

Going Through “The Five Stages of Grief” to Get to Settlement: Negotiation Scenarios and Strategies for Moving From Denial to Deal

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GOING THROUGH THE FIVE STAGES OF GRIEF TO GET TO SETTLEMENT

NEGOTIATION SCENARIOS AND STRATEGIES FOR MOVING FROM DENIAL TO DEAL

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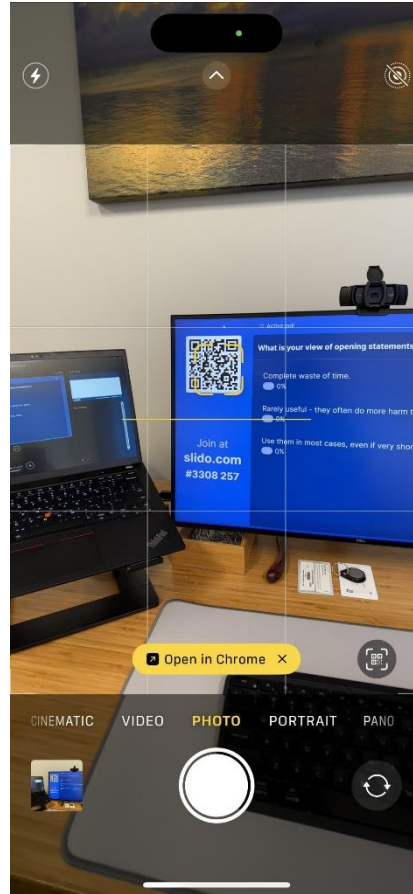


Do unto others as **THEY would have done unto **THEM**.**

**To Opening Statement or To Not Opening Statement.
That is the Question.**

First Audience Poll Up Next

- **Get Out Your Phone,**
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Or

- **Open a browser,**
- **Go to slido.com,**
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What is your view of opening statements in mediation?

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Science and Benefits of Openings

Insulting Demands and Offers

Middle Concierge v. Craft Components

Middle Concierge v. Craft Components

- Middle Concierge is sole proprietorship in United States
- Craft Components in India
- “Sales Representative Agreement”
- Contract terms
 - Middle Concierge – Craft’s sole U.S. sales representative
 - Craft Components direct sales in US without Middle
 - 30% commission to Middle
 - Craft – Middle’s exclusive to component manufacturer for end users
 - Middle – P.O.s to Craft on behalf of U.S. Machine Makers
 - Craft- ship directly to Machine Makers
 - Middle - pay Craft for cost
 - Middle –invoice Machine Maker at 40% profit

Middle Concierge v. Craft Components

- 2-year termination notice required
- Happy profitable period
- Craft falls way behind schedule
- Middle deducts steep air freight charges from payments to Craft
- Craft clandestinely sells direct to US customers - \$1m sales
- Craft terminates *and* refuses to fill any more purchase orders
- Middle discovers Craft's direct sales
 - Commission owed - \$300k
- Middle refuses to pay Craft's outstanding invoices
 - \$275,000
- Early termination- 2 years lost profits
 - Middle profits are \$2.5m every year

Mediation

Middle's First Demand

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What would you do?

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Why Do Disputants Make “Insulting” Offers?

- *Anchoring*: Influences expectations, sets up compromise
- *Signal*: Other side is being unreasonable
- *Anger*: “I spit on your demand!”
- *Wish*: “This is how it should be resolved.”
- *Misunderstanding*: of bargaining situation or legal merits
- *Disagreement*: Toughest player on team prevails

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Why is Middle making its outlandish demand?

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Counteroffer

Why Do Disputants Make “Insulting” Offers?

- **Cognitive barriers to accurate assessment of cases**
 - Selective Perception
 - Availability / Vividness Bias
 - Confirmation Bias
 - Over-optimism
 - Endowment Effect

“Almost no one is ever insulted into agreement.”

“Research shows that insults actually intensify people's opposition to one's point of view.”

Arthur C. Brooks, *Love Your Enemies: How Decent People Can Save America from the Culture of Contempt*

The Negotiation | 30 Rock



Play (k)

0:00 / 4:27

Scroll for details



Rewind: Pre-Negotiation Work With Clients



Choosing a Mediator

the
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