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Post-Lecture Discussion

SPEAKER: ROGER FISHER
MODERATOR: BARBARA J. FICK
SPEECH: "COPING WITH CONFLICT:
WHAT KIND OF THEORY MIGHT HELP?"
DATE: FEBRUARY 21, 1992

Professor Fick: [Professor, Notre Dame Law School.]
Any questions for Professor Fisher?

Participant: At some point the substantive dimension becomes important. We can all feel good three months from now about a congressional, business, or multi-national agreement on the ozone. But we'll feel better about it if, in fact, we take action to close it. So at what point does the issue of substantive expertise, that is, that some solutions are better than others, because of certain scientific findings, play into this process?

Professor Fisher: It's a process question. That is, when and how do you have experts on tap and not on top? How do you bring them in? How do you have them work?

I would frequently use the single negotiating textbook process. If I'm going around with a draft, and I say that I'm not offering this, I'm not proposing it yet, but tell me what's wrong with this. I want experts to tell me what's wrong; I want experts to tell me the risks, clarify the choices. It's likely to enter an interim agreement if they do more research, whether it's breast implants or the ozone layer. Do something and then we'll do work on further data. We want to be able to deal with the on-going uncertainties, decisions under risk. That's bringing them in. That's designing a process for experts. That's not just asking the experts to produce their judgment that [an action is, for example,] sixty percent dangerous. What danger? What choice? Let's get some action paper that somebody can order, sign, vote, do something that takes account of that risk.

So I find that as a mediator, I use a one-text procedure. There's a danger if I come and I say, I've got a proposal—this is the way Secretary Haig did it. He said, "I have a draft; Is this good enough?" And the implicit question is: Or would you rather have

something better? There's only one answer to that question: I'd rather have something better. If you keep coming up with a draft, you've got to keep saying: Is this good enough? Or: Would you rather have something better? There is only one answer to that question. So you have to have a way of saying: I'm thinking of making a proposal. What's wrong with this draft? What interest of yours does it not take adequately into account, recognizing the interests of others? That's the Camp David process. You go round and round, twenty-three drafts; no one made a proposal. When it went through the process, [Menachim] Begin, [former prime minister of Israel,] said, "I'll accept Clause IV." They said, "We're not offering Clause IV; we're still drafting." Just like an architect who has a plan, you can't say I accept the front hall, while the whole thing is being worked on. So round and round and round. Finally, on Sunday morning, it's all been printed; it's final; it's the proposal. Yes or no? And then the choice is not would I rather have something better. The choice is whether I would rather have this or disagreement, disaster, nightmaré, whatever it might be. And it's in this process that I would bring the substantive experts in.

Participant: How do you convince people that process is important, particularly in the academic setting?

Professor Fisher: It's doing it. The best way to do that is to not even argue that process is important. Simply have the process very clearly in your mind. For example, let's say you're working out the Peace Studies curriculum, course offerings, and credit arrangements for next year. You go around saying, "I've got a rough draft. Before our committee makes a suggestion, I'd like your input. I'd like your input on that." Go around with half a dozen drafts. "No commitment yet. I don't want you committing to no or yes. I just want the best advice I can." When they discover that you have next year's thing all worked out happily, they may notice that process is important. But operate on the assumption that you're right and discuss the next question.

I used to debate people. I'd say, you know, I'm thinking of training diplomats jointly, from different countries at the same time. They would say that it would never work. The Russians, you can't trust them; the Germans this, the Frenchmen that. Finally, I said, hell with that. I'm doing a seminar in Salzburg this summer. I've got a lot of diplomats coming together. What should I teach

them? They all said, well, you'll want to teach them about this and teach them about that. They all accept the premise and go on to the next discussion.

In discussing with the German Minister of Foreign Affairs, I said, "If we ran a joint seminar, how would you pick the diplomats from other countries, and what would the content be, and would you be worried about classified information?" He said, "No, classified information would be no problem. We'll take one each from the other countries" And I said, "For five years now we've been doing joint training at the Diplomatic Academy in Bonn for the Federal Republic of Germany in which typically twenty German diplomats and twenty diplomats from other countries: Greek, Spanish, Russian, American, one from each. And every negotiation is an international negotiation, every simulation, every day of the five-day workshop. And it takes about two to three days before some German ambassador says, 'Oh, you're not the enemy; you and I are fellow professionals. We've got to come up with something that you can sell your government and I can sell mine. In fact, we are co-mediators between our two governments, aren't we? Our job is to craft something we each can sell our two governments. Oh, that's what negotiators are. Of course our governments disagree; that's why they need professionals like us.'"

So I would never argue process. I never try to get people to accept the process. I never get people convinced that process is important, I just do it. I just run the process.

At one time [Jack] Matlock, [former U.S. Ambassador to Moscow,] when he was working at the White House, and Soviet Ambassador [Anatoly] Dobrynin was leaving, there was a misunderstanding. I had lunch with Jack Matlock, and I had dinner with Oleg Sokolov of the Soviet Embassy. They were out of phase with one another. Each one was waiting for the other one to make a response. I didn't say process was important. I invited them to dinner. I invited the two of them to come to dinner. They came to dinner. Why not? It was a small dinner. And they talked from seven o'clock till midnight. And about three months later, I called up the White House and I said, "Would you ask Ambassador Matlock if he wants to come to a dinner like the kind we had in May?" And the next day, I got a funny phone call from his secretary. She said, "Mr. Fisher, Ambassador Matlock came to me this morning and asked me to call you about a dinner invitation you left here yesterday. And I have nothing on my calendar. And I

asked him what night it was to be, and he said to tell Professor Fisher, any night." They both came together like that.

But I don't say that the process is important. Don't argue the process; just use the process.

Professor Attanasio: [John Attanasio, Director of the Hesburgh International Institute for Peace Studies and Professor, Notre Dame Law School.]

What are your reflections on venue? How do you see the current Arab-Israeli negotiations, where venue has been a very hot issue? What are the advantages of different venues? What about that process question?

Professor Fisher: In general, I think venue is not important except for security, physical facilities, logistical problems, and travel. Can they come? Are they safe? Are they away from the telephone in a place where people feel comfortable?

I think in the current talks that venue is being used to divert attention away from the main topics. In the current talks, I think both sides are playing to public opinion. Neither the Israelis nor the Palestinians, or anybody else in the Middle East, is producing the kind of agreement that you can expect them to accept. That is, the Israelis have never, since 1945, produced an official proposal—for good reason—a substantive proposal map of Israel. Because there are those that want a big Israel, those that want a democratic Israel, and those that want an overwhelmingly Jewish Israel. Well, if Israel is big and democratic, it's no longer overwhelmingly Jewish. If it's big and Jewish, it's not democratic. If it's Jewish and democratic, it's not very big. And anyone who puts a proposal on the table will lose the constituency immediately in Israel, only to be greeted by the Palestinian response: "If that's your opening proposal, let's negotiate." And they will be out of office. The same is comparably true on the Palestinian side. The partition plan had to be drafted by others.

U.N. Resolution 242 had to be drafted by others. Camp David had to be drafted by others. There is no chance that the parties at these talks will draft an agreement that they can sign. They can't do it politically. They can't do it.

Further, I think the Palestinians should be working on their alternative agreement. My surmise is that [Yitzhak] Shamir, [former prime minister of Israel,] doesn't want an agreement. He wants to placate American public opinion long enough to keep

changing the facts and just preclude an agreement from coming around. He'd rather have an adversary and keep the territories and go on than have a peace agreement. That's my perception. If that's true, the Palestinians had better prepare a draft of what they're going to do, or have somebody prepare it. My current suggestion would be the French or the Egyptians or somebody should come into the Security Council and say, "Here's a long resolution. We propose that you admit Palestine as a separate member to the U.N., provided it accepts the following forty-two conditions: open, unarmed, unlimited verification, no troops, no military force, no tanks, that Israeli inspectors can seize suspected contraband, litigate later, whatever it is." Meet the Palestinian interest—a homeland, a flag, and a place they belong—and the Israeli interest of security. And say that unless the Israelis come up with something better, I urge you to admit Palestine as a separate member of the U.N. That's their best alternative in negotiations. But somebody else has to do it. They can't draft that.

I think venue is grossly exaggerated.

Participant: One of the things that's in the deep background of many conflicts that require negotiation is a perception that you must negotiate from strength. How do you deal with this? The people don't want to negotiate until they are in a position to get a deal they feel is more favorable to them. Often negotiations aren't possible until someone feels they're going to win.

How do you approach that problem?

Professor Fisher: There are lots of situations where the best advice in the world is not going to produce the result. I may be a great negotiator, but if I go down and say that I want to buy the White House, they'll say that it's not for sale. Or if you go into an antique store in Washington or Boston and say that I'm very desirous of a solid sterling Paul Revere bowl, made by Paul himself. And I go down and say, "I'm a great negotiator; let's negotiate." I put my wallet on the table. And they say, "Mr. Fisher, the Fine Arts Museum has offered us a million dollars for that bowl. Our bid is better than yours. We're going to walk away unless you come up with something." I may have some options. I may ask if I can take a picture of the bowl, can I get a duplicate made from it. I may ask if I can rent it fully insured for a day to impress my friends. I may have some options that meet some of my interests, but there's no chance of getting what I want.

There's only one office, a corner office, and two faculty members want it. Unless one is willing to work in the day and the other at night, you'll have a hard time solving that problem. So I would say in any conflict I think I can get people to do better. I'm upset that so much of the world thinks that negotiation is a sign of weakness, for giving in. George Bush said he would not negotiate with Iraq, not negotiate with terrorists. Me, subject to reasonable arrangements of personal security, I'll negotiate with any terrorist. I'm more likely to persuade them than they are to persuade me.

Negotiation doesn't mean giving in. If I don't negotiate, all I've got is my military/economic hand and my political hand is tied behind my back. I don't want to preclude myself from using all the powers of persuasion, listening, understanding what they care about, as well as any other stuff I happen to have in terms of military/economic power. So I feel I'm always stronger if I can listen to you, understand you, if I can be creative in inventing ways of meeting your concerns.

In the real world, there is never a zero-sum situation. Never. Now there are zero-sum aspects: a dollar more for you, a dollar less for me. But in the real world, it's always possible for both parties to lose. I can never be sure that loss for you is an equal gain for me, or vice versa. Or if I lose, you get equal benefit. We always have a shared interest in not blowing ourselves up. We have all sorts of shared interests. The question is: by talking, listening, and creatively understanding and working together, can we craft something—it may not be perfect—but can we craft something better than we can without talking, without listening, without working together?

In World War II, there were negotiations going on about the treatment of prisoners of war. I was in the Air Force. We did some negotiations with Japan. I was talking about this last night with some students. The weather plane would not drop bombs, and we worked out a tacit arrangement that they would not attack the weather plane. In the Atlantic, we broadcast weather from Coast Guard ships in a codebook the Nazi's had captured so they wouldn't sink the boat—tacit negotiations, shared interest. We would rather you not sink the boat, and we both get the weather.

So I'm always impressed with the potential. Let me do one quick exercise. This is an exercise to remind you of something that you may remember later. This is called the arm exercise.

Would you pair up? What we will do, I'll put my elbow on the table, and you put your arm up the same way. Now, listen very carefully to the instructions. Don't break anybody's arm. Listen very carefully. I get a point every time the back of his hand is down, and he gets a point every time the back of my hand is down. I'm totally selfish. You are concerned only with the number of points you yourself get. You're wholly indifferent as to whether the other side gets any points or not. You have twenty seconds. No talking. Let's see how many points you can get. On your mark. Go.

Stop. Some of you got less than two, less than one. How many did you get? One each. None. Zero. You got twenty each. Those of you who got less than two or three were making a classic mistake of assuming an adversarial situation. You were assuming that what was good for the other side is bad for you. Those who flip-flopped their arms back and forth realized that the best way to satisfy my own interest is to satisfy the interest of the other party and that I have an interest in the other side being satisfied because that way they'll go along with me and I'll get more points. I told you that you were wholly indifferent to how many points the other side got, and yet some of you struggled. This group is better than many. I've gone with 150 business people and have one pair who went back and forth.

The assumption that if we're dealing with a situation where our interests differ, that that's just kind of a tough adversarial situation and what are we going to do about it. It's deeply held. There's a sports metaphor for this.

In dealing with conflict, some people say, how should I deal with that conflict? My question first comes if two people come to me. Let's say a husband and wife have decided on divorce, and they come to me and they say, Roger, we have kids, a house, not enough money, but we've really got to split. How do we negotiate the terms of this divorce? We don't want to pay lawyers to litigate this thing. What is the process we go through? I give them the best advice I can. They leave. The wife sneaks back in and says, now, Roger, really, what should I do? Would I change my advice at all? I might be able to help her on how to use my advice: know your interests very clearly, work out some options. But I would have told both of them the same thing.

We have such a shared interest in dealing with our differences skillfully. But I don't believe I have to change my advice one whit, keeping it from one side or the other. I can tell people how

to deal with their conflict whether I am coaching the government or the A.N.C. They both know I'm giving the same workshop. I was very pleased when [Nelson] Mandela came in at the end and I said, "You know, I'm teaching the government too." Just like that he said, "Great, they need it even worse than we do."

But it is that sense that there are neutral skills, neutral processes, neutral techniques by which we can do it. And that's where we thinkers and those of us who have time to think are not overwhelmed with problems can have a lot to contribute to where we're going.

Professor Fick: Thank you.