The Art of Contract Negotiation

David B. Falk
THE ART OF CONTRACT NEGOTIATION*

DAVID B. FALK**

I. INTRODUCTION

Twenty years ago, I was a young student aspiring to a career in sports law. Following law school, I have had the good fortune to achieve my personal ambition and become a sports attorney while representing some of the best athletes in the country. In the process, I have visited many of the top universities and met many athletes throughout the country.

For me, it all began when I attended law school at George Washington University and made the decision to combine my love for sports with my desire for law. Through some networking, I met two of the giants in the business, Bob Woolf and the late Larry Fleisher. They gave me two pieces of advice: First, take a lot of tax courses in law school, which was some of the worst advice I got in my life, because my professor in income tax failed one-third of my class in 1975; and second, since I was in Washington, D.C., look into a very small law firm there that represented tennis players called Dell, Craighill, Fentress & Benton. When Bob Woolf and I meet the same player, I often tweak him: “Don’t forget your recommendation to me that this is a great firm. I hope you tell that to the players.”

One of the most difficult and challenging deals I made with the firm was to get Donald Dell on the telephone, which took six to seven weeks. I met his assistants, his secretaries, and one day I decided I was going to get a personal reply from Donald Dell, even if it was X-rated. So on that fateful day, I called him about eighteen times until he finally took my call. We met and negotiated my first position, which was working evenings during the summer following my second year of law school, after completing my full-time job each day at Sidley & Austin in Washington, D.C. My starting salary was zero. I celebrated my position by getting married, going on my honeymoon, and enrolling in a summer course in negotiations.

By the close of the summer, I had learned enough in my class to negotiate a job at the law firm beginning in September. I did not realize part-time meant about sixty hours a week, but for me it might as well have been sixty

---

* This article is primarily based upon the transcript of Mr. Falk’s presentation at the Sports Dollars & Sense Conference, which was held on October 22, 23, and 24, 1992 in Milwaukee, Wisconsin. The staff of the Marquette Sports Law Journal is especially grateful to Mr. Don Watz, Editor, For The Record Extra, for transcribing Mr. Falk’s presentation.

hours a day. About one day before graduating law school and shortly before my classmates would have burned the building down, Dell broke down and offered me a full-time job.

We went to lunch to negotiate my salary. I vividly remember: We had lunch at about 4:30 in the afternoon. One of the associates in the firm had advised me to have a good breakfast. I thought it was to prepare me for the negotiations, but it really was to prepare me for the hour of day. I sat down and Dell asked: “What do you think a fair salary would be?” In 1979, starting salaries for government attorneys were $15,500 annually. Dell replied, “Starting attorneys here make $13,000.” We then reached a compromise: $13,000. Eighteen years later I am the chairman of my own company called Falk Associates Management Enterprises, Inc., representing about thirty players in two sports.

Over the eighteen years I have been in business, there has been an explosion of players’ salaries. One of my first clients was a point guard from the University of Maryland named John Lucas. Lucas was the first player drafted in the National Basketball Association in 1976, and the last player to sign before the NBA-ABA player merger. Lucas received a salary of about $300,000 a year for his five-year contract. Ten years later, I had the opportunity to represent Patrick Ewing from Georgetown University, who was also the number one pick in the draft. I negotiated a contract for Ewing that averaged about $3 million a year — which represented an increase of about 900 percent since Lucas signed. This year, Shaquille O’Neal signed a contract with the Orlando Magic for seven years, averaging $5.7 million a year. To say that the salaries in basketball have exploded is probably an understatement. The number of people who want to be in the representation business is also increasing. There are 324 players on NBA active rosters, and there are over 400 registered agents to represent them. I would guess that just ten individuals or groups represent about two-thirds of the players in the League. So, there are another 400 people competing for less than 100 players.

The explosion in salaries reminds me of the Texas millionaire who is walking down the street in New York and encounters a bum. The bum says: “Excuse me, can you spare a quarter?” The Texas millionaire looks down at him and says, “Son, look at me; this hat is a custom-made Stetson that cost a thousand dollars. These boots are hand-tooled Tony Lamas that cost two thousand dollars. Do you think I got where I am by thinking small? The next time someone walks up to you, don’t ask him for a quarter. Ask him for a $5 bill.” The bum looks up at the millionaire and says: “Just what I need, some loud-mouthed Texan telling me how to run MY business.”
This raises an interesting question, which just happens to be the topic of this conference: How do I run my business negotiating professional sports contracts, and how do I approach negotiating professional sports contracts?

II. FACTORS IN NEGOTIATING

A. Knowing the Agreements, Terms, and Talk

Despite my longevity in the sports representation business, I always prepare thoroughly. I spend a considerable amount of time before every negotiation preparing, taking copious steps to understand the task I am about to approach. The first step is understanding the collective bargaining agreement, for which it is very helpful to have a legal background. In football there has not been an agreement for a number of years.¹ On the other hand, the basketball collective bargaining agreement is a very complex document that includes the salary cap. There are probably not even ten people in America who really understand the salary cap. There are so many gaps in the cap that Gary Bettman, senior vice president and general counsel of the NBA, creates new rules every time he interprets the cap.² So, it is difficult to really stay on top of the salary cap.

There are a variety of rules. For example, there is the "30 percent rule" that provides that the increases in salary in the NBA from the first year of the contract cannot exceed thirty percent of the first year salary. There are rules on how many options a player can have, termination rules, etc. So to properly negotiate a contract in today's NBA, I think you do have to be a lawyer, you have to be an expert on the salary cap, and you have to be creative and try to invent ways — not to circumvent the cap because that is not permitted — but to negotiate around the cap to get your client fair market value. Unfortunately, I think that very few people on either side of the table — very few general managers and very few player representatives — truly understand the salary cap. The second thing I like to do is try to understand trends in the business. I believe every industry has trends, and the sports industry is no different. There are trends in the length of the contract. For example, because many teams in basketball are close to the salary cap, and because the contract can only be increased by thirty percent of the first-year salary, there has been a tendency in the last few years to negotiate very long contracts. Frankly, this

¹ The NFL and its players reached a settlement agreement on January, 6, 1993. The settlement agreement will be replaced by a collective bargaining agreement when the NFLPA resumes as a union. Bob Oates, Analysis: Players' Victory Not Easy, L.A. TIMES, Jan. 8, 1993, at Cl.
² Gary Bettman was appointed National Hockey League Commissioner on December 11, 1992.
concerns me. Whatever amount seems high today does not seem so high a few years down the road. In 1992, when I was negotiating with the Charlotte Hornets for Alonzo Mourning, I reminded the owner, George Shinn, that I represented the very first player Charlotte ever drafted, Rex Chapman, in 1988. As the eighth pick, Chapman signed a four-year contract averaging $675,000 per year. We had just turned down an offer for Mourning averaging $3 million more than that. I asked George Shinn if he ever thought four years ago that he would sit with a player who could turn down $3.6 million a year? When he said, “No,” I replied, “Well, that’s exactly why I don’t want a long-term contract, because if salaries continue to change as fast as they have over the last four years, Mourning’s contract will never stay in line with the salary explosion.”

About fifteen months ago, I negotiated the biggest contract in the history of professional basketball for a player named Danny Ferry. He signed a ten-year contract for $3.75 million a year. Since Ferry’s record-breaking signing, Patrick Ewing, Magic Johnson, Shaquille O’Neal, David Robinson and Brad Daugherty have all exploded past $3.75 million, $4 million, $5 million, and a few even past $6 million per year. Ewing passed $10 million. Therefore, in that kind of environment, the length of the contract is a very important issue. Without criticizing some of my colleagues, I believe that there is a real pressure when negotiating for young players, particularly rookies, to be able to point to a deal you have negotiated whose average compensation is higher than the player picked before or after you. As a result, sometimes individuals negotiate deals that are too long for their own client because they are trying to make the deal look good. I believe the substance of the deal is more important than how it looks.

B. Knowing the Structure of Contracts

A representative needs to understand the structure of contracts in conjunction with the increase in the lengths of contracts in professional basketball. A lot of us have come to question what happens if you have a player like Patrick Ewing, and you are about to sign him for one and a half times what the highest player has ever received in the history of the sport as a rookie. However, you really believe the salary structure is going to dramatically change. How do you protect yourself? The answer is that you put in a right to terminate the contract. In Ewing’s first contract, we negotiated a clause that provided that after the first six years, if four players in the NBA earned more salary than Ewing, he could terminate. Subsequently, Larry Bird signed a one-year contract whose entire $7.1 million compensation was denominated a signing bonus. We then went to arbitration to determine whether salary in a one-year contract was the same as a signing bonus in a
one-year contract, and unfortunately we lost. That did not really affect the final outcome of the negotiations, though. Since then, there has been an increase in the number of clauses providing early rights to terminate the contract. Gary Bettman is a very good friend of mine. I call him “the Pope.” When I was in Rome several years ago, Gary’s wife, Shelly, came up to me and asked: “Are you the famous David Falk who calls my husband ‘the Pope’? Don’t you know he is Jewish?” I said I knew he was Jewish, as I am. She asked, “Then why do you call him the Pope?” “Because,” I replied, “he makes the rules as he makes them up.” After you have concluded a negotiation, the contract is submitted for approval to Bettman. Recently, we concluded a four-year deal for Xavier McDaniel with the Boston Celtics that included a right to terminate in favor of the player after the first year. Bettman informed us that we were not allowed to do that. I asked, “What rule are we violating?” He said, “No rules, we just interpret a termination after one year as circumventing the cap, so you can’t do it.” You have two choices, either accept it or arbitrate it. Unfortunately, the teams are so afraid of Bettman being difficult to deal with in the future that they do not even want to go to arbitration with him to enforce the deals they have negotiated.

C. Being Aware of Salary Growth

I believe the third step is understanding the growth of salaries in relation to the growth of the cap. The cap has gone up dramatically since its inception in 1983 from $3.6 million to $14 million in 1992-93, and next year it will be $15 million. That is about four times its initial amount. When you are representing a player, you have to question how large the increase in his contract will be over the previous year’s pick, relative to the increase in the cap from year to year. Such analysis is a new trend. From my standpoint, the pre-negotiation analysis has gotten a lot more scientific, like doing a baseball contract. When you go to arbitration in baseball, you want to develop as much economic evidence as you can in order to justify your position.

D. Fair Market Value Rather Than Ability

Most people would be foolish to walk into a room with Red Auerbach or Jerry West and try to negotiate a contract based on their perception of how good their player is. If you walked in and said, “I’m representing Jimmy Jackson; I think he has a great spin move on the base-line, nice rotation on his jump shot, and he is a good rebounder in traffic,” most general managers would laugh you out of the room. They do not think you are qualified to make those determinations. However, when they draft
Jackson number four, a whole host of economic considerations immediately come into play, relative to what the number three player gets, what the number five player gets, what the number four player received the year before and perhaps the year before that. These are the kinds of considerations that professional representatives need to concern themselves with. These considerations are quite different from the fans’ perspective, which focuses on how good the player is.

Every year there are definitive break points in the compensation paid to rookies. If you took the list of rookie players and examined it from top to bottom, you would find that there are gaps in the compensation packages players receive. It is not a symmetrical progression where each player is slotted, as is done in football. For example, in 1990 we represented the fourth player taken in the draft, Dennis Scott, who was picked by the Orlando Magic. Scott received $600,000 a year more in guaranteed compensation than the player selected one pick behind him. That $600,000 represented the biggest gap in the entire first round; it was an even bigger gap than the differential between Scott and the player drafted number one. The gap indicates that there is a consensus by general managers that the talent pool reached a plateau at the fourth pick, and that the players selected below four were at a different level.

The identical situation occurred the following year. Dikembe Mutombo was selected fourth and received $500,000 a year more in guaranteed compensation than Steve Smith, who was selected number five. This represented the biggest gap between any two picks in the draft. This year there will probably be several gaps. Shaquille O’Neal will likely set his own market, and there will probably be a very big gap between the third pick, Christian Laettner, and the fourth pick, Jimmy Jackson. You must understand that when you try to compare your client with the players picked ahead of him in the draft, you may be creating more of an anomaly than the rule.

There are other unwritten rules, such as centers always receive a premium, much like quarterbacks in the NFL. If you represent a NFL quarterback as a rookie, he has traditionally been worth roughly a half-a-round in the draft. It is important to understand these little nuances because they have a big impact on a player’s value. In a general sense, professional representatives must be experts in value, not necessarily experts in the sport.

The experts in the sport are the scouts and general managers. They determine that your client is drafted, for example, number six. You must then understand what impact your client will make as the number six pick based on the year, the composition of the team, and the players around him. You must translate his position into economic value. There are easy ways
of making this economic translation for the rookies. But if a player is a veteran free agent, you can obviously negotiate with all the other teams, and in this open market environment, another team may determine what is fair.

E. The Negotiation Position

Once you understand the collective bargaining agreement and the trends, the second step is to try to understand the client’s negotiation position. Aside from preparation, this is perhaps the most important step because it is not simply a function of what the name of your client is or what number he is picked. Rather, it is really a question of how much leverage you have. Leverage is the bottom line in my business. The obvious question is: Where does leverage come from? The first place is competition from other bidders. I previously mentioned the rule that quarterbacks are worth half-a-round. The first quarterback I represented was Boomer Esiason of the Cincinnati Bengals. Esiason was drafted number thirty-eight in 1984 during the “glory years” when there was another league (USFL). Despite his draft position, Esiason received the seventh highest rookie contract in professional football in 1984. Afterwards, everyone asked me how I got such a good deal? I explained that it was such a good deal because we had three teams in the USFL, whose owners do business with us on a regular basis, bidding to sign Esiason. The competition made the negotiations much easier. When you have another league, like we used to have in basketball (ABA) — or in football (USFL), it provides tremendous leverage. In the global scope of basketball in the 1990s, the other league might actually be another country, such as the Italian or Spanish league. A few years ago, my client, Danny Ferry, signed a five-year contract with an Italian team, Il Messaggero, that was owned by a giant agro-chemical company called the Ferruzzi group. (Those of you who are fans of sailing know that the owner of the company, Raul Gardini, was in the America’s Cup last year. Most of the participants spent $30 million for their boats and Gardini reportedly spent $60 million. He ran his basketball team the same way.) Ferry had a five-year contract in Italy that had an “out clause” at the end of each year. He had been selected by the Los Angeles Clippers as the number two pick in the draft. At Ferry’s request, I indicated to the Clippers that Ferry would prefer to play for a team other than the Clippers, but management was a little stubborn. After Ferry spent his first year in Rome with Il Messaggero, the Clippers began to realize that we were sincere. They made a major trade with the Cleveland Cavaliers, who gave up two first-round picks and Ron Harper, one of their best players, for Danny Ferry and Reggie Williams, who is also a client of mine. By the time Ferry returned from Italy and we were ready to commence negotiations for him, Williams had
been cut. In essence, Cleveland had traded two first-round picks and probably its best, most exciting player for Ferry, who had a fifteen-day window to either make a deal with Cleveland or go back to Rome.

Needless to say, Ferry's negotiating position was very advantageous, and his rookie contract made him the highest paid player in the league for fifteen months. This happened because we had tremendous leverage—probably all the leverage. To reiterate an old theme, because the team had given up a lot of value in the form of Ron Harper and the two first-round picks, they simply had to sign Ferry.

**F. Two Sport Players as a Factor**

There has been a recent, albeit limited, trend of players talented enough to play two professional sports at the same time. Bo Jackson started the trend. More recently, Deion Sanders and Brian Jordan have played two sports simultaneously. Obviously, the ability to tell a team that it is not offering enough money and that you can play for another professional team, sometimes in the same city, gives you a tremendous edge in negotiations.

**II. Knowing the Team(s) You Are Dealing With**

The second source of leverage comes from the team's position in its market. As an example, in 1986, Bo Jackson was the first pick in the NFL draft by the Tampa Bay Buccaneers. He had the highest rating at the scouting combines of any football player between 1968 and 1986. Jackson decided that Hugh Culverhouse's offer simply was not sufficient for him to sign with Tampa Bay, so he signed instead with the Kansas City Royals baseball team. He earned a substantial signing bonus from his baseball contract and sat the year out in football. One year later, Tampa Bay again had the number one pick in the NFL draft and selected the Heisman trophy winner from the University of Miami, Vinny Testaverde. Imagine that you are Testaverde's attorney. You have a star quarterback from one of the premier college football programs in the country. When you sit down to negotiate and tell Hugh Culverhouse that if your client does not get paid enough money, he is going to sit the year out, Culverhouse is going to listen to you a little more attentively in 1987, after losing Bo Jackson, than he would otherwise, when he really did not believe the first pick in the draft would sit out an entire year. So, Testaverde did quite well. His negotiating position was obviously a fluke. You are not going to be in that position often. But when you are, you must take advantage of it.
A. Impact of Player on a Team

Another situation where the team’s position in the market will give you great leverage is when your player can make an impact at the gate. In 1985, Patrick Ewing was the first player in the history of the NBA to be selected in the draft lottery. The lottery changed the old draft system in which the two worst teams in the league flipped a coin for the first pick to a blind draw by the seven worst teams in the league. Some cynical fans thought the draft was not so blind, and that it was influenced by Commissioner David Stern picking envelopes treated with dry ice, or using infra-red glasses or alpha waves, or other ways to make sure the New York Knicks got the number one pick to revive the team in the biggest media market. Regardless of how it happened, we were glad the Knicks won the lottery. Between the lottery and the draft, which was exactly five weeks, the Knicks were not permitted to commence negotiations. During this period, they asked us a very interesting question: “Would we object to their use of Patrick’s picture on the cover of the Knicks’ season ticket brochure?”

I thought it was a joke. However, it was anything but a joke. In that five-week window, the Knicks sold $5 million worth of new season tickets. With $5 million in incremental revenues, we commenced negotiations. The players drafted number one the previous two years were two very special centers, Ralph Sampson and Akeem Olajuwon, who were picked back to back by the Houston Rockets in 1983 and 1984. They both signed for approximately $1 million a year for four to six years. The Knicks’ opening offer was in that neighborhood, but it was very difficult to accept the notion that Ewing should get paid the same as Sampson or Olajuwon because he had already made a $5 million economic impact on the Knicks in terms of new season ticket revenues. I presented an opening offer of $30 million for ten years. Three months later, we signed a ten-year contract for $32.1 million. Ewing had all the leverage because New York did not want to be forced to contact season ticket holders and explain, “Refunds will be available next week because Ewing’s decided not to play.” So his position in the market, independent of his talent, made a huge impact.

B. Realize When the Team Has Already Committed

Sometimes a team has a huge investment in a player. This is more common for a veteran than a rookie, but in the case of Danny Ferry, Cleveland had invested two number one picks and Ron Harper to obtain Ferry’s rights. If he decided not to play for Cleveland and returned to Italy, the team would have lost its premier player, two important draft picks, and Ferry’s services. The investment that they made translated into a lot more dollars for him. Similarly, this year the Orlando Magic won the lottery and
obtained the right to draft Shaquille O'Neal. All the other teams figured it was easy pickings to get Stanley Roberts, Orlando's starting center who was a restricted free agent. NBA rules provide that when a restricted free agent receives an offer from a "new team," his prior team has fifteen days to match the offer or allow the player to sign with the "new team." Most NBA teams felt that if they gave Roberts an offer for significant dollars, Orlando would only have fifteen days to sign Shaquille O'Neal. If Orlando was not able to sign O'Neal before the fifteen day deadline for matching Stanley Roberts' offer, they would have been so far over the salary cap they would not be able to sign O'Neal at all. But everyone was wrong. Pat Williams, Orlando's general manager, did a masterful job of restructuring four or five players' contracts and signed O'Neal for the princely sum of $5.7 million a year within the fifteen day window. He then matched Roberts' $3 million offer and subsequently traded him. But, the leverage represented by Orlando's investment in the number one pick in the draft gave O'Neal tremendous negotiating clout.

There are several areas that I like to look at in trying to understand how much leverage I have. Specifically, how badly does the team need to sign my player? Let's look at Alonzo Mourning from Georgetown, who was drafted number two by the Charlotte Hornets in 1992.

I believe the Hornets absolutely had to sign him. He is a franchise center and has a precedent setting contract with Nike, which has been written about extensively. Charlotte finished number two in the lottery, although its record would have dictated they pick ninth. The "luck of the draw" provided their last real opportunity to obtain a great center. As a result, I think Mourning did not have some of the leverage or even most of the leverage; he had ALL of the leverage. It is a situation where ultimately the team must come to you and meet your terms. It is simply a matter of timing.

C. Know Your Negotiating Opponent

Once you have analyzed your own position, there is a person on the other side of the table who is going to be really tough, and you have to analyze their position as well. You have to evaluate the same criteria, particularly how much leverage they have. However, there are other criteria I would like to look at this point.

1. What is Their Authority?

First, what authority does the person you are negotiating with have to make the deal? In professional sports, you are frequently dealing with a person whose title is General Manager or President of the team, but they do
not own the team. You find yourself in a situation where you are negotiating through a filter. The offers a general manager is throwing at you may just be an attempt to get you into a more comfortable range so the owner can come in and close the deal.

About twelve or fourteen years ago, we represented a very talented basketball player from the University of North Carolina named Phil Ford. Ford was the number two pick in the draft by the Kansas City Kings. Joe Axelson was the King’s general manager. We negotiated all summer with Axelson. Finally, one night at about two o’clock in the morning, we made a deal which we both agreed to recommend to our respective principals. However, Axelson called me at about four o’clock in the morning and said he realized on the way home that he had added up the numbers wrong and he could not sell the deal to his owner. Based on our protocol, I said, “Well, I guess you are going to have to resign now as general manager and have the owner finish the deal.” It was our agreement, that if we could not sell the deal to Ford, we would resign and if Axelson could not sell it, he would resign. Of course, Axelson, as he always did, had a great one-liner, even at 4:30 in the morning. “You know, there’s a difference,” he explained, “You have a lot of clients, and I only have one job, so I’m not going to resign.” Fortunately, we finally made the deal.

2. Your Opponent’s Objective

Often the person you are negotiating with has a different objective than you do. His job is not to close the deal, but simply to get you to a lower level or to change your expectations. I think it is very important, particularly if you are experienced enough, to ask the person you are negotiating with, “Can you close the deal?” If the person cannot, I think it has to affect your strategy as to how far to compromise, knowing that you could end up compromising on a compromise to make a deal.

You have to analyze how important it is for the person you are negotiating with to sign the deal. You may think that is obvious; of course, it is important. Sometimes it may be unexpectedly important for the person you are dealing with to close the deal, rather than having to go back to his or her boss to get help or approval to close the deal. I deal with a general manager, whom I would prefer not to name, who has never made me an offer that has been within fifty percent of what I have finally signed my client for on that particular team. Over the past six or seven years, this individual always low-balls us regardless of who the player is, a superstar or a reserve. One day, I called him up and said, “You know, ultimately we are going to make this deal. I think it would be a good idea for you to show your owner that you can make the deal, instead of always aggravating him
into asking, "Do I have to cancel another meeting and sit down with Falk again?" Apparently, closing the deal is not important to him. Perhaps the strategy on this team is to have the general manager always low-ball the offer. At some point, we are simply not going to deal with him anymore, or I will send one of my junior associates to deal with him. When they finally get into a range they both can deal with, then the first team will come in and close the deal.

Sometimes, you want to find out how important it is to the team to sign your player because if the player is not very important and you delay the deal, the market may pass him by. But if you have a great player of the stature of a Mourning or a Ewing, the team will always come back to you. It is critical that you analyze your opponent's position and try to understand how you can attack his strengths.

3. Trade-offs

The next step is to identify the trade-offs in the deal. Every deal has trade-offs; they are the essence of the bargaining process. You can call it bargaining, negotiating, or horse-trading. There are some basic trade-offs I use when I am negotiating a deal. The first is the length of the contract. You must understand the needs and goals of your client. Does he want security? Does he want to maximize the amount of dollars protected in case he fails to reach an expected level of performance? Or does he want flexibility, so if the market changes substantially in the first two or three years of his contract, he has the ability to renegotiate as a free agent? I mentioned Patrick Ewing, who actually signed the highest contract in NBA history in 1985. Subsequently, the market changed so dramatically that by 1991, it no longer reflected his market value. This occurred because he set such a high standard that everybody else strived to reach. As more players approached his level, the market changed and Ewing's contract no longer reflected his market value. We attempt to obtain both security and flexibility. But the first issue is length, or what I call aggregate dollars and flexibility, so you can come back and renegotiate. I mentioned the case of Stanley Roberts, which is a very interesting one because he was the twenty-third pick in the 1991 draft, and because of the salary cap. He signed a one-year contract. Most general managers thought that he was overweight, was not a very hard worker, and therefore was a risky pick. Roberts averaged ten points and six rebounds a game as a rookie. But he was a center, and centers are extremely hard to obtain in the NBA. As a result, at the conclusion of his one-year contract, four or five teams bid for him. He signed a contract averaging in excess of $3 million a year. Had he come out of school and signed a great contract for the twenty-third pick, let's say $1 million a
year, but locked himself up for five years, he would have cost himself a tremendous amount of money. Because he was in a position to get only a one-year deal, it ended up working to his benefit. The decision whether to sign long-term or short-term is a critical one that demands full discussion with your client. You cannot make judgments for your client. You have to make judgments with your client. You have to point out the benefits of security and the detriments of locking him in for a long period of time and having to renegotiate a contract when you do not have a lot of leverage.

The second trade-off is guarantees. In basketball, eighty-three percent of all contracts are guaranteed for either skill or injury. This means that if the club terminates the contract, it remains obligated to pay the player. In football, a very small percentage of contracts are guaranteed. Since guarantees provide security, teams will often pay a player more dollars if he will take fewer guarantees. Conversely, teams may propose that the player sacrifice dollars in order to get the entire contract guaranteed.

The third trade-off is current cash dollars versus deferred money. I believe deferred money is one of the most abused areas in professional sports contracts. That is why I like to call it “funny money.” Years ago, before the salary cap, I used to say that I could get a million dollars a year for any player I represent if you gave me enough playing years and deferred the money long enough, because it becomes almost worthless. There is a simple rule, called the rule of 72’s, which states that if you take the number 72 and divide it by a given interest rate, it will tell you how long it takes a dollar to double. At the current prime interest rate of six percent, every twelve years a dollar is worth half of what it is today. Many players negotiate deals with money deferred as many as twenty to thirty years out. As interest rates climb, the deferred monies are worth as little as one-fourth of what they are worth today.

Sometimes there are pressures on player representatives to try to obtain a certain amount of money for a client. This pressure may force the representative to make a bad deal by signing an unduly long contract, or deferring large amounts of money, or both. I believe this type of response to the pressures of signing players represents a troubling development in our industry. Rookie players often do not understand how little deferred money is worth. When they agree to defer large amounts of money in their contracts and they receive it many years later, it is literally like monopoly money. Obviously, a team would much prefer to pay a player in deferred dollars than in cash today. In the NBA, this trade-off is affected by the salary cap. For purposes of the cap, a dollar deferred is not discounted and is treated the same as a cash dollar. Thus, suppose two players make a $1 million a year, one all current, and the other $800,000 current and $200,000
deferred. For purposes of the salary cap, they would both be treated as making $1 million. Therefore, there is a disincentive for a team to defer money from a salary cap standpoint, but a strong incentive for the team to do so from a financial standpoint.

Another area of trade-offs is incentive bonuses. As with deferred compensation, incentive bonuses represent an area of abuse. Obviously, if a player could choose between earning a dollar guaranteed or a dollar in incentive bonuses, always insist on getting the dollar guaranteed. However, when you are negotiating a contract and you are apart in your positions, one area available to you to close the deal is incentive bonuses. I am not against bonuses, but I always recommend to a client that we try to maximize the amount of guaranteed current dollars. When you have "maxed out" guaranteed cash, but you have not closed the deal, bonuses are a creative trade-off in closing the gap.

I am amused sometimes by the type of bonuses that people put into contracts. Several years ago, one of our clients was drafted in the lottery. The player was deciding between another agent and me. The player told me how impressed he was by the other agent's claim that he negotiates many bonuses. I indicated that the other agent either did not understand the NBA salary cap or he was simply misleading him. I explained that when the league reviews a new contract, there has to be sufficient salary cap room for every single bonus that can potentially be earned in order for the contract to receive NBA approval. Accordingly, if you negotiate a bonus of $1 million if the player wins the Most Valuable Player award in his rookie year, the League will require the team to have $1 million of salary cap room to approve the contract. I would recommend that my client accept $500,000 in guaranteed salary rather than to try to be the third player in the history of the League to win the MVP as a rookie and receive $1 million.

Unfortunately, players sometimes do not understand the nuances of the cap any more than some of the people in our business. While incentive bonuses are a creative way to bridge the gap and close a deal, they should not be abused. You must tailor the bonuses to your particular client as you are negotiating.

D. Prepare a Negotiation Strategy

The next step and one of the most interesting, perhaps even humorous, areas in contract negotiation is developing a negotiation strategy. This strategy has nothing to do with your client or his position. It really has everything to do with you and your personality. You need to adopt a strategy that fits comfortably with your personality and that can be maintained
on a consistent basis throughout the negotiation. We could easily spend a day on different negotiating styles, but let me point out a few by way of example.

1. High-ball/Low-ball

   The first one is what I call “high-ball, low-ball.” This style is reflected in many football negotiations. Typically, you propose an offer significantly higher than fair market value and the team proposes an offer significantly lower than fair market value. You then inch down like a snail from the top, and the team inches up from the bottom, and each side emphasizes how far it has moved from its initial offer, which was totally unrealistic. You end up somewhere in the middle of two distorted offers. I do not subscribe to this approach because I find it the most amateurish. However, it is the safest approach, because you start so far away from what you expect to get and put a lot of “fat” in the offer. It is not an approach that I like, but it is a legitimate approach.

2. Hard-ball

   The second one is hard-ball. There is an individual who used to negotiate a lot of football contracts who is a very bright attorney, Howard Slusher. Slusher probably was the hardest hard-ball player in professional sports. He would put an offer on the table and he would not budge. He would hold a player out if the team did not capitulate. He would really go to the mat for his client. He is a very intelligent man and a good negotiator, and everyone in sports knew if you drafted a Slusher client, you were in for a long, tough, bruising battle because he was going to play hard-ball. Teams often play hard-ball, particularly in football, because they have all the leverage. Football teams know you really have nowhere to go - no other leagues, no Europe, and as a result, the deals are negotiated in hard-ball fashion.

3. The “Phantom” Negotiation

   The third style is what I call the “phantom” negotiation. In this situation, you are dealing with an individual who cannot “sell” the deal to his or her superior. For example, your opponent will tell you, “It sounds like a really fair deal, but I don’t think I can sell it to my owner.” You are negotiating with one individual, but there is a phantom in the background that you never meet and who is never present. There is a phantom in the background that you simply cannot break through to. It is like negotiating with a ghost and it is very frustrating.
Sometimes, you are able to break through to the ghost. About ten years ago, I was negotiating a deal with the New Jersey Nets for their best player. I had a very friendly relationship with the owners. The general manager expressed repeatedly, “We are really close, but we just do not really feel comfortable with the deal.” I responded, “Our client is your best player and he is one of the top rebounders in the League. What’s the problem?” One day, we finally closed the deal and the general manager explained: “We have a deal, but we want a clause that if your client misses team functions, we can deduct $100,000 from his salary. He’s been late for a couple of team sponsored community functions.” This shocked me because our client is a very conscientious individual. Nevertheless, we responded, “No problem; if he misses three team functions in a year, you can fine him $100,000.” I flew up to the Meadowlands to sign the deal, and as we were about to sign the contract, the general manager said, “Okay, everything’s fine, but what happens if he fails to get 1,000 rebounds in a season?” And I responded, “Well, I guess it’s tough luck. You pay him a salary and hope he has the best season possible and gets 1,000 rebounds.” He said, “No, no, we can’t do that. We are paying him all this money and we want a clause providing that if he does not get 1,000 rebounds for the season, we can deduct $100,000.” I said, “Wait a minute, I thought you were worried about him missing team functions.” He said, “No, we are really not worried about team functions. Joe Taub, our owner, is really worried that if he does not get 1,000 rebounds, we are over-paying him.” I became very angry and said, “This is ridiculous. Where is Joe?” To my surprise, the general manager walked out of the room to call Taub and upon returning said, “I’m sorry, Joe can not be here until 6:30.” New Jersey had a pre-season game against the Knicks, and at 6:45 that evening, Taub arrived. He did not want to negotiate. He wanted to go his sky-box and watch the game. He said to us, “What on earth are we doing at 6:45 on the night of a game, negotiating a deal; why couldn’t we have worked it out this afternoon?”

So I looked at the general manager of the team, who was sporting rings around his arm-pits that made his dress shirt appear like a L.A. Rams uniform, and I said, “Well, Joe, when your general manager called you four hours ago, you said you could not be here until 6:30.” He replied, “What are you talking about? He never even called me.” Needless to say, the general manager was very embarrassed. He got caught playing this phantom game, inventing various versions of deals that the owner wanted. On the other hand, it was a very effective strategy because we kept shifting gears. We wanted to close the deal so much that we kept giving into him on these different protective clauses.
4. Bluffing, Puffing, and Other Styles

There are many other kinds of negotiating styles. Sometimes you project false deadlines. You say to the team, "If this deal is not done by next Friday, I cannot be responsible for what is going to happen." Now, you may be telling the truth or you may be bluffing. I do not like to bluff, because if you are in this business long enough and you bluff, you may lose your credibility. But timing is a very important issue in almost any kind of negotiation, and especially in sports where you have training camp and regular season games scheduled. Often, when I make an offer, I will limit its acceptance to a certain period of time. If you have sufficient information and you really know what is going on in your business, and you know what other deals are being transacted around you, you can develop an instinct for how the timing affects the deal. In 1981, we represented the third and fourth picks in the NBA draft. The third pick signed a deal that was worth about $100,000 a year higher than the picks that went one and two, Mark Aguirre and Isiah Thomas. In our negotiating for the fourth player, we kept reminding the general manager, "We need to finalize this deal because there are developments on the horizon that will affect our negotiations." He did not believe us. One day, we made an offer and explained, "It is good until 5:00 p.m. on Friday, but after that we cannot commit to honor it." The general manager thought it was a bluff, but on Thursday we signed the number three pick to a contract that was significantly higher than the first and second picks, and on Friday we withdrew our offer and submitted a higher one. The general manager went absolutely crazy in Atlanta because he thought it was very unfair to withdraw the offer, even though we had given him notice. The fourth pick ended up getting a very strong contract, piggy-backing the third pick.

The timing of the offers and acceptances was very important. The next time you deal with the same individual and tell him that it is really important to close the deal at a certain time, you hope that the credibility you established in the first negotiation will assist you through the second one.

Many people adopt the philosophy of "splitting the difference" in negotiations. To me, this is an offshoot of high-ball, low-ball. You are at X dollars and they are at Y dollars, and you suggest, "Well, why don't we just split the difference?" I do not like to split the difference. I am not a split the difference negotiator. I like to try to open very close to the final number I want and not put a lot of fat in the offers. Again, splitting the difference is a very legitimate style.

Another style is to negotiate with teams and play "good cop, bad cop." One individual is a really nice guy; he is trying hard to work with you, while the other individual is really tough: whatever you say, the answer is
no. You could propose reducing your offer — the answer is no. Whatever you propose, it is no. Naturally, you have a tendency to try to work with the good guy and do whatever they propose. You feel the good guy is the only person who is responsive to what you are doing. Often, this approach is a well-orchestrated scenario by the other side to try to soften your position, because you feel that one of the two people you are dealing with is absolutely impossible.

Whatever strategy you adopt, it has to be you. I am not a very low-key person. I often get very intense when I negotiate. If I attempted to adopt a Californian, laid-back kind of attitude, it would not last very long. The first time my opponent would say something that got me angry, I would change my demeanor like a chameleon. Therefore, I never try to be low-key in a negotiation because it does not fit my personality or my reputation.

You have to do something that works for you. Every person has a different style. Whatever style you have, I believe it is very important that you establish yourself as a negotiator in that kind of mold and stick with it. The bottom line is credibility. When you are down to the moment of truth, trying to close the deal, and you say, “This is it, I’m not going to go a dime less than this number,” the person on the other side has got to know that you really mean it. Whether you said that nineteen times in the past ten years and you have never gotten your number, or you have said it nineteen times in the past ten years and you have always gotten your number makes all the difference in the world. Your credibility is on the line.

E. The Importance of Atmosphere

1. Home Court Advantage

Once you have established your style and approach, the next thing I like to try to do, which will sound a little strange to some of you who have not done it before, is create an atmosphere that is suitable for your approach. I can give you a couple of variables on atmosphere. First, and most important to me, is what I call “home court advantage.” I like to negotiate in my own office, behind my own desk, with my own notes, my own calculator, etc. These are the same reasons that teams like to play at home. I am more comfortable in my own office than anywhere else. If someone comes from San Diego to negotiate with me, and I am getting nowhere, I can say, “Thanks a million for coming why don’t we hook up again in two weeks.” If the guy has flown five hours to see me, perhaps taking the red-eye, he is going to have a lot more incentive to be reasonable. If I have to fly to San Diego to see him and I have to take the red-eye home, I am probably going to try to get more accomplished. Therefore, working on your home court is a big advantage.
2. Having the Client Present

Another critical issue is whether you have the client present in the negotiation. I have undergone a change in my own philosophy on this issue. Early in my career, I never had my clients directly participate in the negotiations, and I still do not have rookies present because they are not experienced in business and they tend to get more emotional over the ebb and flow of discussions. Today, I believe that a veteran player, particularly if he is bright, can dramatically change the range of options the team has and affect what the team can say about your player. I have brought most of my veteran clients into their negotiations over the past three years. Some of them are terrific. Buck Williams of the Portland Trail Blazers was absolutely fantastic. He was tough and he was firm, but he was very personal with the management of the team, and it was a really good partnership. Patrick Ewing was fantastic. He was in every single meeting we had with the New York Knicks last summer. After we lost his arbitration, I am certain there were many times that David Checketts had to bite his lip with things he would have liked to have said to me, but could not say because Ewing was sitting in the room. Whether you have the client present or not is certainly a strategic decision you have to make. In my opinion, I would counsel against having a young client present in the room. However, if you have a veteran who knows what is going on, and he has a good relationship with the owner, I think it could add a lot to the atmosphere.

3. Number of People Present

How many people do you put in the room? Do you bring in seven or eight accountants to the meeting so they can plug in their calculators? They may have a lot of “horsepower,” but it is definitely going to affect the tenor of the meeting. It is also going to affect the very atmosphere you are negotiating in. If the team responds in kind and they bring in four or five of their accountants, you may have a United Nations conference. You then have to decide what shape table you want, whether to meet in a hotel room or in an arena, or at the United Nations. How many people are in the room affects how personal you get with the ultimate decision-maker.

I like to keep the number of people very small. However, I do like to negotiate in teams. I usually bring in a younger person from my office who can learn from the experience. The best way to learn to negotiate is to be involved. But the number of people clearly affects the dynamics of the negotiation. If you are not going one-on-one with the decision-maker, you will oftentimes get into a “good cop, bad cop” routine with the second person in command who will intercept every signal you are throwing out to the decision-maker. You will ask, “Gary, what do you think of this?” and the
assistant will respond, “Let me answer that.” Consequently, you never really develop the kind of personal rapport with the decision-maker that you want to have in order to make a break-through.

4. Oral or Written Offer?

Whether you make your offers orally or in writing has a big impact. When you put things in writing, they have tendency to become carved in stone. Once a person has a letter sitting in front him, it is very difficult to say, “I never said that” or “I did not mean that.” He is reading your writing, and it has a tendency to really harden positions versus something you communicate orally, where you can say, “Yes, I said that, but I changed my mind.”

5. Appearance

How do you dress? Depending on who you are meeting with, how you dress can have an impact. I took an individual with a beard who worked for me into negotiations about five years ago, and the first comment the owner made was, “I normally do not like guys with beards, but if he works for you, I guess he is okay.” It never occurred to me before that having a beard or a moustache would impact what you are doing, but this particular owner reacted to my assistant’s personal grooming habits. If you are a woman, how you dress can clearly have an impact in a male-dominated sports industry like football, basketball, or baseball.

6. Gridlock

A classic issue is: Do you walk out of a negotiation? I have been negotiating for eighteen years and I have only threatened to walk out of one meeting. This occurred when a general manager told me that his offer was absolutely non-negotiable. The general manager of my client’s team told me that we were $500,000 a year apart, but we had to accept his offer. I asked, “Why is that? Isn’t my input important enough, or how my client feels important?” He responded, “No, it really isn’t important.” I was a little stunned, and he continued, “We are the ones paying the money, so we are going to determine what’s fair.” I very calmly packed up my briefcase and started to leave. He asked, “Where are you going?” and I explained, “Obviously, neither my client nor I are very important to this process. You are going to determine what is fair and since we can not accept your offer, I guess it’s time to leave.” An hour later we made the deal at our numbers. I guess the whole thing was just for show, but I am not a big believer in histrionics in negotiations. I attempt to be very up front with the person I am dealing with because I expect to have more dealings with them. Many
people find it effective to storm out of a meeting to show they are truly upset. That move certainly affects the atmosphere.

7. Scheduling the Meeting

How you schedule a meeting is a very important part of the negotiating process. The former president of the Minnesota Vikings, Mike Lynn, had a well known reputation for being very difficult to deal with. I represented one of his best players, All-Pro defensive end Chris Doleman. Lynn and I actually had a very good relationship. However, he told me that I was absolutely out of my mind when it came to salary numbers — that I was mistakenly giving him basketball numbers for football contracts. When I would travel to Minnesota to negotiate Doleman’s contract, I would always have a flight planned to Los Angeles or San Francisco or somewhere else about two hours after my meeting was scheduled to start. I would walk in the room, and the first thing Lynn would say would be, “What did I offer you last time — $410,000? I can’t believe I offered you that much. It’s so high. And you did not accept it? I really should be at about $210,000.” I would reply, “Mike, don’t worry about it. We are never going to get the deal done today. Let’s just go out and have breakfast. I’ve got a plane to Los Angeles in an hour and a half.” Then, he would get serious when he realized that the meeting was finite and I was not going to be there for nine hours — which is what he actually did to me when Doleman was a rookie. Lynn put me up at Lake Minnetonka, gave me a lot of wine, a nice dinner, and we negotiated for about thirteen hours overnight. Fortunately, I have a lot of staying power. The point is that how you schedule and where you schedule are important. Do you schedule a meeting at the airport, so you can hop on a plane right away if the meeting is not working out? Or do you sit in a general manager’s office with six or seven hours to kill? You have to know that some people like to string you out.

8. Managing the Media

Last, but certainly not least, is management of the media. The media is one of the most important tools and one of the most important booby-traps in negotiations. Generally, I do not like to use the media in negotiations. First, the public is not very sympathetic to your client when he complains, “Gee, $3.5 million is really unfair.” With unemployment rising and a lot of people out of work, you are not going to get a lot of public sympathy by whining in the newspaper that the few million dollars your client is being offered is unfair. Second, in most team sports, the team controls the media’s access to the players. If you get a writer who is too sympathetic to your position, the team will subtly tell him that his press pass is being re-
stricted or the number of interviews he is scheduled to do is being limited, or they might not want to talk with him as much as they have in the past. You are not likely to win the media battle with the team and, therefore, it is a battle you should not engage in. I have always said that the press is like a derringer. You have one shot and you have to know when to shoot it. In 1992, in Charlotte, the Hornets held a daily press briefing on the Alonzo Mourning negotiation, even though the team promised me they would not discuss what was going on with the press. Every day I woke up, an article was faxed to me that I felt was inaccurate and distorted. We are all human, and we all have a tendency to want to respond and straighten it out. I tried to do this for about three weeks. However, a media black-out resulted, and we did not talk to the press. All it did was hype the negotiations, raise everybody’s emotions and ultimately made the atmosphere more difficult to make a deal that both sides could live with. Getting drawn into this media battle with the team is really counter-productive and I regret doing it.

The use of the media is critical. A lot of people who have never seen their name in the newspaper love to wake up in the morning over coffee and say, “There I am on page three.” There may be one line that says, “Joe Smith’s a jerk; he’s asking for six million dollars,” but you are in there anyway and it is really fun to show to your girlfriend, your wife, or your kids. However, doing the play-by-play in the press is something you should try to avoid.

III. FIRST OFFERS: GETTING OFF THE GROUND

You have developed a strategy, created the atmosphere, you have your opponent coming to see you, and you have twenty five minutes to make the deal or you are going to leave the room. Who makes the first offer? It depends. Is that a good answer? It depends. I like to make the first offer because I believe you set the market most of the time if you make the first offer.

When we sat down with the New York Knicks in 1985, we knew they were going to offer us $1 million a year for Ewing, because that is what the number one picks had made in 1983 and 1984. I did not think that number remotely reflected the market for Ewing, so I made the first offer. In fact, I made it in writing. A lot of people will tell players they do not need an agent, and that they can get the deal by themselves. Players are told they simply need to get the offer and then hire someone to negotiate the deal on the excess. I think that is a disastrous suggestion because if the team makes the offer directly to the player and then you come in and dramatically change it, it is going to appear to the player that the team was really being unfair to him. Nobody wants to go to work for somebody who has been
unfair. If you know what you are doing, if you have done your homework, if you are confident, it is important for you to set the market, as opposed to having the team come in first. They are not as likely to move on their own offer if they come in first as they are if you come in first. Sometimes, you can come in at the same time. You say to the team, “We’re going to exchange offers. I don’t want you to go to school on my offer, and I’m not going to go to school on your offer. Get to the fax machine; we’ll both exchange offers at 3:00.” In team sports, particularly football, there is a system you may have heard of called “slotting.” Who makes the first offer in a sport like football sometimes is not that important, because all of the teams are going to wait and see what the player ahead of you got and what the player behind you got, in order to determine what is fair. I like to set the market in my negotiations. I think it has a psychological impact. If historically you have finalized contracts close to your opening offer, it sets a tone in your negotiations. Conversely, if your opening offer bears no relationship whatsoever to the final deal, I do not think it is that important who makes the first offer.

**IV. Narrowing the Issues**

*A. Get Down to Business*

Now, you have made the offer, you have the right atmosphere and you negotiate back and forth. As you try to close the deal, you need to narrow the issues. If you have seven or eight different issues on the table (I do not know too many people who can simultaneously “horse-trade” so many different issues), you have to narrow the negotiation down to two or three really key issues and trade-off dollars for length, guarantees for bonuses, cash for deferred, or whatever the issues are. You have to narrow the negotiation. Many of the issues really are not important; a number of them are red herrings. There are issues people will concede readily — they may have been thrown in to make you think that your opponent is making compromises. You need to ascertain the two or three most critical issues and deal points and go to them. Depending on how well you know the person you are dealing with, you might suggest to them, “We’ve been at this for three months. What is it going to take to close this deal? You’ve been asking X and I’m offering Y.”

If your opponent respects you and you have dealt with him before, he is going to tell you, “You want to close the deal? I can’t go five years, I can’t go over three years. My owner won’t let me do it. The Chancellor won’t let me do it. My wife won’t let me do it.” If you have a good relationship, at some point you have to stop playing games; training camp is around the
corner and you must get the player into camp. You have to get beyond the verbiage.

B. Identifying "Deal-Breakers"

You must identify what I call the deal-breakers. Certain points in the deal are probably non-negotiable. If I represent the number one pick in the country, I am not going to accept an option from the team. I do not care how much money they pay us; I do not want any options. That is a deal-breaker. I am not going to give any non-guaranteed years. That is a deal-breaker. We can talk for six months or six years; we are not going to give them a non-guaranteed year for this player. I think you need to identify that. Ultimately, you need to identify the paramount issue to each side. What is the single, most important issue that each side needs to get? If you boil the negotiating process down, each side needs to get certain basic points, one or two or three basic points to make the deal. And you have to figure out a way to get the opponent most of what he needs, while you get most of what you need. For example, I am in negotiation now and I do not want to lock up my client on a long-term deal. The team keeps reminding me, “I’m giving you all the security.” I reply, “I don’t want security. I’m very confident that my client is going to be a terrific player. I want to go short and you want to go long. You’re not doing me a favor by putting all these additional dollars on the table, because I’m not interested in a long-term contract. You’re not giving me what I need, so quit pushing it. If I wanted the security, I’d say, ‘Thanks a million for the extra ten million dollars; I’ll give you something.’ But, that’s not important to me here. The reason we haven’t made the deal is because you haven’t understood that what you’re offering me isn’t what I need to make the deal.”

C. Be Flexible

You need to identify the single most important issue. Sometimes, it is what I call a magic number. If you want to get $1 million, $999,000 just does not have the same appeal. If your client is absolutely fixated on a number, whether you go above or below the magic level will have a huge impact on him. At times, the team is really hung up on how much total dollars they pay out. They may not be concerned about paying you $4 million a year for two years, but they simply are not going to pay you $4 million a year for eight years. You must figure out what the break-point is in each deal, and then you have to horse-trade.

Figure out how to give up some things that you want, but maybe you cannot get, for the things that you absolutely have to have to make the deal
and go home. When you have done all these things, you must narrow the gap. That is the art of being creative.

D. Closing

Last, but not least, you have to take the most important step; you have to close the deal. You can talk and talk; you can have the greatest strategy; you can do all your research — know every salary in the League by heart for the last twenty years; but you have not closed the deal yet. There are no style points in negotiations. You have to close the deal. To do that, you have to set a tone for the close. You have been negotiating back and forth, plenty of offers and counter-offers. You have to somehow communicate to the other party that you are ready to make the deal now. Make your closing offer and clearly and unambiguously identify this offer as a closing offer. Suppose you are at $1 million, and your opponent is at $800,000 and you respond, “I'm going to break the million dollar barrier.” You can close the deal for $950,000. The other party says, “Great, now if you just come down to $900,000, you have a deal.” You wanted to close the deal at $950,000. However, you did not signal that $950,000 was your closing offer. When you are making the close, your opponent needs to know that you are not going to have anymore room to compromise the deal. Maybe you walk out, maybe you terminate the session, but you have to let your opponent know that you are at the close.

The cardinal rule of negotiations is that you must be prepared to say no. If you do not get what you want, whether it is one dollar less or a million dollars less, if you really believe you are below market and you have the leverage, you have to be prepared to say no. If you are lucky, and your opponent says, “Okay, I can accept the last compromise,” then you say some magic words to signify that you have a deal, so that there is no confusion later. When I deal with someone I know well, whether I am on the phone or in person, I say, “Do we have a deal?” If the reply is, “Yes, we have a deal,” I shake hands if I am in person, or I say on the telephone, “We have a deal,” and I immediately send something in writing.

If you are in person, you could take a yellow pad of paper and jot some principal deal points down and sign it. You want to have something tangible that states you have a deal, so that a week later the other party does not say, “I thought it was a seven-year deal, not a five-year deal.” Once you get away from the discussion, everyone is going to have a different recollection of the final deal. Therefore, if you are negotiating in person, find a way to reduce it to writing, even if you have to write on a napkin or a paper plate. Always have the person you are negotiating with signify you have a deal. At that point, I like to review the deal points and go through all the princi-
pal terms to make certain you are both on the same page. If you have a misunderstanding at the moment you are making the deal, you are certain to have a misunderstanding a week later. It is important to reduce the terms to writing, even if it is informal, and schedule an exchange of a more formal writing or final contract.

V. CONCLUSION

In summary, five points must be emphasized:

1) Do your homework. I have negotiated contracts for eighteen years. I have an almost photographic memory. However, when I get on an airplane to meet someone, I pull out the League salary numbers, review them, and write down my arguments. I do not think I need to do that, but it gives me a sense of confidence that I am really prepared. Know your opponent. Find out as much as you can about the person with whom you are negotiating. What is his style? What is his authority? How long has he been doing it? Is he easy or difficult to deal with?

2) Prepare your principal arguments in writing. What is the worth of your client? Write it down. Do not just wing it. I write down my offers. Sometimes, I write down counter-offers and even potential counter-offers, which are called "fall-backs." Can you go shorter? Can you take deferred money? Can you get bonuses? I try to have as much information as possible at my fingertips so that when I am in the room, I am really prepared. I am not thinking about the issues and how to approach the deal for the first time.

3) Be creative. In today's environment of big dollars, people will respect you for coming up with creative ways to make a deal. Ultimately, the process of making a deal — negotiating — is simply an exercise in creative problem-solving. You have certain things you have to get, your opponent has certain things he has to get and you are trying to creatively find a way to match up as many points on both sides of the table as you can.

4) Maintain your flexibility. Sometimes you put yourself in a corner by giving ultimatums or by being unnecessarily difficult. Never forget that never is a long, long time. People who say, "I'm never going to do this" or "I'm never going to do that," lose a lot of credibility the next time around if you persuade them to "just do it." My good friend, Angelo Drosses, often got to the point where he would say, "I will swear on my dead mother's grave that I'll never accept your offer." I would respond, "Angelo, please don't swear on your dead mother's grave. I get the message. You don't have to carve it in cement." Never say never.

Likewise, I think you need to allow your opponent to maintain his flexibility. As you get more rigid, threatening and difficult, the chances are that
your opponent is either going to cave-in because he is weak, or he is also
going to get rigid and difficult and make it a lot harder to close the deal.
Allow your opponent to maintain his integrity. Perhaps this is the most
difficult lesson to learn - something that only comes with maturity as a deal-
maker. Sometimes, you know you can get a little more money, but the last
concession, the last $10,000 a year, will so impair the relationship between
the team and you and even your client that it is just not worth it. I recall
Xavier McDaniel’s negotiation with the Seattle SuperSonics. I was deter-
minded to get him $800,000 a year as a rookie. Toward the end of the nego-
tiation, we got a big break and the team offered $750,000. I felt strongly we
could get to our $800,000 goal, but in my judgment it would have been so
embarrassing to the team that when they offered $762,000, we closed the
deal. I knew we could have obtained the last $38,000, but McDaniel had to
live in Seattle and if the coach thought that the team had been gouged, it
really was not worth it. When I negotiated Danny Ferry’s contract, I re-
ally wanted to get him $4 million. Ferry thought $4 million was simply too
much. When we finally signed the deal, the owner was very complimentary
to me at dinner about how reasonable we had been, even though we had all
the leverage. Ferry replied, “If you think David was reasonable, you should
have seen what he really wanted to ask for.” I had to kick Ferry under the
table.

5) Last, but not least, as they say at Holiday Inn, “The best surprise is
no surprise.” Do not try to wing it. Know what the market is and under-
stand the collective bargaining agreement, the salary trends, the salary cap,
or whatever the restrictions are. Do not be surprised. Do not make a deal
and find out later that someone who really impacts your client has made a
deal you did not know about it. Semper paratis. You must always be pre-
pared. The stakes are far too large in today’s economy, with players break-
ing the $2 million, $3 million, $5 million, $6 million, and $10 million a year
barriers. The stakes are simply too high to be surprised. You are a profes-
sional and this is not a hobby. This is a big business. You have to be
prepared.