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# The Wizard and Dorothy, Patton and Rommel: Negotiation Parables in Fiction and Fact

Professor H. Lee Hetherington\*

## I. INTRODUCTION

Of all the varied skills possessed by successful lawyers, the ability to consistently resolve problems and create new, advantageous relationships by utilization of the process of negotiation is clearly a common thread that runs through the legal profession. While not every member of the bar is a litigator, transactional attorney, or even a practitioner, everyone is a negotiator in both their professional and their private lives. The process of negotiation is quite simply the engine of change and compromise that drives everything from the global economy to basic interpersonal relations at every level of every strata of human experience. Lawyers are often considered the leading exponents of the art and science of consensus building, commonly referred to as negotiation, but they are far from the only group or profession that relies on the process. Nations, corporations, families, and a myriad of other organizations and individuals spend much of their professional and personal lives using universal bargaining principles to create opportunities and avoid problems. Without this process of give and take, chaos would soon envelop the world. However, it does not.

Assuming that the negotiation process works, what exactly makes it work? Are there primary elements or principles that drive the process which any student of negotiation can quickly master? The quick answer to the latter question is that there are universal principles that have governed every negotiation, from the first barter transaction between cavemen, who likely worked out a deal to trade fire for sharpened stone, to the latest corporate merger appearing in the pages of tomorrow's *Wall Street Journal*. A previous article highlighted the universal elements of negotiation that we call leverage.<sup>1</sup> The elements are: Uncertainty, Time, Opportunity, and Sanction.<sup>2</sup> Like Earth, Water, Fire, and Air, the elements

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1. H. Lee Hetherington, *Negotiating Lessons from Iran: Synthesizing Langdell & MacCrate*, 44 CATH. U. L. REV 675 (1995).

2. *Id.* at 681.

are the building blocks and prime movers of every agreement—past, present, and future.

The next logical questions are the following: How are these elements of leverage used to the negotiator's best advantage, and what role does a negotiator's personality play in the process? These very practical questions are the central theme of this piece. In developing a comprehensive answer to these questions, this article draws on the pioneering work of Dr. William Marston, a psychologist who taught at Columbia University in the 1920s and 1930s. Among his many accomplishments, Dr. Marston wrote the classic work, *The Emotions Of Normal People*,<sup>3</sup> which focused on the motivations and patterns of ordinary behavior.<sup>4</sup> By applying Marston's behavioral theory to the world of bargaining, this article seeks to demonstrate that every human being's behavior tends to fall into broad, identifiable patterns that govern his or her approach to risk taking, level of pro-activity, and method of approaching and dealing with any given bargaining situation. Furthermore, because a person's behavior is observable, it is therefore predictable as well. Starting with one's own behavior patterns and then moving on to observe one's bargaining counterparts, it is not only possible, but also highly beneficial to understand the critical role personalities play in the give and take game of negotiation. Every negotiator stands to gain tremendous advantages by playing to his or her own strengths, while at the same time being able to anticipate how the opposite number is likely to react in any given bargaining scenario. This ability can, in the short run, be the difference between a good deal, a great deal, or no deal. Over a career, mastery of the personal dimension of negotiation will have a direct bearing on one's overall level of success, both personally and professionally. The basic psychological principles addressed by this article, combined with universal principles of leverage, are easily understood in the abstract. But real-life consensus and dispute resolution are forged in the real world, which is characterized by varying pressures, perceptions, needs, and emotions. When it comes to developing practical negotiation skills, the challenge is to help students of negotiation integrate the abstract into the concrete so as to advance the cause of consensus building and problem solving through negotiation. But how is that best done? How does one teach a student to become an artist? Anyone who has ever tried to master golf, creative writing, or any of a number of skills and callings understands that grasping theory does not necessarily guarantee that the student will be particularly proficient in the actual practicing of the skill. As applied to negotiation skills, the transformation from student to artist involves combining hard information with entertaining parables and examples that bring universal truths to life in real world settings. Once those truths are illustrated and internalized with emotion in a person blessed with native ability, the transformation begins to take place.

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3. WILLIAM MARSTON, *EMOTIONS OF NORMAL PEOPLE* (1928).

4. *See generally id.*

Over time, mastery of fundamental principles, together with hands-on experience, begins to yield favorable results at the negotiation table. Whether the parables by which the principles are illustrated are, in the end, fiction or fact is of secondary import; it is the lesson learned that is the key. To this end, this article will use two well-known yet disparate Hollywood motion pictures to demonstrate the skills required of a successful negotiator. The first is a work of pure fantasy, the classic MGM release of *The Wizard of Oz*,<sup>6</sup> starring Judy Garland. The second cinematic example is drawn from the movie *Patton*,<sup>7</sup> starring George C. Scott as the mercurial, larger-than-life World War II General, George S. Patton.

## II. AN UNWANTED, ONE-WAY TRIP TO OZ

Everyone is familiar with the classic 1939 motion picture, *The Wizard of Oz*,<sup>8</sup> based on the book with the same title by author Franklin Baum. Besides being a charming tale of adventure for youngsters, this timeless story, as dramatized on the big screen, provides an instructive object lesson in how any negotiator can use personality, persistence, and basic planning skills to one's best advantage in a negotiation.

As one will recall, Dorothy Gale from Kansas and her dog Toto were suddenly transported somewhere over the rainbow to the beautiful, but sometimes dangerous, Land of Oz.<sup>9</sup> As with most unwanted, problem-based negotiations, Dorothy would have much preferred to stay at home, but that was not going to happen.<sup>10</sup> As luck would have it, Dorothy, her dog, and her house came to rest in the Land of the Munchkins, a domain of tiny but friendly people, who viewed Dorothy as the equivalent of a conquering superhero from another planet.<sup>11</sup> Their adoration stemmed from the fact that Dorothy's house dropped out of the sky and scored a direct hit on the hated Wicked Witch of the East.<sup>12</sup> In so doing, Dorothy delivered the oppressed little people from the tyranny of the reigning Wicked Witch.<sup>13</sup> Her reward was a new pair of shoes and a triumphant escort out of town on the way to see the Great Wizard of Oz, whom everyone told her had the power to get her back to Kansas.<sup>14</sup> Prior to returning home, however, Dorothy confronted

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6. THE WIZARD OF OZ (Metro-Goldwyn-Mayer 1939).

7. PATTON (Twentieth-Century Fox 1970).

8. THE WIZARD OF OZ, *supra* note 6.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* Glenda, the Good Witch, told Dorothy, "The only person who might know [a way back to Kansas] is the great and wonderful Wizard of Oz himself." *Id.*

the first of many obstacles in the Land of Oz, the Wicked Witch of the West.<sup>15</sup>

#### A. *Motivation And The Status Quo*

The starting point of every successful negotiation is a motivated person unwilling to live with the status quo. From the moment the tornado dropped Dorothy's house in Oz, the little girl with her black dog was highly motivated to do one thing—find her way back to Kansas. While the Munchkins would have surely welcomed her as a permanent resident, that was out of the question. What the story demonstrates to negotiators, above all else, is the crucial roles aspiration and motivation play in one's ultimate success. Certainly, Dorothy never lacked the fire it would take to see her through an adventure of a lifetime in the magical Land of Oz. While a burning desire to achieve a goal is not the only thing a successful negotiator needs to succeed, it is often the most important.

#### B. *Nothing Is Hopeless; It Only Looks That Way*

Much of negotiation involves having the courage to overcome obstacles as a way of changing the status quo for the better. No matter the number and degree of problems confronting a negotiator, few situations are hopeless. Dorothy's hard landing in Oz is a case in point.

As if being transported to parts unknown by a tornado and being knocked unconscious in the process were not misfortune enough, Dorothy got off to the worst start imaginable when her house landed on the late Wicked Witch of the East, quite by accident.<sup>16</sup> Who can think of a worse start? She was not in Oz five minutes and unwittingly made a formidable enemy in the ill-tempered Wicked Witch of the West, who was only too ready to extract retribution from the little girl who "killed my sister."<sup>17</sup> Add the fact that Dorothy was a young girl who was quite alone in a strange land, and one probably would not blame her if she had just thrown in the towel on the spot. In fact, that is exactly what all too many negotiators do when faced with seemingly overwhelming odds—panic, followed by surrender, is exactly the wrong move. Such a reaction transforms would-be negotiators into victims of unfair and oppressive agreements and worsening circumstances. Most of these sad stories can be easily avoided if the would-be victims would simply look around for some perceived power which could even up the odds and provide the necessary negotiating leverage. No matter how grim things might look at first glance, there is always something that can be done. That is exactly what Dorothy did.

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15. *Id.*

16. *Id.*

17. *Id.* Swearing to avenge her sister's death, the Wicked Witch of the West delivered the classic line, "I'll get you my pretty, and your little dog too!" *Id.*

### *C. Finding One's Pair Of Ruby Slippers—Just Look!*

Though she did not realize it at first, Dorothy actually had quite a lot going for her. First of all, though just a young girl, the Munchkins, as well as the Wicked Witch, perceived her as some kind of supernatural being.<sup>18</sup> She also had some natural allies who wished her well and willingly helped her.<sup>19</sup> Of course, it did not hurt that Dorothy magically inherited the ruby slippers formerly possessed by the recently deceased Wicked Witch.<sup>20</sup> But like so many of us, Dorothy never realized that the means for her return home were literally right under her nose.<sup>21</sup> The Wicked Witch of the West was, however, well aware of Dorothy's power, as was the Wizard of Oz, who was comfortably ensconced in Emerald City perpetuating his own myth.<sup>22</sup>

### *D. It Is Always Best To Start At The Beginning*

After learning that it was the Wizard who had the power to return her to her home, Dorothy asked the obvious question—"How do I start for Emerald City?"<sup>23</sup>—to which Glenda, the Good Witch of the North, offered the same common sense answer that is applicable in any negotiation, whether it is between Fortune 500 companies, international powers, or a young girl and a Wizard: "It's always best to start at the beginning."<sup>24</sup> After uttering those words of profound wisdom, the Good Witch motioned to the colorful path stretched out before the curious visitor from Kansas and said, "Follow the yellow brick road."<sup>25</sup>

### *E. A Quick Course In Planning*

Regardless of whether the negotiator is a young girl trying to get back home to Auntie Em and Uncle Henry or is an executive preparing to negotiate a multi-million dollar acquisition, planning is essential. The first step is always

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18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

formulation of clear, specific goals.<sup>26</sup> Sounds simple does it not? Yet, it is startling how many negotiators plunge headlong into negotiations armed only with a vague notion of what they really want or what they are willing to give up to get it. Phrases such as “best deal possible,” “top dollar,” or “as soon as possible” are tip-offs that someone has not done their homework when it comes to goal setting.<sup>27</sup> Goals should be highly specific, for example: \$100,000 max, with a \$85,000 minimum at no more than eight percent interest, closing within forty-five business days.<sup>28</sup> Simply put, “What is it you want, and be specific.”<sup>29</sup> For Dorothy, the answer was simple: Topeka Airport and make it quick.

After the negotiator is sure of what the client wants, the negotiator must then determine the specific wants and needs of the bargaining counterpart.<sup>30</sup> Only when it is apparent what both sides want is it possible to begin narrowing issues and start the process of moving toward agreement.<sup>31</sup> Though Dorothy could not have known at the time, the Wizard’s *quid pro quo* was the removal of the Wicked Witch of the West by any means possible.<sup>32</sup> Since the mysterious young girl with the black dog had done it once, why not twice?

#### F. Creating A Ceiling And A Floor

A few questions help provide the focus and structure necessary for narrowing the issues and setting goals.

**CEILING:** If the client could have everything he wants in a particular negotiation, what would that be?<sup>33</sup> The key to making this work is for the negotiator to not engage in any limiting behavior.<sup>34</sup> By articulating every conceivable point, the negotiator effectively clarifies exactly what he would like to gain before beginning the process.<sup>35</sup>

**FLOOR:** In contrast, the negotiator should also imagine a worst case scenario and ask, What is the very least amount acceptable to make a deal?<sup>36</sup> The answers to these two questions effectively create a ceiling and a floor for the negotiation.<sup>37</sup> A deal, if there is to be one, should fall somewhere within these two extremes.

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26. See X. M. FRASCOGNA, JR. & H. LEE HETHERINGTON, *THE LAWYER’S GUIDE TO NEGOTIATION* 50-56 (2001).

27. See *id.*

28. See *id.*

29. *Id.*

30. *Id.* at 55.

31. *Id.* at 55-56.

32. See WIZARD OF OZ, *supra* note 6.

33. FRASCOGNA & HETHERINGTON, *supra* note 26, at 52.

34. *Id.* at 53-54.

35. *Id.*

36. *Id.* at 52.

37. See *id.*

**ALTERNATIVES:** The last bit of pre-negotiation planning involves identifying the alternatives to a negotiated agreement.<sup>38</sup> After doing so, the negotiator should rank them in order of priority, from the most attractive to the least attractive.<sup>39</sup> This process ensures that the negotiator will never finish a negotiation in a worse position than where he started. If one accepts the premise that, for a negotiation to be successful, any final agreement must result in a net gain over the existing *status quo*, it follows that anything short of obtaining the basic objectives should be a clear signal to the negotiator to abort discussions and walk away from the negotiation. However, the walk away should be toward the next best available alternative to a negotiated conclusion, whatever that might be.

Roger Fisher and William Ury in their classic book, *Getting to Yes*, refer to this final phase of goal setting as the BATNA (Best Alternative to a Negotiated Agreement).<sup>40</sup> When the negotiator identifies his goals, as well as the BATNA at the outset, the negotiator effectively insulates himself from having to identify alternatives in a pressurized situation. This also allows the negotiator to avoid the common trap of substituting objective goals for the more subjective and less rational alternatives of making a deal for the sake of the deal, without regard to whether or not the client's interests are advanced. It follows that the only way to know when the client's interests are being served is to know precisely what they are. The ceiling and floor approach to defining goals, along with formulating the BATNA, will help the negotiator achieve this.<sup>41</sup>

### *G. The Basement Equals BATNA*

If at any time during the give and take of bargaining, the negotiator suddenly finds that the negotiation, for whatever reason, falls below the floor set as the absolute minimum acceptable position with no hope of return, it is time to invoke the BATNA and walk away from the deal.<sup>42</sup> No exceptions. Period.

### *H. Deal Points, Secondary Points And Trade Points*

Once the negotiator clearly identifies the Ceiling, the Floor, and the BATNA, the specific items on the wish list should be prioritized and assigned one of the

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38. *Id.*

39. *Id.* at 55.

40. ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN*, 101-111 (1983).

41. *Id.* at 104.

42. See FRASCOGNA & HETHERINGTON, *supra* note 26, at 55.



following labels: Deal Points, Secondary Points, and Trade Points.<sup>43</sup>

### 1. Deal Points

Deal Points are those fundamental items which are absolutely essential to a successful deal.<sup>44</sup> A true Deal Point should always provide the floor of the negotiation. Failure to obtain a Deal Point should automatically invoke the BATNA.

### 2. Secondary Points

Secondary Points are those points which are important, but not so crucial as to jeopardize the negotiation.<sup>45</sup> While it is preferable to gain these in the form of concessions, the deal should not fail because the negotiator is unsuccessful in obtaining one or more secondary points.

### 3. Trade Points

Contrary to what many highly competitive people choose to acknowledge, concessions are essential for a negotiation to work.<sup>46</sup> Trade Points provide the ammunition every negotiator needs to make effective concessions.<sup>47</sup> Trade Points are comprised of low priority objectives that can be readily relinquished as concessions and exchanged for more important Deal or Secondary Points.<sup>48</sup> Note that Trade Points can also be comprised of tangible or intangible bargaining chips that do not relate to specific objectives sought from the other side.<sup>49</sup> Effective use of leverage involves identifying things of little or no consequence to the negotiator that might be valued by the other side.<sup>50</sup>

#### *I. Step Into The Other Guy's Shoes*

Once the negotiator has determined goals in accordance with the Ceiling and Floor analysis, and after they are broken down into Deal, Secondary, and Trade Points, the negotiator should repeat the process from the vantage point of the negotiating counterpart.<sup>51</sup> The negotiator should write down the negotiator's best guess as to the opposite side's best and worst case scenarios, as well as the

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43. *Id.* at 54.

44. *Id.* at 51.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at 54.

opposition's alternatives to agreement, and then break down that information into Deal, Secondary, and Trade Points. Finally, negotiator should construct the opposite number's BATNA.<sup>52</sup> A side-by-side comparison of both BATNA positions will clearly indicate areas of consensus and difference. This exercise is also useful in suggesting the appropriate negotiating strategy, together with identifying specific items for compromise and exchange. For instance, if the negotiator's Deal Point is one of the opposite number's Trade Points, one can expect a quick, win-win deal. However, if the negotiator's Deal Point is the same as the other party's Deal Point, expect a long and difficult negotiation.

The final part of the planning exercise should include a personality analysis of the negotiator's counterpart. With that done, the negotiator is ready to negotiate, or in Dorothy's situation, ready to travel down the Yellow Brick Road.

### III. PLANNING A TRIP BACK TO KANSAS

Dorothy's Deal Point was clear from the first moment she became aware of her predicament; she wanted to go home to Kansas, as soon as possible.<sup>53</sup> By necessity, her other primary goal was to stay alive long enough to realize her goal, which meant eluding the wrath of the ill-tempered witch who was out to even the score for her sister's death.<sup>54</sup>

Of course, changed circumstances causes the adoption of new goals. Only later would Dorothy find out that the Wizard's Deal Point was elimination of the Wicked Witch of the West,<sup>55</sup> but that is getting ahead of the story.

According to the Munchkins, there was only one person who could write Dorothy a ticket back to Kansas, The Great and Powerful Wizard of Oz who lived far away in Emerald City.<sup>56</sup> The adventure of young Dorothy Gale's life was about to begin in a land as unfamiliar as it was beautiful. Fortunately, Franklin Baum's story telling ability is much like real life—full of obstacles, as well as some big pluses. If Baum could conjure up wicked witches, it was only fair to give Dorothy a helping hand in Glenda, The Good Witch of the North, who tipped Dorothy about the power of the ruby slippers.<sup>57</sup> Though she did not yet know it, Dorothy was about to meet some very important people with similar needs who would be willing to help her realize her overriding goal.<sup>58</sup>

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52. See FISHER & URY, *supra* note 40, at 109.

53. See WIZARD OF OZ, *supra* note 6.

54. See *id.*

55. See *id.*

56. *Id.*

57. *Id.*

58. See *id.*

As we know, on her journey to Emerald City, Dorothy befriended the Scarecrow, the Tin Man, and the Cowardly Lion, whom she met on the Yellow Brick Road.<sup>59</sup> Each of these characters was prompted to join Dorothy's trek by their own negotiating agenda. The Scarecrow wanted the Wizard to give him a brain, the Tin Man a heart, and the Lion courage.<sup>60</sup> Like Dorothy, each sought to alter their own *status quo* and were convinced that the Wizard was the ultimate decision maker, capable of granting all wishes great and small.<sup>61</sup> But the question remained, would he?

#### IV. FROM THE LAND OF OZ TO WORLD WAR II IN NORTH AFRICA

Before arriving in Emerald City, it would be useful to take a brief—albeit important—look at a second motion picture for insights into some of the same issues Dorothy faced in her negotiation with the great and powerful Wizard of Oz.

In 1970, thirty-one years after the release of the *Wizard of Oz*, actor George C. Scott portrayed famed American World War II General George S. Patton in the movie *Patton*.<sup>62</sup> For his work in the biographic film, Scott was chosen as Best Actor by the Academy of Motion Picture Arts and Sciences, an award he ultimately refused in Patton-like fashion as a meaningless popularity contest.<sup>63</sup>

One of the most memorable scenes in the movie involved a tank battle between Patton's army and the legendary German general Erwin Rommel, popularly known as the "Desert Fox."<sup>64</sup> In the movie, the Allies stopped the Axis threat at el Guettar, in Tunisia, when Patton ambushed a German tank brigade.<sup>65</sup> Patton's decisive attack resulted in a devastating loss for the Nazis, and subsequently cleared the way for the Allied invasion of Sicily and eventual occupation of Italy. "In the movie, the American general indicated that the key to victory was simply the predictability of the German forces. "The now-famous quote attributed to the colorful American general summed up the key to Allied success in stopping the seemingly invulnerable Nazi tank forces: "Rommel, you magnificent bastard, I read your book."<sup>66</sup> Patton was referring to a book entitled *Infanteire greift an*, written by Rommel in 1937.<sup>67</sup> By reading it, Patton knew exactly what Rommel was going to do and where he was going to do it. In his book, Rommel advanced revolutionary principles of war involving highly mobile forces designed to give infantry troops previously unheard of momentum and attack capability by

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59. *Id.*

60. *Id.*

61. *See id.*

62. PATTON, *supra* note 7.

63. *See generally* Michael Sauter, *Great Scott*, ENT. WKLY., Oct. 8, 1999.

64. *Id.*; *see also* 8 THE NEW ENCYCLOPEDIA BRITANNICA 165 (15th ed. 1993).

65. PATTON, *supra* note 7.

66. *Id.*

67. *See* LADISLAS FARAGO, PATTON: ORDEAL AND TRIUMPH 121 (1964). INFANTRIE GREIFT AN translates to "Infantry Attacks." 8 THE NEW ENCYCLOPEDIA BRITANNICA 165 (15th ed. 1993).

integrating them with armored units.<sup>68</sup> It is documented that Patton read Rommel's book prior to the outbreak of World War II while Patton was stationed at Fort Riley, Kansas, which ironically was not far from Dorothy Gale's fictional hometown.<sup>69</sup> According to *Patton*, it was this background information that allowed General Patton to devise a plan to counter the moves he knew were forthcoming from the great German tank commander, and Patton was absolutely correct in his assessment of his German counterpart.<sup>70</sup> Despite Rommel's brilliance as a military strategist, his predictability enabled Patton to destroy his rival's forces in North Africa, thus marking a turning point in the war.<sup>71</sup>

#### A. *Verify The Line Between Fact And Fiction*

*Patton* illustrates two points for negotiators—one obvious and one obscure. An obscure and unexpected negotiating lesson, relating to the tenuous line between fact and fiction, is drawn from the famous ambush scene in *Patton*. The memorable ambush scene enhanced the legend of General Patton and played a key role in winning the film an Oscar for Best Picture; however, the truth is that the famous confrontation never occurred. In fact, in 1942, Rommel led his Afrika Korps into battle at el Alamein, Egypt, a small coastal town some 96 kilometers west of Alexandria where the German tank forces were indeed decisively defeated by the Allies.<sup>72</sup> The Allied forces, however, were commanded by British General Bernard Montgomery.<sup>73</sup> In point of fact, at the time of el Alamein, General Patton was in California, training for desert combat conditions that simulated those of North Africa.<sup>74</sup> By the time Patton arrived in the Northern African theater where he bested the Germans in the Battle of el Guettar, the legendary Rommel was back home in Germany suffering from a serious illness.<sup>75</sup> While there are indications that Rommel did in fact take part in some of the planning for the battles in 1943 that involved General Patton, it was an Italian named Marshal Giovanni Messe who commanded the Axis forces.<sup>76</sup>

For those who never saw *Patton*, or for those who failed to pay close attention, many viewers believed, from watching Patton's big screen ambush of the German

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68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. 8 THE NEW ENCYCLOPEDIA BRITANNICA 291 (15th ed. 1993).

73. *Id.*

74. FARAGO, *supra* note 69, at 169.

75. *Id.* at 247.

76. *Id.*

tank forces at el Guettar, that Patton actually beat Rommel on the battlefield. This, in turn, helped foster and perpetuate Patton's myth long after the actual drama of World War II had been played out. This small little footnote of history stands to counsel any negotiator to be exceedingly careful when accepting information at face value, no matter how attractively packaged or generally accepted. The line between fact and fiction often turns on perception and belief, and failing to verify important information can spell trouble at the negotiation table.

*The Wizard of Oz* perfectly illustrates this point. Dorothy, the Scarecrow, Tin Man, Lion, and indeed, all of the residents of the Land of Oz, believed that the Great and Powerful Wizard of Oz was as advertised.<sup>77</sup> Indeed, the Wizard's special effects were calculated to fortify this impression.<sup>78</sup> Unfortunately, Dorothy and her friends had to learn the hard way that they were dealing with someone who was not what he seemed and who had no power to deliver on his promise to return Dorothy to Kansas, other than by hot air balloon.<sup>79</sup> The lesson here is to verify information, only deal with people who are empowered to make a decision, and then follow up on that choice.

### *B. The Dangers Of Being Too Predictable*

The more obvious lesson for negotiators to draw from this dramatic scene in *Patton* revolves around the dangers of being too predictable. Predictability robs the potency from uncertainty and provides valuable information needed to construct an effective time-line. Anticipating the almost certain actions of one's bargaining counterpart creates a tremendous advantage that allows the possessor of superior information to maximize the leverage of opportunity and sanction. However, some degree of predictability is built into every human being. The goal for all negotiators should be to minimize their own predictability, while at the same time striving to master techniques calculated to uncover the true nature of their counterpart's personality. Marston's theory is a valuable tool to help every negotiator accomplish that feat.<sup>80</sup>

### *C. People Are Highly Predictable*

Notwithstanding the infinite variants of the human experience, Marston's research indicates that people tend to fall into highly identifiable personality groups.<sup>81</sup> When these patterns are understood, they reveal a great deal of information about how people are likely to behave in any given situation. These

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77. WIZARD OF OZ, *supra* note 6.

78. *Id.*

79. *Id.*

80. See generally MARSTON, *supra* note 3.

81. See *id.* at 103-12.

principles make it possible for anyone to read people and predict behavior. When the added advantage of predictability is integrated with the rules of leverage, the odds of consistently achieving successful results as a negotiator are drastically improved. However, the question that remains is: "What are these scientifically verifiable patterns and how can they be recognized?"

#### *D. Marston's Theory Of Behavior*

While Freud and Jung researched the causes of abnormal behavior, Dr. William Marston, a psychologist at Columbia University, was intent on discovering what motivates normal people to act and react.<sup>82</sup> Marston, who is probably best known for his invention of the lie detector, also created the comic strip *Wonder Woman* written under a pen name.<sup>83</sup> However, his most enduring legacy was the 1928 publication of *The Emotions of Normal People*, which articulated his theory of human behavior.<sup>84</sup> According to Marston, people tend to interact with their environment in distinctly similar ways.<sup>85</sup> His research revealed that people's fundamental approach to life is either active or passive.<sup>86</sup> Likewise, people tend to view their environment as being either antagonistic or favorable.<sup>87</sup> By constructing intersecting lines representing these two fundamental axes, four personality quadrants are formed, and each quadrant corresponds to a predictable behavior pattern:

**DOMINANCE (D):** Active personalities in an antagonistic setting;

**INFLUENCE (I):** Active personalities in a favorable setting;

**STEADINESS (S):** Passive personalities in a favorable setting;

**COMPLIANCE (C):** Passive personalities in an antagonistic setting.<sup>88</sup>

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82. See generally MARSTON, *supra* note 3.

83. Olive Richard, *Our Women Are Our Future*, FAMILY CIRCLE, August 14, 1942, available at <http://www.hastur.com/WonderWoman/marston.html>. Dr. William Marston wrote *Wonder Woman* under the pen name Charles Moulton. *Id.*

84. See MARSTON, *supra* note 3.

85. See *id.*

86. See *id.*

87. See *id.*

88. *Id.*; see also JACK MOHLER, *THE NAME OF THE GAME IS YOU! HOW TO ZERO IN ON YOURSELF AND OTHERS; THE IMPORTANCE OF VALUES AND BEHAVIOR* (1981) (on file with author).

While Marston found that all human beings possess qualities that fall into each of the four quadrants, it became clear that one of the four will predominate, influencing that person's behavior accordingly.<sup>89</sup> He also found that people tend to be deliberate in their behavior, thus explaining why only about 20% of persons studied could be classified as active.<sup>90</sup> Marston's studies indicated that four out of every five people prefer incremental change and measured adjustment as a more prudent alternative to pro-activity, flux, and change.<sup>91</sup> This helps explain why in most cases, the *status quo* tends to change slowly, if at all.

Based on Marston's theory, it is possible to predict general patterns of human behavior by becoming familiar with the traits and patterns that correspond to each quadrant. It is, however, important to note that no personality type is inherently superior or inferior to any other, just different. Each quadrant has its own set of strengths and weaknesses, though people often see their own behavior only in degrees of what is considered positive and desirable.

One can test the validity of Marston's theory thinking of someone who might fit into the following categories:

**1) HI-D (Dominance–Intent is to Overcome or Conquer)**

Hi-D people are self-starters who thrive on challenge and competition.<sup>92</sup> They are direct, positive, straightforward people who say what they think, sometimes bluntly.<sup>93</sup> They make decisions quickly and love to be in charge.<sup>94</sup> These self-sufficient individualists seek out adventure, the unusual, and are apt to lose interest in anyone or anything that is routine.<sup>95</sup> While they are demanding of others, they are even tougher on themselves.<sup>96</sup> Hi-D personalities are often high achievers who are best described as being result-oriented and often impatient. In the extreme, they are driven "workaholics". A disproportionate number of corporate executive officers and military commanders share this quadrant, including our friend General George S. Patton, who is a classic Hi-D.

**2) HI-I (Influence–Intent is to Persuade and Sell)**

Hi-I persons are outgoing, gregarious, and persuasive.<sup>97</sup> They love people and feel very comfortable in one-on-one situations.<sup>98</sup> Optimism and openness are two common traits shared by Hi-I personalities.<sup>99</sup> Because they inherently like and trust people, and want to be liked in return, they sometimes over-promise and tend

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89. MARSTON, *supra* note 3, at 103-12.

90. *Id.*

91. MOHLER, *supra* note 90.

92. *Id.* at 15.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.* at 16.

98. *Id.*

99. *Id.*

to trust too much.<sup>100</sup> Hi-I people are natural salespeople who sometimes lose interest in following up once the sale is made.<sup>101</sup> The Hi-I loves being centerstage and is drawn to the limelight.<sup>102</sup> This explains why an inordinate number of celebrities and politicians share this quadrant. Former President Bill Clinton is the prototype Hi-I with all the predictable pluses and minuses. Oprah Winfrey, and just about every other talk show host one can think of, shares this quadrant as well.

### 3) HI-S (Steadiness–Intent is to be Supportive and Consistent)

The Hi-S is best described as easy-going, even-tempered, and relaxed.<sup>103</sup> Unlike the Hi-D and Hi-I, Hi-S people are low-key, undemonstrative people who dislike urgency and change.<sup>104</sup> The Hi-S tends to be friendly, but make no mistake, they are also possessive about everything, including family, possessions, and turf.<sup>105</sup> While they seldom argue or openly criticize, they can slow things down in quiet ways if they feel unnecessarily rushed.<sup>106</sup> Actor Jimmy Stewart is the personification of the Hi-S. Former President Gerald Ford also falls into the Hi-S quadrant.

### 4) HI-C (Compliance–Intent is to Avoid Trouble)

Hi-Cs are naturally cautious people who proceed in a precise and orderly way.<sup>107</sup> They seek to avoid conflict and antagonism by following established procedures.<sup>108</sup> The Hi-C is the classic detail-oriented person who documents everything just in case someone checks up on him or her.<sup>109</sup> These are the people who believe in doing everything “by the book.”<sup>110</sup> Unlike Hi-Ds, they are reserved and slow to make decisions.<sup>111</sup> This is the profile of the perfectionist, which explains why an inordinate percentage of concert pianists, chess masters, and certified public accountants are drawn from this quadrant. Former President Jimmy Carter is a Hi-C. Often criticized for his inability to make a decision, he was, in actuality, constantly refining his choices in an effort to make the very best decision possible.

The most important generalization to be drawn from Marston’s theory is

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.* at 17.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* at 18.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*



simply that people are different. Too many negotiators erroneously assume that everyone else shares their perspective, values, and priorities. For a negotiator, a foolproof formula for failure is to assume that everyone sees opportunities and problems through their own behavioral filter. Of course, some do and always will. That explains why people are drawn to people like themselves. However, one is more likely to encounter negotiators that either move too fast or too slow and who are either too cautious or not cautious enough. The proactive, dominating Hi-D and outgoing, action-oriented Hi-I personalities will tend to view others with more reactive profiles as having inadequate vision and urgency, while being hopelessly immersed in details.<sup>112</sup> Likewise, the more cautious Hi-C and the deliberative Hi-S negotiators are likely to view the Hi-D and Hi-I negotiators as being half-cocked, “bulls-in-a-china shop,” or grandiose, superficial talkers unwilling or unable to do the hard work necessary to transform ideas into reality.<sup>113</sup>

## V. INTERPRETING BEHAVIOR

It is relatively easy to identify behavior types when one quadrant is predominant. For instance, it is not difficult to group Hitler, Stalin, and Idi Amin as Hi-D personalities to the exclusion of everything else. They all shared a grandiose vision, iron will, paranoia of rivals, and obsession of ruling by edict. This is classic Hi-D behavior in its most extreme form. With each of these dictators, there was a pronounced absence of persuasion, support, or caution. Nothing short of total dominance was acceptable. Luckily, such exaggerated personality extremes are exceedingly rare. Most human beings behavior styles are a composite of Marston's four quadrants. This suggests that the arrangement of a person's Dominant (D), Influential (I), Supportive (S), and Compliant (C), or DISC factors, will further refine their behavioral profile.<sup>114</sup> People often moderate or mask one trait with another to enhance their effectiveness and personal appeal. For instance, a Hi-D combined with very low I, S, and C fits the profile of the dictator.<sup>115</sup> By understanding these relationships and learning to detect them in ourselves and others, it is possible to refine our ability to read people and make necessary adjustments.

Consider the behavioral profiles of two former United States Presidents: Ronald Reagan and Richard Nixon. For each, try to determine the relationship of the various factors. For instance, the Hitler-Stalin-Amin profile is clearly Hi-D, Low-I, S, and C.

Consider the behavioral profile of former President Ronald Reagan. Labeled by the Washington Press Corps as the “Great Communicator,” Reagan is an

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112. *Id.*

113. *Id.* at 17-18.

114. *Id.* at 20-32.

115. *See id.* at 20.

interesting composite of Marston factors. Classifying him as a classic, Hi-I is only partially correct. His Hi-I affability and ability to sell his programs and policies helped mask his Hi-D tendencies. As President, he took every opportunity to push his clearly defined political agenda—conquering communism, drastically cutting taxes, and reversing the intrusion of the federal government into the lives of Americans. His uncompromising views, along with his legendary disdain for details, short attention span, and management by delegation underscore a Hi-D personality. Conversely, Reagan's ongoing assault on liberal policies and his obsession with the Evil Empire of the Soviet Union are indicative of Low-C, Low-S behavior. Reagan's genius was an ability to project a Hi-I profile in order to sell a decidedly Hi-D agenda.

In marked contrast, consider former President Richard Nixon. Nixon, a highly competent and pragmatic chief executive, arguably was our most able President in terms of foreign affairs. As with Reagan, Nixon had a bold vision for the world that allowed him to open China to the West and extricate the United States from the Vietnam war. Despite his immense ability, his Hi-D paranoia was eventually his undoing. The Watergate scandal is a striking affirmation of the principle that people like people who are similar to themselves. The Nixon White House with its alter ego, the "Committee to Re-elect the President," was clearly one of the most Hi-D, Hi-C, Low-I, Low-S organizations ever assembled. Everyone from Haldeman, to Ehrlichman, to Mitchell were virtual behavioral clones of their boss. Consequently, there was no sense of perspective at work. Everything became a political conspiracy and everyone outside the inner circle became a political enemy. With no Hi-I or Hi-S anywhere in sight to moderate the unfavorable filter through which the President and his men viewed the world of politics, it is not at all surprising that the Watergate scandal took place. What is even more astonishing is the fact that Watergate was completely unnecessary. No serious student of Presidential politics gave George McGovern a realistic chance of beating an effective incumbent President. All of this demonstrates the power of behavior to take its own predetermined course in the face of rational arguments to the contrary.

Comparing the relationship of the four quadrants to one another to refine the process of personality prediction is a valuable technique, provided that the information is used to the negotiator's best advantage. The initial objective in every negotiation is to establish the maximum degree of rapport and trust possible. Once this is accomplished, the protective psychological walls that each of us erects when encountering strangers will begin to crumble. Until this happens, it is unrealistic to think that one's substantive proposals, no matter how meritorious, will get a fair hearing. Indeed, some people are untrustworthy and should be avoided if possible. In the overwhelming percentage of new bargaining

relationships, however, it is either the erroneous perception that one is not trustworthy or a basic lack of rapport between the parties that dooms the relationship from the outset. This is where knowledge of behavioral patterns becomes an invaluable asset. Once the critically important prerequisites of rapport and trust are established, the negotiator who has mastered this knowledge can begin to use the information on behavioral patterns in a tactical sense. For instance, when it comes to bringing a negotiation to closure, one will know that it is best not to push a Hi-S or Hi-C to an early conclusion.<sup>116</sup> Conversely, a Hi-D or Hi-I is likely to lose interest in the deal if the negotiation is drawn out too long.<sup>117</sup> All of this is further complicated by the relationships of the subordinate traits to the predominate trait. Thus, a Hi-D with a healthy dose of Hi-C characteristics will be much more wary of an early conclusion than a Hi-D, Low-C who will welcome such closure to allow him or her to focus on the next problem or challenge.

## VI. USING BEHAVIORAL PROFILES TO NEGOTIATE

Assuming the negotiator identifies his own profile and that of his negotiation counterpart, how then does he make best use of the information? The first step is to appreciate differences rather than dismissing the profiles of others as being less desirable or somehow inferior to one's own. It is important for the negotiator to understand that not everyone sees and experiences life as he does. This becomes even more problematic when negotiators come from different cultural or socio-economic backgrounds. Insisting on conformity to a particular behavioral profile is not only unrealistic, but is dangerous when applied to negotiations. When it comes to bargaining, pushing someone out of their comfort zone is the surest way to kill a deal. Consequently, it is important for negotiators to construct separate needs profiles for themselves and the negotiation counterpart. If both personalities fall into the same quadrant, both parties will probably find it easier to understand each other. However, the chances are that there will be some degree of discrepancy in the behavioral profiles. The key is to identify these differences and adjust accordingly. The following chart provides a quick reference on how best to bridge the behavioral differences that inevitably crop up in negotiations:

### A. Hi-D (Dominate) Negotiators<sup>118</sup>

**DO:**

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116. *Id.* at 36-37.

117. *Id.* at 34-35.

118. X. M. FRASCOGNA, JR. & H. LEE HETHERINGTON, *The 5000 Year Old Formula: From Moses to Next Monday Morning--The Rules Haven't Changed* (1999) (unpublished manuscript, on file with author).

\*Get right to the point

\*Focus the negotiation on objective considerations, rather than personal relationships

\*Demonstrate exactly why how the proposal is beneficial to the negotiator

\*Emphasize options and results

\*Back up assertions with facts

\*Bring the initial presentation to a timely conclusion

**DON'T:**

\*Be afraid to utilize the leverage of time by setting deadlines

\*Waste time or go into unnecessary detail

\*Overstate or exaggerate

\*Appear indecisive or unprepared

\*Take failure to consider risks and weigh the pros and cons of a proposal as a negative sign

**B. Hi-I (Influential) Negotiators<sup>119</sup>**

**DO:**

\*Take time to develop a personal rapport and relationship

\*Deal with a negotiation counterpart as an equal

\*Be friendly, warm, enthusiastic, and open

\*Utilize the leverage of opportunity

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119. *Id.*

\*Ask for input

\*Frame conflict oriented negotiation in terms of joint problem solving

**DON'T:**

\*Get down to business immediately

\*Be abrupt or curt

\*Dominate or monopolize the conversation

\*Be put off if the other party interrupts

\*Take lack of concentration or failure to follow up on important facts as a negative sign

**C. Hi-S (Steady) Negotiators<sup>120</sup>**

**DO:**

\*Take time to establish a comfortable rapport

\*Be patient and relaxed in one's approach

\*Demonstrate interest by being an attentive listener

\*Solicit the counterpart's objectives and concerns

\*Stress reliability

\*Emphasize sincerity

**DON'T:**

\*Be erratic or impatient

\*Be overly aggressive

\*Move too fast

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120. *Id.*

\*Leave out important details

\*Take hesitancy or reluctance to make a decision as a negative sign

**D. Hi-C (Compliant) Negotiators<sup>121</sup>**

**DO:**

\*Appeal to logic

\*Provide substantiation and documentation to back up assertions

\*Keep negotiations formal and business-like

\*Address the details and fine points of a proposal

\*Anticipate questions and weaknesses in the proposal

\*Make provision for problems

**DON'T:**

\*Be overly familiar or casual in one's approach

\*Move too fast

\*Make statements that cannot be substantiated with documentation, statistics, or other forms of demonstrative proof

\*Be afraid to go into exacting detail

\*Take caution or coolness as a negative sign

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121. *Id.*

## VII. THE FALLACY OF AN “I WIN-YOU LOSE” MINDSET

Conventional wisdom teaches that negotiation American-style is strictly a game of in-your-face confrontation with winners, losers, and little in between. This is certainly understandable in a culture that values winners and winning. To most Americans there is little differentiation between football championships, leveraged buyouts, or courtroom victories; they all involve the battlefield mentality of winners who marshal superior attributes to carry the day against competitors who are not quite up to the challenge. That is fine for inherently adversarial pursuits such as sporting events, unfriendly business takeovers, and lawsuits. Unfortunately, too many people frame their daily negotiations in similar terms, and this is a mistake. As suggested earlier, in all business-oriented bargaining and most successful dispute resolution negotiation, the elements of trust and cooperation are essential prerequisites for the process to work.<sup>122</sup> Even the most celebrated corporate takeover or jury verdict is evidence of a failed negotiation. As discussed previously, the price of such a force-driven alternative resolution is high indeed. Clearly, not all negotiations are capable of a win-win result. However, all successful negotiations do require at least some degree of rapport, trust, and cooperation. The question which follows then is, How is that rapport, trust, and cooperation created and maintained? Certainly not by touching off a war of words.

### A. *Marston And The Wizard Of Oz Characters*

Apart from the specific deal point each sought, it is both interesting and instructive to use the characters of the *Wizard of Oz* to illustrate and apply Marston's principles of behavior and personality. The easiest to identify is the Wicked Witch of the West. There is little doubt that the Witch is a Hi-D, with few moderating traits. Her obsession with capturing Dorothy's ruby slippers through the use of force and intimidation closely follows the dictator profile of Hitler, Stalin, Idi Amin, and to a somewhat lesser extent, General Patton.

A somewhat more difficult task is to identify the predominate traits of Dorothy and her three companions. Each of the four has a distinct personality corresponding to one of Marston's four predominate DISC behavioral types. The following characters are matched below with their predominate personality types:

Dorothy.....D  
Scarecrow.....I  
Tin Man.....S

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122. See *supra* discussion Part V.

Cowardly Lion.....C<sup>123</sup>

**Dorothy:** In many ways this is the most difficult call to make. Although Dorothy has a lot of Hi-S compassion, she is the Hi-D of the group. This attribute is clearly seen by her leadership and relentless push toward Emerald City. It is also apparent in her fearless willingness to stand up to wizards and witches alike.

**The Scarecrow:** The Scarecrow is the classic Hi-I of the group. He is clearly the most outgoing and entertaining of the four.

**The Tin Man:** If ever there was a Hi-S in the group it is the Tin Man. His tender heart and supportive nature helped the group through innumerable hard times.

**The Cowardly Lion:** The character exhibiting Hi-C behavior is the Cowardly Lion. Despite his bravado, it is clear the Lion wanted to avoid trouble at every turn.

#### *B. Perception Is Reality—And Not Just In Oz*

Proceeding on their arduous journey to The Emerald City, Dorothy and her new friends were totally unaware that they were on their way to a negotiation. They viewed themselves as supplicants seeking the grace of an all-powerful and benevolent Wizard possessed of magical powers. But as is so often the case in negotiations, appearances can be deceiving, as illustrated by the famous scene in *Patton* that never, in fact, took place.<sup>124</sup> Though there was no way for Dorothy to know it, the Wizard's act was pure subterfuge. The would-be sorcerer was merely a carnival huckster whose hot air balloon was blown off course and ended up in Oz under circumstances similar to Dorothy's.<sup>125</sup> But unlike the little girl with whom he was about to negotiate, the shrewd old man took advantage of his seemingly supernatural arrival by installing himself as the symbolic, yet inaccessible, ruler of Oz.<sup>126</sup> The Wizard made the most of the old adage that perception is indeed reality. Ironically, it was the Wizard who assigned supernatural powers to the little girl with the black dog.<sup>127</sup> After all, she was able to do what the Wizard never could—rid Oz of the Wicked Witch of the East. It

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123. Though it is probably a coincidence, WIZARD OF OZ author Franklin Baum introduced his characters in clockwise order that corresponded to the DISC chart introduced previously. See WIZARD OF OZ, *supra* note 6.

124. See *supra* notes 64-78 and accompanying text.

125. THE WIZARD OF OZ, *supra* note 6.

126. *Id.*

127. *Id.*



occurred to the Wizard that everybody's life could be enhanced if he could find a way to get Dorothy to dispose of the Wicked Witch of the West, an impossible task which he had no idea how to accomplish.<sup>128</sup>

### C. *How Many Wizards Are Out There?*

The ironies of Oz should not be lost on negotiators. First of all, it is human nature to assume everybody else knows what they are doing. Likewise, it is easy to focus on the weakness of one's own position while assuming that the opposite number is dealing from a position of strength. While that can be the case, no individual, company, or nation is totally self-sufficient. This basic fact of interdependency is the prime mover of negotiation and compromise. Unfortunately, too many negotiators fail to fully appreciate their capacity to create leverage and make things happen. Like the seemingly all-powerful Wizard of Oz, the world is populated by more than a few paper tigers, and even real tigers have their own problems and weaknesses. Some are just better than others at concealing them.

### D. *"I Am The Great And Powerful Wizard of Oz"*<sup>129</sup>

Who can forget the initial face to face encounter between Dorothy, her friends, and the all-powerful Wizard of Oz? When the four entered the Great Hall of Oz, they were greeted by a giant broiling fireball and a booming voice—all of which had a supernatural effect that transcended anything human.<sup>130</sup> Of course, it was all an act, but an effective act nonetheless. Though the innocent quartet still did not know it, the parameters of a potentially deadly negotiation were set. The Wizard was prepared to trade a heart, a brain, courage, and a one-way ticket to Kansas for the broom stick of the Wicked Witch of the West.<sup>131</sup> However, Dorothy had to first deliver her end of the bargain.

Once again, Dorothy and her friends were outflanked by the manipulative ruler of Oz. Because the old man was so successful in his efforts to cloak the Wizard's identity in myth and mystery, he was able to move freely about disguised as the crusty old gatekeeper of Emerald City.<sup>132</sup> This allowed him a significant information advantage over the unsuspecting Dorothy and her friends. Upon their arrival in Emerald City, the gatekeeper was able to learn all he could about the unsuspecting visitors.<sup>133</sup> As we know, the Wizard was able to transform this

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128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

information into an effective negotiating agenda calculated to rid Oz of the menacing Wicked Witch of the West.

### *E. The Wizard's Power—Superior Information And Credibility*

The lesson for negotiators is clear—there is no substitute for good, solid information about one's bargaining counterpart. The more known about the opposite number's agenda, leverage, and deadlines, the more effective the negotiator will be in getting what the negotiator wants. Dorothy, the Scarecrow, Tin Man, and the Lion left Emerald City empty handed, and because of the Wizard's high-tech packaging, he was able to maintain and project sufficient credibility necessary to convince the foursome to risk their lives in quest of the newly announced Deal Point: the Witch's broomstick.<sup>134</sup>

Dorothy was ultimately successful in melting the Wicked Witch of the West, but only after an armada of winged monkeys abducted her and imprisoned her in a castle tower.<sup>135</sup> In so doing, she won the affection of an army of mercenaries and more importantly, possession of the Witch's broomstick.<sup>136</sup>

### *F. The Wizard And Dorothy: The Second Round*

Finally, after more adventure and close calls than most people experience in a lifetime, Dorothy and her friends made their triumphant return to Emerald City to redeem the promises made by the Wizard.<sup>137</sup> Sensing his inability to uphold his end of the bargain, the ex-carnival-barker-turned-Wizard utilized delay tactics to keep the little girl and her brave friends from discovering his true identity and inability to keep his end of the bargain.<sup>138</sup>

As the angry fireball boomed his displeasure, Toto nipped at a curtain off to the side of the Great Hall of Oz.<sup>139</sup> To everyone's surprise, it revealed a man manipulating levers and speaking into a loudspeaker.<sup>140</sup> "Pay no attention to that man behind the curtain . . . I am the great and powerful Wizard of Oz."<sup>141</sup> Unfortunately for the Wizard, his secret was finally out. The great and terrible Hi-

134. *See id.*

135. *Id.*

136. *Id.*

137. *Id.* Dorothy told the Wizard, "We've done what you told us, we brought you the broomstick of the Wicked Witch of the West . . . so we'd like you to keep your promise, if you please, sir." *Id.*

138. *Id.* The Wizard barked, "Not so fast, I'll have to give the matter a little thought. Go away and come back tomorrow." *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

D ruler of Oz was in fact not a supernatural version of General Patton, but rather, a meek and kindly Hi-S imposter whose disguise was unveiled. In response to Dorothy's allegation that the Wizard was a "very bad man," he responded, "No, my dear. I'm a very good man, I'm just a very bad Wizard."<sup>142</sup>

### G. Defining *The Quid Pro Quo*

Now that Toto has uncovered the ruse, it was time for the Wizard to make good on his promises. Once again, the Wizard's ingenuity carried the day while providing all negotiators with an excellent lesson in packaging. To the Scarecrow, who so desperately wanted a brain, the Wizard gave a testimonial.<sup>143</sup> Like so many of us, all the Scarecrow really wanted was validation. Likewise with the Lion, the intangible of courage, developed and tested through his adventures with Dorothy, was conclusively validated with a hero's medal.<sup>144</sup> Finally, to the Tin Man, who clearly had the biggest heart of all, the Wizard gave a ticking, heart-shaped clock.<sup>145</sup> In all three instances, the benevolent old man found a way to satisfy the Deal Point needs of each of the three by making the effort to truly understand what they really wanted and responding with what was, in effect, three classic Trade Points.<sup>146</sup> This demonstrates that all negotiators should look behind the positions of their counterparts to find the necessary common ground to seal the deal.

For all the Wizard's success with the others, Dorothy's Deal Point was admittedly a tougher wish to grant. There was no other alternative for the Wizard than to abdicate his Wizardry, dust off the hot air balloon that had transported him to Oz, and take the Dorothy and her dog back to Kansas himself.<sup>147</sup>

### H. Dorothy's BATNA: *The Ruby Slippers*

On the appointed day amid great fanfare, just as the balloon carrying the Wizard and Dorothy was cut loose, Toto jumped from Dorothy's arms into the crowd.<sup>148</sup> As Dorothy ran to follow, the balloon drifted away, and with it her last chance to return home.<sup>149</sup> After all of the trials and tribulations, circumstances, as they so often do, made it impossible to close the deal. For a negotiator who failed to develop a contingency plan, or as Fisher and Ury would call it, a BATNA position, all appeared lost.<sup>150</sup> Dorothy was, however, wearing her BATNA in the

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142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *See id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *See FISHER & URY, supra note 40, at 101-11.*

form of the mysteriously powerful ruby slippers. With the help of Glenda, the Good Witch, Dorothy realized that the slippers represented her BATNA. By simply clicking the heels together and repeating the phrase, "There's no place like home" three times, she realized her objective even more surely, safely, and immediately than she would have with a balloon ride into the unknown.<sup>151</sup> The lesson of the ruby slippers is ultimately that no matter how problematic a situation appears to be, the ultimate strength of every negotiator lies within. There is simply no substitute for perseverance, commitment, and resourcefulness when it comes to changing the *status quo* for the better. Throughout all of Dorothy's adventures, she never lost sight of her ultimate objective—to go home. Dorothy finally made her dream come true. Therefore, when the odds appear overwhelming and one feels outgunned in a negotiation, one should remember Dorothy and the Wizard of Oz and follow the Yellow Brick Road of planning, personality, and persistence.

#### VIII. CONCLUSION

Like so much of life, there is nothing particularly difficult about grasping the abstract principles of negotiation and personality assessment. However, consistent and effective application of this knowledge in a time-sensitive environment, characterized by competing needs, incomplete information, constantly changing circumstances, unrevealed deadlines, misleading signals, hidden agendas, and other ambiguous factors that combine to create the real world landscape of deal making and dispute resolution, is quite another matter. As with our fictional friend Dorothy Gale, necessity is the best and only true motivator we need. As lawyers, negotiation is a primary tool of the profession. For that reason alone, lawyers should strive to improve their negotiation skills in order to make the most of their potential. As any art student will claim, it never hurts to have another perspective on the use of light and color. So it is with the art of negotiation. Hopefully, Dr. Marston's principles of human interaction, along with the foregoing parables in fiction and fact, provide that additional perspective.

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151. THE WIZARD OF OZ, *supra* note 6.

