

2024 Hispanic Metropolitan Chamber Leadership Class XVIII

Negotiation and Conflict Management for Leaders

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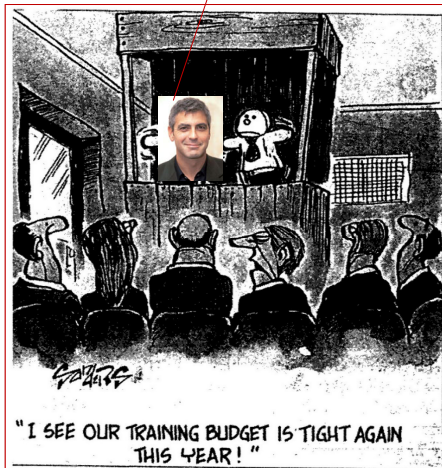
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Sam Before He Started His ADR Practice!



*I've been involved in thousands of
disputes... some of which I started!*

Introduction

- Sam Imperati, JD
- Former: Private Practice, Nike Trial Attorney, and Pro Tem Judge
- Taught UO CRES, L&C Law, and Willamette MBA
- Currently: Mediator, Facilitator, and Trainer
- 2006 – 2024: Best Lawyers in America – ADR
- Stand-up Comedy Winner

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Working Agenda

11:00 to 12:30: Conflict Resolution with Small Group Work

12:30 to 1:00: Lunch

1:00 to 2:30: Core Skills with Small Group Work

2:30 to 2:45: Break

2:45 to 4:00: Nuts and Bolts Techniques with Small Group Work

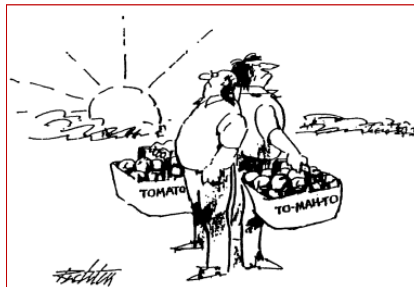
4:00 to 4:15: Closing Dance Number

4:15: Adjourn

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Course Objectives



Learn:

- Conflict Resolution Theory & Psychological Insights
- Core Negotiation and Communication Skills
- Nuts and Bolts
- Extra Credit: Appendix

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Ground Rules

- *Keep an Open Mind*
- *Participate Fully*
- *Share Differing Views*
- *Explore, Don't Debate*
- *Cell-Free Zone*
- *Have Some Fun!*

The Practical Details

- Presentation vs. Handout
- No Legal Advice

Boot Camp!

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A) CONFLICT RESOLUTION

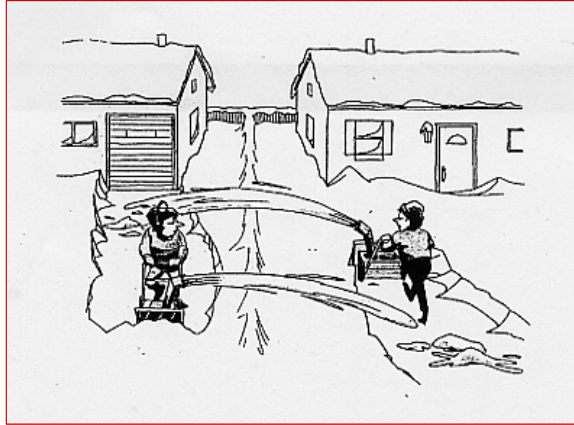


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Conflict

When someone insists that they are right, and you are wrong.

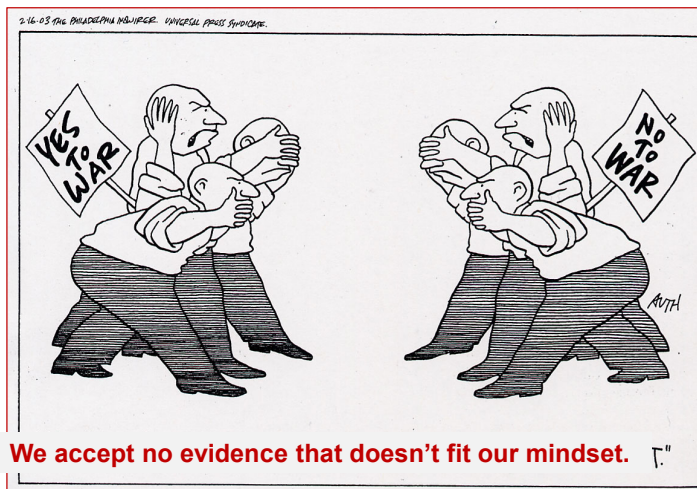


**... and so it Begins,
The “Attack-Justify-Blame” Spiral**

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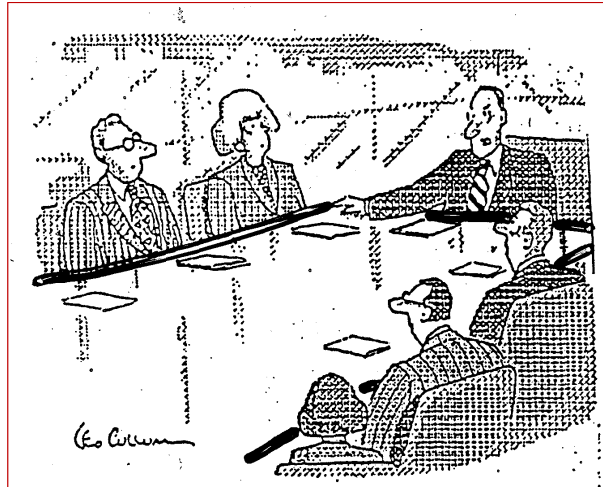
We Polarize and Entrench



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Typical Meeting



We can sit here all day until the person with the hidden agenda speaks up.

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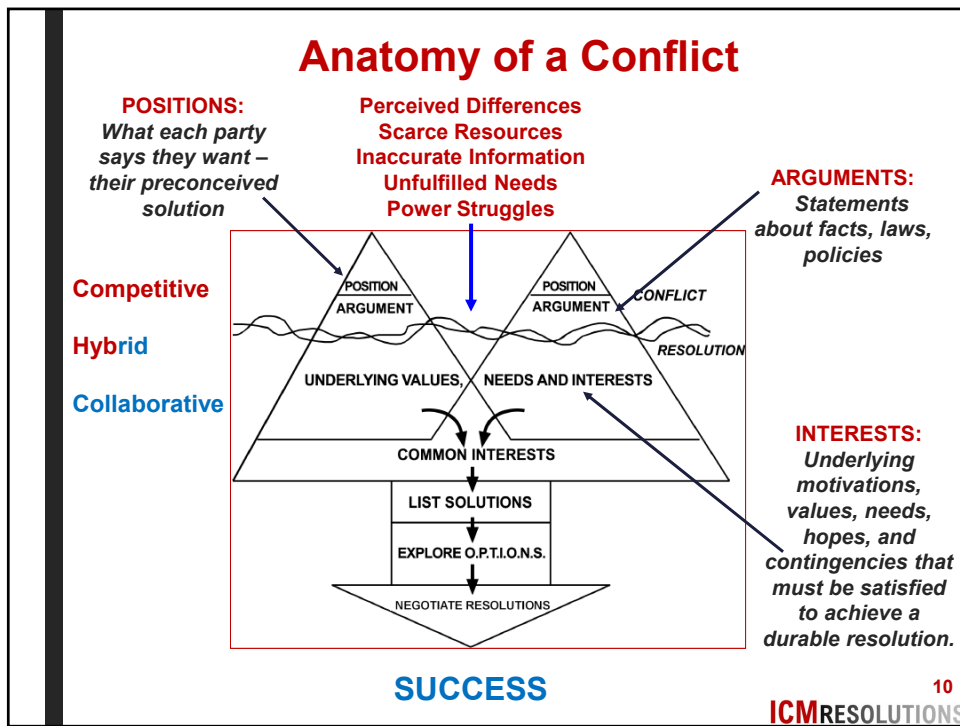
Typical Conflict



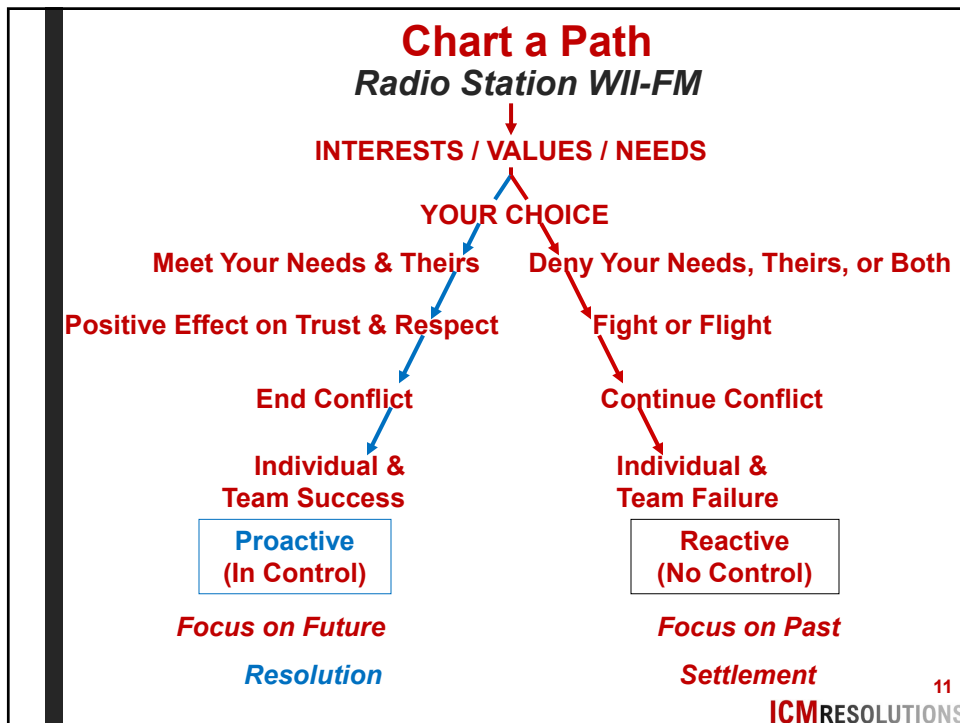
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Interests

Dive Below Waterline of Adversarial Banter

Accomplishment (measurable achievement, getting job done)
Autonomy (right to self-govern, self-reliance, self-sufficiency)
Balance with Personal Life (order, tranquility)
Competition (winning or beating others)
Cooperation (helpfulness, being involved in team activities)
Courage (standing up for your beliefs)
Creativity (using imagination, being innovative)
Dignity (true worth, respect, self-esteem)
Efficiency (effective resource allocation and implementation)
Equality (equal opportunity for all)

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Interests

Excitement (adventure, challenge)
Fairness (equitable process and outcome)
Honesty (sincerity, truthfulness, integrity)
Leadership (exercising influence with others)
Loyalty (sense of duty and mutual caring)
Money (having it, financial security)
Objectivity (Use merit and facts – not subjective standards)
Recognition (acknowledgment, admiration from others)
Responsibility (get the job done, others depend on you)
Self-confidence (belief in your talents and abilities)
Stability (consistency, “balanced” or little change)

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Individual Exercise

What are your primary interests?

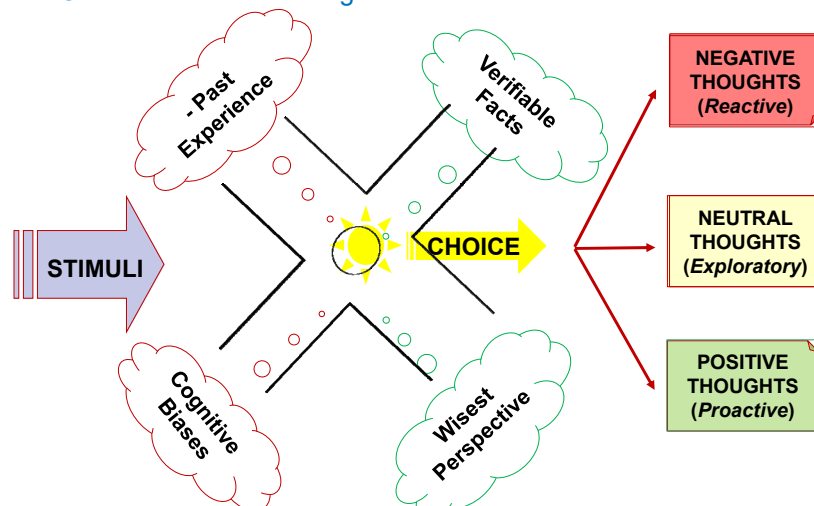


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The Intersection of Logic & Emotion

"Our life is what our thoughts make it ..." Marcus Aurelius

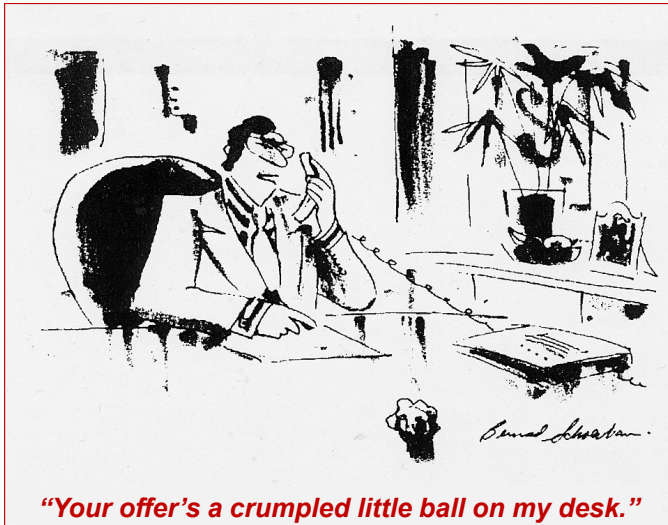


Emotions are, for better or worse, the dominant driver of most people when they are making meaningful decisions.

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Automatic Cognitive Processes



Are Habit-Bound and Inhibit Clear Thought

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The Challenges of Being Human!

- **Self-Serving Bias:** A cognitive process that is distorted by the need to maintain and enhance self-esteem. Ascribing success to own efforts, but ascribing failure to external factors.
- **Naïve Realism:** The human tendency to believe we see the world objectively and without bias. We assume that others who do not share the same views must be ignorant, irrational, or biased.
- **Cognitive Dissonance:** The uncomfortable feeling people get when holding two “competing” ideas in mind at once. This compels us to get rid of the troubling thoughts by rationalizing our behavior or dehumanizing others.

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How We “Think”

System 1

- Generally automatic, affective (emotional).
- “Mental Shortcuts”- heuristics
- Efficient- few resources needed
- Examples:
 - *localize the source of a specific sound*
 - *complete the phrase “war and ...”*
 - *display disgust when seeing a gruesome image*
 - *read a text on a billboard*
 - *drive a car on an empty road*

System 2

- Slow, effortful, conscious, rule-based
- Used to monitor System 1
- Takes lots of resources
- Examples:
 - *dig into your memory to recognize a sound*
 - *determine the appropriateness of a behavior in a social setting*
 - *count the number of A’s in a certain text*
 - *park into a tight parking space*
 - *determine the price/quality ratio of two products*

We rely on System 1 more than we like to admit

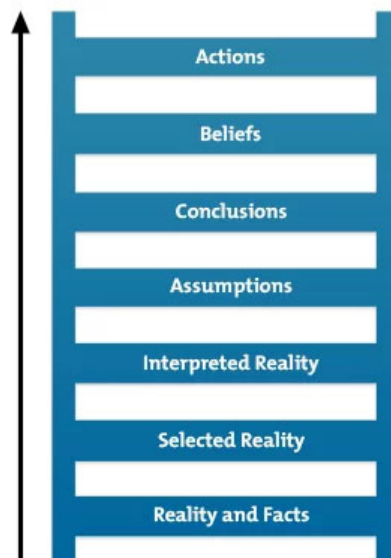
Thinking, Fast and Slow (2013) by Daniel Kahneman

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Ladder of Inference



Peter Senge

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Ladder Explained

- Reality and facts are at the bottom. From there, we:
 - *Experience them selectively based on beliefs and experience;*
 - *Interpret what they mean;*
 - *Apply assumptions, often without challenging them;*
 - *Draw conclusions based on our interpreted facts and assumptions;*
 - *Develop beliefs based on those conclusions; and*
 - *Take actions that seem "right" because they are belief-based.*
- A vicious cycle. Soon we are literally jumping to conclusions – by missing facts and skipping steps in the reasoning process.

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Reality Check

Audit the way you make inferences using the following questions - with yourself or others that may want guidance. Imagine what your wisest friend would think, how the other person involved might answer these questions, or how they might feel one year from now.

- *What are the basic facts?*
- *Are these all of the facts (subtext: not just the ones you've chosen because they fit your belief)?*
- *What are all the possible interpretations of those facts?*
- *What assumptions are we making?*
- *Is there a provable basis for our assumptions?*
- *What other facts are out there and how could they impact our analysis?*
- *What actions should we take based on this new analysis?*
- *What is this the "right" thing to do?*

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... and Manage Our Emotions”

1. What is really going on and can I realistically change it right now?
2. What am I doing that isn't working?
3. What do I really “need” versus “want?”
4. What can I do right now to make the situation better?
5. “Just do it!” (To coin a phrase...)

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Discussion

Please discuss your experiences with System 1-System 2 thinking and the Ladder of Inference.

What has tripped you up and what has worked?

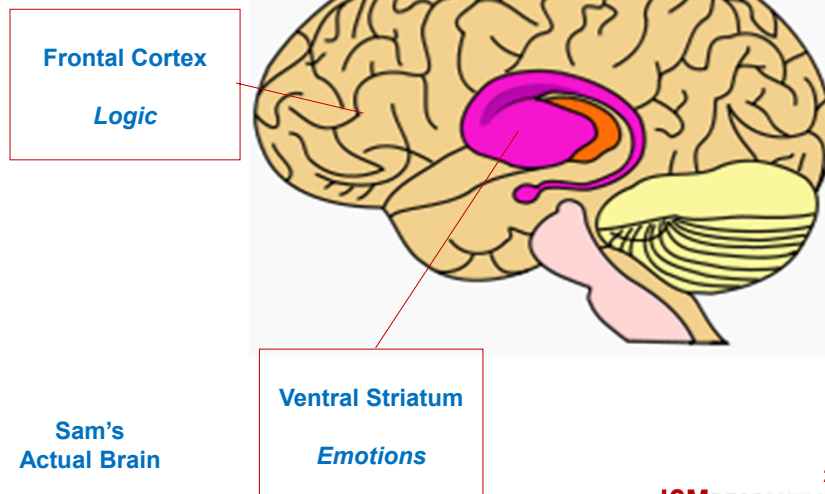


See Cognitive Biases and Tips for Handling in Appendix

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We Have to **STOP** ...



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Our Own Biases: We tend to think of ourselves as rational, careful, and logical. The more we do, the more likely we are to make mistakes.

See, <http://personal.anderson.ucla.edu/policy.area/faculty/fox/hnlr99.pdf>

Assume you are subject to psychological traps and your intuition is not always reliable!

Don't assume they are irrational when they may be just uninformed or haven't yet told you what's really going on.

Extra Credit:

Prejudice: <https://implicit.harvard.edu/implicit/demo>

<http://www.understandingprejudice.org/iat/index2.htm>

Core Philosophy: <http://www.selectsmart.com/PHILOSOPHY>

Morality: <http://www.philosophyexperiments.com/moralityplay/Default.aspx>

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The Punch Lines

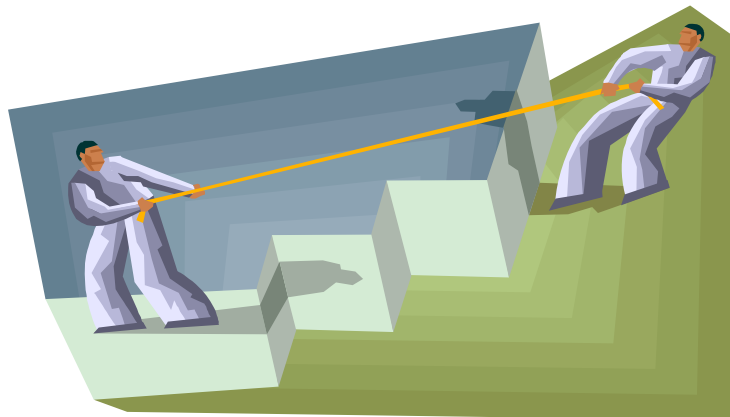
- Smart people make systematic decision-making mistakes on a regular basis.
- This affects many managerial and executive decisions.
- Why? We are each so darn human!

TIP: Attend to Their Traps by Normalizing Their Reaction ... And yours

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B) CORE SKILLS



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Goal: “Resolution” or “Settlement”
“Build a Relationship and Fix the Problem”
or
“Build a Case and Fix Blame”

	“Resolution”	“Settlement”
Definition	Durable, Satisfying Solution	Walk Away Equally Unhappy
Getting the Deal	Slower	Faster
Acceptance	Sooner	Later
Result	Success	Compliance
Maintenance	Low	High
Approach	“Collaborative”	“Competitive”

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Goal: “Resolution” or “Settlement”

	“Resolution”	“Settlement”
Definition	Durable, Satisfying Solution	Walk Away Equally Unhappy

Elements of a Successful Relationship

- 1) Agreed-Upon Goals
- 2) Shared Interests, Values, and Needs
- 3) Clear Expectations
- 4) Mutual Accountability
- 5) Trust and Respect

“Build a Relationship and Fix the Problem” or
“Build a Case and Fix Blame”

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Emotions Impact Decision Making ... It's Not Random!

- Anger and fear can affect risk perception:

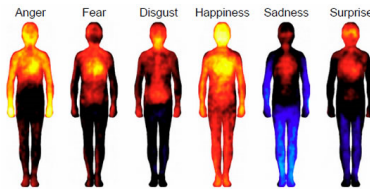
- **Angry people:**

- more optimistic about future events (approach)
- they see less risk

- **Fearful people:**

- more pessimistic about future events (avoid)
- they see greater risk

Emotions serve a purpose and create differing motivations. We need to understand them to satisfy our parties' core concerns.



Slovic and Peters, Risk Perception and Affect, Current Directions in Psychological Science, www.cdp.sagepub/content/15/6/322 (2006)

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Your Goals and Conflict Approach

		Yours			
		A	B	C	D
Goals		Outcome and Relationship Important	Outcome Important Relationship Not	Relationship Important Outcome Not	Neither Outcome nor Relationship Important
Theirs	1 Outcome and Relationship Important	Pure Collaborate	Collaborate Soft Compete	Pure Collaborate	Collaborate Soft Compete
	2 Outcome Important Relationship Not	Collaboration Soft Compete	Hard Compete	Subordinate	Responsive Avoidance Medium Compete
	3 Relationship Important Outcome Not	Collaborate	Soft Compete	Collaborate	Passive Avoidance
	4 Neither Outcome nor Relationship Important	Soft Subordinate	Collaboration Soft Compete	Subordinate	Active Avoid

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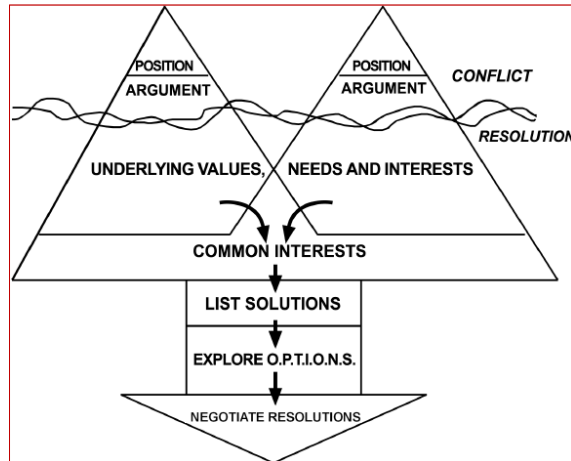
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Effective Communication During Conflict

Communication Stages:

1. Build a relationship by listening for understanding
2. Promote trust and respect by showing that you understand the other person
3. Then, start negotiating to solve the real problem



"The satisfaction of being heard is the whole scope of human ambition."

Jon Jay Chapman

RESOLUTION

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Listening for Understanding

Reactive Listening	Proactive Listening
Interrupt	Listen
Assume	Ask
Demand	Suggest
Emote	Reflect
Deny	Acknowledge
Focus: You	Focus: Us
Intention: Change Them	Intention: Understand Them
Goal: "Settlement"	Goal: "Resolution"
Approach: Competitive	Approach: Collaborative

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Power of Words

USE

Proposals

Resolve

Firm

And

INSTEAD OF

Positions

Compromise

Non-negotiable

But



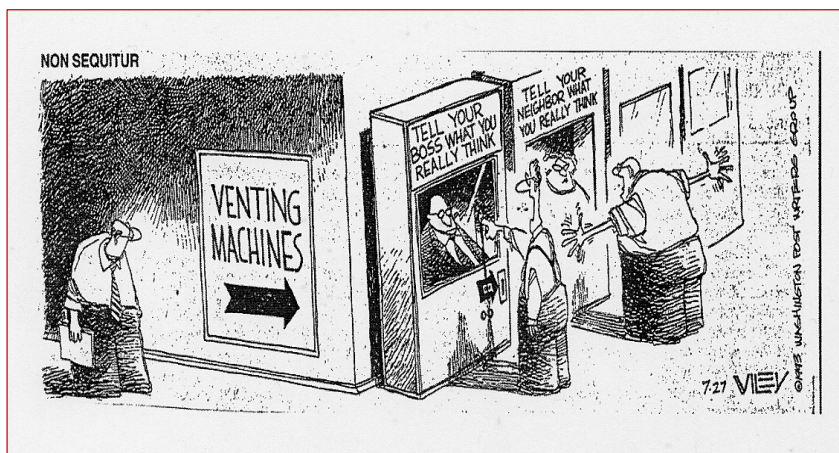
Mud thrown is ground lost!

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The "Gift" of Venting



See Appendix for "How People Arrive at the Truth,"
"Normalizing Reactions" and Misjudging Feelings"

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VECS: Suggested Phrases

(Diving Below the Waterline of Adversarial Banter)

- **Validate**

- Acknowledging people for talking even if you disagree: “I appreciate your willingness to say...”

- **Empathize**

- Identify with another’s views even if you disagree: “This is tough.”

- **Clarify**

- Open-ended questions to clarify issues or meaning: “What bothers you most about this situation?”

- **Summarize**

- Setting the stage to move toward a cooperative resolution: “So, let’s back up and review... so where do we go from here?”

If you can’t do this with genuine sincerity, don’t do it!

Let’s Practice!

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Table Exercise



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VECS: *Let's Practice!*

Your Example or ...

Pat has noticed cliques at work. Pat is not a member and feels like an outsider. There is always tension in the air. People are talking behind each other's backs, sometimes even within the clique. There is a lot of "trash talking" and blaming of others. Pat has had enough and "vents" to Chris, the Manager, who will use the "VECS" technique.

Validate
Empathize
Clarify
Summarize

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Basic Questions

1. “**Who** do you think could most help...”
2. “**What** do you think your company really needs?”
3. “**When** will we have enough information to begin exploring a resolution?”
4. “**Where** do you think the real sticking points are?”
5. “Help me understand **Why** there is confusion?”
6. “**How** can we craft a resolution that’s fair to all?”

Open-Ended Questions

- A. “Tell me more about that...”
- B. “Would it be helpful if...?”
- C. “Do you have any suggestions on how we can...?”
- D. “We all want a fair result. What standard can we look to?”
- E. “What do you think I’m missing in assessing this situation?”
- F. “We’re momentarily stuck, how can we get back on track?”



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Questions for Deeper Understanding

- Amplify Contradictions & Widen the Lens
 - How do you decide which information to trust?
 - Is there any part of the [other side’s] position that makes sense to you?
- Ask Questions that Get to People’s Motivations
 - What do you want the other side to understand about you?
 - What do you want to understand about the other side?
- Listen More and Better
 - How do you feel, telling this story?
 - Where does that (feeling, emotion, paranoia, distrust...) come from?
- Expose People to the Other Tribe & Counter Confirmation Bias
 - What do you think the other group wants?
 - Help me make sense of this, because other people are saying...

Questions from this great resource:
<https://thewholestory.solutionsjournalism.org/22-questions-that-complicate-the-narrative-47f2649efa0e>

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Reframing

Translate “positions” into “interests” by diving below the waterline of adversarial banter. Help others focus on their “real” needs versus stated positions.

EXAMPLE: “I want a flex schedule!”

REFRAME #1: “It sounds like being available so you can meaningfully contribute to your kid’s development is important to you.”

REFRAME #2: “If you had predictable time off during the week, would that help?”

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The Umbrella Question Exercise

How can we address _____
(interests of Party A)
while at the same time addressing _____
(interests of Party B)
thereby satisfying our _____ ?
(common interests)

National Coalition Building Institute International

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Umbrella Question Tool



Shift Scheduling Problem

How can we assure adequate shift coverage, while also respecting the need to plan personal lives, thereby meeting our financial objectives and the fair distribution of work?

The Business Deal

How can we fairly and cost-effectively address Brown's need to get its product to market, while at the same time protect Green's distribution rights, thereby satisfying your common need for profitability and viability?

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Homework



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Umbrella Question Tips

- Short vs. Long
- Whose Interests Do You Lead With?
- If Neither Work?
- Incorporate Values and Interests

**“There’s no such thing as good writing –
just good re-writing!”**

Sister Mary Fintan, Sam’s 6th Grade Teacher

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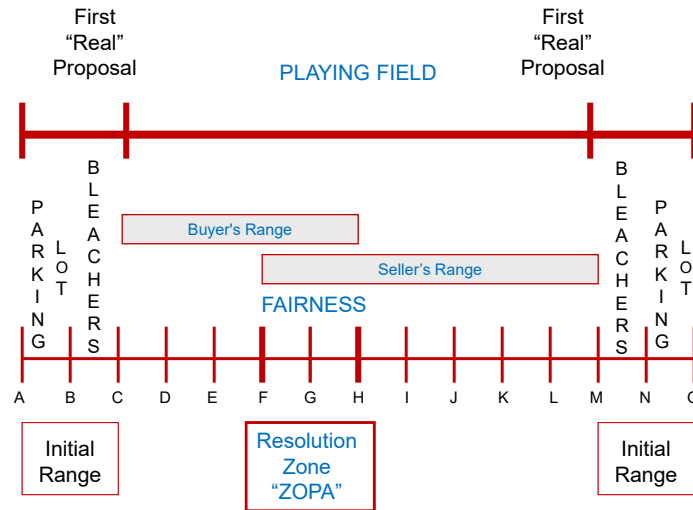
C) NUTS & BOLTS TECHNIQUES



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The Typical “Settlement Dance”



The Three Impasses

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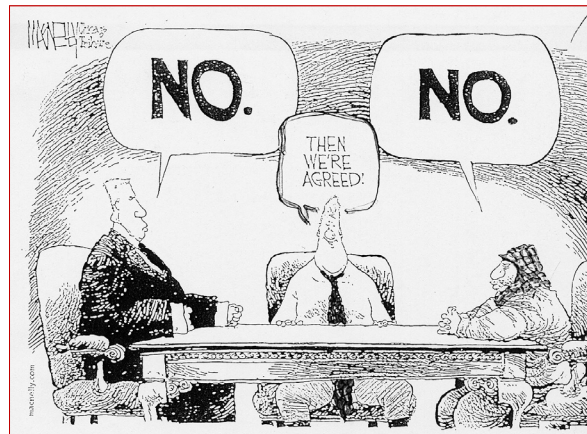
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Negotiation Approach



X = You
O = Other



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Risk Tolerance

AVERSE

EMBRACING



You?

Your Group?



"You say it's a win-win, but what if you're wrong-wrong and it all goes bad-bad?"

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Table Exercise

- 1) Explore your negotiation approach and risk tolerance level:
 - a) Advantages and Disadvantages
 - b) Is it working for you?



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Manage Cognitive Conflict

“Cognitive Conflict” = Importance x Uncertainty

- 
- 1) High Importance and High Uncertainty
 - 2) High Importance and Low Uncertainty
 - 3) Low Importance and High Uncertainty
 - 4) Low Importance and Low Uncertainty

- Too Much Cognitive Conflict Can Create Client Panic
- Too Little Cognitive Conflict Can Create Client Apathy

Risk Preference Bias

Remember Expected Utility Theory and
Concession Aversion

- People tend to avoid taking risks when it means losing secure gains: “Risk Averse”
- People tend to accept risk to avoid a certain loss: “Risk Tolerant”
- Risk-taking is not necessarily a personality characteristic

See Appendix for
“Decision-Making Preferences”

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Negotiation Preparation: “SWAP-LION”

- Strengths:** Where are you strong?
- Weaknesses:** Where will the other side say they are strong?
- Alternatives:** If the conflict is not resolved, what will happen?
BATNA, WATNA, and MLATNA Analyses
- Perspectives:** Theirs – What is driving the controversy? What do they need to agree on resolution? Why?
Yours – What is driving the controversy? What do they need to agree on resolution? Why?
- List Interests:** Party A, Party B, Common, Prioritize
- Options:** Brainstorm multiple options for resolution.
Separate the process of *inventing* from negotiating.
- Negotiation:** Tie proposals to legitimate objective standards.
Plan your concession strategy.

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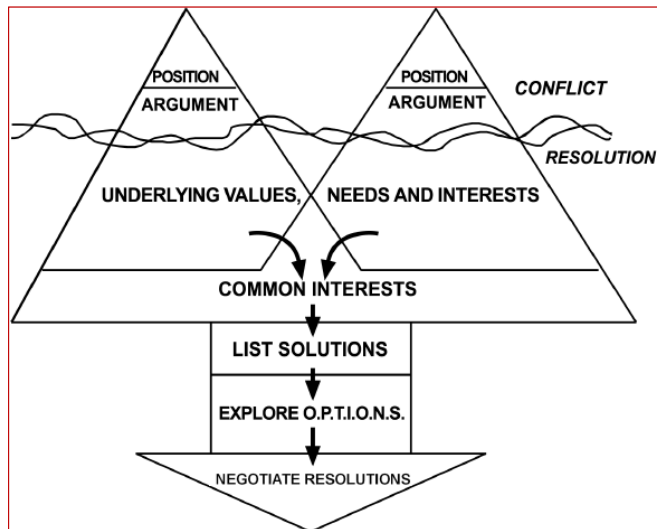
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Scripted “Hybrid” Improv: Overview

THE FOUR STEPS:

1. **IDENTIFY THE STATED PROBLEM**
2. **EXPLORE THE REAL ISSUE**
3. **DEVELOP POSSIBLE SOLUTIONS**
4. **SELECT & IMPLEMENT SOLUTIONS**



SUCCESS

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Mediation: The Basic Steps

Step 1: Identify the Stated Problem

- Understand Their Positions and Arguments
- Have them tell their story
 - *What concerns would you like to see addressed today?*
- State the issue in a neutral way
- Be an active observer, give equal time
- Enforce ground rules
 - *Can we speak one at a time?*
- Ask vs. tell: Ask questions to clarify facts and the feelings around the facts. Use short, open-ended questions
 - *Please tell me more about... or Is there anything else I need to know?*

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Manage Cognitive Conflict

“Cognitive Conflict” = Importance x Uncertainty

- 1) High Importance and High Uncertainty
- 2) High Importance and Low Uncertainty
- 3) Low Importance and High Uncertainty
- 4) Low Importance and Low Uncertainty

- Too Much Cognitive Conflict Can Create Client Panic
- Too Little Cognitive Conflict Can Create Client Apathy

Janis, I. L., & Mann, L. *Decision Making: A psychological analysis of conflict*. NY: Free Press. Berlyne, D. E. *Structure and Direction in Thinking*. NY: Wiley.

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- Stay attuned to body language & vocal tone
- Neutralize the “Attack-Justify-Blame” Spiral
- Use active listening & reflective feedback (VECS)
 - *This is frustrating.*
 - *I appreciate your willingness to say...*
- Summarize the issues in a neutral way
 - *So the situation from your perspective is...*
 - *My understanding of what you have said so far is.... Did I miss anything?*
 - *Is there anything that you want me to understand that you don't think I understand yet?*



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Step 2: Explore the Real Issue

- What are the underlying values, needs and interests of each party?
 - *What are you concerned about?*
 - *What bothers you most about that?*
 - *What do you understand I am saying about that?*
 - *What assumptions are they/you making? How can we test these assumptions?*
 - *What are possible ways that would allow us to _____?*
 - *So besides needing to assure that there is _____, what other conditions must this solution satisfy?*
- What are the common interests?
 - *It sounds like we are both interested in _____.*

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- What are the consequences of not settling or resolving the matter? Best case? Worst case? Most likely case?
 - *If we don't resolve this, what will happen next (time, cost, etc.)?*
- What else is going on? ✓ risk tolerance, ✓ decision-making styles, ✓ conflict styles colliding, ✓ other sources of tension
- Summarize interests and needs of each party
 - *Could we list all of the needs and interests on the board to make sure we have everything so we can identify shared interests?*
 - *We have a lot of things in common. For example, _____. Let's use these as a basis for crafting a fair agreement.*

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Step 3: Develop Possible Solutions

- **Let's suggest possible solutions**, thinking creatively & realistically
 - *Let's list all of the options and then explore the up-side and down-side of each before we even discuss what to do.*
 - *Which one of these (needs or interests) would you like to talk about first?*
- **Explore O.P.T.I.O.N.S.** (Only Proposals That Include Other's Needs Succeed)
- **If you get stuck, move back to Interests, reframe, and/or spend more time helping them navigate the intersection of logic and emotion**

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- **Look at the solutions that satisfy common interests and/or competing interests that can be paired to fashion a resolution**
 - *It would appear that the first two suggestions would both _____. So are you saying if I do _____, then will you do _____?*
- **List all the objective standards external to the parties that could be used as a reference point to assess fairness** (e.g., past practice, industry standard, jury results, prime rate, etc.)
 - *Are there any other criteria we need to use to evaluate these proposed solutions?*



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Step 4: Select & Implement a Solution

- **Negotiate a winning solution using the Umbrella Question**
How can we address _____,
While at the same time _____,
Thereby, _____.
- **If stuck, move back to option-generating**
- **Check to see if it meets all parties interests, now and in the future**
 - *Would that meet our need for...?*
- **Do a reality check to ensure a complete deal**
 - *Who will do what, when, where and how?*
- **Confirm that all parties agree and write a balanced agreement**
- **Agree on what to do if there are problems down the road**
- **If no agreement is reached, discuss how to process the dispute in a way that is more satisfying and effective than the traditional method**

See Appendix for "Impasse-Breaking
Techniques"

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Wrapping Up the Deal

1. *Have all bases been covered – any loose ends? Is the "deal" sustainable, durable and enforceable?*

"Settlement" vs. "Resolution?"



2. *Who will do What, When, Where, and How?*
3. *Reduce it to writing and agree on language.*
4. *What do will you do if problems develop in the future? (ADR Architecture)*
5. *If no "deal" is reached, how can you process the matter in a fair, timely and efficient manner? (ADR Architecture)*

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Four Truths About Dealing with Difficult Negotiators

- 1) We can only *manage* our *own* behavior when we do not like theirs.
- 2) If we *avoid* difficult people or situations, we will not be successful.
- 3) If we *react* against difficult people or situations, we might “win the battle, but lose the war.”
- 4) If we respond *proactively*, we stand the best chance of negotiating a resolution.

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Ten Conflict Resolution Tips

- 1) Seek first to understand, then to be understood because suspending judgment is the foundation of clear thought.
- 2) Explore – Don’t debate. Attack the problem – Not the person.
- 3) Listen for agreement – not disagreement.
- 4) Ask questions, don’t restate your position.
- 5) Don’t prepare your response while they are talking.
- 6) Don’t interrupt.
- 7) Treat the person’s values, needs and interests with respect.
- 8) Manage your reactivity and take responsibility for your actions.
- 9) Keep focused on your vision and values.
- 10) Be assertive about the need to collaborate.

Blessed are the flexible, for they shall not be bent out of shape!
-Gumby’s Spiritual Advisor

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The “Skilled” vs. “Average” Negotiator:

- Made twice as many comments regarding long-term considerations and considered twice as many options.
- Made three times as many comments about common ground.
- Tested the other party’s understanding and summarized previous points more than twice as often.
- Seldom used heated or emotional behaviors to attack the other party or defend their position.
- Offered commentary about feelings almost twice as often (e.g., fairness and motives for proposals).
- Asked more than twice as many questions.
- Did not require “issues sequencing.”



From Neil Rackham, Huthwaite Research Group, 1968

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D) CLOSING DANCE NUMBER



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Don't Forget

Ethics



Humor



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When All Else Fails, Try Humor

- People exposed to a funny video before negotiating more easily came to resolutions
- People who laugh during conflict are more likely to shift their thinking from one solution to seeing many
- Humor can relieve tension and help manage emotions.



Example:

Kenny Hold it vs. Willy Make it

Whitney Meers, *The Funny Thing About Mediation: A Rationale for the Use of Humor in Mediation*, 10 Cardozo Law Review 657 (2009). Jacquelyn Smith, *10 Reasons Why Humor Is a Key to Success at Work*, FORBES.COM, May 2013

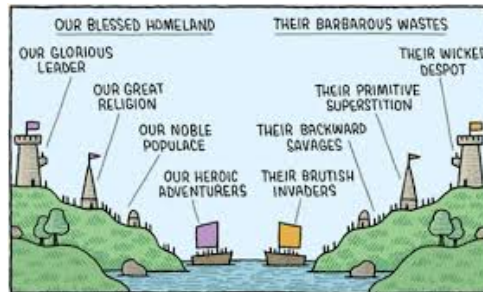
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Humor Humanizes, Normalizes, and Builds Trust

- Connects opposing parties
- When they see each other as human, it is a lot easier to resolve the dispute
- Other studies suggest people that demonstrate a sense of humor are more likely to be viewed as trustworthy and approachable



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It Softens the Blow

- Humor allows you to say things without putting others on the defensive
- Allows them to "save face"

Example: "Don't Jew me down"

I could have said, "You, anti-Semitic bastard ... this mediation is over." Instead, I said, "

"I hate bigots and ..."



Do you have a card that stops short of saying, I'm sorry, yet vaguely hints at some wrongdoing?

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Audience Competition



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Bust Your Butt to Get a Deal!

At the end of a successful process, we were in a room tying up loose ends when one of the attorneys said, "Sam, sorry we had to bust your butt today." I replied, "No problem. I thought you were all quite well behaved." He said, "Turn around!"

I did and said,

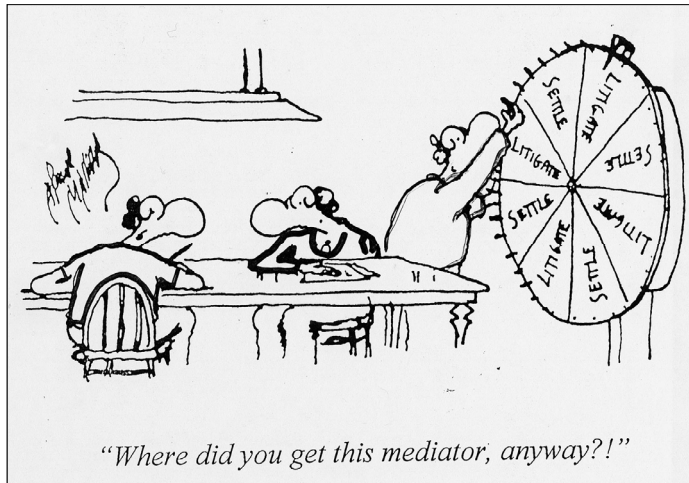
***"What ... Aren't
your boxers
supposed to
match your tie!"***



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A Third Party?



Sometimes the conflict needs a mediator

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Suggested Reading

- Getting to Yes and Getting Past No
- Problem-Solving 101
- Negotiation Genius
- www.mediate.com
- Heart and Mind: Mastering the Art of Decision Making,
<http://www.amazon.com/Heart-Mind-Mastering-Decision-Making/dp/1490317627>
- The Three Secrets of Wise Decision Making,
<http://personaldecisions.net/secrets.pdf>
- Imagine: How Creativity Works,
<http://www.amazon.com/Imagine-Creativity-Works-Jonah-Lehrer/dp/B007QRI1UQ>
- http://www.mindtools.com/pages/main/newMN_TED.htm

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Next Step



Appendix (WAIT, there's more!)

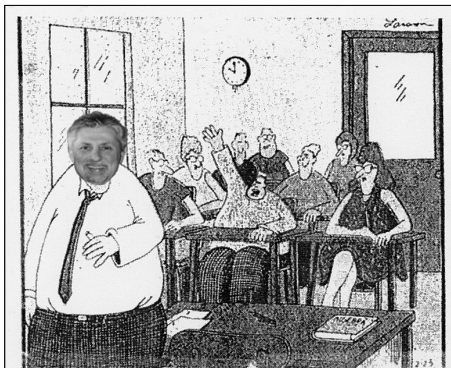
As a result of what we discussed, I'm going to:

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Final Thought

***“Build a Relationship and Fix the Problem” or
“Build a Case and Fix Blame?”***



***Sam, may I be excused,
my brain hurts!***

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imgflip.com

GO FORTH AND LEAD!

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We're Out!
[Glad You Came](#)

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Cognitive Biases and Tips for Handling

Traps

Tips

Anchoring: Getting stuck on the first offer/ number they see and being unable to break free of that starting point. All other moves are in relation to that offer/number.

- Reality Testing
- Tie to legitimate outside standards.
- Anchoring happens if they feel under pressure to make a decision.
- Give them time and be ready to give them more if they feel under pressure to make a quick decision.

Availability Bias: Tendency to rely on information that is more readily available to them. Example: It's easy to think of the last fatal plane crash, but harder to think of a specific car crash, making people think planes are more dangerous than cars.

- Ask, "What information will they be relying upon and will the decisionmaker find it reasonable?"
- Have them research, focus on facts, and avoid relying on gut instinct.

Confirmation Bias: Only using or seeking out information that confirms their beliefs; devaluing information that doesn't fit with existing beliefs.

- Ask them to consider multiple perspectives.
- Have them seek out people that challenge their opinions or ask you be the "devil's advocate."

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Cognitive Biases and Tips for Handling

Traps

Tips

Construal Biases: Clients think others hold more extreme views than they do. For example, believing the employer in a union negotiation want to offer zero vacation days.

- Reality Testing: Test their assumptions and have them put on their "third party" hat to see what an objective observer might think about the situation.
- Investigate these assumptions with the other side.

Endowment Effect: Defendants value concessions things more than plaintiffs' value them because defendants see the concession as a loss of what is theirs.

- Use open-ended questions to uncover underlying interests.
- Normalize and help them decide what's best with a cost/benefit analysis.

Fairness: Clients reject deals if they perceive their norms of fairness will be violated by accepting. Related, **The Just World Hypothesis:** Most clients prefer a just world and therefore presume it exists.

- Reality testing: Is the judgment likely to be fair? Is it unfair or just normal concessions in the process of negotiation?
- VECS and use open-ended questions to uncover their real interests.

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Cognitive Biases and Tips for Handling

Traps

Tips

Framing Effects: Decisions are heavily influenced by the way they are presented. For example, you can buy beef that is 75% lean or buy beef that is 25% fat. Which would you prefer? People tend to avoid risk with a gain frame but seek risks with a loss frame.

- Be mindful in how you present options. Are you presenting it as them avoiding a loss or gaining something?
- Consciously decide whether to frame as a loss or a gain.

Fundamental Attribution Error: Tendency to assume other's actions are because of their characteristics (e.g. rude or selfish) rather than their situation (stressed or challenged by something external).

- Suggest they be generous in interpreting the other side's actions.
- What are the reasons you might act as they are/have?

Overconfidence Bias: When clients place too much faith in their own knowledge and opinions. Often combined with **Anchoring**, meaning clients act on hunches because they have an unrealistic view of their abilities or the situation.

- "What sources of information do you tend to rely on for big decisions?"
- "Are these fact-based?"
- "Has our information been gathered systematically?"
- "Who else will have information?"

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Cognitive Biases and Tips for Handling

Traps

Tips

Reactive Devaluation: Dismissing a proposal from others on the assumption that it is either motivated by self-interest, or less valuable, or simply because they make them. "I don't like that idea because they proposed it."

- Walk them through a cost/benefit analysis to overcome their initial gut rejection.

Recency Bias: tendency to overvalue the latest information available. People think the most recent information holds the most influence. **Primacy:** the reverse.

- Ask, "What information will they be relying upon and will the decisionmaker find it reasonable?"
- Give them facts so they will be less likely to rely on gut instinct.
- Repeat the facts, especially the ones that hurt.

Sunk Costs: People tend to "throw good money after bad," favoring options where we have already incurred substantial costs, even though these costs are gone.

- Help them with System 2 thinking by doing a cost/benefit (BATNA) analysis.
- Help them realize that all options have the same future cost, because costs incurred are already lost.

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How People Arrive at the Truth

- Five key criteria parties use to evaluate the “truth”:
 - General acceptance by others,
 - Amount of supporting evidence,
 - Compatibility with their beliefs,
 - General coherence of the statement, and
 - Credibility of the source of the information
- Parties are looking for “fluent processing” and “cognitive simplicity.”



Schwarz, N., Newman, E., & Leach, W. (2016). Making the truth stick & the myths fade: Lessons from cognitive psychology. *Behavioral Science & Policy*, 2(1), pp. 85-95. Varol, O. (2018) Facts don't change people's minds. Here's what does. Retrieved from <https://ozanvarol.com/how-to-change-a-mind-yours-or-someone-elses/>

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Normalize Their Reactions

Explain: “We’re all so darn human and our first reactions are not always reliable. I’m confident you will make a good choice when the time comes.”

Say, “I sometimes catch myself reacting to suggestions from the other side. It helps when I don’t respond immediately and give myself time to objectively consider the situation.”

Because parties often think otherwise, explain **Correlation** is a connection between two variables. It doesn't necessarily mean that one caused the other. **Causation** is when one variable causes another ... and that’s what we have to prove.

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Misjudging Feelings?

Researchers asked the question: Is it worse to overestimate or underestimate other people's emotional responses? They examined the consequences of being wrong both ways.

- Accurate assessments of other people's perspective and emotional responses is essential for successful social interaction and is very difficult!
- Seven experiments showed that *underestimating* the intensity of other people's emotional responses leads to more negative evaluations than *overestimating* others' emotions.
- People believe that underestimation is indicative of lower efforts and empathy.
- Erring on the side of overestimating others' feelings may be an optimal strategy for social interactions.

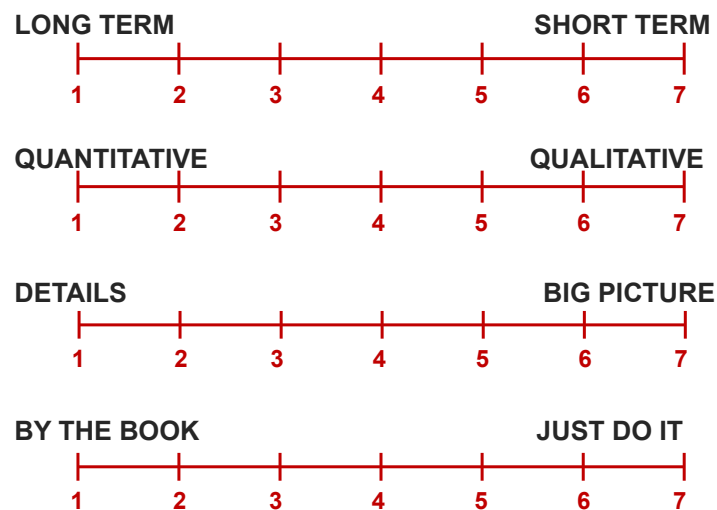
Klein, N. (2019). Better to Overestimate than to Underestimate Others' Feelings: Asymmetric Cost of Errors in Affective Perspective-Taking. *Organizational Behavior and Human Decision Processes* 151: 1-15

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Decision-Making Preferences



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Impasse-Breaking Techniques

1. Issue Sequencing – If can't agree on the order issues will be discussed, accept their proposed sequencing of the issues. However, make it clear that any interim agreements are subject to a global deal.
2. All things equal, start bargaining with less important topics - Develops a cooperative mood and make progress. This will pay off later when more significant and contentious subjects are discussed.
3. New Numbers – Parties posture by retreating from pre-session offers. Only works if new law or new “killer” fact.

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4. Party states hard line opinion at outset and/or is arbitrary or emotional:
 - Ignore
 - Develop rapport before asking for realistic proposal
 - Use “Tit-for-Tat” strategy and invite cooperation
5. Party leads with “bottom line.” Avoid the psychological block when a “bottom line” is put out too early. Reframe: “So based on what you now know, that seems like a reasonable place.”
6. Legitimate Outside Standards – Tie proposals to them.

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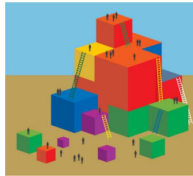
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7. Allow new information to impact your risk analysis.
8. Once they are on the “playing field,” your proposals should be no closer to your goal than their position is from your goal.
9. Any subsequent movement on your part must again have an objective rationale or be in response to their objective rationale. Do not move for the sake of movement . . . it is a sign of weakness.
10. “I won’t bid against myself!” Use “Conditional Offer.” An offer/proposal that may be accepted only if a certain condition is met.

9. Two proposals that tease out true needs (E.g. money or reinstatement)
10. Suggest non-monetary items – e.g. reference letter. Often something of high value to them with minor cost to you
11. Set a deadline – “90/10” or Extend time – Recess
12. Look for WOWD factor – Give them a Way Out With Dignity
13. Ask for help – we are at a possible impasse; what are your suggestions for moving forward?



14. Summarizes agreements to show progress
15. Unbundle deal points: Package contains several elements – let's discuss them one at a time
16. Package deal points: Let's try packaging the individual elements. Lead with stuff they will like, then your needs, and end with stuff that is more boiler plate.
17. Move from money to terms, or vice versa
18. Propose a "trial" settlement for a period of time or a "conditional"/"Contingent" settlement



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19. Preempt the "Oh, by the way..." Play. Bring it up when they are 80% of the way to settlement. Get all terms on the table before proceeding into the "Resolution Zone."
20. Bifurcation – Suggest bifurcating the dispute and submitting the disputed portion to next level. Mere suggestion can break impasse.



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