



# Sotomayor Law

Rande S. Sotomayor, Esq.



Mediation, Arbitration and Business Dispute Services

## Power Play in Mediation and Negotiation – Expect the Unexpected

February 25, 2016

The ICC International Commercial Mediation Competition in Paris showcased many different approaches to business mediation and negotiation even within the predetermined format and criteria for performance. Even when cultural differences were insignificant, the mediations often turned in unpredictable directions depending on different personalities and negotiation techniques. This was an excellent demonstration of the many permutations of power play.

The ICC Competition Final at the Maison du Barreau was the perfect example of power play at work. The auditorium was huge, the stage bathed in spotlight. Hundreds of spectators anxiously awaited the final match between the University of New South Wales (Australia) and the University of Auckland (New Zealand). There were no significant cultural differences between the teams.

All of the spectators had access to the details of the conflict – a dispute between a celebrity baker and party planner-to-the-stars over a wedding cake disaster that occurred when the industry-changing icing jointly developed by the two slid off of the cake at the party planner's daughter's wedding. Both parties' reputations, businesses, and cash flow were in trouble. Each sought money damages from the other.

The spectators also had access to the confidential information for each side – the juicy details that once revealed, could lead to a variety of solutions that would satisfy both parties' many needs and interests.

It was like an edge-of-your-seat TV episode. When – and how – would the pivotal facts be revealed? Would there be tears, hugs, a happy dance? Would the two parties move forward with a clever new business plan that would resolve the dispute and lead to new fame and fortune?

The baker was very emotional. His lawyer often held him back, to make sure he didn't reveal too much too soon. The party planner was stern. His lawyer had a plethora of issues to address. Both sides were slow to rediscover their longstanding trust as partners.

When the principals finally had a private caucus with the mediator, and the mutual resources to permit a creative solution to both sides' claims were revealed, the baker was deflated. He was confronted with hesitation, a bit of encouragement, and a laundry list of yet-to-be-addressed questions. The mediation was working, and the solution was in sight, but clearly the party planner and his lawyer put up walls that left the baker somewhat frustrated and his lawyer looking for new issues to raise.

Both teams were strikingly talented, and their professional approaches were superb. How else would they have made it to the final round in an international tournament of 66 teams?

It was a great lesson to negotiators at all levels, novice and expert. Your personality, strategy, approach, and interpersonal initiatives and responses will influence the negotiation process at all stages. You can hold bargaining power, lose it, or balance it as you work toward agreement. Do you want to keep your opponent guessing? Off balance? Or maybe secure? Do you want to drag the negotiation out or speed it up? As a lawyer, are you a deal-killer or a deal-maker? What does your client want you to be?

Negotiation is an adventure. The journey can be unpredictable. You must be prepared to go off the course you planned. There are many roads to "Yes."

## Sotomayor Law

Rande S. Sotomayor, Esq.

466 Foothill Blvd., #162 | La Cañada, CA 91011

Phone: 626-791-5519 | Fax: 626-794-3789 | Mobile: 626-616-5843

E-mail: [Rande@SotomayorLaw.com](mailto:Rande@SotomayorLaw.com) | Website: [www.SotomayorLaw.com](http://www.SotomayorLaw.com)