

FUNDAMENTALS OF PRINCIPLED NEGOTIATION

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NEGOTIATION

**“Communication
for the purpose of
persuasion.”**

- Prof. Frank Sander

NEGOTIATION

“An interpersonal decision-making process by which two or more people agree (on) how to allocate scarce resources.”

- Leigh Thompson

NEGOTIATION

- **MOST DISPUTES IN THE U.S. END UP BEING SETTLED.**
- **PROFESSOR FRANK SANDER OF THE HARVARD LAW SCHOOL LECTURED ABOUT “THE VANISHING TRIAL”.**

NEGOTIATION

IN 2003, PROFESSOR SANDER SAID THAT ADR WAS NOT JUST AN ALTERNATIVE MODE OF DISPUTE RESOLUTION IN THE UNITED STATES. IT HAS BECOME THE PRIMARY MODE OF DISPUTE RESOLUTION IN THE U.S.

V.D. On V.D.
(Venereal Disease on
Valentine's Day)

ISSUES

- **ISSUE NO. 1: CUSTODY OF VITTORIO**
- **ISSUE NO. 2: DAMAGES FOR V.D.**
- **ISSUE NO. 3: SEPARATION OF PROPERTIES**



PREPARATION FOR NEGOTIATION

**THE
NEGOTIATION
PROCESS**

POSITIONAL NEGOTIATION PROCESS:

- 1. Identify the Issues.**
- 2. Make the Offer.**
- 3. Make the Counter-Offer.**
- 4. Make the Reply to Counter Offer, etc.**
- 5. Sign the Agreement/
Terminate the Negotiations.**

THE NEGOTIATION PROCESS

PRINCIPLED NEGOTIATION PROCESS:

- 1. PREPARE FOR NEGOTIATION.**
- 2. SET THE GROUND RULES.**
- 3. Identify the Issues.**
- 4. IDENTIFY THE PARTIES' INTERESTS.**
- 5. INVENT OPTIONS FOR MUTUAL GAIN.**
- 6. Make the offer.**
- 7. Make the counter-offer.**
- 8. Make the reply to counter-offer, etc**
- 9. ESTABLISH OBJECTIVE CRITERIA.**
- 10. Sign the Agreement/ Terminate the Negotiations.**

PREPARATION FOR NEGOTIATION

1. IDENTIFY THE **ISSUES.**
2. KNOW THE **FACTS, EVIDENCE, LAW AND JURISPRUDENCE.**
3. IDENTIFY THE PARTIES' **INTERESTS.**
4. CREATE **OPTIONS** FOR MUTUAL GAIN WHICH MEET THE PARTIES' INTERESTS.
5. DETERMINE THE **OBJECTIVE CRITERIA** TO RESOLVE IMPASSES.
6. FIND OUT THE PARTIES' **BATNA.**
7. IMPROVE YOUR **BATNA.**
8. WORSEN THE OTHER PARTY'S **BATNA** AND DEMONSTRATE THEIR **WATNA.**
9. KNOW YOUR **ASPIRATION POINT.**
10. KNOW YOUR **RESERVATION POINT.**
11. SET THE **GROUND RULES.**

1.
**IDENTIFY
THE
ISSUES**

**WHAT ARE THE
ISSUES TO BE
DISCUSSED DURING
THE NEGOTIATION?**

ISSUES

- **ISSUE NO. 1: CUSTODY OF VITTORIO**
- **ISSUE NO. 2: DAMAGES FOR V.D.**
- **ISSUE NO. 3: SEPARATION OF PROPERTIES**

2.

**KNOW THE FACTS,
EVIDENCE , LAW
AND
JURISPRUDENCE**

- **FACTS**
- **EVIDENCE**
- **LAW AND
JURISPRUDENCE**

3.

IDENTIFY THE PARTIES' INTERESTS

➤ **POSITION**- WHAT YOU WANT.

➤ **INTEREST**- WHY YOU WANT IT.

- A PARTIES' NEEDS,
DESIRES, CONCERNS
AND FEARS

3.
**IDENTIFY
THE
PARTIES'
INTERESTS**

**VANESSA'S
POSITION-**

**I WANT 75% OF
OUR CONJUGAL
PROPERTIES OR
ITS CASH
EQUIVALENT OF
225 MILLION
PESOS!**

3.

IDENTIFY THE PARTIES' INTERESTS

DR. ABRAHAM MASLOW'S HEIRARCHY OF NEEDS (IN ASCENDING ORDER):

- **PHYSICAL/ PHYSIOLOGICAL/
FINANCIAL**
- **SAFETY AND SECURITY**
- **LOVE AND BELONGING**
- **SELF-ESTEEM/ SELF-RESPECT**
- **SELF-ACTUALIZATION**
- **INTELLECTUAL**
- **AESTHETIC**

3.
**IDENTIFY
THE
PARTIES'
INTERESTS**

**TO FIND OUT
THEIR REAL
INTEREST, ASK
“WHY?” FIVE
TIMES.**

3. IDENTIFY THE PARTIES' INTERESTS

5 WHY'S FOR VANESSA:

- **WHY DO YOU WANT 75% OF OUR CONJUGAL PROPERTIES OR ITS CASH EQUIVALENT OF 225 MILLION PESOS? (Because I need it.)**
- **WHY DO YOU NEED IT? (Because unlike you who graduated from U.P., I am not a college graduate.)**
- **WHY DO YOU NEED IT JUST BECAUSE YOU ARE NOT A COLLEGE GRADUATE? (Because I will soon be turning 42!)**
- **WHY DO YOU NEED IT BECAUSE YOU ARE TURNING 42 THIS YEAR? (Because I will be living all alone by myself when you leave me.)**
- **WHY DO YOU NEED 225 MILLION PESOS JUST BECAUSE YOU ARE LIVING ALONE BY YOURSELF? (What if I get sick? Who is going to take care of me when I get sick? What if I lose my job when I get sick? I don't want to be begging from my relatives when I get sick!)**

3. IDENTIFY THE PARTIES' INTERESTS



VANESSA'S POSITION-

**I WANT 75% OF
OUR CONJUGAL
PROPERTIES OR ITS
CASH EQUIVALENT
OF 225 MILLION
PESOS! (MONEY)**



VANESSA'S INTEREST- **SECURITY**

3.

IDENTIFY THE PARTIES' INTERESTS

INTERESTS OF VANESSA: INTERESTS OF VICTOR:

WHAT IS GOOD FOR VITTORIO
FINANCIAL NEED

SELF-ESTEEM//SELF-RESPECT
SECURITY
PEACE OF MIND/ HEALTH

WHAT IS GOOD FOR VITTORIO
FINANCIAL NEED

REPUTATION
SUCCESS IN POLITICAL CAREER
TO BE REUNITED WITH FALAFA

4. CREATE OPTIONS FOR MUTUAL GAIN.

- **ASK: “WHAT IF?”**
- **A BRAINSTORMING SESSION IS DESIGNED TO PRODUCE AS MANY IDEAS AS POSSIBLE TO SOLVE THE PROBLEM AT HAND. THE KEY GROUND RULE IS TO POSTPONE ALL CRITICISM AND EVALUATION OF IDEAS. WILD IDEAS ARE EXPLICITLY ENCOURAGED.**
- **SEPARATE INVENTING FROM DECIDING.**
- **BROADEN YOUR OPTIONS.**
- **DON'T REJECT THEIR PROPOSAL OUTRIGHT. TREAT THEIR PROPOSAL AS ONE OF THE OPTIONS TO BE CONSIDERED.**

4.

**CREATE
OPTIONS
FOR
MUTUAL
GAIN.**

**INTEREST OF VANESSA:
SECURITY**

OPTIONS FOR VANESSA:

- ❖ **Directorship in family corporation**
- ❖ **Dividends from family corporation**
- ❖ **Disability Insurance**
- ❖ **Monthly Pension**
- ❖ **Lifetime Usufruct of Conjugal Properties**

5.

**DETERMINE
OBJECTIVE
CRITERIA**

**USE OBJECTIVE
CRITERIA TO
RESOLVE IMPASSES:**

- FAIRNESS**
- LAW &
JURISPRUDENCE**
- PRECEDENTS**
- CONTRACT**
- COMMON VALUES**
- ROLE REVERSAL**
- OTHER OBJECTIVE
CRITERIA**

FAIRNESS CAN BE BASED ON:

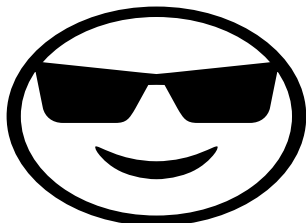
EQUALITY



EQUITY



NEED



5.
DETERMINE
OBJECTIVE
CRITERIA

USE OBJECTIVE CRITERIA TO RESOLVE IMPASSES.

- FAIRNESS CAN BE BASED ON **STANDARDS.**
 - **EQUALITY**- EQUAL SHARES FOR ALL
 - **EQUITY**- IN PROPORTION TO A PERSON'S CONTRIBUTION
 - **NEED**- IN PROPORTION TO A PERSON'S NEED
- FAIRNESS CAN BE BASED ON **PROCEDURE.**

6.
**KNOW
THE
PARTIES'
BATNA.**

**BATNA- BEST
ALTERNATIVE TO A
NEGOTIATED AGREEMENT.**

- **A BATNA determines the point at which a negotiator is prepared to walk away from the negotiation table.**
- **Negotiators should be willing to accept outcomes that are superior to their BATNA and reject outcomes that are worse than their BATNA.**

6.

**KNOW
THE
PARTIES'
BATNA**

➤ **VICTOR'S PROPOSAL TO VANESSA: I WILL GET SOLE CUSTODY OF VITTORIO.**

➤ **VANESSA'S BATNA: I WILL GO TO COURT AND THE COURT WILL AWARD ME SOLE CUSTODY OF VITTORIO AND JUST GIVE VISITATION RIGHTS TO VICTOR.**

7.
**IMPROVE
YOUR
BATNA**

**BATNA- BEST
ALTERNATIVE TO A
NEGOTIATED
AGREEMENT**

7.
**IMPROVE
YOUR
BATNA**

**HOW VANESSA CAN
IMPROVE HER BATNA:**

**1. GET COPY OF
BIRTH CERTIFICATE
OF VITTORIO.**

**2. TALK TO VITTORIO
AND PERSUADE HIM
TO STAY WITH HER.**

8.

**WORSEN THE
OTHER PARTY'S
BATNA AND
DEMONSTRATE
THEIR WATNA.**

**WATNA- WORST
ALTERNATIVE TO A
NEGOTIATED
AGREEMENT**

8.

**WORSEN THE
OTHER PARTY'S
BATNA AND
DEMONSTRATE
THEIR WATNA.**

**HOW VANESSA CAN
WORSEN VICTOR'S
BATNA AND
DEMONSTRATE VICTOR'S
WATNA:**

- 1. SEND DEMAND LETTER
WITH THREAT OF
LITIGATION.**
- 2. FILE COURT CASE FOR
DAMAGES.**
- 3. THREATEN TO GRANT
INTERVIEW TO THE
MEDIA.**

9.

**KNOW
YOUR
ASPIRATION
POINT**

**TARGET POINT/
ASPIRATION POINT-
YOUR IDEAL
OUTCOME**

9.

**KNOW YOUR
ASPIRATION
POINT**

**VANESSA'S TARGET
POINT/ ASPIRATION
POINT- 75% OF
CONJUGAL
PROPERTIES OR
CASH EQUIVALENT
OF 225 MILLION
PESOS**

10.

**KNOW YOUR
RESERVATION
POINT.**

**RESERVATION
POINT- YOUR WALK-
AWAY POINT. THE
QUANTIFICATION OF
YOUR BATNA.**

10.

**KNOW YOUR
RESERVATION
POINT**

**VANESSA'S
RESERVATION POINT
NO. 1: LESS THAN
50% OF CONJUGAL
PROPERTIES/ LESS
THAN 150 MILLION
PESOS**

10.

**KNOW YOUR
RESERVATION
POINT**

**VANESSA'S
RESERVATION POINT
NO. 2: 75 MILLION
PESOS (TO BE
DEPOSITED IN A
HIGH-YIELD DEPOSIT
FOR 10 YEARS AT
10% PER ANNUM)**

10.

**KNOW YOUR
RESERVATION
POINT**

**IN DETERMINING YOUR
RESERVATION POINT,
DO NOT FORGET TO
FACTOR IN THE
TIME VALUE OF MONEY.**

10.

**KNOW YOUR
RESERVATION
POINT**

**VICTOR'S
RESERVATION POINT
NO. 1: LESS THAN 50%
OF CONJUGAL
PROPERTIES/ LESS
THAN 150 MILLION
PESOS (FINANCIAL
NEED)**

10.

**KNOW YOUR
RESERVATION
POINT**

**VICTOR'S
RESERVATION POINT
NO. 2: 75 MILLION
PESOS (TO BE
DEPOSITED IN A
HIGH-YIELD DEPOSIT
FOR 10 YEARS AT
10% PER ANNUM)
(FINANCIAL NEED)**

10.

**KNOW YOUR
RESERVATION
POINT**

**VICTOR'S
RESERVATION POINT
3: 0 PESOS + NO
FILING OF CASE +
SILENCE (PEACE OF
MIND + REPUTATION
+ SUCCESS IN
POLITICAL CAREER)**

10.

**KNOW YOUR
RESERVATION
POINT**

**IN DETERMINING
YOUR RESERVATION
POINT, KNOW WHAT
YOUR **PRIORITY**
INTERESTS ARE.**

10.

**KNOW YOUR
RESERVATION
POINT**

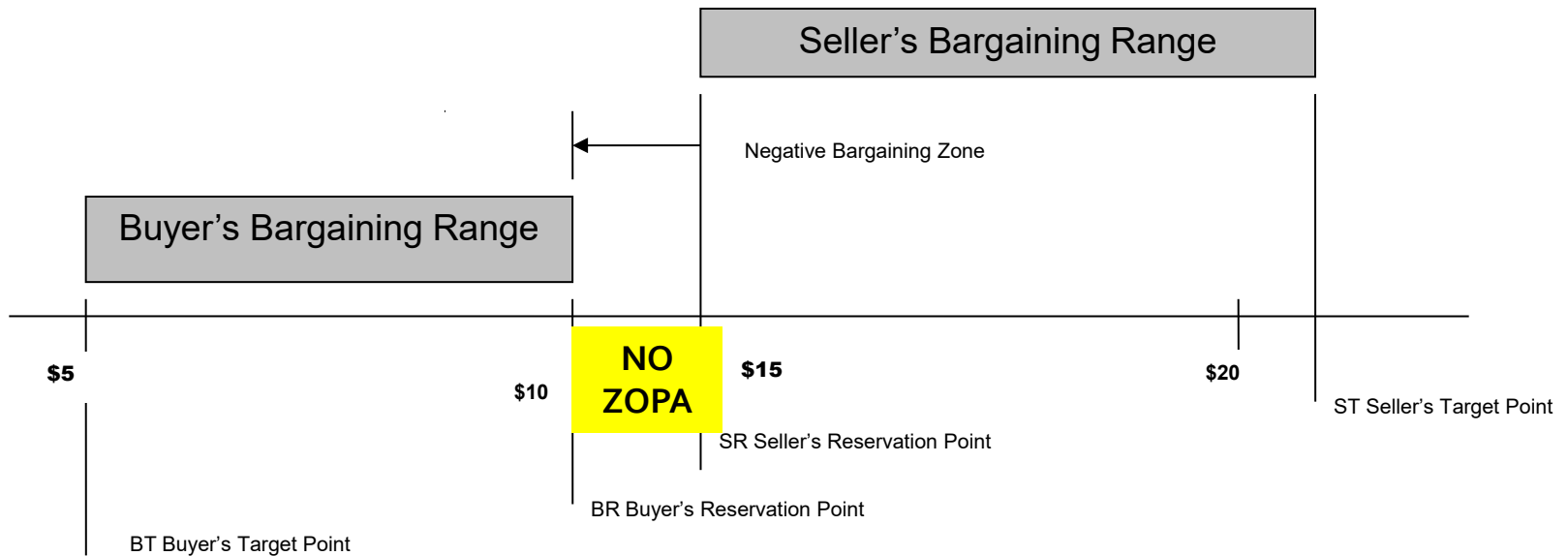
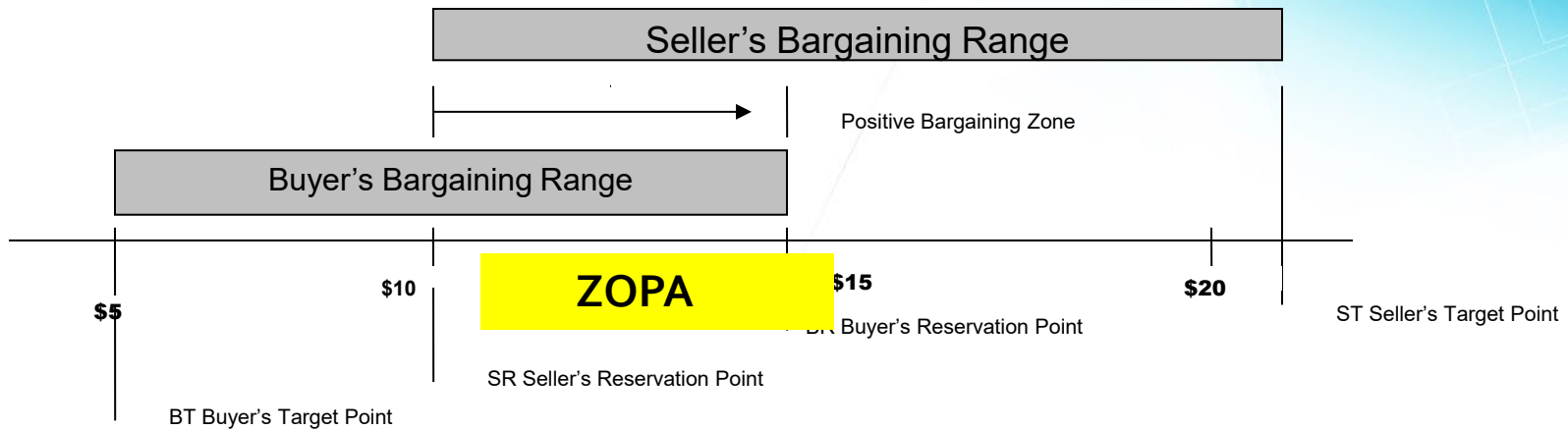
➤ **BARGAINING RANGE-**
**THE REGION
BETWEEN THE
PARTY'S TARGET
POINT/ ASPIRATION
POINT AND
RESERVATION POINT.**

10.
KNOW YOUR
RESERVATION
POINT.

➤ **BARGAINING ZONE/ ZONE OF POSSIBLE AGREEMENT (ZOPA)- THE POSITIVE OVERLAP BETWEEN THE PARTIES' RESERVATION POINTS ("THE PIE").**

➤ **POSITIVE BARGAINING ZONE- THERE IS A POSITIVE OVERLAP BETWEEN THE PARTIES' RESERVATION POINTS.**

➤ **NEGATIVE BARGAINING ZONE- THERE IS NO POSITIVE OVERLAP BETWEEN THE PARTIES' RESERVATION POINTS.**



11.

SET THE GROUND RULES.

- **Examples:**
 - **No interruption while someone else is speaking.**
 - **Avoid cursing and “ad hominem” attacks.**
 - **Avoid shouting.**
 - **Instead of walking out, call for a time-out.**
- **NEGOTIATE ABOUT THE PROCESS, JUST AS YOU WOULD ABOUT THE SUBSTANCE. ONCE YOU HAVE AGREED ON THE GROUND RULES, YOU CAN NEGOTIATE OVER THE SUBSTANCE IN A MORE CONSTRUCTIVE AND PRODUCTIVE MANNER.**



THE NEGOTIATION PROCESS

➤ PRINCIPLED NEGOTIATION PROCESS:

THE NEGOTIATION PROCESS

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51 NEGOTIATION TIPS TO HELP YOU SEAL THE DEAL

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1. DEVELOP YOUR BATNA- BEST ALTERNATIVE TO A NEGOTIATED AGREEMENT.

- A BATNA determines the point at which a negotiator is prepared to walk away from the negotiation table.
- THE BETTER YOUR BATNA, THE GREATER YOUR POWER.

2. CONDUCT PRE-NEGOTIATION CAUCUSES WITH THE DECISION-MAKERS.

- ▶ **TALK TO THE DECISION-MAKERS BEFORE THE NEGOTIATION IN PRIVATE CAUCUSES SO THAT YOU COULD ALREADY GET ADVANCE INFORMATION OR EVEN START THE NEGOTIATION PROCESS EVEN BEFORE THE SCHEDULED DATE OF THE NEGOTIATION.**

3. ASK FOR HIS AUTHORITY TO NEGOTIATE.

- **A CONTRACT WHICH IS SIGNED BY A PERSON WHO HAS NO AUTHORITY TO SIGN ON BEHALF OF ANOTHER PERSON OR JURIDICAL ENTITY IS UNENFORCEABLE.**
- **A SALE OF REAL PROPERTY MADE BY AN AGENT WITHOUT A WRITTEN AUTHORITY IS VOID.**

3. ASK FOR HIS AUTHORITY TO NEGOTIATE.

- **REQUEST FOR A WRITTEN SPECIAL POWER OF ATTORNEY IF THE PRINCIPAL IS A PERSON.**
- **REQUEST FOR A WRITTEN BOARD RESOLUTION OR SECRETARY'S CERTIFICATE IF THE PRINCIPAL IS A JURIDICAL ENTITY (e.g., corporation, partnership)**

4. BE AN OPTIMIST AND BE CONFIDENT WITH THE EXPECTATION THAT THERE WILL BE AN AGREEMENT. IN THE END, IT COULD BE A SELF-FULFILLING PROPHECY.

BE OPTIMISTIC.

- PRACTICE SELF-AGENCY. YOU ARE YOUR BEST SPOKESPERSON.**

5. MAKING THE FIRST OFFER GIVES YOU THE ADVANTAGE OF ANCHORING.

- **SOMETIMES, IT IS BETTER TO MAKE THE FIRST OFFER SO THAT YOU COULD ALREADY ANCHOR THE NEGOTIATION ON YOUR DESIRED AMOUNT.**
- **HOWEVER, BEWARE OF THE “WINNER’S CURSE”.**

**6. YOUR BEGINNING OFFER
SHOULD BE HIGHER THAN
WHAT YOU ASPIRE FOR.**

**EXPECT THE OTHER PARTY TO
BARGAIN LOWER THAN YOUR
BEGINNING OFFER.**

**THERE IS A SENSE OF
SATISFACTION IN FEELING
THAT ONE WAS ABLE TO GET A
DISCOUNT.**

7. TEMPER YOUR DEMANDS.

IF YOU WILL DEMAND FROM THE OTHER PARTY THE SAME AMOUNT THAT YOU WILL RECOVER IN LITIGATION, THERE MIGHT BE NO INCENTIVE FOR HIM TO SETTLE.

IF YOU ARE ASKED:

**“HOW MUCH ARE YOU WILLING TO
SELL YOUR HOUSE?”**

DON'T SAY:

**“BETWEEN 5 TO 10 MILLION
PESOS.”**

8. DON'T REVEAL YOUR RESERVATION POINT. AVOID STATING RANGES.

- ▶ **IF YOU REVEAL YOUR
RESERVATION POINT, EXPECT
THE OTHER PARTY TO OFFER
YOUR RESERVATION PRICE.**
- ▶ **IF YOU STATE A RANGE, THE
OTHER PARTY WILL CONSIDER
THE LOWER END OF THE RANGE
AS YOUR TARGET AND
NEGOTIATE DOWN FROM THERE.**

INTERROGATIVE SENTENCE.

SAY: “I WANT TEN MILLION PESOS.”

DON'T SAY: “IS THERE A CHANCE THAT YOU COULD INCREASE YOUR OFFER TO TEN MILLION PESOS?”

60?

10. DO NOT FALL FOR THE PROBLEM WITH “EVEN SPLITS” OR “SPLITTING THE DIFFERENCE” IS THAT THEY COULD BE BASED ON ARBITRARY VALUES. THUS, THE MIDDLE VALUE MAY NOT NECESSARILY BE A “FAIR” VALUE.

11. HIS FINAL OFFER IS NOT FINAL. HIS NON-NEGOTIABLE POSITION IS NEGOTIABLE.

- **BE BOLD AND PUSH THE LIMITS OF THE OTHER PARTY'S "FINAL OFFER"---- WHICH COULD TURN OUT TO BE NOT FINAL AFTER ALL.**

12. DON'T BELIEVE EVERYTHING THAT THE OTHER PARTY SAYS.

- **HE MAY JUST BE
BLUFFING.**

13. SEPARATE THE PEOPLE FROM THE PROBLEM.

**• THE NEGOTIATORS
SHOULD ATTACK THE
PROBLEM AND NOT EACH
OTHER.**

- BE HARD ON THE
PROBLEM BUT SOFT ON
THE PEOPLE.**

14. DON'T REACT: GO TO THE BALCONY.

- **3 COMMON REACTIONS TO PRESSURE TACTICS:**
 - **STRIKE BACK**
 - **GIVE IN**
 - **BREAK OFF**
- **DO NOT REACT TO EMOTIONAL OUTBURSTS.**

14. DON'T REACT: GO TO THE BALCONY.

- **DETACH YOURSELF MENTALLY FROM THE NEGOTIATION AND CONTROL YOUR REACTION.**
- **REGAIN CONTROL OF YOURSELF.**
- **KEEP YOUR EYES ON THE PRIZE. INSTEAD OF GETTING MAD OR GETTING EVEN, FOCUS ON GETTING WHAT YOU WANT.**

15. DON'T ARGUE: STEP TO THEIR SIDE.

- **DEFUSE THEIR ANGER, FEAR, HOSTILITY AND SUSPICION.**
- **PUT YOURSELF IN THEIR SHOES (EMPATHY).**
- **LISTEN ACTIVELY AND ACKNOWLEDGE WHAT IS BEING SAID. ACKNOWLEDGE THEIR POINTS AND AGREE WITH THEM WHEREVER YOU CAN.**
- **DON'T SAY "YES, BUT...."; SAY "YES, AND..."**
- **PRINCIPLED NEGOTIATION IS JOINT PROBLEM-SOLVING. BOTH PARTIES AIM TO SOLVE THEIR PROBLEM BY COMING UP WITH A SOLUTION WHICH IS MUTUALLY BENEFICIAL TO THEIR INTERESTS. VIEW THE OTHER PARTY NOT AS AN**

16.

DON'T

REJECT

T:

• **INSTEAD OF REJECTING THEIR POSITION, DIRECT THEIR ATTENTION TO THE PROBLEM OF MEETING EACH OTHER'S INTERESTS.**

REFRAME

ME

• **REFRAME THE ISSUE IN A WAY THAT WILL RESONATE WITH THE OTHER PARTY'S INTERESTS.**

17. APPEAL TO SELF-INTEREST. HIGHLIGHT THE POSITIVE BENEFITS OF SETTLEMENT.

- **SHOW HOW SETTLEMENT WILL
BENEFIT THEM AND SERVE
THEIR INTERESTS.**

18. EXPRESS APOLOGY.

▶ **PERHAPS THE MOST POWERFUL FORM OF ACKNOWLEDGMENT IS AN APOLOGY. SOME PEOPLE SIMPLY WANT A RECOGNITION THAT THEY HAVE BEEN WRONGED.**

▶ 18. EXPRESS APOLOGY.
**EVEN IF THE OTHER SIDE IS
PRIMARILY RESPONSIBLE FOR THE
MESS YOU ARE IN, CONSIDER
APOLOGIZING FOR YOUR SHARE IN
CONTRIBUTING TO THE PROBLEM
OR FOR HURTING THEM. THIS
COULD SET IN MOTION A PROCESS
OF RECONCILIATION IN WHICH
THEY WILL APOLOGIZE FOR THEIR
SHARE IN CONTRIBUTING TO THE
PROBLEM.**

19. **USE EMOTIONAL APPEAL, ALSO KNOWN AS “PATHOS”, IS A PERSUASIVE TECHNIQUE THAT FOCUSES ON EVOKING EMOTIONS TO MAKE THE OTHER PARTY FEEL A CERTAIN WAY AND INFLUENCE HIS OPINIONS OR ACTIONS. IT IS A WAY OF BYPASSING LOGIC AND CONNECTING WITH THE OTHER PARTY ON A PERSONAL LEVEL.**

20. SEARCH FOR TRADE-OFFS.

- ▶ **IDENTIFY THE ISSUES AND IDENTIFY WHICH OF THESE ISSUES ARE YOUR PRIORITIES.**
- ▶ **LOGROLLING- TRADING OFF IN ORDER TO CAPITALIZE ON DIFFERENT STRENGTHS OF PREFERENCES.**
- ▶ **IF A VEGETARIAN WITH SOME MEAT BARGAINS WITH A CARNIVORE WHO OWNS SOME VEGETABLES, IT IS PRECISELY THE DIFFERENCE IN THEIR PREFERENCES THAT CAN FACILITATE REACHING AN AGREEMENT.**

20. SEARCH FOR TRADE-OFFS.

- ▶ **THE PROBABILITY THAT NEGOTIATORS WILL HAVE IDENTICAL PREFERENCES ACROSS ALL OF THE ISSUES IS VERY SMALL. IT IS DIFFERENCES THAT MAY BE PROFITABLY TRADED OFF TO CREATE JOINT GAIN.**
- ▶ **DETERMINE EACH PARTY'S PREFERENCES AND DEVISE A MEANS OF SATISFYING EACH PARTY'S MOST IMPORTANT INTERESTS WHILE INDUCING THEM TO MAKE CONCESSIONS ON LOWER-PRIORITY ISSUES.**

21. OFFER PACKAGE DEALS, NOT SINGLE-ISSUE OFFERS

- **NEGOTIATING EACH ISSUE ONE BY ONE / SEPARATELY DOES NOT ALLOW NEGOTIATORS TO MAKE TRADE-OFFS BETWEEN ISSUES.**
- **DETERMINE A VARIETY OF DIFFERENT ATTRACTIVE PACKAGES.**

**AGREEMENTS BY DISCOVERING
INTERESTS AND JOINT GAINS.**

**BUILD TRUST AND SHARE
INFORMATION.**

▶ **IF NEGOTIATORS CAN BUILD A
TRUSTING RELATIONSHIP AND
SHARE INFORMATION, THIS CAN
GREATLY INCREASE THE
POSSIBILITY THAT A WIN-WIN
OUTCOME WILL BE REACHED.**

**AGREEMENTS BY DISCOVERING
INTERESTS AND JOINT GAINS.**

**BUILD TRUST AND SHARE
INFORMATION.**

► **IT IS NOT INFORMATION ABOUT YOUR
WATNA'S OR YOUR RESERVATION
POINTS, BUT RATHER INFORMATION
ABOUT YOUR INTERESTS,
PREFERENCES AND PRIORITIES
ACROSS ISSUES THAT SHOULD BE
SHARED.**

22. SEARCH FOR PIE-EXPANDING AGREEMENTS BY DISCOVERING INTERESTS AND JOINT GAINS.

BUILD TRUST AND SHARE INFORMATION.

- **MIXED MOTIVE NATURE OF NEGOTIATION-
NEGOTIATORS ARE MOTIVATED TO
COOPERATE WITH THE OTHER PARTY TO
ENLARGE THE PIE (“CREATE VALUE”) BUT
THEY ARE ALSO MOTIVATED TO COMPETE
WITH THE OTHER PARTY TO CLAIM AS MUCH
OF THE BARGAINING SURPLUS AS THEY CAN
(“CLAIM VALUE”). NEGOTIATORS, THEREFORE,
EXPERIENCE THE TENSION OF CREATING
VALUE AND CLAIMING VALUE.**

22. SEARCH FOR PIE-EXPANDING AGREEMENTS BY DISCOVERING INTERESTS AND JOINT GAINS.

BUILD TRUST AND SHARE INFORMATION.

- **DON'T ASSUME A FIXED PIE.**
- **TURN YOUR ADVERSARY INTO A PARTNER AND EXPAND THE PIE BY JOINTLY SEARCHING FOR INTERESTS AND MUTUAL GAINS.**
- **INSTEAD OF A PURELY COMPETITIVE APPROACH, TRY THE COOPERATIVE-COMPETITIVE APPROACH.**

23. EXPAND THE PIE BY ADDING ISSUES.

- ▶ **SINGLE-ISSUE NEGOTIATIONS ARE NOT WIN-WIN BECAUSE WHATEVER ONE PARTY GAINS, THE OTHER PARTY LOSES.**
- ▶ **BRING OTHER ISSUES INTO THE NEGOTIATION.**
- ▶ **A SINGLE-ISSUE NEGOTIATION CAN BE BROKEN UP INTO SMALLER PARTS AND CONVERTED INTO A MULTI-ISSUE NEGOTIATION.**
- ▶ **UNBUNDLING THE ISSUES CAN TRANSFORM A SINGLE-ISSUE NEGOTIATION INTO A MULTI-ISSUE NEGOTIATION WITH A WIN-WIN POTENTIAL.**

**INSTALLMENTS OVER SEVERAL
YEARS.**

**IF YOU INSIST ON PAYING P30
MILLION, BUT THE OTHER PARTY
INSISTS ON BEING PAID P40
MILLION, AGREE TO PAY HIM P40
MILLION, PAYABLE IN 5
INSTALLMENTS OVER A PERIOD OF 5
YEARS.**

**BALANCE WILL BE PAYABLE IN
INSTALLMENTS WITH INTEREST.**

**IF YOU INSIST ON BEING PAID P40
MILLION, BUT THE OTHER PARTY
INSISTS ON PAYING ONLY P30 MILLION,
AGREE TO BE PAID P30 MILLION NOW,
AND THE BALANCE WILL BE PAYABLE
IN INSTALLMENTS WITH 7% INTEREST.**

**WHICH WILL MEET THE OTHER PARTY'S
INTERESTS.**

**THERE MIGHT BE SOMETHING THAT YOU
CAN OFFER TO THE OTHER PARTY IN
ADDITION TO MONEY WHICH WILL MEET
HIS INTERESTS AND LEAD TO AN
AGREEMENT.**

27. DEVISE

CONTINGENCY CONTRACTS.

- **IMPASSES RESULTING FROM DIFFERENCES IN BELIEFS OR EXPECTATIONS ABOUT UNCERTAIN EVENTS CAN BE AVOIDED BY DEVISING CONTINGENCY CONTRACTS.**

28. EXPAND THE PIE BY ADDING PARTIES.

▶ ADD PARTIES WHO WOULD BE ABLE TO EXPAND THE PIE.

29. IF YOU' RE A DAVI D



30. OFFER HIM A LIFETIME USUFRUCT OR COMMODATUM INSTEAD OF TRANSFERRING THE TITLE TO HIS NAME.

- **A USUFRUCT IS A LEGAL RIGHT GIVEN TO A PERSON TO USE AND DERIVE INCOME OR BENEFIT FROM SOMEONE ELSE'S PROPERTY FOR FREE.**
- **A COMMODATUM REFERS TO THE LENDING OF A MOVABLE OR PERSONAL PROPERTY FOR FREE, WHERE THE BORROWER USES THE PROPERTY FOR A SPECIFIC TIME AND MUST RETURN IT IN THE SAME CONDITION.**

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- **AN ESCROW DEPOSIT IS A SUM OF MONEY HELD BY A NEUTRAL THIRD PARTY (THE ESCROW AGENT) ON BEHALF OF TWO PARTIES IN A TRANSACTION UNTIL THE CONDITIONS ARE MET. IT IS ESSENTIALLY A HOLDING ACCOUNT WHICH PROVIDES A SECURE WAY FOR BOTH PARTIES TO FEEL CONFIDENT THAT THE TRANSACTION AND PAYMENT WILL PROCEED AS AGREED UPON.**

INSERT A PROVISION ON LIQUIDATED DAMAGES

- INSERTING A PROVISION ON LIQUIDATED DAMAGES IN A CONTRACT CAN DETER NON-COMPLIANCE.
- IT WILL ALSO HELP YOU GAUGE IF THE OTHER PARTY IS CONFIDENT THAT HE WILL BE ABLE TO COMPLY WITH THE CONTRACT OR IF HE HAS INTENTIONS TO RENEGE ON HIS OBLIGATIONS.

**33. DO NOT LET THE OTHER
PARTY KNOW THAT
YOU ARE IN A
HURRY TO CLOSE THE DEAL.**

▶ **Do not let the other party know that you are in a hurry to close the deal. Otherwise, he might try to deliberately delay the negotiations in order to pressure you to accede to his demands as your deadline nears.**

34. DO NOT SETTLE FOR TERMS THAT ARE WORSE THAN YOUR ALTERNATIVE.

- **AGREEMENT BIAS- THIS OCCURS WHEN NEGOTIATORS FEEL OBLIGATED TO REACH AN AGREEMENT EVEN WHEN THE SETTLEMENT TERMS ARE NOT AS GOOD AS THEIR OTHER ALTERNATIVES.**
- **NEGOTIATORS SHOULD BE WILLING TO ACCEPT OUTCOMES THAT ARE BETTER THAN THEIR BATNA AND REJECT OUTCOMES THAT ARE WORSE THAN THEIR BATNA.**

BEWARE OF THE “WINNER’S CURSE.”

- **THE WINNER’S CURSE- WHEN THE NEGOTIATOR OPENS THE NEGOTIATION BY MAKING AN OFFER THAT IS IMMEDIATELY ACCEPTED BY THE OTHER PARTY. THIS HAPPENS TO THE UNDERASPIRING NEGOTIATOR WHO SETS HIS TARGET POINT/ ASPIRATION POINT TOO LOW.**

36. REMIND YOURSELF AND THE OTHER PARTY ABOUT THE LENGTH OF LITIGATION.

- **REGIONAL TRIAL COURT- 2 TO 5 YEARS**
- **COURT OF APPEALS- 5 YEARS**
- **SUPREME COURT- 5 YEARS OR MORE**

- **AVERAGE LITIGATION BEFORE YOU CAN GET A FINAL JUDGMENT BEFORE THE SUPREME COURT- 12 TO 15 YEARS**

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38.GIVE A REALITY CHECK.

**DEMONSTRATE THEIR
WATNA.**

▶ **EDUCATE THEM ABOUT THE COSTS
OF NOT AGREEING.**

▶ **ASK REALITY-TESTING QUESTIONS:**

▶ **“WHAT DO YOU THINK WILL HAPPEN
IF WE DON'T AGREE?”**

▶ **“WHAT DO YOU THINK I WILL DO?”**

▶ **“WHAT WILL YOU DO?”**

38.GIVE A REALITY CHECK.

**DEMONSTRATE THEIR
WATNA.**

- ▶ **MAKE YOUR POWER CREDIBLE BY DEVELOPING YOUR BATNA AND/OR DEMONSTRATING THE OTHER PARTY'S WATNA. A DEMONSTRATION SHOWS WHAT YOU PLAN TO DO WITHOUT YOUR HAVING TO CARRY IT OUT.**
- ▶ **WARN RATHER THAN THREATEN.**

**DON'T
ESCALATE.**

**DO
N'T
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**▶ DON'T ESCALATE THE CONFLICT.
DON'T CROSS THE "POINT OF NO
RETURN"---WHICH IS THE POINT
WHERE NO SETTLEMENT IS
POSSIBLE BECAUSE OF THE SEVERE
DAMAGE INFLICTED ON THE OTHER
PARTY WHICH MAKES THE LATTER
UNWILLING TO SETTLE AND WILLING
TO FIGHT AT ANY COST.**

40. CALL A TIME-OUT.

- **ALLOW THE OTHER SIDE TO LET OFF STEAM.**
- **NEGOTIATIONS ESCALATE AS EACH PERSON REACTS TO THE OTHER'S PROVOCATIONS. A TIME-OUT GIVES BOTH SIDES A CHANCE TO COOL OFF AND GO TO THE BALCONY.**

41. DO NOT LEAVE VALUE ON THE TABLE.

- **THIS OCCURS WHEN NEGOTIATORS FAIL TO RECOGNIZE AND EXPLOIT A WIN-WIN POTENTIAL.**
- **THIS OCCURS WHEN NEGOTIATORS REJECT TERMS OFFERED BY THE OTHER PARTY THAT ARE BETTER THAN ANY OTHER OPTION AVAILABLE TO THEM.**
- **BEFORE WALKING AWAY, ASK YOURSELF: DO I HAVE A BETTER ALTERNATIVE?**

**SEARCH FIRST TO
DETERMINE IF THE OTHER
PARTY HAS PROPERTIES TO
EXECUTE. IF HE HAS NONE,
IT MIGHT BE BETTER TO
COMPROMISE RATHER THAN
LITIGATE.**

- **AFTER 12 TO 15 YEARS OF
LITIGATION, YOU MIGHT END
UP WITH AN EMPTY BAG.**

43. WRITE THE VICTORY SPEECH OF THE OTHER PARTY.

- THERE IS ALWAYS A CONSTITUENCY OR AUDIENCE WHOSE OPINION THE OTHER SIDE CARES ABOUT--- THEIR BOSS, THEIR ORGANIZATION, THEIR COLLEAGUES, THEIR FAMILY AND FRIENDS, OR THEIR OWN INTERNAL CRITIC. NATURALLY, THEY DON'T WANT THEM TO THINK THEY HAVE GIVEN IN.
- YOUR CHALLENGE IS TO HELP YOUR COUNTERPART AVOID CRITICISM. SO THINK ABOUT HOW YOUR COUNTERPART CAN PRESENT IT TO THEM IN THE MOST POSITIVE LIGHT, PERHAPS EVEN AS A VICTORY.
- ANTICIPATE WHAT YOUR COUNTERPART'S CRITICS ARE LIKELY TO SAY AND PRESENT PERSUASIVE COUNTERARGUMENTS.

44.

CHANGE THE AGENT.

- IF THE AGENT'S INTERESTS CONFLICT WITH THOSE OF THE PRINCIPAL, CHANGE THE AGENT.

CHANGE THE AGENT.

- IF THE AGENT COMPLICATES THE NEGOTIATION DYNAMICS AND INHIBITS SETTLEMENT, CHANGE THE AGENT.

45



US President Joe Biden meets with German Chancellor Olaf Scholz in the Oval Office of the White House in Washington, DC, February 9, 2024

45. **USE YOU R GO OD WILL L.** Inside the ‘painstaking’ negotiations that led to the biggest prisoner swap since the Cold War

Key to the deal was President Biden’s ability to persuade German Chancellor Olaf Scholz to release Krasikov, the Russian prisoner most keenly sought by Putin.

Officials worked quietly throughout this year to get the German government to agree to release Krasikov — including entreaties from both Biden and Harris.

Biden raised the issue with Scholz in a January call and discussed it again with him in February during a meeting in the Oval Office. At that point, US officials felt that the deal had a good chance of coming together, according to an administration official.

In the Oval Office meeting, according to a senior administration official,

“Chancellor Scholz responded to the President, saying, ‘For you, I will do this.’”

46. MAKE SURE THAT YOUR AGREEMENT IS NOT CONTRARY TO LAW, MORALS, GOOD CUSTOMS AND PUBLIC POLICY.

- **THE CIVIL CODE STATES THAT A CONTRACT (WHICH INCLUDES A COMPROMISE AGREEMENT) THAT IS CONTRARY TO LAW, MORALS, GOOD CUSTOMS OR PUBLIC POLICY IS VOID.**
- **IT WOULD BE A GOOD PRACTICE TO LET A LAWYER REVIEW YOUR CONTRACT OR COMPROMISE AGREEMENT BEFORE SIGNING IT.**

**OFFERING, OFFER TO PAY
THE DIFFERENCE IN KIND.**

**YOU MIGHT HAVE
SOMETHING THAT THE
OTHER PARTY WANTS OR
NEEDS WHICH YOU CAN
OFFER TO HIM IN LIEU OF
CASH.**

48. ONCE AN AGREEMENT IS REACHED, SIGN THE AGREEMENT IMMEDIATELY.

- **ONCE AN AGREEMENT IS REACHED, SIGN THE AGREEMENT IMMEDIATELY. IF YOU WILL DELAY THE SIGNING, THE OTHER PARTY COULD CHANGE HIS MIND BECAUSE OF SUPERVENING EVENTS OR OUTSIDE INFLUENCE.**
- **A SIGNED AGREEMENT CONSTITUTES DOCUMENTARY EVIDENCE. CONSEQUENTLY, THE EXISTENCE OF THE AGREEMENT AND THE TERMS AND CONDITIONS STATED THEREIN CANNOT BE DENIED.**

49. SEARCH FOR POST- SETTLEMENT

SETTLEMENTS.

- **POST-SETTLEMENT SETTLEMENTS- WHEN NEGOTIATORS REACH AN INITIAL SETTLEMENT BUT SPEND ADDITIONAL TIME ATTEMPTING TO IMPROVE IT. THUS, THEY AGREE TO EXPLORE OTHER OPTIONS AND THEIR INITIAL SETTLEMENT BECOMES BOTH PARTIES' NEW BATNA.**
- **IF THEY DO NOT AGREE TO REPLACE THE INITIAL SETTLEMENT WITH A NEW SETTLEMENT, THEN THEY CAN SAFELY REVERT TO THEIR INITIAL SETTLEMENT.**

50. IF NEGOTIATION FAILS, GET A THIRD-PARTY MEDIATOR.

▶ **REACTIVE DEVALUATION- WHEN NEGOTIATORS WANT WHAT THE OTHER PARTY DOES NOT WANT TO GIVE THEM AND DO NOT WANT WHAT THE OTHER PARTY IS WILLING TO OFFER.**

▶ **EVEN IF THE PROPOSALS ARE IDENTICAL, REACTIONS TO THEM MAY VARY, DEPENDING UPON WHO OFFERED THEM.**

▶ **A MEDIATOR WILL BE ABLE TO DETERMINE IF THERE IS A POSITIVE BARGAINING ZONE.**

51. A MEDIATED AGREEMENT IS EASIER TO ENFORCE THAN A NEGOTIATED AGREEMENT.

SEC. 17. *Enforcement of Mediated Settlement Agreement.* - The mediation shall be guided by the following operative principles:

X X X X

(c) If the parties so desire, they may deposit such settlement agreement with the appropriate Clerk of a Regional Trial Court of the place where one of the parties resides. Where there is a need to enforce the settlement agreement, a petition may be filed by any of the parties with the same court, in which case, the court shall proceed summarily to hear the petition, in accordance with such rules of procedure as may be promulgated by the Supreme Court.

(d) The parties may agree in the settlement agreement that the mediator shall become a sole arbitrator for the dispute and shall treat the settlement agreement as an arbitral award which shall be subject to enforcement under Republic Act No. 876, otherwise known as the Arbitration Law, notwithstanding the provisions of Executive Order No. 1008 for mediated dispute outside of the CIAC.

- SECTION 17, ADR ACT OF 2004 (RA 9285)

51. A MEDIATED AGREEMENT IS EASIER TO ENFORCE THAN A NEGOTIATED AGREEMENT.

Rule 1.3. Summary proceedings in certain cases.-The proceedings in the following instances are summary in nature and shall be governed by this provision:

X X X X

i. Deposit and Enforcement of Mediated Settlement Agreements.

X X X X

(C) *Summary hearing.* - In all cases, as far as practicable, the summary hearing shall be conducted in one (1) day and only for purposes of clarifying facts.

Except in cases involving Referral to ADR or Confidentiality/Protective Orders made through motions, it shall be the court that sets the petition for hearing within five (5) days from the lapse of the period for filing the opposition or comment.

(D) *Resolution.* - The court shall resolve the matter within a period of thirty (30) days from the day of the hearing.

- RULE 1.3, SPECIAL RULES OF COURT ON ADR

SOURCES:

- **“THE HEART AND MIND OF THE NEGOTIATOR”** by Leigh Thompson
- **“DISPUTE RESOLUTION”** by Frank Sander, Stephen Goldberg, Nancy Rogers and Sarah Rudolph Cole
- **“GETTING TO YES”** by Roger Fisher and William Ury
- **“GETTING PAST NO”** by William Ury
- **“GETTING READY TO NEGOTIATE”** by Roger Fisher and Danny Ertel
- *“Inside the ‘painstaking’ negotiations that led to the biggest prisoner swap since the Cold War”, CNN News, August 2, 2024.*