

Maximizing Mediation Results and Overcoming Obstacles

(Including your own subconscious bias)

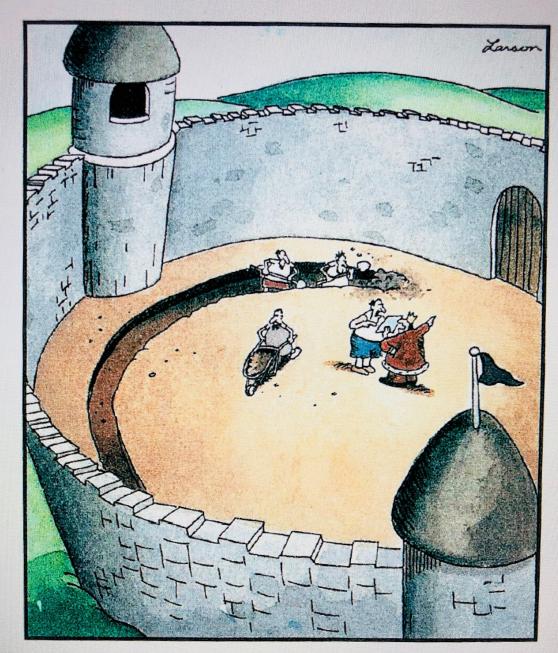
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Suddenly, a heated exchange took place between the king and the moat contractor.

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

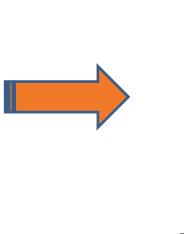




Influencing those who do not want to be influenced



Who is easier to persuade?



Neutral
Judge,
Jury,
Arbitrator









Consequences of Not Sharing Information



And, to make matters even more interesting...



The Role
of
Subconscious
Bias







How our Subconscious Bias Impacts Negotiations and the Mediation Process

- Hunter R. Hughes





CONSTRUCTION
SUPERCONFERENCE





Base Rates





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



The Endowment Effect





- 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?



- 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?



- 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?



- What is the number of books in the Old Testament?
- 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



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



- 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



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+





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







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