

IV. THE UGLI ORANGE NEGOTIATION

A. The Student Simulation

Rather than simply tell students the story about the two sisters arguing over an orange or having them read about it in their negotiation text,³² a negotiation simulation based on this story appears to be the single most effective simulation for teaching negotiation and ADR. The Ugli Orange negotiation simulation is the perfect starting point³³ for a class in negotiation and ADR because it is simple and it can be used to introduce the two major negotiation and ADR themes of underlying interests and effective communication.

In the Ugli Orange negotiation,³⁴ Dr. Jones and Dr. Roland, two biological research scientists representing rival pharmaceutical companies, seek to acquire the entire crop of Ugli Oranges that was grown in the world this year. Dr. Jones is interested in the Ugli Oranges because of a recent outbreak of Rudosen, a disease contracted by pregnant women that causes serious brain, eye, and ear damage to unborn children unless the pregnant mothers are inoculated early in their pregnancy. Juice from the Ugli Orange can be made into a synthetic chemical serum by Dr. Jones' company to prevent the spread of Rudosen.

Dr. Roland is interested in the Ugli Oranges because of a recent leak of nerve gas from old chemical warfare bombs stored in bomb chambers on a small Pacific island. Thousands of people will die or incur serious brain damage if the gas gets out of the bomb chambers and spreads to the coast. Rinds from the Ugli Orange can be made into a synthetic chemical gas by Dr. Roland's company to neutralize the nerve gas.

Mr. Cardoza, a farmer in South America, owns most or all of the Ugli Oranges grown in the world this year.³⁵ The students, playing the roles of Jones and Roland, are told to speak with each

³². Of course, the Ugli Orange simulation must be done before assigning a negotiation book reading that discusses the sisters' conflict over the orange. In *Getting to Yes*, the orange story is in one of the early chapters. Fisher & Ury, *supra* note 2, at 58.

³³. The Ugli Orange simulation can serve as a reference experience during the remainder of the course. I often refer back to this simulation during later class discussions. In addition, I have even used a question about this simulation on my final examination. The question was:

The Ugli Orange negotiation simulation in class seemed to have a perfectly integrative, "win-win" solution to the negotiating problem. One side wanted the juice; the other side wanted the rinds. The question for you to answer is:

Is it possible to have such a perfectly integrative, "win-win" solution in the "real" world?

If you believe that the answer is "yes," can you provide an example? If you believe the answer is "no," how close can you get to a perfectly integrative solution?

³⁴. The Ugli Orange simulation is reproduced in Appendix A. The origin of the Ugli Orange simulation is unknown to me. Students do this negotiation in pairs. They must situate themselves such that they cannot hear what another pair is saying during their negotiation. The arrangement requires at least two rooms and perhaps the hallway.

³⁵. In the version of the Ugli Orange simulation I use, the two doctors have differing estimates of the total number of Ugli Oranges in the world this year. One side thinks there are 3,000 oranges; the other side thinks there are 4,000 oranges. In many real negotiations, the opposing parties have

other before going to South America to try to purchase the Ugli Oranges from Cardoza.

Initially, some students do not even understand why they should talk with each other. They see only one possible negotiation here--the talk between Cardoza and either Jones or Roland. These students must be told that they should treat the meeting between Jones and Roland as a negotiation. They need to understand the principle that everything is negotiable.³⁶ Once the students realize that their discussion is in fact a negotiation, the negotiation can play out in many different ways, which is one of the benefits of using simulations.

The first perspective for most students doing the Ugli Orange negotiation is like the angels and devils cartoon, with both negotiators perceiving themselves as aligned with the angels. Often, the students do not even consider who is on the other side of the negotiating table or what the other side's interest might be. Because both Jones and Roland see themselves as great humanitarians without a profit motive, they initially expect that the other negotiator will let them have all the Ugli Oranges once the other negotiator learns about their non-profit, humanitarian motive--to prevent birth defects from Rudosen disease or to prevent death or brain injury from the nerve gas. They are blinded by righteousness and assured that they deserve all the oranges. Both Jones and Roland are usually eager to tell each other how important it is for them to acquire the oranges. However, this initial persuasion strategy invariably fails. Both sides talk in an attempt to persuade the other, but neither side can persuade the other side to forego their interest in the oranges.

At this point, the negotiation starts to look like a classic distributional negotiation. Whatever one negotiator wins, the other negotiator loses. Each orange for one looks like one less orange for the other. Next, the negotiators often try to bargain over who has the greatest immediate need for the oranges. Of course, both Jones and Roland assume that they have the greatest need for the oranges this year. "I will let you have all the oranges next year if you give me all the oranges this year" is a common proposal. However, they both need all of the oranges this year. If one negotiator's company gets all of the oranges, then the other negotiator's company will not get any, and the humanitarian objectives of that negotiator will be thwarted. If Dr. Jones got all 3,000 Ugli Oranges, then Dr. Roland's company cannot prevent the deaths or brain damage from the nerve gas. If Dr. Roland got all 3,000 Ugli Oranges, Dr. Jones' company will not be able to prevent the birth defects from Rudosen. Frequently, the negotiators reach impasse at this point and fail to arrive at any negotiated solution.

The Ugli Orange simulation probably has the greatest impact on the negotiators who never discover that they each have different uses for the orange. Although from one perspective these students have failed in this negotiation, these students may gain the most from the simulation because they are not likely to forget the importance of focusing on interests and effective communication.

Stopping the Ugli Orange simulation when approximately one-half of the negotiation pairs have completed their negotiations is highly instructive.³⁷ Half the class is at impasse and half has a solution, so there is a rich mixture of experiential material for the debriefing.³⁸ With about half of

different data and perceptions of the facts and issues.

³⁶. Stark, *supra* note 19, at 61.

³⁷. I circulate among the negotiating pairs to listen to their negotiations. After hearing a few sentences, I can usually tell what stage of the negotiation each pair is in.

³⁸. I tell the group when they start negotiating that I will stop them when only half of them have

the teams not reaching a solution, the remaining negotiated solutions fall into several different categories. A few groups reach a compromise solution in which they divide the number of oranges so that both Jones and Roland get some of the oranges. Usually, each negotiator gets one-half of the oranges (1,500 each).

In rare cases, one negotiator actually agrees that the other negotiator's interests are paramount, and they divide the oranges two-thirds to one-third. When students are given only a few minutes to read their confidential facts and complete the negotiation, they often reach such compromise solutions. Other issues that Jones and Roland discuss include: how they will approach Cardoza, how much money each company will contribute to the acquisition of the oranges, how they will exchange the oranges, and a few groups have even discussed leaving their present company to form a new joint venture just to handle this orange problem.

The secret to success in this simulation is the discovery that each negotiator needs only a part of each orange, rather than the whole orange. Dr. Jones needs only the juice of 3,000 oranges; Dr. Roland only needs the rinds of 3,000 oranges. (The J in Jones stands for Juice and the R in Roland stands for Rind.) Negotiators who discover the juice/rinds distinction are usually very pleased with themselves. They work out a negotiated solution to save all the people from both the Rudosen and the nerve gas. They are able to expand the fixed pie.³⁹ They take 3,000 oranges and make them into what looks like 6,000 oranges. They have the juice from 3,000 oranges and the rinds from 3,000 oranges.

My debriefing of this simulation focuses on the key concepts of positions versus interests and effective communication for conflict resolution. The interests are usually obvious--to prevent birth defects or prevent death and brain damage. The position of both Jones and Roland is that they each want all 3,000 oranges. Their interests can explain why they want the oranges--to get the juice of 3,000 oranges or to get 3,000 rinds.

The communication elements of this simulation are also very important. Some negotiating pairs learn of the juice/rind distinction through good questioning.⁴⁰ Some students have asked their negotiating partner why they need the oranges. Most do not. Most students argue strongly for their own positions without disclosing their interests. Often students who do discover the juice/rind distinction find it through luck or accidental disclosure made without thinking about the possible consequences of disclosure. One of the negotiators often simply says "Well, I need the juice to . . ." or "I need the rind to . . ." When this disclosure is made the other negotiator usually quickly says something like, "Great, I need another part of the oranges. You need the juice, but I only need the rind. This is perfect!"

After discovering the juice/rind distinction, many negotiating pairs discuss who will approach Cardoza and how much money they will offer him. Most negotiators, however, do not consider how their competing companies will exchange the unused portions of the oranges. This exchange

completed the negotiation.

³⁹. Bazerman & Neale, *supra* note 21, at 16.

⁴⁰. Because negotiation and conflict resolution classes and seminars have become so popular, I sometimes encounter students who have already performed the Ugli Orange simulation. In such instances, I ask these students to be my assistants for the simulation. I instruct them to wander among the negotiating pairs and to listen to how some pairs discover or fail to discover the juice/rind distinction. These assistants give a report during the debriefing.

issue is important considering the companies' prior poor relationship. The more thoughtful negotiators might decide to hire a third-party to separate the juice and the rinds for both companies. Sometimes, each company decides to take 1,500 oranges, remove the part of the orange they need first, and then exchange the remaining parts of the 1,500 oranges in their possession with the other side. Using such a procedure attempts to minimize the risk that the other side will fail to produce the remaining oranges. During debriefing, I also use these different solutions to highlight the importance of being alert for new issues that emerge during the negotiation and the importance of comprehensive settlement.

I try to provide positive feedback for all negotiators and encourage them to try alternative negotiation styles. For those who did not reach a negotiated solution I say, "Of course, you would not reach a negotiated solution to such a complex problem in only 15 minutes in the real world, but what could you have done to make more progress here?" For those who feel extremely proud about finding the juice and the rind distinction, I say, "Did you disclose too much information too soon in this negotiation?" For those who divided the oranges 1,500 for one and 1,500 for the other and did not discover the juice-rind distinction, I say "Perhaps you withheld too much information. Would your negotiation have benefited from more disclosure?"

B. Competitive Bargaining with Cardoza

Although the Ugli Orange simulation looks like a perfect vehicle for teaching cooperative, problem-solving negotiation with an integrative, win-win solution, it can be extended to elements of traditional, competitive negotiation tactics and strategy. I usually pose the following hypothetical to the students after the debriefing of their Ugli Orange negotiation.

Assume that Jones and Roland agree to form a joint venture to acquire the oranges from Cardoza. Further assume that Jones and Roland go to talk to Cardoza. How should they proceed? Should Jones and Roland make the first offer to Cardoza or should they allow Cardoza to make the first offer? Why? If they want to make the first offer, what should that offer be? After allowing the students to discuss these topics in small groups, we have a class discussion about first offers, responding to offers, bargaining ranges, goals, concession strategies, commitments,⁴¹ anchoring, and other distributional topics.

C. The Ugli Orange Video

The Ugli Orange simulation works well and is especially meaningful for the students who do not discover the juice/rind distinction. Students who quickly discover the juice/rind distinction, however, may think the simulation is simplistic and not very challenging. Furthermore, they may leave class believing that such a win-win solution is interesting for class discussion, but that the concept has little applicability to real-world negotiations.⁴² Usually the students who quickly

⁴¹. See Walton & McKersie, *supra* note 21, at 81-121 (discussing commitment tactics).

⁴². It is often useful to discuss some of the more famous win-win political negotiation solutions. For example, at the time of the founding of the United States, the large states wanted political representation by population (large states would get more representatives in Congress). Small states wanted representation by political subdivision (small states and large states would each get the same number of representatives in Congress). The solution was to move away from the unicameral Parliament model of England and create a two-house Congress in which state representation in the House of Representatives would be proportional to the total population of each

discover the juice/rind solution did not follow through to negotiate the more complex aspects of this negotiation. They did not work out in detail how they would structure their joint venture to buy the oranges, how they would approach Cardoza, or how they would separate the juice from the rinds and still ensure that the opposing company would actually turn over the remaining portions of the oranges to them.

To add greater complexity and interest to the Ugli Orange simulation and to increase the learning about the key concepts, I use a videotape of two other people playing the roles of Jones and Roland in the Ugli Orange negotiation. I play the role of Dr. Jones, and my friend and colleague David Chandler⁴³ plays the role of Dr. Roland. This videotape provides a demonstration to use as a basis of discussion as well as some unusual twists that the students have not explored in their simulated negotiations.

Initially, the videotape looks similar to the negotiation conducted by students in class. Both negotiators argue strenuously for their own positions. But when the negotiators do not get what they want from each other (all the oranges), the level of hostility rises and they begin to make indirect threats. They begin to reject the opposing party's interests and suggest that those interests are neither legitimate nor reasonable.

The second and even more fundamental difference between the videotape and the typical student negotiation of this problem is that once Jones discovers that Roland only needs the rinds, Jones does not immediately disclose that he only needs the juice. Jones presses forward and tries to secure a financial advantage over Roland. The point of the tape is not to suggest that non-disclosure is the best way to proceed in negotiation, but rather to alert students to the fact that not every opponent will be using a cooperative, win-win style of negotiation.⁴⁴ Students should not naively assume that the other side will always use cooperative negotiation styles or even tell the truth.

D. Ugli Orange Transcript

I begin the debriefing of the Ugli Orange simulation by asking which negotiating pairs have not yet reached a solution. I then open a short discussion with these groups about what made the negotiation so difficult. After this discussion, I turn to the videotape. But before I start the videotape, I advise the students that the first question I will ask them after only a minute of viewing the videotape is which of the two negotiators holds greater power over the other. A transcript of the videotape is presented below.

state, but representation in the Senate would be equal for each state. That was a win-win solution. Fisher & Ury also tell of the win-win solution to the Egypt-Israel conflict over the Sinai Peninsula. Fisher & Ury, *supra* note 2, at 58.

⁴³. David Chandler is a professor of sociology at the University of Hawaii and we have taught the Negotiations and ADR course at the law school since 1985. In 1979, David and I were members of the first training class for mediators at the Neighborhood Justice Center of Honolulu. We both serve on the Board of Directors. We were founding members (1985) of the University of Hawaii's Program on Conflict Resolution (PCR) and serve on its Policy Committee. We have also conducted three week-long mediation workshops in the Federated States of Micronesia together.

⁴⁴. As my friend Peter Adler, with whom I sometimes co-teach says, "Some Rambo negotiators like it if they 'win-win' and you 'lose-lose.' "

R= Roland (David Chandler) needs the rinds

J= Jones (John Barkai) needs the juice

R 1 We've been asked--by the federal government--to assist in a matter of great importance in the Pacific. It's a matter that requires the acquisition of some oranges that are currently being held in South America. I've been led to believe you are interested in these oranges as well.

J 2 [interrupting] Well, my information from my company, tells me that your company is interested in those oranges, and we have a very important interest in those oranges ourselves. I'm sure that if we have a discussion about it, you will understand that my interest is going to be paramount. We just need to acquire these oranges.

I pause the tape at this early point and ask students who has more power in the negotiation. Students have varying opinions on this issue of power. Those who say Dr. Roland has greater power cite a variety of reasons, such as Roland started the negotiations, Roland said he was working with the government,⁴⁵ or that Roland seemed to have a more relaxed style. Those who say Dr. Jones has more power cite other reasons, such as Jones is dominating by interrupting, Jones is speaking faster and louder, or Jones is sitting more erect or that Roland started the negotiation.⁴⁶

Power is easy to talk about, but difficult to assess in a negotiation. I make only a couple of comments about power at this point because I want to stress the idea that information is power later in the videotape. For now, I usually say that power is an elusive concept. There are many different ways of defining power.⁴⁷ Many people think of power as the ability to force an opponent to accept a settlement on less than favorable terms. Other people think that power is a perception, "either you have it or you don't." Still other people would say that power is having alternatives. If you have alternatives, then you have power. Or, if you lack alternatives and must accept the other party's offer, then you do not have power. I usually tell my students that I cannot tell yet who has more power in this negotiation at this time.⁴⁸

For the next few minutes, the negotiators continue to not listen to each other and they make arguments like lawyers arguing to a court, attempting to persuade the judge that their facts are more persuasive than the other party's. We hear a variety of phrases that the class analyzes for hidden meaning and their impact on the negotiation and the negotiators.

R 3 I think that as a scientist, you might appreciate the fact that this is really not a commercial venture that we are involved in. This is a matter of life and death. There is a number--I can tell you this--there is a number of old warheads that have been stored in the Pacific that are now in some danger of creating a public health hazard of great significance. If we are unable to acquire these

⁴⁵. Many students from Asian countries, particularly from countries with strongly regulating governments such as Singapore, cite the fact that Roland is working with the government as a very important source of Roland's power.

⁴⁶. That some people perceive commencing the negotiations as an indicator of power while others perceive it as an indication of weakness is itself quite revealing. Is this, too, a matter of perception and belief?

⁴⁷. See Kenneth Boulding, *Three Faces of Power* (1989), reprinted in Roy J. Lewicki et al., *Negotiation: Readings, Exercises, and Cases* 15-33.

⁴⁸. Usually I do say that I like one of the negotiators more than the other. Later I mention that the negotiator I like on the videotape is me.

oranges in a very short period of time, there are going to be some very serious implications. The federal government has asked us for our assistance. You can confirm this if you wish.

J 4 That's really not of interest to me. I can appreciate the concern you do have, but the matter that we are dealing with, and our company is working on, is that we need to have these oranges to save--really it's a matter of life and death--to save lives of young children. Really our work is dealing with pregnant mothers who are about to give birth and unless we acquire those oranges, there are going to be thousands of newborn children with brain damage, serious eye, ear, and throat problems.

R 5 [interrupting] Is there really any way independently of showing that these oranges are essential for this project?

J 6 Absolutely, it's Rudosen disease. We're dealing with pregnant mothers. It's very well known.

R 7 [interrupting] And it's only these oranges that can provide . . .

J 8 [interrupting] Absolutely, we have to have these special oranges from South America. So there's really no question.

R 9 Well ah . . .

Responses 3-8 show a variety of subtle negotiation tactics. In R 3, Roland starts to play on a common interest--"as a scientist"--and then he makes a disclosure while at the same time implying that he is keeping some information secret--"I can tell you this." Roland also tries to display some power by asking Jones to confirm Roland's relationship with the federal government. Jones, however, starts to quickly get competitive and not listen much to Roland--"That's really not of interest to me." Jones also attempts to sound very confident of his position--"Absolutely"--"It's very well known."

J 10 [interrupting] I guess frankly, we would really appreciate it if you would kind of bow out of it because we need this crop of oranges. I'd be happy to allow you to have the next crop of oranges

R 11 I was about to suggest that. We're in a matter of great urgency. As you know, children come and go, children live and die, I'm not saying . . . [usually great laughter at this line]

J 12 [interrupting] We need these oranges in the next two weeks. We have to have them. The mothers have to be inoculated. If not, it is going to be too late for these children. If we have to, I'm prepared to go to court and contact my lawyers. You know we have had a history, our companies, unfortunately . . .

R 13 I understand that.

J 14 My people are ready to do what we need to do to keep you out of this.

R 15 Sure, I'm under, I guess, similar instructions. I didn't want to have to bring the attorneys in on this. I thought, perhaps as scientists we could discuss this some more . . . but if necessary we have the attorney general standing by--the attorney general of the United States of America--because of the government's interest in this matter. So we are hopeful that we can find a solution to this, but if necessary we will make every resource available to us to put that at our disposal. But maybe we can talk about this as scientists and find some reasonable way around what appears to be quite a dilemma.

J 16 Well, I don't see our position changing, but . . .

R 17 Ours will not either.

In responses 10-17, both sides dig in their heels and make it clear that they each want this crop of oranges. In J 10, Jones wants Roland to "bow out" and offers Roland the "next crop of oranges."

In R 11 Roland does the same--"I was about to suggest that"--and then insults Jones and his interest in saving the children--"As you know, children come and go, children live and die." Both sides also threaten legal action or other power options. Jones implies taking some action to keep Roland from

getting the oranges--"My people are ready to do what we need to do." Roland counters this implicit threat--"Sure, I'm under, I guess, similar instructions"--and is willing to go beyond that if necessary-- "if necessary we have the attorney general standing by." Finally, Roland makes a signal that he is still willing to talk--"But maybe we can talk about this as scientists and find some reasonable way around what appears to be quite a dilemma." However, both sides reaffirm their positions and indicate they will not change positions in J 16 and R 17--"Well, I don't see our position changing" and "Ours will not either." I usually make the point to the class that if they were rational, truthful negotiators, they would walk away at this point because they have both said they will not change their positions. This exchange illustrates that people often say things they do not mean during a negotiation. It is often helpful to display a poor memory, to forget such statements, and to move towards a solution.

At this point during the videotape, I usually ask the class what solutions they reached in their Ugli Orange negotiation. To prevent the premature disclosure of the juice/rind solution, I first ask who reached a solution in which Jones got some of the oranges and Roland got other oranges. We discuss these situations and why the negotiating pairs divided the oranges the way they did. Typically, almost all groups divide the oranges 1,500 for Jones and 1,500 for Roland.

Finally, I ask about other solutions. Several people usually are eager to tell about their negotiation and how they discovered that one side needed the juice and the other needed the rinds. Jones got 3,000 juices and Roland got 3,000 rinds. When such solutions are mentioned, I can see many eyes look down to their confidential fact sheets, obviously searching their facts for the words "juice" or "rind" that they missed during their earlier preparation. At this point, we discuss the concepts of positions and interests. I then return to the video tape and show the remaining parts.

J 18 Maybe you can tell me what you are going to use the oranges for.

I stop the videotape again at this point and ask the students to comment on the communication patterns displayed so far. We note that until J 18, all communications were usually statements designed to persuade the other side to give up their positions to further the interests of their opponent. J 18 is the first question that has been asked by either side in this negotiation-- "What you are going to use the oranges for?" And J 20 contains a follow-up question that elicits more information--"Could you tell me a little bit more-- What are you going to do with the oranges?"

R 19 Well, the bomb casing that we are concerned about for the moment, and our best estimates are that the gases are in the process of leaking out at the moment. These gases need to be neutralized and a portion of these rare Ugli Oranges is necessary to make the serum. We have to do this within about four or five weeks in order to solve this problem.

J 20 We also need the oranges to make the serum. Could you tell me a little bit more--I'm kind of technically interested in what you are going to do. What are you going to do with the oranges?

R 21 Well, this is not proprietary at all. As I told you before this is a matter of national urgency. It is not a commercial concern of ours. What we do is we extract from the rinds of the orange, a serum, it is an important component of the serum.

J 22 From the rinds you are getting your serum?

After this comment, I again ask the question that I started the review of the video tape with: which party holds greater power over the other? Unanimously, the class agrees that Jones has the power in this negotiation because he has more information. Information can be power in a negotiation.

R 23 So we need the oranges in order to get the rind from the orange.

J 24 Yeah, I've never heard of that before--that you could work with that.

R 25 Yeah, no, it's something we have had a breakthrough on. We are able to do that. That's

why the federal government asked us to participate in this project.

J 26 Well, as I said, we too need the oranges.

R 27 [interrupting] We wouldn't be able to reveal how we do that.

J 28 Yeah, we have had some patent issues going back and forth. I'm not trying to find that out from you at this point.

R 29 But that is largely the role of the attorneys and the executives. I was sent because my people largely see this as a scientific problem, and I asked to see you because we feel it is a scientific problem, and as scientists, perhaps, we can make some progress on it that the others wouldn't be able to understand.

J 30 Well, maybe there is some way that we can share the oranges.

R 31 Well, that certainly would be desirable. As I understand it there are only 3,000 available . .

J 32 That's right

R 33 . . . and we are going to need all 3,000.

J 34 We are going to need all 3,000 too. And we really would like to have the complete orange, [hesitating] but there are some things we can do in our proposal that we may not need all the rinds for.

R 35 How many of--is it possible for us to have all of the rinds you think?

J 36 I think. . . .

R 37 We would need--our estimate is that we would need all of the rinds.

J 38 I don't think we would be able to do what we wanted to if we had to give up all the rinds. But I understand, I believe what you are talking about in terms of life and death issues for your people. So maybe we could allow you to have the rinds if we could have the rest of the oranges. They wouldn't, of course, be as valuable to us. We might have to do something synthetically.

At this point we discuss what is going on in the videotape. Jones is either not fully disclosing his needs or he is lying. Jones is not approaching this as a win-win negotiation. We constructed the video this way to show that not every negotiation is going to be a delightful win-win process. Some negotiators may lie during the negotiation. We discuss what can be done to protect oneself from lying negotiators. Jones' methods do not look very professional to many people. We also discuss the long-range consequences of Jones' behavior and the impact this behavior may have on any joint venture that the two negotiators form.

R 39 OK. I see. Maybe there is a way of sharing these oranges then. I have a couple of other problems. I need to get the oranges from Cardoza very quickly. We understand--about how much do you think these oranges would be worth if they were, say--if you were just bidding against us? Hopefully we can find some way of not bidding against each other on this.

J 40 I mean these are not store oranges. They're much more valuable. I would guess that the oranges should go for maybe \$100,000 if he doesn't get wind of the fact that there are competitors there.

R 41 I think that is about our estimate as well. At least \$100,000. It might take at least a \$100,000 to . . .

J 42 Your firm is willing to put \$100,000 . . . ?

R 43 We would be willing to put \$100,000 into this, but I've got to lay my cards on the table. We need to get these orange rinds, and we need to get them promptly. And we have a contingency which allows us to go over \$100,000 in order to insure that we get that. I would assume that for your purposes that the money wouldn't really be a decisive matter here. So you would be at least willing to do \$100,000 and possibly considerably more than that.

J 44 OK, I mean we want to lay our cards on the table too. As I said, we need these oranges. Could you tell us how much you think your company could pay, just in case he gets wind of what's going on?

Interestingly, both sides have said they want to "lay [their] cards on the table," but both sides are now holding back the truth. This is another example of negotiators not saying what they mean. Jones is not revealing that he needs only the juice; Roland is not revealing how much money he is authorized to spend. We can discuss if there is any difference in how and why they are withholding information and the ethics of this behavior. From this point forward, I usually play the videotape without interruption or simply stop the videotape at this point.

R 45 Let's see, we certainly could go over \$100,000, but if we are cooperating on this, we might have an opportunity of going \$200,000 to Cardoza, and equally contributing. Would you be in favor of a proportional contribution, perhaps an equal contribution to the buying of these oranges?

J 46 Well, as I said, the oranges, if you are taking the rinds aren't going to be as valuable to us. So I'm not sure that I'm willing to match your contribution. Maybe a proportionally lesser contribution. But certainly we will want to pool our money to get all we can of these oranges.

R 47 Well, are you agreeable to the fact that whatever the proportion we work out that we go in as a joint venture to buy these oranges. That's something that in principle you could see your way towards.

J 48 I think it's important that we do that and Cardoza doesn't understand that two of us are working together and have different interests, otherwise we will bid up the price of the oranges.

R 49 If we are the only people bidding on the oranges--then I guess Cardoza-- if he wants to sell the oranges, he will have to sell them to us. If, on the other hand, there may be another bidder around we don't know about. Can you give me some idea about how high your side is prepared to go in order to--in order to secure these oranges?

J 50 Well, ah--we can definitely go to \$100,000.

R 51 Yeah, we have established that. We say more than that--how much more do you think you'd need in order to . . .

J 52 Probably, [hesitating] . . . I'm sure we could go to \$150,000.

R 53 OK, I think we could probably go there as well.

J 54 Maybe a little more if we need to.

R 55 Well, why don't we do it this way. \$150,000 each gives us a ceiling of \$300,000. And I think you indicated a moment ago that there might be more than that.

J 56 If we absolutely needed to do that, I'm sure I could get that authorization, although I can't really go much higher right now.

R 57 I think that I could guarantee that we could match that. What we do need to--and then perhaps more if it turns out that it is necessary to do so, so we would need to perhaps a little later work on the idea of how we are going to put this deal together as a joint venture. There is another matter, though, about--let's assume for a moment that we are able to acquire these oranges at a reasonable price and we are sharing it in some agreeable proportion. How do we manage to take the rinds off and make sure that our side gets the rinds in an expeditious way which does not damage the scientific potential of these rinds.

J 58 I'm a little unclear about that because of what we have done before (referring to prior litigation between the companies). I mean we would be glad to take the oranges and simply peel them for you and give you the rinds and work with that.

R 59 I clearly would trust that you would do that in a way that would work, but I'm not sure that the people in my corporation would go along with that.

J 60 I understand--knowing our history. What if we came up with a third group, somebody else, some other company, who would be willing to act as not a monitor, but would do the physical separation.

R 61 Perhaps the university.

J 62 The university, yeah.

R 63 They would be apart from it and they might have the capabilities of doing that. So, would we go to the university together and say "Here is the problem. We are able to get the oranges. We need to have the rinds taken off." My technicians tell me that it is important that the rinds then, subsequently, be stored below 40 degrees and they be into our process plant no later than 48 hours after they're separated.

J 64 How would you feel if we went to the university? I'm having a little bit of feelings that if two of us went to the university, somehow the word might get out to Cardoza that there are two different companies that are using . . .

R 65 I think that might be right. Could you get back from the university kind of a written description of what they would actually do.

J 66 I'm sure I could.

R 67 And I would be assured that would be handled that way. How would we handle any fees charged by the university?

J 68 Seems to me that we should split our fees.

R 69 That would seem reasonable. That is an important thing to keep in mind, budgeting this whole operation. So we need to put together a joint company. I'll get my accountant to contact your financial people and perhaps we can work that one through with them. We need to find a purchasing agent who would contact Cardoza. And we need to contact the university to get this thing handled.

J 70 OK.

R 71 It seems like we might have been able to save some lives here. I appreciate very much your cooperation on this, doctor.

J 72 Been nice working with you.

R 73 Been nice working with you.

J 74 Thank you very much.

V. TALKING LIKE A DUCK: EFFECTIVE COMMUNICATION FOR CONFLICT RESOLUTION

Communication is at the heart of negotiation and mediation,⁴⁹ the two principal ADR skills

⁴⁹. Arbitration is also typically taught in ADR courses. I teach meeting facilitation in my course, although I think this is somewhat unusual. Meeting facilitation is similar to mediation. The ability to facilitate group meetings is useful for lawyers who often attend meetings as part of their practice or bar and community activities. The classic book about facilitation is Michael Doyle & David Straus, *How To Make Meetings Work* (1976). Some excellent recent sources in this area include: Richard Chang & Kevin Kehoe, *Meetings That Work!* (1994); Dale Hunter & Marion Haynes, *Effective Meeting Skills* (1988); Dale Hunter et al., *The Art of Facilitation* (1995); Thomas Keyser, *Mining Group Gold* (1990); Robert Levasseur, *Breakthrough Business Meetings* (1994); Roger Mosvick & Robert Nelson, *We've Got to Start Meeting Like This!*; Steve Saint & James Lawson, *Rules for Reaching Consensus* (1994); The 3M Management Team, *Mastering Meetings* (1994).