

A PRIMER ON THE GOOD COP/BAD COP ROUTINE IN NEGOTIATIONS

*Abeer Sharma**

The Good Cop/ Bad Cop Routine is a common and versatile tactic used in negotiation. The purpose of this paper is to serve as a primer for the Routine for legal professionals looking to hone their negotiation skills repertoire. This paper explains how negotiators can incorporate the tactic in different forms, summarising what the psychology explaining the Routine's effectiveness is. Additionally, this paper also aims to explore the relevant strategic factors that negotiators must consider when deciding whether to employ the Routine and discuss how negotiators may defend themselves from others using the Routine.

Keywords: *Negotiation, dispute resolution, psychology, Good cop-bad cop routine*

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*Abeer Sharma is a lawyer and PhD candidate in law and technology based at the University of Hong Kong.

I. INTRODUCTION

The “Good Cop/Bad Cop Routine” (“Routine”) is a psychological influence tactic that has popularly become strongly associated with police interrogations.¹ The contemporary cultural connotation it now possesses developed in the mid-twentieth century² but records of tactics strongly resembling the Routine can be found in literature dating from antiquity.³

The gist of this tactic in interrogations is to make the interrogatee establish rapport and cooperation with one of the interrogators. This is done by first exposing the interrogatee to the “Bad Cop”, who displays an unsympathetic, even aggressive attitude, emphasising the dire consequences if the interrogatee refuses to cooperate. When the interrogatee has been softened-up enough, the “Good Cop” intervenes. The approach of the Good Cop starkly contrasts with that of the Bad Cop. The Good Cop seeks to make the interrogatee comfortable and perhaps even criticises the Bad Cop’s conduct. He tries to inculcate a feeling of gratitude and familiarity towards himself. Additionally, the surrounding environment may also be adjusted in order to change the interrogatee’s comfort level. This process leads to the interrogatee divulging information to the Good Cop, spurred by both a built-up rapport between the interrogatee and the Good Cop and the fear of Bad Cop’s return.⁴

The Routine is, at its core a tactic that aims to affect the actions and attitudes of the target party. It can thus be tweaked and applied to regular interpersonal negotiations. This is not surprising when one realises that interrogation is merely a special kind of negotiation,⁵ albeit an unequal one. The interrogators – who wield great power over the process and the interrogatee⁶ – try to negotiate the release of information from the interrogatee and the chances of the latter leaving that negotiation feeling satisfied are rather slim.

The paper aims to serve as a primer for the Routine in negotiations, explaining the use and effectiveness of this tactic. Part II of this paper describes the different forms that the Routine may take in negotiations. Part III summarises the current state of knowledge pertaining to the psychology underpinning the effectiveness of the Routine. Part IV details some of the relevant strategic factors that negotiators must consider when deciding whether to employ the Routine. Part

¹Aisha Harris and Sharan Shetty, ‘Is the “Good Cop, Bad Cop” Routine a Real Thing?’ (*Slate*, 2 July 2013) <<https://slate.com/culture/2013/07/good-cop-bad-cop-routine-real-life-history-pop-culture-examples-and-effectiveness-as-interrogation-tactic.html>> accessed 1 November 2021 (‘The earliest printed usage of the phrase “good cop, bad cop” that we found dates to 1956. And the phrase didn’t become terribly common until the last 30 years or so, when the routine had begun taking over TV and movie screens. On the heels of the rogue cop blockbusters of the 1970s, the ’80s and ’90s gave us a slew of police dramas and procedurals that used the trope again and again.’).

² John Reid devised the “Reid Technique” of conducting interrogations in the 1940s, a major component of which was the Routine. See generally IS Black and LJ Fennelly, *Investigations and the Art of Interview* (4th edn, Butterworth-Heinemann 2021) 75-87 (The chapter provides an overview of the Reid Technique). See also ‘Beyond Good Cop/Bad Cop: A look at Real-life interrogations’ (*NPR*, 2013) <<https://www.npr.org/2013/12/05/248968150/beyond-good-cop-bad-cop-a-look-at-real-life-interrogations>> accessed 26 October 2021.

³ Peter Green, (tr), *The Iliad Homer* (University of California Press 2015) 259-262 (Two protagonists use the tactic on a minor antagonist in order to extract information about the enemy).

⁴ Headquarters Department of the Army, ‘Field Manual 2-22.3 Human Intelligence Collector Operations’ (2006) Ch. 8-4 – 8-7.

⁵ Susan E Brodt and Marla Tuchinsky, ‘Working Together but in Opposition: An Examination of the “Good-Cop/Bad-Cop” Negotiating Team Tactic’ [2000] 81 *Organizational Behaviour and Human Decision Processes* 155, 157.

⁶ More specifically, the interrogators can be said to wield “coercive” and “reward” power. See John RP French and Bertram Raven, ‘The Bases of Social Power’ (1959) 263-264 <http://www.communicationcache.com/uploads/1/0/8/8/10887248/the_bases_of_social_power_-_chapter_20_-_1959.pdf> accessed 29 October 2021.

V discusses how negotiators can defend themselves from the Routine and, finally, Part VI provides concluding remarks for this paper.

The paper seeks to analyse the Routine in the broader context of negotiations instead of narrowing its focus to specific negotiation contexts.⁷ However, an important caveat must be made: While this paper envisions a wide negotiating context, it still assumes that the *immediate* negotiating parties are natural persons, regardless of whether they are principal negotiating parties or agents representing juridical entities. This clarification is important because there is growing discussion about the Routine manifesting itself in foreign policy as a tool of regulating inter-state relations outside of specific “negotiating tables.”⁸ The variables involved in analysing these sorts of interactions between non-human legal entities are entirely different and thus outside the scope of this paper.

II. VARIATIONS OF THE GOOD COP/BAD COP ROUTINE IN NEGOTIATIONS

Fortunately, most negotiations in the civilian world do not take place in an empty room with one person chained to a desk. The Routine manifests itself in subtler forms than its popular cultural depiction. The broad variations can be classified as follows:

A. *SIMULTANEOUS GOOD COP/BAD COP*

One party (the “Target”) is negotiating with two members of the opposing side (the “Agents”) simultaneously. One of the Agents plays a Bad Cop while the other plays a Good Cop. The Bad Cop may exhibit behaviours such as being uncooperative, making threats, or constantly disagreeing with the Target. The Good Cop, conversely, may exhibit behaviours such as attempting to reason with the Target, may indicate potential rewards if the Target complies with the Agents, or may even criticise the extreme anchors of the Bad Cop.⁹

B. *SEQUENTIAL GOOD COP/BAD COP*¹⁰

The Target first negotiates exclusively with one of the Agents (traditionally the Bad Cop), and afterwards (provided the Target has not complied), the other Agent takes the place of the first one as a good cop.¹¹

C. *GOOD COP AND ABSENT BAD COP*

The Target is only exposed to the Good Cop, who alludes to an absent Bad Cop. The Good Cop may inform the Target that the latter might have to deal with the Bad Cop later if no agreement is reached.¹² Alternatively, the Good Cop may assure the Target that he is on the Target’s side, whereas the Bad Cop (typically a supervisor, client, legal department, etc.) might refuse to

⁷ In other words, “negotiation” should be construed in broad terms to encompass all the different contexts such as commercial deal-making negotiations or litigation settlement negotiations. See Frank Sander and Jeffrey Rubin, ‘The Janus Quality of Negotiation: Dealmaking and Dispute Settlement’ (1988) 4(2) *Negotiation Journal* 109.

⁸ See generally Curtis Martin, “‘Good Cop/Bad Cop’ as a Model for Nonproliferation Diplomacy Toward North Korea and Iran’ (2007) 14 *The Nonproliferation Review* 61. (the article’s author disagrees with this thesis)

⁹ Anat Rafaeli and Robert Sutton, ‘Emotional Contrast Strategies as a Means of Social Influence: Lessons from Criminal Interrogators and Bill Collectors’ (1991) 34 *Academy of Management Journal* 749, 759; Brodt and Tuchinsky (n 5) 157.

¹⁰ Variations A and B are those typically found in interrogations.

¹¹ John Hilty and Peter Carnevale, ‘Black-Hat/white-Hat Strategy in Bilateral Negotiation’ (1993) 55 *Organizational Behavior and Human Decision Processes* 444.

¹² Rafaeli and Sutton (n 9) 763.

cooperate.¹³ Indeed, there is no need for the Bad Cop to be another human being; inanimate objects like computers or government regulations can also take his place.¹⁴

D. ONE PERSON PLAYS BOTH GOOD COP AND BAD COP

A single negotiating Agent may alternate between being aggressive towards the Target and being friendly. For instance, an Agent may start off warm and accommodating (Good Cop), but if the Agent senses that the Target is not responding positively, he may switch to a more competitive demeanour (Bad Cop). If the Agent senses that the Target is responding accordingly, the Agent may choose to resume being warm and cooperative (Good Cop).¹⁵

E. GOOD COP IN CONTRAST TO PRIOR EXPECTATIONS OF A BAD COP

The Target expects to face hostility and a hard-bargain, but is instead treated to a friendly and cooperative Good Cop. This approach requires a pre-existing stereotype of the negotiating Agent in the mind of the Target.¹⁶

The essence of the Routine involves creating a dichotomy between the two Agents. Some academics explore this dichotomy primarily in terms of negotiating behaviour, which would include, for example, the manner and tone of communication,¹⁷ or the nature of the arguments the Agents use to convince the Target to accept their offers (i.e. Good Cop emphasises the benefits of acceptance for the Target while the Bad Cop highlights the harms of non-acceptance, but both Agents still maintain the same negotiating positions).¹⁸ Other studies assess the negotiation *substance*, or, in other words, the actual content of the dialogue being exchanged among all participants. To illustrate, some Good Cops in negotiations may make positional concessions to offset the Bad Cop's extreme anchors. In an interrogation scenario, the Good Cop may offer to personally try to reduce the suspect's sentence if the latter confesses to the crime while the Bad Cop makes no such offer. A study investigating negotiation substance in this situation may include an analysis of the contrasting positions or offers made by the relevant parties during the negotiation.¹⁹ While it would be an interesting topic of future research to determine the degree to which these constituent factors affect this dichotomy – or indeed, to what extent they can even be separated – ultimately, they all lead to the same psychological effect in the mind of the Target.

III. PSYCHOLOGICAL UNDERPINNINGS OF THE GOOD COP/BAD COP ROUTINE

The predominant view is that the Routine induces compliance in Targets due to the *psychological contrast effect*. This effect causes individuals to perceive the difference between things as more pronounced than it really is when said things are presented successively or

¹³ See eg 'The White Hat-Black Hat, Sugar-Vinegar Approach' (Karrass, 6 February 2014) <<https://www.karrass.com/blog/post/the-white-hat-black-hat-sugar-vinegar-approach>> accessed 29 October 2021.

¹⁴ *ibid.*

¹⁵ Rafaeli and Sutton (n 9) 762.

¹⁶ *ibid.* 764.

¹⁷ *ibid.*

¹⁸ See Brodt and Tuchinsky (n 5) (the research gives no indication of tone or manner differences between the Agents in the experiments, but it does indicate they used different argumentative methods of convincing the Target).

¹⁹ See eg, Hilty and Carnevale (n 11) (this study is explained in Part III).

simultaneously.²⁰ In negotiations, the opposing personalities adopted by the Cops tend to spur this effect in the Target's mind.²¹

Rafaeli and Sutton's 1991 research studied the specific psychological dynamics of the Good Cop/Bad Cop Routine. Their qualitative studies included observing and interviewing debt collectors and interrogators using variations of the Routine in order to get debtors to pay and suspects to confess, respectively.²² The researchers proposed three basic mechanisms that explained the success of the psychological contrast effect:

A. *NEGATIVE REINFORCEMENT*

Compliance is fostered because Bad Cops continuously subject the Target to a stream of adverse stimuli (including negative emotions), which the Target wants to escape. The researchers proposed that “emotional contrast strategies facilitate compliance because they accentuate anxiety or fear in response to Bad Cops and accentuate relief in response to Good Cops.”²³

B. *RECIPROCATING A GOOD COP'S KINDNESS*

Compliance is achieved by endorsing the contrast between the Bad Cop and the Good Cop, which leads the Target to believe that the Good Cop is affable and kind. This contrast may even induce the Target to interpret the changed demeanour as a concession from the Good Cop. Resultantly, because the Good Cop's kindness appears especially pronounced in the mind of the Target, “the norm of reciprocity may induce the Target to return the favour by complying with the Good Cop's wishes.”²⁴

C. *TRUSTING THE GOOD COP REDUCES THE APPARENT COST OF COMPLIANCE*

Compliance is effectuated by the Targets' enhanced trust in the Good Cop. The Good Cop's relative affability establishes his trustworthiness, and trustworthy people are more persuasive than those who are not. Therefore, the emotional contrast indirectly leads to more trust in the Good Cop, which in turn leads the Target to perceive the costs of compliance as lower than he initially thought such costs would be.²⁵

While important, the results of Rafaeli and Sutton's research could not be mechanically generalised for all categories of negotiations. The Researchers only looked at specific kinds of interactions – where the target party had violated certain norms and had less negotiating power than the Agents.²⁶ However, the results led the researchers to raise several questions that would form the basis of future research.²⁷

Hilty and Carnevale's 1993 research applied some of Rafaeli's and Sutton's findings to more “equal” negotiations to determine whether and how the adoption of different orderings²⁸ of

²⁰Pam Nugent, ‘Contrast Effect’ (*Psychology Dictionary*, 2013) <<https://psychologydictionary.org/contrast-effect/>> accessed 31 March 2018.

²¹ Although the roles do not necessarily have to be diametrically opposed. The contrast can also exist between a bad cop and worse cop. See Rafaeli and Sutton (n 9) 771.

²² Rafaeli and Sutton (n 9).

²³ *ibid* 766.

²⁴ *ibid* 767-768.

²⁵ *ibid* 769.

²⁶ *ibid* 753.

²⁷ *ibid* 771-773.

²⁸ Namely, Bad-Good, Good-Bad, Bad-Bad and Good-Good.

Good and Bad Cops (termed “white” and “black” hats in the study) would affect negotiation outcomes. The methodology involved assigning test subjects to act as buyers through a computer program to a seller, which, unbeknownst to the buyers, was really a computer simulation. Over the rounds of negotiations, the simulated seller would adopt different tactical orderings. The researchers then noted the responses and perceptions of the test subjects.²⁹ The study design confirmed that a team is not necessary to produce the psychological contrast effect – a single Agent alternating between roles can also suffice.³⁰ The study also showed that the traditional “reformed sinner” strategy (Bad Cop followed by Good Cop)³¹ was the most effective ordering in bridging the divide between the negotiating parties and fostering agreement.³² Perhaps more importantly, the study also revealed that the “reformed sinner” ordering carved out the most private value for the Agents adopting the Routine.³³ The researchers concluded that this all happened due to the contrast effect between the two Cops. The increase in perceived cooperativeness and concessions from the Good Cop led the Target to become more compliant.³⁴

Brodt and Tuchinsky’s research from 2000 involves two successive studies further built on Hilty and Carnevale’s findings. Not only did the studies test different orderings of the Cops, but also assessed their effectiveness based on whether the Target was initially accepting or rejecting the proposal before negotiation commenced. In the first study, the test subjects (in the role of the Target) were initially given information that would shape their initial perception of the offer being made by the Agents and were later subjected to two sequential video recordings of individuals portraying opposing Cop roles.³⁵ The first study confirmed that the order of the two roles matters and the “reformed sinner” approach was the most effective in securing Target’s compliance. The study also revealed that the Routine was most effective when the Target initially rejected the negotiating Agents’ offers. Moreover, the study confirmed the intuitive notion that the use of the Routine could discernibly impact interpersonal relationships – test subjects reported they were more willing to work in the future with the Good Cop than the Bad Cop. The effectiveness of the contrast effect was evident in the fact that the Good Cop was rated more favourably when he was accompanied by a Bad Cop as opposed to his rating in isolation. However, the contrast effect did not occur in this manner for the Bad Cops.³⁶

Brodt and Tuchinsky’s second study sought to explore whether negotiation would be more effective when there was no role differentiation between the negotiating Agents (i.e., either both Good or both Bad Cops).³⁷ The researchers found that *neither* of these two combinations was effective and that both Cop roles were necessary. In fact, while the Good Cop/Good Cop combination was merely ineffective, the Bad Cop/Bad Cop combination *lowered Target’s* inclination to comply.³⁸ However, while the studies confirmed the effectiveness of the Routine on initially rejecting Targets, its impact on initially accepting Targets was left unclear.³⁹

²⁹ Hilty and Carnevale (n 11) 450-451.

³⁰ Brodt and Tuchinsky (n 5) 158.

³¹ Thomas Harford and Leonard Solomon, “Reformed Sinner” and “Lapsed Saint” Strategies in the Prisoner’s Dilemma Game 1’ (1967) 11 *Journal of Conflict Resolution* 104.

³² Hilty and Carnevale (n 11) 464

³³ *ibid.*

³⁴ *ibid* 466.

³⁵ But no Good-Good or Bad-Bad combinations. *See* Brodt and Tuchinsky (n 5) 162-163.

³⁶ *ibid* 169-170.

³⁷ *ibid* 156.

³⁸ *ibid* 171-172.

³⁹ *ibid* 174-175.

Other psychological research⁴⁰ has also confirmed the existence of an emotional contrast effect that increases compliance, thus validating its character as a social influence tool. For example, one study found that “people yield mindlessly to social influence after a sequence of changed emotions.”⁴¹

Understanding the underlying psychology behind the success of the Routine is valuable and has substantial practical value. Only a thorough scientific investigation can help negotiators move beyond their subjective “gut instincts” and have some empirical validation and guidance while considering whether they should employ a negotiation tactic as part of their broader negotiation strategy.

IV. STRATEGIC CONSIDERATIONS

A. COMPETITIVE OR COOPERATIVE MODEL?

The debate on negotiation strategies is complex and there is plenty of debate on their characterisation and semantic classification.⁴² However, a basic strategic analysis of the Routine is possible by adopting the Competitive-Cooperative model of comparison proposed by Lax and Sebenius.⁴³ The competitive strategy sees parties approach the negotiation as a win-lose game, wherein each party is trying to gain the most private value for himself and believes that an additional gain for the opponent is a loss for him.⁴⁴ On the other hand, parties adopting the cooperative strategy approach the negotiation as a win-win game wherein they work together to create the maximum value for each other and develop their common interests.⁴⁵ However, the Competitive-Cooperative distinction is not exactly clear-cut. Complex negotiations may involve stages wherein the negotiators need to alternate between being competitive and being cooperative. Once the negotiators have harmonised their interests in order to create value by being cooperative, they need to divide the value so created between themselves, which requires them to be competitive.⁴⁶

Accordingly, negotiation literature typically classifies the Routine as a competitive tactic because it aims to claim value and obtain concessions from the other party through psychological manipulation.⁴⁷ However, some practitioners believe that it can theoretically be incorporated into cooperative negotiations –particularly when the Agent wants to say “no” but does not want to appear uncooperative and needs time to think.⁴⁸ Such exceptions aside, negotiators should therefore employ the Routine only after they are certain that they must be competitive in the negotiation (or in that particular stage of the negotiation) and claim private value at the expense of their opponent.

The appropriateness of these broader negotiation strategies can only be determined *vis-a-vis* the context and circumstances in which they are employed. However, as a basic rule,

⁴⁰ That is, not in the context of “negotiations” specifically.

⁴¹ Magdalena Kaczmarek and Melanie Steffens, ‘Mindlessly Polite: A Conceptual Replication of the Emotional Seesaw Effect on Compliance and Information Processing’ (2017) 8 *Frontiers in Psychology* 239.

⁴² John Ogilvie and Deborah Kidder, ‘What about Negotiator Styles?’ (2008) 19 *International Journal of Conflict Management* 132.

⁴³ David Lax and James Sebenius, *The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain* (Free Press 1986).

⁴⁴ *ibid* 32-33.

⁴⁵ *ibid*.

⁴⁶ *ibid* 33.

⁴⁷ See eg, Gary Goodpaster, ‘A Primer on Competitive Bargaining’ (1996) 1996 *Journal of Dispute Resolution*, 360.

⁴⁸ See ‘Good Cop/Bad Cop’ (*Watershed Associates*, 1 November 2021) <<https://www.watershedassociates.com/learning-center-item/good-copbad-cop.html>> accessed 1 November 2021.

competitive tactics are most appropriate where the negotiators are primarily concerned with making economic gains, whereas cooperative tactics are most appropriate when negotiators are primarily concerned with socioemotional outcomes.⁴⁹ As already stated, the two objectives are not mutually exclusive, and many negotiations may involve the parties attempting to make gains along both these lines.⁵⁰

B. FACTORING IN THE VARIATIONS

The variations listed in Part II reveal that the Routine is quite flexible and can be employed by either solo Agents or a team. If the Agents are in a team, they must first decide whether to engage with the Target simultaneously or sequentially. While it is true that simultaneous negotiating teams perceive themselves as more powerful in the negotiation as opposed to sequential teams,⁵¹ negotiating Agents should also consider the costs of failure. If the Target is unaffected by the Routine, it will be harder for a simultaneously negotiating team to extract maximum private value via other tactics as their presence will have made the Target more competitive than he would have been if he were faced with a sequential team.⁵² However, the simultaneous variation offers other “tricks” that are not available under other variations. For instance, the two Cops can bicker between themselves to make the Target believe that they really are on different sides.⁵³ On the other hand, the sequential variation, maybe preferable in instances where the Target is unwilling to make any concessions in the presence of the Bad Cop due to intimidation, discomfort or frustration.

These considerations are in addition to more general factors that negotiators must consider when negotiating as a team. For example, the team members must agree on role allocation and divide roles according to their strengths and suitability.⁵⁴ The roles should also be chosen with regard to what combination the Target will find believable. For example, the Target would not believe the subordinates of the Good Cop playing Bad Cop and creating a real roadblock to an agreement. Just as importantly, the Cops need to be able to trust each other and demonstrate effective teamwork. They need to make sure they have the same objectives for the negotiation and agree on what, if any, concessions the Good Cop is authorised to make, in order to make the contrast between the Cops appear legitimate.⁵⁵

There are unique considerations that a single negotiator employing the Routine must keep in mind. For instance, in cases where the Agent himself wants to oscillate between both roles, he must ensure that he comes across as believable when switching between the roles.⁵⁶ More importantly, he must ensure he plays the roles in such a way that he is not perceived as erratic, as this could jeopardise the negotiation. If relying on an absent Bad Cop, the Agent must be sure that the excuse for their absence is convincing enough. For example, if the Agent insists that their legal department will not clear a proposal suggested by the Target in a commercial negotiation, this

⁴⁹ Joachim Hüffmeier et al, ‘Being Tough or Being Nice? A Meta-Analysis on the Impact of Hard- and Softline Strategies in Distributive Negotiations’ (2014) 40 *Journal of Management* 866.

⁵⁰ Interestingly, the Routine can also be used in some cases to *strengthen* relationships. See text to (n 70) and accompanying footnote.

⁵¹ Charles Patton and PV Balakrishnan, ‘Negotiating when Outnumbered: Agenda Strategies for Bargaining with Buying Teams’ (2012) 29 *International Journal of Research in Marketing* 280, 285.

⁵² *ibid.*

⁵³ Rafaeli and Sutton (n 9) 762.

⁵⁴ Brodt and Tuchinsky (n 5) 156-157.

⁵⁵ Jeanne M Brett et al, ‘How to Manage Your Negotiating Team’ (2009) 87 *Harvard Business Review* 105.

⁵⁶ Rafaeli and Sutton (n 9) 763-764.

excuse might not work if the Target is an experienced lawyer who can figure out a way to navigate through legal hurdles.

C. RELATIVE NEGOTIATING POWER

The Agents must have some inkling of the relative negotiating power of the parties before considering such tactics. “Power” in the context of negotiation theory refers not only to traditional notions of “power”⁵⁷ but also includes how relatively dependent each party is on reaching an agreement.⁵⁸ Competitive tactics are more effective when there is unequal bargaining power, as less-powerful negotiators are more likely to concede.⁵⁹ Therefore, the Routine will be most effective when performed on a less powerful Target. While such information might not always be forthcoming, it would be useful if negotiating Agents have some inkling of the Target’s initial willingness to agree to their offer. As mentioned earlier, the Routine is most effective when the Target is initially rejecting the Agents’ offer before negotiations commence.⁶⁰ While it is reasonable for police interrogators to believe that the Target is unwilling to divulge information, such an assumption might not be appropriate in negotiation contexts that aren’t conducted under a hostile atmosphere.⁶¹

D. ETHICAL ISSUES

Negotiators must also be aware of any potential ethical issues that might arise from the use of this tactic. The Routine is considered an “ethically ambiguous” negotiation tactic by some commentators,⁶² and ethically ambiguous tactics may seem more or less ethical depending on what perspective an observer adopts.⁶³ Relying on laws or rules governing professional conduct to determine ethical issues is of no use, as they only regulate egregious misconduct such as fraud or professional negligence.⁶⁴ However, one definition of ethical negotiation calls it “*a process of guided transformation that occurs through dialogical exchange aiming at an optimal agreement that responds fairly to the co-negotiators’ aspirations as persons of equivalent moral worth.*”⁶⁵ Under this definition, the Routine may be considered unethical in some contexts.

Two-member variations could be considered unethical if they are devised to “trick” the Target into believing that the Agents are in conflict with each other or that the Good Cop truly is on “his side”. Creating an elaborate illusion lies at the heart of such tactics, which is not dialogical exchange, and hence, certainly does not treat the Target as a “person of equivalent moral worth.”

The source of the psychological contrast may also be relevant. For instance, a contrast between the two Agents based on negotiation substance (Bad Cop is a hard-bargainer while Good Cop is willing to make concessions) is much more ethical than a contrast wherein the Bad Cop

⁵⁷ See French and Raven (n 6).

⁵⁸ Parties with a better BATNA are relatively more powerful. See Andreas Jäger and others, ‘Using Self-Regulation to Successfully Overcome the Negotiation Disadvantage of Low Power’ (2017) 8 *Frontiers in psychology* 271.

⁵⁹ *ibid*

⁶⁰ See *text to* (n 37).

⁶¹ Brodt and Tuchinsky (n 5) 175.

⁶² John Wade, ‘Ethically Ambiguous Negotiation Tactics (EANTS): What Are the Rules behind the Rules?’ (2014) Law Society of Saskatchewan CPD Conferences.

⁶³ Shirit Kronzon and John Darley, ‘Is This Tactic Ethical? Biased Judgments of Ethics in Negotiation’ (1999) 21 *Basic and Applied Social Psychology* 49.

⁶⁴ See *eg*, *Ethical Guidelines for Settlement Negotiations* (American Bar Association, 2002); See also Colleen Hanycz and others, *The Theory and Practice of Representative Negotiation* (Emond Montgomery Publications 2008), 129 (arguing that negotiation is “much too multi-dimensional to be summarized in a generic code.”).

⁶⁵ James R Silkenat et al, *The ABA Guide to International Business Negotiations: A Comparison of Cross-Cultural Issues and Successful Approaches* (ABA, Section of International Law 2009) 42.

screams at and threatens the Target while the Good Cop restrains him. The latter example is unethical because the Agents are attacking the emotional balance of the Target through extraneous means; it is similar to raising the room temperature so that the opposing party gets uncomfortable and concedes more. Such tactics are cannot be termed a “dialogical exchange” and are employed to achieve agreement through discomfort and distress. Even “milder” variations of the Routine such as relying on an absent Bad Cop can be considered unethical. Where the Agent believes that the absent Bad Cop would not or should not have any objections but still informs the Target that the Bad Cop will “never approve” of the proposal in order to gain more concessions from the Target. While such a statement would not necessarily be fraudulent, it would still be less-than-honest in intent.⁶⁶

Ultimately, when determining the ethical value of a tactic, negotiators need to take a holistic approach- considering the facts and circumstances of the negotiation, their own intent, and the likely consequences of the tactic.

E. COMPLIANCE

Closely related to the issue of ethics is the question of whether the Target will comply with the negotiated agreement. In instances where the agreement made is performed immediately, this might not be an issue. However, in situations where the performance of the deal takes place after its closing, there is a possibility that the Target may change his mind believing that he was pressured into agreeing on terms he did not like.⁶⁷ Starting negotiations anew or trying other mechanisms like litigation to enforce compliance would simply add to time and costs which could have been avoided in the first place.

F. REPUTATION AND GOODWILL

Negotiators must also consider the possibility that the Target might recognise their tactics. Not only could this jeopardise the current negotiation, but it could also pose a threat to reputation and goodwill. The Target might refuse to negotiate again or even tell others about the Agents’ tactics, which could lead to long-term damage, especially in contexts where excessive competitiveness is inappropriate and negotiating reputation is crucial for maintaining future relationships.⁶⁸ On a related note, if negotiators are interested in their reputation or in fostering a long-term relationship with the Target, one way of securing this would be to assign the Bad Cop role to a lawyer, consultant or anyone else with whom the target will not work in future.⁶⁹ This way (assuming the tactic is successful) the Target will hold the Good Cop in much higher regard.⁷⁰

An important strategic consideration is to always have an alternate plan in case the Routine has to be abandoned because it has ceased to be an appropriate aspect of the Agents’ larger negotiation objectives. Negotiators must adapt to each situation and be willing to discard tactics

⁶⁶ Gerald Wetlaufer, ‘The Ethics of Lying in Negotiations’ (1990) 75 Iowa Law Review, 1224-1226.

⁶⁷ John Wade and Christopher Honeyman, ‘Negotiating Beyond Agreement to Commitment Why Contracts Are Breached And How To Make Them More Durable’ (2005) 20 Bond Dispute Resolution News 10.

⁶⁸ See generally Li Ma and Judi Mc Lean Parks, ‘Your Good Name: The Relationship between Perceived Reputational Risk and Acceptability of Negotiation Tactics’ (2012) 106 Journal of Business Ethics 161.

⁶⁹ Jack Nasher, ‘The Norm of Reciprocity Revisited’ (*Munich Business School*, 2016) <<https://www.munich-business-school.de/insights/en/2016/reciprocity-revisited/>> accessed 4 April 2018.

⁷⁰ See generally Andreas Fili, ‘Business Angel–venture Negotiation in the Post-Investment Relationship: The Use of the Good Cop, Bad Cop Strategy’ (2014) 16 An International Journal of Entrepreneurial Finance.

which are no longer useful.⁷¹ There may also be cases where the intended Target has effectively neutralised the tactic.

V. NEUTRALISATION STRATEGIES

Because the Routine is often employed as a competitive or manipulative tactic, it may be useful for negotiators to know how to defend against it and “neutralise” it. A negotiator's most important quality to defend against all kinds of competitive tactics is perception; one can only defend against competitive tactics when one recognises they are being used.⁷² Following this, the negotiator can simply “call out” the tactic being used. Merely making the opponents aware that the negotiator recognises the Routine should be sufficient in most cases, as the opponents would then realise the tactic's ineffectiveness and not want to risk alienating the negotiator by pressing on it any further.⁷³

Another way of neutralising the tactic in two-member variations is to focus on the Bad Cop by asking probing questions and soliciting reasoned justifications regarding his objections and positions. Since the aim of the Routine is to exert pressure on the Target by creating a contrast effect, it is likely that the Bad Cop will adopt an aggressive demeanour just for show. If the Bad Cop is being unreasonable simply for the sake of appearance to extract concessions, he may have a hard time justifying himself, leading to the tactic unravelling.⁷⁴

The negotiator could also consider using the tit-for-tat strategy, wherein he brings his own Bad Cop to the negotiation table or at the very least threatens to do so. The tit-for-tat strategy effectively tones down the competitiveness of the party employing the Routine. It clarifies that the Agents risk retaliation by their intended Target and thus potential escalation to a more competitive form of negotiation if they do not abandon their current tactics.⁷⁵ This neutralisation tactic can even be adopted in situations where there is an absent Bad Cop - the negotiator can mention that he has an absent Bad Cop of his own holding him back.

If the parties care about their reputations beyond the negotiation before them, a powerful tool to neutralise (or even prevent) the Routine is for intended Targets to let their opponents know that word of the current negotiation might get out to their professional network. A negotiator would not want to seem unethical or even overtly competitive as it might harm the negotiator in future negotiations, and so the negotiator will drop the tactic in favour of more cooperative approaches.⁷⁶ Of course, this neutralisation method is predicated on the assumption that the intended Target has easy access to the same networks or social circles as its counterpart employing the Routine.

VI. CONCLUSION

Good negotiators must have insight into all kinds of competitive tactics that may arise during the course of a negotiation. This insight serves as both a sword and a shield –negotiators

⁷¹ Mary Greenwood, *How to Negotiate Like a Pro: How to Resolve Anything, Anytime, Anywhere* (3rd edn, iUniverse 2017).

⁷² Goodpaster (n 47) 250.

⁷³ Roger Fisher and William Ury, *Getting to Yes: Negotiating an Agreement without Giving in* (Random House Business 2012) 131-133.

⁷⁴ See Goodpaster (n 47) 373.

⁷⁵ *ibid* 374.

⁷⁶ Denise Fleck et al, ‘Neutralizing Unethical Negotiating Tactics: An Empirical Investigation of Approach Selection and Effectiveness’ (2014) 30 *Negotiation Journal* 25, 29.

can know when and how to use a tactic in order to extract the most private value for themselves, and can also use their knowledge to neutralise said tactics when they are employed by an opponent.

However, it is pertinent to note that there are still many questions about the operation of the Routine that are left unanswered, which could potentially alter the current strategic value of the tactic. For instance, while researchers have studied the psychological contrast effect arising from either the negotiating behaviour or negotiating substance, nobody has attempted to deconstruct the intersection and interrelation between the two sources.⁷⁷ For example, how does the contrast effect operate on a Target when the Target is faced by a polite but hard-bargaining Agent on one hand and a rude but cooperative Agent on the other hand? Which one will the Target perceive as the Good Cop and which one as the Bad Cop? Does such a distinction even make much of a difference? Similarly, the psychological effect of Variation 5 of the Routine⁷⁸ has not been sufficiently studied and distinguished from the contrast effect operating under the other variations.

The Routine can be wielded as a powerful tool to pressurise an opponent into conceding. However, it also brings with it associated strategic risks and ethical questions. It is not the place of this paper to provide any categorical prescriptive guidance on whether negotiators should or should not use the Routine in their negotiations, as ultimately, negotiators will have to rely on the subjective assessment of the situation in order to determine the usefulness and appropriateness of the tactic. However, it is hoped that this paper has highlighted some of the key issues a negotiator must bear in mind while coming to any such determination.

⁷⁷ See text to (n18)-(n20).

⁷⁸ See text to (n17).