ADR Times
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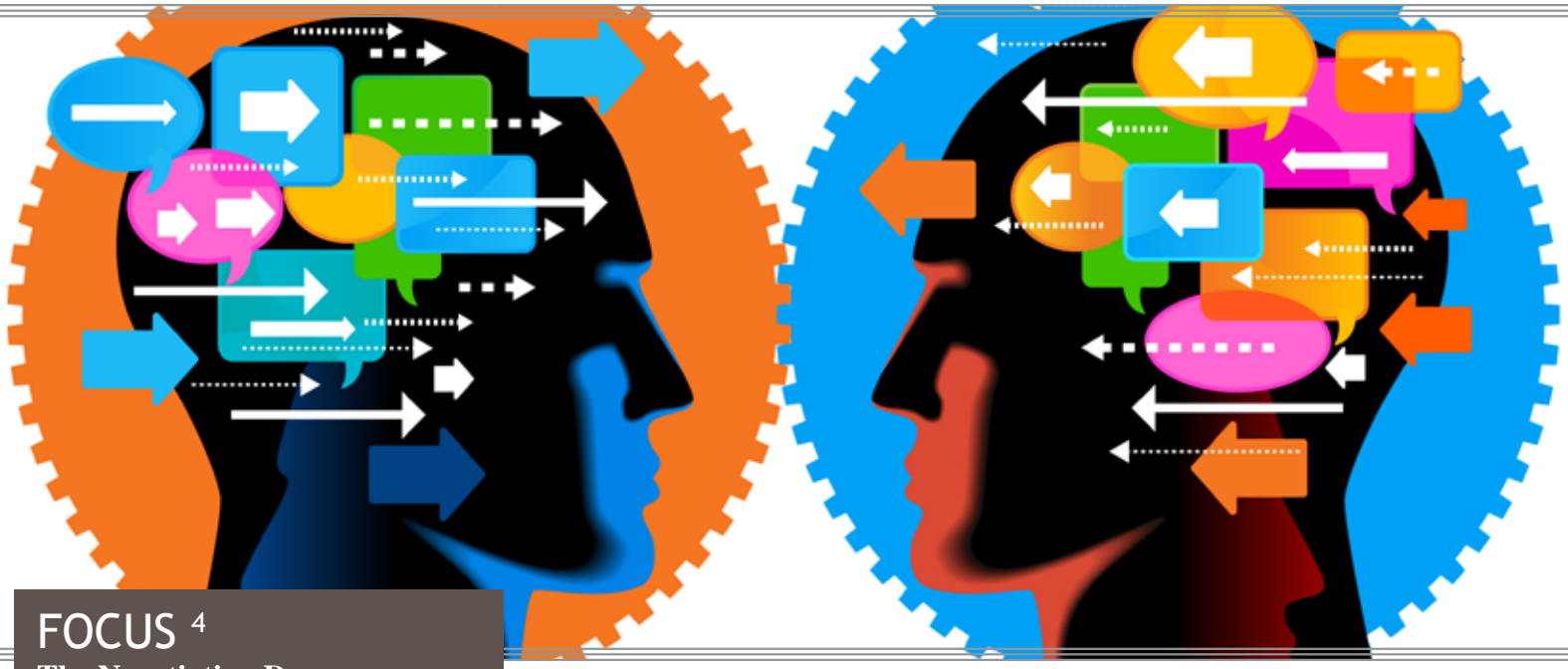

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Scott Van Soye


Jeffrey Krivis


Marie Dominguez-Gasson


Mikita Weaver


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ALSO IN THIS ISSUE

ADR Times explores mediation, arbitration, negotiation, diplomacy, and peace. ADRTimes.com publishes articles, news and debates, and provides an industry directory, event calendar, job board, and community space for public and professionals to connect and share insights.

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MESSAGE FROM THE EDITOR

Happy Conflict Resolution Day
And Happy 1st Birthday to ADR Times!~

In celebration of our 1st year anniversary, we're launching our monthly newsletter, offering insight and commentary on content that is positively transforming the fabric of identifying and resolving conflict.

Editor-in-Chief / Mikita Weaver

Over the course of the past 12 months, ADR Times has morphed from an interactive blog into a vibrant dispute resolution community and trusted news source for unbiased journalism covering negotiation, mediation, arbitration, diplomacy and peace. Not only have we witnessed the emergence of a dynamic and collaborative culture amongst our target audience of dispute resolution enthusiasts, but we've also welcomed the views and interests of neighboring professions under the social sciences umbrella. In addition, our social media outreach efforts have granted us substantial visibility nationwide and internationally.

We thank you for your continued interest and constructive comments in transforming our efforts to a collective project!

As a token of our gratitude and appreciation, we are giving away two Kindle Fire tablets! Subscribe to the ADR Times Mailing List at www.adrtimes.com/mailing-list to ENTER TO WIN!! Winners will be announced at the end of November, just in time for the holidays!

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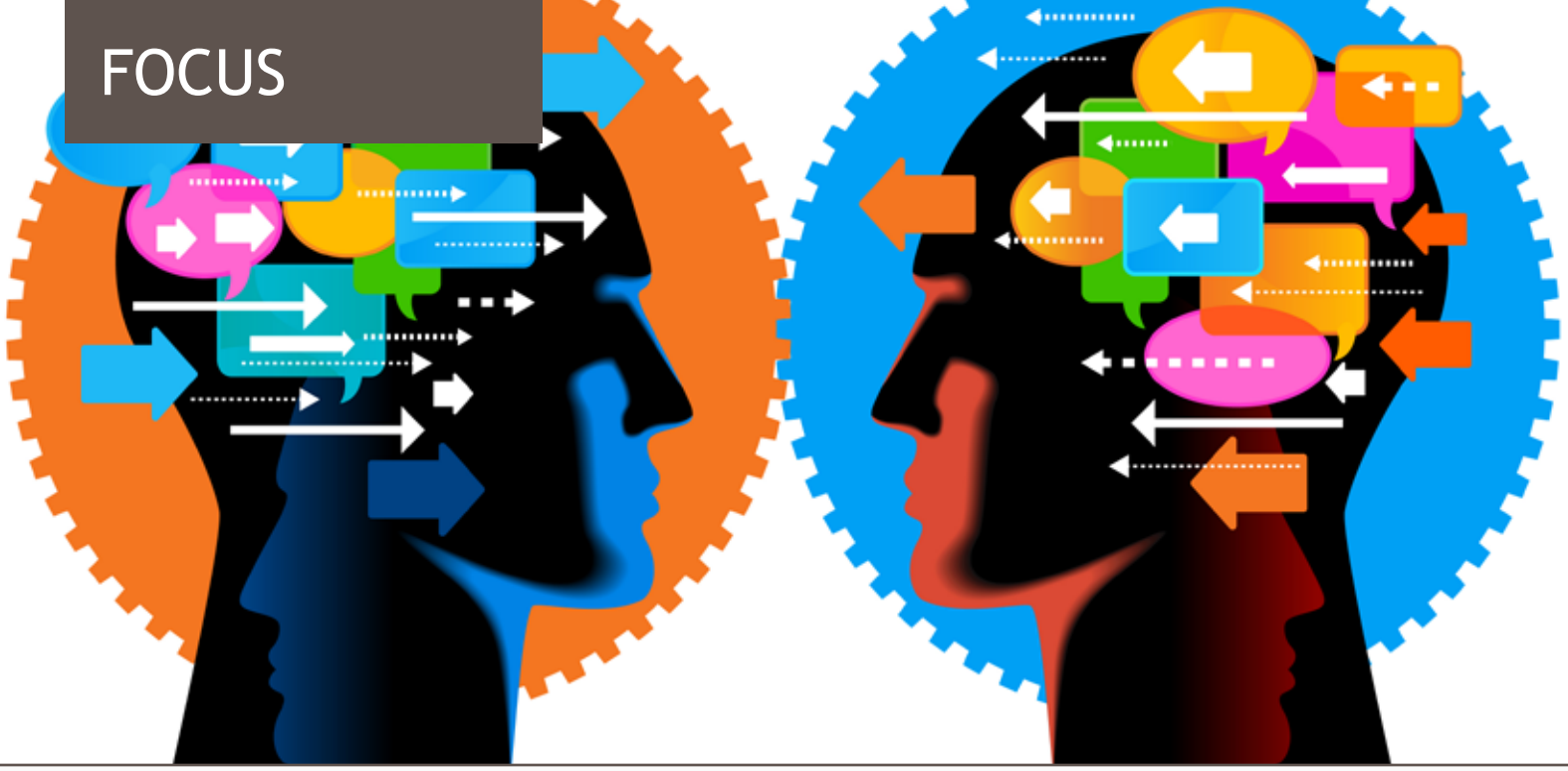

THE NEGOTIATION DANCE

FIVE REASONS NOT TO SIT OUT

by Scott Van Soye

Negotiating price (or a settlement amount) can be a long and frustrating process.

Think about the last time you bought a car. Exhausting, wasn't it? And yet research has shown that the outcome is often predictable. Professor Peter Robinson of Pepperdine University reports that such negotiations usually end with an agreement about halfway between the first two reasonable offers.

Doesn't this mean that we can skip all the bargaining rigamarole, figure out what the most reasonable midpoint number is, offer that, stick to it as our "bottom line," and be confident of settlement?

The short answer is an emphatic no, the following are five reasons why~

Scott
Van Soye

Scott Van Soye is a full-time mediator and arbitrator working with the Agency for Dispute Resolution with offices in Irvine, Beverly Hills and nationwide. He is a member of the California Bar, and practiced real estate, civil rights, and employment law for over twenty years. He holds an LL.M. in Dispute Resolution from Pepperdine University, where he is an adjunct professor of law. He welcomes your inquiries, and can be reached at scott.vansoye@agencydr.com or (800) 616-1202, Ext. 721. Website: www.scottvansoye.agencydr.com

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1 First, Professor Robinson points out that the drive toward the midpoint is caused by social pressure on the bargainers to share the burden of conceding. Without a pattern of concessions, sometimes called the "negotiation dance," this mutual pressure is gone.

2 Second, because negotiating is the social norm, failing to negotiate leaves your counterpart frustrated, angry that you are being "stubborn"or "unfair," and doubtful that you are really at your bottom line. These feelings can cause your opponent to refuse even the best deal.

3 Third, the "take it or leave it" gambit puts you in a very limited negotiating position. If you say "this is my bottom line" and then change your mind, you lose credibility and seem weak. The author presided over a mediation in which five "final offers," ranging from $5,000 (first offer) to $225,000 (settlement amount) were presented in the course of four hours. Had the "final offer" tactic been saved until late in the negotiation, it might have been believed, and the defendant could have settled for far less.

4 Fourth, the pattern of offer and demand can have significant impacts on how much you recover or pay. Studies show that the first move in a negotiation strongly influences the other party's estimate of value. If you demand $1,000,000, your opponent will value the claim more highly than if you demand $100,000. This phenomenon is called anchoring. So if you start with a reasonable offer, your counterpart will expect to do better than if you started higher.

5 Fifth, research confirms the value of aspirations, or optimistic goals. Those with high hopes routinely do better than those with more "realistic" ones. Of course, this assumes that the demands are within the realm of possibility. Ridiculous demands will be ignored. Professor Charles Craver recommends determining your reservation point – the price at which you'd rather walk away than settle – and your target price – the most you can reasonably expect to get. Then do the same for the other side. Consider the value of similar claims, and your opponent's resources. Pick an aggressive, but not outrageous, number with these facts in mind.

Not negotiating can put you at a serious disadvantage, and even anger your business associates. If you need coaching through the "dance," a good mediator or negotiation consultant can help. Whether you use a coach or not, take the time to think through your situation. And enhance your chances of success by setting lofty goals – after doing your homework.

Upcoming Events

- ACR Conflict Resolution Day
Worlwide / Oct 20

- ADRHub.com Cyberweek
Online / Oct 24-28

- Green Building From the Construction Lawyer's Perspective
Los Angeles, CA / Oct 25

- Tenth Annual Environmental Law Fall Symposium
Los Angeles, CA / Nov 4

- SCMA 23rd Annual Fall Conference
Malibu, CA / Nov 4-5

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Recent Headlines in ADR News:

- 10.19 Can Mediation Help the Victims of Japan Crisis? Compensation for Fukushima Crisis Victims

- 10.18 Mediation Alleviating Economic Concerns: State Hopes Mediation Can Alleviate Court Overload

- 10.17 NBA and Mediator Cohen: What Lies Ahead in NBA Lockout Mediation

- 10.17 Ban Ki-moon Applauds Mediation Efforts: Ban Commends Independent Mediation Centre for Efforts in Conflict Resolution

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FROM CONFLICT TO NEGOTIATION
WHEN TO NEGOTIATE THE LITIGATED CASE

by Jeffrey Krivis

There are two eternal truths about litigated cases:

1) There is a tremendous likelihood the case will be settled without trial;

2) The settlement could occur any time from the moment the case is filed until the eve of trial. That vacuum of time provides many favorable and unfavorable opportunities to negotiate a resolution to a case that is satisfactory to your client. It's how you use the time that counts.

Picture a Continuum of Conflict in which we start at one end with the filing of a litigated case. At the other end of the continuum is trial. In between are various opportunities available to come to the table and negotiate a deal.

Determining when to come to the table depends on your confidence in the case and overcoming the fear that the other side will misinterpret a suggestion of negotiation or mediation as a sign of weakness. Figuring out how to inquire about settlement, either through direct negotiation or mediation, also requires strategic choices.

In order to understand the current options available to a litigator who wants to settle a case, let's first go back in history and look at the context in which cases have traditionally resolved. What is the context in which all of this is going to happen?

Assume for a moment that you were retained to process a typical tort dispute in the 1950s. What were the obvious dispute resolution choices available to the typical litigator at that time? One option would be to contact general counsel for the defendant and offer the idea of trial or propose some kind of negotiated settlement. Generally there were not many choices in between.

Another possibility was to advise the client that the easiest approach is to make a telephone call to the other side to see if the matter can be worked out. If that was unsuccessful, the client would have been

to be informed that trial was the only other alternative. The client would be reminded that our civil justice system has been successfully resolving disputes for hundreds of years, and that the courthouse is a nice place to spend some time. After all, it has beautiful cement columns on the outside, large rooms with plenty of spectator seats and of course, each room proudly displays the American flag. Most importantly, though, it is free to use almost any time. So, if the telephone call did not work, the client would be informed that s/he could go over to the courthouse with some sense of confidence that lawyers would be able to do their work, that there would be a judge there ready to hear the case, and that it could happen in a relatively timely fashion. In 1950, the system of resolving disputes would have been perceived as relatively efficient.

The Early Years of Dispute Resolution

The first generation of dispute resolution that evolved over 150 or 160 years in this country was one that said, "Look, we try to settle things, and if we can't, we file these papers in court, and we have a forum that will take care of it."

Connection Between Negotiation & Litigation

In the early years of this continuum of conflict, litigators knew that there was some connection between the process of negotiation and litigation. Whenever a litigated case was filed, like a rubber band, we would snap back and try to negotiate the case. In so doing, we would send a message that required the other side to take us seriously. After receiving the summons and complaint, the other party would realize that s/he must appear in court. This inconvenience made it a little bit easier to talk. As a result, the parties would then get on the phone and settle a huge number of cases simply by negotiating directly with the other side. One commentator has indicated that often times we file papers in court for the primary purpose of getting the attention of the other side so we can negotiate. This has been cleverly referred to as "litigotiation."

Litigators in the 1970s and 1980s faced an increasingly over burdened court system. At one point in our history, the court system in Los Angeles took over 60 months to get a civil case to trial. Attorneys realized that juries, when we finally get them, are unpredictable. Moreover, the cost to prove even the most simple case made some trials economically prohibitive.

Options Borrowed from the Labor Field

Litigators began to observe that perhaps there were other choices available that managed costs, were more efficient and clearly more timely than trial. We looked at other cultures, borrowed ideas from the labor field, and realized that some clients would be better served if their cases were resolved in something other than a court room. We then started using arbitration for smaller civil disputes since that process worked for years in labor contracts, was more informal, less costly and seemed to be successful.

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While mediation was also used in the labor field, it didn't catch on as quickly in the 1970s while arbitration was making its way up the ladder. Yet litigators were still looking for a way to negotiate, but possibly with the help of a third party, similar to an arbitrator, but who could not make a decision on the case.

Early mediation programs grew out of the family law courts that observed that there might be a more humane way to solve these problems than to present them in a public forum. Family law litigators started to move in the direction of mediation since the issues they had, like child visitation and custody, probably didn't make sense to put in a courtroom environment. Indeed the early mediation programs in family law courts envisioned using neutral third parties who were not necessarily members of the bar to serve as mediators. As the process began to emerge, some felt that working through a negotiation of a family dispute was something a therapist could do better than a lawyer. That process continued to evolve and now we have applications of the mediation process all over the map.

The Next Generation of Dispute Resolution

Following the lead of the family law arena, civil litigators began to see the value of bringing in a neutral third party to assist or facilitate in the negotiation process. While it took about 15-20 years to institutionalize the mediation system into our civil justice system, it appears that it is here to stay as a viable option for litigators who want to settle their cases without going to court. ◢

Following this second generation of dispute resolution options available to litigators, we move forward until about ten years ago, when another generation of options became available to settle cases out of court. This third generation resulted from people wanting to tailor their mediation or arbitration process to match the particular dispute. Now we have at least 25 other hybrid processes available, ranging from baseball arbitration to mini-maxi arbitration, with various things in between, including summary jury trials, med-arb and much more.

The current Continuum of Conflict takes on a dimension that is far broader than we saw 40-50 years ago. The world has changed. We are now beginning to reframe our choices so that the strategies we select to intervene in a dispute give us the best possible chance of achieving resolution at the least possible emotional and financial cost to our clients.

Negotiation is at the heart of the many choices we have to resolve cases. Whether we use negotiation to actually settle a case or parlay a matter into another procedure which is less intrusive than court, litigators must fundamentally rely on the negotiation process for everything they do.

Negotiation Defined

Negotiation is generally defined as "a communication process we use to put deals together or resolve conflict." In negotiation, litigators have control over both the outcome and the process of a dispute. Procedurally, the parties in negotiation are responsible for designing the process. Similarly, by definition, the parties have control over the outcome.

This is in sharp contrast to arbitration or trial where power is clearly delegated. In traditional litigated cases, a litigator relinquishes the power over the outcome because decision making process is given to someone else. All procedural decisions are taken from parties. Like a cafeteria, litigated cases require you put down a tray and select things from a menu such as which discovery processes or motions you might utilize to get an advantage over the other side.

Since it is a communication process, like most things which require communication, sometimes problems occur that end up causing the dispute to reach an impasse. This is where civil litigators and even the court system have chosen to introduce Mediation as a preferred option for resolving disputes.

The reason that mediation has worked so well for litigators is that it is basically a facilitated negotiation. While we have evolved beyond the years when family law practitioners preferred non-lawyers to mediate their cases, the current crop of litigators can choose from well respected retired judges and established trial lawyers to serve as mediators. This gives the litigators a sense of comfort because the neutral has more than likely been in their shoes before and can speak the same language. The neutral knows that the goal of the facilitated negotiation is to get the case closed, which is something the litigator was unable to accomplish.

Top Ten Factors
For Getting The Other Side To The Table

The key to a successful facilitated negotiation is getting the other side to agree to mediate in the first place. In order to set yourself up for success, there are several factors to consider when convening a mediation:

1. Never request mediation within two weeks after you've lost any motion, no matter how insignificant.

2. The most profitable mediation on a great case generally occurs before expert discovery, although it can happen closer to the trial date.

3. The most profitable mediation on a so-so case occurs close to the trial date, assuming your experts have not betrayed you.

4. The most profitable mediation on a bad case occurs before you file the lawsuit, or as soon thereafter as you can manage with a straight face.

5. Ask for mediation in a letter which accompanies a motion to compel discovery. Offer to postpone the motion if the other party agrees to mediation.

6. Where you have a belief in the merits of your case, send out a letter demanding mediation, and specify your good faith estimate of the value of the case. Indicate that you will only agree to mediation if the other party fully understands and acknowledges your approximated value. If you then show up at the mediation and the other party comes in substantially below that approximated value, leave promptly.

7. Allow the judge to propose mediation at the initial status conference.

8. Mediation often works best for a defendant after a summary judgment motion has been filed, but before the hearing and before plaintiff's opposition is due. Mediations often work best for plaintiffs just after the summary judgment motion has been denied. Schedule accordingly.

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9. Consider a cost basis analysis. This means that for every month you have the case open, the time you have committed to the case increases, yet there is no guarantee that the value of the case goes up.

10. Many provider organizations will take on the responsibility of contacting the other side about the prospect of mediating. This can be effective since these organizations usually have people trained to sell the process in a way that doesn't make you look vulnerable.

Now That You're Coming To The Table, What's Next?

Negotiating a litigated case depends upon the style of the mediator and the approach of the advocate. Before beginning the mediation session, ask the mediator to define his/her style. Some mediators choose an approach much like a messenger, where they exchange numbers back and forth and actively make recommendations on the number. Others might use a more facilitated evaluation which tends to encourage the parties to come up with their own understanding of risk that might also be more interest based. Whatever the approach, a litigator must be aware of the direction the mediation might go before it begins. ◢

Dealing With The Competitive Negotiator

Many litigators approach mediation in a competitive manner. They view the session as an extension of the litigation battlefield and make negotiations difficult. On the other hand, the cooperative litigator is hopeful that the negotiation will achieve their ultimate goal — to settle the case — and assume that the other side is at the bargaining table for the same purpose. Because of these aspirations, it is not unusual for cooperative litigators to put all their cards face up on the table and hope toward a cooperative solution. Unfortunately, the competitive litigator might view this willingness to cooperate as a sign of weakness and attempt to take advantage of the negotiation.

Studies have been conducted demonstrating that cooperation as an affirmative strategy will more likely than not achieve the objectives of mutual gains for all parties. However, litigators in a mediation sometimes must be mindful of the possibility of losing opportunities for the client by maintaining a cooperative attitude throughout a negotiation with a competitive player.

Under these conditions, an advocate in a mediation must be aware of strategic options that can be used in order to avoid becoming exploited in the negotiation. Fortunately, those options have been studied extensively by educators through such game theories as the well known "Prisoner's Dilemma." Following extensive computer testing of the Prisoner's Dilemma, Professor Robert Axelrod came to the conclusion that the best strategy for achieving goals through cooperation is a simple process he calls "tit for tat." This strategy proposes that during a negotiation, a party must match the opponent's move either competitively or cooperatively. If your opponent chooses to whack you over the head, you must hit back. If your opponent offers an olive branch, you must offer one back, and so on.

Axelrod developed five basic rules to follow in achieving cooperative solutions:
(1) begin cooperatively
(2) retaliate if the other side is competitive
(3) forgive if the other side becomes cooperative
(4) be clear and consistent in the approach
(5) be flexible

Those litigators who come to the negotiating table assuming they are still at war sometimes create an imbalance in power with the advocate who chooses to be cooperative.

One approach to disarming a competitive negotiator is to use the mediators to get your adversary to commit to the principle that they might have more liability and/or damage exposure than they originally thought. Once that occurs, be prepared with additional information demonstrating that you are capable of continued retaliation. At the same time, have the mediator extend a signal that you are prepared to forgive, i.e., work cooperatively, provided they acknowledge that exposure exists.

Jefferey Krivis

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This must be done slowly and strategically, without giving away too much information until you have verified with the mediator that your adversary is beginning to be a believer in your position. This will require a delicate balance by the mediator and, of course, your full and complete trust in the mediator's representations.

The goal of this technique is to lull your adversary into a state of vulnerability. After considering possible downside scenarios, the mediator can provide your adversary with a face saving pretext to either pay out more or take less than they brought to the table.

A Case Example

Suppose you represent a person who has undergone a hip replacement due to a slip and fall at a department store. During your investigation, you learn through inside information that the store has had other similar falls in the same area, and that the company was well aware of the need to correct the condition that caused the falls. In fact, you have actually talked to several people who have sustained injury in the same area and they are prepared to testify if necessary. The company doesn't know that you have this information, and they take the position that there was no "notice" of the problem and therefore no liability.

During the mediation, you begin cooperatively by offering to openly discuss the issues. In response you receive a lecture in front of your client by your opponent's counsel about what a bad case you have. You ask the mediator to check with the store's lawyer to see whether there have been any other falls in the area where people sustained injury. Immediately that sparks some interest from the other side, wondering what you are fishing for. They initially resist, but it gets them talking about potential mine fields which they don't want unearthed. The mediator tells you she hasn't learned anything new so you send her back in to force the issue. You also float the name of another claimant who sustained injuries and ask the store's lawyer if they would like to discuss the situation further. In essence, you are using the power of the mediator to make statements about the strength of your case without throwing it in the other side's face.

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After several rounds of private meetings, you finally tell the mediator to ask the company if they feel there might be some exposure in this case. You ask the question because you know there really have been similar incidents, and you suspect the company doesn't want it to get out in the public. You are prepared to negotiate a confidentiality agreement in exchange for a reasonable settlement. When you get a positive signal from the mediator, you start asking for money, while at the same time being "flexible" with your response so that they know the retaliation has worn off.

The time to negotiate a litigated case can occur anywhere from filing the case until trial. Selecting the most strategic time to engage the other side is the key to a successful outcome. The menu of dispute resolution options available to litigators has expanded over the last 50 years such that settlement opportunities are available to the creative practitioner at almost every stage of a litigation.

BARGAINING
How the Process Helps Parties Feel Satisfied
by Jasper Ozbirn

In negotiation theory, it is a basic beginner's rule not to start with your best offer, or your "bottom line." When I first heard this, I wondered, "Why not?" I had always negotiated by simply deciding what I would pay for an item, and then walking in and offering that price. If the seller accepted my price, great; if not, I would walk out. Simple. Half the time I found that when I walked out, the seller would come after me and accept my price rather than not make a sale. On the other hand, on occasion, they immediately accepted my offer and I kicked myself for offering too much. Nevertheless, I considered this the best approach.

While my approach was simple, it is clear to me now that it is fundamentally flawed. This is because it prevents both the seller and buyer from feeling they got the best deal possible from the other side. Even when I got my price, I wondered if I could have paid less and gotten a "better deal." Similarly, a seller may wonder if he could have convinced me to pay more. Dancing the dance of negotiation satisfies this desire to work to the best deal possible for both sides.

A common example of the value of bargaining is found in buying trinkets from street vendors. I have bought plenty of trinkets and made more than my fair share of insultingly low offers to do so. But, I have received just as many insultingly high offers (like a fake Rolex for $200, or fake Oakley's for $100). From there, the bargaining begins. So, if I offer $1 for the $100 Oakley's, and slowly raise my price step by step and end up buying them for $15, the seller feels that at least he got me to come up. He probably fears that if he started with a reasonable offer, say $20, that I would not end up as high as $15. In fact, this is probably true.

From the buyer's perspective, there is increased value in reducing the price from $100 to $15 than there would be from $20 to $15. After hearing $100, $15 sounds like a "good deal". After all, it is a mere 15% of the seller's opening offer. In other words, I feel I have gotten a "deal" because the seller has lowered his price. I would not feel I had gotten as good of a "deal" if the opening offer was $20, because I would have paid 75% (instead of 15%) of the seller's first price.

The result of the dance then is that both parties feel they have "won" to some degree. The seller has gotten a price higher than the lowest he could accept, and the buyer has paid less than what he considers the good to be worth. Without the bargaining, the parties would not have this feeling. Perhaps it is this feeling that drives people to continue making extreme opening offers in negotiation. And, for the first time, I see the importance of "dancing the dance" and understand it more as a dance than a fight.

By thinking of negotiation in these terms, I began to understand that bargaining allows both sides to feel that, even if they did not get exactly what they wanted, they were able to make the other side make a concession. Often, the most important consideration of each side is simply to feel they got the other side to go as far as they could, or that they got "the best deal possible." This is impossible with a "one and done" system of negotiation.

Jasper Ozbirn

Jasper L. Ozbirn received a LL.M. in Dispute Resolution with an Emphasis in Mediation from the Straus Institute, Pepperdine University School of Law. He is presently an associate attorney with Citron & Citron in Santa Monica, California.

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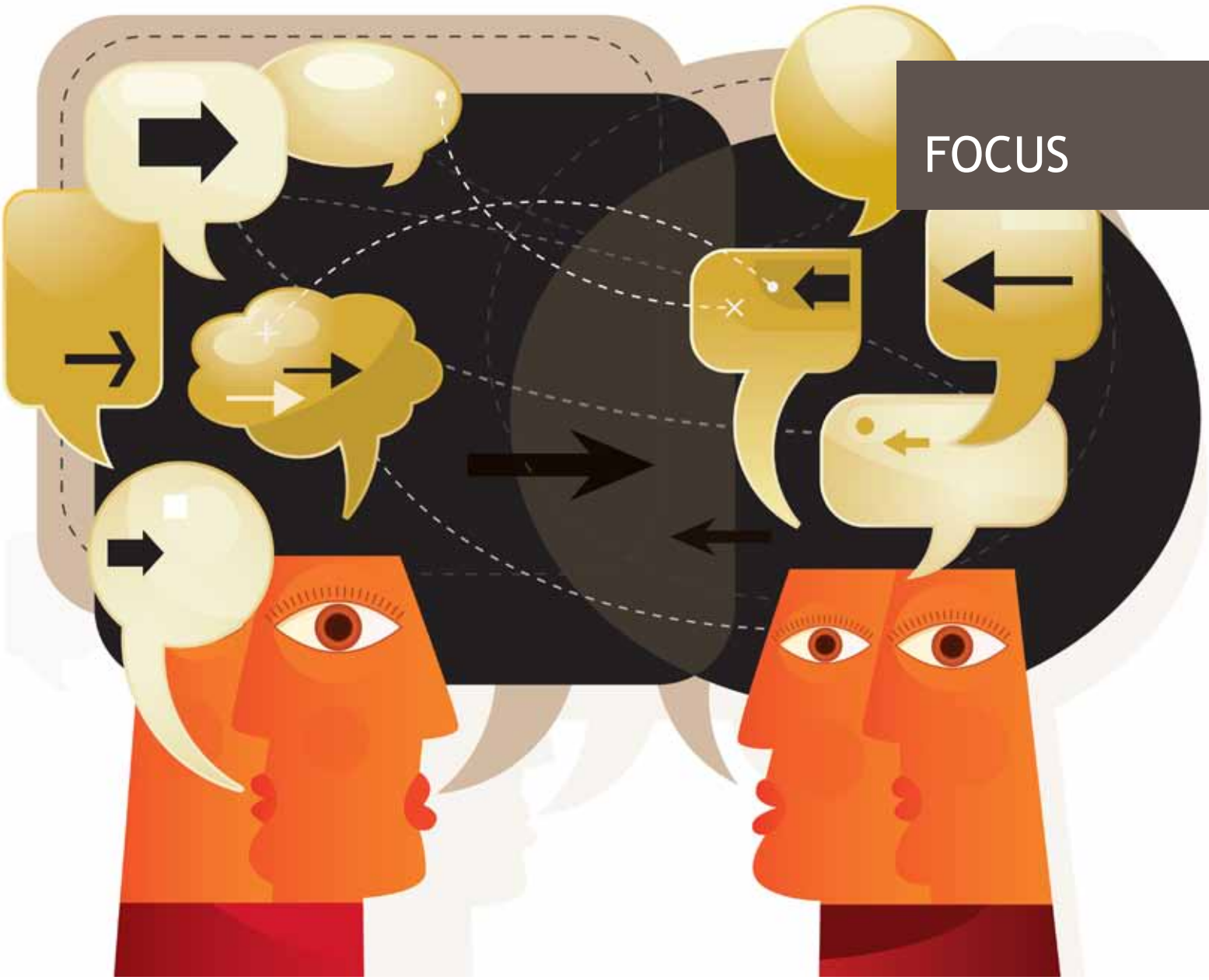

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BUILDING RELATIONSHIPS WITH LAUGHTER

A Negotiator's Guide to the Benefits of Humor

by Marie Dominguez-Gasson

As communities grow closer and technology expands multicultural businesses, conflicts arise. "Cross-cultural differences create such a high degree of friction and frustration that they put business deals in jeopardy, make disputes more difficult to resolve, and create international incidents." Conflict is unavoidable in many situations. Therefore, the goal is to teach people and parties entering a negotiation how to deal with conflict appropriately and not to avoid it. Communication is one of the largest sources of conflict between different cultures in multiparty negotiations. Conversely, appropriate use of humor allows negotiators to speak the language of all people — laughter.

In an article written for MSNBC, Robert Provine stated, "laughter is part of the universal human vocabulary. All members of the human species understand it. Unlike English or French or Swahili, we don't have to learn to speak it. We're born with the capacity to laugh." Therefore all people, regardless of culture, speak the human language of laughter. Without having to learn a different language, laughter allows people of different cultures to communicate on a human level. The use of humor in multicultural negotiations eases tension, shifts power roles, and builds party trust. If the main goal in a negotiation is to establish relationships, then laughter is key. In order to understand why humor should be used, it is important to look at the cognitive process that is undertaken when humans experience conflict, and how humor and laughter can ease tension. Humor is the perfect complement to multicultural negotiations. Although humor can be based on cultural similarities, the benefits of humor, when correctly applied, are the same among all cultures. ◢

This three-part series can be used as a guide for advocates. Part I of the series is titled "The Benefits of Humor" It explains how humor and laughter influence people across cultures physically and cognitively. Part II of the series is titled "When to Use Humor in Negotiations." This section discusses how humor can help in negotiations by decreasing tension, shifting power, developing party-trust, and improving communication. Part III of the series is titled "Tips for Using Humor in Negotiations." It suggests ways to effectively use humor and outlines when humor may not be helpful in the negotiation process.

Psychological & Physical Benefits of Humor

Laughter is a neurological process; therefore, it is the same for all people. By targeting one's genetic similarities you work on a level that is not subject to cultural differences. Although the jokes might be different, and the type of humor changes, laughter creates similar reactions in all people.

Laughter creates a sympathetic release in the limbic system allowing people to relax and let their guard down. The brain's right frontal lobe is the processing center that allows a person to react to something funny. The frontal lobe links information from the language areas of the brain with the memory and emotional sections of the brain. Laughter stimulates the mind, and an activation of the pre-frontal cortex allows people to become more creative within negotiation settings. Additionally, the "release effect" of laughter assists in protecting people from inappropriately reacting to stress or conflict. For example, if a person is anxious and has begun to enter a state of fight-or-flight, laughter can release endorphins to enable a feeling of well-being. It is this calm attitude that allows people to confront conflict in a more constructive manner.

Laughter also keeps us healthy. Laughter maintains our cognitive processes by working through the challenge of a joke, the creation of an emotional reaction, and the motor skills used to smile in the process. Laughter increases the heart rate, changes breathing patterns, provides a boost to the immune system, and reduces levels of negative neurochemicals. Doctors say that laughter is "exercise for the body," as it can create the same effects. Research shows that our mind positively responds to laughter.

Social Benefits of Humor

A sense of humor is essential in cross-cultural settings. The biological effect of humor is present in all people. Although the jokes are different, laughter creates similar reactions. "Most people think of laughter as a simple response to comedy, or a cathartic mood-lifter. Instead, after 10 years of research on this little-studied topic, [Robert Provine has] concluded that laughter is primarily a social vocalization that binds people together. It is a hidden language that we all speak. It is not a learned group reaction but an instinctive behavior programmed by our genes. Laughter bonds us through humor and play."

Often, negotiators see themselves as entering into a conflict with another person who is their adversary or enemy. In reality, laughter can help us bridge our differences in order to reach consensus because we are all genetically related.

Laughter has evolved over time, not only as a natural response to humor, but as a relationship mechanism allowing people to communicate.

"Occasionally we're surprised into laughing at something funny, but most laughter has little to do with humor. Laughter, much like yawning, when heard triggers a neural circuit that causes another in turn to produce laughter. It's an instinctual survival tool for social animals, not an intellectual response to wit. It's not about getting the joke. It's about getting along."

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Humor is a tool used by humans to form relationships through laughter.

Unlike animals, humans use laughter to build relationships with one another. One of the reasons why people respond to laughter is because it is an honest emotion. Laughter shows others a human side during negotiations. Scientists believe that "primal laughter evolved as a signaling device to highlight readiness for friendly interaction." As demonstrated, humor has various benefits including psychological, physical, and social benefits. ◤

All citations and references have been omitted. Full citations accompany the online articles at www.adrtimes.com.

Marie Dominguez-Gasson

Marie Dominguez-Gasson graduated from Pepperdine University School of Law in 2011, where she obtained her Juris Doctor, Master's in Dispute Resolution and a Certificate in International Law. While attending Pepperdine Marie worked in Kampala, Uganda with the Commercial Court and later with the Los Angeles Superior Court. In addition, Marie has over two years of state and federal legislative experience. Marie currently works at Lewis Brisbois Bisgaard & Smith with the Employment and Labor Group.

Read these and other articles by Marie Dominguez-Gasson at:
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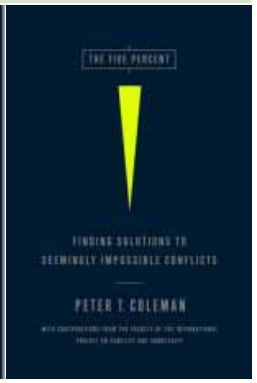
THE FIVE PERCENT

FINDING SOLUTIONS TO SEEMINGLY IMPOSSIBLE CONFLICTS



By Peter T. Coleman
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One in every twenty difficult conflicts ends up not in a calm reconciliation or tolerable standoff but as an acute lasting antagonism. Such conflicts -- the five percent -- can be found among the diplomatic and political clashes we read about every day in the newspaper but also, and in a no less damaging and dangerous form, in our private and personal lives, within families, in work-places, and among neighbors. These self-perpetuating conflicts resist mediation, defy conventional wisdom, and drag on and on, worsening over time. Once we get pulled in, it is nearly impossible to escape. The five percent rules us.

So what can we do when we find ourselves ensnared? According to Dr. Peter T. Coleman, to contend with this destructive species of conflict we must understand the invisible dynamics at work. Coleman has extensively researched the essence of conflict in his "Intractable Conflict Lab," the first research facility devoted to the study of polarizing conversations and seemingly unresolveable disagreements. Informed by lessons drawn from practical experience, advances in complexity theory, and the psychological and social currents that drive conflicts both international and domestic, Coleman offers innovative new strategies for dealing with disputes of all types, ranging from abortion debates to the enmity between Israelis and Palestinians.

A timely, paradigm-shifting look at conflict, *The Five Percent* is an invaluable guide to preventing even the most fractious negotiations from foundering.

"As the world gets smaller and more complex, we have to improve our ability to live together peacefully -- whether it is in our homes, our streets, or between nations. This thoughtfully constructed examination of human conflict and how we can resolve it is a welcome antidote to the contentious times in which we live. Peter T. Coleman delivers hope in this guidebook to untangling our most intractable problems."
-- Geoffrey Canada

"This book is not business as usual. It challenges how most of us think about conflict and peace, and backs it up with leading-edge research. It will prove useful to anyone dealing with complex conflicts in many settings whether they are small or large, personal or political."
-- Her Majesty Queen Noor

"With the benefit of years of research and experience, Peter T. Coleman has expanded the science of conflict to take on problems that previously seemed beyond resolution. Combining the practicality of Getting to Yes with the surprising insights of The Tipping Point, The Five Percent is a necessary guide for doing the impossibly -- resolving conflict in all its manifestations."
-- Mary Robinson, former president of Ireland and United Nations High Commisioner on Human Rights

"This book is an important, original contribution to understanding destructive, intractable conflicts and how to change them. It is well-written and can be read with much profit by the general reader as well as by conflict specialists."
-- Mortan Deutsch, E.L. Thorndike Proffesor Emeritus of Psychology and Director Emeritus of the International Center for Cooperation and Conflict Resolution (ICCCR)

PETER T. COLEMAN

"A necessary guide for doing the impossible–resolving conflict in all its manifestations."
–Mary Robinson, Former President of Ireland

BOOK REVIEW

Upon first hearing the title of Peter Coleman's book, I made certain assumptions. The title, "The Five Percent: Finding Solutions to Seemingly Impossible Conflicts," refers to the five percent of all conflicts that become intractable. I assumed that these conflicts would be the most serious conflicts that have occurred throughout history—the kind that ends in genocide, civil war, violence, and ongoing tension.

But Coleman points out that conflict does not need to be violent and large scale to be intractable. In reality, "many lives have been destroyed by personal conflicts where no blood was shed." Coleman picks up on the nuances of conflict that affect each of us daily. On a day-to-day basis, we are faced with a variety of conflicts. It is therefore inevitable that we will be confronted with intractable conflicts whether it is in our work place, in our personal life, or between our friends or family members. An intractable conflict affects us in a deep and profound way, resulting in the debilitating feeling of despair.

As individuals engaged in the world, we have experienced conflict. We know what it feels like. We see other people engaged in it. As practitioners or students in the field of Alternative Dispute Resolution, we may even sometimes think we understand it. Evidenced by a growing body of popular books and courses on mediation and conflict resolution, it is clear that we as humans are beginning to understand more about how to deal with the majority of conflicts we face on a daily basis.

But, with the five percent of conflicts, these guidelines must be thrown out the window. Peter Coleman tells us not to trust our instincts when it comes to the intractable type of conflict. The lessons we know about conflict in general are not helpful because intractable conflicts have a different pattern. The worst thing about intractable conflicts is that we do not know which conflicts will evolve into an intractable conflict; a conflict seeming to involve insurmountable violence may be resolved simply while a juvenile debate that began over a cup of coffee may become intractable.

Coleman studies conflict in a new way – attempting to pull themes and lessons from the basic logic, interworking, and dynamics of conflict—in an attempt to learn from these patterns and apply that new knowledge to all conflicts. He equips the reader with new tools to help understand conflict by examining "conflict traps" and "attractors." The book provides an evidence-based model for understanding the five percent and provides a coherent set of principles and practices for resolving them.

Coleman guides the reader through a variety of steps to better understand conflict first by explaining the approach and then by detailing a three-part method to resolve impossible conflicts:

(1) complicate to simplify,
(2) build up to tear down, and
(3) change to stabilize.

The novel presentation of research and helpful case analyses scattered throughout the pages allow the reader to garner the subtle intricacies of conflict, and to apply that understanding to the reader's own personal conflicts or conflict resolution practice.

While analyzing only a small subset of conflicts, this book is clearly useful to the dispute resolution practitioner. If parties in a conflict file a complaint; survive the obstacles of pre-trial motions, discovery, and dispositive motions; and then make it to the steps of the courthouse, the conflict has most likely become intractable. Dispute resolution practitioners can incorporate Coleman's approach and methods to help parties reach resolution despite the many years and resources spent in litigation.

With the constant push for mediation and settlement, lawyers and mediators would be wise to recognize the benefits of this outstanding book and its broad application. *Thank you Peter Coleman!* ◤

VIDEO

The Five Percent Video Series

This series explores how and why certain conflicts elevate to an intractable level in order to better understand this type of conflict. Peter Coleman with Columbia University has studied the root cause of intractable conflicts and identified more than fifty reasons ranging from politics to personal revenge to trauma. It is important to understand intractable conflict so that we can more effectively work towards resolving these complex conflicts.

Video I: Introduction

This video introduces emerging research on intractable conflicts. Each video is meant to help a diverse audience understand the fundamental concepts behind this area of emerging research and education.

Video II: A Conflict in the South Bronx

To better understand how and why certain conflicts elevate to an intractable level, Peter Coleman spoke with individuals at a local school in the Bronx who were embroiled in gang violence. The outsiders to the conflict, like the teachers and principle of the school, saw the conflict as a complex problem. However, the people in the conflict had a simple "us" versus "them" mentality.

Video III: A Conflict at Columbia University

Peter Coleman examined a conflict at Columbia University regarding the Israeli-Palestinian conflict. A group of students created a video on Columbia's alleged bias towards Israel. This ultimately attracted huge media attention and then the conflict erupted on campus. Conflict is like a "huge hole that took years to dig but only seconds to fall into." Once the conflict begins, it becomes so easy to get trapped in the conflict.

Video IV: A Conflict in Mozambique

Mozambique was at civil-war for years before peace suddenly "struck." One man, Jaime Gonzalez, helped both sides break through the wall of "good" versus "evil" which had been utilized to justify the ongoing tension between the government and the rebels. Peter Coleman discusses how "latent attractors" helped individuals in Mozambique to see the humanity in their enemy. This ultimately allowed for both parties to forgive each other for the violence and find lasting peace. Mozambique shows us that peace is possible even in impossible situations. We can get beyond the "us" versus "them" to find lasting peace.

DISCOVER

Video content from Columbia University and Peter T. Coleman, author of the book, "*The Five Percent: Finding Solutions to Seemingly Impossible Conflicts*."

Find these videos & other content by Peter Coleman at: www.adrtimes.com/articles/author/petertcoleman

Peter T. Coleman

Peter T. Coleman, author of *The Five Percent: Finding Solutions to Seemingly Impossible Conflicts*, is associate professor of psychology and education at Columbia University, director of the International Center for Cooperation and Conflict Resolution, and on the faculty of Teachers College and The Earth Institute at Columbia. In 2003, he received the Early Career Award from the American Psychological Association, Division 48: Society for the Study of Peace, Conflict, and Violence. He lives in New York. Website: www.fivepercentbook.com

Read more articles by Peter Coleman at: www.adrtimes.com/articles/author/petertcoleman

Are Law Schools Failing This Generation?

Law Review

by Walt Turner

Is trouble brewing in the educational structures of American law? Perhaps like so many aspects of our culture today, money takes precedence over prudence?

Distracted by financial exigencies generated by faulty assumptions, do we focus on enrollment, rankings, fundraising, building, branding—and thereby lay waste our powers? Examining the habits of mind that undergird a liberal arts training: responsibility, creativity, openness, curiosity; I wonder if the "best practices" of our institutions are modeling the behavior we seek to instill in our students.

Case in point: Access. Of all career paths, certainly the law should be our most democratic profession: a nexus of our shining city. Access to practice in our modern courts lies at the very heart of our pursuit of happiness. Diversity should reign in modern American courts; yet the very structures seeking to protect civil liberties are trending towards elitistism—by narrowly defining talent and limiting choices by indenturing practitioners.

Has an addiction to the prestige of academic structures and the majesty of legal systems binded justice? Muted the call to equanimity? Transmuted the scales into an impenetrable hide that terrorizes rather than protects; demonizes rather than tranquilizes; isolates instead of bonding the welfare of our fellow citizens?

Justice should be merciful, kind of flexible. Reset the bar. See a glorious landscape in faces of the uncouth. Do not eviscerate the promise of our better future to safeguard mind-forged manacles. Now is the time to revolutionize the educational structures of American law: to sow new seeds in a garden that envisions the law not as a codex; but an index of the shifting values and dreams of a people who have lived too long in the shadows. Then, future generations will review our choices, and give thanks for the blessings of a more perfect union.

Walt Turner, the Director of the Writing Program at Bethany College, was born and raised in coastal Alabama. He teaches courses in composition, professional writing, and world literature. While he has published articles and reviews on subjects from Shakespeare to Queer Theory to Popular Culture, his current research interests focus on writing program administration and writing pedagogy. ◤

Law School Graduation Day

by Law School Graduate

Graduating from law school reminds me of the part from George Orwell's Animal Farm where Boxer, the horse, finally collapses after many years of hard work. His friends make sure that he gets adequate rest and they come to talk to him. He tells them how he wants to retire and spend his final days leisurely relaxing in the field. After spending two days resting, a van shows up to take him away. Boxer had been the hardest working of the animals on the farm and the other animals gathered to say goodbye to him. Benjamin the donkey is the only one who notices that something is afoul and he cries out "Fools! Fools! Do you not see what is written on the side of that van?" On the side of the van is written "Horse Slaughterer and Glue Boiler." The animals chase after the van and tell Boxer to get out. Boxer tries to kick down the door but he is too weak. The animals plead with the horses that are drawing the van but the horses are too stupid to stop. Boxer is never seen again. Three days later, the pigs, who are the leaders of the farm, announce that Boxer died in the hospital. They describe the heroic manner in which he died and praise his work. They plan to create a wreath to send to his grave

and to hold a banquet in his honor. They also explain that the van had previously been the property of the horse slaughterer, and had been bought by the doctor, who had not yet painted over the old name out. It was all just a big misunderstanding. A few days later a van drops off a case of whiskey, apparently the price the pigs paid in exchange for boxer.

How does all this relate to law school? The graduating students are Boxer. After three years of hard work they are finally done. They have paid their dues. Over $150,000 in dues for some. Instead of wanting to relax in the field, they want the right to get a job in the legal market. The van coming to take them away to the slaughter is law school. After finally finishing law school, there is a graduation ceremony. Our friends and relatives show up to celebrate. But sadly in this situation, no one plays the role of Benjamin. No one is brave enough to point out the writing on the side of the van. Here the writing says "Indebtedness and Unemployment." At this point it is too late to try to kick down the door of the van. We could have tried first year, or maybe even second, but at this point it is too late. What's done is done. We can try to plead with the idiotic horses (the 1Ls and newly incoming students) to stop pulling the van by giving their money, but they are too stupid to listen. At graduation the pigs (the deans, the faculty, the center for career services) will hail our performance and accomplishments at the school. The writing doesn't say "Indebtedness and Unemployment!" It is all just a big misunderstanding! You will all be successful, you will all get jobs, the economy will improve! The pigs will then go home and use the money they earned from selling you to the slaughterer to buy their big homes, fancy cars, and expensive liquor. They will then report back to the rest of the animals that you secured a fancy job, that the average pay is $120,000 a year, and that you are now prominent attorneys. Little do they know that they are next and that soon the van will show up to take them to slaughter. And so the cycle continues. ◤

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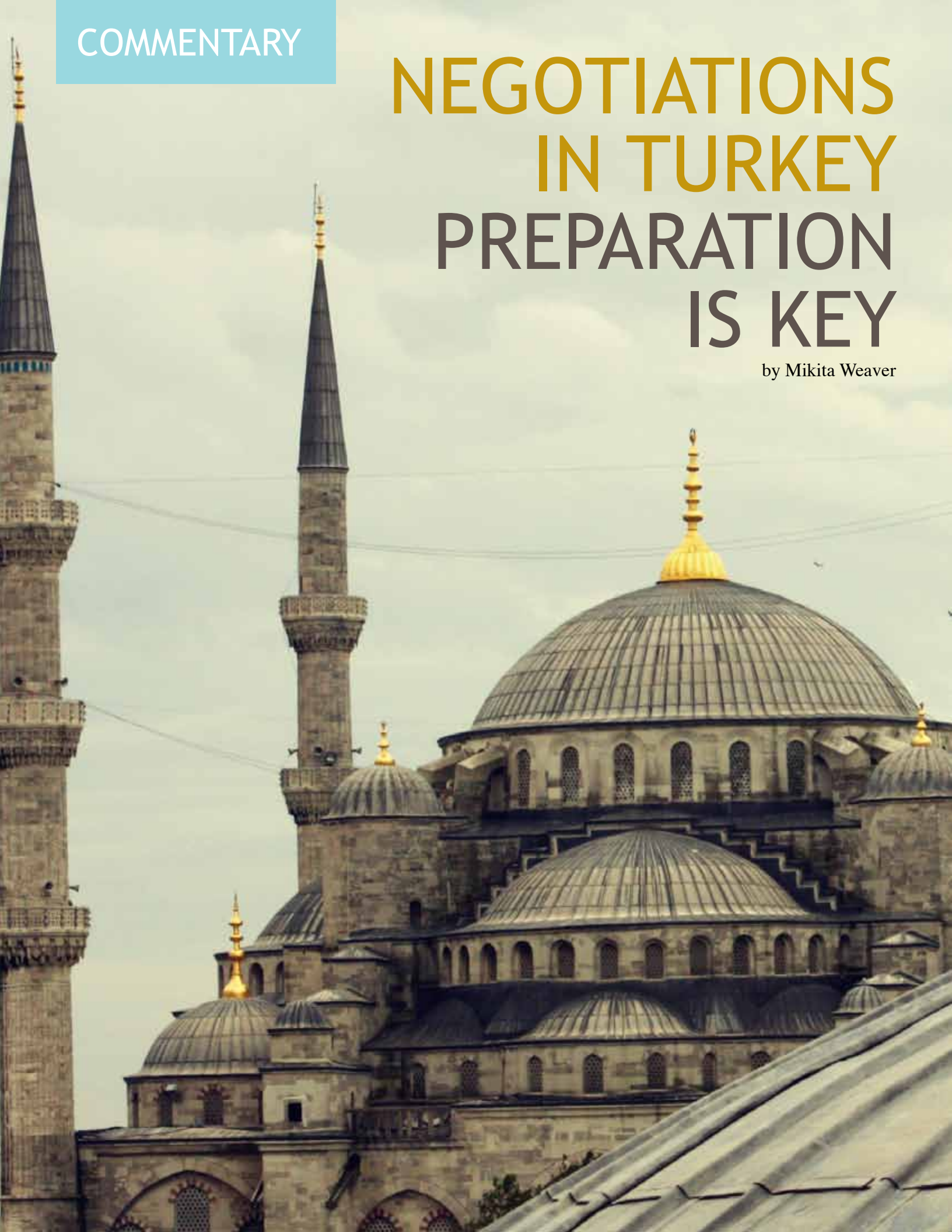
COMMENTARY

NEGOTIATIONS IN TURKEY PREPARATION IS KEY

by Mikita Weaver



Istanbul is fascinating.

French poet and politician, Alphonse de Lamartine, said the following of Istanbul, "If one had but a single glance to give the world, one should gaze on Istanbul."

While sailing on the Bosphorus Straight, the city skyline is filled with the ancient juxtaposed by the modern. The modern skyscrapers and yalıs (waterfront mansions) adorn the skyline—no doubt to accommodate the ever increasing population which is currently around 13 million. Ancient wonders like the Hagia Sophia, the Blue Mosque, and the Galata tower enhance the magnificent view and remind every visitor and citizen alike that we are indeed standing on historic grounds.

Besides the cathedrals, mosques, and palaces, I found myself enthralled by the ordinary. Walking through the streets, everything was so colorful: the bright red pomegranates and oranges at the fruit stands; the green pistachio and rose and almond flavored desserts at pastry shops; and, of course my favorite, cinnamon or clove-flavored Turkish delights.

Stopping on the street for a cup of tea became my favorite pastime—bringing a moment of serenity amidst the hustle and bustle of everyday life.

The markets were a completely different experience. The Spice Market and the Bazaar were a negotiator's paradise. I have been abroad plenty of times, frequently using bartering skills to acquire souvenirs for friends and family back home. Whether it was a woven Andean sweater, a tailored salwar kameez in India, or scarves in a Beijing market, a basic level of negotiation skills is needed so as not to be taken advantage of in ◢

other countries. Bartering for everyday items is simply part of the culture.

In the context of a buyer and a seller in a market, negotiations involve various stages. Usually these stages are not clearly defined, and parties rapidly progress through the different phases. Both parties must convene—each party must decide that they want to negotiate. Opening offers follow the convening phase. When a market has too many vendors and not enough buyers, I find it quite advantageous to look at one item and then walk away, effectively ignoring the vendors as though I am not yet ready to negotiate for the specific item. In this way, the vendor may bid against himself. I then return to the "negotiation table" and the negotiation dance begins and I start with the advantage.

Opening offers tend to anchor the negotiation process. When I lived in Ecuador, I quickly learned the going rate for particular items; in this way, I could bypass the typical negotiation dance by throwing out a reasonable opening offer. In Turkey though, I did not always know what a reasonable price was. To avoid overpaying, I negotiated with various vendors for items that I had no intention of buying. This had a dual purpose. Not only was I able to learn the going rate, I was able to avoid the pitfall of becoming emotionally invested in a particular item. For example, in the Istanbul bazaar I had been moseying around various shops inquiring about prices. After getting a general idea of prices, I found a beautiful red purse. Instead of negotiating for the red purse, I inquired about the price of the green purse next to the red one. As the price got closer to what I was willing to pay, I asked if the red purse was a similar price. In doing this, the vendor has invested his time and wants to sell me an item—any item. More importantly, I avoided becoming emotionally attached. When a vendor senses your affinity towards an item, he has the upper hand in the negotiation. When that happens, the price remains higher and I would ultimately pay more simply because I really wanted it!

A basic level of negotiation skills is needed so as not to be taken advantage of in other countries. Bartering for everyday items is simply part of the culture.

As the negotiation dance winds down, it is time for the buyer and seller to make a deal, or for the buyer to walk away. At this stage in the game, the vendor usually tries to convince me that his offer is a "fair price" or "good price." I am friendly and jovial in response and ask for a "friend price" or a "student discount." It is usually a friendly banter back and forth and we settle on a number that we are both a little dissatisfied with—I pay a little more than I want to and he accepts a little less than he wants to.

Everything is negotiated in Istanbul: the taxis, the tea, the scarves, the touristy trinkets, the ear of corn you buy from the street vendor, the Turkish delights. Described above are just a few "technique" I have employed. Do you have any tips or advice for the street-market negotiator?

Mikita Weaver

Mikita Weaver is the Editor-in-Chief of ADR Times, a premier online dispute resolution community. As an associate at Northrup Schlueter LLC, she focuses predominantly on litigation and arbitration in the field of construction insurance defense. She received her Juris Doctorate at Pepperdine University School of Law and received a Masters in Dispute Resolution from the Straus Institute. Mikita has been published on the Pepperdine Dispute Resolution Law Journal and worked at the Centre for Effective Dispute Resolution in London. As an avid traveler, she continues to explore various dispute resolution issues and how they vary from region to region. She graduated magna cum laude from Berea College with a philosophy degree and her favorite things include yoga, cooking, photography, and singing with the Legal Voices of Los Angeles and Lawyer's Philharmonic.

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COMMENT

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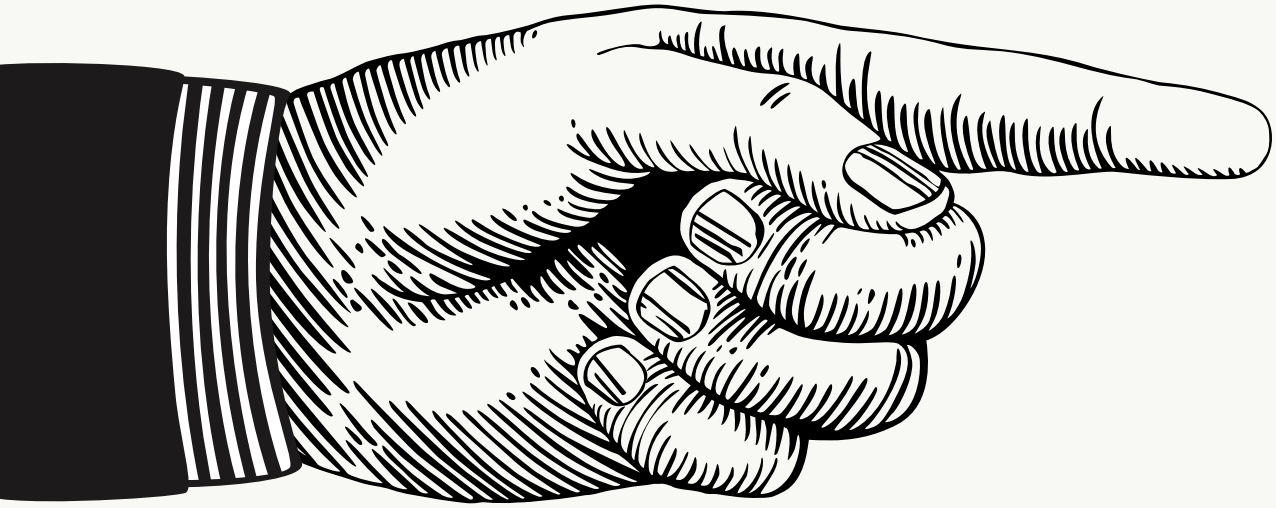
The Fundamental Attribution Error in Mediation

Why Parties Sometimes "Take Things Personally," And What Mediators Can Do About It



by Zachary Ulrich

Have you ever had someone blame you for something when there was nothing you could have done to change the situation? For example, have you ever made a promise to someone (say, to be at a certain place at a certain time) had something come up, and then have them become offended – where they just "assumed" it was "your fault"? More likely than not, you know exactly what I'm talking about. This is the Fundamental Attribution Error (FAE) at work, and it pops up all the time. In fact, the FAE has huge implications for not only our everyday lives, but also for many sources of conflict between mediating parties.

While there are many different reasons why people (parties) may "assume" things about one another, one of the biggest reasons is the FAE. Put simply, the FAE is a person's tendency to "assume" that the reason for someone else' behavior is "personal," "internal" – due to that person's personality or disposition, and not due to the "external" situation. For example, say you're late for an anniversary dinner date and your spouse has "assumed" that your tardiness was because you just didn't "care enough" about spending time with them. Imagine further that, in reality, you got stuck behind a huge accident on the freeway – you had absolutely no control over the situation. But by the time you arrive home your spouse has made a judgment – indeed, your spouse has committed a FAE without knowing it. Your spouse assumed you had control over the situation, when you did not. Further, when someone "assumes" that you can control events, they become offended because they usually also assume that you didn't personally care about their feelings, and their offense becomes "your fault." In situations like this, successful resolution of the misunderstanding often comes down to the trust between two people, which is often based on previous patterns of behavior. Are you consistently late for dates? Do you normally go out of your way to ensure that your spouse knows how much you appreciate and care about them? When someone "commits" a FAE, they only have the context of the situation (i.e., your past behavior) by which to reevaluate their assessment (and thus, their potential "offense" at what you've done). Unfortunately, as humans we tend to only consider the "context" of actions when those actions are our own. We give ourselves the benefit of the doubt, but it's a different story when judging others.

In fact, by the time a case crosses your desk as a mediator, more likely than not at least one of the parties (often the plaintiff) is wholly convinced that the dispute only exists because the other party did or did not do something to cause it. And they may be right! Many times, parties did cause the dispute and therefore the other side is not committing the FAE—they are correct about whose fault it is. But sometimes, there may be a reasonable explanation that a party was not wholly to blame, because of the external context the other side has not considered. For instance, perhaps a sub-contractor did not meet a contract deadline but could not do so because the sub-contractor's main supplier delivered needed goods late, etc. Sometimes, parties assume the other party "harmed" them and could have prevented it when they in fact could not.

As mediators we know too well that facts can often be "gray," convoluted, incredibly complex – and therein lies the conundrum: When parties can possibly "blame" other parties for a negative experience or outcome, they will likely do so because it's in their nature to "assume" that someone was always in control of events. All too often, "blame" lies somewhere in the middle of the dispute and arguments of potential liability end up dominating the most complex cases. This is especially true when parties do not have a previous personal or professional relationship: As with our hypothetical dispute between spouses, if parties do not have previous context by which to judge the validity of their FAE, they are more likely to commit it and assume the other side is to blame – regardless of the reality.

So as mediators, what can we do? Of course, one of our most fundamental responsibilities is to remain neutral – to not even worry about assessing liabilities of a case, but instead to help parties think through all potentialities and so pursue healthy, lasting settlements. But there are some instances where it is nonetheless beneficial for parties to be guided in fully examining potential FAE's they may have committed. It is always better for a client to examine their stance in mediation than to enter trial and find that there are perspectives they haven't considered. In order to help myself remember how to break down my approach to potential FAE-related "roadblocks" in a dispute, I like to keep it simple and use the same acronym as the problem itself: FAE. ◢

Facts

First, understand the Facts of the case from both sides, as best you can. This is a very elementary starting point, but it's important – and often tricky. Even though we are neutrals, we certainly have the opportunity and, I feel, responsibility, to help our clients assess the situation in ways they may not have previously done if it would be helpful in moving towards settlement. I always have my "feelers" out for potentially relevant, alternative "interpretations" of the dispute by either side. I ask myself the questions: Are there any facts from either party that suggest liability may not lie where one (or both) of the parties assumes it might? Further, do I think one or both of the parties may be committing a FAE? Of course, the whole point of many cases is that one or both sides feel they have an adequate factual basis from which to feel justified in their positions – right or wrong. If you sense during proceedings that a party may benefit from considering a potential FAE, then you might want to address it.

Address

Second, if you do choose to Address a potential FAE, make sure that 1) it is relevant to the dispute-at-hand (e.g., not something that neither party considers important anyway and that thus will likely not cause stalemate later) and that 2) addressing the assumption is worth the delicate balance of indirectly calling attention to a potential "mistake" or "bias" a party may have. Remember, when you address a potential assumption mistake of a party, you must help them keep face. If you do seek to address a party's potential FAE, do it delicately. The best way, I've found, to help a party "think through" any assumptions they may have made is to ask general questions regarding the assumption. For instance, ask clarifying questions from the standpoint that you are seeking clarification on the potentially ambiguous issues involved. You will be indirectly helping the party think through and clarify their own thoughts on the issues – likely in ways they may not have considered before. This is where the "delicate balance" comes in. You may very well find that the party interprets your questions as an "attack" on their perspective – if they do, move to the third stage of addressing a potential FAE: Empathy.

Empathy

When addressing potential FAE's, the key word is Empathy. Simply put, there is no "right" or "seamless" way to help a party think through their assumptions. There are only methods you can use to ensure that parties know you are seeking to help both sides find resolution from a neutral stance. For instance, questions such as, "is there any chance that the other party may not be directly responsible?," or, "are we sure of all potential interpretations of this case?" can be important for clients to hear, but are all potentially interpretable as a "threat" to their established viewpoint. I cannot stress enough how important – and powerful – it is to consistently communicate empathy as a mediator: especially when helping clients re-evaluate viewpoints they have assumed and that may be emotionally charged. Communicate that you are "seeking to ensure that we have thought through all possible alternatives." If necessary, it may be beneficial to directly reiterate your role as a neutral both on "no one's side," but also on "everyone's side."

All-in-all, addressing potential FAE's within mediation is a delicate balance, and is not a process to be undertaken lightly. It should be done rarely – only when there is potential for a party's assumptions to prevent them from considering viewpoints or options that may affect their positions on key issues. For a party's FAE to be "important" it does not necessarily have to be about something that would lead to "stalemate," but instead might just be about an issue that is nonetheless important to the case, and that might determine the outcome of even one significant aspect of the settlement. Finally, realize that often it may not matter to a party how or why a perceived slight or harm was committed – they may only value being recompensed (and legally, it may be the other side's fault regardless). Regardless, one of our roles as mediator is to understand our clients' potential biases and motivations as we work with them to develop lasting settlement. The fundamental attribution error is one of the most prevalent cognitive biases in human thinking, and as such it is essential that as mediators we both understand and know how to work with this and other potential mental "roadblocks" as they arise. ◤

Zachary Ulrich

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