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Digging Deeper

First Mediation Corporation Newsletter

March 2006

Greetings from the Editor!

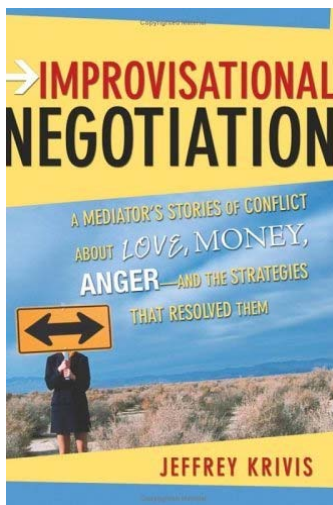
I'd like to welcome you to our bimonthly Digging Deeper newsletter where we discuss cutting-edge mediation topics that go below the surface toward the heart of achieving resolution. We will provide you an inside look into the industry and of course, welcome your comments and feedback for future issues.

-Mariam Zadeh

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Talking about Improvisational Negotiation with Jeffrey Kravis



Jeff talks about his new book, *Improvisational Negotiation: Stories About Love, Money, Anger and the Strategies that Resolved Them*, with BookLook.tv. and shares his thoughts, insights and ideas that brought this book to life.

[Watch Jeff's Book Interview on BookLook.tv!](#)

Calendar of Events



This is where you can learn about the latest events that are being sponsored by First Mediation Corporation. If you want to make sure to receive an invitation to one of our upcoming events or seminars, be sure to join our mailing list below.

You can find Jeffrey Kravis at the following upcoming events:

January 10 - April 18:
Professor, Pepperdine
Law School Advanced
Mediation Class (Malibu,
CA)

February 21: Book
Signing for
Improvisational
Negotiation at

Finding Common Ground: By Jeffrey Kravis and Mariam Zadeh

The X factor in mediation is the ability to influence the other side to pay more or take less. Finding the elusive X factor is the challenge for most mediators, and is often done in the face of uncertainty. This uncertainty takes many forms and can serve as a barrier if not acknowledged and addressed by the parties. Taking the uncertainty out of the negotiation requires the mediator to convey to each of the parties the ability to be strategic while at the same time presenting each negotiation move from a positive perspective.



Got Milk?

If we offered you a tall glass of ice cold milk after you just finished eating a plate of freshly baked chocolate chip cookies, would you accept our offer? We think the odds are in our favor that you would say yes. What if we offered you that same glass of milk after you just finished eating a plate of fresh baked Atlantic salmon over a bed of sun dried tomato risotto. Under this set of circumstances, it is more likely that you would say no. Although our offer (i.e. the glass of milk) did not change in any way, the circumstances immediately preceding the offer were quite different in the two scenarios. In the first instance, the cookies made the glass of milk appear more palatable and enticing while in the second instance, the idea of drinking milk after such a heavy meal might have even made you feel repulsed or disgusted. By altering the circumstances immediately preceding an offer, you can influence another's frame of reference and their perception of the offer's appeal.

Take for example the situation where both sides have goals of ultimately settling the case for around \$200,000. The plaintiff starts the negotiation by demanding \$1,000,000 and the defendant responds with an offer of \$25,000. Had we not revealed the parties' intended endgame of \$200,000, there would appear to be little probability of settlement in light of their extreme respective positions. The figures proffered by the parties give little clue to the other side about how each actually values the case, leaving neither side willing to negotiate in the dark. The plaintiff won't feel comfortable responding to the unrealistic offer of \$25,000 and the defendant will need reassurance that the plaintiff intends to come off their "pie in the sky" figure of \$1,000,000. By making an offer that is viewed as extreme, the negotiator is likely to get a response that is equally, or even more extreme, which could paint the party into a corner with few negotiating options.

In order to put a positive perspective on the negotiation, while not leaving money on the table, the strategic negotiator will select an initial position that is exaggerated just enough to serve its intended purpose while providing the other party with a figure they can contrast and respond to. If the goal is to settle the case for \$200,000, the aim should be to make an initial demand that sends that message to the defendant, producing a negotiation

Pepperdine Law School
(Malibu, CA)

March 15: SCMA Book Signing for Improvisational Negotiation at Barnes and Noble (Encino, CA)

April 5 - 8: Presenter, ABA Dispute Resolution Conference (Atlanta, GA)

April 26 - 30: Presenter, Int'l Academy of Mediators Conference at Harvard Law School (Boston, MA)

June 22 - 24: Professor, Pepperdine Law School Specialized Mediation Course (Malibu, CA)

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volley that plays out in a series of small reciprocal concessions and counteroffers, which will ultimately result in the final dollar figure being sought.

You Scratch My Back, I'll Scratch Yours

When giving a gift, it may be because you enjoy the mere act of giving, but it may also be because deep down, whether you acknowledge it or not, you are hoping to receive something in return. We suggest that the next time you give a gift or do a favor for another, look inward and consider whether there is a part of you that seeks reciprocation in some form from the recipient. Do not be alarmed if you find that motivation, because as it applies to the business realm, a voluntary gratuitous move has significant appeal and the power to make people feel obliged to reciprocate in some form in the future. The form of reciprocation varies greatly and can take the shape of currency, recognition or closure. People are hard-wired to feel obligated to repay favors, gifts or invitations regardless of whether they wanted the favor, gift or invitation in the first place. As a result, a person who feels indebted to another is likely to say "yes" to a request, even when in all other circumstances, they would have said no.

Consider what happens when walking into warehouse department store like Costco. As you walk into the store, you will find salespeople in just about every other food aisle passing out samples to anyone who walks by them. Once you have finished the food sample, the salesperson generally asks whether you liked the item. Having just eaten the food contained in the bite sized cup, you reply, "yes". At that point, the salesperson points to the bulk sized food item stacked neatly behind her and offers one, to which you feel obliged to reciprocate by replying "yes".

Likewise, the Hare Krishna Society took advantage of this reciprocation phenomenon by soliciting contributions in public places by first giving the target person a "gift" such as a book or flower and then requesting a donation to the society. Clearly, even an unwanted favor (i.e. the food sample or flower), once received, will produce a sense of indebtedness that can later be capitalized upon. When negotiating, try to create that sense of indebtedness in your adversary by granting an extra discovery extension, providing copies without asking to be reimbursed, or extending a courtesy you normally would not -- make sure to do these "favors" before you start negotiating so that they don't appear tied in to your settlement request. Once your adversary has received something unexpected from you, he or she will feel obligated to repay the favor and champion your cause, making it that much more likely that the settlement scale will tip in your favor at the end of the day.

I'll Promise, If You Promise

People tend to lock themselves into extreme and unrealistic positions at the beginning of a negotiation only to feel obligated to act consistently with those positions throughout the negotiation

and not appear weak. You can tap into and harvest this sense of obligation from your adversary by engaging in a series of trades with him or her during the negotiation process. To illustrate, suppose that you have a case that you would like to settle for \$80,000. You last demanded \$125,000 and they responded with an offer of \$40,000. The discussions have hit an impasse and everyone has emphatically declared that they are done negotiating. You could continue the traditional negotiation volley, which likely won't get you very far very fast. Or, you can view this as an opportunity to bracket the negotiations and gain an advantage by getting agreement about the value of the case from your adversary.

First, start by obtaining their agreement that the value of the case falls within a range such as \$60,000 - \$100,000. Second, make sure that the range you are agreeing to includes the amount that you are striving to settle the case for; in this example, \$80,000. Third, establish that your respective case values are both right because both are in the agreed range even though you are at the upper end of the range (\$100,000) and they are at the lower end of the range (\$60,000). This is a relatively small commitment and should not be that difficult to acquire because no one is conceding anything at this point. By establishing agreement to a trivial request such as this one (that you are both in the range), you will have increased the likelihood of your adversary's compliance with a similar but larger request even though the larger request is only remotely connected to the smaller earlier request.

Make your final move toward closing the deal by coaxing the other side into a mutual commitment. You say, "I promise that I will recommend \$80,000 to my client, if you promise to make the same recommendation to yours. It's not a value that either of us wants but it's one that is within the range we both placed on the case." Knowing that your adversary will inherently feel the need to reciprocate your commitment and remain consistent with the position he or she just took, i.e. that \$80,000 is within the range of reasonable values for this case, it is all the more probable that they will agree to make your requested recommendation. If you acquire their commitment to make this recommendation, be confident that they will do their best to get their client's authority to settle the case for \$80,000, because to do otherwise will only serve to tarnish their reputation for consistency.

[Read the Complete Article](#)

We Want to Hear From You ...



Please feel free to drop me a line at mzadeh@firstmediation.com to let us know if there are particular topics of interest that you would like us to cover in future issues. We are always interested to hear from our readers and welcome and appreciate your feedback.

Mariam Zadeh

Last Minute Club - Become a Member!

We realize that it is often difficult to schedule cases with us on short notice or in instances where there are critical time pressures. As a result and in an effort to accommodate our colleagues when faced with this situation, we have instituted the *Last Minute Club*.



As a member of the *Last Minute Club*, you will be notified in the event of a cancellation or opening in our calendar and will be given priority to book that last minute spot. You can choose to be notified by email or phone, at which point we will advise of the date, time and number of hours available.

Please keep in mind that the first to respond with a firm acceptance by all parties of the opening will be able to reserve the date.

We are hopeful that becoming a member of the *Last Minute Club* will help accommodate your firm and serve your needs for any last minute mediations.

[Last Minute Club Membership Form](#)

Have Something to Say? Join Our Blog!

We invite you to check out our Blog where you can contribute your thoughts, ideas, and experiences. It's a way to shed light and create dialog about issues that are of importance to you and your colleagues.



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