CHAPTER 5

Creativity

If you think deals are just about price, you’re in for a rude awakening. Of course price is a crucial part of any negotiation. But whenever you focus only on a single part of the negotiation, you’re going to run into problems. A deal should be evaluated based on all of its terms—price, timing, payment, size, penalties, and everything else—or you’re going to miss some potential benefits hidden within the deal.

A common but misguided mindset for negotiators is to keep their sights set on exact terms they want to emerge from the deal with. They repeat to themselves: “Twenty percent, ten thousand dollars, twenty percent, ten thousand dollars.” By the time they walk into the negotiation, they’ve lost the ability to accept anything other than twenty percent and ten thousand dollars. It’s alright to say that you’re not going to accept less than twenty percent and ten thousand dollars. But you also need to keep your mind open to possible offers that would be even more valuable to you than twenty percent and ten thousand dollars.

This is why your negotiation plan is only a rough guide. If you are tied to exactly what you’ve written down on the page, you’re closing off a host of possibilities you may not have thought of before. Let’s say you’re stuck on twenty percent, ten thousand dollars, and you’re offered twice the amount of work for twenty percent and fifteen thousand dollars. You’ve hit your desired price, but at what value for the work? What if you’re offered half the amount of work for thirty percent and five thousand dollars? It’s less than you wanted, but do you really want to turn down an offer that may be more valuable than what you would have accepted on a different scale?

Once you've begun negotiating, it's very difficult to change your opinion about what some part of the deal is worth, so it is important to scrutinize each aspect of the deal before you get to the negotiating table. In the deal that follows, how responsive is Steve likely to be to Dave's changing opinion about the value of his stuff?

> *"O.K. Steve. This is it. I want $400 for the television and the VCR."*
>
> *"Dave—I'm not going to pay more than $300."*
>
> *"Then you aren't getting my TV and VCR."*
>
> *"How about I give you $200 for the television?"*
>
> *"How about you give me $300 for the television?"*
>
> *"Then how about I give you $100 for the VCR?"*
>
> *"How about you give me $200 for the VCR?"*
>
> *"But that makes the two of them together $500!"*
>
> *"You see! I'm giving you $100 off, because you're a friend."*
>
> *"O.K. How about I give you $250 for the television."*
>
> *"But then I'm stuck with the VCR. What good is a VCR if I have no television?"*
>
> *"You can use it as a doorstop."*
>
> *"Yeah, a $300 doorstop."*
>
> *"I thought you said it was $200."*
>
> *"That's before I remembered you could use it as a doorstop, too."*

Steve is probably through dealing with Dave at this point. The more creative you can be before the negotiating process begins, the more flexible you can be once it starts. Keep yourself open to all alternatives the other side proposes, and explore your own creative side too. The more open-minded you can be in your approaches to negotiation, the more likely the two parties will come to a mutually acceptable solution.

Creativity Exercise 1

By increasing your general intellectual creativity, you will approach any negotiating situation better equipped. Here's a quick workout to gauge the flexibility of your thinking. Imagine the following scenario. You are in a room with floors and walls made of wood. There is no furniture in the room, except for a large fish tank right in the middle. At the bottom of that fish tank is a diamond worth one million dollars. There are sleeping guards in every corner. If there is any loud noise, they will wake up and arrest you. All you have to do is retrieve the diamond from the bottom of the fish tank. Oh, and the fish tank is full of flesh-eating piranha fish. You have with you the following items:

1. a wad of cotton
2. a hammer
3. a straw
4. a cup
5. a steel canister
6. a side of beef
7. a stack of paper plates
8. a towel
9. a baseball bat

Write down all the ways that you can think of to retrieve the diamond without waking the guards or getting your arm chewed off.

Creativity means opening yourself up to new solutions. When you negotiate, you should be creative in three ways: You should be flexible, be a careful listener, and be able to assign value.

Flexibility

We've said it before, but it's worth saying again: Going into any negotiation with a rigid sense of what you want makes negotiating more difficult and more likely to fail than if you are flexible. Stay open to finding new solutions to existing problems, even when those solutions are not on your negotiation plan. When you remain flexible, you'll never let a deal fail unless it simply can't be done at all.

A flexible stance does not mean accepting a deal below your trip wires or letting yourself be railroaded into a solution that creates more problems for you than benefits. On the contrary, flexibility opens up the negotiation to a better solution for all parties. For example, in 1993, basketball player Nick Van Exel was drafted out of the University of Cincinnati by the Los Angeles Lakers. Though an accomplished college player, Van Exel is only six feet tall and had demonstrated questionable shot selection, making his value uncertain. The Lakers offered him the standard contract for a player drafted in his position, although at a slightly lower price than the market might have determined. Van Exel, however, had a different belief in the worth of his skills. Contract talks

stalled on a long-term contract until his agent decided to be creative. The agent stopped arguing price and length of contract and offered the Lakers a one-year contract at the league minimum—way below even the Lakers' original offer—to give Van Exel a chance to prove his skills. The Lakers found this interesting. If he proved himself during the season, they would pay fair market value for his services from that point on; if he turned out to be less talented than they believed, they would save themselves a lot of money. There was an additional benefit to the Lakers in signing the kind of contract Van Exel signed. Each NBA team is limited in the amount of money they can offer in any given year by a "salary cap" of roughly twelve million dollars. By signing Van Exel at the league minimum—109,000—they kept more money available to sign other free agents. And if a team re-signs a player who played for them the year before, that money doesn't count toward the salary cap. Van Exel ended up having an excellent year and signed a five-year deal with the Lakers for over ten million dollars.

11

"Or Else"

Identification
When the other side says "or else," you're under the pressure of a threat. You know it. They know it. But what are you going to do about it?

Note
Threats only work when the person making them:
1. Doesn't care about the relationship.
2. Can back them up.
3. Is prepared to back them up.

Solution
It is often more effective to address the other side's tone than to focus on the substance of what they say. A simple "we can work this out without threats," usually makes the other side state exactly what they want. If they can and will back up their threats, you might have to decide that the deal does not satisfy your needs and consider the negotiation closed at that point.

In this case, Van Exel took a big risk, betting on his skills and his continuing health, and it paid off. His range of alternatives was expanded by his willingness to take that risk. Not all such gambles are successful, however. A recent case of risk-taking behavior that did not pay off is Danny Manning, another basketball player, who was offered over three million dollars a year to remain with the Atlanta Hawks. He decided he wanted a championship ring more than guaranteed money, so he elected to leave the Hawks and sign with a team that had a strong chance to contend for an NBA title. He signed a one-year deal with the Phoenix Suns for below his market value, since they were close to the salary cap for that year. Manning expected that after the year was up, he would sign a long-term, multimillion-dollar deal with the Suns. During the season, he tore the anterior cruciate ligament in his knee. Unfortunately for Manning, he will never play as well or command that kind of money again, and it is unlikely that the Phoenix Suns will re-sign him for next season.

Many large companies have "Creative Block-busting Sessions" where they invite workers from all levels to come up with solutions to company problems. "There are no bad solutions," one executive says, "only ones we choose not to implement." Most of the suggestions range from the impossible to the bizarre, but even the most outlandish suggestion often contains the kernel of an idea that proves valuable. One cost-cutting creative blockbusting session for a pharmaceutical company came up with the following solutions:

1. *Free employee samples to improve worker productivity*
2. *No more toilet paper*
3. *Sell chairs & tables*
4. *Company rodeo to raise money*
5. *Raise insurance level then burn factory down*

   Ideas number 1 and 4 ended up leading to an employee discount for products and group events, both of which raised worker morale and productivity.

The point is that flexibility and innovative thinking go hand-in-hand. Solutions are created all the time in ways that not only meet the needs of each party, but also expand the gains that each party can make. Ask yourself these questions:

1. Am I resistant to an offer merely because I didn't think of it?

It's not unusual to resent someone who thinks of something you didn’t. Aim to make an accurate, informed, objective judgment about the fairness of an offer without regard to who came up with it first. You might try imagining that you yourself were planning to propose this solution to the negotiation in order to put yourself in the frame of mind to evaluate the offer on its merits alone. What would the benefits be to your side? How would it address your needs? How would it address their needs?

2. Is the other side thinking creatively?

If the other side is locked into a “one issue/one solution” negotiating position, they are going to be limited in their ability to suggest alternative solutions. Obviously, you can’t force another side to think creatively—though you’ll often wish you could. What you can do, however, is educate them about your creative suggestions. Perhaps something you’ll say or

offer will start them thinking about the deal in completely new terms. Tell them about different ways in which your needs could be satisfied. In other words, give them some raw material that they can mull over later. One important element in any negotiation is time—and we’ll discuss how to use time to your advantage in chapter 6. But if the other side isn't thinking creatively, a good idea is to throw some suggestions to the other side and then recess. Give them some time to let your ideas sink in. They may even be inspired by your ingenuity to come up with their own creative proposals.

3. Am I being flexible or am I being a pushover?

The downside of flexibility is that in your desire to consider every possible option, you may send inappropriate signals to the other side. In chapter 5, we'll talk about what benchmarks you should use to determine value. But be aware that flexibility means openness—not acquiescence. When an offer is made that is completely unacceptable to you, make certain that when you reject it, you make your reasons clear.

12

The Non-Negotiators

Identification
The other party refuses to negotiate and discuss terms with you. They submit a proposal with a price and terms and then ask you to accept or reject it on the whole.

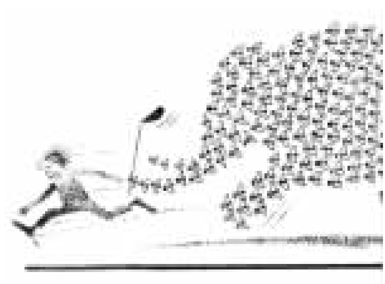
Note
A refusal to negotiate is usually a refusal to negotiate price. This is an opportunity for you. Since they are rigid on price, you can ask for concessions on other terms. Asking for clarification as to why they won't negotiate will usually let you know where there is some room for discussion. If they continue to not negotiate, you may consider choosing another company and telling the original one that had they been more willing to negotiate, they may have gotten your business.

Solution
Approach them in a positive and inquisitive way. Tell them you'd love to make a deal, but you have some questions. Don't try to negotiate right away. They will take the time to educate you. When they commit some time and energy to your education, they suddenly have more at stake in the discussions. Then, when you have more information and some creative alternatives to approach them with, they'll be more willing to bargain. Sometimes how you do something is just as important as what you do.

In their zeal to avoid a salary cap, NHLPA representatives compromised on every issue important to the other side. The rules on arbitration, free agency, and rookie salaries were all changed to meet the owners' demands. In many ways, the salary cap that the NHL didn't get would have caused less pain to the players than the conglomeration of new rules did. By focusing on a single issue rather than the overall picture, the Players' Association lost out.

Listening

Larry is wandering through an electronics store, and he notices a stereo on sale—a tuner, a tape player, and a set of speakers—ior $300. Chuck, the salesperson, sees him approaching and offers his hand.



"So, this stereo set is on sale for three hundred dollars?"

"Yup. Do you want one of them, or two?"

"I'm just looking. Is there anything I should know about this set?"

"It's a great deal. I'd get better speakers though."

"Can I substitute better speakers?"

"Nope."

"Does a CD player come with this stereo set?"
"Nope."
"Is there any way to get this price down?"
"Not really."
"No way at all."
"Nope."
"Thanks for your time."

Flexibility is intimately tied to being a careful listener. Listen raptly to the offers someone proposes and the terms he gives you. For example, if a salesperson keeps talking about "the best deal you'll ever get, the most for your money, the finest craftsmanship, the most elegant materials," and doesn't get to the price for a long, long time, be patient. Let him give you a hundred reasons for his price. That never precludes you from taking issue with it. Additionally, you now have a hundred reasons to attack the price and ask for a lower one. By listening carefully, you can determine what the other side's needs are, and you are in a better position to offer a creative alternative. Look at how the above scenario changes when both sides listen better and think more flexibly:

"My name's Chuck. Can I help you with anything?"
"My name's Larry. Just looking at this stereo."
"It's a great stereo. If you want more depth to the sound, though, I'd get better speakers."
"And how much would those cost?"
"About two hundred dollars more."
"Two hundred dollars more? That almost doubles the price!"
"You get what you pay for. Now look, my boss doesn'

t want you to know this, but those speakers they include with the package... ? They' re lousy. You can barely hear any drums in the background."

"Then why do they include them?"

"How are you gonna sell a stereo without speakers?"

"You' ve got a point. But I can' t pay five hundred dollars for this system. It doesn' t even have a CD player. Can you do something about the price?"

"I wish I could. You see, on all these sale items, us salespeople have very little room to drop the price. If I sell you one of these things, I make twenty, maybe thirty dollars. The store only makes about forty. But the quality sucks."

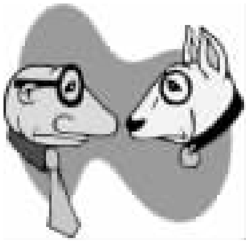
"What if I buy a different stereo? Could you give me a break on the price? That way you get better commission and I get a better deal."

"I could do that if you get that CD player you talked about as well. I can get you better speakers and—heck, better everything—ior about the same amount of money."

"And you know, I' ve got a couple of friends who are looking for good equipment themselves. If you can give me a good deal here, I' ll send them over."

"I am sure we can find an excellent deal for you."

By starting with the basic assumption that the price was negotiable, the buyer sent a clear signal to the salesperson—no way this deal gets done on these terms at this price. The salesperson uses



Strategic Education to inform the buyer about the product and the pricing. He also provides a piece of information—he makes less commission on sale items—that allows the buyer to offer a creative solution to their mutual needs. Note that this important piece of information was obtained because Larry was listening carefully and managed to discern and then work with Chuck's desire for a higher commission.

Negotiating Workshop 7

Careful Listening

Read the following sentences and decide how important each might be to a negotiation, on a scale of 1 to 10. Remember: Careful listening can open the door to creative solutions.

1. "You know, I'm on the spot here. My manager is waiting to see if we make a deal."
2. "I'm not allowed to go any lower on price."
3. "At these volumes, I'm not making any money."
4. "You know, I ski too, and those skis you're looking at—they're for beginners. They're not for an expert like you."
5. "I'll take your offer to my boss, but I don't think he'll like it."
6. "Make me a better offer."
7. "You know, prices are going up all the time. When's the last time you heard of prices going down?"
8. "I only have three left in that color. They're going fast..."

9. "That product comes all the way from Russia. Do you know how much it takes to ship this from Russia?"
10. "I'm indifferent between the up-front money and the percentage. Either one is good for me."

Assigning Value

Assigning value is how you decide what you want, not just when you negotiate, but in all aspects of your life. Something that's valuable to you is something you want. Something that's less valuable is something you don't want as much. Before you enter any negotiation, you've got to look at every part of a deal and ask yourself, "What's it worth to me?" Your answers don't have to be the most specific ones in the world, like "$372.12" or "On a scale of 1 to 10, I'd rank this a 6.53." But the values you assign should be distinguishable. Just being able to determine if something is "very" valuable or "not very" valuable can guide you through dangerous waters in any deal.

13 *Upping the Ante*

Identification
You ask for a small concession. The other side agrees—if you'll make a major concession on something else. You refuse. You ask for another small concession. They ask for another major one in return. Pretty soon, you're tired of asking for anything. They've made it impossible for you to get any more concessions.

Note
Upping the ante can lead to renegotiation of an entire contract, so be careful. Policies of escalation can create ill will and lead you places you don't want to go. However, when someone keeps asking for tips, a few "ante-uppers" should stop that behavior.

Solution
As with all irrational negotiating tactics, bringing the policy to light may have a positive effect. Another way to defuse an "upping the ante" situation is to do the same yourself. Respond to their disproportionate requests with your own, absurdly high requests. After a time, you'll both be able to proceed in a reasonable, productive fashion.

Always remember that each person is going to answer the question "What's it worth to me?" according to his own needs. Don't assume that the other person has the exact same opinion you do on the value of every part of a deal, or you're going to find yourself giving away things that could have been worth more to you than to him. The other person is the only one who knows what he values most. Your job is to find out as much about what he values as you can.

You'll find that pinpointing differences in assigning value is the basis of all "win/win" negotiations. By discovering differences in your valuations, you can actually find areas that make both parties content. If you think something is not very valuable, but the other side thinks it is very valuable, you can probably get something important to you in return for it.

Taking an inflexible position in a public forum can lock you into a stance antithetical to a creative compromise. As the NFL Players Union contract expired, Gene Upshaw, president of the union, and the league owners engaged in a mud slinging contest in the national press that made each side less willing to modify its position. The result? The players struck, while the owners locked out the players and brought in scab replacements. These replacement players were such poor substitutes that coaches were forced to use "trick" plays that are rarely seen in the NFL, such as the "Statue of Liberty" play.

Let's look at an example. You are a software programmer who has designed the perfect system for Company X. The only thing is, they want

you to train their employees to use the system. For you, training their employees is a snap. It'll take you a couple of days at most, and you already know everything about the system. You assign very little value to training Company X's employees. Company X, however, knows that without training, this great system they have is useless. They are willing to pay a bunch of money to have their people trained by the one person who knows the system inside and out. They assign a very high value to your training of their employees. By trading your item of low value to you for one of high value to them, you can get something you value more, cash, and they can get the expert training they desire. In this case, both parties come out ahead.

Now, no one is going to go into a negotiation and state, "This is what I want most, this second, and this last." Doing that will give away critical information that may allow the other side to extract huge concessions from you for the one thing you want most. You've got to keep your valuations as hidden as possible while figuring out what the other side's are. But if you can find a way to get at value for both parties, you've got a winning solution.

Value and creativity go hand-in-hand. The negotiator who can be most creative about finding value is, in the long run, going to be the most successful. Some place you might look for hidden value in a negotiation are:

1. Size—if the volume or scale changes, how will that affect the other parts of the deal?
2. Timing—when is the deal going to get done?
3. Payment—how much, when, what form? Cash or credit?