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## Digging Deeper

First Mediation Corporation Newsletter

November 2006

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### Weekends in Carmel/Monterey with Jeffrey Kravis



Jeff Kravis has now expanded his practice to the Carmel/Monterey area for clients who wish to mediate and spend their weekend in a scenic and relaxing environment.

Dispute resolution doesn't have to be stressful and gut-wrenching. In fact, working through your conflicts in a tranquil setting can be a

remarkably pleasant experience. Join Jeff for a weekend in Carmel/Monterey and soak up the ambiance of this lovely historic village while you bring closure to your most complex legal challenges.

### STEP IN to Improvisational Negotiation

This edition embarks on the first of a seven-part series where we unveil the mechanics and theory behind



### Greetings from the Editor!



Welcome once again to our bi-monthly Digging Deeper newsletter where we discuss cutting edge topics in negotiation and mediation that go below the surface to the heart of achieving resolution.

We hope you will join us at one or more of the following upcoming events where Jeff and/or I will be presenting.

- **Mariam Zadeh**

**Calendar of Events:**

### *Improvisational Negotiation.*

We begin this series with a discussion about the problem with conventional wisdom in negotiation. The six steps of this groundbreaking STEP IN technique will be addressed in future issues of our newsletter. Join us for the entire series and STEP IN to the solution!

1. **S**hape the Marketplace for Risk
2. **T**rade Knowledge for Instinct
3. **E**xamine the Tea Leaves of Uncertainty
4. **P**aint the Canvas of Creativity
5. **I**lluminate the Negotiation Landscape
6. **N**urture Team Synergy

## **The Problem with Conventional Wisdom in Negotiation By Jeffrey Kravis and Mariam Zadeh**

Conventional wisdom in negotiation provides specific responses to stimuli that are categorized as competitive or cooperative behavior. Depending on the identity of the behavior, the negotiator is taught to distribute a set value through a series of moves and concessions, or create value through ideas and transformative behavior. Historically, negotiation theorists remarked that competitive mindsets are based on "positional" bargaining---something is gained only if something is given up. These theorists encourage concentrating on the "interests" or needs of the parties, with the hope that the solution will somehow rise to the surface on its own like oil on water.

The problem with conventional wisdom is that the world is not broken down into simple behavior categories that respond the same way to predictable incentives. Instead, the world of negotiation mirrors the complexities of society, in which relationships emerge based on past experience and the pursuit of new opportunities with each other. The memory associated with a person's experience allows for the building of mutual understanding, while the response received to positive and negative change results in a solution to conflict. It is against this backdrop that negotiating through an improvisational lens allows people to work together to create something larger than the sum of its parts.

The improvisational orientation and approach to negotiation is characterized by adapting to a set of circumstances in a strategic yet unconventional way. The strategic side of improvisational negotiation provides acknowledgement and integration of the gems offered by conventional wisdom while the unconventional side permits incorporation of these traditional techniques in a manner that yields an unconventional negotiation repertoire. By adjusting one's pattern of negotiation to the behaviors presented in the moment, we move away from the predictable and move

January - April 2007:  
Straus Institute for  
Dispute Resolution,  
Advanced Mediation  
Course (Malibu, CA)

February 2007:  
Mediating the Litigated  
Case (Malibu, CA)

March 2007: DRI Life,  
Health and Disability  
Conference (Chicago,  
CA)

May 2007: International  
Academy of Mediators  
Conference  
(Philadelphia, PA)

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closer to the improvisational. The success of this technique stems from the willingness to replace the traditional "one size fits all" textbook approach with a style that encourages creativity in an obvious moment of uncertainty; making certain that the concept of risk is portrayed in a light that makes it a useful tool instead of a dreaded challenge.

The essence of improvisation is the act of creating something as it is performed on the spur of the moment. For example, an actor improvising a scene must trust his own instincts to define a character's response to internal and external stimuli. Although this term is usually used in the context of music and theater, it applies equally well to the negotiation setting where spontaneity and intuition are critical components. Negotiators find themselves in rapidly changing unpredictable environments where they are required to react and respond to information as it is being presented, which makes it difficult to draw from a set of standard techniques and responses.

The brilliance behind integrating improvisational techniques into negotiation is that the apparent lack of structure actually allows for the use of strategies that are well thought out in advance but are not bound by precise formulas or equations. The objective is to steer away from the conventional wisdom that produces a rigid and uniform negotiation methodology. This is not to say that improvising means, "Anything goes." Instead, improvisation in negotiation relies on this structure for developing and mastering skill sets that support the uniqueness of each individual negotiation, its parameters, participants, challenges and objectives.

Predictable patterns by their very nature lead to impasse. By layering the strategic unpredictability of improvisation over conventional wisdom, traditional competitive and collaborative approaches are sheltered from exploitation under the umbrella of improvisational negotiation. The effectiveness of this overarching principle derives from its unique integration of concepts previously well defined with innovative models that allow for creative and broader thinking.

Competitive and collaborative techniques will continue to serve the negotiator well under the traditional set of circumstances for which they were designed. Unfortunately, taken individually their application in less-established circumstances is limited and will encourage a breeding ground for impasse. In these situations where the benefits offered by conventional wisdom have been exhausted, the negotiator is invited to explore the next layer of negotiation technology and STEP IN to *Improvisational Negotiation*.

### **Farewell to Christine...**

After eleven years of loyal service, we are saddened to say farewell to Christine Goedert. While we appreciate Christine's dedication over the past several years as she has commuted from San Diego to Encino, we understand that being closer to her

family is important and we wish her only the best in her future endeavors.

**-Jeff Krivis and 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.



**[To the Blog!](#)**

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