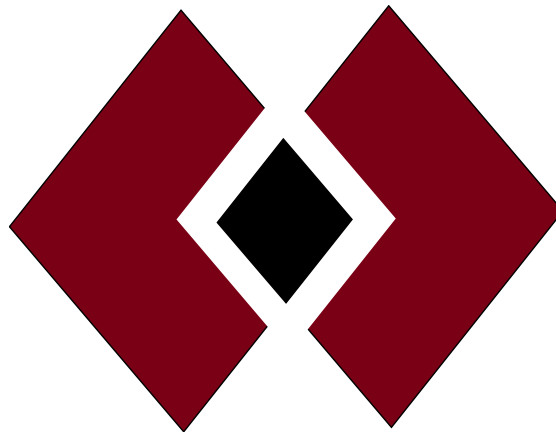


Great Negotiators are characterized, not by their techniques, nor by their hard-nosed toughness, but rather by their breadth of capabilities, their ability to build trust, their flexibility, their depth of listening & understanding, and their insightfulness across a broad range of strategies and situations.

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# ***NEGOTIATIONS GUIDE***

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## ***INTRODUCTION***

Negotiations are perhaps one of the most confused and misunderstood elements of supplier relationship formation. The primary reason for this confusion lies in the intermingling of very different negotiations strategies and tactics.

Overall, there are essentially three distinct negotiations strategies in operation today:

- 1) The Adversarial/Combative (Win/Lose) Strategy
- 2) The Cooperative (Win/Win) Strategy
- 3) The Synergistic/Co-Creative (Beyond Win/Win) Strategy

The first negotiations strategy -- adversarial -- some argue, might be effective in some forms of negotiations, such as short-term vendor relationships. Unfortunately, our adversarially based legal system has made this negotiations style the foundation of most courtroom litigation. For years, adversarial negotiations have been the primary mode of purchasing managers seeking to get the lowest prices. The adversarial approach is presented here for the sake of understanding its thinking, tactics, and countermeasures. However, its value is strictly limited to transactions where no future relationship is either valued or desired. In most situations we neither endorse it nor recommend it.

The second strategy is very applicable as a beginning point for generating cooperation. It is particularly applicable to preferred supplier relationships where the value proposition requires more than the lowest price: just-in-time inventory, rapid product reconfiguration, etc. It requires a balancing of needs and requirements between the buyer and seller. Often, the win-win approach will require using compromise. Beware, that compromise, while often inevitable, is, more often than not, considered far less than an optimal response.

However, while win/win is a worthy goal, its level of trust generation and capacity to create real synergy is somewhat limited. Therefore, for truly effective negotiations for such purposes as strategic alliances, one must go beyond the cooperative model to a synergistic model.

The third strategy is the most effective for alliance building, but, unfortunately, it is far less known, and has not been popularized in the press. Consequently, fewer executives know or practice it. Yet, those executives that have never been “trained” in the other models tend to pick it up rather naturally.

**Great Negotiators are characterized, not by their techniques, nor by their hard-nosed toughness, but rather by their breadth of capabilities, , their ability to build trust,their flexibility, their depth of listening & understanding, and their insightfulness across a broad range of strategies and situations.**

As a negotiator, your responsibility is to distinguish the different models and ensure that you use the right model for the right circumstance.

## **Chapter 1**

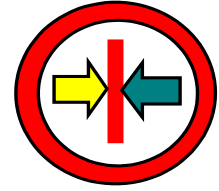
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- Characteristics of Effective Negotiators
- The Negotiations Game
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## CHAPTER ONE

### ***THE COMPETITIVE/COMBATIVE/ADVERSARIAL STYLE***



#### **CHARACTERISTICS OF EFFECTIVE ADVERSARIAL NEGOTIATORS**

*Make even the dullest item look great*

*Be Cunning & Crafty -- project your products in the most positive light*

*Be Greedy, have more ambition and motivation than your opposition has objections*

*Make people like you by virtue of your powerful and smooth personality*

*The Other Side is the Opponent, who is prepared to scheme against you;*

*they will not volunteer any information that will make the deal easier, and will lie if they feel a trap is being set or intimidation is likely; and will lie about most other things they tell you, so be careful. Remember, the other side has a game plan and is suspicious of his enemy, which is you. The suspicion will continue until you manage to break the ice.*

#### **NEGOTIATIONS ARE A GAME OF PSYCHOLOGICAL MANIPULATION: MIND GAME WARFARE**

*Psychology is the most important weapon a master has in his arsenal. By using psychological manipulation you can examine and analyze the opponent and guide their thinking so he will be more open-minded and receptive to any presentation.*

*One excellent way to manipulate the thinking of the other side is let them know you appreciate them. Also, ask them to talk about themselves*

#### **GUIDELINES ON MAKING CONCESSIONS**

1. Don't be the first to make a concession on an important issue
2. Never accept the first offer
3. Make the other side reduce a high initial demand; don't honor a high demand by making a counter-offer.
4. Lower the expectations of the other side by making small concessions.
5. When you make concessions, make them slowly
6. Defer concessions on matters that are important to you.
7. Make contingent concessions (i.e. get something in return, or concede only on the condition that all issues be settled).
8. Make every concession seem important
9. Don't feel that you must reciprocate every concession made to you.
10. Be cautious about making first offers, because you may lose an unintended benefit.

**TACTICS FOR PSYCHOLOGICAL MANIPULATION**

**Touch People:** Use your hands to touch their hands or some other part of their body. This makes people more attentive and draws them closer to you.

**Countermeasure:** Keep your distance. Show displeasure if you are touched.

**Always tell them a Secret,** something they believe is special. People love to think they know something that no one else knows.

**Countermeasure:** Tell them the secret has little strategic value, but you appreciate it; see if you can get them to tell you something of real importance.

**If you are negotiating against a team, it's you against them.** Focus on winning over one of the team; it creates a pressure for the others to join in.

**Countermeasure:** Establish clear roles of skeptics and devils advocates to make the team division tactic useless and seem impotent.

**Be aware of the weapon of intimidation; maneuver yourself into a psychologically advantageous physical position** when talking. The main factor is for your eyes to be higher than theirs, making them look up at you, subconsciously making them feel less defensive, more believing, and more attentive to your words.

**Countermeasure:** Set the positions of the negotiations table first, hold the negotiations on your territory.

**Ask a series of trap questions** that the opponent will have to agree with (say 'yes' to), it puts them into a logical progression pattern that forces them to trap themselves every time. Build a "trap box" to surround the opponent with invincible and invisible walls, and when the time is right, close the final door to the "trap." At this point, they are sealed in, locked in, boxed in, and sold.

**Countermeasure:** Don't say yes easily; throw them off-balance by answering a question with a question, or asking for further clarification.

**Good Cop/Bad Cop:** Have an unreasonable contract clause or lawyer who takes a tough stand to make the "good guy's" position seem quite reasonable.

**Countermeasure:** Tell the other side you just witnessed an excellent (or awful) good cop/bad cop routine. It will put them off balance. Then counter with a small concession in return for a larger concession from them.

**Limited Authority** prevents someone present from making final decisions, thereby requiring higher authority from another entity, such as a lawyer, board of directors, or technical review.

**Countermeasure:** Determine if this is true or a ploy. If true, ask that the right person be present at the table.

**Last and Final Offer** sets a standard for the other side to reach, or the deal will be killed.

**Countermeasure:** Don't overreact; consider the walking out ploy, perhaps by feigning a need to caucus. Introduce new alternatives and other possible solutions.

**Nibbling** is typically used when the deal is close to being agreed, and one side asks for a few minor points just to gain a little more advantage before the end is in sight.

**Countermeasure:** These are just concessions; follow the rules of concessions (above)

**Crunching** is an intimidation tactic that says, “You’ll simply have to do better than that if you are serious in doing this deal,” counting on pushing you to change your position.

**Countermeasure:** Defend your position as firmly as possible; hold on to any concession you might make as long as possible.

**Humble & Helpless** says that you really don’t know the industry nor the technology and are too new at the game to be knowledgeable, thereby getting the other side to be more giving.

**Countermeasure:** Realize they may be dumb as a fox, play dumb like a fox asking for vital information in return; give out information in small increments, looking for signs of insincerity.

**Cherry Picking** puts one party in the position of buyer, treating the other side as a vendor. The buyer gets bids from several vendors, picking the lowest prices per item from bidders on a line-item basis.

**Countermeasure:** Consider tying all items together, and making the offer contingent on an all-or-nothing basis.

**Note: *The Ultimate Countermeasure:***

Remember,

***“A tactic exposed is defused.”***

#### LEGAL ISSUES — How to use to use your lawyer most effectively in Adversarial Negotiations

- ☐ Your lawyer is an important asset.
- ☐ Use Lawyers to Spread Fear
- ☐ Shed Risk to the Other Side
- ☐ Don’t Trust any agreement except the tightest agreement.
- ☐ Be sure to get all agreements in writing with clear terms and conditions.
- ☐ Accept no risks.
- ☐ Litigation is the best manner to win a dispute.

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The Art of War, Sun Tzu, Shambala Books, 1994  
The Negotiators Handbook, George Fuller, Prentice Hall, 1991  
How to Negotiate Anything with Anyone Anywhere, Frank Acuff, Amacom, 1993

## **CHAPTER 2**

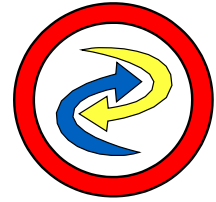
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## CHAPTER 2

### THE COOPERATIVE STYLE



#### CHARACTERISTICS OF EFFECTIVE COOPERATIVE NEGOTIATORS

*Conflict is inevitable and not necessarily harmful*

*Some kinds of conflict can contribute immeasurably to the health and well being of an organization -- for example, by stimulating productive competition*

*No matter what the conflict, it can be managed in such a way that losses are minimized and gains are maximized.*

*There will be clashes of values, but the good negotiator will find the Best Alternatives*

*There is always a Zone of Possible Agreement, one must seek and find it*

*All Change will Cause Conflict, and the skilled negotiator will show compassion and understanding of needs, values, and differences in these situations*

*The escalation of conflict and reaction does not generally produce good results*

*Always seek areas of mutual agreement, be hard on the problem, soft on the relationship*

*Focus on Interests, not Positions*

#### NEGOTIATIONS IS A GAME OF MUTUAL ACCORD ....

*Establish an Atmosphere in which people are free to raise appropriate objections*

*When soliciting opinions, don't define the results you are expecting*

*Joint Problem Solving is a superior manner to get agreement than confrontation*

*Diplomacy is the art of letting someone else have **your** way.*

*Negotiations is the process of back-and-forth communications aimed at reaching agreement with others when some of your interests are shared and some are opposed; it is the informal activity you engage in when you try to get something you want from another person.*

*It is essential to identify the other side's interests, fears, needs, concerns, desires and motivations at the outset before attempting to solve a problem.*

*People are Reaction Machines, and it is this knee-jerk reaction mechanism that blocks most*



*people's abilities to reach accord because differences escalate immediately into uncontrollable conflict. By suppressing this reaction mechanism, negotiations can proceed on a more logical, methodical basis.*

*It is essential to limit any attack on people, which will only exacerbate feelings of distrust, thus making joint problem solving nearly impossible.*

*Always look for situations where Win/Win is possible. Win/Lose situations are not likely to result in long-term accord.*

*The Negotiator's Role must be to change the Rules of the Game, from one of limits and fixed positions, to one of accords to meet mutual interests.*

*Extensive Preparation is critical before entering negotiations to determine what the other side's needs and interests are.*

*Look to build trust by focusing on a positive relationship with the other side. The relationship between the sides frequently outweighs the importance of the outcome.*

*Good Negotiations should produce a wise agreement, efficiently, and not damage the relationship between the parties. A wise agreement is one that meets the legitimate needs of each side, is durable, and resolves conflicts fairly.*

*Negotiations are neither a debate, nor a trial, nor an exercise in persuasion of a third party judge or arbiter.*

## **GUIDELINES ON MAKING CONCESSIONS**

1. Know what I am willing to give up and what I am willing to take.
2. Examine and weigh all alternatives; develop objective criteria for the alternatives.
3. Never assume the other side thinks like you do, nor do they always want what you want.
4. The other side's values are probably different, even if they were in your position.
5. Never put the other side in a position where they will lose face or be perceived as dishonorable.
6. Preparation and Research are essential to finding win/win arrangements.
7. Listening is far more important than talking if you are to discover best alternatives.
8. Seek alternatives rather than make concessions.

**TACTICS**

**Win-Win:** A commitment to both parties winning will result in a far better solution than a win-lose, adversarial game. Both parties should make this commitment up front.

**De-personal Conflict:** Do not see conflict as evil; benevolent people can use conflict productively. Use conflict to generate energy, new opinions, and to prevent stagnant, one-dimensional thinking. Separate the Disputants from the dispute. Recast an attack on you to an attack on the problem.

**Compromise:** Trade-off minor issues to win major issues. Compromise is the art of releasing a lower order need to gain a higher order need.

**Build Relationships:** Use personal interaction to build trust and understanding. You can gain far more with a positive, productive relationship of appreciation and mutual respect than if you distrust or detest the other side. Make the other side feel not as an opponent, but as if they belong.

**Listen & Learn:** The most important skills in negotiations are often the most simple. By listening, asking non-threatening questions, and developing a deep understanding of the other side's perspectives, we can determine the "Best Alternative To A Negotiated Agreement (BATANA)". Spend the time to find the facts. Give people time to think.

**BATANA:** The Best Alternative To A Negotiated Agreement is that Zone where both parties sacrifice the least and gain the most. It should be the aim of *both parties* to do the least damage to the other. Be willing to explore many alternatives to get what you want.

**Fairness:** A mutual commitment to fairness is essential to building a win-win. A sincere desire to see that neither side benefits at the diminishment of the other will produce a better agreement.

**Focus on Interests:** A "position-based" stance will only force ego-entrenched warfare that does nothing to produce a positive result. It is legitimate for the other side to different interests. Too often positions are just symbols of real needs and wants.

**Respect Differences:** Only by respecting differences can mutual accord be gained. Needs, fears, and desires are always different among people, so give the other side the room to have their own interests at stake.

**Establish Objective Criteria:** To enable a shift from positions to interests, set objective criteria for achievement of goals.

**Problem Solving:** Negotiations should not be considered like a war, but as a mutual problem solving exercise, where needs, wants, obstacles, and goals can be dealt with rationally and objectively.

**Balance Forces:** Instead of pitting my force against the other side, thereby locking them into a position, balance the forces in a manner that enables both parties to operate in detente.

**Corollary: Power** grows out of someone else's dependency. If you provide something the other side needs, they become dependent upon you, and visa versa. The key to gaining power is to identify what you and the other side really want. Spend time learning who has the power to control and the power to decide.

**LEGAL ISSUES** — How to use your lawyer most effectively in cooperative negotiations:

- ☐ Use lawyers as part of your team.
- ☐ Be sure they focus on interests.
- ☐ Do not let lawyers get into a positioning, posturing game.
- ☐ Keep lawyers objective.
- ☐ Use contracts to codify the win-win agreement.

**REFERENCES:**

Roger Fisher & William Ury, *Getting to Yes*, Houghton Mifflin, 1981

William Fisher, *Getting Past No*, Bantam Books, 1993

Fred E. Jandt, *Win-Win Negotiating*, Wiley, 1985

Denis Waitley, *The Double Win*, Revel, 1985

Note: In the Chinese Culture, this is roughly equivalent to Confucian Thinking

**The ultimate question that must be asked when choosing a negotiating strategy is:**  
*Will the outcome truly serve my best long-term interests?*  
**In other words, will the strategy produce a set of results that will not adversely encumber the relationship and prevent me from really winning.**

1. Note: There three different “levels” of commitment to a win-win negotiations, and only the strongest level of commitment is of real value to the negotiators.
  - *Level One:*  
**Reluctant Acceptance:** The negotiations proceeds on the belief that I must fight for everything I can get, and you must do the same. I will fight for my interests, you must fight for yours. I will allow you to win (because I know this is the only fair way), but you must stand up for your interests, otherwise I will keep pushing until I know you are at the zone where you have left nothing more on the table. This is how a win-lose negotiator believes they have become a win-win negotiator.
  - *Level Two:*  
**Compromise:** The negotiators approach the problem as one of compromise and concessions. We will bargain away less important things to enable your essential interests to be achieved. Here, Win-Win is just an elegant form of Compromise, and thus sub-optimizes the possibilities in negotiations. To overcome this problem, you must shift to a higher order of negotiations (see next section)
  - *Level Three:*  
**Joint Commitment:** The negotiators deeply understand the other side’s real interests and needs and each is strongly committed to the other meeting their needs and will defend the other’s interests against internal attack. This is the most effective win-win method for alliances.

## **CHAPTER 3**

### **SYNERGISTIC CO-CREATIVE STRATEGIES**

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- Characteristics of Effective Negotiators
- The Negotiations Game
- Guidelines on Strategy
- Tactics
- Legal Issues
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### CHAPTER THREE

#### NEGOTIATIONS -- THE SYNERGISTIC -- CO-CREATIVE STYLE for ALLIANCE-BUILDING



For the uninitiated, alliance negotiations will often mistakenly take an adversarial form -- posturing, using bargaining tactics, gaining advantage, and emphasizing control. However, none of these approaches have demonstrated long-term viability in sustaining success. Alliances have generated a new evolutionary form of negotiations based on approaches that seek to support long-term synergy. The methods and processes outlined below will dramatically *shorten the time required* to negotiate and alliance, and will produce more *successful performance*.

#### CHARACTERISTICS OF EFFECTIVE CO-CREATIVE NEGOTIATORS

*Understanding the right situation to use adversarial, cooperative, or synergistic negotiations is essential to success.*

*Conflict is seldom a problem because ego battles can always be transformed by focusing on a larger vision and unifying values.*

*Designing a synergistic, long-term relationship is always built on a foundation of trust and integrity.*

*Flexibility and Creativity are the invaluable to building an alliance.*

*Win-Win is just a starting point; there is much to be gained by pushing farther than win-win.*

*Synergy is achieved by a process of co-creation of a  $1+1>3$  paradigm.*

*Using adversarial negotiations techniques will only produce sub-optimal results when designing an alliance.*

*Playing with an "open" rulebook will produce better results than playing with your "cards too close to your chest."*

#### THE NEGOTIATIONS GAME

*Always focus on creating more — an expansionary process — for both parties*

*Aim for Designing the Future Together*

*Create a Culture of Trust that enables continuous improvements and breakthroughs*

*Make Differences an opportunity to explore new possibilities*

*Openly Discuss the Balance between what is in the Self Interest and what is in the Greater Good of the Whole*

#### GUIDELINES ON STRATEGY -- Thoughts on Co-Creative Synergistic Negotiations:

- A. *Co-Creative Negotiations implies there will be a commitment to an alliance between the negotiating parties. The alliance implies that each will be committed to serving the best interests of the other, hence a synergistic relationship, where the whole is far more functional than the sum of the parts.*

- B. Co-Creative Synergistic Negotiations require six fundamental skills:
1. Design of **Breakthroughs** (new paradigm generations)
  2. **Vision** of a new Future
  3. **Integrity** to keep to one's word
  4. **Synergy** building to focus on  $1+1=3$
  5. **Trust** that enables higher performance and is reinforced by integrity
  6. **Attitude & Language** that create new possibilities.
- C. Mastery of the "Synergy of Compatible Differences" - called **Dinergy** - is essential to the implementation of any co-creative negotiations.

**Definition: Dinergy** (from the Greek; dia=opposite and ergos=working) A dinergistic relationship between two parties requires a fundamental shift in the response mechanism from traditional ways of dealing with each other and a shift in the willingness to confront traditional paradigms.

<b>Traditional Responses</b>	<b>Dinergistic Responses</b>
<i>Blaming and defending</i>	<i>Turn Breakdowns into Breakthroughs</i>
<i>I'm right. You're wrong.</i>	<i>Ask "What's Possible?"</i>
<i>You're Different, therefore Bad.-- Diversity is scorned.</i>	<i>Can we use differences to generate new paradigms? Turn Diversity into Unity.</i>
<i>Emphasis on importance of Knowledge &amp; having the right answer</i>	<i>Emphasis on importance of Creativity and asking fundamental questions.</i>
<i>Constant Evaluation of "Right &amp; Wrong"</i>	<i>Ask "What's Missing?" and "What's Possible?"</i>
<i>Desire for Predictability and Control</i>	<i>Desire for Flexibility and Coordination</i>

## GUIDELINES ON STRATEGY

**Four Key Goals** to keep in mind during the negotiations process:

1. Design a Powerful Synergistic Future
2. Determine if this is the Right Partner
3. Build a Trusting Relationship Between Key People
4. Develop Agreement Between the Companies

### STRATEGY 1: DESIGN A SYNERGISTIC FUTURE

Effective Alliances are *alignments* goals and visions. The real value in an alliance is to gain access to new opportunities -- new markets, new technology, new knowledge, new fields of view and levels of thinking.

Once you have gotten very clear on the future of the alliance, then reverse-engineer the future vision back to the present with key tasks and milestones.

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#### TRAP

When prospective partners do not have a clear, powerful value proposition, they create a *vision vacuum* into which the need for *control* and *structure* are used to fill the vacuum. Avoid protracted arguments about control until you've empowered the alliance with a clear idea of the result it is supposed to produce.

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**STRATEGY 2: CHOOSE A WIN-WIN OR SYNERGISTIC NEGOTIATIONS STYLE**

One of the biggest and most frequent mistakes in alliance negotiations is to use the wrong approach. (see Chapter 4) All-too-often negotiators treat alliances like they were negotiating a commodity purchase from a vendor -- squeezing concessions, using strong arm and posturing tactics. It is far better to start with a strategy based on mutual interests (e.g. Fisher & Ury *Getting to Yes*) then migrating to a more synergistic model using the rules outlined here, than to start with a power and control style of negotiations.

**TRAP**

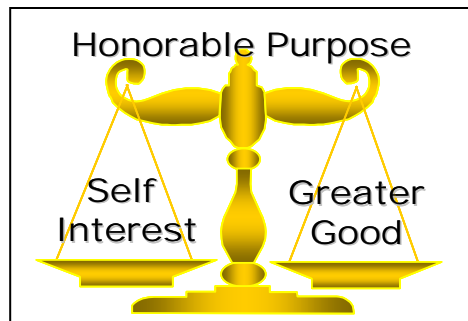
For alliances, there is no such thing as a win-lose arrangement, because, in the long run, the loser will either get even, get out, or both. And the winner will have a hollow victory or be stuck with the residue.

Negotiating an alliance isn't like buying a house or a car. It is more like arranging a marriage. It's far more important to determine if "1+1=3," than to "squeeze the last concessions" out of an opponent. Your objective is to create a "win/win" condition, not a "win/lose." Remember, you will have to rely upon your alliance partners when problems occur. Make sure your alliance partner is with you, and not anxious to regain the advantages they perceived were lost in original negotiations. And be sure that both negotiations teams are using the same set of rules! Win/Win is more than a Negotiations strategy, it is a way of life for the alliance members far after the legal agreements are signed. Therefore it's crucial to have a very clear understanding of what a "win" truly means to your partner. Keep this highly focused in your own mind.

**STRATEGY 3: GENERATE POSITIVE CHEMISTRY**

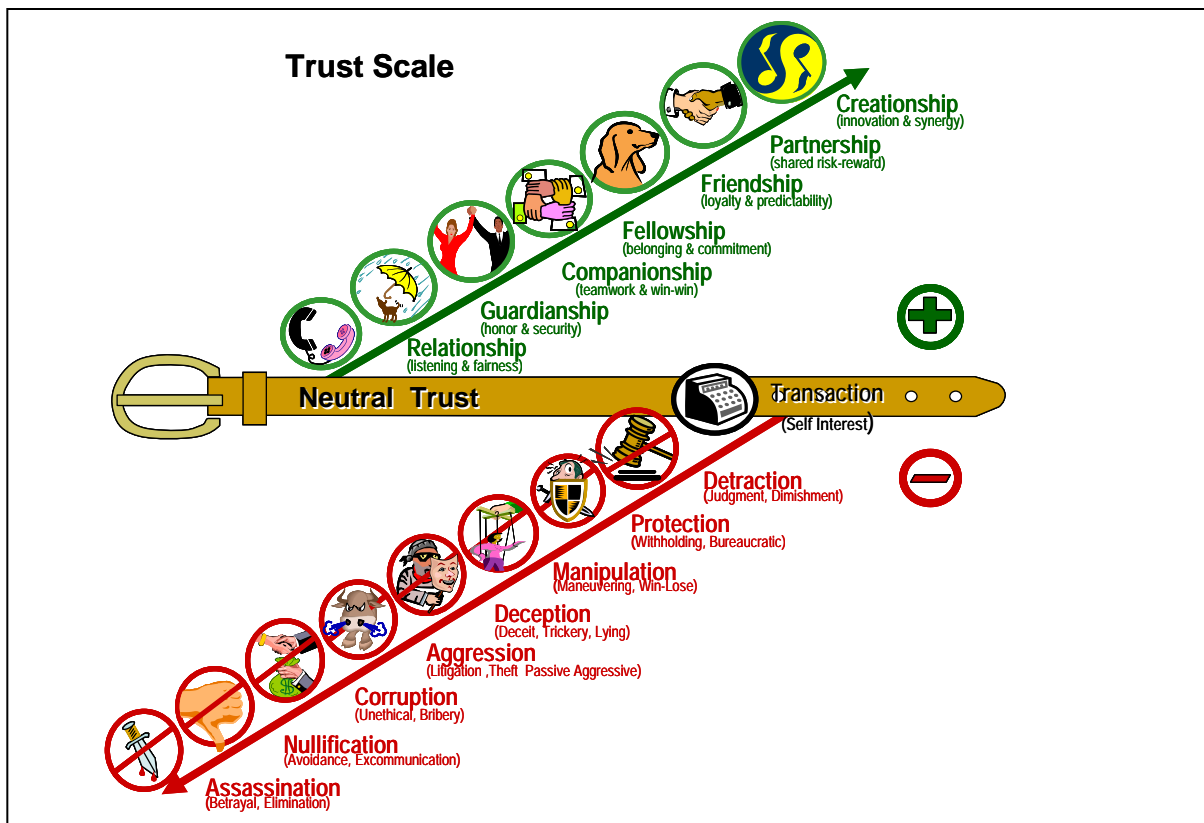
It's essential to build trust, or the alliance will never achieve breakthrough performance. One of the key purposes of Synergistic Negotiations is to generate trust. This begins first with open discussion of what is in the self interest of each partner, and what each partner is willing to commit to the greater good (mutual interest) of the alliance itself. This discussion should be an open and frank revelation of what is needed to satisfy each party's self interest, balanced by a commitment to working in the greater good of the whole venture.

In addition, the alliance must frame its purpose honorably. Anything other than an honorable purpose for its existence will set the partners at odds with each other. Alliances within a "den of thieves" will unravel in short order.



Chemistry is the psychological contract -- the energy, the vision, the trust, and the commitment. It is far more important than the written, legal contract. Take it away and the structure of the alliance will collapse. Although intangible, it's essential as part of the "glue" that holds the two partners together.

On the Trust Scale below, are a range of behaviors and expectations that describe the potential ways the partners may interact. In no uncertain terms must any behavior or language take place "below the belt." The potential partners should clarify what their relationship will look like in each of the dimensions "above the belt" to ensure there is a complete alignment of expectations and key elements of success.



Chemistry, like mortar between bricks, fills gaps between imperfect strategic and operational "fits" and helps keep the partners glued together when the alliance is under stress. If, perchance, the alliance strategy fails the acid test of reality, or the operational plans show themselves to be faulty, it is then the chemistry factor that is the pathway to use to rebuild, reorient, restructure, and reform the alliance. One can count on markets changing, technology becoming obsolete, development processes being superseded, political forces intervening, and any number of unexpected occurrences interfering with the alliance. Without excellent chemistry, no amount of strategic planning or crisis management can substitute.

#### STRATEGY 4: ESTABLISH A COMMITTED NEGOTIATIONS TEAM

Alliances that try to create an alliance "lone ranger" style, with a single individual doing the negotiating are usually doomed before they start. Seldom can a single individual understand all the complexities of strategy, operational integration, cultural interrelationships, financial management, and technology. To overcome these deficiencies, the lone ranger typically turns to legal counsel to "protect" against all the uncertainties and ambiguities that are inherently introduced by not having a clear strategic and operational integration plan. The lawyer then constructs a protective legal agreement that shifts all risk to the other prospective partner, thus destroying the trust needed for a successful alliance later.

But more fundamentally, the lone ranger does not have the support of the key middle managers who will be required to run the alliance after it has been launched. This sets up a classic front-end/back-end of the deal, whereby those who will have to implement the alliance have had little or no involvement in the structuring of the alliance. Consequently, they have little commitment to its final outcome and wonder why they were not consulted in the very beginning.



The fundamental rule is that: *People Support What They Help Create*. Therefore, put those key operational managers who will have to make the alliance a success on the negotiations team. Be sure they are trained in alliance negotiations techniques.

The Alliance Champion should be the leader of the negotiations team, choosing the team carefully to ensure proper balance of people on the team.

#### **STRATEGY 5: GET THE LAWYERS ALIGNED WITH THE NEGOTIATIONS TEAM**

The champion is responsible for selecting the right legal counsel, and ensuring that the lawyers work for and with the negotiations team and do not indulge in independent, adversarial negotiations. Ultimately the venture's success lies not in the legal agreements, but upon the fundamental strategy and the successful design of day-to-day operations. *Under no circumstances let the lawyers act as key negotiators.*

Examining the autopsy reports of failed alliances, many executives report that their time in negotiations was spent roughly in the following way:

50%	on legal and tax work
30%	on selecting products to produce, market or develop
20%	on strategic issues
0%	on building trust and teamwork
0%	on operations planning
0%	on management & personnel selection
0%	on developing a strong team
0%	on practical decision making procedures
0%	on maintaining good communications

*To avoid these problems, allocate time during negotiations for these discussions, and designate key team members to take individual responsibility for each of these factors.*

#### **STRATEGY 6: CREATE A STATEMENT OF PRINCIPLES AND UNDERSTANDINGS**

Once negotiations have proceeded to outline the basics of an alliance, many deal makers are tempted to "structure the deal," and jump to detailed legal agreements. This should be carefully avoided at this stage.

The Statement of Principles and Understandings (SOPU) is much like a memorandum of understanding, but beyond the MOU it also includes several key passages that focus on the mission of the alliance, the key factors of success, fundamentals of the union, the presumed operational interfaces, the spirit of the agreement, and the fundamental values that the prospective partners are committing to. Unlike a Statement of Intent, the SOPU is not designed to be a binding agreement, nor is it a document written by and for lawyers. Keep the agreement flexible enough to adapt to the rapidly changing needs of the competitive arena.

The SOPU crystallizes key points and sets the foundation for finalization of arrangements. Structural issues should be only broadly outlined at this point, with final commitments to organizational form, financial investments, and legal contracts formalized after the next phase of operational planning.

**What it is:** View the SOPU as a road map. It helps you set goals and broad principles for action. It is written by business people for business people; it's not a legal document and non-controversial. It is a means of communication, for in-house, between partners or between staff.

**What it does:** The SPU opens communications: in-house, between partners, between staffs, and between legal counsels. It airs concerns about what should be included and what should be left to negotiations. It also provides a continuity of background for new staff entering the alliance years later. It serves as a document for settling minor interim disputes, eliminates duplication of decision-making and provides clear direction for legal counsel drafting agreements.

**How it works:** The SPU is produced in-house with management signed off, the project team confirming the current position. It acts as a position paper that short cuts posturing of newcomers and acts as a mandate for attorneys of management, detailing the position on key basic issues. This relieves them of the responsibility of maximizing their client's position.

**Implementation:** The drafts are done jointly by the champions and agreed to by their negotiations teams prior to any formal presentations to top management. After a sign-off of the final draft by top management of all parties, it's confirmed by executives to each other. Then, allowing that "form (structure) follows after determining functions," an operational plan should be *mutually* created by the two prospective partners to ensure that the gears of the alliance mesh properly. Writing the operational plan together, the partners test the teamwork at the operational level, insuring that the middle managers will be able to maximize their capabilities.

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**~CAUTION~**

**LENGTH OF DOCUMENT**

Don't Make the SPU more than 5 pages long. No one reads documents longer than that. It will lose its effectiveness if it isn't short and concise.

Remember, this is not the Agreement, it is just the outline of a possible agreement. The most important thing is to be sure both companies agree to the direction you are now headed in. You want to be absolutely sure there is top and middle rank support on both sides for this alliance.

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**TACTICS**

**Negotiations as Co-Creation:** *Cooperation and Alliance Architecture is the method for shifting the energy of conflict from a Resistive, Win-Lose Battle into a Co-Creative Experience*

**Resolving Conflict** is rarely about who is right. It is about acknowledgment and appreciation of differences.

**Fear** will sap your ability to channel your opponent's energy into a co-creative win and breaks the co-creative connection of the heart, forcing ego to conquer ego

**Discovery** is the power of opening yourself to the wonderful realm of possibility

**Defense** is a rigid, closed belief system, while **Discovery** is a flexible, open belief system.

**Strategic Future:** Ask Critical Questions about the future, such as: What Do You Want? What's Your Vision? What Do They Want? What's Their Vision? What's Missing? What's Possible? What Shifts in Thinking are Needed?

**Chemistry & Character** are essential for a long-term relationship. Therefore, create an environment where integrity and trust can prevail.

**Breakdowns:** When the Synergistic Processes breakdown, use the Win-Win, Cooperative Style. Avoid blaming and faultfinding. Use every breakdown as an opportunity to create a breakthrough.

**Integration:** Use co-location and secondment to understand what the issues and concerns of the partner are.

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**~BEST PRACTICE TIP~**

How much do you really believe in this alliance? Would you invest your own mother's retirement fund in it? If not, fix it.

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**Einstein:** Use Einstein's Rules to generate new futures:

### EINSTEIN'S 1<sup>ST</sup> LAW

**The Problems of Today Cannot be Solved  
with the Same Level of Thinking that  
Originally Created the Problem.**

**Corollary:**

*"Problems" occur at the Same Level of Thinking  
"Opportunities" emerge at a Higher Order of  
Thinking*

### EINSTEIN'S 2<sup>ND</sup> LAW

**Creativity is More Important  
than Knowledge.**

**Corollary:**

*"Vision is More Important."  
than Being Right.*

### EINSTEIN'S 3<sup>RD</sup> LAW

**Try not to become a person of success, but  
rather, become a person of value.**

**Corollary:**

*"Success and Failure are both phantoms that exist only  
in the ego, neither are true reality..."*

### EINSTEIN'S 4<sup>TH</sup> LAW

**From Clutter Find Simplicity.**

**Corollary:**

*"From Discord, Make Harmony."*

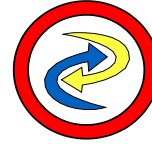
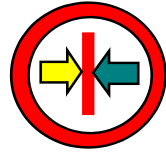
**LEGAL ISSUES** — how to use lawyers effectively in synergistic negotiations:

- ☐ Use Lawyers only after you know what you want
- ☐ Don't let Lawyers "poison the well" with distrust that you must live with later
- ☐ Select Lawyers who understand how to operate in a collaborative environment, even when the legal system in which they practice is highly adversarial
- ☐ Select Lawyers with a high degree of integrity and who have been thoroughly trained in alliance formation and management.
- ☐ Use Contracts to support and reinforce the Statements of Principles and Understandings and the Covenant of Trust

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 Peter Russell & Roger Evans, The Creative Manager, Jossey Bass, 1992  
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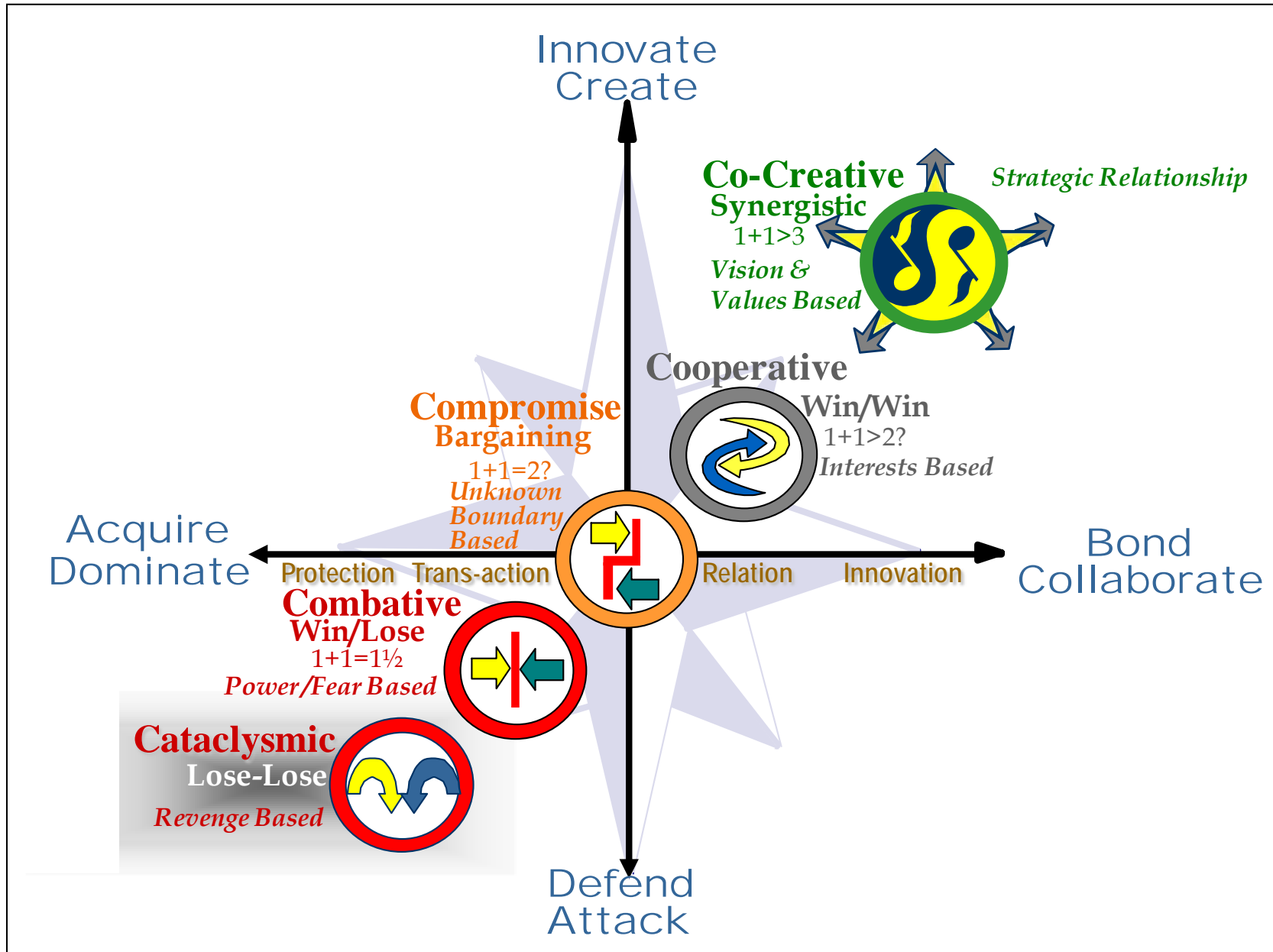
Note: in the Chinese, this is roughly the equivalent of Lao Tzu's Tao Te Ching

**CHAPTER 4****COMPARISON OF THREE NEGOTIATIONS STRATEGIES**

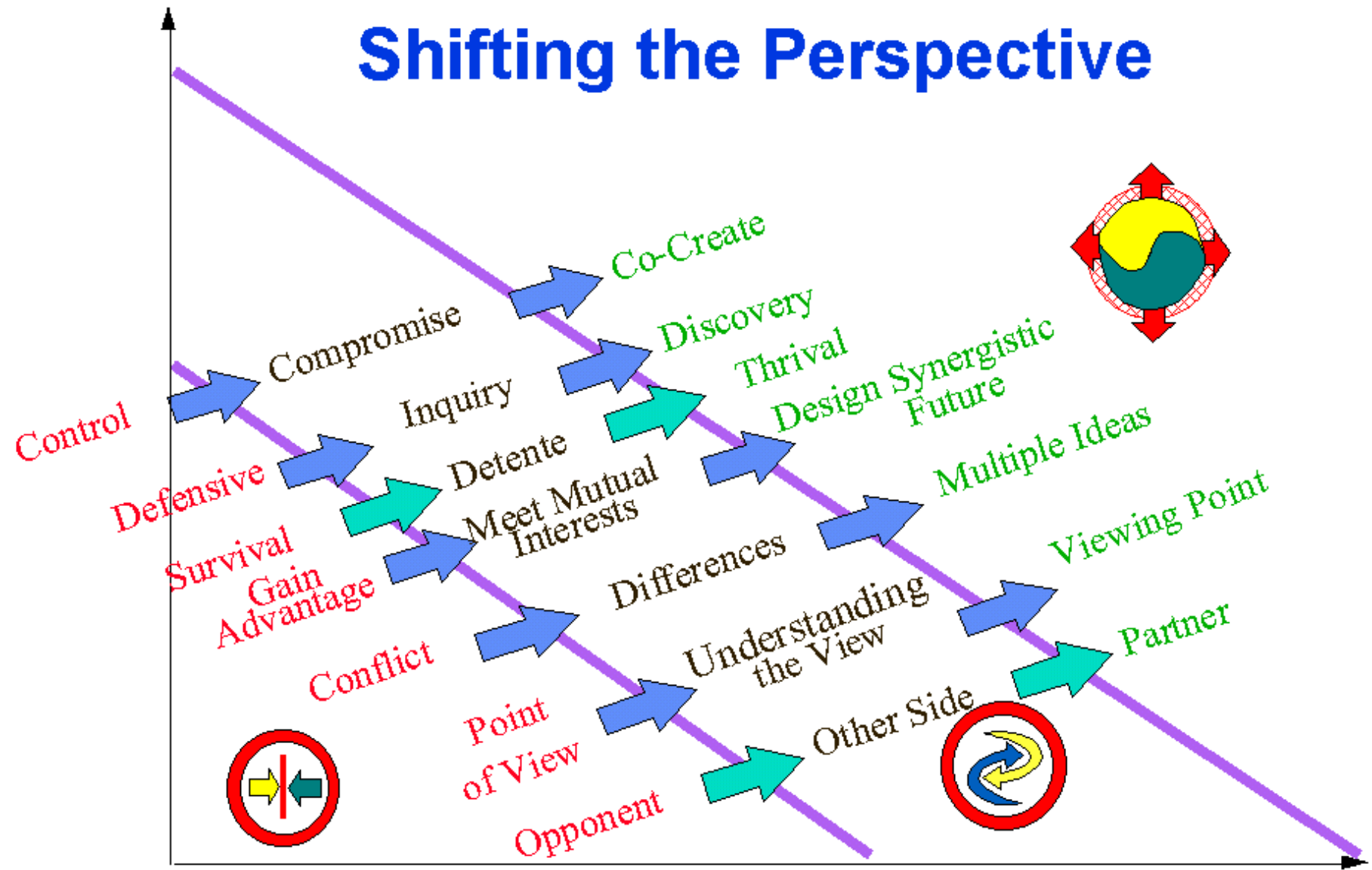
	<i>TRANSACTIONAL-- Win/Lose</i>	<i>COOPERATIVE -- Win/Win</i>	<i>SYNERGISTIC -- Beyond Win/Win</i>
<b>WHO YOU NEGOTIATE WITH</b>	The Opponent (Confrontive, Combative, Conflictive, Adversarial, Filled with Strife, Defensive, etc.)	The Other Side (Find Mutual Accord, Respect Differences, Seek Common Ground, Minimize Losses)	Your Partner (The differences between the two companies will actually create an advantage in creative thinking)
<b>NEGOTIATIONS STYLE</b>	Argumentation & Debate	Joint Problem Solving	Opportunity Generation
<b>BEST PRACTICES</b>	Maneuvering & Manipulation	Compromise and Fact Finding	Envisioning and Co-Creation
<b>FOCUS</b>	Positional -- State Demands, Requirements, and Issues	Interests -- Identify Concerns, Needs, Fears, Desires	Enhanced Total Value -- Stand in the Future, Jointly Create Winning Value Proposition
<b>BELIEFS</b>	Negotiations are a "Psychological War Game. Your "opponent" is out to squeeze you, so be prepared to squeeze back. "Take no prisoners" techniques let you "move in for the kill."	Negotiations can be a difficult game, but it's possible create an environment of cooperation where fairness & an equitable balance of power will lead to a reasonable solution	Win/Win is just a starting point. Synergy is the creation of a 1+1>3 paradigm. Given the opportunity, most people will want synergy rather than warfare.
<b>FOUNDATION</b>	Positionally & Power/Control Based "Competitive Model" -- Winning is Everything	Interests & Needs Based "Cooperative Model" -- Win-Win is Essential	Strategically & Relationally Based "Synergistic/Dinergistic Model" - Beyond Win- Win
<b>ASSUMPTIONS</b>	Pressure the other side. A good scheme will defeat their scheme. Winning is the result of cunning & craftiness. Do your homework -- know how and when to use Strategies and Tactics. The Other Side will Push Very Hard for their position; We must Push Back in order to Protect our Position. Use Lawyers to Ensure Protection.	Negotiations are integral to all working relationships. "You don't get what you deserve in life, you get what you negotiate." Success in positively influencing the outcome of any negotiations depends upon skill in understanding & managing personal and positional needs, perceptions, & personal orientations.	A strategic alliance can only be formed using a synergistic approach. Change is inevitable, making fluid, flexible agreements essential; lawyers must be supportive of flexibility. Careful selection of people & structure will reinforce 1+1>3. There is great untapped power in differential energy. Beware only of those who are committed to adversarial negotiations.

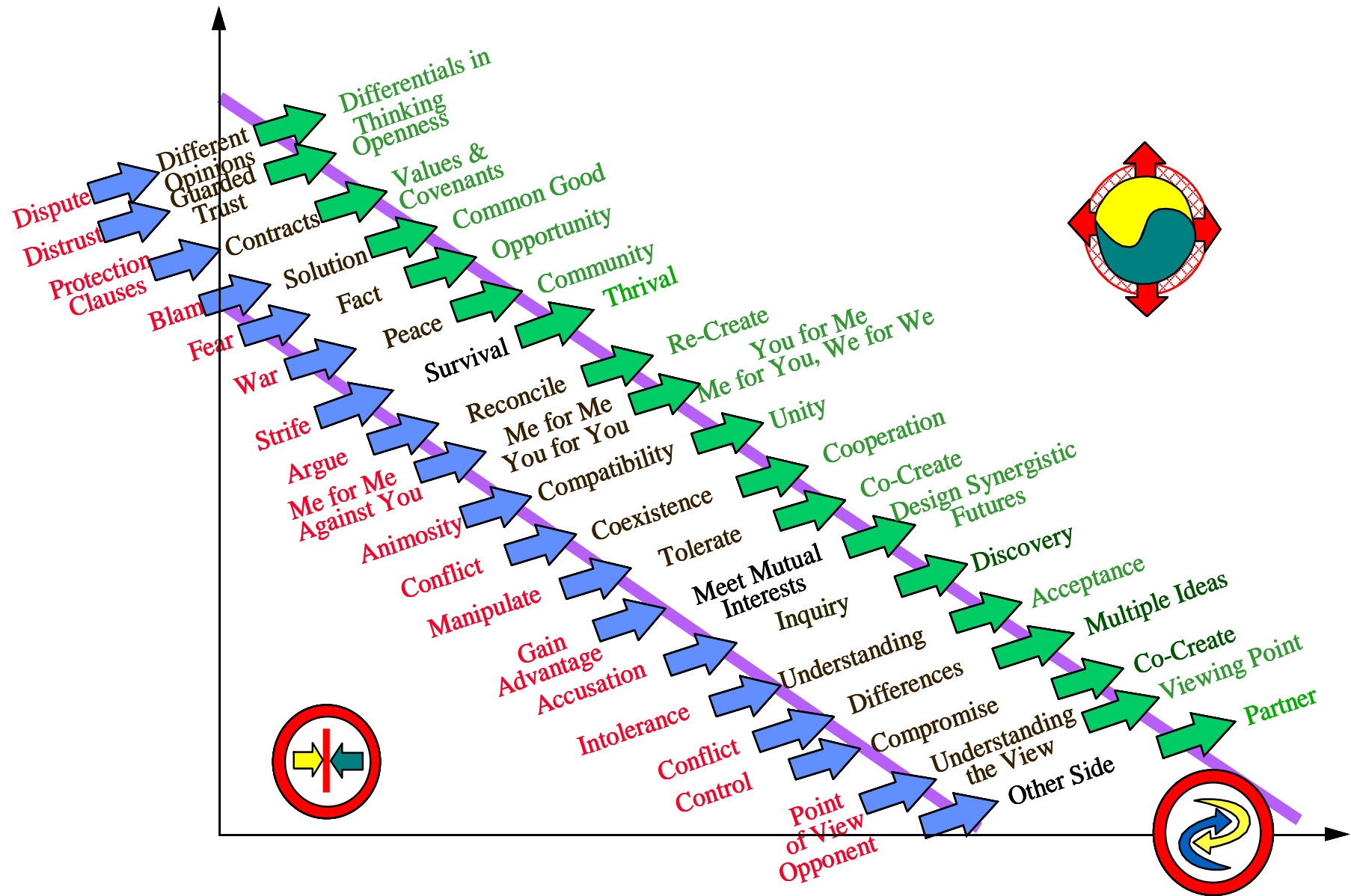
<i>STRATEGIES</i>	Bargain from strength. Find weaknesses. Use lawyers to protect yourself. Put the other side on an unstable position using a variety of tricks & traps. Control the negotiations in order to win.	Bargain from strength, but be flexible enough to see beyond the boundaries of your own limits. Look to find a reasonable ground that meets both parties' needs.	Build Trust & Long Term Relationships. Create value. Be clear on each party's requirements for winning. Generate trust thru numerous points of action & small scale pilot projects
<i>TECHNIQUES</i>	Learn Tactics for Psychological Manipulation. Trick & Trap the Opponent. Hype the sale with energy & enthusiasm. Sell features & benefits. Being nice to people lowers their resistance	Expand Zone of Possible Agreement, Ensure Balance of Power, Balance Emotions with Reason, See The Other Side's point of view, Educate, don't Escalate, Build Trust & Honesty	Search for possibilities, shift to higher levels of creativity - seek 3rd & 4th alternatives. Generate new paradigms. Turn breakdowns into breakthroughs.
<i>OBSTACLES</i>	Fear, Your Ego, Their Ego, Knee-Jerk Reactivity, Mistrust, Needs for Power, Need for Control	Fear, Your & Their Ego, Knee-Jerk Reactivity, Mistrust, Needs for Power, Need for Control	Fear, Your Ego, Their Ego, Knee-Jerk Reactivity, Mistrust, Needs for Power, Need for Control
<i>LISTENING STYLE</i>	Judgmental -- Look for Weakness, Seek Advantage	Understanding -- Look for Needs, Seek Accommodation	Commitment -- Look For Breakthroughs
<i>DISPUTE RESOLUTION</i>	Litigation & Arbitration	Mediation	Turn Breakdowns Into Breakthroughs
<i>APPROPRIATE RELATIONSHIPS</i>	Vendors, Labor Unions (?), Party Politics, Purchase of a Used Car,	Outsourcing, OEM Agreements, VARs, Distribution Agreements	Strategic Alliances, Partnership Agreements, Marriage,
<i>RESULTS</i>	Win/Lose. Distrust. Loser eventually gets even or gets out. Short Term, Tactical Relationship. Low Value Add	Win/Win. Moderate Trust. Compromise is Frequent. Good Tactical Relationship, Possible Strategic Relationship, Moderate Value Add	Beyond Win/Win. High Trust, Short Legal Agreements, Long Term Strategic Relationships, High Value Add

## KNOWING WHEN TO USE THE DIFFERENT NEGOTIATIONS STRATEGIES



## THE LANGUAGE OF THE DIFFERENT NEGOTIATIONS STRATEGIES

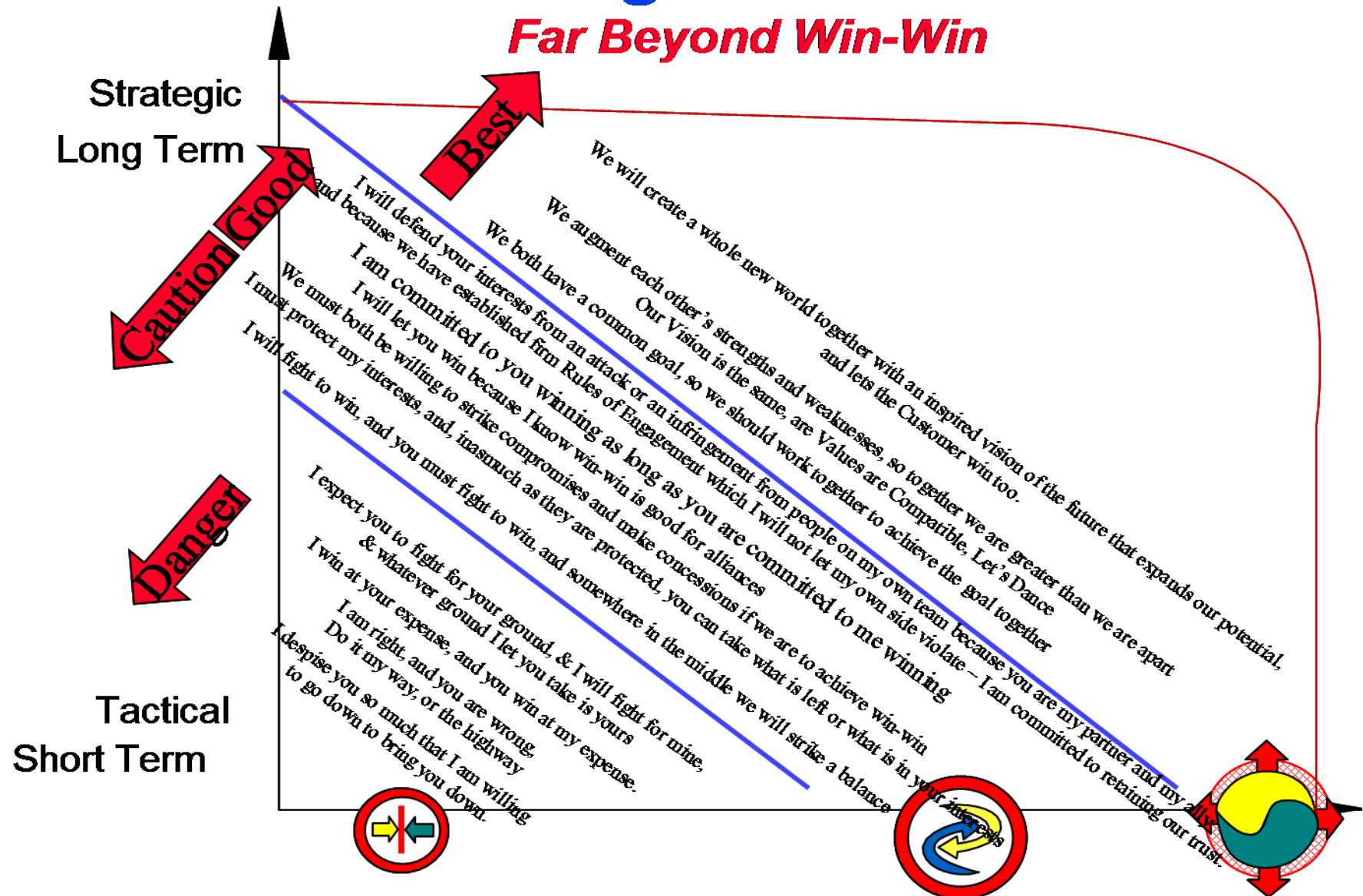






# Negotiations

*Far Beyond Win-Win*



# Shifting Fields

- ◆ For Hard Line Combative Negotiators, One Level of Shift is all you will get in the Near Term
- ◆ For those who have been in the upper two zones, and slip into combative negotiations, move back up QUICKLY  
*“Let Not the Sun Set on Thy Wrath”*
- ◆ No Trade Off Paradigms – Avoid Compromises & Concessions
- ◆ What is emitted from your mouth is a reflection of what is in your mind and heart
- ◆ Examine the Risks, Costs, Opportunities, and Benefits of being in each Zone (there are benefits to combative negotiations)
- ◆ The Third Party must have several Qualities
  - ◆ You Must Believe it is possible!!
  - ◆ You must be able to hold paradox\
  - ◆ Avoid Compromise and Concessions – the No Trade Off Paradigm
  - ◆ No Judgemental thinking
  - ◆ Build Trust by focusing on Values
  - ◆ Build a Common Vision for the future early
  - ◆ Einstein’s Rules
    - ◆ From Complexity Find Simplicity, for in Simplicity there is truth
    - ◆ From Confusion & Discord, find Harmony
    - ◆ We cannot solve the problems of today with the same level of thinking that created the problem
    - ◆ Creativity is more Important than knowledge
  - ◆ Change Language, Shift Paradigms
  - ◆ Pose Questions that Shift the Insight and Perception
  - ◆ Believe the Solution is already in the Stone
  - ◆ Understand and Listen First, Make no Pronouncements or Judgments, except for setting ground rules.

## OUTSOURCING CHART

	<b>VENDOR</b>	<b>OUTSOURCING</b>	<b>ALLIANCE</b>
<b>Viewed As:</b>	Replaceable Commodity	Unique Specialty	Integrated, Customized Specialty
<b>Level of Integration</b>	Low/Not Integrated	Loosely Integrated	Highly Integrated or Inseparable
<b>Number of Suppliers</b>	Many Suppliers	Several Suppliers	Very Few Suppliers
<b>Distinguishing Features</b>	Mainly Price Driven within min. qual. stds	Price plus unique offering (i.e. technology, service, etc)	Synergistic Value Proposition (i.e. mutual growth, etc)
<b>Style of Interaction</b>	Tactical Transaction	Preferred and/or Tactical Relationship	Strategic Synergy
<b>Duration of Term</b>	Short Term	Medium Term	Long Term
<b>Value Proposition</b>	Price and acceptable quality	Price, superior quality, and excellent service	Strategy, Cost, Quality, Reliability, Speed, Innovation, and more
<b>Framework for Winning</b>	Winning is essential for me, What happens to you is your business	A Win is essential for me, and I know I should let you win too if the relationship is to survive	A Win/Win is essential for both of us and is critical if the relationship is to thrive continually
<b>Competitive Advantage</b>	Low Competitive Advantage	Moderate Competitive Advantage	High Competitive Advantage
<b>Make, Buy, or Ally Decision</b>	Seldom produced internally (not a core competency)	Often Produced Internally (debatable core competency)	Frequently has been an integral part of the internal value chain
<b>Trust Level</b>	Distrust Prevalent (caveat emptor)	Trust is important to managing the relationship	Trust is essential to generating a continuous stream of new value
<b>Difficulty of Exit</b>	Low Impact, Excellent Ability to Switch Vendors quickly	Moderate Impact	High Impact, Switching may have detrimental impact due to disintegration of systems

Never Assume that the Future will be an extension of the past

# Range of Negotiations Objectives



## Comparing the negotiations strategies as it relates to the Chinese Symbolic Language

		
Figure 1: Take out a Knife and Cut 	Figure 2: Talk & Judge 	Figure 3: Cooperation Together 
Figure 4: Fiery Talk 	Figure 5: Give One Step Away 	Figure 6: Partners Walking Hand in Hand Through a Doorway 
Figure 7: Crossed Fire 	Figure 8: Lose & Gain 	Figure 9: Stirring a Boiling Cauldron (to create a great brew) 
	Figure 10: Peaceful Solution 	
	Figure 11: Cross Contact 	
	Figure 12: Fair Accounting 	

