

THE TOP 25 NEGOTIATION TRUTHS AND STRATEGIES I HAVE LEARNED IN FORTY YEARS

A Guest Lecture
Presented By

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for

Contract Drafting, Analysis, and Negotiations
USC Gould School of Law
LL.M Program
Spring 2022

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March 30, 2022

MY TOP 25 TRUTHS AND STRATEGIES

- 1. Read Every Book You Can Find on Negotiation—Then Practice**
- 2. Don't Try to Do What You Don't Know**
- 3. Begin with the End in Mind**
- 4. Think of the Negotiation Like it Were a Movie—And You are the Screenwriter**
- 5. Understand the Greatest Human Need is to be Understood**
- 6. Know Your Audience—Know the Culture and Know the Acceptable Manner of Communication**
- 7. Know Your Audience—What do you Think is the End They Have in Mind?**
- 8. Know Your Audience—As Individuals and as Human Beings**
- 9. If there are Forms or Templates that are Commonly Used, Master Them**
- 10. Prepare, Prepare, and Then Prepare Some More**
- 11. Know the Best Possible Outcome for You and What is the Worst Possible Outcome for You—The Deal is Between Those Two Extremes**
- 12. Be Friendly and be Enthusiastic**
- 13. Remember Every Gambler Needs a Pile of Chips that Can be Lost**
- 14. Agree on Small Things to Build Momentum**

- 15. Never, Ever Lose Your Cool**
- 16. Remember You Cannot Make a Deal with Someone Who is Irrational**
- 17. Be Honest to the Extreme—No One Wants to Make a Deal with Someone Who is Not Perceived to be Trustworthy**
- 18. Impasse Will Happen—Have Alternative Approaches to Use (e.g. LBFO)**
- 19. Impasse Will Happen—Be Willing to Think Out of the Box**
- 20. Impasse Will Happen—Be Willing to Take a Break and Then Try Again**
- 21. Impasse Will Happen—Be Able to Neutrally Describe What Will Happen if the Parties Fail in the Negotiations**
- 22. Remember There is Great Value in Closure**
- 23. Don't Overreach—An Agreement that is Too Tough on One Side is Likely to Not Stick (i.e. Can Blow Up in Your Face)**
- 24. Create Incentives and Disincentives that will Make the Agreement Work**
- 25. Never Leave a Negotiation Without a Written, Signed Agreement**

Michael J. Bayard, Esq.
Construction ADR Services

Michael J. Bayard is a full-time Construction Arbitrator, Mediator, and Project Neutral. He is the founder of Construction ADR Services which provides dispute resolution services exclusively for the Construction Industry. Mr. Bayard has served as a Neutral in over 500 construction disputes. He has been involved in every conceivable type of construction project, including single-family homes, planned residential communities, apartments and condominiums, shopping centers, industrial projects, commercial office buildings, and local, state, and federal public works projects.

Mr. Bayard has handled virtually every type of construction claim—including breach of contract, extra work, delays, mechanic's liens, stop notices, errors and omissions, and payment disputes. He served as the Chair of the Panel hearing one of the largest construction dispute ever filed with the American Arbitration Association in the Western United States—claims in excess of \$250,000,000. Today his services are in demand as a Neutral Evaluator in mediations involving disputes valued at in excess of \$10,000,000.

Prior to becoming a full-time neutral, Mr. Bayard was a practicing construction lawyer for twenty years. He served as the National Chair of the Construction Law Departments at two of the largest law firms in the US, Chicago's Sonnenshein Nath & Rosenthal (now Dentons) (1994-1999) and San Francisco's Pillsbury Madison & Sutro (now Pillsbury Winthrop) (1987-1994). Mr. Bayard was an Adjunct Professor of Construction Management in USC's Graduate Program in Real Estate Development for 20 years (1988-2008). He is a Past Chair of the Construction Law Subsections of both the California State Bar and the Los Angeles County Bar Association. He is the author of over forty publications on Construction Law and Construction ADR topics.

Mr. Bayard is a Phi Beta Kappa graduate of the University of California at Berkeley. He is a graduate of Hastings College of the Law, where he was Associate Executive Editor of the Hastings Law Journal.

Mr. Bayard and his wife, Randy Jane, have four children and reside in Los Angeles.

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