

DOND 2017



DEAL OR NO DEAL:  
EPISODE VII – THE LAST CONTRACT

Session 6: 2:40-3:40

**Presented by Sidley & Austin**

Title:

***Negotiating Tactics and Strategies in  
Technology Transactions***

Speakers:

**Glenn Nash - Partner, Sidley & Austin**

**Karen Lorenzo - GC & EVP Business Affairs,  
Tribeca Enterprises**

**Joe Ramirez - Vice President Licensing and  
Associate General Counsel, Adobe Systems**

**Aaron Thacker - Vice President and Associate  
General Counsel, Medallia**





PARTNER

## Glenn G. Nash

*Emerging Companies and Venture Capital  
Privacy, Data Security and Information Law  
Technology & IP Transactions  
Technology*

[GNASH@SIDLEY.COM](mailto:GNASH@SIDLEY.COM)

PALO ALTO +1 650 565 7113

GLENN NASH is a corporate partner in Sidley's Palo Alto office and global co-leader of Sidley's Technology & IP Transactions practice. He has deep experience in the Internet and the Internet of Things, AI, financial services and insurance, media, software, hardware and information technology industries.

Glenn's practice focuses on intellectual property matters and providing strategic counseling to companies establishing and expanding their business and operations domestically and internationally. As well, Glenn handles complex business transactions including technology, content and intellectual property transactions, joint ventures and other strategic collaborations and commercial transactions domestically and internationally for both established and emerging growth companies.

Glenn is ranked by *Chambers Global* and *Chambers USA* as a leading IT lawyer, and described as "very dynamic" and "an absolutely first-rate lawyer." *Chambers* awarded him their highest ranking in the category of leading IT and IT Outsourcing attorneys, noting that clients comment that "he really knows how to get a big transaction done efficiently and painlessly." Glenn has been recommended in *The Legal 500 US* 2014–2017 for "outstanding business acumen and a pragmatic approach in solving issues." He is ranked in the top tier of the Media, Technology and Telecoms: Technology Transactions category as a "Leading Lawyer." Glenn is also listed in the *Best Lawyers in America* survey in the Information Technology law and Technology law categories. He is recognized as the San Francisco Technology Law "Lawyer of the Year" in the 2015 edition of *The Best Lawyers in America*.

Glenn advises clients on intellectual property ownership, use, acquisition, sale, license and protection, and structures and negotiates U.S. and cross-border transactions such as strategic alliances, joint ventures, mergers and acquisitions, intellectual property acquisitions and spin-outs, as well as the full array of commercial relationships, including development, hosting, services, outsourcing, manufacturing, supply, distribution, marketing, advertising and promotional relationships. As part of his practice, he also advises companies on privacy and compliance issues, as well as counseling companies expanding overseas on

international structurings, intra-company arrangements, customer facing arrangements, jurisdictional issues and local law compliance.

Glenn is a member of the State Bar of California, American Bar Association and the Licensing Executives Society.

## EVENTS

- Speaker, “Anatomy of a Tech Agreement: Drafting and Negotiating Contracts Involving Digital Media Content,” 25th Annual All Hands Meeting, Silicon Valley Association of General Counsel (Santa Clara, CA, December 2013, with [Stephen M. Fronk](#))
- Speaker, ACC 2nd Annual Institute for Advanced Corporate Counsel – Trends in Technology M&A, Santa Clara, CA (May 2013)

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## INDUSTRIES

Technology

## ADMISSIONS & CERTIFICATIONS

California

## EDUCATION

University of Saskatchewan, J.D., 1988  
Memorial University of Newfoundland, B.A., 1984

## **SPEAKER BIOS: SESSION 6**

**Karen Lorenzo**  
**General Counsel**  
**Tribeca Enterprises**

Karen Lorenzo is General Counsel of Tribeca Enterprises, which owns and operates a number of branded media and entertainment platforms including the Tribeca Film Festival. Prior to joining Tribeca, Lorenzo was Chief Privacy Officer and Corporate Counsel for CMP Media, a subsidiary of United Business Media. Previously, she was an associate in the technology transactions group of a top-tier Silicon Valley law firm and started her career with a boutique New York entertainment law firm. Lorenzo graduated from The Johns Hopkins University (B.A., 1992) and The New York University School of Law (J.D., 1995).

**Joseph Ramirez**  
**Vice President of Licensing and Associate General Counsel**  
**Adobe Systems Incorporated**

Joe Ramirez is the Vice President of Licensing and Associate General Counsel of Adobe Systems Incorporated. In this position, he manages a 65+ person organization, including Adobe's piracy conversion team. Ramirez is responsible for providing legal support for all of Adobe's channel and enterprise licensing programs currently operating at a \$5-billion-dollar annual run rate.

On the channel side, Ramirez oversees Adobe's strategic account negotiations, channel and partner programs, Adobe's education channel, online stores and specialty channels, as well as Adobe's extensive OEM, VAB, and ISV channel. On the direct side, Ramirez is responsible for managing the legal function of Adobe's legal enterprise sales legal team in the Americas, EMEA, Asia-Pacific, Latin America, and Japan.

Additionally, he provides strategic advice concerning anti-competitive reviews and making needed process improvements to Adobe's internal processes. Previously, Ramirez was general counsel of Brio Software, Network Computing Devices, and Masstor Systems, all of these entities being NASDAQ traded companies. Ramirez is a graduate of the University of California at Davis Law School and Santa Clara University (B.A. in history).

**Aaron Thacker**  
**Vice President and Associate General Counsel**  
**Medallia**

Leading Medallia's Transactions function through hyper-growth and toward public company readiness. Developing a diverse team of top legal talent into leaders at Medallia, responsible for negotiating and drafting all Medallia contracts and for providing legal and business counsel to leaders across the company. Designing strategies and processes to support success at public company scale, including contract workflow, negotiation training, and quantitative legal analysis. Serving on cross-functional teams charged with delivering on strategic company initiatives.

Joined as the third member of the legal team, with shared responsibility for all legal issues at a fast growing Enterprise SaaS company. Negotiated and drafted Medallia's core revenue generating agreements, including three of Medallia's five largest deals. Provided counsel and leadership on a wide range of legal and business issues, including commercial law, intellectual property law, litigation, regulatory requirements, consumer protection law, and strategic service provider strategy.

Selected, after eight months in the role, to lead the Transactions function, responsible for all Medallia contracts. Successfully scaled the function through two years of hyper-growth. Recruited, developed, and managed a diverse team of top performing legal talent. Designed and implemented an enterprise SaaS transactions model to deliver deal quality and speed at scale.





# Association of Corporate Counsel November 9, 2017 Negotiating Tactics for Technology Agreements

*Presenters:*

*Karen Lorenzo  
General Counsel and EVP  
Business Affairs  
Tribeca Enterprises*

*Joe Ramirez  
Vice President Licensing &  
Associate General Counsel  
Adobe Systems*

*Aaron Thacker  
Vice President &  
Associate General Counsel  
Medallia*

*Glenn Nash  
Partner  
Sidley Austin LLP*

# SIDLEY

# OUTLINE

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1. Approaches to Negotiations
2. Goals and Objectives
3. Preparation
4. Showtime
5. Tactics

# 1. APPROACHES TO NEGOTIATIONS

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- Two basic approaches to negotiation:

<b>Competitive (Distributive)</b>	<b>Collaborative (Integrative)</b>
Positional	Problem Solving
Win-Lose	Win-Win
Claiming Value/Dividing the Pie	Creating Value/Expanding the Pie
Short Term/One-Off Deal	Long-Term/Relationship Oriented

## 2. GOALS AND OBJECTIVES

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- UNDERSTANDING YOUR GOALS:
  - Institutional goals
    - There is no “one-off” negotiation
  - Team goals
    - Business objectives
      - Understanding the business drivers for the deal
    - Legal objectives
      - Balancing managing legal risk with the mandate to “Get the Deal Done!”
  - “Silo” goals
    - Recognize that some of your teammates’ goals may conflict
    - Anticipate; educate; get buy-in



## 2. GOALS AND OBJECTIVES – *CONT'D.*

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- UNDERSTANDING THE OTHER SIDE'S GOALS:
  - Get as much information as you can from your client about the other side's goals
  - Research public filings and media coverage
  - Ask the other side
- LISTEN, LISTEN, LISTEN

## 10 Bad Habits of Listening

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1. I interrupt often or try to finish the other person's sentences.
2. I jump to conclusions.
3. I often answer with advice/solutions/instructions, even when not requested.
4. I make up my mind before I have all the information.
5. I am a compulsive note taker.
6. I don't take any notes at all.
7. I am impatient.
8. I get annoyed when hearing things I don't agree with.
9. When listening to a story, I tend to interject to share my own related experiences. I think more about my reply while the other person is speaking than what he or she is saying.

## 3. PREPARATION

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- PREPARE, PREPARE, PREPARE
  - Diligence
    - On the other side
    - On the market
  - Know your documents
  - Assess personal styles of your client and other negotiator
- When to have the negotiation?
- Who will attend?
  - Decision makers?
  - Lawyers only?
  - Omission of decision makers may be useful or harmful

### 3. PREPARATION – *CONT'D.*

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- Cross-border and Cross-Culture Perspective:
- Understand local culture, laws, norms and business practices. Show respect for them!
- Understand their pre-conceived notions about you – disabuse the other side of negative perceptions about you
- Get to know each other
- Remember we're all people trying to get a deal done

### 3. PREPARATION – *CONT'D.*

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- What to do when you have limited time or resources to prepare?
- Top five questions to ask your client if you have limited time to prepare:
  1. Why are we doing this deal – what do we really care about in the deal (e.g., product, money, competition, marketing/PR?)
  2. Why is the other side doing the deal? What do you know about them?
  3. Whose time deadline is it?
  4. Who has the leverage here?
  5. How much do we/they want this deal – is there a point at which we or they would walk away? What is our alternative if we lose this deal?

## 3. PREPARATION – *CONT'D.*

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- Schedule a meeting with your team
  - Establish roles for team members
    - Identify key spokesperson
    - Who will need to sign off on deal points/concessions
  - Prepare issues list
    - Prioritize – you can't win them all
    - Anticipate what the key issues are for the other side
    - Educate the client about key issues
  - Identify your BATNA (best alternative to negotiated outcome)
    - Examples: Develop it yourself? Find another business partner?
    - What about the other side's BATNA?
  - Assess your leverage
    - Leverage can be absolute: big company vs. small company
    - Or Relative: competitive bidding; time constraints

### 3. PREPARATION – *CONT'D.*

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Warning signs that a negotiation will be challenging:

- Internally imposed time constraints
- Unbalanced leverage
- Notoriously difficult negotiators on other side
- Unskilled negotiators on other side
- Lack of internal alignment on your side
- Bad historical relationship
- Entrenched positions



## 4. SHOWTIME

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- Telephonic and Video
  - Telephonic:
    - Harder to read signals, both from your client and other side
    - May be more contentious
    - Minimizes status differences
    - Avoid the temptation to interrupt
    - Establish a way to communicate with your team (side bars, IM)
  - Video:
    - Hybrid between in-person and face-to-face – may be able to read body language better
    - May enable more cooperation
    - Some of the same challenges as telephonic

## 4. SHOWTIME – CONT'D.

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- Face-to-face meetings
  - Engenders more cooperation between sides and enables better communication with your client
    - If done too quickly (i.e., before all issues have surfaced), may be counterproductive and encourage premature concessions
  - Protocol:
    - Seating
    - Greetings; Establish Rapport
    - Discuss Common Ground
    - Avoid Interrupting
    - Non-Verbal Communication

## 4. SHOWTIME – CONT'D.

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- Pay attention to communication skills in negotiating
- Various types of communication
  - Verbal: written and spoken
  - Non-verbal
    - Body language, facial expressions, posture, other

## 4. SHOWTIME – CONT'D.

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Communication is made up of three components:

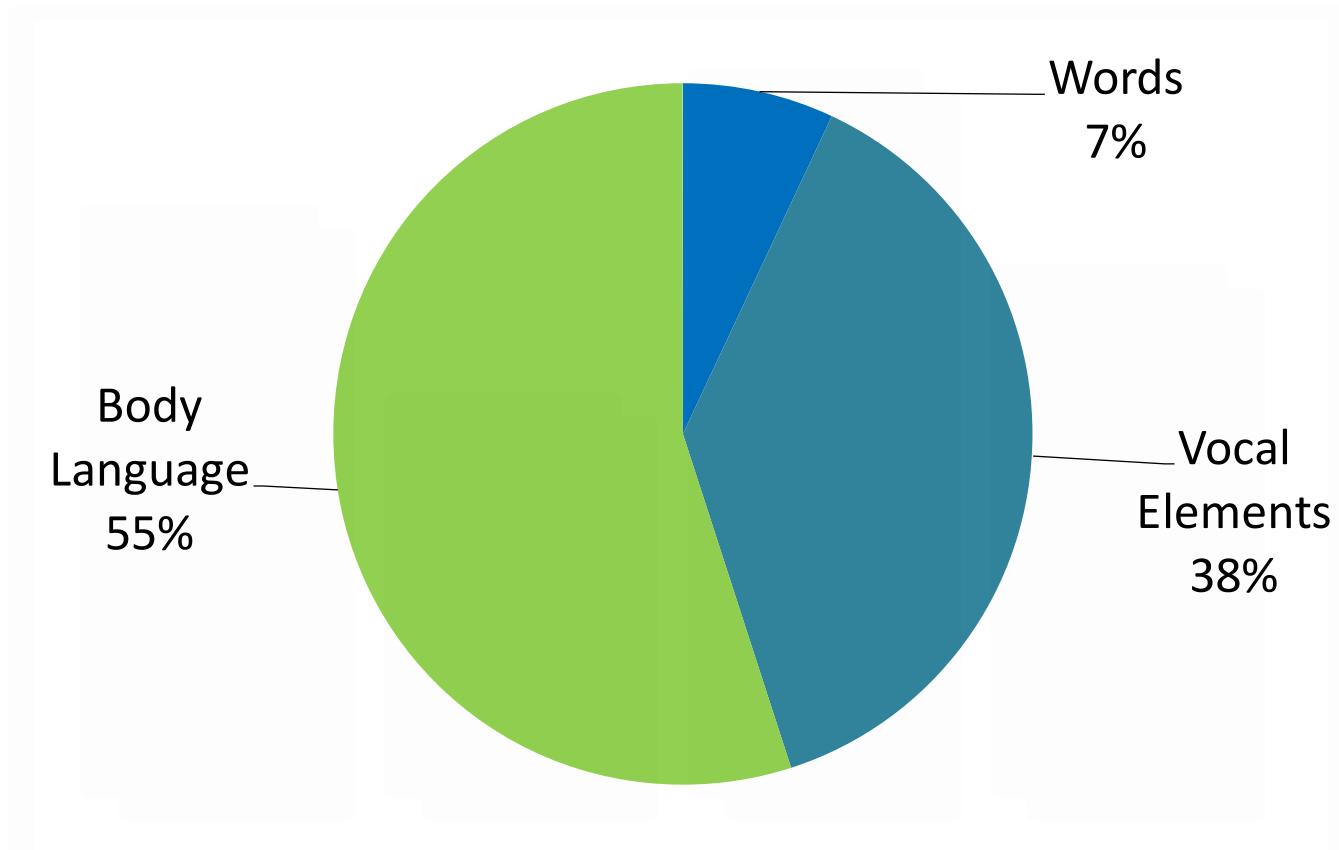
Words
Vocal Elements
Body Language

What percentage would you attribute to each of these categories?

## 4. SHOWTIME – CONT'D.

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- Communication



Source: Albert Mehrabian, Ph.D., Professor Emeritus of Psychology, UCLA, “Silent Messages”

## 4. SHOWTIME – CONT'D.

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- Building Trust
  - At beginning make small talk – avoid sensitive topics, e.g., politics, religion
  - Search for common interests
  - Share information
  - Both parties seek to understand other side's goals and desires (communicate that to them)
  - Negotiate minor points before major points
  - Be predictable
  - Honest disclosure
  - Take commitments seriously
  - Clarify perceived inconsistencies
  - Humanize
  - Post signing conduct

## 4. SHOWTIME – CONT'D.

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- Setting the Agenda
  - If the nature of the negotiation is going to be a discussion of open issues, consider sending around an agenda in advance so the group addresses your issues in the way you want the issues raised.
  - If the negotiation is going to be a page-turn, then actually it is better to turn the Agreement and make them run through what they want changed.
  - Either way, you are setting the agenda.
  - Try to ensure that you are negotiating with the decision makers.
  - If you are not negotiating with the decision makers, to the extent you can, set a more modest agenda and call for a quicker meeting.
  - Also give yourself room to negotiate further if the other side changes position based on later input from the decision maker.
  - If the decision makers are present, gauge their tolerance for detail.
  - Frame discussion in business person's terms.
  - Be realistic about what each meeting can achieve.



## 4. SHOWTIME – CONT'D.

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- Who Makes the First Proposal?
  - Will depend on steps leading up – consider whether you should make first offer
  - Back proposal with solid rationale (avoid ranges)
  - Use silence (don't negotiate against yourself)

## 5. TACTICS

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1. Tactic: Time Deadlines
  - Counter: Question Legitimacy; know your BATNA
2. Tactic: The Nibble – “Oh, just one more thing...”
  - Counter: Reopen the entire deal
3. Tactic: Angry outburst
  - Counter: Acknowledge anger; table discussions
4. Tactic: Limited authority – “I need to get sign-off from someone up the chain.”
  - Counter: Ask if other has authority first; reopen deal if learn after negotiation that no authority
5. Tactic: We have the experts
  - Counter: Don’t confuse status with expertise; reject relevance of what is “market”

## 5. TACTICS – CONT'D.

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6. Tactic: Silence
  - Counter: Probe their interests; ask what they want
7. Tactic: Humor
  - Counter: Enjoy it, reciprocate if appropriate but don't lose sight of goals
8. Tactic: Ultimatum – “You have to accept or reject our offer – no counters possible.”
  - Counter: Question and walk away; help other back down (face saving); create new solutions
9. Tactic: Good cop – bad cop
  - Counter: Focus on initial goals; hard bargain with both; divide and conquer
10. Tactic: The smart dummy – “I'm really slow here and don't really understand.”
  - Counter: Focus on your initial goals; resist temptation to make unilateral concessions out of impatience

## 5. TACTICS – CONT'D.

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11. Tactic: Wine and dine

- Counter: Maintain composure

12. Tactic: Flattery

- Counter: Recognize it as tactic; reciprocate

13. Tactic: Hard to get. Make you work hard for agreement with slow concessions.

- Counter: Play the game; consider package

14. Tactic: Turning the tables – “Why don’t you argue our position?”

- Counter: Reject and turn back to them

15. Tactic: Low ball offer

- Counter: Clarify price in full up front

# BEHAVIORS OF SUCCESSFUL NEGOTIATORS

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- Reminds one's team and the other side of the bigger picture (this is not a one-off negotiation)
- Looks for common ground
- Listens and listens and listens
- Watches for the other side's "tell"
- Uses firm flexibility (firm on goals/flexible on how achieve them)
- Tests and summarizes the other's ideas
- Uses neutral language when making proposal
- Makes principled concessions (not horse trading or splitting the difference)
- Knows when to pivot to another topic

# TOP TEN NEGOTIATING TIPS AND SUGGESTIONS

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1. Be as prepared as you can.
2. Understand what approach works for you, your client and the other side.
3. Do not lose sight of your key goals.
4. Work really hard to understand the other side's goals.
5. Know who has leverage and that leverage can change.
6. Build trust.
7. Show respect for the other side.
8. Maintain composure and avoid offending the other side.
9. Listen, listen and listen.
10. Be yourself.

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