



SETTLE FOR MORE OR LESS NEGOTIATION

Teaching Note

Settle for More or Less is a two-party, primarily distributive negotiation simulation. Each party's confidential information is short – two pages or two sides of a single sheet. It can easily be negotiated in 30 minutes. Many groups will finish in 20 minutes or less.

The debrief takes between 40 minutes and an hour or more, especially when using this case to introduce key concepts, terminology, and prescriptions for claiming value in distributive negotiations. In a three-hour class block on distributive negotiation, I often pair it with another distributive simulation called *Marking the Trail*. Additional comments on working with both cases in the same class are offered in later portions of this teaching note.

Written in the early 2000s, this simulation has since been used countless times in my negotiation courses and professional workshops. It has never failed to generate a wide distribution of dollar value results and thus can be counted upon to demonstrate effective and ineffective distributive negotiation strategies, including the power of anchoring. It reliably demonstrates that our own unfortunate BATNA and reservation values shouldn't influence our aspirations and that our assumptions shouldn't predetermine our analysis of the other side's reservation values. Its inclusion of external dollar value reference points as objective criteria teaches how these can be useful but needn't dictate a result. Real information about the other side's circumstances is critical for insight into what their BATNA and thus the ZOPA might be.

While I use the case to highlight and teach distributive negotiation strategies, it does offer opportunities to explore integrative terms, discuss how emotions and relationships can both impact and be affected by negotiation approach or style, and how the terms of an agreement might hold meaning for the parties.

Basic facts and structure

Quality Quarry is seeking to quarry limestone on a large parcel adjacent to the Branams' 100-acre property, where their home and one of their farmstands are located. The Branams have filed suit to block the quarrying permit. Quality Quarry's representative has contacted the Branams to invite them to negotiate a resolution to the litigation and/or a sale of their land. The negotiators should quickly realize that their task is to negotiate the price for the purchase and sale of the property as well as a release of all claims. As a practical matter, once the Quarry owns the property, the filed permit objection would be moot.

The problem is set up as primarily distributive, with a ZOPA (Zone of Possible Agreement) as large as the side of the proverbial barn: \$200,000 - \$850,000+.

Branam's BATNA (based on a real estate agent's advice) is to try to sell later for an estimated value of \$200,000 (if the Quarry operates next door). Thus, their reservation



value could be as low as \$200,000. However, the simulation also references other higher-value numbers with persuasive power as theoretical “objective criteria.” This is not about a long-term relationship: Branam's information reveals they seek to move out of the town. Of course, they want as high a price as possible. While that is often true, the Branams’ financial business circumstances provide strong motivation for claiming high value.

The Quarry’s instructions authorize paying \$850,000 *or more* for the Branam property. The \$850,000 can be thought of as the minimum calculated cost of their BATNA, without including delay costs while the project is held up. The quarry estimates profits of \$200,000 from limestone on the Barman land. Additional value comes from the Branam property’s access to Corina Road, calculated as \$200,000 in savings in required road improvements and \$200,000 in reduced hauling costs. All that yields \$600,000 in value. The legal fees and costs of continued litigation are estimated to be \$250,000. That’s how the BATNA - not purchasing the Branams property and continuing to litigate - calculates to \$850,000 even without valuing the cost of delay.

Teaching process

I introduce this case early in my negotiation course – typically in the second week. Students are asked to read the fact pattern and prepare to negotiate outside of class. I pair the case with readings about distributive negotiation. However, in workshop settings, I have also just handed it out to participants, given them ten or fifteen minutes to read and get ready, and had them negotiate it on the spot.

In a classroom context, I always assign the roles in advance. If I’ve assigned pairings in advance too, I put the project pairings on a PowerPoint and display them as a reminder. If not, then I ask all students in one role to stand up and select their negotiation counterpart from among those still seated (and thus in the other role). However, I instruct them NOT to select the person sitting next to them, their roommate, their best friend, fiancée, and the like. The point is to be paired with someone you don’t already know too well.

Before the negotiations begin, I emphasize that their goal is to get the best deal they can - cash only, to be paid at the time of an agreement - that their results will be compared.

As indicated above, it usually takes 20-30 minutes. You can squeeze it in 20 minutes if need be. Occasionally, a group finishes in no time – when one student starts by putting out an offer or demand within the ZOPA, and the other student just says yes to avoid conflict. When that happens, I suggest they read each other’s facts and then discuss what they missed, what influenced them, and what would have improved each party’s results. I sometimes suggest considering how they might have negotiated with perfect information.

Collecting results

I generally have a PowerPoint with blank columns for paired roles of Branam and Quality Quarry. I ask students to come up and report their names and results as soon as they finish.



If you assigned the pairings in advance, you could put their names into the paired Branam or Quarry columns before class. Do turn projection off and ask them to whisper so that students who are still negotiating won't see or hear others' results. Often, I will not have collected all the results before all students have finished. I'd rather not make half the class wait for me to get through the line of students at the front of the room. It's better to put up the PowerPoint with partial results, and then read the names of missing pairs and have them shout out their deals as you fill in the rest of the chart. It makes for some suspense, murmurs, groans, and chuckles.

Note: as mentioned earlier, in a three-hour class session, I also have the students negotiate *Marking the Trail*, another essentially distributive negotiation. I get the results up from *Settle for More or Less* and ask just a question or two about what the students think accounts for the range of results. I suggest students take five or ten minutes to refresh their recollections of their roles in *Marking the Trail* and perhaps rethink their strategies in light of their *Settle for More or Less* experience. I then put up the pairings for *Marking the Trail* and give the students approximately 30 minutes to negotiate. Finally, I collect and put up the *Marking the Trail* results. The debriefing is as described below, but it's done in parallel, referencing ZOPAs, anchoring, patterns of bargaining, power of information, etc. in both cases as we go. When doing the pairings, whoever was a "payor" in *Settle for More or Less* – the Quarry – becomes the "payee" in the *Marking the Trail* case, and vice versa.

The debriefing is fairly straightforward. First, I comment on the range and assure them all Branam and all Quality Quarry role-players had the same information. I might ask a general question about theories for what caused the ranges. I will turn to the groups with deals at the highest and lowest values and ask who put the first serious number on the table. Sometimes, I'll draw attention to the group with the highest number, and say "I'm going out on a limb here, but did Mr. or Ms. Branam put out the first number? What was it?" Often, their answer is yes, and Branam started at around one million dollars or more. On the low-end deals, I'll ask if Quality Quarry put out the first number. If so, the number tends to have been \$250,000 or \$300,000 or so.

That demonstrates anchoring, of course. And I'll ask the negotiators who started with the effective or strong anchor to explain how and why they decided to do so.

When the answer to my "out on a limb" question is no – the high-value deal wasn't prompted by Branam's high first number – I'll ask what did happen. Almost inevitably, one party started with a number that was unexpectedly beneficial to the other side. Either it was accepted or bargaining then occurred in a narrow range. For example, the Branams began by asking for \$450,000 for their property, and Quality Quarry accepted or negotiated them down to \$400,000. Or Quality Quarry started by offering \$750,000 or \$800,000 for the Branam property and they accepted or negotiated the final number up just a bit.

Those results can be used to demonstrate how putting out the first number risks cutting off the end of the bargaining range that would have been favorable.



At this point, I step back and use the case to review and apply essential ideas and terminology. What's the ZOPA? What are the parties' respective BATNAs? What are their Reservation Prices – or Reservation Values? Why? What is or what should be the relationship between a BATNA and a Reservation Price? What does it mean to say a negotiation is purely or mostly distributive, or zero-sum? What are the characteristics and examples of a purely distributive negotiation?

At some point, I'll ask: "So, is it wise to be the one who puts the first serious number on the table." We review the pros and cons. Hopefully, we elicit the wisdom that a strong first offer acts as a powerful anchor. An effective anchor is not too far from (somewhat beyond) an educated estimate of the other side's BATNA and Reservation Price.

The challenge then, is how to get to an educated estimate of the other side's BATNA and RP. The answer is a combination of perspective, curiosity, and information. Your BATNA and potentially bad facts tell you what you must accept if you can negotiate nothing better. But that should not diminish efforts to think about what the situation looks like for the side. How desperate are they? What value does this deal hold for them? What will happen to them if no deal is reached?

Using *Settle for More or Less*, the Branams should start thinking about what will happen for the Quarry if they can't buy the property. What would they have used it for? What will Corina Road access mean for them? The Quarry's business is extracting limestone; how much limestone might be on the property? If the Branams have the power to delay the permit through litigation- even if winning is unlikely- what will that cost the Quarry? If this were real, the Branams (and their lawyer) might do some research about quarry operations, hauling, and other similar operations. With or without the opportunity for substantial research, by thinking from their perspective, you can formulate a hypothesis about how Quality Quarry might value this deal.

Even without that, the Branams should surely and skillfully seek information at the beginning of the negotiation. Somewhere, I read an article titled "Make the first offer but not at first." Endless gratitude to anyone who can locate that article; I have tried and failed. The title contains the takeaway. Take time to learn before mentioning any numbers.

I can't help but add that a little trick is to articulate your hypotheses in initial discussions, not aggressively, but with curiosity (and charm). So, the Branams might say: "We were looking at the map, and we know that our property gives you access to Corina Road. Am I wrong that this would be a benefit as it would shorten the Quarry's hauling distances for those heavy trucks?" Or "if you've located limestone on the parcel Quality Quarry has already bought, then there must be some on our land too?" In my experience, that makes the Quarry think you know more than you do, and they'll be inclined to confirm your hypotheses to the extent accurate. Or they will hem and haw, or evade, which tells you quite a bit. If your hypotheses missed the mark, the Quarry would surely tell you. Of course, the same strategic advice applies to the Quarry and hypotheses coupled with curiosity about the Branams.



Only after a negotiator has some sense of the other party's BATNA should they put a first number on the table. Also based on my experience, a best practice is to take a break after the initial discussion phase and spend time processing what they learned before deciding on a first number. Too often, I've watched students come into negotiation with an opening number in mind, learn important information about the other side in the initial discussion, and then fail to reassess and revise their planned opening offer. Take a break to think and process what you learn!

The takeaway is to anchor with a first number *unless you are completely clueless* about the value the deal might hold for the other side. If so, do let them make the first move.

One concept I try to introduce every time I teach is "soft anchoring." It's the idea that you reference a very high or low number, without making it an offer or a demand. This is useful if you are uncertain about where to put the anchor – worried about undercutting, but also worried about closing the negotiation down and losing credibility if your anchor is too far off. So, if you were Branam, you could say: "I heard from my cousin in Illinois that farmers were getting as much as \$40,000 an acre from some mining company – he sold his 100-acre farm for \$4 million." (Let's assume this is true.) If \$4 million is an overshoot, and the Quarry representatives say, "Whoa, that is far away from our ballpark," Branam can walk it back and say, "Well I guess you are telling me Illinois is different, or maybe they were mining something else." If the Quarry representative doesn't seem too shocked, even if they're not happy, Branam has learned something.

Soft anchoring is very helpful when you are negotiating within the context of a relationship. It's less aggressive and feels less greedy. I always use the example of my brother-in-law, a rabbi in California who periodically must negotiate his contract terms with the synagogue board chair. He needs to make a living; California is expensive- kids have braces, college tuition, and all of that. But the rabbi is clergy... he leads services and has a trust relationship. Soft anchoring is my advice. (I don't know if my brother-in-law takes it.) He could say, in preparing for this meeting, I did some research, and it seems that senior rabbis' compensation in some congregations is as high as \$X, or \$Y. Of course, I know those congregations are very wealthy, I'm not asking for that much here...."

Research (I wish I could cite it, but I can't) suggests that the number used as a soft anchor has the same anchoring impact as a number stated as an offer or a demand. Students very much appreciate the soft anchoring advice and often apply it as the course proceeds.

After focusing strictly on distributive negotiation concepts and strategies, I'll broaden the debriefing to include more general observations about style, reaction, and whatever the students identify as interesting or significant.

Concerning style: there's often discussion of aggressive or tight-lipped styles vs. friendly and conversational, with the punchline that friendly and conversational is best whether your goals are to claim value or to create it. Even if your goal is to claim as much of the



ZOPA as possible, making the other side feel comfortable is strategic, as they are more likely to give away information and make concessions.

Discussion often moves to the entire question of information: can you divulge information in a distributive negotiation? Information is power, as the saying goes, so why give much information to the other side? That makes sense, except that if you give away very little, the other side is likely to do the same thing. And you do want information from them.

The solution is to think carefully (preferably in advance) about what information you can divulge without weakening your bargaining position – without revealing how much you need an agreement or a particular term. Part of strategic preparation is anticipating what questions the other side is likely to ask and considering how to frame a response in a way that won't be harmful to your interests.

Related to framing is an idea that I believe is valuable even if we don't reach it every time. I think that if you frame your reasons for wanting more or paying less in ways that are emotional, and not greedy, it's helpful. And your reasoning is less likely to be questioned if it's consistent with an expected or common narrative. Using Quality Quarry and the Branams as an example, the Branams might frame their resistance to selling around the "family farm" narrative. "The land has been in our family for generations.... we feel bad about giving it up. It's worth more to us than some business per acre price.... We have roots here." So, one might ask why they are interested in selling at all. "With a quarry there, it won't have the same rural country feel. And at \$X [high] price, we can't ignore our family's future." Framing resistance and a high price around "the family" farm won't surprise the Quarry, and it won't be as off-putting as saying, in essence: "You, Quality Quarry, need to save trucks and money and we want to take as much of the benefit from you as possible." At the end of the exercise, time permitting, we may raise some of the possible integrative terms that might be reached: catering or food contracts with the farmstand, assistance relocating, etc. That's a setup for the next week, which will focus on integrative negotiation – creating value.

I am pleased to note that my colleague and video collaborator Dwight Golann and I created a 20-minute video of two Cincinnati lawyers' negotiating the *Settle for More or Less* simulation. You can find it at <https://www.adrvideo.org/negotiation/>, accessible with the password: adrteacher. On the same website there are also three shorter videos drawn from *Settle for More or Less*. One consists of clips from the longer video but focuses just on an attorney's "stonewalling" and responses to it. A second consists of clips that focus on "exploring interests." The third video depicts one attorney reporting that their client has rejected the proposed deal and subsequent responses.

Note that *Altering the Terrain*, the other simulation in this suite requires integrative negotiation. It draws on the same basic background, but changes the BATNAs and the dollars, and articulated different interests. There's no ZOPA if the negotiators don't look at interests or integrative solutions.