

Dispute Resolution Program



INTRO

About the Training

- This training is based on the 8-hour On-line conciliation program provided by EOTC to support court-connected conciliation to train volunteer attorneys in the District and Probate & Family Court Departments.
- This training was been modified to introduce dispute resolution skills and dispute resolution process for judges conducting Judicial Settlement Conferences (JSC).
- The slides on JSC were created by retired Judge Mark Mason and used with his permission.

2-Day Program

Day 1 - Thursday, June 4, 2026

Day 2 - Thursday, June 11, 2026

- 12:00 pm to 4:00 pm on both days
- Must attend both days
- District Court Judicial Settlement Conferences

Dispute Resolution Program

WELCOME

DAY 1

June 4, 2026

12:00 PM to 4:00 PM

WELCOME

Trainers

Timothy M. Linnehan, Esq.

ADR Coordinator for the Trial Court, EOTC

Honorable Paula Clifford

Associate Justice, Quincy Division

Beth Cook, Esq.

Deputy Legal Counsel, AODC

Facilitators and Coaches

Josh Hoch

- Mediator
- Facilitator

Nnena Odim, Esq.

- Attorney
- Facilitator

Alnoor Maherali

- Diplomat
- ADR Coach

Diana Chiang-Cooke

- Adjunct Faculty
- Facilitator

Elise Ramos

- Mediator
- Role-Play Party

Aaron Arzu

- Attorney
- ADR Coach

Zoom Basics

- Update Name
- Be Prepared to Use Chat
- Raise Hand
- Breakout Rooms
- Problems? Text Josh at 617-895-4028

Housekeeping

- Start at 12:00 pm, and ends by **4:00 pm**
- One break
- Must attend both days of the program
- Please have paper and pen or pencil nearby
- Stay hydrated and comfortable

Materials

Program Manual and Other Resources:

www.mwi.org/dispute-resolution-training-for-judges

- Program Evaluation
- Certificate of Completion
- Class Photo

Why Dispute Resolution?

“The courts of this country should not be the places where resolution of disputes begins.

*They should be the places where the disputes end after alternative methods of resolving disputes have been **considered and tried.**”*



Sandra Day O' Connor

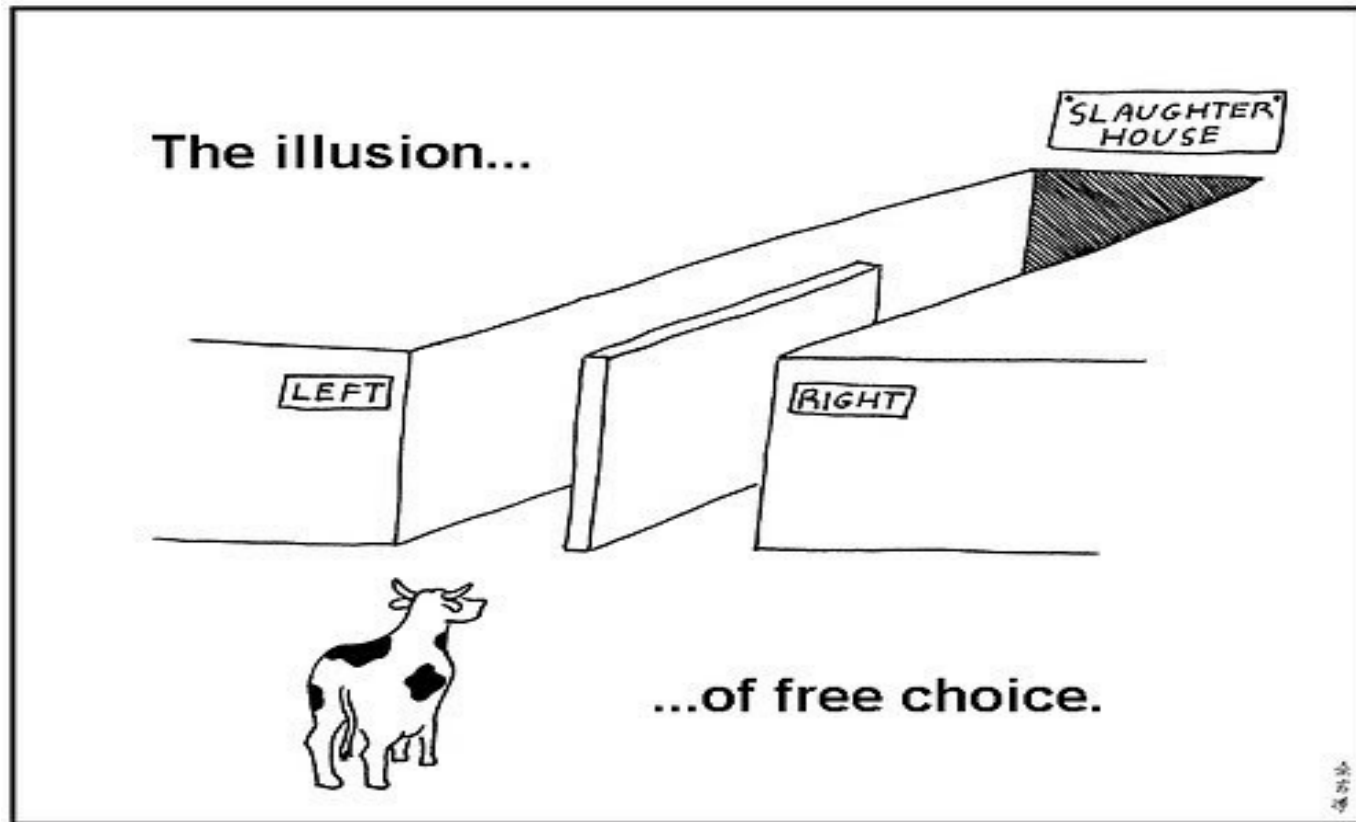
QUOTE

“Let the Forum Fit the Fuss” – Frank Sander



A modern justice system should offer a **multi-door courthouse approach** – an approach in which all legal matters come to court, but litigants are given many options (doors) to resolve their case.

ADR Paradox



ADR Paradox

- The illusion of trial. Most civil cases settle before trial, yet many cases do not use ADR!
- ADR is successful in specific case types, but, overall, there is no systematic use.
- The paradox is that while the use of ADR yields highly successful results in certain case types, it is rarely used in a systematic way by courts in other appropriate case types.

Reasons for Training

- To comply with the Code of Judicial Conduct
- To obtain a shared understanding of different conflict resolution skills, the dispute resolution process, and best practices for JSC.
- To practice dispute resolution skills.
- To promote JSC.

Program Agenda

- Overview of Uniform Rules on Dispute Resolution
- JSC Process & Role
- Communication & Conflict Skills
- Cognitive Barriers
- Ethical Standards & Implicit Bias
- Role-plays (1 Demo and 2 solo)

Program Format

- Interactive presentations & group discussions
- Role-plays & fun exercises
- You are the Experts!
- We draw on your legal and judicial experience and expertise!

Agenda – Day 1

- Welcome & Introductions
- Uniform Rules on Dispute Resolution
- Overview of JSC
- JSC Process & Role
- Break
- Role-Play Demonstration and Debrief
- First Role-Play (60 mins)
- Cognitive Barriers

Agenda – Day 2

- Ethical Standards & Implicit Bias
- Communication & Conflict Skills
- Break
- Second Role-Play (80 mins)
- Group Debrief
- Challenges & Strategies
- Wrap up – Evaluations

Training Norms

- Be flexible and open to learning.
- Encourage participation by all.
- Give permission to make mistakes.
- Be willing to receive constructive feedback.
- Support learning and productive conversations.

Uniform Rules on Dispute Resolution (SJC Rule 1:18)

Adopted by Supreme Judicial Court in **1999**.

Governs the provision of all court-connected dispute resolution services.

Imposes ethical standards for all neutrals.

Party Self determination. The parties decide on issues for discussion and terms of their own agreement.

Overview of the Rules

- Consistent Statewide Standards for court-connected dispute resolution services
- Uniform System for court referrals.
- Qualification Standards for all neutrals.
- Offer other options to resolve disputes.

Applicable Rules

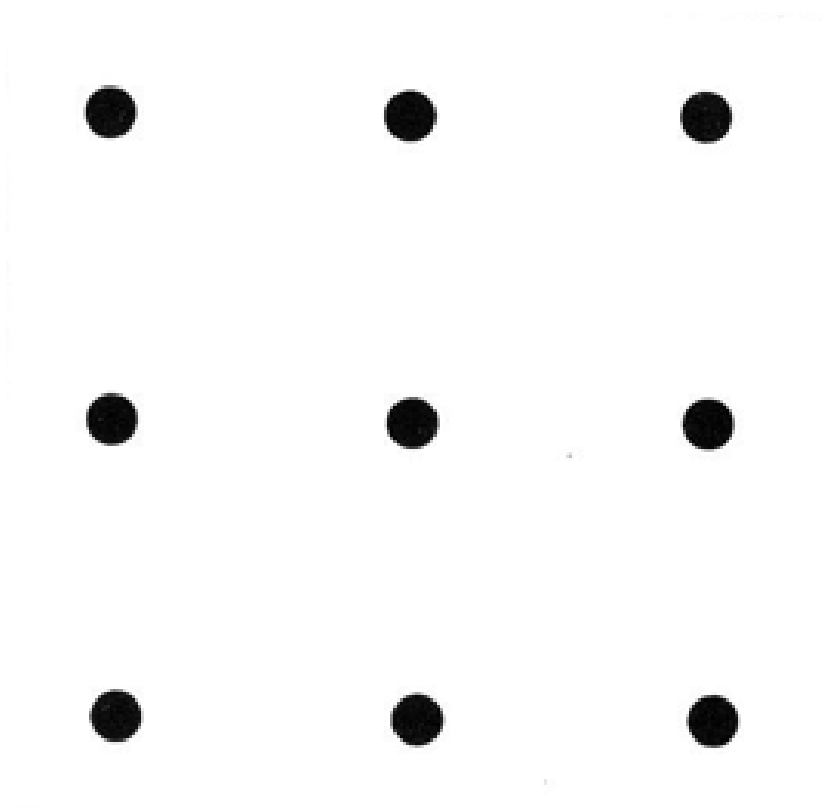
- Rule 1. Guiding Principles
- Rule 6. Duties of Courts regarding ADR Services
- Rule 7. Duties of Approved Programs
- Rule 8. Qualification Standards
- Rule 9. Ethical Standards

Participant Introductions

1. Name?
2. Court Division?
3. Years as an Attorney & Judge?
4. ADR Experience?



Nine Dot Puzzle



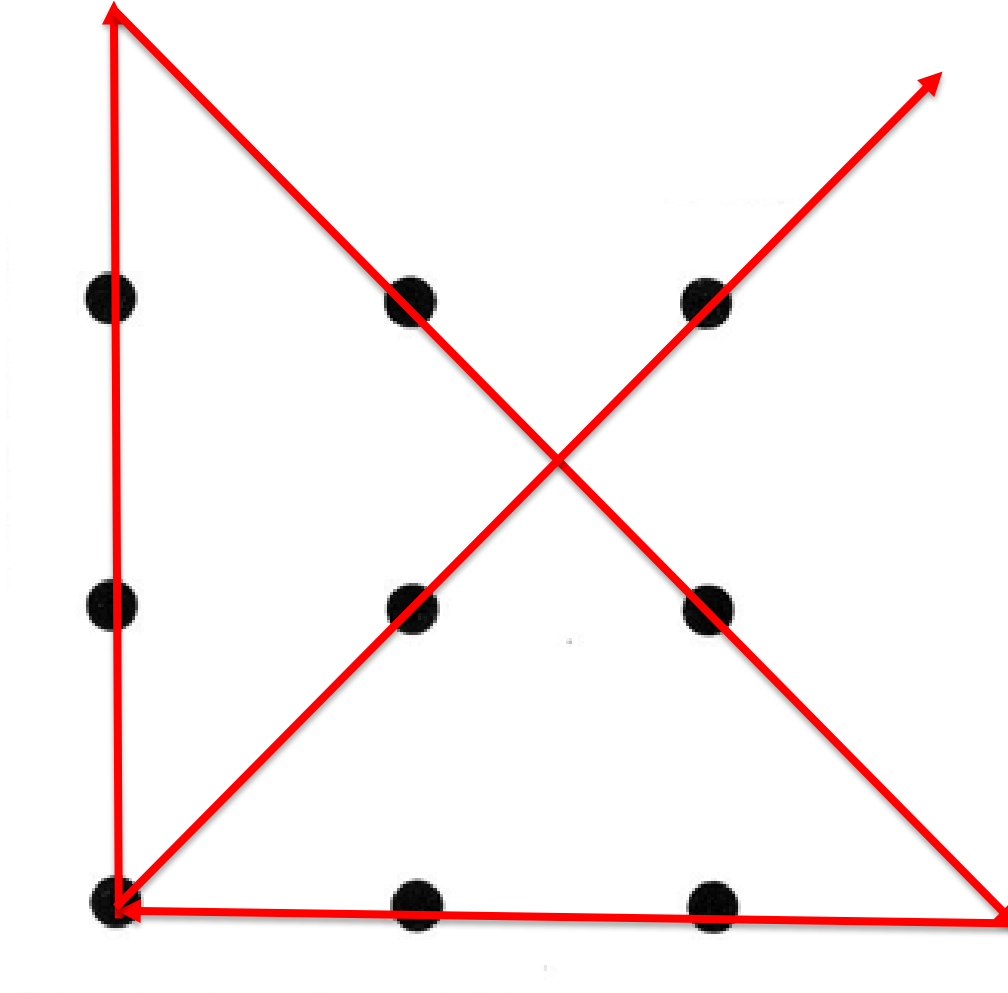
PUZZLE

Nine Dot Puzzle

Connect the nine dots in the pattern below following these rules:

1. You may draw **only 4** lines.
2. The lines must be **straight** lines.
3. You may **not lift your pen** or pencil off the paper.
4. You may **not retrace** over any part of the line.
5. It **is Ok** if the lines intersect.
6. No google search!

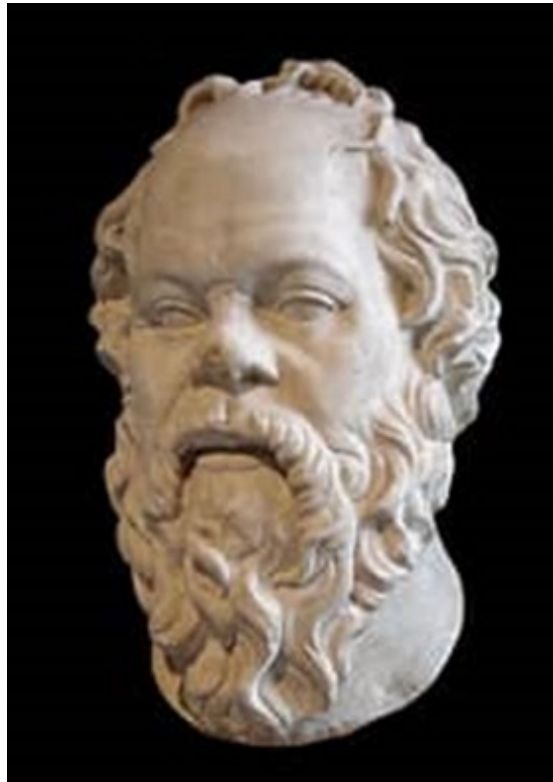
Answer - Nine Dot Puzzle



PUZZLE

Socratic Method

Named after the Greek philosopher who taught students by asking questions



SOCRATES

Socratic Method

Socrates sought to expose contradictions in the students' thoughts and ideas to then guide them to solid, tenable conclusions.



What is Dispute Resolution?



CONCILIATION

DR Spectrum

The Conflict Resolution Continuum

- **Parties** have most control over process and outcome
- Informal
- Mutual Interest-based
- Less expensive/painful
- Private
- Voluntary
- **Parties** have least control over process and outcome
- Formal
- Legal norm-based
- Expensive
- Public
- Involuntary



Mediation

A voluntary, confidential process in which a neutral is invited or accepted by disputing parties to assist them in identifying and discussing issues of mutual concern, exploring various solutions, and developing a settlement mutually acceptable to the disputing parties.

Mediation

- Facilitated negotiation
- Neutral 3rd Party process
- Facilitates communication & negotiation
- Helps parties understand and address underlying interests
- Helps parties create own options
- Voluntary, confidential and non-binding

Conciliation

A process in which a neutral assists parties to settle a case by clarifying the issues and assessing the strengths and weaknesses of each side of the case

Conciliators must be:

1. Attorney
2. Admitted to the Bar in MA
3. In good standing with the Board of Bar Overseers
4. 3 years of experience practicing law in MA
5. Attend an 8-Hour Conciliation Training

Conciliation

A ***triage*** process in which a neutral, in a brief informal session, must diagnose the problems that are preventing the parties from resolving the case themselves and employ strategies to help the parties overcome these barriers and move the case closer to resolution.

How is this similar to JSC?

Conciliation v. Mediation

What the difference between Conciliation and Mediation?

Conciliation is where people get emotional about money,

and **Mediation** is where people get money after becoming emotional!!

Judicial Settlement Approach

How many mediators does it take to change a light bulb?

Zero (0), it's a trick question. Mediators do not decide if the bulb needs changing.

However, a **Judge in a JSC** will tell them the light is out!!

Case Evaluation

A process in which the parties or their attorneys present a summary of their cases to a neutral who renders a non-binding opinion of the settlement value of the case and/or a non-binding prediction of the likely outcome if the case is adjudicated.

Judicial Settlement Conference

The ABA Dispute Resolution Defines

"Judicial Settlement Conference" as a meeting in which a judge or magistrate assigned to the case presides over the process. The purpose of the settlement conference is to try to settle the case before the hearing or trial. "Settlement conferencing" is similar to mediation in that a third-party neutral assists the parties in exploring settlement options.

You are the Experts!

- You know your court and the cases assigned to you.
- This training is designed to make you feel more comfortable being a neutral in the JSC.
- This material shows the dispute resolution process and skills to understand and use as a judge during JSC.

Judge Denlow



A neutral at JAMS since 2012, following over 16 years of distinguished service as a magistrate judge for the United States District Court for the Northern District of Illinois.

On the bench, he conducted more than 2,000 settlement conferences and authored numerous articles on the practice of conducting judicial settlement conferences.

Judicial Settlement Conference Material – Morton Denlow

- Settlement Tips
- Opening Statement
- Breaking Impasses – 5 Strategies
- More Impasses – 7 More Strategies
- Concluding JSC

These articles are available at

www.mwi.org/dispute-resolution-training-for-judges

JSC Survey

- Do you conduct judicial settlement conferences (JSC) in your civil cases?
 - If so, approximately how many do you conduct annually?
 - If so, approximately what percentage were settled?
- How do you determine whether to conduct a JSC?
- At what stage do you offer JSC?

JSC Survey

- Do you prefer certain types of cases for JSC?
 - If so, what are the types of cases?
- Do you disfavor certain types of cases for JSC?
 - If so, what are those types of cases?
- Do you follow any guidelines for doing JSC?
 - If so, what are they?
 - Do you find JSC to be helpful?

JSC Survey

- Do you believe you would benefit from relevant dispute resolution training to assist you in providing JSC?

How is JSC different from other DR Processes?



DISCUSSION

Dispute Resolution Process - JSC

- Ask open ended questions
- Use the Socratic method
- Do not interrogate
- Assess Strength and Weakness
- Trash, Bash & Hash

Judge's Role in JSC

- Not an advocate for either side.
- Not a fact finder but a problem solver.
- Not giving legal advice but provide information about court process.
- Provide normative information.
- You are Here! - Describes what normally happens with these issues and cases.
- Altering parties' expectations based on what could happen in court, if not settled.
- Assessing Strength and Weakness of case in private session.
- Settle the case!

Denlow - The Seven Advantages of Settlement

The 7 “C” s

- Client control
- Containing costs
- Certainty of outcome
- Confidentiality of process
- Creative solutions
- Continuing relationships can be preserved
- Closure

Don't Just Trash & Bash, Hash too!

Trash. A way of continuing to diminishing the parties view of their case, trashing their arguments until resolution.

Bash. A way of pushing the parties to accept a compromise of competing offers. For example, \$100 offered by plaintiff to settle while defendant counters with 50. “Bashes” parties to accept \$75.

Hash. A better way try to hash out the interests and positions of the parties by using listening and conflict resolution skills to get the parties to reconcile.

Trash and Bash

Way of describing the process where a 3rd party neutral trashes the merits of each of the sides case and then seek to push the parties to split the difference in compromise on back-and-forth monetary offers.

- **Trash.** Parties need to hear the weaknesses of their case by reality testing. Cognitive dissonance.
- **Bash.** Parties need to make reasonable offers and understand their interest. Anchoring and Loss.

No Absolutes

When evaluating the strength and weaknesses of each sides case, there are no absolutes!

- Not case evaluation. No written findings.
- Uncertainty of success at trial is your friend, use it!
- Provide reality testing in private with each party, not with both parties present.

JSC Steps

Introduction

- Introduce yourself
- Welcome parties
- Describe Conference Settlement Process
- Voluntary, informed consent, self-determination
- Explain confidentiality. Ask about the authority to settle
- Describe the process (talk first with everyone, meet separately, come back together for agreement, or end the session)

JSC Suggested Steps

Joint Session

- Ask what happened
- Ask about prior dealings and relationship
- Summarize each party
- Ask each party how it can be resolved

Private Session

- Remind about confidentiality
- Ask about anything forgot or unconformable from public
- Explore strength and weaknesses (BATNA – reality testing)
- Ask about sharing info to other side (offer etc.)
- Ask about options
- Summaries interests

JSC Steps

Last Joint Session

- Summarize progress and shared interests
- Share info and movement in resolution
- Reach an agreement or end the JSC

Agreement

- If settled, the Parties create and file the agreement with the court.

JSC Tips – Do

- Control flow of negative language.
- Reframe issues neutrally.
- Listen actively and show understanding.
- Look for non-legal factors.
- Ask about litigation alternatives.
- Ask about cost of litigation.

JSC Tips – Don't

- Skip the introduction.
- Assume parties understand the process.
- Ask leading or judgmental questions.
- Give up too soon.

JSC Introduction Exercise



EXERCISE

Introduction Exercise

- Groups of 2
- 10 minutes
- Review and Practice the JSC Introduction

www.mwi.org/wp-content/uploads/2026/06/Introduction-JSC.pdf

Conciliation Demo

Conciliator: Tim

Plaintiff: Elise

Plaintiff's Atty: Nnena

Defendant: Josh

Facilitator: Diana

- What did the Conciliator do? What skills did you notice?
<https://www.mwi.org/wp-content/uploads/2023/09/Questions-for-Observers.pdf>

Demo information

- Business Dissolution case
- Elise and Josh

<https://www.mwi.org/wp-content/uploads/2023/11/Fishbowl-DemoGeneralInfo.pdf>

Debriefing Demo

- Use Questions for Observers.
- What worked well?
- Was the conciliator impartial?
- How would a JSC be different?
- Questions?

Introduction to Role-Playing

How to Role-Play:

- Speed conferencing
- Key Elements of Successful Role-Plays
- Lessons from Geese
- Questions for Observers

Role-Play 1 – (1 Hour)

Role-Play Groups

4 participants per group, 4 groups

1 coach per group

Switch role as a JSC judge every 15 min

Consumer Case

<https://www.mwi.org/wp-content/uploads/2023/05/Consumer-CaseTML.pdf>

Cognitive Barriers

Heuristics: A term used to describe decision making strategies people use

- Mental short cuts.
- Not always rationale.



Cognitive Dissonance

- When it is psychologically uncomfortable to consider information that contradicts one's own point of view.
- Tends to justify a person's conduct, to blame others, deny, downplay, or ignore conflicting data.
- People dislike inconsistency and will act to eliminate the contradiction, if questioned about it!

Affect Heuristic

When our emotional state or mood influences our decisions.

- Instead of evaluating the situation objectively, we rely on our “gut feelings” and respond according to how we feel.
- Bad weather - The affect heuristic can lead to suboptimal decision-making.

Advocacy Effect

- Self-serving judgments about the likelihood of success with less attention to weaknesses.
- May result in the Plaintiff demanding more than the defendant would accept.
- May cause first offers to be too extreme!
- Causes parties to try to win through the conciliator.

Loss Aversion

(affected by framing)

GAIN FRAME



LOSS FRAME



Risk Averse

Studies have shown that parties make different decisions about risk depending upon whether they categorize (or “frame”) the risk as a gain or a loss.

- The usual reference point in negotiation is the status quo. Most parties are more risk-averse when protecting settlements regarded as current “gains” and are less risk-seeking when making decisions involving results regarded as current “losses.”

Loss and Risk Aversion

- Parties frame a choice between certain and risky options will take the certain option.
- Conciliators need to focus parties on settlement options as a gain rather than a loss.
- Conciliators can discuss the transactional cost of continuing to litigate, as a gain to settlement and not a loss.

Selective Perception

Is parallel to the Advocacy Effect.

- The hammer only sees the nail. Party only see the positive or good part of the case supporting their position.
- Blind to other positions!

It's Not About the Nail



VIDEO

Optimistic Over Confidence

An inflated view that people have of themselves or a situation.

- **Lake Wobegon** - That's the news from Lake Wobegon, "where all the women are strong, all the men are good-looking, and all the children are above average."
- Good driving example.

Over Confidence

- Parties are less willing to settle because they like their litigation chances.
- Lawyers tend to focus on the facts supporting their case and overestimate their ability to prevail at trial when advising clients to settle.
- Conciliators need to assess weaknesses of each side case and use reality testing.

Reactive Devaluation

Parties tend to reject offers from the opposing side, as they do not want the other side to gain. That is good for you is bad for me.

- May otherwise reject offers that they should accept.
- Most problematic when the bargaining range is narrow.

“We should support whatever the enemy opposes and oppose whatever the enemy supports”

Chairman Mao



Reactive Revaluation

- Use objective standards to help the parties to review offers.
- Get the parties to brainstorm about possible options before making definite offers.
- Explore interests when discussing offers.

Mug Exercise

This is your coffee mug below;

How much are you willing to sell it for?



Mug Exercise

This is NOT your coffee mug below;

How much are you willing to buy it for?



NEW YORK TIMES BESTSELLER

REVISED AND
EXPANDED EDITION



PREDICTABLY IRRATIONAL

"Sly and lucid. . . . Revolutionary." —*New York Times Book Review*

*The Hidden Forces That
Shape Our Decisions*

DAN ARIELY

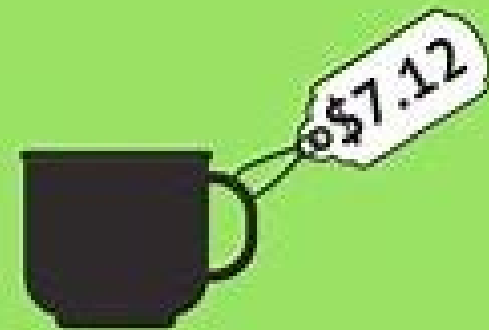
AUTHOR OF *THE UPSIDE OF IRRATIONALITY*

HEURISTICS

The Endowment Effect



Not mine



Mine

Endowment Effect

- What is mine is more valuable.
- My injuries
- My divorce

Anchoring Effect



When decisions are influenced by a particular reference point or 'anchor'.

Anchoring

- An opening position or reference point that effects further negotiation.
- An unreasonable offer may weigh down, the conciliation process as the parties concentrate or “anchor” on the position.
- Limits discussion of realistic options. As parties will not bid against themselves.
- Conciliators must try to expand the conversation beyond the specific reference point.

Anchoring

- Try to get the parties into a zone of settlement where their interest may overlap.
- Move the parties beyond specific high or low offers by discussing interest and objective standards.
- Try to get the parties to create a range for possible settlement. A range of possible settlement will make it easier for parties to move off positions.

Fairness



EXERCISE

Fairness - Exercise

- Pairs of two
- One person is the Proposer
- The other person is the Responder
- Proposer has been given you a \$100 and to keep it you must offer Responder some portion of the \$100 AND the Responder must accept it.
- The Proposer makes an offer to the Responder, and the Responder must accept or reject the offer as given, no discussion (Yes or No)
- If the offer is not accepted by the Responder, no one gets to keep the money.

Results of Fairness Exercise

Fairness is subjective.

- Why would you not accept any amount, you started with nothing! Offered something for free.
- Not fair, Proposer did NOT offer more, so rejected it in spite.
- Most Responders in US accepted \$24 but in Philippines they accepted \$12!

THINKING, FAST AND SLOW



DANIEL
KAHNEMAN

WINNER OF THE NOBEL PRIZE IN ECONOMICS

READ BY PATRICK EGAN • AN UNABRIDGED PRODUCTION

FAST AND SLOW

Thinking Fast and Slow

- Psychologist **Daniel Kahneman** explains how two systems of the human mind constantly fight over control of our behavior and actions.
- **System 1** is fast, intuitive, and emotional, while **System 2** is slow, rational, and logical.
- The book shows how these 2 systems leads to errors in memory, judgment and decisions, and what we can do about it.

Fast - Bat & Ball

A baseball bat and a ball cost \$1.10 in total. The bat costs \$1.00 more than the ball. How much does the ball cost?



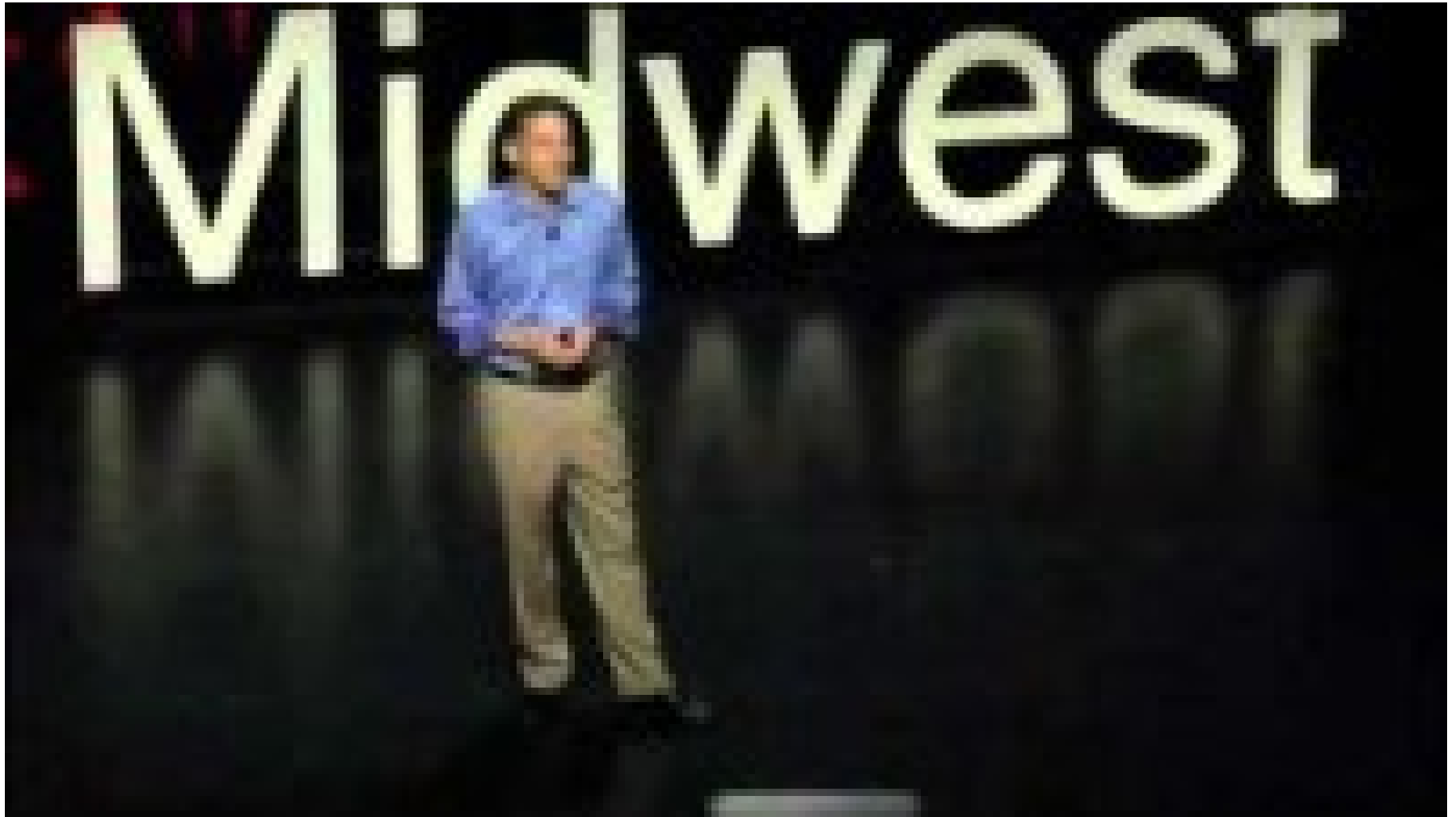
Fast - Bat & Ball

5 cents.

For the bat to cost \$1 more than the ball, the ball must cost 5 cents and the bat \$1.05.



Thinking Slow – 17 Camels



FAST AND SLOW

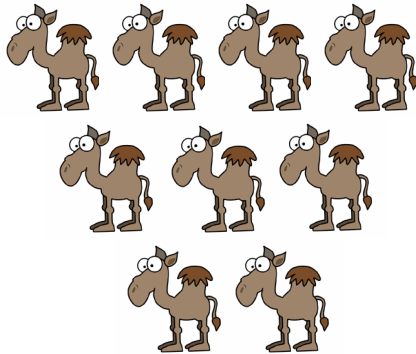
$$17 \div 2$$

$$17 \div 3$$

$$17 \div 9$$

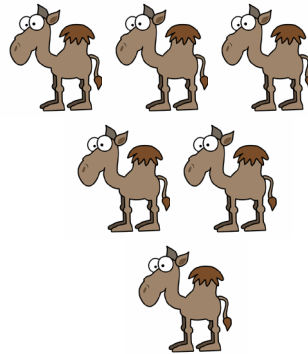
$$18 \div 2$$

The first son took his half --



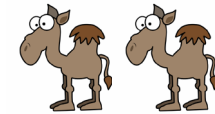
$$18 \div 3$$

The second son took his third --



$$18 \div 9$$

The youngest son took his ninth --



$$= 17 \text{ Camels}$$

They had one camel left over. They gave it back to the wise old woman.



Thinking Slow

Judges need to slow the parties down; quick assessments are not always the correct ones to help resolve disputes.

Keep looking for that 18th Camel!!

End of Day 1

See you all next Thursday 6/11!!

