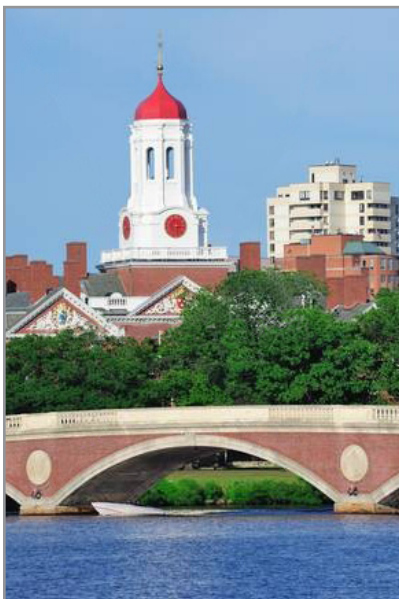




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Negotiation Special Report #1

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1. Get your head in the game.

Like top athletes, smart negotiators confront the cognitive and psychological errors that could keep them from performing at their best.

IN 2000, 18-YEAR-OLD MATT HARRINGTON WAS WIDELY CONSIDERED the most promising pitcher in the Major League Baseball (MLB) draft. The Colorado Rockies chose him as their seventh pick and then sweetened the pot after Harrington, his parents, and his agent, Tommy Tanzer, rejected the team's first offer. On behalf of his client, Tanzer turned down the Rockies' final offer of \$4 million over two years, though it was a typical offer for a seventh-pick player.

After a disappointing season in the independent leagues, Harrington entered the 2001 MLB draft, where the San Diego Padres made him the 58th overall selection. On the advice of his new agent, Scott Boras, Harrington rejected an offer of \$1.25 million over four years and a \$300,000 signing bonus.

In 2002, following another lackluster season in the independent leagues, Harrington did poorly in the MLB draft and turned down less than \$100,000 from the Tampa Bay Devil Rays.

In 2003, the Cincinnati Reds drafted Harrington in the 24th round and offered him little more than the opportunity to play; again talks fell through. In 2004, the New York Yankees drafted Harrington in the 36th round but passed on making him an offer.

After failing to receive any offer in the 2005 draft, Harrington became a free agent. In 2006, he received a minor-league contract from the Chicago Cubs, but he was released before the 2007 season began. He continues to play for independent-league teams, earning about \$1,000 per month, and works other jobs during the off-season.

Matt Harrington holds the dubious distinction of being the longest holdout in the history of the MLB draft. His string of botched negotiations ensured that his career ended before it could even begin.

The mistakes Harrington and his negotiating team made are spectacular as a whole, but considered one by one, they are not unique. In their book, *Judgment in Managerial Decision Making* (Wiley, 7th ed., 2008), professors Max H. Bazerman of Harvard Business School and Don A. Moore of Carnegie Mellon University present Harrington's thwarted baseball career as a cautionary tale to illustrate the decision-making errors that affect virtually all negotiators.

In negotiation, we unwittingly operate under a number of systematic and predictable cognitive biases on a regular basis. Many of these errors in thinking result from our tendency to put too much trust in our intuition. Here we present three of the most common mistakes that Bazerman and Moore have identified and suggest a number of ways to keep this faulty thinking from ruining your most important talks.

Mistake No. 1: Viewing negotiation as a fixed pie. Negotiators often falsely assume that their interests are directly opposed to those of their counterparts. The prevalence of competition in our society, ranging from sports to university admissions to corporate promotion systems, can lead us to view many other situations as win-lose. For example, too many negotiators assume that the pie of resources is fixed in size when, in fact, opportunities exist to expand the pie by creating value.

What's more, researchers have found that the belief in a fixed pie causes negotiators to devalue any concession their "adversary" makes. Unfortunately, Matt Harrington and his agents succumbed to the tendency to view the other side's alleged best offer with too much suspicion. They also neglected to explore the possibility of a value-creating trade, such as accepting the salary offered and negotiating performance-based bonuses if Harrington played as well as he expected.

Solution: Share information. The simplest way to break through the fixed-pie mindset in a negotiation is to disclose information to your counterpart. In particular, try to provide information that could lead to wise tradeoffs. If a customer complains about your prices, break down your costs for her and ask whether she is willing to make concessions on delivery time or other issues

in return for lower prices. Typically, the discoveries you reach jointly will outweigh the risk that the other side will take advantage of the information you disclose.

Mistake No. 2: Anchoring on the first offer. Harrington and his family fell victim to another common cognitive bias: they were overly affected by the first number that entered the negotiation. Harrington's first agent, Tommy Tanzer, told MLB teams with high draft choices that Harrington would require at least a \$4.95 million first-year signing bonus—an unrealistic amount that scared off seven teams in the draft. This high anchor created expectations in the minds of Harrington and his family that could not be supported.

Initially, the Harringtons stood by Tanzer's hard bargaining. Only later did they come to understand that they had hired an inexperienced agent—and file a lawsuit against him for botching the deal.

Solution: Reject anchors. Unprepared negotiators are far more likely to fall into traps, such as inappropriate anchors, than their prepared counterparts. When you come to the table unprepared, you put yourself at a distinct disadvantage. Set concrete goals for the negotiation in advance so you won't be swayed by others' influence tactics and vivid stories.

In addition, keep in mind that your thinking will tend to be more intuitive and less rational when you're pressed to make snap decisions. Don't allow other negotiators to force you to give an answer right away. Instead, schedule breaks between negotiating sessions that give you time to think and evaluate.

Mistake No. 3: Escalating commitment. After wising up about Tanzer, why did the Harringtons make the same mistake year after year—rejecting decent offers in favor of much worse alternatives?

When Tanzer urged his 18-year-old client to turn down the Rockies' multimillion-dollar deal, he unwittingly set up his client for a string of failed negotiations. According to Bazerman and Moore, negotiators have a tendency toward irrational *escalation of commitment*—a strong psychological need to justify their prior decisions and behaviors, both to themselves and to others. After you've invested a great deal of time and energy in a course of action, it's difficult to know when to quit.

Many of us would rather remain committed to a losing strategy than admit we're throwing good money after bad. As for Harrington, by turning down one disappointing draft offer after another, he committed himself more deeply to doing better the next year, even as the odds of that happening dropped out of sight.

Solution: Don't dwell on the past. Thoughts about the “sunk costs” you've invested can keep you plodding forward long after you should quit a negotiation or settle for a disappointing deal. Yet economists tell us that past investments should rarely affect our decisions about the future. At each decision point during your talks, make sure you have a sound basis for escalating your commitment to a deal.

Adapted from “When Your Thoughts Work Against You,” first published in the *Negotiation* newsletter (October 2008).

2. Manage team dynamics.

When you are trying to pull your team together, you'll need to carefully navigate group negotiations.

HOW DO YOU GET THE ATTENTION OF NEGOTIATING PARTNERS who seem intent on running off to greener fields? That's the question Dan Beebe, the commissioner of the Big 12 college athletics conference, faced as his league threatened to splinter apart.

A rush on the field. Beebe's troubles began on June 10, 2010, when the University of Colorado abandoned the Big 12, lured away by the Pacific-10. Larry Scott, the Pac-10's new commissioner, was on a mission to launch a league TV network by acquiring member schools in new geographic regions, according to the *New York Times*.

A day later, the University of Nebraska also decamped from the Big 12, joining yet another league, the Big Ten. The Big 12 was down to 10 members—a number that immediately threatened to go down by half. Lining up behind the University of Texas, the Big 12's moneymaking powerhouse, were Texas

Tech University, the University of Oklahoma, and Oklahoma State University, attracted by the Pac-10's promises of sky-high television revenues. Meanwhile, Texas A&M University, another Big 12 member, was said to be flirting with the Southeastern Conference as well as the Pac-10. The other five members of the Big 12 faced the prospect of scrambling to find new homes in other leagues.

Hit hard by the economic crisis, universities have put pressure on their athletic divisions to ramp up revenues. In this climate, the long-predicted prospect of college athletics conferences merging into four 16-team "super-conferences," structured around lucrative TV deals rather than traditional rivalries and geography, suddenly seemed imminent.

The playbook changes. On June 14, though, the game of musical chairs came to an abrupt end. The University of Texas announced it would stay in the Big 12, as did its four followers.

There were a number of reasons for the schools' change of heart. First, and most notably, Commissioner Beebe promised them between \$14 million and \$25 million each in TV revenue per season (with the highest sum going to Texas), about double their 2009 TV earnings. Texas also gained the right to launch a potentially lucrative Longhorns TV network. Beebe had negotiated with the Big 12's TV networks, ABC/ESPN and Fox, for promises of generous renegotiation terms in the years ahead. These future TV deals were viewed as critical to winning over University of Texas President Bill Powers and keeping the conference intact.

Second, the five schools that would have been left in a tattered Big 12 offered to give Texas, Texas A&M, and the University of Oklahoma their share of the reported \$32 million in departure penalties that Nebraska and Colorado owed for abandoning the conference.

Third, a number of influential individuals "without a dog in the hunt"—including business executives, athletic directors, and network executives—quietly lobbied Texas and the other schools being pursued to stay put, a National Collegiate Athletic Association (NCAA) source told ESPN.com. These concerned outsiders reportedly warned the universities that the Pac-10's expansion deal was against their best interests. The group also was said to have helped Beebe with his TV negotiations.

Finally, Texas made 11th-hour demands that turned out to be a deal breaker for the Pac-10. Given its plan to build its own TV network, the Pac-10 refused to let Texas keep its local network rights. Nor would the Pac-10 give the school the “extra sweetener” it desired in revenue sharing, a source told the *Times*.

Having gone down to 10 teams, the Big 12 is expected to have to forfeit its traditional championship game, in accordance with NCAA rules. But under Beebe’s leadership, the league succeeded in keeping storied rivalries intact while also appeasing its members financially—at least for the time being.

How to inspire team loyalty

- ❶ **Do a side deal or two.** Commissioner Beebe understood the power of money to influence the mutinous universities. Through side deals with ABC/ESPN and Fox, he secured promises of TV contracts that rivaled the Pac-10’s offer.
- ❷ **Exploit patterns of deference.** The University of Texas was the clear leader of the Big 12 schools that were threatening to defect. Aware of this fact, Beebe concentrated his efforts on winning over Texas in the expectation that the others would line up behind its decision.
- ❸ **Ask for a sacrifice.** The five universities that risked being abandoned in the Big 12 stepped up financially to help keep the league united. Such sacrifices demonstrate goodwill and team spirit.
- ❹ **Enlist new players.** The shadowy group that worked to try to hold the Big 12 together may have strongly influenced the final outcome. If your counterparts won’t listen to you, recruit outsiders they respect to argue your case.

“The Near-Collapse of the Big 12: Holding a Winning Team Together,”
first published in the *Negotiation* newsletter (September 2010).

3. Gain a competitive edge.

To triumph in cutthroat situations, such as negotiations where agents are present, you’ll need to tap new sources of strength.

SHOW ME THE MONEY!” THAT REFRAIN FROM THE 1996 MOVIE *Jerry Maguire*, shouted by a football player to his agent, continues to echo through U.S. professional sports negotiations today. A public arena, enormous piles of cash, and even bigger egos combine to make sports negotiations a unique context. Yet

anyone who has negotiated through agents, faced a competitive atmosphere, or lacked strong deal alternatives can learn a lot from team athletics.

Why are sports talks so tough? In his chapter “First, Let’s Kill All the Agents!” in *Negotiating on Behalf of Others* (Sage, 1999), Harvard Business School professor Michael Wheeler analyzes the key features that can make sports negotiations so contentious. Here are three of them:

1. The presence of agents. In recent decades, the rise of players’ unions, collective bargaining, and growing revenue streams from advertising and broadcast fees gave players more leverage than ever before—and created a greater need for experts to negotiate athletes’ increasingly lucrative and complex contracts. Agents can add value by matching players with the right teams and insulating them from subpar offers and hard-bargaining tactics, according to Wheeler.

But because sports agents typically have relationships with many different teams and players, and earn a portion of their clients’ salaries (typically 4% to 10%), they face significant conflicts of interest. Sports agents are routinely accused of keeping players in the dark during contract talks and focusing on player salary to the exclusion of other deal features that might please their clients, such as a great location or options for contract extensions.

For reasons such as these, a small number of athletes choose to negotiate on their own behalf. Former Major League Baseball (MLB) pitcher Curt Schilling successfully negotiated an \$8 million incentive-laden one-year contract extension with the Boston Red Sox for himself, only to sit out the entire 2008 season with a shoulder injury. On his blog, Schilling wrote in 2007 that “at some point in your career, an agent becomes baggage.”

2. Lack of alternatives. Consider the saga of baseball player Matt Harrington, described in the first article in this report. As we noted, for four years straight, the pitcher entered the MLB draft. Year after year, negotiating through different agents, Harrington turned down offers from MLB teams. As Harrington got older, the offers got worse, falling from a promise of \$4 million over two years to little more than the chance to play in the majors.

The story illustrates a prime feature of most professional sports deals: a lack of strong outside alternatives. In most negotiations, if talks with one counterpart don’t go well, we can walk away and deal with someone else. But in the major

U.S. team-sports leagues, including MLB, the National Football League, and the National Basketball Association, players enter the system through a draft that requires them to negotiate with one particular team. For most junior players, holding out for a better deal means sitting out the season—not an appealing career option. Only when athletes have served their team for a set number of years are they eligible to become free agents and negotiate with other teams.

3. No zone of agreement. In negotiations outside the realm of sports, parties typically see value in negotiating with each other only if a *zone of possible agreement*, or ZOPA, exists. If you’ve decided to pay no more than \$15,000 for a new car, you won’t bother visiting your local Porsche dealership.

Yet agents and sports teams often begin their negotiations miles apart. Instead of dealing in the ZOPA, according to Wheeler, they deal in the “NOPA”—the realm of *no possible agreement*. In a 1995 study, Wheeler and his colleagues David Lax and James Sebenius tested this theory by observing how actual National Hockey League (NHL) general managers behaved in a simulated NHL salary negotiation. Almost all the pairs, playing the role of player’s agent and general manager, started the negotiation with a large gap in their bargaining range. That is, those acting as agents demanded much higher salaries for their players than those playing managers were willing to offer.

In NOPA negotiations where the only alternative is to walk away (or, for senior players in some sports, to let an arbitrator decide your fate), parties on both sides of the table concentrate on getting the other party to budge, notes Wheeler. Under these conditions, negotiation becomes nothing more than a matter of hoping the other guy blinks first.

From competition to collaboration. If you’ve faced some of the same challenges that plague sports negotiations, these four tips can help you strive for greater collaboration and trust:

1. Manage your agent. In a chapter in *Negotiating on Behalf of Others*, Brian S. Mandell argues that athletes who negotiate through agents need to take a number of steps to guard against agent incompetence and conflicts of interest. This advice applies to all negotiators who allow others to speak for them. First, give your agent clear instructions regarding your long-term goals and your

range of interests. Second, limit your agent's authority to make commitments on your behalf. Third, make sure that your agent consults with you throughout the negotiation process. Fourth, try to align your agent's compensation with your interests by structuring a payment scheme that rewards him for creating value at the table. Finally, verify your agent's statements by reaching out to your negotiating counterpart. Even if you're not sitting at the table, you still have a right to speak with the other side. Here's one more tip: if your agent won't follow these instructions, find a new agent or consider representing yourself.

2. Insist on expanding the pie. Whether you're negotiating on your own or through an agent, you are likely to periodically encounter negotiators who persist in haggling over a single issue—typically price. How can you convince someone to discuss ways to create more value for both parties? First, reduce some of the external pressures on your negotiation. If you're facing a tight deadline, try to extend it. If you're being closely monitored by an audience, such as members of your organizations or the media, work on making your negotiations more private. At the table, discuss the benefits of viewing each other as collaborators rather than as rivals.

3. Analyze the market. Examining each other's constraints and broader market forces can help negotiators move from a NOPA to a ZOPA. In 2005, the NHL enacted a collective-bargaining agreement that placed an overall salary cap tied to league revenues. As a consequence, players and their agents have had to lower their expectations of what some NHL teams can afford to pay. Similarly, business negotiators need to consider the larger economic forces in which they are working. In the midst of a recession, it might be unrealistic for you to expect customers to accept a significant price increase as part of your contract renegotiations, even if they did last year.

4. Create better alternatives. Occasionally, it may seem as if everything is riding on the outcome of a particular deal. But that kind of pressure can sabotage even the best negotiators. When preparing for a negotiation that seems like a once-in-a-lifetime opportunity, make a list of all the other options you might explore if you don't succeed. By improving your sense of psychological power, you set yourself up to perform at your best.

“Becoming a Team Player: Lessons from Professional Athletics,”
first published in the *Negotiation* newsletter (October 2009).



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