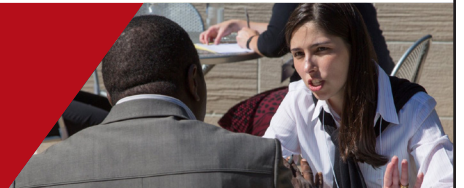




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So, you want to reach a more creative agreement... but how?

YOU'VE HEARD IT MANY TIMES: to get the most out of an agreement and a new business relationship, you have to collaborate to find new sources of value in addition to claiming value for yourself. Yet coming up with original, value-creating ideas can be easier said than done.

As Daniel Kahneman explains in his book *Thinking, Fast and Slow* (Farrar, Straus and Giroux, 2011), the vigilant, analytic thinking that we strive to adopt in negotiation is actually less conducive to creativity than the superficial, intuitive thinking we often try to avoid. In the midst of formulating arguments and crunching numbers, how can we open our minds to novel ideas? Here we present three basic techniques that you can use to get your creative juices flowing the next time you want to squeeze more value out of a negotiation.

1. Break the problem into smaller parts.

Perhaps the most helpful step you can take to promote creativity as a negotiator is to break problems into smaller components, writes Leigh Thompson in *The Mind and Heart of the Negotiator* (Pearson Prentice Hall, 2011). By doing so, you can build a multi-issue negotiation out of what might appear to be a single-issue deal.

Negotiators often think they are haggling over a single issue, but that is rarely the case. In 2003, a university and its food and commercial workers' union avoided a strike despite a \$300,000 deficit by breaking a single issue—the union's desire for wage increases—into multiple issues, including job security, parking fees, access to facilities, and overtime costs, writes Thompson. Identifying multiple issues positions you to make valuable tradeoffs based on your differing preferences.

How can you foster this type of creative mind-set in a counterpart who seems fixated on a single issue? Ask lots of questions, and listen carefully to the answers. Then consider using the information the other party shares to open up a conversation about your respective preferences regarding the varying issues.

If your counterpart is reluctant to engage in such a discussion, put together several different packages for his review. When you put forth several proposals at the same time, you are likely to impress the other side with your flexibility and encourage him to reciprocate with his own innovative ideas. Even if he doesn't like any of your initial proposals, his reactions will steer you in new directions for discussion.

3 approaches to more creative agreements

1. "Unpack" a problem into its components to uncover potential tradeoffs.
2. Apply underused deal-structuring techniques to avoid impasse.
3. Open up your mind through creativity-generating exercises.

2. Consider novel deal terms.

An array of issues may be on the table, but price can remain a sticking point, especially in the current economy. Unconventional deal-structuring arrangements can offer a way to bridge the gap between what a seller wants and what a buyer can afford.

When one side doesn't have the funds needed to push through a deal, consider whether you can barter your way to the finish line. Thompson tells the story of a Formula 1 motor-racing team that wanted to launch a new website but didn't have the budget to pay a London-based design studio to do the work. Instead of haggling over price, the team offered to pay for the website with tickets to upcoming Formula 1 races. The design studio readily agreed, seeing the opportunity to use the tickets to reward staff members for their performance and to woo new clients and pamper existing ones.

In addition, as we've discussed in past articles, a contingent contract offers a way to overcome differences in beliefs about future events and outcomes. Instead of arguing about how the future will play out, negotiators can place a bet on it. The same design studio described in the previous paragraph took this route when negotiating a deal to build an e-commerce website for the U.K. Football Association, writes Thompson. The association was working with a limited budget and wasn't sure the website would pay off. So the studio proposed

receiving a percentage of sales from the new site instead of a flat fee for its work. Such contingencies serve as a safety net that limits each side's losses if the agreement goes awry, according to Thompson.

Finally, negotiators often overlook opportunities to create more value by adding conditions to their deals, says Harvard Law School and Harvard Business School professor Guhan Subramanian. A condition is a deal-structuring technique that can be expressed in an “if” statement, such as “I’ll do X if you’ll do Y.”

According to Subramanian, a condition might have been a game-changer for NBC in 2001, when the television network was negotiating with Paramount Studios to renew the eight-year-old hit TV show *Frasier* for another three years. NBC wanted a “cutback right” to cancel the show if ratings fell before the contract ended. Under pressure from the show's star, Kelsey Grammer, Paramount refused; NBC backed down and agreed to pay approximately \$5.4 million per episode for *Frasier* with no cutback right.

Subramanian argued that if NBC had given Paramount a choice between \$5.2 million per episode without a cutback right or \$5.5 million with a cutback right, this condition might have motivated the studio to put pressure on its star to accept the cutback right. As this example shows, creative negotiators not only find innovative ways to collaborate but also use their creativity to get what they want.

3. Try some mind games.

We're all at least vaguely familiar with the concept of brainstorming—the popular technique used to unleash creativity in groups (and reduce the negative impact of “groupthink”). In a brainstorming session, individuals are encouraged to share whatever idea comes to mind, no matter how outlandish. Avoiding the urge to evaluate and criticize, the group gathers as many ideas as possible. At the end of the idea-generation stage, members may realize that they have adopted a more creative mind-set, and they may even find some good ideas on the list they've drawn up. Though research has found mixed results for the overall effectiveness of brainstorming in generating useful outcomes, negotiators who want to break out of an analytical mind-set might give it a try.

In her chapter “Creativity and Problem-Solving” in *The Negotiator’s Fieldbook* (American Bar Association, 2006), Jennifer Gerarda Brown suggests several other exercises that negotiators might use to stimulate their creativity.

In “mind mapping,” a form of word association, negotiators write down the problem they are facing and then add whatever related words come to mind on the same piece of paper. After covering the paper with words, negotiators can draw lines to connect those that seem related. This technique is designed to draw potentially useful links between various aspects of a problem and thus trigger creative solutions to difficult problems.

Another technique, known as “flipping,” involves considering the opposite of a given situation or idea. Mediator Christopher Honeyman has found that this can help parties find novel solutions to their conflicts. When encouraged to share their “bad ideas,” disputants may feel freed to offer ideas they partially or secretly support. As in brainstorming, Brown writes, being given permission to disclaim ownership of our ideas may inspire more creative thinking. .

by Katherine Shonk, Editor, *Negotiation Briefings*.
First published in the March 2012 issue of *Negotiation Briefings*.

Got a raw deal? Renegotiate a better one

If you are stuck coping with a faulty contract, try renegotiation.

Many viewed the deal to be a terrible one from the start. In December 2008, Richard M. Daley, then Chicago’s mayor, announced that his administration had agreed to lease the city’s parking meters for 75 years to a private company for nearly \$1.2 billion in an attempt to tackle a budget shortfall of about \$500 million. The deal was rushed through the city council despite members’ confusion about what, exactly, they were signing.

After Chicago Parking Meters (CPM), an investment group led by Morgan Stanley, took control of the city’s meters, Chicago drivers quickly found themselves paying the highest parking rates in the country. And in 2010, the news broke that, as had been widely suspected, the city had sacrificed billions of dollars in revenue in the negotiation. Daley spent \$1.15 billion of the money paid to the

4 steps to midcontract renegotiation

1. Appeal to the other side's sense of fairness by presenting objective evidence of a lopsided contract.
2. If necessary, get your counterpart's attention by refusing to meet contested contract terms.
3. Put heavy hitters in charge of negotiating contract revisions.
4. Reach out to lawmakers and others who might be able to help you work around your obstacles.

city in the parking deal during what proved to be his final term in office, leaving just \$125 million unspent. As we described in the article “Help Your Agreement Go the Distance” in our June 2011 issue, CPM revealed in a private note sale that it expected to receive \$11.6 billion in parking revenues over the course of its lease.

When Rahm Emanuel took office as Chicago's new mayor in 2011, he vowed to try to get taxpayers a better parking-meter deal, despite the fact that the 75-year contract had only just gotten under way. We

look at his administration's renegotiation tactics with an eye toward identifying how you can avoid Chicago's mistakes—both in your initial negotiations and in your renegotiations.

Attention-getting moves

If you find yourself struggling to cope with a lopsided deal, your first step should be to call the inequities to the other party's attention and ask for a renegotiation. Because most people have an innate desire to be fair, the other party may be willing to reopen a discussion before the end of your contract period, especially if you back up your request with convincing evidence.

What if they aren't? Some would say it's time to threaten a lawsuit, if you believe you can make a strong case. But doing so could escalate a situation that might be resolved more efficiently, cheaply, and peacefully.

There may be other ways to get your counterpart's attention. When CPM submitted a bill for \$12 million in lost revenue due to street closings in 2011, Emanuel refused to pay it. He also refused to reimburse the company for the \$35.5 million it claimed it was owed as a result of cars with disabled-parking placards and license plates parking for free. He publicly challenged the company's right to reimbursement, saying, “There's a new sheriff in town.”

Emanuel then put together a team of heavy hitters, including the city's chief financial officer and a prominent hedge fund managing partner, Michael Sacks, to fight the bills. These attention-getting moves worked: CPM agreed to sit down at the table.

In August 2012, the mayor announced an agreement that the city, and not CPM, was entitled to determine how much the company was owed due to street closings. The city then hired a technology consulting firm to develop software to recalculate the city's bill. Meanwhile, the city's dispute with the meter company over reimbursements for free parking by those with disability designations entered arbitration.

“A little lemonade”

The negotiations between CPM and the city's team continued for months. In addition to filing legal actions and revoking prime parking spots from CPM's control, city representatives sought to resolve a dispute over tens of millions in unpaid fees.

In April 2013, Emanuel announced the terms of the revised deal, which he claimed would save the city a projected \$1 billion over the course of the 75-year contract, specifically by reducing fees billed by CPM for out-of-service meters and other lost revenue. The city agreed to pay \$8.9 million of the disputed \$49 million that CPM had claimed it was owed. The new contract also provides for free parking in many neighborhoods on Sunday, a city tradition that vanished when CPM took control in 2008.

Yet an analysis by the *Chicago Tribune* suggested that the renegotiation may not have resulted in a better overall deal for city taxpayers and drivers. CPM negotiated to extend the hours of paid parking on most nights other than Sunday. And the company could net millions in service fees from a pay-by-cell-phone system that could be added to the contract.

The city largely lost in the arbitration over disabled-parking permits. Yet Emanuel has lobbied the Illinois governor to block CPM from seeking further reimbursements for free parking for those using disabled signs and plates.

Burned by CPM's initial contract, Chicago reluctantly voted in June to approve the renegotiated deal. Emanuel has tried to deflect criticism that the new terms don't go far enough to improve Chicago's side of the deal. “I'm trying to make a little lemonade out of a big lemon,” he said. “We can't make this bad deal go away, or make it a good one.”

Toward more successful renegotiation

The limited success that the City of Chicago had renegotiating its botched parking-meter deal attests to the difficulty of persuading a counterpart to revise existing contract terms. Perhaps the ultimate lesson from the dispute may be the value of getting the deal right the first time. Here are a few tips to follow:

1. Create breaks. Mayor Daley consented to a truly epic 75-year deal with CPM. Given the difficulty of foreseeing how economic and other conditions will change, try instead to do short-term deals that will allow natural breaks for renegotiation. A much shorter contract would have allowed the City of Chicago to examine how the parking deal was working, negotiate adjustments as necessary, and seek out other bidders in the event of nonagreement.

2. Prepare for disputes. Even with short-term contracts, disputes and differences of opinion inevitably arise. Add a clause to your contract that requires renegotiation, mediation, or arbitration in the event that parties end up disagreeing about the terms of the contract or how the partnership should unfold.

3. Avoid quick fixes. Daley addressed a short-term crisis—a pressing budget shortfall—with what appeared to be a simple solution: a cash windfall from a parking-meter deal. In the midst of an emergency, it's not unusual for negotiators to seize on seemingly quick fixes. Unfortunately, short-term thinking can lead to long-term problems. To avoid this common error, include disinterested parties in the decision-making process and encourage them to question your judgment.

by Katherine Shonk, Editor, *Negotiation Briefings*.

First published in the August 2013 issue of *Negotiation Briefings*.

How to Win a “Beauty Contest”

QUESTION

My company is going through a “beauty contest” to try to win a major contract with a buyer of corporate wear. The target’s employees have tested our samples and eliminated several other suppliers based on quality, price, and other issues. As one of the two suppliers still in the game, we have been invited to attend a “finale day.” We have also been asked to “review our offer as much as possible”

in advance. On the big day, we expect that we and the other supplier will sit in separate rooms, and the buyer will go back and forth between us, trying to pressure both of us and squeeze out the best deal. How should we approach this process?

ANSWER

Competitive bidding processes like the one you describe are becoming increasingly commonplace as markets become more global, high-tech, and price sensitive. Neither pure auctions nor pure negotiations, these processes lie in the middle ground that I call a “negotiauction.” In such situations, you face price pressure from the buyer across the table, but you’re also vying with competitors on the same side of the table.

Here are three suggestions to help you get the business without giving away the store:

1. Clarify their interests and alternatives. Learn as much as you can about the buyer—both the company and the person or people running the process. Are they solely concerned about price, or are other issues more important? If you were them, who else would you be talking to? How is the person making the buying decision evaluated and compensated?

Consider the recent case of Fairstar Heavy Transport N.V., a Dutch shipping company that participated in a yearlong negotiauction to provide transportation services for the Gorgon energy project in Australia. In the final meeting, Fairstar CEO Philip Adkins was confronted with the make-or-break question: “What’s your best price?” Based on deep preparation, Adkins knew that cost was not a significant issue for his counterpart; Fairstar’s contract would be a drop in the bucket for a \$42 billion energy project. And since BP’s oil spill in the Gulf of Mexico had just occurred, he also knew that the project manager would be very concerned about quality and reliability. Finally, Adkins knew that Gorgon had weak alternatives, as Fairstar’s major competitor had recently dropped out of the process. As a result, Adkins stuck to his demand: \$95,000 per day. After a “very lonely 10 minutes” in the hallway, he got the deal.

2. Make multiple simultaneous offers. Your buyer has asked you to “review your offer as much as possible.” You might assume this means you’ve got to cut your price, but then you risk bidding against yourself if they are lying and there is no

other bidder. Instead, try providing a few options: “Here is the best we can do on our current package; here’s another package we can offer at a lower price but with some quality adjustments,” and so on. If price is critical for the buyer, but your current package is not the low-price alternative, such multiple simultaneous offers (as my colleagues Max Bazerman and Deepak Malhotra call them) keep you in the game.

3. Look for a “shut-down move.” You note that your buyer is likely to shuttle between you and your competitor on finale day. Don’t accept this process as given; rather, look for opportunities to make a “shut-down move.” As your buyer is about to shop your offer back to the other guy, you might say, “What would it take for us to get this done now?” If a negotiation ensues, be clear that any concessions you make may expire if the buyer leaves the room. In effect, you are giving your customer a bit extra in exchange for exclusivity.



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Want the other side to open up?

It may be simpler than you think, a new study suggests.

It was a negotiation cloaked in secrecy. Realizing that two men, adversaries for a decade, both happened to be in Scottsdale, Arizona, at the same time, attorney and activist Jerry Crawford brought them to his part-time home in that city. For five hours, the two enemies talked face-to-face for the first time. Their negotiations continued in fits and starts in the months ahead, USA Today reports. Talks broke down five or six times, but, ultimately, the former adversaries reached a groundbreaking agreement.

The two men in this story are Wayne Pacelle, president of the Humane Society of the United States, and Gene Gregory, president of United Egg Producers. For years, they were on opposite sides of a hot-button issue: the egg industry's practice of crowding hundreds of thousands of chickens into cages in a single henhouse. Pacelle's and Gregory's organizations have spent millions of dollars fighting over government proposals regarding chicken cages.

"We could fight the United Egg Producers for another 10 or 15 years and spend millions and millions of dollars on both sides," Pacelle told Dan Charles of National Public Radio's *Morning Edition*. "But the other option is we could sit down together and figure out a pathway that's good for industry and better for animals."

With the egg industry facing a patchwork of regulations in different states, Gregory agreed to a top-secret meeting with Pacelle at Crawford's home. Over the months of negotiation that followed, the men hammered out a proposal that would give chickens twice as much cage space, plus perches and egg-laying areas, while also meeting industry concerns regarding egg supply.

The win-win deal gives egg producers one clear set of regulations to follow and meets the Humane Society's goal of improving conditions for chickens nationwide. If approved by Congress, the plan will be phased in over 15 years. Once lobbying on opposite sides on Capitol Hill, Pacelle and Gregory now walk "shoulder to shoulder" seeking support in Congress for the new rules, says Charles.

At the heart of this negotiation lies an open exchange of information between two men who had little reason to trust each other and much on the line, including their jobs. Pacelle and Gregory had to share information they had ample reasons to conceal, such as details about the egg industry's practices and the Humane Society's activism strategy.

Negotiation experts often stress that creative, value-generating agreements are possible only when the parties involved disclose key information, as Pacelle and Gregory appeared to do in their talks. In particular, revealing the deeper interests behind our stated positions may be the clearest path to discovering mutually beneficial tradeoffs. But the fear of saying too much—and somehow giving the other side an edge—often causes negotiators to hold back and leave value on the table.

Whether dealing with adversaries, customers, coworkers, or even friends, we need to learn to draw important information out of our counterparts and ensure that we are being forthcoming as well. Fortunately, this may be easier than it sounds, according to a new study by Tal G. Zarankin of Radford University and James A. Wall Jr. of the University of Missouri.

Sharing and reciprocity

The researchers examined which strategies are most effective at drawing information out of negotiators. In the study, college students were asked to play the part of a student negotiating the terms of a part-time job on campus. Participants shared more information about their best alternative to a negotiated agreement, or BATNA, and their payoffs when their counterparts shared this type of information themselves. They also shared this type of information more often when their counterparts directly asked them to open up. And when their counterparts both shared and requested information, negotiators responded with the most information of all.

Zarankin and Wall attribute these results to the *norm of reciprocity*—the

universal and powerful urge to respond in kind to others' behavior, whether positive or negative. Past research had already found that negotiators tend to reciprocate concessions, threats, and emotions. Now we can add information sharing to the list of behaviors that you and your counterparts are likely to reciprocate, perhaps even without much thought.

The researchers also looked at whether information about other negotiators' performance in similar circumstances causes us to share more information than we would otherwise in our own talks. Does aspiring to match or beat the achievements of others motivate us to share more information in our negotiations? In fact, it does not, perhaps because such goals make us overly competitive and less

What should you share?

Here are some types of information you might share to expand the discussion and the possibilities for agreement in your next important negotiation:

- **Information about needs and desires:** "Confidentially speaking, our former service provider wasn't able to meet our strict deadlines. What methods would you use to make sure the project stays on track?"
- **Information about alternatives:** "We are speaking to a couple of other potential partners in the event that we can't get this deal to work. Are you doing the same?"
- **Information about potential tradeoffs:** "We may be willing to budge a bit on the financing issue. What would you be willing to give us in return?"

cooperative. In the experiment, only requests for information or revelations from a counterpart motivated greater sharing.

When you share information about your interests and alternatives, and encourage the other party to do the same, the benefits are likely to outweigh the costs, this study suggests.

By Guhan Subramanian.

First published in the August 2006 issue of *Negotiation Briefings*.

Building Your Team Online

QUESTION

I run a start-up and am looking to hire a team of people to help with everything from product development to marketing to data entry. I have heard that online labor markets such as oDesk or vWorker may be a good way to hire people, but I don't know how trustworthy they are or how best to negotiate on them. Any thoughts on taking hiring digital?

ANSWER

One of the more remarkable trends in the recent explosion of online marketplaces, online labor markets (OLMs) have been transforming the way we think about hiring and managing. Websites such as oDesk, Elance, and vWorker allow you to gain access to applicants with a wider range of skills in farther-flung locations than would otherwise be feasible, especially for a small business looking for part-time or temporary help. But these sites present challenges that are distinct from those of traditional labor markets.

To give an example of how an OLM works, let's say you are looking for a programmer to do Web development. With job description and requirements in hand, you would face a series of decisions when posting on an OLM:

Decision #1: Approach them or let them approach you? If you simply posted the position, you would quickly receive a response . . . and then another, and another, and another, and so on. Some applicants might ask for more money than others, and their qualifications will vary as well. Amid the deluge, it's easy to experience choice overload.

One way to alleviate this problem is to set parameters, first by allowing only targeted candidates to apply. Targeting can be done on different levels, from looking at one candidate at a time to filtering candidates with a certain amount of experience. This can greatly simplify the process, especially when a specialized skill is required.

Decision #2: Whom can you trust? The main challenge OLMs face is facilitating trust between strangers. Each potential employee has an online reputation, which is similar in many ways to an offline reputation. For example, you can look at the applicant's employment history, including ratings and comments from previous OLM employers. Additional information can include (self-reported) biographical data and even verified skill testing by the OLM. Not surprisingly, applicants with more favorable reputations command a higher wage.

Decision #3: How should you negotiate? Now it's time to communicate with applicants. You may have specified a price for the job, and they will have submitted bids, leaving room for negotiation. Because these websites are competitive labor markets (and hence known for reasonable wages from an employer's perspective), focus primarily on worker quality rather than haggling too much over the wage—you are already getting a good deal! Make sure both you and the applicant agree exactly on the deliverables and the terms of employment, such as how you will communicate and how often.

Decision #4: How should you manage employees? So you've hired your OLM employees. Almost all OLMs will facilitate their payment for you. As for managing employees, you can transition employees off of OLMs and interact with them directly (via e-mail, telephone, and so on), or some OLMs will help you with it. (oDesk even takes screenshots to show you what your employees are doing.) OLMs prefer that you stay on the system, as they charge an ongoing commission that is a percentage of employees' wages. Think carefully about the potential benefits (quality assurance, payment facilitation) of keeping employment online versus the cost (a substantial fee).

OLMs will continue to grow in importance in the marketplace. Stay aware of their quirks and balance costs against quality, and you are likely to benefit from them.



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When a Job Offer is “Nonnegotiable”

QUESTION

I am in my final year of business school and starting to prepare for job interviews. I have heard many of the organizations that recruit on campus are not open to negotiating specific terms of employment. Rather, they offer everyone roughly the same deal terms. To what extent should I respect such conventions versus trying to negotiate better terms for myself?

ANSWER

As you’ve heard, firms that hire a large number of college or professional-school graduates into entry-level positions tend to offer standard packages and avoid negotiating with new recruits. If a firm hires more than four or five people each cycle and has hired “classes” of new employees with similar qualifications for years, you may have little room to negotiate your offer.

In fact, negotiating aggressively in the face of a standard package could cause the employer to sour on you and retract the offer. If you are still hired, any gains that you negotiate could come at the expense of future pay increases, bonuses, or other perks.

Although negotiation isn’t encouraged in such situations, it isn’t forbidden. Here are a few tips to help you get a better offer:

1. Probe for signs of flexibility. Often, by doing some research, you can uncover areas where potential employers may be flexible. For example, if a company wants to stagger the start dates of a group of new hires, management might be willing to accommodate your preference for a certain start date. If you have special expertise or experience, you could ask your interviewers if you might qualify for a more senior position. You might also find that volunteering for a particular role or agreeing to move to a less popular location could qualify you for a customized package.

2. Take a long-term perspective. Ideally, you will face the task of comparing job offers from multiple organizations. When doing so, most candidates focus on salary, bonus potential, and other “year one” items, such as a signing bonus. But what happens after year one?

With a little research—such as calling alums from your school who have worked for the firm for several years, or asking your interviewers directly—you can get more information on trend lines. For example, Company A’s \$80,000 salary might sound better than Company B’s offer of \$70,000. But if you learn that Company A provides only cost-of-living raises, and Company B offers much more generous pay increases, the salary issue may level out or even reverse.

3. Create a scoring system. The number of factors at stake in a job decision can be overwhelming: role, location, department, pay package, amount of travel required, and so on. Job candidates often find that they can effectively determine which issues matter most to them by creating a scoring system by which they can compare the various issues at stake. After weighing all the known elements of a job and likely trend lines, you might decide to negotiate the one or two issues that are most important to you.

4. Demonstrate flexibility. Because organizations are often hamstrung by policies and procedures, your interviewers are likely to appreciate some flexibility from you regarding how they meet your interests. You might explain that it matters little to you how the total dollars that you earn your first year on the job are divided up—among base salary, signing bonus, year-end bonus, and educational-loan repayment, for example.

In addition, think about how you might deliver more value to your employer. If you had hoped for a break between school and work, but they need someone to start right away, you might agree to start immediately in return for an extra two weeks off after the busy season. Such relatively minor concessions could inspire employers to reciprocate with flexibility on issues that matter more to you.



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by Katherine Shonk, Editor, *Negotiation Briefings*.
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