DEALMAKERS UNITE!

WAGE WAR AGAINST DEAL WASTE, INEFFICIENCY, AND FRICTION

Deals are notoriously idiosyncratic, but they are all plagued by the same Achilles heel: it doesn't take much to derail them. Every deal has a different culprit. Sometimes negotiations succumb to structural flaws or irreconcilable economic impasses. But sometimes the death knell is needlessly sounded by poor interpersonal dynamics and communication patterns.

Successful dealmakers understand Morgenstern's Maxim: "[d]eals, like the universe, tend toward entropy". So they wage war against the ever-present enemies: deal waste, inefficient communication, and overly-burdensome documents.

Effective negotiators actively run transactions using a variety of styles and tactics. Their common denominator, however, is that they are universally great listeners. They accept that there are legitimate needs on both sides of a negotiating table that must be recognized and satisfied if there is to be a deal.

As a group they don't need to (or try to) win every point. Instead, they:

- identify and fight only over those issues with genuine monetary impact relative to transaction size and price,
- seek and build on common interests,
- leave only the most narrow set of material issues to resolve, and
- comfortably distinguish wheat from chaff.

And at every turn, good dealmakers seize control of the deal and fight back against the major barriers to closing:

- passage of time (the longer a deal takes, the less likely it is to close),
- miscommunication and ambiguity, and
- unnecessary deal friction.

Consequently, great dealmakers think about what truly matters and don't obsess about issues that are seven standard deviations from the norm. All issues are not equal-weighted in importance. They can confidently distinguish between "nice to have" or "need to have".

A unifying theme is that skilled dealmakers minimize friction/ resistance points to the irreducible minimum. Why? Because time kills deals.

Transactions close when counterparty rapport and mutual confidence is established and transaction momentum builds. Personal relationships matter. As trust rises, there is a freer flow of less guarded information; creating dialogue and leading to positive results.

Once lost or reduced, trust and momentum are excruciatingly difficult to regain. Each unnecessary, ineffective, or ambiguous communication (documents or emails) wastes time, add costs, and degrades momentum and trust. Collectively they consume energy and deal goodwill, and provoke negative counterparty reaction.

Dealmakers know how to compromise without feeling compromised. They work relentlessly to improve the emotional and monetary negotiation "noise-to-signal" ratio. By reducing "clutter" the negotiator can focus intensely on the comparatively small universe of truly economically meaningful variables.

HOW TO BUILD A TRANSACTION ECOSYSTEM THAT FACILITATES DEALS: SOME MODEST SUGGESTIONS.

In an M&A context, the transaction ecosystem inhabitants are buyer and seller (the "counterparties"), and their respective agents (investment bankers, lawyers, and accountants).

Counterparties sit on opposite sides of an increasingly metaphorical negotiating table. However, they share a need for an agreed piece of paper codifying a deal; an agreed exchange of assets and currency permitting transfer from Seller to Buyer. The agreement creates a line of demarcation clarifying and allocating the counterparties risks and rewards at and after the closing.

In this deal configuration only the principals have the power and leverage to affirmatively set a transactional "tone" and establish guidelines (including human dynamics) for all counterparties. They can and should demand transaction documents designed to facilitate (not frustrate) dealmaking.

The principals can mutually establish "Rules of the Road" for the deal, i.e. establishing communication patterns emphasizing listening (not talking) as a key concept.

Effective negotiation is most productive in a transaction ecosystem in which:

- all documents/written communications are designed to minimize ambiguous, confusing, inconsistent, or irrelevant material, and
- direct bilateral communication is maximized (i.e. face to face, or voice to voice).

After major terms of a deal are agreed to, the deal process has to be actively run with a shared counter-party intention of getting the transaction done quickly, and with the minimum of unnecessary friction. Some friction can't be (and shouldn't be) avoided. Every issue is NOT win-win. But LOTS of friction is the accidental by-product of a poorly run and conceived process.

Conceptually, the ideal document clearly and simply codifies the mutual expectations of Buyer and Seller resulting from an informed negotiation process. Ideally negotiation is a mutual education process; a focused exchange of information, needs, views, and value proposition.

The acquisition document is the "place" where the counterparty's mutual expectations (developed and refined through negotiation) are articulated. Neither wants disappointments post-closing based on lack of shared understanding.

In a perfect world, Apple would design a user-friendly acquisition agreement. The document would be easy to navigate, visually intuitive, and use everyday words and SEC Plain English throughout. Buyers and Sellers should be able to easily read "their" document and understand the business and financial implications to each of them.

Since mandated in 1998, SEC prospectuses have complied with "SEC Plain English"; six simple rules that have enormously improved the "readability" of public offering materials. The rules call for:

- Short sentences,
- Everyday words,
- Active voice,
- Tables or bullet lists for complex material,
- No legal "jargon" or highly technical business terms, and
- No double negatives.

Adopting the SEC's approach in the deal world would result in shorter documents, a sharpened focus on the relevant, and fewer opportunities for disagreement.

Said differently, the longer a document, the more negotiation. The more negotiation, the longer the time-period. The longer the time-period, the greater the cost and the lower the probability of closing. The converse is equally true. 17th century French philosopher Blaise Pascal noted that "I have made this letter longer than usual, because I lack the time to make it short". That's not a luxury dealmakers can afford. Deal participants MUST take the time. Re-read documents and emails before sending. Reflect. Edit.

Put yourself in the recipient's shoes. Will the context be clear? Will the reader of your email easily understand its goal, content, and requested action step? The effectiveness of communication can only be judged by what the recipient heard, read, and/or retained. Judge yourself accordingly.

Emails promote hasty replies, extreme positions, and sarcastic responses. All are self-indulgent and deal-destructive. Neither humor nor anger communicate well in digital fashion. Avoid them.

What's the best communication approach for the deal? Dueling drafts rapidly reach a point of marginal utility. Digital exchanges have a value (particularly for data transmission). But sooner rather than later the analog world is probably more effective than digital. Email lacks physical, social, and vocal clues critical to human connection, compromise, and resolution.

Many emails are best responded to with a phone call (quaint though that may seem to some.) Phone conversations and in-person meetings facilitate dialogue (which tends to lead to problem resolution) rather than sequential monologue (which leads to Congress).

By definition "dialogue" is not possible unless someone is talking while someone else is listening; really listening. Listening to understand rather than to merely rebut or distinguish. Deep, active, engaged listening (without defense or judgment) is the key to "hearing", communication, and successful negotiation.

In addition to the value of listening, many of us were raised with the useful "KISS" principle; "Keep it Simple Stupid". Perhaps it's time to update this principle by adding an important "S". KISSS. Keep it SHORT and simple, stupid.

CONCLUSION: Listen. Shorten. Simplify. Compromise. Close. All the rest is commentary.

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A passionate musician, he has been on the Board of the Rock and Roll Hall of Fame and Museum for almost 20 years. He also serves on the Board of the Rex Foundation, the San Francisco-based non-profit founded by the Grateful Dead.

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