

Can We Engineer Comprehensiveness in “Negotiation” Education?

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Editors’ Note: Ever since the first ripostes to Roger Fisher’s magnum opus, we have known that sometimes the people are the problem. Or maybe it was their education. Grecia-de Vera analyzes the prevailing attitude toward negotiation in the Philippines, a nation that has not yet adopted “Negotiation 1.0,” and asks – Could countries in the Philippines’ situation go straight to the better stuff, maybe, and skip over all the first-generation mistakes? Or are they condemned to repeat them?

Introduction

The existing state of “embedded” understanding of negotiation may vary greatly from one legal culture to another. When faced with a legal culture that has been particularly recalcitrant, this raises a question: must such a culture pass slowly through every stage of discovery of “1.0” negotiation elements, or could that process be speeded up?

An anecdotal but, I think, typical example of the current state of legal culture in one such country may be helpful. In a settlement process during the pre-trial stage of a dispute that had been in litigation before a Philippine court for over a year, the defendant, despite having a sufficient basis to resist the suit and ultimately succeed in her defense, decided to invite the plaintiff to negotiate. The defendant was aware that civil suits for money claims can remain pending in the Philippine courts for an average of eight years, and did not want to be burdened for such a period of time even if she were to be vindicated in the end. So she asked her lawyer to extend an invita-

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tion to the plaintiff through the latter's lawyer, to meet and discuss a possible settlement over breakfast in a neutral place. With the plaintiff's consent and with the court's permission, the date, for what defendant and her lawyer thought would be one of perhaps two or three settlement meetings, was set.

Defendant and her counsel prepared for the breakfast meeting, and having had previous experience dealing with both plaintiff and her lawyer, the defendant took the initiative in letting her own lawyer know that she intended to be reasonable and to maintain her equanimity even if the plaintiff and her team proved to be difficult. On the morning of the meeting, both plaintiff and defendant arrived in good spirits and broke bread before commencing the discussion. When the negotiation began, plaintiff, through her lawyer, handed defendant a piece of paper with some figures. Plaintiff's lawyer said that they were willing to settle for less than half of the amount they were claiming provided defendant shouldered certain fees payable to the government (which the plaintiff failed to take care of while at the helm of the company they formed together). The figures on the piece of paper represented the amount in arrears and penalties impossible. Defendant and her lawyer nodded in tandem as they unfolded the piece of paper. They then asked for a few minutes to discuss privately by taking a separate table. Plaintiff immediately shot up from her seat to say,

"Negosasyon ba 'to? 'Di ba kayo ang nagimbita? O, pumayag kami, tapos ngayon na may proposal kami kelangan pag-usapan niyo pa? Wala kayong balak makipag-ayos kung ganyan?" [Is this what you call a negotiation? Didn't you invite us to this meeting? We agreed to sit down with you. But now that we have a proposal you tell us you need to discuss it further? That tells us you don't intend to settle.]

Consistent with their plan to remain reasonable and patient, defendant's lawyer tried to explain that they were in the very thick of negotiating, having just received what they considered an offer, and needed only time to discuss whether it was acceptable or if they would like to make a counter-offer. She then dropped a few buzzwords associated with integrative or principled negotiation, hoping that plaintiff's lawyer at least would be familiar with them and react positively. She also calmly explained that never before that day had the arrears to the government been mentioned, and certainly it was only natural for defendant to want to consider their impact, to which plaintiff's lawyer responded that all defendant had to do was verify the amount. If

the amount turned out to be accurate then defendant should pay, if she intended to negotiate. A further attempt by the defendant's lawyer to explain was dismissed curtly, followed by plaintiff and her lawyer's abrupt departure. The case stayed in trial for six years and was decided in favor of the defendant.¹

Not Being Difficult, Just Not a Negotiator?

After having heard about this particular negotiation, I tried to understand the process that took place, and noted areas where defendant's lawyer could have been more effective in her role as lawyer representing a client in a negotiation of a dispute already in litigation. I thought of the steps I would take, and the tactics then available to the defendant, and the reasons why together defendant and her lawyer chose one rather than another. But, as generally happens in most legal negotiations (whether to settle a dispute or complete a transaction),² no actual negotiation debrief took place, even though this could have provided a wealth of information.

For the negotiation I describe, I initially assumed that plaintiff's lawyer was simply being "difficult" and had deliberately strayed from principled negotiation. Taking my own copy of *Getting to Yes* (Fisher, Ury, and Patton 1991: 17-18), I am reminded that, indeed, "negotiators are people first." And of "separating people from the problem" Roger Fisher and his colleagues said:

If negotiators view themselves as adversaries in a personal face-to-face confrontation, it is difficult to separate their relationship from the substantive problem. In that context, anything one negotiator says about the problem seems to be directed personally at the other and is received that way. Each side tends to become defensive and reactive and to ignore the other side's legitimate interests altogether.

A more effective way for the parties to think of themselves is as partners in a hardheaded, side-by-side search for a fair agreement advantageous to each (Fisher, Ury, and Patton 1991: 37).

But is it possible for parties in a legal negotiation³ to think of themselves as partners (as if in a dance), if neither has ever had any exposure to negotiation theory and method?

The typology that has been developed over the last thirty years on kinds of negotiations (e.g., integrative and distributive) and types of negotiators (e.g., cooperative or competitive) makes it appear possible to neatly categorize either the process or the players, if not

both, and therefore to think strategically in addressing positions or interests. But what if we are dealing with someone who does not know how to negotiate, who is engaged in the activity simply as herself, and who is acting without direction?⁴ The typology does not help us here; this means what we perceive as tactics, deliberately employed under a distributive strategy, could really be merely a personal quirk, or a tantrum without any tactical objective. Worse, what if we are dealing with opposing counsel, who is not aware of negotiation principles and has agreed to negotiate (perhaps without caring to know what negotiation is or entails) as a tactic in itself (to delay proceedings, for example)? What do we do then, and is it fair to leave the process and possible settlement in her hands?

I will not attempt to answer these questions⁵ in this reflection piece, but only to explore the impact they have in the narrow context of legal negotiation, both as a mode of putting an end to litigation and in the transactional setting. I will do so specifically in reference to various legal negotiations in the Philippines that have been described to me, exclusively among local counterparts,⁶ and in relation to the effort of developing second generation global negotiation education. I will begin with the idea of negotiating in bad faith based on E. Allan Farnsworth's (1987) discussion, and address briefly why it has particular resonance for those in the legal profession, to highlight the importance of making negotiation part of legal education and continuing professional development. I will then turn to some initiatives that could form part of "Negotiation 2.0." In closing, I will turn to the potential role of the Rethinking Negotiation Teaching project in jurisdictions similar to the Philippines, where apart from revisiting the integrative negotiation classroom and formulating 2.0 negotiation teaching, the work ahead appears to require promoting the study of negotiation, both theory and skills, and including "Negotiation 1.0." I will argue not only for courses in negotiation to be part of every lawyer's basic training, but for knowledge of negotiation to positively inform personal and professional conduct in relation to the law.

Learning How to Negotiate: Should Lawyers Care?

In an informal survey conducted among participants to a consultative meeting conducted in late 2009 as an initial effort at exploring negotiation practice and pedagogy in the Philippines,⁷ a good number replied that they engaged in negotiation daily – whether at home, in the office, or as part of what they do. Lawyer-participants, in particular, stated that they regularly took part in negotiations for their work in companies or in firms. Two law firm partners, one who heads his firm's litigation department and another who leads the

banking department, confirmed the importance of having “negotiation skills” as lawyers, and said that they appreciated younger lawyers who possess “negotiation skills.” But neither of their firms invests in in-house training or professional development costs for negotiation training.⁸ When asked further about what they thought were “excellent” negotiation skills, invariably the answer was tied to “bringing home a winning deal (for litigation)” or “getting what the client wanted.” Two other lawyers who were regularly engaged as in-house counsel in transacting supplier deals at least used the term “win-win.” The jargon of integrative negotiation did not appear widespread, and its total absence in some of the conversations I had indicated to me that while integrative negotiation is not without adherents, formal negotiation training has not gained traction in the Philippine law community, whether as part of the law school curriculum or as part of professional development initiatives.⁹

In further conversations, stories emerged of lawyers walking away from a negotiation, and not necessarily towards their clients’ best alternative to a negotiated agreement (BATNA), particularly in processes involving disputes in litigation. Let us take the story with which I began this reflection. The lawyer who shared it with me (without of course disclosing particulars such as the identity of the parties) felt she would have no qualms about walking away from a negotiation, even if it would appear unseemly. When I asked about the possibility of her conduct rendering her client liable for having engaged in bad faith negotiation, she shrugged it off, saying that a cause of action for the purpose cannot be made out under Philippine law. Since having that conversation, I learned that in other jurisdictions, the act of walking away from negotiations may lead to an assessment of damages against the negotiating party who breaks off the process, for having engaged in negotiation “without serious interest” (Farnsworth 1987: 11).¹⁰

As of this writing, a survey of Philippine Supreme Court cases and academic writing does not disclose support for such bad faith negotiation claims. But if the Human Relations provisions of the Philippines New Civil Code are considered (Republic Act No. 386: articles 19-21), it would seem that a cause of action for bad faith negotiation, particularly in the context of transactional negotiation, can be made.¹¹ To the extent then that there is potential liability on the part of the negotiating party for bad faith negotiation, with possible adverse consequences upon a client and her interests, it seems irresponsible to advise on and engage in negotiations without the benefit of previous experience, basic education (delivered at the law school) or adequate training. There is also another reason for lawyers to pay close attention to their participation in negotiation.

Thinking about and training in negotiation, even for lawyers who will not be engaged in negotiations, encourages self-awareness that can inform professional conduct. As negotiation thinking progresses in different areas, including psychology (see, e.g., Birke and Fox 1999; Korobkin and Guthrie 2004), neuroscience (see, e.g., Yarn and Jones 2004; Birke 2010), and game theory (see, e.g., Sally and Jones 2006), ideas emerge that can be helpful for the legal profession. Take for example the challenge of “rigorous investigation into one’s own actions, skills, and behavioral patterns” proposed by Scott Peppet and Michael Moffitt to those seeking to improve themselves as negotiators (Peppet and Moffitt 2006: 617). While my examples here are from the Philippines, I submit that similar considerations may apply in numerous countries. Thus, the need for a lawyer’s better negotiation training can arise out of the law itself, rendering the typical lawyer’s disinterest intellectually and professionally bankrupt.

Formulating the Negotiation Curriculum for the Law School

While there may be legal foundation for finding a negotiating party liable for, among other things, engaging in negotiation without serious intent to reach an agreement, it may not be consistent with ideas of fairness to impose such liability in jurisdictions where legal negotiation processes may not be informed by contemporary negotiation theory and education (i.e., where negotiation is absent from the law school curriculum) and where even what constitutes negotiation may not be consistently understood.¹² Considering Metro Manila alone, only one law school offers a course in negotiation.¹³ A lawyer who thinks he would benefit from taking an executive training seminar on negotiation, meanwhile, would as yet have very few options.¹⁴

Thinking of negotiation in “2.0 terms” means, to me, taking into consideration where negotiation education has yet to be introduced as applicable (e.g., in law schools, business schools) and taking the opportunity to design appropriate curriculum models, which perhaps may require challenging current models. Moffitt (2004) noted, as part of his research, that in more than 100 American law schools’ curricular offerings related to negotiation, most cited skills development as the primary focus of the course. If this focus persists today, then perhaps 2.0 thinking should also place emphasis on principles, theory, and culture, among other elements.

Training Professionals to Guide Negotiation Processes

If typical lawyers do not receive negotiation education or training, what can they do to prevent either lack of knowledge, experience or skill from impeding the process of negotiation? During a casual exchange on our negotiation experiences, a friend (also a lawyer) remarked that he learned in a two-day, executive-type seminar about how to deal with a negotiator who employs distributive bargaining. When he finished describing the prescription given to manage the distributive negotiator, we both had the same questions. What if the distributive negotiator was immune to every countermeasure already devised? What if our counterparty had never before picked up a single article or book on negotiation or attended a training course on negotiation? What if she is just being herself, and does not subscribe to any theory of negotiation? Neither of us had picked up advice on how to deal with a “non-negotiator” tasked to negotiate. Setting aside our concern on how much it might cost, is there a professional who can help those negotiating and who think they are negotiators to actually engage in a negotiation?

While in Istanbul I had occasion to bring up this question in separate conversations with conference colleagues Manon Schonewille (of the Netherlands) and Dana Potockova (Czech Republic). I shared with them that in the Philippines, mediation is considered as synonymous with “assisted negotiation” (Tabucanon 2010: 43)¹⁵ and that one possible bit of advice to the lawyer who needs help during actual negotiations is to seek third party intervention, perhaps through mediation. But mediation has its own set of issues in the Philippine context¹⁶ and may not be the optimal form of intervention where the basic problem is that a process that is intended to be a negotiation falls into the hands of legal professionals who have either no previous experience in negotiating that type of dispute or transaction or no previous training in negotiation at all.

This is where the possibility of auxiliary professionals in the field of negotiation becomes relevant. However, apart from mediators, I have not encountered anyone trained specifically for intervention in the Philippines. There are negotiation trainers who extend some guidance to lawyers (particularly those involved in the negotiation of public issues), but the assistance comes before the negotiation takes place. What I have in mind are auxiliary professionals who not only provide training pre-negotiation, but who can be called upon to provide assistance while the negotiations are taking place.

Bernard Mayer, author of *Beyond Neutrality: Confronting the Crisis in Conflict Resolution* (2004), provides a framework for understanding the roles that these auxiliary professionals, whom he calls conflict specialists or conflict engagement specialists, can assume in order to

help parties engage in constructive conflict. As identified by Mayer, the three broad categories of roles that can be played by conflict specialists are ally roles, third-party roles and system roles. Allies assume non-neutral functions in which they assist particular parties to engage more effectively. Third party roles, such as facilitators, mediators, fact finders, evaluators or arbitrators, involve neutrals who extend assistance to conflicting parties in engaging more effectively. System roles may be potentially neutral or non-neutral; these refer to case managers, trainers, and researchers, and impact the system and culture in which a dispute takes place.

Ally Roles

*Advocate*¹⁷

Mayer further suggested that there are many ways in which one can assume an ally role. He considered four approaches. One is as advocate, whose goal is to help people engage effectively and powerfully in conflict. A distinguishing characteristic of this approach to the ally role is that the advocate provides a voice for the disputant (Mayer 2004: 224). While advocacy has been traditionally associated with legal representation, there are other types of advocates such as diplomats, union representatives, community organizers and victims' advocates. An example provided by Mayer is the community organizer. He described organizers as working on all sides of issues and in many arenas and as "key players in allowing a conflict to develop and have a lot to do with whether a conflict process unfolds in a constructive manner." They play an "essential role in articulating issues, framing the story of a dispute, defining the parties, and developing an engagement strategy" (Mayer 2004: 226).

Strategist

The strategist role assumes the specific task of helping design a strategy for how to approach a conflict. It may require substantive expertise. The role as described by Mayer is broad enough to incorporate many specific activities, but he identified the following as key (Mayer 2004: 230):

- 1) Conducting conflict analyses;
- 2) identifying the pros and cons of alternative approaches to engagement;
- 3) planning how to pursue a strategic approach; and
- 4) assessing how an engagement process is going and how to modify it.

Coach

Mayer's articulation of the coach role includes personal coaches, executive coaches, leadership coaches, among others. While the term "coaching" has different meanings, the common conception of the term involves helping individuals achieve goals, whether personal or professional. Differentiating this role from other conflict specialist roles is its "primary focus on helping people develop their competence to engage in conflict effectively" (Mayer 2004: 233).

Third Party Roles

Mayer postulates that third party neutrals, while traditionally looked upon as being engaged to resolve a conflict, may be utilized instead to contain conflict and to design processes, within which issues, differences, even animosity and anger, may be allowed to surface as part of paving the way for the parties to be engaged effectively.

System Roles

System roles, such as that assumed by a corporation's ombudsman or a project's evaluator, help promote what Mayer calls a "culture of constructive conflict" (Mayer 2004: 243). According to Mayer,

All of the system roles have in common that they are at least in part intended to ensure that an organization, agency, or program allows for effective conflict processes. Some system roles are focused on design and creation of approaches to conflict (process design, dispute system design, and system adviser). Some are oriented toward system maintenance and operation (ombudsperson, case manager, conflict program administrator) and some to system feedback and review (research, evaluation, and system consultant) (Mayer 2004: 244).

As an example of what the auxiliary professional or conflict specialist can do, Peter S. Adler, President of the Keystone Center, has described¹⁸ developing a "study" format, where those who ought to be negotiating an issue, but who are reluctant to participate in negotiation, are drawn to a "pre-bargaining" table by an invitation to "study" the problem or dispute.

These seem to me to be types of professional and third party intervention that might work where lawyers without adequate background are constrained to negotiate with each other. I would argue, then, that "Negotiation 2.0" should be broadly enough construed within the Philippines, and perhaps elsewhere, that it can serve also as a platform for looking at identifying those who may have experi-

ence as conflict specialists,¹⁹ and establishing not only a community of practice, but also a program. In such a program, they could assist in providing specific training in assuming any of the roles described by Mayer; help in developing models of intervention to aid lawyers in undergoing the process of negotiation in the legal context; and perhaps, help them learn and train on the job.

Conclusion: A 2.0 Environment – Negotiation in Legal Education

In places such as the Philippines, some lawyers are surprised to learn that negotiation scholars from other parts of the world are rethinking Western models, particularly the interest-based approach – for the simple reason that not even “Negotiation 1.0” has yet been taught in the law schools. Perhaps a “2.0 initiative” should be to promote negotiation education and training in general, i.e., in a comprehensive context along with ancillary forms of practice as described above. With “2.0 thinking” stretching our minds to consider questions on both the substance of education and training and the methodology – including culture, emotions, language and adult learning models – this is a opportune time not only to design law school negotiation classes and executive-type negotiation courses to introduce the basic development of negotiation principles. Along with these, if they are to be successful in the Philippines and similar countries on a much faster pace of development than by repeating a whole generation of Western practice, we need to focus on the challenges to current models, explore the role of indigenous modes of dispute resolution, identify communities of practice in related fields (such as peace studies and conflict management), and evaluate the other new thinking that is going into the design of “Negotiation 2.0.”

It is important, in other words, to consider negotiation education not only as a way of obtaining a particularized new set of skills to add to those we already possess as lawyers, but as an opportunity to see and work with the whole picture of conflict. What is needed is to make the principles of negotiation and conflict management so integrated into law education that they truly inform the practice of the legal profession.

Notes

¹ The narration is based on an actual case as described to me by a colleague. As far as I now know, the case is still on appeal before the Philippine Court of Appeals.

² The term legal negotiation is used here to refer to a narrow set of negotiations involving either: a) a dispute that is pending before the regular courts of the Philippines, where the parties are in negotiations principally through their respective counsels of record for the possible settlement of the case (particularly those involving collection of debt, monetary claim and/or contract breach); or b) a transaction or deal, typically a sale of goods, rendition of services, or licensing.

This is a functional definition for this reflection piece. Full exploration of the range of practices constituting legal negotiation in the Philippines merits separate articulation. In other jurisdictions, particularly the United States, specific courses on legal negotiation have been developed, and differences between negotiation in general and legal negotiation have been explored. Here the term is used also to isolate the process from related studies, such as those involving peace processes and indigenous modes of dispute settlement. Cultural aspects that can be drawn from the example provided will not be discussed here, although it is certainly a significant part of considering designs for the negotiation classroom in the Philippines.

One basic difference that has been pointed out is that legal negotiations involve “not only a relationship between two negotiating attorneys, but also relationships between each lawyer and her respective client” (Gifford 1989: 3).

³ It is useful to note that in legal negotiation involving a dispute pending adjudication, participating lawyers become involved in negotiation as advocates and adversaries. As Michael Moffitt (2004: 101) pointed out:

Almost all legal negotiations involve clear distributive issues (e.g., who gets how much money) and opportunities to create or destroy value (e.g., by expanding the scope of the agreement to include other terms). Many legal negotiations also involve complex ongoing relationships (e.g., joint venture agreements or parenting plans between divorcing spouses).

⁴ “People rarely act randomly” (Peppet and Moffitt 2006: 619-620) and particular action may be guided by either “theories in action,” or “explicit ‘rules’ that we hold about how the world works, and how to act within it” or “theories in use” – those implicit rules of action which in practice govern what we do, but which we do not admit to, or which sometimes we are only dimly aware of. This thinking must form part of designing the 2.0 class.

⁵ There are other questions that the scenario described raises within the context of law practice in the Philippines and the role of lawyers in legal negotiation. The questions presented here are among the few that I shared with Istanbul Conference colleagues Manon Schoneville and Dana Potockova, as I explored the availability of resources to better prepare lawyers for legal negotiation. I hope to write further on the other questions such as professional responsibility in the context of conducting negotiations within the Philippine setting.

⁶ I will not discuss here the unique dynamics of negotiation with foreign negotiation partner-lawyers, and negotiating public issues.

⁷ In *A Look at a Negotiation 2.0 Classroom*, also in this volume, Salvador P. Panga, Jr. and I share that in preparation for our participation in the Istanbul Conference, we organized a consultative meeting for the purpose of exploring negotiation practice and pedagogy in the Philippine setting.

⁸ Indeed, it is possible, as observed by Peppet and Moffitt (2006), that there is some belief that negotiation is learned through experience, by actual and constant involvement in negotiations – whether at home, in the workplace, in our personal purchases or during our representation of clients. But the same authors also observe that “simply having more experience negotiating does not necessarily make someone a better negotiator” (Peppet and Moffitt 2006: 615). Neither does reading about negotiation theories, it seems. This highlights the importance of devoting some thinking to how to improve our ability to engage in negotiation and/or to assist others to do so.

⁹ This very preliminary finding gains significance when I consider the local commercial contracts I have reviewed. In not a few of these contracts, dispute resolution clauses often include “executive negotiation” as an initial step towards resolution. While intended to take the dispute away from operations where it might have started and allow cooler heads to intervene, in the person of higher company officials or executives, the contemplated negotiation is likely to take place with the help of lawyers or, in some instances, exclusively between the parties’ lawyers.

¹⁰ See, e.g., *Markov v. ABS Transport & Storage Co.*, 457 P. 2d. 535 (Wash. 1969), which provides a framework for understanding how a claim may be made against one who walks away from the negotiation. In this case, the Supreme Court of Washington said that the lessor had fraudulently promised to renew the lease and to negotiate the amount of rentals in good faith. The lessor misrepresented to the lessee that it intended to renew the lease, while it was at the same time negotiating a sale with another party. The motive of the lessor was to have the premises occupied during negotiations with the potential purchaser, so that if the sale fell through, the lease could be renewed. Since a representation of a serious intent to reach agreement is implicit in the act of negotiating (Farnsworth 1987: 11), the rationale of *Markov* finds relevance even in the absence of explicit representation and supports recovery in the following scenarios: a) if a party enters into negotiations without serious intent to reach agreement; b) if a party, having lost that intent, continues in negotiations; or c) if a party, having lost that intent, fails to give prompt notice of its change of mind. Farnsworth adds that this may apply to a misrepresentation by nondisclosure, which upon being discovered caused negotiations to fail.

¹¹ The applicable Human Relations provisions of Republic Act No. 386 or the New Civil Code of the Philippines are as follows:

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

¹² Consider our reference story at the beginning of this reflection, where plaintiff and plaintiff's lawyer understood negotiation as taking place only if the other party accepts the offer. Any resistance, no matter how slight or reasonable, immediately serves to indicate that there never was a negotiation.

¹³ Based on a brief interview with the professor offering the course, there is no prescribed text. Simulations form a significant portion of the course, with case studies drawn from various sources and revised for use in the particular classroom. This information was obtained in the course of an informal survey of law and business schools in Metro Manila, made preparatory to the consultative conference organized by the Institute of International Legal Studies (see note 7). The Institute staff was informed by at least one business school representative that it is possible that negotiation, whether theory or practice, is discussed as part of substantive courses, such as sales and business transactions.

¹⁴ A program regularly offered is a two-day course entitled "Learning the Art of Negotiation" run by the Center for Continuing Education of the Ateneo de Manila University Graduate School of Business. See www.cce.ateneo.edu (last accessed June 22, 2010). Also available is an executive type course offered by Guthrie-Jensen Consultants Inc. See www.guthriejensen.com (last accessed June 22, 2010). While the cost would be considered prohibitive by most lawyers, the fact that only two courses are available for a metro population of some 20 million is remarkable. We have not had the opportunity to conduct a similar survey for areas outside of Metro Manila.

¹⁵ It is helpful to review here that "[a]lthough the ultimate objective of mediation is the same as arbitration – to resolve the dispute – the major difference is that mediation seeks to achieve the objective by having the parties themselves develop and endorse the agreement. In fact, mediation has been called a form of 'assisted negotiation'" (Susskind and Cruikshank 1987: 1360), an "an extension and elaboration of the negotiation process" (Moore 1996: 8), and an "informal accompanist of negotiation" (Wall and Blum 1991: 284). Mediation can help reduce or remove barriers to settlements, adding value to the negotiation process because it tends to produce or enhance much of what the parties desire and value in negotiation itself (Lewicki, Barry, and Saunders 2010: 529).

¹⁶ Pursuant to the Philippines Supreme Court Resolution A.M. No. 01-10-5-SC-PHILJA issued in 2001, and in line with the objectives of the Action Program for Judicial Reforms (APJR) to decongest court dockets, among others, a court-referred mediation program was introduced in the Philippines. With respect to disputes pending litigation, one current consequence is that mediation is currently seen as something associated with the judicial process. This has not helped it attract voluntary support among lawyers. The typical lawyer's initial concern of a drop in revenue (seen in many countries in the initial stages of mediation development in legal settings,

until enough lawyers figure out how to derive revenue from it) also has yet to be overcome in the Philippines.

¹⁷ Mayer uses the following to define an advocate: "An advocate is the representative of one particular interest in actual or potential conflict with others, and it is not his duty to define the collective well-being of those involved or to determine how it can be achieved. The advocate's job as most people see it, is simply to get as much as he can for his client." (Mayer 2004: 251, citing Kronman 1993: 147).

¹⁸ Multi-Stakeholder Processes and Water Governance in Asia: Lessons and Next Steps, held January 28-29th, 2010.

¹⁹ I have been informed that there may be Philippine scholars and/or professionals, working specifically on peace processes, who have prepared studies on intervention and third party participants whose roles may be comparable to those assumed by Mayer's conflict specialists. As of this writing, I am still trying to identify these scholars and to locate their work.

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