Power Before Interests in Dispute System Design

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I. INTRODUCTION

The dispute system design ("DSD") literature argues that a focus on interests when developing a dispute system generally creates more value and produces fairer outcomes than a comparable focus on power.[1] This emphasis on interests leads scholars and practitioners to urge dispute system designers ("designers") to begin the DSD process by mapping the various interests of the major stakeholders as a first step toward creating a dispute system that satisfies the concerns of the stakeholders.[2] What the literature misses, however, is that certain stakeholders may not be amenable to an interests-based approach. Often, this reluctance stems from either a confidence that such stakeholder has the power to unilaterally implement a dispute system without consulting other stakeholders or from the belief that

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   1.   *See* WILLIAM L. URY ET AL., GETTING DISPUTES RESOLVED: DESIGNING SYSTEMS TO CUT THE COSTS OF CONFLICT 15 (1993).
   2.   *See generally* LAWRENCE E. SUSSKIND & JENNIFER THOMAS-LARMER, *Conducting a Conflict Assessment*, *in* THE CONSENSUS BUILDING HANDBOOK 99-136 (Lawrence Susskind et al. eds., 1999).

maintaining the particular stakeholder's power takes precedence over a dispute system that satisfies the needs of all concerned. In dealing with such situations, this paper argues that a designer may use the power dynamic of a client organization as a tool to move the reluctant stakeholder toward a position that makes possible the implementation of a design that it is fair and useful to all parties.

This paper, through a series of hypothetical situations geared toward designers hired to create dispute systems for organizations, demonstrates why a designer must begin the DSD process with an analysis of power and how that power dynamic may be shaped to allow an interests-based approach to be implemented. It also raises a number of ethical questions to be considered in so acting.

This paper does *not* challenge the premise that the best dispute systems are those that ultimately concentrate on interests; rather it argues that a designer working for an organization must first understand the unique internal balance of power of the organization before thinking about interests. Without mapping the underlying balance of power, and learning how to manage it, an interests-based approach will be more difficult to implement.

II.   Why Start with Power?

A.   *Interests vs. Power*

In order to discuss whether designers should begin the design process with an analysis of interests or power, one must first understand what is meant by those terms.

In *Getting to Yes*, the authors define "interests" as the desires and concerns that motivate people. Interests are "the silent movers behind the hubbub of positions."[3] "Your position is something you have decided upon. Your interests are what caused you to so decide."[4] For instance, one might say "I want cake." That is a position. The interests that motivate that position could be many. You might want to satisfy your hunger, gain weight for the upcoming wrestling season, or you might want the cake so that I cannot have it.

"Power," on the other hand, may be defined as "the ability to coerce someone to do something he would not otherwise do."[5] The use of power may be illustrated by the typical parent-child relationship. For instance, a father may want to stop his young son from eating a

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3.   *See* William L. Ury et al., Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict 15 (1993).

4.   *Id.*

5.   Ury et al., *supra* note 1, at 7.

piece of cake. The father does not need to appeal to interests. If his son asks why, he may simply reply: "because I'm your father and I said so." His status as parent allows him to coerce the son into performing an action he would not otherwise do, all other things being equal.[6]

B. *Interests Within the Client Organization*

As discussed above, this paper is geared toward designers hired to create dispute systems for organizations. Most designers probably recognize that an organization is not a single entity with a single set of interests, but rather it is an entity made up of groups of supporting and competing stakeholders. For the sake of simplicity, one can divide an organization into two interests groups: 1) the management that runs the organization and 2) the employees who carry out the strategy of the management.

These two groups share a variety of supporting interests. For instance, both groups have an interest in the success of the organization. Both group's livelihoods depend on the organization prospering and surviving. In addition, both groups may desire that the organization develop a positive reputation. For management, running a respected organization increases its prestige among its peers. For employees, working for a respected organization provides both a sense of accomplishment and makes such employees more attractive to other employers should they wish to change jobs in the future.

While a number of each group's interests support one another, there are competing interests as well. For example, if an organization is a corporation, management will have an interest in satisfying shareholders' demands. In order to do so, management may take certain actions that employees do not support, such as emphasizing the importance of reducing labor costs. On the employees' side, the employees may have an interest in supporting their local union. Even if employees have a good relationship with management, employees may participate in actions that harm management such as striking. The DSD literature recognizes that different stakeholders have different interests and attempts to create dispute systems that reduce conflict by accounting for the interests of the various stakeholders.

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6. It is important to note that some in the DSD field believe power is "all a matter of perception." Roger Fisher, *Negotiating Power: Getting and Using Influence*, 27 AMERICAN BEHAVIORAL SCIENTIST 149, 150 (1983). While one may create the illusion of power, for the purposes of this paper "'real' negotiating power [is] an ability to influence the decisions of others assuming they know the truth [regarding a party's actual level of power]." Fisher, *supra*, at 150.

Although the DSD literature correctly recognizes that different stakeholders have different interests, it fails to emphasize that different stakeholders have different types of power as well. This failure creates an implicit assumption that management is the only stakeholder group whose power matters in the organization. The reason for this lies with the fact that management is the only stakeholder group in an organization with the power to implement the designer's system.

To understand how this dynamic practically functions, consider the following hypothetical. Acme Automotive hires me to create a dispute system for handling sexual harassment claims. Having been immersed in the world of alternative dispute resolution ("ADR"), I decide to begin my design process by focusing on interests. In order to do this, I interview the major stakeholders to determine each group's interests with respect to a sexual harassment system. Based on those interviews, I design a system that fulfills the groups' different interests and, ideally, creates value for all involved.

This system, however, is an abstract plan. To make it a reality, management must set aside resources for hiring skilled individuals to run the system, reorganize office space to facilitate its implementation, and train employees in the operation of the system. As the designer, I cannot access those resources. I must persuade someone with the appropriate authority within the client organization to provide the means for building my system.

This dependence on authority, then, creates an important problem for the designer. The designer seeks to incorporate the interests of all major stakeholders in order to create an effective dispute system for the client organization. One stakeholder, however, has power over the resources for implementing any dispute system. The conventional wisdom suggests that a skillful designer persuades management to use consensus-building by making the case that if management leaves power behind and adopts a new set of ground rules, it may better satisfy its interests and the interests of the organization.[7] This view, then, may be summarized as follows: (1) management has the power to implement the design; (2) management's main

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7.   Cathy A. Costantino & Christina Sickles Merchant, Designing Conflict Management Systems: A Guide to Creating Productive and Healthy Organizations 204 (1993).

priority will be implementing a dispute system that solves the appropriate dispute; (3) an interests-based approach leads to the best outcome; (4) therefore, management will use an interests-based approach in choosing a dispute system.

C. *Power Within the Client Organization*

This characterization, however, fails to account for two foreseeable situations. First, management may feel it has enough power to implement unilaterally a dispute system and that unilateral implementation will prove more efficient. Such an intuition does not seem farfetched. Returning to the hypothetical discussed above, I may approach Acme Automotive's management with two approaches to designing a dispute system to handle sexual harassment claims. In an interest-based approach, I would interview management and the other stakeholder groups. I would work on a system that accounts for each stakeholder's interests. Should the stakeholder groups disagree over the details of the system, I would need to bring the groups together to negotiate the details of the final system. This process could take an extended period of time and effort. Compare that approach with a power-based approach in which I may simply discuss sexual harassment systems I designed in similar settings in the past, give the pros and cons of those systems and allow management to unilaterally select the system it would like to see implemented. Even if the DSD literature suggests that an interests-based approach produces better outcomes and reduces future problems in the long-term, management may feel such long-term gains do not outweigh short-term costs or that any problems that arise later could be dealt with at that time.

The second problematic situation for the conventional wisdom that management will choose an interests-based approach because it leads to better outcomes is that management may prefer maintaining power. In some cases, management may want power for power's sake. As Cathy A. Costantino and Christina Sickles Merchant write:

> [H]aving power . . . is important to many organizational players . . . . ADR can literally take the fun out of the dispute resolution game for some who value the rush of the fight or winning the prize. ADR can thus be seen by some as a disempowering event, particularly those who like to be in control of conflict.[8]

In most cases, however, the desire to maintain power stems from the apprehension and uncertainty management may feel over ceding

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8. *See id.* at 205.

control. If employees gain a voice, management may believe its own authority to establish, implement, and direct organizational desires will be weakened. This concern over losing its position of leadership may make management resist the idea of compromise. In these situations, where the primary goal may not be the satisfactory resolution of disputes, simply touting the advantages of an interests-based approach may not be enough to get management to embrace consensus-building.

D. *Leveling the Playing Field*

As the two situations above illustrate, a key impediment to an interests-based approach is management's perception that it enjoys a significant power advantage over other stakeholders. If a designer hopes to persuade management to abandon that frame of mind and, in so doing, to allow the designer to create a dispute system that accounts for various stakeholders' interests and ultimately delivers a satisfactory outcome for the client organization, the designer must find some way to convince management that its perception of the organization is incorrect. From the foregoing analysis, one sees that, realistically, management's unique power lies in its ability to implement the overall design. The DSD community, however, should be wary of overestimating this power.

Those sources of power that other stakeholders possess are numerous even though they may not be apparent from an examination of the *formal* power structure of a company. For example, an employee who does not approve of management's actions may quit, depriving the organization of that individual's talents and imposing the costs of finding a replacement. Or, the employee may perform her job at a slower rate than usual or commit an act of sabotage. Either action may be taken unilaterally and levels a cost on management. Moreover, an employee may turn to a third party, such as a union or trade organization, to equalize power at the bargaining table (an approach relying on "strength in numbers"). Still other forms of power include appealing to the press which would bring unwelcome publicity to the company, or seeking legal redress if an employer fails to provide an adequate remedy.

Interestingly, the fact that employees have power makes the interests-based approach *more* likely to succeed. This is what William

Ury refers to as the "power paradox."[9] The power paradox theory argues that power imbalances make negotiations more difficult. If the balance is skewed, the more powerful party feels less of a need to compromise. The weaker party, on other hand, may resist bargaining with the stronger party because it does not want to bow to the other's power or because it is suspicious of the stronger party's intentions. On the other hand, when parties have more comparable levels of power, those impediments fall away. Compromise must be reached since neither party may act unilaterally. Likewise, neither party fears being abused by the other party since it has comparable force with which to meet that pressure.[10]

III.   SHAPING THE BALANCE OF POWER

In order to convince management to make interests-based negotiation possible, then, the skilled designer must find a way to reframe management's vision of its place within the prevailing power structure. The next part of this paper will deal with ways a designer may shape the balance of power to make implementing an interests-based dispute system possible.

A.   *Appeals to Pragmatism*

The conventional approach to DSD implicitly recognizes balance of power issues but does not seek to ply them in any significant way. Management is told that the use of an interests-based process will reduce transaction costs, increase party satisfaction with outcomes, improve relationships among the stakeholders, and lower the recurrence of disputes within the organization.[11] Such an appeal persuades management that it is in its *best interest* to focus on other stakeholders' interests rather than relying only on its power. In this approach, the designer seeks to persuade management because the designer recognizes that management has the power to implement the system. The interests of the other stakeholders are discussed within the context of satisfying management's interests. The designer does not challenge the underlying power dynamics. Rather, management is made to realize that it will benefit by foregoing the use of power.

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    9.   Robert Adler & Elliot Silverstein, *When David Meets Goliath: Dealing with Power Differentials in Negotiations*, 5 Harv. Negot. L. Rev. 77 (2000).
    10.   *See id.*
    11.   URY ET AL., *supra* note 1, at 11-12.

B.   *Situation and Perception*

The problem with the conventional approach is that the designer may not be able convince management to dedicate the time and re- sources necessary for effective consensus-building. Faced with that situation, the conventional approach leaves three options for the de- signer: 1) continue arguing for the interests-based approach in hopes he will persuade management, 2) create a dispute system that meets management's interests but may not fully consider the interests of other stakeholders, or 3) quit. That said, if a designer performs an analysis of an organization's power dynamics at the beginning of the process, a fourth path exists; one in which the designer attempts to reshape management's perception of the power dynamic.

To a large extent power depends on a) the situation in which the parties find themselves[12] and b) the perceptions of the parties.[13] Thus, power is not an independent and absolute measure. X cannot be said to always be more powerful than Y because power is a dy- namic born of the situation in which parties find themselves and their perceptions of this situation. In order to illustrate this point, consider two men, Seymour and Magnus. Seymour is physically frag- ile but intelligent. Magnus is physically powerful but stupid. Based on that description alone, one may be tempted to say Magnus is more "powerful." Such reasoning, however, is ill-founded until it considers the situation in which the question is posed. If the two men were to have a fist fight, then, yes, we would say Magnus is more powerful. But what if they had to play chess? In that situation, Seymour would be more powerful. As the situation changes, then, so too does the power dynamic.

Likewise, perception influences how one views power. Let's re- turn to the example of a fist fight between Seymour and Magnus. It seems clear that both men would perceive Magnus as the more pow- erful party. Now, let's give Seymour a gun. What Magnus does not know is that the gun is not loaded. Absent perceptions, Magnus is still more powerful since he would win the fight. Magnus' perception that Seymour has a loaded gun, however, makes Seymour more pow- erful. By altering the parties' perceptions, the power dynamic shifts.

The importance of situation and perceptions means that design- ers may shape them in such a way as to make management more amenable to implementing an interests-based dispute system. To do so, the designer must understand the formal power dynamic in the

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12.   *See* Adler & Silverstein, *supra* note 9, at 10.
13.   *See id.* at 13.

status quo. The designer must learn: (a) who has formal control within the organization (e.g. who occupies which positions in the company's organizational chart), (b) about management's general interest in satisfying employee concerns, and (c) how the organization currently handles the type of conflict that the designer has been brought in to mitigate. Answering such questions gives the designer an approximation of the formal power structure.

Next, the designer should try to get a sense of the perception of power within the organization. For example, in our hypothetical situation involving Acme Automotive, let us imagine that Judy, who has one year of experience in the auto industry, takes over as CEO when her mother retires from that position. Sandy, who has held the position of CFO for ten years, is charged with handling the day-to-day operations of the company until Judy acquires the knowledge and experience necessary to run the company. In this case, the formal power structure indicates that Judy has power over the company's resources. However, members of the organization know that Sandy really runs the organization and will base their behavior on Sandy's actions rather than Judy's. If the designer does not analyze the power dynamic of the organization before beginning the design process, that designer might not realize that Sandy has the actual power within the organization. To make a legitimate proposal, Sandy must be consulted.

The perception of power farther down the rungs of the hierarchy could also be important to the designer's implementation. For instance, on paper it may seem as though a group of factory workers do not have much influence since they have been unable to unionize. As the designer talks with the workers, however, he may learn that they have not unionized because they have successfully leveraged management's fear of unionization into a series of satisfactory concessions. In this case, then, management perceives the workers to be quite powerful because management wants to keep unions from entering the picture. In thinking about what types of questions need to be answered, the designer should think about who is really in charge at the organization, whether management has concerns about employees reactions to new policies and directives, and how well current dispute resolutions mechanisms operate.

In general, designers should focus more on perceptions of power than formal power within a client company. First, in many ways, perceptions can be more useful than real power. In the case of CEO Judy and CFO Sandy, it does not matter that an organization chart states that Judy is Sandy's boss. The ultimate implementation of a dispute

system will depend on convincing Sandy that it is a good idea, not Judy. Second, a designer will have difficulty trying to alter the formal chains of command within an organization. When an organization engages in DSD, it hopes to solve a particular enduring conflict. Unless the problem is crippling to its operations, the company will not give the designer so much influence that he can rearrange the formal chains of command. Third, and connected with the other two points, it is easier for designers to tweak perceptions in order to accomplish the goal of implementing an interests-based dispute system.

Let us return to the sexual harassment example to illustrate how altering the situation and perceptions at the front end may make an organization more amenable to interests-based consensus-building in the long-run. Acme Automotive hires me to design a dispute system. I explain that studies suggest an interests-based approach reduces transaction costs, improves relationships, and lowers the risk of conflict recurrence. Management may acknowledge the research but remain reluctant to engage in consensus-building. Management will counter that the interests-based approach takes longer to put in place and is more costly than just implementing a system from the top down. In addition, it feels that its employees will not object to it creating the system; or, even if they do mind, they will not be so bothered as to challenge the system. Clearly, management feels it enjoys a superior position of power.[14]

If I want to move past this roadblock, I must change management's perception of the situation. Management may see the situation as a short-term problem of determining what kind of dispute system to implement. Due to this "error in focus,"[15] management may envision unilateral decision making as effectual. To change management's outlook, I could argue that the client company really faces a long-term challenge: to create a mechanism to adequately handle sexual harassment issues for years to come. I could strive to make management understand that forcing an outcome today may breed alienation and sow the seeds of dissension down the road.

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14.   Management may feel this way for any number of reasons. One reason may lie with cognitive biases in its thinking. For one, people tend to be overconfident in their judgment. Management may think it understands the company and "knows" that the employees will not get upset. *See* MAX H. BAZERMAN & KATIE SHONK, *The Decision Perspective in Negotiation*, *in* THE HANDBOOK OF DISPUTE RESOLUTION 56-57 (Michael L. Moffitt & Robert C. Bordone eds. 2005).

15.   The client's short-term view represents another kind of cognitive bias: an "error in focus." In this bias, the decision maker's focus is so narrow that she "attend[s] to only a portion of the available and relevant information." *Id.* at 61. This focus on immediate rather than long-term concerns is a frequent error in focus. *See id.*

Second, I could help management to see that its perception of power may not be justified. I could impress upon management that while it may have formal control within the confines of Acme Automotive, the employees have power that originates outside the company. For example, employees may turn to the court system or to the union for help. By drawing management's attention to the other stakeholders' power, management may more readily see the advantage of consensus-building.

One may argue that this approach seems analogous to convincing a client that it is in its interest to engage in consensus-building. There is a subtle difference, however, on a practical level in the way these approaches are communicated to the client. In a conventional, interests-first approach, the designer does not challenge management's belief that is the dominant stakeholder. The designer acknowledges that management could impose a unilateral solution or ignore the root cause of the dispute. The designer offers consensus building, not for the fact that it satisfies the interests of the major stakeholders, but for the fact that satisfying those interests is best for management. Thus, the designer allows management to feel that its best alternative to a negotiated agreement ("BATNA"), in this case a unilateral implementation of a dispute system, remains viable and legitimate.

When a designer begins with an analysis of power, the focus of the conversation with management shifts. The designer challenges management's belief that it is the only stakeholder with power and, in doing so, demonstrates the strength of the other stakeholders. Thus, unlike the interests-first approach which takes management's view of itself for granted, in a power-first analysis, the designer attempts to reframe management's perception of its dominance in the situation. This adjustment to management's perspective helps move management off its fixed position toward one of consensus-building. When management's focus shifts from its own dominance to the power held by the other stakeholders, management becomes aware of the potential undesired or damaging consequences that may arise if it chooses to act unilaterally. By challenging management's BATNA, the designer makes the unilateral approach seem less and less viable, making it more likely that management will follow an interests-based approach. The power-first approach relies on the definition of power above in that it gets management to take an action it might not otherwise do. When management recognizes that the other stakeholders have the capacity to negatively affect the outcomes management desires, management becomes more willing to reach an

agreement that satisfies all parties, something it might not have done when it felt secure in its dominant position.

C. *Divide and Conquer*

The last way to shape the power dynamic in order to accomplish consensus-building may be to engage in a game of "divide and conquer." Today's large companies have organization charts that look like upside down trees with multiple branches jutting out from the trunk. This means a Vice President for Marketing who has a great deal of influence within the company may have no control over the entry-level employee in Human Resources. Even though the Vice President has much formal power within the organization, her sphere of influence does not encompass the employee since the functions of marketing and human resources are kept distinct from one another. This separation of influence and control presents a path whereby the creative designer may use competing influences to accomplish his goals.

James Sebenius writes about "sequencing to exploit patterns of deference."[16] Sequencing is the idea that you may have no influence over Person 1 but have influence over Person 2. Person 2, in turn, may have influence over Person 1. In order for you to influence Person 1, you first speak with Person 2 in hopes of getting Person 2 to influence Person 1. Thus, you've "sequenced" your request (by asking Person 2 first) in order to exploit Person 2's influence over Person 1. Although this is a complex sounding idea, it is one that children seem to intuitively understand. For instance, say a child wants a cookie. The child may know that his father does not like him to snack between meals. Recognizing that his father will not give him the cookie, the child goes to his mother and asks for the cookie. The mother, who may not mind if the child has a cookie at that moment, tells him to ask his father for a cookie. When the child asks his father, his father says no. Then the child tells the father that the mother has said he can have one. The father, deferring to the child's mother, gives the child the cookie.[17] By approaching a party who is both more amenable to your request and who has control over the person you need to influence, you are able to achieve a goal that would not have been possible without that third-party intermediary.

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16. *See* JAMES K. SEBENIUS, *Sequencing to Build Coalitions: With Whom Should I Talk First*, *in* WISE CHOICES: DECISIONS, GAMES, AND NEGOTIATIONS 328-29 (Richard J. Zeckhauser et al. eds. 1996).

17. *Id.*

    To bring this idea back to DSD, let's return to Acme Automotive. Acme is a large company and designing a dispute system to handle sexual harassment claims may not be a high priority for everyone in the hierarchy. In fact, it may only be really meaningful to the individuals in Human Resources who will ultimately be held accountable for employee job satisfaction and the management of complaints. While it may make sense for me to work with Human Resources since we both share a similar purpose, it may also be problematic. Human Resources will be invested in the process and may have strong feelings about the ultimate path the process takes. Having developed an expertise in handling employee complaints, the staff may not want me telling it how to do its job. If I have to deal with Human Resources, I may face an uphill struggle in convincing it to use an interests-based approach.

    I, however, do not need to work for Human Resources. If I know that Human Resources stands in the way of an interests-based approach, I may be able to craft my initial contract such that I do not have to report to individuals who have the most invested in the success of the dispute system.[18] Instead, I may ask to report to the Vice President of Operations rather than Human Resources. This accomplishes two goals. First, it aligns me with a member of the organization who has the influence to marshal the organization's resources behind the design. Second, since evaluations of the Vice President's performance may depend more on car engines and auto part sales than on employee satisfaction, which dispute design approach is chosen is of little relevance to her. Consequently, she may be more amenable to my desire to use consensus-building than Human Resources. Thus, by understanding the power dynamic of a client organization, a designer may use the intricacies of the client's power structure to accomplish the desired outcome of a fair and effective design.

IV.   ETHICAL CONSIDERATIONS

    This paper details some ways in which designers may convince management to follow an interests-based approach to DSD. Some

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    18.   This idea of setting up the most promising negotiating situation before coming to the table is elaborated on in *3D Negotiation.* In the book the authors discuss creating an "all-party map." A negotiator must ensure that the map answers questions such as: are the highest value people involved? Are all of the potentially influential parties involved? Are there any potential spoilers with which to deal? Are there agents or representatives who may have the wrong incentives? *See* DAVID A. LAX & JAMES K. SEBENIUS, 3D NEGOTIATION: POWERFUL TOOLS TO CHANGE THE GAME IN YOUR MOST IMPORTANT DEALS 54 (Harvard Business School Press 2006).

techniques, such as persuading management that consensus-building is in its best interest, seem universally acceptable. Other techniques may seem a bit questionable. For instance, one may question the ethicality of challenging management's BATNA in order to get it to follow a designer's suggestions. A critic would argue that management hired and paid the designer and thus it is wrong for the designer to try to manipulate it. Such criticism seems well-placed and could convince some designers to avoid focusing on the internal balance of power in this way.

That said, there are a number of reasons to consider using the tactics outlined above. First, a designer must consider his own motives. The designer should only encourage an interests-based approach if he believes that it is in the client organization's best interest. It is not the designer's place to advocate for any particular stakeholder. For instance, the designer should not try to alter the balance of power in order to help factory workers at management's expense. Nor should it bolster management to the detriment of the employees. Rather, the designer should be an advocate for the interests of the client organization. From that perspective, the designer should use all tools available to him to establish a system that satisfies the interests of all or many of the parties and creates value for the organization as a whole.

Second, in following the suggestions in this paper, a designer will not mislead management into doing anything. When a designer attempts to put management's BATNA in perspective by correctly noting that employees *actually* have power, the designer does not misguide the client. Rather, based on that designer's expertise, he is pointing out a consideration that management may have underestimated in thinking about creating a dispute system. Also, when a designer contracts with less invested members of an organization, that designer does so out of a belief that the consensus-building approach will lead to a better outcome. By choosing with whom to contract, that designer attempts to ensure that the interests-based approach gets a fair hearing.

Third, and perhaps most importantly, the designer may alleviate these ethical concerns by being transparent with management. Instead of trying to pressure management into thinking a certain way by harshly criticizing its BATNA, the designer can calmly point out the perceived flaws in management's thinking. If I believe that imposing a sexual harassment dispute system without seeking the input of the other important stakeholders will lead to increased litigation, I can say so to management – and forcefully, if needed. If I

seek to contract with less-invested members of an organization, I may explain my motivations to that less-interested member. I may tell the Vice President of Operations that I did not go to Human Resources because I felt Human Resources is so invested in the process that it cannot give me the freedom necessary to effectively accomplish the organization's goals. In doing so, I leave the decision to the client organization. If the Vice President believes Human Resources should handle the system, she may say so. If the Vice President agrees with me then she, as a representative of management, has made the decision.

What makes these ethical questions so interesting is that they highlight the various allegiances a designer must juggle: those of management, the other stakeholders, and the principles of DSD. Moreover, answering these ethical concerns is crucial for ensuring trust in the practice of DSD and in instilling confidence in any proposed dispute system.

V.   CONCLUSION

The DSD literature holds that the interests-based approach to DSD yields optimal outcomes for all of the necessary stakeholders. That said, the determination of which system gets adopted by an organization depends on the underlying power dynamic within that organization. If one hopes to do consensus-building one must first understand the particular underlying power dynamic of an organization and find a way to shape it such that consensus-building becomes feasible. The DSD literature's focus on interests to the exclusion of power fails to recognize this fundamental fact. Until more emphasis is placed on balance of power issues, designers may have difficulty implementing their interest-based designs.