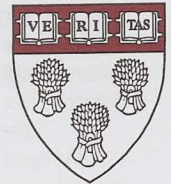


• Negotiation

Helping you build successful agreements and partnerships

Program on Negotiation
at Harvard Law School



Will your emotions get the upper hand?

New research shows that emotions affect our judgment in different ways. Anticipate how you might act on feelings that arise—and negotiate more rationally.

Imagine yourself in each of these three negotiation scenarios:

A. You purchase a plot of land and hire an architect to draw up plans for your new home. He presents plans for a house that is larger and more luxurious than you originally discussed. Though the plans are beyond your budget, you find yourself swept up by a desire to make the dream home a reality.

B. Talks with a longtime negotiating counterpart are proceeding smoothly until you raise the possibility of extending a delivery deadline during the winter holidays. "You left us in the lurch last year," the buyer's rep says, pushing aside your sales proposal. "You're going to have to get your act together." His outburst makes you furious. After all, you were only trying to give him fair warning.

C. You're meeting a negotiating counterpart for the first time. To your surprise, she physically resembles a college friend of yours who passed away suddenly a number of years ago. As you begin to chat with the woman, sorrowful memories of your old friend flood your mind.

What do these scenarios have in common? In each case, you find yourself experiencing a strong emotion—excitement, anger, and sadness, respectively—during the course of a negotiation. New research suggests that these different emotions will predispose you to act and react in very different ways during the talks that follow, regardless of the relevance of these feelings to the issues at hand.

For many years, research on judgment and decision making centered on cognition, identifying the ways in which our intuition leads us astray. More recently, researchers have begun to explore the impact of emotion on our judgments, including the decisions we make during negotiations. This research is supported by findings from neuroscience showing that our immediate reactions to a situation, a person, or some other stimuli are often emotional.

While emotions provide negotiators with

valuable feedback about each other's preferences and interests, they can be detrimental when unaccompanied by rational decision making. Yet whether we realize it or not, we often base our decisions on passing moods. New findings on how emotions affect decisions can help you anticipate how certain feelings may influence your negotiations and adjust your strategies accordingly.

A tighter focus on emotions

Early research on the effects of emotions on judgment and decision making failed to distinguish between specific emotions. Rather, researchers compared how people in a "good" mood performed various tasks as compared to people in a "bad" mood.

Perhaps not surprisingly, this broad categorization of emotions reached contradictory conclusions. We can all think of instances in which two different emotions, such as fear and anger, caused us to ▶▶

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- Gender differences at the bargaining table
- Weighing your options

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behave in very different ways.

Recently, Harvard Kennedy School of Government professor Jennifer Lerner and her colleagues have zeroed in on the impact of specific emotions, including anger, sadness, fear, and disgust, on our judgments. According to this research, specific emotions trigger a specific set of *appraisal tendencies*—goals, typically unconscious, that lead us to view and respond to the world in certain predictable ways. For example, fear motivates the desire to flee a situation, and sadness causes us to turn inward. Although these tendencies were adaptive to human evolution, protecting us from predators and illness, in today's society they sometimes work against us.

Different emotions, different results

Our fleeting emotions affect our financial transactions in different ways. In the article “Why Your Selling Price May Be Too High” in our October 2007 issue, we described the *endowment effect*, or the tendency for sellers to place an irrationally high value on items they own, a phenomenon identified by psychologists Daniel Kahneman, Jack Knetsch, and Richard Thaler. In a study conducted by these researchers, participants overvalued items they owned briefly, such as inexpensive mugs given to them during the experiment. This type of overvaluation can lead to disappointment for sellers when buyers refuse to pay their inflated asking prices.

Might different emotional states influence the endowment effect? In a 2004 study, Lerner, Deborah Small of the Wharton School of Business, and George Loewenstein of Carnegie Mellon University considered this question. Prior to having participants engage in a

buying-and-selling task similar to Kahneman, Knetsch, and Thaler's, the researchers primed some participants to feel disgust by showing them a graphic, disgusting scene from the movie *Trainspotting*. Other participants were shown a neutral clip from a nature film. Participants primed to feel disgust seemed to feel an “urge to purge” during the financial task that followed. Relative to participants in the neutral condition, disgusted sellers reduced their selling prices, and disgusted “choosers” (those choosing between a commodity and money) were less willing to acquire new items. Disgust eliminated the endowment effect.

In a related experiment, the researchers primed participants by showing a sad scene from the movie *The Champ*. These “sad” participants seemed motivated to change their circumstances in the financial task. As compared to participants in a neutral condition, sad sellers reduced their prices, similar to disgusted sellers. However, sad choosers were willing to pay more for an item, the opposite of the effect found with disgusted choosers. Thus, sadness produced a *reverse* endowment effect, or what Lerner and colleagues termed the “misery is not miserly” effect.

Let's return to the scenario in which a fellow negotiator's resemblance to a deceased friend makes you feel sad. The desire to change your emotional state could make you more receptive to extreme proposals from your counterpart, regardless of whether such changes would benefit you.

Unrelated emotions matter

According to Jennifer Lerner, no one is surprised when *integral emotions*—those triggered by the

negotiation itself—affect negotiated outcomes. If your counterpart shows up an hour late, makes an offensive joke, and issues careless threats, you are likely to feel furious, and your anger will influence how talks unfold. (For more on how anger affects judgment, see the sidebar, page 4.)

What's more surprising is the finding that *incidental emotions*,

or feelings unrelated to the task at hand, can have an impact on talks. The participants in the Lerner, Small, and Loewenstein study insisted that the emotions generated by the sad or disgusting film clips did not affect the prices they set in the financial task, yet the emotions they experienced—sadness and disgust—had significant and differing effects on their behavior.

Managing emotions in negotiation

Too often, write professors Max H. Bazerman of Harvard Business School and Don Moore of Carnegie Mellon University in their forthcoming book, *Judgment in Managerial Decision Making, Seventh Edition* (Wiley, 2008), people view themselves as slaves to their emotions. In fact, the following five

Bet you didn't know...

Claim more value in settlement negotiations

What determines the size of a financial settlement when a lawsuit is negotiated out of court? The facts of the dispute matter, of course, as do the relevant legal rules. Plaintiffs who can make a strong case for liability generally will recover more in damages than plaintiffs with a weaker case.

Other factors matter, including the bargaining ability and confidence of the attorneys on each side. Yet the intricacy of real-world cases makes it difficult to ascertain exactly how to claim the biggest slice of the settlement pie.

In a new study, UCLA School of Law professor Russell Korobkin and UCLA School of Law Empirical Research Group director Joseph Doherty attempted to answer the opening question by having law school students engage in a settlement negotiation simulation. Pairs of students playing the roles of plaintiff's and defendant's attorneys were told to attempt to negotiate a settlement to an age-discrimination lawsuit, based on a real case, in which the plaintiff was suing his former employer for \$100,000.

Both sides received the same information about the merits of the case and the relevant legal standards. The "facts" gave neither side an edge. The plaintiff's lawyers learned that the client's bottom line—the least he would accept as a settlement—was \$10,000. The defense attorneys learned the former employer's bottom line—the most the company would pay to settle—was \$60,000. A bargaining range of \$50,000 was up for grabs.

The bottom line

On average, pairs of negotiators settled the case for \$44,980. The best predictor of "winning" outcomes—claiming the lion's share of the bargaining range—were negotiators' estimates of the other side's bottom line. The more accurately a negotiator estimated his counterpart's bottom line, the more money that negotiator successfully claimed.

The study identified other important factors that may improve your settlement outcomes in the real world: making an aggressive first offer, setting high aspirations

(or "targets"), being willing to go to court if necessary, and having confidence in your negotiating skills.

The gender gap

Notably, men in the simulation negotiated better agreements for the plaintiff than did women. Men captured an average of \$39,066 of the bargaining range for the plaintiff, and women captured only \$30,423. The researchers attribute this finding in part to the fact that female negotiators made significantly lower—and less-accurate—estimates of the defendant's bottom line (\$36,923 on average) than did male negotiators (\$54,583 on average).

What else might explain the gender gap? Citing research that shows women to be more risk-averse than men, Korobkin and Doherty speculate that female participants were more likely than male participants to accept offers during the bargaining process (the safe alternative) rather than rejecting offers and seeking more money (the riskier choice). In keeping with research on gender differences in competitive environments, women participants also may have felt less comfortable engaging in competitive tactics than male participants, and the men may have been more competitive with female opponents than with other men.

Improving your outcomes

Korobkin and Doherty's findings should apply to any two-party negotiation that has a distributive element, particularly when a large bargaining zone exists and the odds of agreement are high. The study suggests that the best way to improve your outcomes is to spend time analyzing and testing your counterpart's bottom line (or hiring an attorney to do so). This preparation step could be especially crucial for women negotiators, who may face greater psychological and social hurdles than men in certain bargaining situations.

Resource: "Who Wins in Settlement Negotiations?" Russell B. Korobkin and Joseph W. Doherty. Second Annual Conference on Empirical Legal Studies paper, July 1, 2007. Available at <http://ssrn.com/abstract=998095>.

Is there an upside of anger?

Angry individuals approach situations with confidence, a sense of control, and negative thoughts about others. In negotiation, these appraisal tendencies can trigger overconfidence, unrealistic optimism, and aggression, yet they buffer decision makers from indecision, risk aversion, and overanalysis, write Jennifer Lerner and her colleague Larissa Tiedens of Stanford University. In addition, anger can motivate us to stand up for ourselves and others in the face of injustice.



Given these different patterns, Lerner and Tiedens raise the interesting question of whether anger, despite being widely regarded as a negative emotion, can be considered a positive force in some instances. They theorize that we experience anger as relatively unpleasant and unrewarding when we reflect back on its source. However, we tend to experience anger as pleasant when looking forward, as when we anticipate the misfortune of others.

A unique emotion, anger can't be clustered with other negative feelings when making predictions about judgments and decisions, conclude Lerner and Tiedens. The complexity of anger highlights the importance of thinking carefully about how to prepare for its impact on your decisions and the decisions of others.

steps can help minimize the negative impact of your emotions on your negotiations.

1. Take a time-out. Loewenstein has noted that when people are feeling angry or upset, they incorrectly predict what they will want when they feel more calm and rational. Unfortunately, anger often prompts us to make immediate, emotional decisions that we may later regret when we feel calmer, such as punishing the other side or seeking revenge for a perceived wrong.

To avoid committing such errors, call for a time-out whenever you are feeling upset during a negotiation, advises Lerner. Letting a hot emotion cool helps you realize that seeking punishment or revenge is not in your interest. And if you sense that your negotiating counterpart is in a foul mood, reschedule the rest of your session for another day. On a related note, keep in mind that we're most likely to make emotional snap judgments when we're pressed for time. For this reason, allot ample time to negotiate.

2. Acknowledge your feelings. Simply being aware that your mood

is likely to affect your judgment is an important step. When you label your feelings, you begin to reduce their influence.

Thinking about the source of your emotions and moods (or gently guiding your counterpart to do the same) can help as well. In one study of this phenomenon, researchers Norbert Schwarz of the University of Michigan and Gerald Clore of the University of Virginia found that participants surveyed by phone on cloudy days reported feeling less satisfied with their lives than those surveyed on sunny days. But consider what happened when pollsters asked this question before beginning the survey: "By the way, how is the weather down there?" This subtle cue about a fleeting condition led cloudy-day participants to report being just as satisfied with their lives as sunny-day participants.

3. Reappraise rather than suppress. In her February 2005 *Negotiation* article, "Emotional Strategy," Stanford University professor Margaret A. Neale writes that it would be a mistake for negotiators to try to suppress emotions that crop up during negotiation. Not only can it

Negotiator

Resolve internal conflict with **dispute system design**

The problem: A group of employees complains that they don't get enough vacation days. Two employees argue openly about responsibility for a work assignment. A colleague confides in you about a possible case of sexual harassment. Your organization lacks an integrated system for resolving such employee disputes, leading to low morale and high turnover.

The tool: Address such human-resources problems by following the principles of *dispute system design* (DSD). Harvard Law School professors Frank E. A. Sander and Robert C. Bordone describe DSD as the process of diagnosing, designing, implementing, and evaluating an effective method for resolving internal

conflicts. The best dispute systems focus on preventing and intervening early in conflict—and they can generate huge savings by improving morale, reducing turnover, and preventing lawsuits.

Operating instructions: Just about anyone with experience in basic dispute-resolution processes can be a "DSD architect." Here are four steps to follow:

1. Do an assessment of the types of disputes that typically arise and how your organization handles them.
2. Lead your organization through the process of building a system that encourages employees

be impossible to suppress a strong feeling, but our emotions often offer valuable information about the negotiation.

Consider the case of a counterpart who berates you for bringing up a potential deadline extension. Rather than trying to suppress the anger his remarks trigger, Neale advises you to reappraise the way you view the situation. The negotiator's outburst suggests that you have old business to discuss. By listening to his concerns about how your company let him down in the past, you pave the way for a better relationship and a more constructive agreement.

4. Institute accountability. Making negotiators accountable to others for their decisions is another proven way of managing the harmful impact of certain emotions. In one study, Lerner and Philip Tetlock of the University of California at Berkeley found that participants who had to justify their decisions to an audience learned to control their emotions and engage in more systematic thinking.

You can introduce effective accountability into an upcoming negotiation by agreeing with the

other party in advance that you will each be responsible for privately justifying your decisions to an impartial audience, such as a mutually trusted adviser or mediator. For accountability to be effective, negotiators should be accountable not only for their outcomes, but for the negotiation process they outline in advance. Furthermore, they should avoid finding out the opinions of the adviser to whom they are accountable about the issues at stake.

5. Present multiple proposals. The timing of the presentation of options influences our susceptibility to harmful emotions, Bazerman, Ann Tenbrunsel of Notre Dame University, and Kimberly Wade-Benzoni of Duke University have found. Specifically, we tend to act on our emotional preferences when evaluating options one at a time,

but we become more capable of engaging in reasoned analysis when evaluating options jointly.

If your architect simultaneously presented you with two very different plans for a house—one modest and affordable, the other luxurious and expensive—you would be better equipped to choose the more logical option over the more “affectively arousing” one. Better yet, having two or more options enables you to choose the best qualities of both. Whenever possible, present multiple proposals to your counterparts and ask them to do the same.

Researchers are only just beginning to understand the effect of different emotions on our judgments and negotiations. In the meantime, encouraging others to approach negotiations with greater rationality will help generate better outcomes for everyone involved. ♥

5 things to know about negotiator emotion

- 1 Different feelings trigger different patterns of behavior.
- 2 Unrelated emotions can bleed into a negotiation and affect results.
- 3 Thinking about the source of an emotion can reduce its impact.
- 4 Being accountable for our decisions helps with emotion regulation.
- 5 Presenting negotiators with multiple options increases logical thinking.

Toolbox

to seek help before conflict escalates. Start with low-cost, interest-based approaches to conflict, such as internal discussions and internal mediation, before moving on to more extreme measures, such as arbitration or litigation.

3. Implement your new system by setting up a design committee that considers the needs of everyone in the organization. Ask leaders in your organization to promote early victories to others.
4. Evaluate whether you've met these four goals: cost savings, improved disputant satisfaction, improved employee relationships, and reduced recurrence of disputes. Adjust the system accordingly.

What it can do: With the goal of reducing employee grievances and lawsuits, Coca-Cola Enterprises set up a mandated grievance process in 2000 for all of its employees that has focused the company's attention on internal disputes. The four-part program begins with informal discussions between employees and can progress to external mediation or arbitration in cases such as alleged harassment or discrimination.

Safety warning: Be sure that any dispute system you create is strong enough to withstand your departure from the organization. An effective system does not depend on any one person to thrive.

The strike zone: How to defuse protracted labor conflicts

The long-term costs of strikes can be devastating to organizations and industries. Here are some strategies for getting people off the picket line and back to the bargaining table.

What happens when people think they've invested too much in a dispute to back down from their entrenched positions? This question, familiar to negotiation scholars, rose to the fore as the Writers Guild of America (WGA) West and East's strike against the Alliance of Motion Picture and Television Producers (AMPTP) dragged from weeks into months.

Following three months of bitter negotiations with the AMPTP over a new contract, the writers closed laptops on November 5, 2007. In addition to seeking an increase in their residual pay for movies and TV shows released on DVD, writers insisted on a contractual guarantee for residuals on shows and films aired on the Internet and other "new media" outlets. The AMPTP argued that more time was needed to find out whether new-media revenues would be significant before reaching a profit-sharing agreement.

As the two sides took turns angrily rejecting each other's proposals, television network ratings slumped, and AMPTP member companies laid off support staff. The Los Angeles County Economic Development Corporation estimated that the strike (which remained unresolved as of this writing) was costing the regional economy \$220 million per month.

Although strikes often end with a whimper, the costs they inflict can be devastating. The 1988 WGA strike lasted five months and cost approximately \$500 million in lost revenues and wages, but only produced modest gains for the writers. The 1994 Major League Baseball

(MLB) players' strike led to the cancellation of the season. Fans turned away from the league in disgust, causing owners and players to lose an estimated \$1 billion in the years that followed. The National Basketball Association's 202-day lockout in 1998 cost owners over \$1 billion and players more than \$500 million in lost salaries.

These cases and many others suggest that disputing parties would do better to remain at the negotiating table than to head for the picket lines. Yet for a variety of reasons, negotiators often fail to recognize this fact until it's too late.

Why we strike

A number of factors contribute to strikes and prevent parties from reaching negotiated solutions:

- **Overconfidence** leads negotiators on both sides to believe their case is stronger than it really is, while underestimating the other side's willingness to stand firm. When one side doubts the other side's claims, a strike becomes even more tempting. Did the AMPTP truly not know what it could afford to pay writers for shows streamed on the Web? Going on strike was one way for the WGA to find out, writes James Surowiecki in the *New Yorker*. A quick settlement would have suggested the producers were bluffing, but they stood by their claims.

- **Fairness concerns** cause negotiators to reject deals that would leave both sides better off. We sometimes are even willing to pay good money to punish those who treat us unfairly.

- **Agents** at the bargaining table can have incentives that are misaligned with the interests of those they represent. Elected union representatives may be more concerned about appearing to "stand firm" than with working out a deal with management.

- **Viewing negotiation as a competition** to be "won" breeds contention and stands in the way of an agreement that will satisfy everyone's interests. Both sides in the writers' strike made enough inflammatory public statements to suggest they viewed their negotiations as a contest.

- **Incremental commitment** to a strike can make it difficult to quit one. When the decision to "hold out for a few more days" is repeated, a strike can last for months, even years. Economists have long advised us to ignore our past investments of time, money, and other resources when making decisions about the future. Yet such "sunk costs" weigh heavily on us. The decision to cut our losses can be extremely difficult to make.

How to defuse a strike

Wise negotiators understand that strikes are often a waste of everyone's time and money. To avoid or end a strike, follow these six tactical and structural steps:

1. **Avoid extreme demands.** When talks get heated, it's tempting to draw a line in the sand. Before their strike, for instance, the WGA demanded compensation for programs broadcast on new-media outlets, and studio and network management flatly refused. Making

such firm demands is usually a mistake. When you do so, you prevent yourself from considering alternative proposals that might meet your needs just as well. To make matters worse, demands increase the tendency to escalate commitment to a strike.

2. Think about the other side. Far too often, negotiators assume they fully understand the other side's interests and goals. This is especially true in competitive situations, where we tend to fall back on stereotypes. The WGA appeared to view the AMPTP as greedy through and through, for instance, while the AMPTP seemed to see the writers as naive. By looking for nuances in each other's positions, they might have opened up opportunities to brainstorm the types of creative solutions we propose below.

3. Get an outside opinion. When a negotiation gets heated, third parties can add a degree of rationality and impartiality to the proceedings. Before going on strike, seek advice from a disinterested adviser, such as an industry expert. Ask for an objective critique of your plans and encourage your expert to offer alternatives.

Similarly, before or during a strike, you and your counterpart might hire a third-party mediator to help you reach a voluntary agreement. Rather than imposing a solution, a mediator will work with the two sides to come up with a version that meets the interests of both parties.

4. Divide and conquer. In late December, the WGA announced a new "divide and conquer" strategy of making interim deals with individual networks, studios, and production companies that agreed to its proposals. This strategy led to deals with movie studio United

Artists and David Letterman's Worldwide Pants production company that put writers back to work without breaking the strike.

In addition to putting pressure on other companies to agree to its terms, the WGA's divide-and-conquer strategy allowed for less-contentious negotiations on a smaller, more private stage. So when you're facing a behemoth, consider engaging its factions one by one.

5. Make it a "virtual" strike. In the midst of the 1994 baseball strike, Harvard Business School professors Michael Wheeler and James K. Sebenius proposed a novel solution for resolving the disagreement: resume the MLB season, but do not allow owners and players to receive their revenues and pay. Rather, these funds would be deposited into an escrow fund to be disbursed only after the dispute was resolved. Presumably, the money rapidly accumulating in escrow during this "virtual strike" would motivate both sides to reach a deal. (For more detail, see Sebenius's September 2006 *Negotiation* article, "Facing a Protracted Dispute? Consider a 'Virtual Strike.'")

Unfortunately, MLB failed to take this advice, instead choosing to sacrifice huge profits in exchange for modest concessions from the players' union. By building virtual-strike clauses into their contracts during periods of relative calm, unions and management could create a situation in which strikes would not destroy long-term value to either side.

How might this concept apply to the writers' strike? The WGA and the AMPTP could continue to do business as usual, generating new movies and TV shows, while setting aside the revenues and salaries they would usually receive. Upon

resolving the strike, they could decide how to divvy up the profits they set aside.

6. Structure contingencies. In past *Negotiation* articles, we've presented contingent contracts as an innovative tool for resolving negotiators' differences of opinion about the future. When you add a contingency clause to your deal, you place a bet on how events will unfold.



The WGA and the TV and film producers already had contingencies in their existing contract, such as promises of residual payments to writers based on DVD sales. Their disagreement over the likelihood of new-media profits could have led them to structure another contingency. The writers seemed willing to bet that the producers would reap huge rewards on the Internet, while the producers claimed the future was less certain. Why not bet on these differing predictions? The producers could agree to pay writers more if the writers' predictions came true in five years, less if revenues proved disappointing. To further account for uncertainty, the agreement could be tailored to different types of media. Assuming the two sides were bargaining in good faith, they should have been willing to adopt this type of creative solution. ♥

Q

My company is selecting a firm to deliver a two-day negotiation training program for 250 executives and staff. From your experience, when is training most effective? We want to make sure it's worth the expense.

A

If negotiation training is preceded by the right kind of organizational needs assessment and followed by post-training support, results could reach your company's bottom line within months. Training should focus not just on individual skills, but also on improving how the company backs its negotiators. Think of your task as building a "world-class negotiating organization."

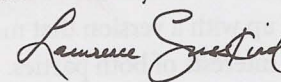
Tailoring training to your employees is important. While your sales staff may face negotiation challenges similar to those of sales forces in other industries, they also must deal with unique organizational demands and market conditions. The return on your investment will depend on the extent to which the instruction is matched to your colleagues' needs. Trainers can ensure such matching by talking (confidentially) with some of your colleagues before training begins to find out which negotiations worry them most and what obstacles they'll face when applying new skills. Trainers should adjust their teaching materials and presentation based on what they hear. In addition, I urge your company to set up a pretraining intranet site where participants can test their negotiation knowledge, find background readings, and anonymously post their own negotiation "nightmare scenarios."

If possible, to maximize conversation, have trainers divide your large group of employees into smaller groups. Training should include lectures on key principles and multiple opportunities to apply those principles in negotiation simulations that resemble the situations participants face

regularly. Each exercise should be debriefed, first in small groups, then within the classroom, and finally with the full group, where the process and results can be compared.

Once your employees complete their training, you can take a number of steps to increase the odds that the skills and ideas they've learned won't fade away. In the months that follow, have them write up accounts of how their negotiating strategy has changed as a result of the training and how they have used what they learned to save money or add value. Second, based on pretraining needs assessment and the training itself, list the ways in which your organization should alter its usual practices to enhance company-wide results. You might find that negotiators need more time to prepare, greater authority to explore options, salary incentives for improved outcomes, and clearer individual- and group-performance benchmarks. Finally, think about ways to improve the coaching skills of your key executives so they can help their direct reports (and perhaps others) apply the lessons learned in the training.

The value of negotiation training depends heavily on your organization's follow-up efforts. Unless senior staff model good negotiation practices, trainees may not think it's important to use what they have learned. If employees aren't rewarded for stellar results, don't expect them to improve. And if the organization doesn't adjust its rules, norms, and practices to support employees in their negotiations, training will be a waste of money.



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