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Introduction

Andrea Kupfer Schneider¹ and Chris Honeyman²

This book has one very specific purpose: to take everything we have learned about negotiation, select only the parts that matter most to attorneys, and then make them as fast and easy as possible for very time-constrained legal practitioners to *apply*.

Simple enough, on the surface. Yet, simplicity was not easy to achieve.

This is our third book on negotiation together, and the second book in two years. We have tried to think clearly about what each project provides for the field. More than fifteen years ago, the idea of

1. **Andrea Kupfer Schneider** is a Professor of Law at Marquette University Law School, where she teaches dispute resolution, negotiation, ethics, and international conflict resolution and is the director of Marquette's nationally ranked dispute resolution program. Andrea has written numerous books, book chapters, and articles on negotiation skills and styles, dispute system design, international conflict, and gender and negotiation. She was given the American Bar Association (ABA) Section of Dispute Resolution Award for Outstanding Scholarly Work for 2017. Andrea received her A.B. *cum laude* from the Woodrow Wilson School of Public & International Affairs at Princeton University and her J.D. *cum laude* from Harvard Law School.

2. **Chris Honeyman** is managing partner of Convenor Conflict Management, a consulting firm based in Washington, DC. He is co-editor of *The Negotiator's Desk Reference* and six other books, and author of more than 100 published articles, book chapters, and monographs. Chris has directed a 30-year series of research and development programs about conflict management (see www.convenor.com/projects). Chris also has served as a consultant to numerous academic and practical conflict resolution programs, held a variety of advisory roles with the ABA, International Mediation Institute (IMI) and other organizations, and served as a mediator and arbitrator and in other neutral capacities in more than 2,000 disputes.

a *canon of negotiation* first intrigued us: What did *everyone* teach about negotiation, in and outside of law school, and why? What did only *some* people teach, based on their field or research area? What did virtually *no one* teach about negotiation, even though it is obviously important? And could it be that the information had not yet been translated into language suited for practitioners?

Our canon of negotiation initiative started with a conference. Based on that, we first organized (and wrote some of) 26 law review articles. We followed this with 80 book chapters in *The Negotiator's Fieldbook*; later, 101 chapters in *The Negotiator's Desk Reference* at the end of 2017, and now, 53 chapters in this book. We have tried to find the best knowledge, theory, and practice out there and to bring it home in ways that the most people possible will find usable.

In our first book in this long-term project, *The Negotiator's Fieldbook* (American Bar Association, 2006), we wrote:

This book is a working tool that can help you figure out quickly what went wrong in yesterday's meetings, and how to fix it in tomorrow's follow-up. And if you see your needs primarily in those terms, you will be in good company. The wisest and most experienced of negotiators will often admit that at certain critical moments, they simply do not know what to do.

This remains our overarching goal: to be helpful immediately and clearly. Our two earlier books took the view that we can be most helpful by really addressing the complexities and by showing how apparently unrelated things often fit together. That way, those who really need to know things that aren't normally part of their field can find them out, and fast.

Still, we must admit that not everybody needs *everything*. We often are reminded by practicing lawyers and by businesspeople, in particular, that a book of 800 or 1,500 pages might be highly relevant to their needs, but it still might go unread. Even after we and our contributors worked hard to boil down years or decades of study of key negotiation problems into a few thousand words per topic, we have often enough heard the cry, "Just tell me what to *do* in this situation!"

We have long known that our petitioners are not unreasonable in this request. More than twenty years ago, one of us even organized a national project to that end. A direct line can be drawn from the Theory to Practice project (described at www.convenor.com) to this book. This new book is all about making negotiation *work for lawyers*. Every chapter is highly structured to focus on the most *practical* advice you can act on tomorrow.

Each chapter in this book starts with a brief introduction, immediately followed by a standard section, *Why This Concept Might Change Your Thinking*. There, the author explains succinctly why their body of work might be useful specifically *for lawyers*. After that, each chapter has a section called *Action Plan—What You Can Do Differently Tomorrow*. There, each author outlines specific steps a lawyer can take in their next negotiation. This advice is as varied as the topics in the book: the advice might be about a particular piece of preparation, what to say at the table, how to counsel a client, or how to close the deal. But in all cases, we hope you will find the action plan clear, usable, and practical.

Of course, the effort to understand a complicated problem in short order runs a risk of applying a supposed lesson where it *shouldn't* be applied. Our authors have considered this, too. Many authors include a section in their chapters called *Modifiers, Caveats, and No-Go Areas—When This Advice Just Won't Apply*. And then, the chapter wraps up.

In each chapter, we also include a closing section written by the editors designed to show how topics in this book fit together and to provide some hints about what you might want to look at next. We hope that with this consistent chapter organization, you can easily zero in on just what you need.

And note that, in mandating this tight focus for our authors, we firmly declined all requests to include references and supporting explanations in the chapter text. The chapters in this book have only one citation each—on purpose. The chapter's citation is to the contributor's longer chapter in *The Negotiator's Desk Reference*—which in turn contains full citations and references.

If you wonder *why* a contributor gives you a particular piece of practical advice, you will find the answer to that question in *The*

Negotiator's Desk Reference. We have included the full references for each chapter in the public, free version of that chapter at www.ndrweb.com

Our intent is to show a variety of perspectives from different disciplines and forms of practice, among different cultures, and even within the same Western culture, as each author grapples with his or her best advice. This approach is based on the full version of *The Negotiator's Desk Reference*. As we noted in our introduction there:

Some chapters here are based on empirical research that is truly cutting-edge. Many chapters are based on their authors' far more detailed works or even complete books, and we greatly appreciate their willingness to edit their thoughts into brief pieces. Other chapters are based primarily in stories from the real world. It is our objective to interrelate such practitioners' hard-won wisdom with other chapters, containing scholars' related research and theoretical insights, so that the *next* practitioner to encounter a similar problem has more to go on.

Now, we briefly describe each section of the book.

Part I: Working with Individuals

Section I: Introduction

Section I starts with this introduction and continues with *Learning from Your Negotiations*, an introductory reading that is designed to help readers absorb and implement all the other readings in this book.

Section II: All About You

Section II discusses negotiation style choices, some individual characteristics that might make a difference in negotiations, and understanding your own thinking. Chapter 3 is a thorough analysis of the ways someone's style of negotiation might not mesh with the same person's style of handling conflict—often because of failure to think through the differences between good practices, tactics, and tricks. Chapter 4 demonstrates how hard bargaining really works, in no fewer than 28 varieties.

Chapters 5 and 6 focus on race and gender. Both chapters note how personal differences might play out in negotiations. The chapters also

discuss what to do if you want to consider the structural and organizational biases that might perpetuate inequity as a result of negotiations. Chapter 7 is about social intuition—a quality that helps you be aware of yourself, read your counterpart, and attune yourself, so you have the best chance of getting through to your counterpart. We end with Chapter 8, a neuroscience-based explanation of how human beings evolved to be interdependent.

Section III: Making Your Case

Section III is about ensuring that however farsighted and generous you choose to be in a negotiation, your own needs are still met. The section begins with Chapter 9, which is about setting goals—or how to ensure that your aspirations are both high *and* attainable. Chapter 10 discusses six factors that influence whether you will get your way or not (all other things being equal), and then Chapter 11 is on how to distinguish between and work with two kinds of audiences that are responsive to completely different psychological approaches.

We turn next to Chapter 12, which boils down a bestseller into a brief treatment of how each party is likely to formulate (and believe) a completely different story of what is going on. Chapter 13 explains why and how the best salespeople listen far more than they talk—and what questions they ask when they do talk.

But when the story your negotiation counterparts are telling themselves is one that you must challenge, the moves and turns the discussion takes are likely to determine whether you get anywhere in your negotiations—and that is the final subject of this section, in Chapter 14.

Section IV: Strategies of Communication

Section IV addresses the postmodern era of communication and the challenges of listening well. Chapter 15 surveys the confusing panoply of communication options now available and outlines a way to use them more tactically. In Chapter 16, we move to what has probably become the baseline method of ordinary, day-to-day communication, particularly for components of a negotiation that has yet to be framed in complete documents—e-mail.

Two very different groups have specific needs and uses for technology in their negotiations: lawyers and the young. Chapter 17 analyzes lawyers' needs and how technology is changing their practice.

Chapter 18 focuses on the youngest adult generation—such avid users of technology that it is barely possible to pull their attention from it.

Chapters 19 to 21 focus on more than talking. In Chapter 19, the author argues that listening can be used in a disciplined way to avoid either cooperating or competing too much. Chapter 20 demonstrates some key findings from clinical psychology: it focuses on actually *understanding* what you hear, to make you more persuasive.

Yet, listening is not everything. Chapter 21 analyzes nonverbal communication as a whole, it demonstrates how many different forms it can take, and it shows how you can employ nonverbal communication consciously.

Section V: Working with Them

Section V addresses a multitude of concepts around relationships with your negotiation counterpart. Chapter 22 begins with a brief account of how trust and distrust work, and moves on to an analysis of how trust, after it is broken, can be repaired. This, however, is not always possible, and Chapter 23 is a trenchant analysis of what you can do in an environment where trust is impossible.

Trust, of course, is related to reputation. How a reputation is formed and why a trustworthy reputation is important, in far more settings than is commonly believed, are the subjects of Chapter 24. Closely linked to reputation, in turn, is the negotiator's ethical behavior. Chapter 25 moves to an analysis that shows how morals, rules, and law might all treat the same situation, but in vastly different ways. Understanding how they differ can give you a better sense of how your counterpart thinks. This discussion is followed by Chapter 26, which is about how fairness is perceived, particularly with an eye to fair processes and outcomes. Naturally, human beings being what they are, the effort to maintain a good reputation is sometimes going to involve making an apology, which is the subject of Chapter 27. And perhaps, if the apology is effective, forgiveness and reconciliation will follow, as they do in our book, in Chapter 28.

Part II: Complications, Groups, and Firms

Part II of *Negotiation Essentials for Lawyers* is for when things get complicated. Working with groups, firms, different cultures, and

more inevitably adds complexity even beyond the challenges of working with individuals, which were the focus of Part I.

Section VI: Complexity and Culture

Section VI starts off Part II by diving straight in to more complicated situations. Chapter 29 addresses whether mental illness might be affecting someone at the bargaining table. The authors lay out information about the surprising frequency of mental illness in our society and the varied ways that we might need to respond to it in a negotiation.

Then, we turn to a triad of chapters about cultural differences, starting with Chapter 30 on how negotiating style integrates with culture—except for when it doesn't. Chapter 31 analyzes how Westerners tend to misread Chinese culture when they negotiate there—and “there,” of course, includes the Chinese communities in many American cities. Chapter 32 assesses the often-unfortunate experiences of western or northern negotiators and mediators when they have taken their (implicit, and often unrecognized) cultural codes with them. . . . to an *extremely* different culture.

Chapter 33 combines a classic analysis, of how even a major negotiation in an international setting has some predictable stages in a somewhat predictable process, with an equally classic discussion of timing and ripeness.

Section VII: Context and Other Constraints

Section VII addresses some deliberately varied contexts, each of which poses particular limitations. Chapter 34 describes the common situation in which you, as an individual, must face off with a huge organization that has boiled down all its negotiation moves to a script. (When you read this chapter, you might find that you have more leverage than you think.) This is followed by Chapter 35, which discusses another common setting, arbitration, in which only one side suffers the major constraints—and unless you happen to be a major corporation, this means *you*. In turn, Chapter 36 discusses a very common setting in which the constraints are major for both sides: plea-bargaining.

Some readers might be surprised when we assert that they can also learn negotiation lessons from some seemingly unrelated—not

to mention, dangerous—contexts: hostage negotiation and martial arts. Yet, we have three chapters (Chapters 37 to 39) that demonstrate how lessons from hostage negotiation and martial arts really can be adapted into a lawyer’s more typical negotiation settings.

Section VIII: Working with Your Client

Working with your client often might be the most challenging part of any negotiation—and four chapters in Section VIII address that particular challenge.

Chapter 40 focuses on how to use psychology to address ethical challenges with your client specifically, and inside their organization. This is followed by Chapter 41, a trenchant analysis of agents’ frequent failure to ensure that their clients have given informed consent to the agent’s actions. Then in Chapter 42, we turn to the challenge of herding cats—or when your client has a “tribe” behind them that might upend any decision they make. And finally, in Chapter 43, we address the unique circumstances of using an interpreter in negotiations: An interpreter is neither a true neutral nor a client—and he or she needs to be *managed*.

Section IX: Groups and Third Parties

Section IX expands the number of people we must consider as part of the negotiation. Chapter 44 addresses how organizations can improve their overall negotiation performance by managing it strategically, with consistent training, incentives, communication, and support. Chapter 45 analyzes the larger, systematic context in which a negotiation takes place, and shows why lawyers must remain alert to the potential for systemic injustice to be perpetuated by their actions. Chapters 46 and 47 focus on mediation: A general overview of mediation’s uses is followed by a chapter analyzing why one mediator is frequently so different from another, and what you might need to watch out for. Mediators, however, are not the only outside people who might become useful in a difficult conflict. Chapter 48 analyzes a whole series of non-neutral (and yet, not classically “agent”) roles, under the general heading of *allies* who might be usefully invoked by a party.

Section X: Getting It Done

The final section of the book addresses the strategies that we need to close that deal. Chapter 49 is about ambiguity and how a bit of

ambiguity just might be the grease that gets the deal done. Or, one could think about how, for any resolution to be possible, many disputes and other negotiations require a lawyer to adopt more than one kind of role. Chapter 50 explains the dual role of Doberman/Diplomat.

But sometimes, what a situation needs is somebody who will really shake things up. Chapter 51 assesses the possibility that an activist might not (always) create conflict, and instead might sometimes be essential in resolving it. Of course, if the matter is to be truly *resolved*, you'll want the agreement to hold. So, Chapter 52 addresses how to make sure that when you and your counterparts finally do “sign on the dotted line,” the results stick.

Finally, we close with Chapter 53, which gives examples of how dispute *prevention* can work—and maybe even reduce the need for many of the strategies discussed in the book—when lawyers actually think about all of this in advance!

Delving Deeper

We should acknowledge that some lawyer readers will quickly absorb a subject of immediate interest and then want more. Some might also ask themselves, “What would this author say about this *other* situation I'm concerned about?” or “I wonder what the setting was for this research, and is there more I should know about that?”

We are happy to say that our publisher agreed with the publisher of *The Negotiator's Desk Reference* that the two books are complementary. At the end of this book, you will find a provision by which the American Bar Association (ABA) and DRI Press have agreed that, as a purchaser of this book, you can buy the full version of *The Negotiator's Desk Reference* in its easy-access and most comprehensive form—the Web edition, with updates—at a healthy discount. We thank both publishers for their mutual courtesy toward our readers.