over fifty fights with her co-owners about how to run the restaurant. Meanwhile, her mother had sold her portion of the business to a man named Leon, who sub-

sequently schemed to buy everyone out and run the restaurant himself. While sitcoms are a far cry from real life, trust us—this restaurant deal would have blown up even sooner than Roseanne would have it. In real life, the friends/co-owners would most likely have ended up in court, suing each other for everything they could think of.

People tend to assume that because they have a personal relationship with another party, a business arrangement can be struck on better terms than would otherwise be possible. In some ways, many of the pre-negotiating ordeals are taken care of by knowing the other party. You have some goodwill accrued, you have an understanding of the other side's history, and you have already established a manner of communication that is helpful to both sides. However, everything that works for you can



also work against you. The other side may know your needs more intimately than you would like. The other side may know what is important to you and how to use that to their best advantage. In many ways, the informational problems

presented by a negotiation between friends may outweigh the informational problems prevented by knowing each other already. But equally important are the expectations of both parties. Each one is looking for a better deal than the market would provide. Can this happen? Sure, but the usual way that creative, win-win solutions occur is through flexible, creative and comprehensive negotiations, whether you've been friends for years or not.

On a professional level, you can't afford to choose one set of standards for deals with friends and another set of standards for your nonpersonal deals. You may move more quickly to creative alternatives and to

compromise offers with a friend, but if you offer a deal that clearly favors the other party, you're worse off than if you got a new client through the mail. Soon, you'll begin to resent the whole situation, since you are spending the same amount of effort to achieve less fulfillment. Eventually, that dissatisfaction will resonate throughout the relationship.

What advantage you do have, though, emerges through your knowledge of the parties involved and your ability to make an informed judgment about what you understand the other side's level of reliability to be. This will help determine how strongly you should argue for enforcement clauses, timing issues, and accountability levels that you otherwise could only guess at.

Set down your terms up front and make things as clear as possible. Let the other side know that you value your relationship with them, but that you also value your business, just as they value theirs. The best way for both of you to stay satisfied is to reinforce the value of all three of those things, and the best way to manage that is through comprehensive negotiation. Communicate to them that they should welcome these negotiations and, in the same way, that neither one of you should expect a free ride.



A common mistake for friendly negotiators is to begin the negotiation in an inappropriate setting. Often one party will recommend that terms be discussed over dinner, or over drinks, or at one party's home.

While these locations may be familiar and cordial, they are not good negotiating locations. Try to set up the negotiation in a place that is professional and appropriate. Unprofessional locations can lead to unprofessional conduct by both parties. Don't assume that you can be as articulate, as sharp, and as forceful with a plate of linguini in front of you or after two or three drinks as you would in a conference room with a pad full of notes in front of you. There's plenty of time to celebrate after the deal is done.

Diaz Dennis is a labor lawyer who once had to negotiate with a group of inmates at Folsom Prison who had been used as extras in an ABC movie and demanded more than SAG minimum. Mostly, she realized, they wanted the chance to leave the prison to negotiate. She didn't budge on their demands, but the negotiating sessions gave them a chance to break the monotony of prison life.

In a negotiation, there are going to be topics and subjects that you and the other side disagree upon. In the negotiation with a friend, you can use your relationship as a springboard to broach any difficult subject. Don't expect the other side to give in merely because you invoke the relationship, but nonetheless your affiliation should provide you with a way to open discussions on a topic without engendering ill will. For example, if one topic you need to discuss is a strict enforcement of terms of payment (if the other side doesn't pay within thirty days you want strict penalties), you can use your history together to broach the subject and to not accuse the other side of any bad motivations. You might say, "Look Barry, I'm sure you understand the needs of proper payment. I

know how mad you were when Catalan Associates were behind on their payments every month. And I know that you’ll never stiff me, and I’ll never default on a delivery. So why don’t we just put it in the contract? I guarantee that I give you delivery of the product or I pay a bunch, and you guarantee that you’ll pay me in a timely fashion, or you pay me a bunch. I just want both of us protected here.” A simple mention of a past understanding that didn’t have this clause in it, as well as an affirmation that both parties want the best for the agreement, can smooth the way for the discussion of a potentially sticky subject.

You want to avoid as many tactics as possible in a personal negotiation. When you are trying to construct a deal with a friend or relative, you can only encourage ill will if you try to trick or over-technique the other party. Use the base of communication you have already established and be as forthright as possible. Trying out a tactic can easily blow up in your face.

One final note about failed attempts at negotiating a personal deal—if you can’t make a deal, then you should make an effort to reestablish the relationship that existed before the business negotiation began. Even a failed deal should work to make both parties understand each other better. Make explicit the terms that prevented you from reaching a deal, then agree upon a plan to enjoy some non-business-oriented meeting soon after. By pointing out that at that time no deal was the best deal, you encourage the relationship while putting the negotiation in proper perspective.



X-File 4

The Rapid Negotiation

Occasionally, situations will arise that require rapid dealmaking. Unusual windows of opportunity present themselves, and you have to act quickly in order to take advantage of them. The first thing you must consider is—does this really have to be done right away? Often people merely prefer a fast negotiation, while in reality, the deal could take as much time as it needs. Determine if the opportunity will in fact not be available if you hesitate or delay the negotiations. Is this a matter of regulatory timing (for example, does it have to be done before the end of the year for tax reporting purposes)? Is this a result of a unique situation (for example, is there an extreme demand for your product immediately, like a fad or national interest)? Is the other side only going to test the waters for a brief period of time, and if they don't reach an agreement with you, will they go back to their original provider? If the answer to any of these questions is yes, you may have to negotiate quickly.

Second, you should consider getting as much information as you can on the product, the situation, the process, and the needs of the other party. When you are under time pressure, you're never going to be able to do as much research as you would like to, so you have to focus your research efforts. See if you can get in touch with a company that has done business with the other firm in the past. Their experiences may shortcut your research efforts. Normally, when you go into the negotiations, you can expect marathon sessions and comprehensive discussions. In the rapid negotiation, you can expect to find yourself discussing several terms and issues at once. The more information you have on any subject that is likely to come up, the better off you'll be.

Third, draft a plan. Even rapid negotiations don't take place instantaneously. Large-scale deals—deals between countries, large corporations, religious groups—are discussed for years before anything is done. Drafting a plan may take some time away from the negotiation itself, but you'll make up this time with your rapid responses to their demands. Drafting a plan also keeps you from making potentially horrible choices, ones below your trip wires. If you have a list in front of you that tells you what you cannot do, you're not going to do it. The general rule is, if you don't have time to draft a plan, you can't afford to close the deal. For every two deals you miss, you'll have saved yourself one embarrassing and financially excruciating situation.

Fourth, divide up the deal into sections and get the other side to



agree to talk about each section. This is the only time we encourage segmented negotiations. You want to divide up the negotiation in order to have a set of related concerns to deal with at a single time. In a rapid nego-

tiation, it is easy to lose the focus of what you are dealing with at a given time. It is easy to make concessions that are not in your best interest, and that if you had more time you never would have agreed to. By segmenting, you get a chance to see a whole section of the deal take place and to assess your contentment with that section immediately. Then, when you are done, you can make a rapid evaluation of the fulfillment the whole deal gives you.

If you aren't able to sign the contract, you're probably running out of time. If you have very little time to respond and you've still got prob-

lems with the deal, then submit to the other side your best offer as a “take it or leave it.” Be prepared to walk away if they reject your proposal. At this point, they know your concerns and you know theirs. If they reject it and suggest a creative alternative, consider their alternative. Always give a deal every chance to get done.

If time runs out and you have had productive talks, see if in any way that time limit can be extended. If it can't, encourage the other side to continue discussions at some future date and keep the relationship as positive and future-oriented as possible. It never hurts to trade all the goodwill every satisfactory negotiation provides.

X-File

The International Negotiation

When you negotiate with a party from another country, you have to acknowledge the difference in negotiating styles and understandings that come from a different historical and cultural environment. In these negotiations, research and investigation are critical to success. Before you step into the negotiating room, get a good feel for the culture of the country you are negotiating in. If possible, find a local person involved in the industry to give you guidance. Your preparation and understanding of the other side's attitude is critical to the outcome of the negotiation.

There are some general areas you may want to pay attention to. In general, you should determine the importance in that country of the status of the negotiator, since some countries determine the seriousness of your intent by the rank of the negotiator. Merely sending a person of the wrong status could doom the negotiations from the start. You should determine the ordinary time frame and pace of negotiations in that country. In most countries, the pacing of negotiations is slower than in the United States