

The background features a large, semi-transparent number '2021' in a light orange color. Behind the number, there is a faint image of construction cranes and a building under construction. The overall color scheme is orange and grey.

# CONSTRUCTION **SUPER**CONFERENCE **2021**

[www.constructionsuperconference.com](http://www.constructionsuperconference.com)

# Maximizing Mediation Results and Overcoming Obstacles

*(Including your own subconscious bias)*

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Suddenly, a heated exchange took place between the king and the moat contractor.

# Conflict and Communication

*“The single biggest problem in communication is the illusion that it has taken place.”*

- George Bernard Shaw

# TODAY'S DISCUSSION

- Pre-Mediation Preparation
- Opening Statements
- Strategies to Maximize Success
- Understanding the Role of Subconscious Bias
- Overcoming Impasse



*“By failing to prepare,  
you are preparing to fail.”*

- Benjamin Franklin



# PRE-MEDIATION PREPARATION

1. Know your case: What's at issue?
2. Are there special concerns or impediments to settlement?
  - Yours
  - Theirs
  - Options

# PRE-MEDIATION PREPARATION

3. Timing of mediation
4. Selecting the mediator
5. Preparing a mediation summary
  - Pros/Cons
  - Content
  - Sharing with the other side

# PRE-MEDIATION PREPARATION

6. Anticipate your own and the other side's needs:

- Ability to attend in person
- Time constraints
- Authority issues
- Coverage issues

**Exchanging  
information  
is critical  
before and at  
Mediation**





# Benefits of a Strong Opening Statement



**Influencing  
those who  
do not want  
to be  
influenced**

Who is  
easier to  
persuade?



Neutral  
Judge,  
Jury,  
Arbitrator




Adversary,  
Opposing  
Party



**Less Effort  
or  
More Effort  
Required?**







# Consequences of Not Sharing Information



**And, to make  
matters even  
more interesting...**

# The Role of Subconscious Bias



Affects the  
Opposition



It Affects You

# *How our Subconscious Bias Impacts Negotiations and the Mediation Process*

*- Hunter R. Hughes*





# Heuristics



# Self-serving Bias





# Base Rates



We tend to ignore  
base rates that do not favor us.

# The Endowment Effect



# Confidence Quiz

1. What is the number of books in the Old Testament?
2. What was the age of Alexander the Great at his death?
3. What is the Earth's diameter?

# Confidence Quiz

4. In what year was Mozart born?
5. What is the gestation period of a blue whale?
6. What is the lifespan of a blue whale in the wild?
7. What is the weight of an empty Boeing 747 with its engines?

# Confidence Quiz

8. What is the average number of inches of rain per year in the rainiest place inhabited on Earth?
9. What is the air distance from London to Sydney, Australia?
10. How many books are kept at the Library of Congress?



# Confidence Quiz

1. What is the number of books in the Old Testament? **39**
2. What was the age of Alexander the Great at his death? **33 years old**
3. What is the Earth's diameter? **7,917.5 miles**

# Confidence Quiz

4. In what year was Mozart born?

**1756**

5. What is the gestation period of a blue whale?

**300 to 600 days**

6. What is the lifespan of a blue whale in the wild?

**80 to 90 years**

# Confidence Quiz

7. What is the weight of an empty Boeing 747 with its engines? **390,000 lbs.**
8. What is the average number of inches of rain per year in the rainiest place inhabited on Earth? **467 inches in Mawsynram, India**

# Confidence Quiz

9. What is the air distance from London to Sydney, Australia? **10,573 miles**

10. How many books are kept at the Library of Congress? **39,000,000+**





Impasse  
Is  
Approaching



# Analyze Why ...

1. Missing or misunderstood information  
(i.e. insufficient preparation)
2. Incorrect valuation
3. Impact of the parties' (or attorneys')  
subconscious bias

# Overcoming Impasse

1. Exchanging additional documentation and/or other information
2. Breakdown and re-examine the issues
3. Assign the parties “homework” and schedule one-on-one follow-up sessions (consider hot tubbing)

# Overcoming Impasse

4. Consider alternatives
  - a. Phased mediation
  - b. Neutral third-party assessment
  - c. Non-binding arbitration



*“In the middle of every  
difficulty lies opportunity.”*

- Albert Einstein



A hand holding a small white object, possibly a pen or a small container, with a word cloud of conflict resolution terms overlaid. The words include: fairness, justice, resolution, connection, conflict, legal, together, negotiation, recommendation, cooperation, diplomacy, legislation, reconciliation, arbitration, interference, mediate, success, relationship, partnership, and document. The word 'negotiation' is the largest and most prominent. The background is a light gray gradient.

document justice

fairness

lawyer

resolution

together

connection

conflict

legal

negotiation

relationship

partnership

recommendation

cooperation

diplomacy

legislation

reconciliation

arbitration

interference

mediate

success

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The background of the slide is a composite image. It features a construction site at sunset, with silhouettes of workers on a building's steel framework and a large tower crane. Overlaid on this is a semi-transparent image of a person in a white business suit and a red patterned tie, with their hands clasped in front of them. The text is overlaid on the central part of the image.

**How was our session?**

**Please complete the session  
evaluation in the CSC  
mobile app**