10-15-1985

How to Negotiate with a Woman Women and the art of Negotiating: Techniques for Achieving Success in your Business and Personal Relationships (Book Review)

David J. Agatstein

Follow this and additional works at: http://digitalcommons.pepperdine.edu/naalj

Part of the Dispute Resolution and Arbitration Commons, and the Women Commons

Recommended Citation


This Book Review is brought to you for free and open access by the School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Journal of the National Association of Administrative Law Judiciary by an authorized administrator of Pepperdine Digital Commons. For more information, please contact Kevin.Miller3@pepperdine.edu.
HOW TO NEGOTIATE WITH A WOMAN
WOMEN AND THE ART OF NEGOTIATING:
TECHNIQUES FOR ACHIEVING SUCCESS
IN YOUR BUSINESS AND PERSONAL RELATIONSHIPS

Juliet Nierenberg
Irene S. Ross
Simon & Schuster
(New York, 1985)
$16.95--Paperback $6.95

The wry title of this review of Women and the Art of Negotiating does not derive solely from the fact that the reviewer is male. It is intended to supplement the remarks of an earlier reviewer who said "the authors have produced a wonderful guide for women who negotiate--in other words, all women". */ In fact, this marvelous guide is equally useful for men who negotiate with women and, for that matter, for men who negotiate with men. As the book itself makes clear, the techniques and skills of successful negotiation have no particular affinity for either gender.

Nevertheless, the feminist orientation of the book is amply justified. It is still true, I think, that some men treat women as if they were different from men in a negotiating situation. In some circumstances (as in personal relationships, to which a chapter of the book is devoted) this difference in treatment may be advisable. In a business negotiation, however, inappropriate male attitudes (condescension, intimidation, etc.) will either impede the success of the negotiation or (if a woman is skilled in the

*/ Steven L. Schlossberg, Deputy Under Secretary of Labor (quoted from the Flyleaf).
FIGURE 1

THE NEGOTIATION MAP

CIRCULARITY OF PROCESS
(feed forward and feed back)

YOUR SIDE ↔ Points of View ↔ OTHER SIDE

SUBJECT MATTER
seek agreement

OBJECTIVES
a. maximum and minimum
b. expand objectives

FACT FINDING
a. assumptions
b. hidden assumptions

ISSUES
a. points of disagreement
b. major and minor

POSITION
the stands you take
on the issues

NEEDS
a. yours
b. theirs

CLIMATE
the atmosphere you
create

STRATEGY
a. the overall plan
b. the moves you plan

OTHER SIDE

SUBJECT MATTER
seek agreement

OBJECTIVES
a. maximum and minimum
b. expand objectives

FACT FINDING
a. assumptions
b. hidden assumptions

ISSUES
a. points of disagreement
b. major and minor

POSITION
the stands you take
on the issues

NEEDS
a. theirs
b. yours

CLIMATE
the atmosphere you
create

STRATEGY
a. the overall plan
b. the moves you plan

(C) Simon & Schuster
techniques discussed in this book) provide her with the opportunity for a distinct negotiating advantage. Conversely, the authors suggest that many women, by training or experience, adopt attitudes or behavior patterns which are ill-suited to negotiating successfully. The book addresses these issues and provides specific suggestions for dealing with sexist stereotypes and roles.

The authors of Women and the Art of Negotiating emphasize "the success of the negotiation", rather than the individual success of either of the negotiators. Rather than focusing on a division of the pie, a successful negotiation will be directed to baking a bigger pie. Thus, wherever possible, a skilled negotiator will discover the common goals of the participants and seek mutually acceptable means of achieving those goals.

Suppose, however, that there is only one pie, and you are negotiating with someone who wants it all. Suppose, moreover, that he seeks to acquire the whole pie, not for his own sake, but to achieve a victory, discredit you, attract publicity, or otherwise enjoy some psychological or political advantage. Perhaps he intends the entire negotiation to be nothing other than a diversionary tactic and a drain on your resources. If you look into this book to find ways of dealing with these extremely difficult problems—you will be well rewarded! While Women and the Art of Negotiating reads with the ease and speed of many popular books, its substantive content would not be scorned by those who negotiate world peace.

That there is great depth to Women and the Art of Negotiating should not be surprising. The book is based upon the accumulated learning of Gerard I. Nierenberg, an internationally respected lawyer and author of The Art of Negotiating. It was written by his wife, Juliet Nierenberg, Director of the Negotiation Institute and a well-known negotiator in her own right, and by Irene S. Ross, an Administrative Law Judge for the New York State Department of Labor and a lawyer greatly admired for her skill in complex negotiations.

What, then, does the book tell us? It would be unfair to the authors to disclose the answers to the really hard questions, but consider the following common example. After looking for a year, you have finally found the one house you want to buy. You and the seller appear to be in complete agreement. Unfortunately for you, however, the seller is represented by Sidney Grapefruit, Esq., a lunatic
who insists upon imposing terms that neither you nor your attorney can possibly accept. What do you do?

Since you yourself are an ethical attorney, you would not dream of attempting to undermine Mr. Grapefruit's standing with his client, but a lay purchaser, who has read this book, might suggest to the real estate broker that he inform the seller that Mr. Grapefruit's intransigence was threatening to break up the deal. This end run (the example is the reviewer's, not the authors') typifies an option available in most negotiations, frequently at the beginning of the process: changing the circumstances of the negotiation.

In order to change the circumstances of a negotiation, it is necessary to understand the process. A prospective purchaser who is caught up in the details of Mr. Grapefruit's demands might not realize that an impasse has been reached and that progress is at a standstill. Such obstacles to negotiation become clearer, however, if one has adequately prepared for the negotiation. In preparing for any negotiation, however formal or informal, the authors suggest the use of a negotiating map. (fig.--p. 166)

An examination of the map, which the book discusses in some detail, reveals the elements of a negotiation and the fact that the perception of these elements by the various participants may be different, and may change during the course of a negotiation. It may be readily perceived, for example, that different assumptions about the underlying facts, or different assessments of the degree of trust existing between the negotiators can impede a negotiation or, conversely, form the basis for some tactical advantage. In general, the authors suggest, the more information one has, the stronger her (or his) negotiating position.

Strategy, as the map indicates, is only one element in a negotiation, but it is probably the topic of greatest interest to most readers. This book is loaded with strategies and gives plenty of good, specific advice for their wise and effective use! To whet the reader's appetite, I will simply list the sub-chapter headings: Forbearance. Surprise. Fait Accompli. Bland Withdrawal. Apparent Withdrawal. Reversal. Limits. Feigning. Favors. Anger and Intimidation. Participation. Association. Disassociation. Statistical Data. Salami. Bracketing. Changing Levels. Silence. Low Bailing. Flexibility. These topics are not self-explanatory, and the authors have much of interest to say about each. I withhold all but the following

168
explanation: Take a small piece at a time until you have the whole salami.

The development of specific negotiating skills comprises an entire chapter of the book. Having learned to recognize the stratagems which others may be using, it is here that we learn to counter them and to push forward with our own, more enlightened program. While guiding the reader (and, in particular, women who are uncertain of their negotiating skills) along the high road of imagination and communication, the authors do not fail to warn us of the specific dirty tricks to which our adversaries, in their perfidious way, may stoop. Manipulation is a word which figures more than once in Women and the Art of Negotiating.

The theme of negotiation skills is further developed in chapters on barriers to negotiating with others and dealing with difficult people. As stated by Dr. Ralph M. Lauer of Pace University:

The authors emphasize that everything and everybody is in a constant process of change. Without specifically stating it, they imply that whereas ideas, goals, and strategies can change, the concept of loving acceptance can prevail. At the same time, the authors do not recommend "giving in." In fact, they advise women to use every skill of observation, creativity, and persistence so that everybody wins and nobody loses. In legal circles, I believe this philosophy is the basis for the new "alternate dispute resolution" techniques.

In a chapter on negotiating personal relationships, the authors discuss the need to continually renegotiate long-term relationships. They consider negotiating with children and with the elderly, dealing with friends, lovers and in-laws, and negotiating the successful continuance, or, if necessary, the termination of a marriage. Negotiating in the workplace, as a supervisor or independent entrepreneur, is the subject of the final substantive chapter.

What, then, does one do when forced into negotiating with the hostile monomaniac described earlier? If I understand the book correctly, the answer might be: recognize what is happening, confront him with his tactics, point
to the common goals of both parties, and if that doesn't work, go over his head.

-David J. Agatstein

* * *

**Pieper Electric, Inc. v. Labor and Industry Review Commission**

118 Wis. 2d 92, 464 N.W. 2d 464 (1984)

Claimant was disqualified from receiving unemployment insurance benefits, on grounds of misconduct consisting of excessive absenteeism. The disqualification was upheld by a hearing examiner, and the claimant appealed to the Labor and Industry Review Commission. The LIRC reversed the hearing examiner and allowed benefits. On appeal by the employer, the Circuit Court remanded the case to the LIRC. The LIRC appealed the remand order to the Wisconsin Supreme Court. The Supreme Court declared (346 N.W. 2d @ 467):

The second ground which the LIRC advances for reversal of the circuit court is that the court erroneously held that the LIRC was required to explain why it made findings of fact different from those made by the appeal tribunal. Because Wisconsin law requires the LIRC to explain why it differs with the appeal tribunal on matters resting on an assessment of the credibility of a witness, and because a credibility resolution entered into the LIRC's decision in this case, we hold that the circuit court correctly reversed and remanded the case for explanation by the LIRC.

Where the credibility of a witness is at issue and a commission reverses its examiner and makes contrary findings, due process requires that the commission (1) glean, from the record or from personal consultation with the examiner, the examiner's personal impressions of the material witness[es] and (2) include in a memorandum opinion an explanation for its disagreement with the examiner.