

The Art of Peacemaking

Ventura, California
May 19, 2006

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What Is This About?

- Conflict Theory
- Conflict Resolution Models
- Mediation Theory
- Interest-Based No-Caucus Mediation

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Conflict Theory

- Conflict occurs when two or more people perceive incompatible goals, objectives, or desires.

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Conflict Theory

Conflict Goals--CRIP

- Content Goals
- Relational Goals
- Identity and Face Saving Goals
- Process Goals

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Conflict Theory

Content Goals

- What do I want?
- Easy to see and talk about
- Usually external
- Focus on rights and remedies

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Conflict Theory

Relational Goals

- Who are we in this relationship?
- Hierarchy issues
- Fairness, justice, equal treatment
- Often real cause of conflict
- Difficult to work with relational goals

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Conflict Theory

Identity and Face Saving Goals

- Who am I in this relationship?
- We have many identities defining us
- Threat to important identities arouses fear
- Loss of face becomes central
- Save face; damage to other party becomes goal

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Conflict Theory

Process Goals

- How will we process this conflict?
- What communication process is best?
- Quick processes defeat innovation
- Longer processes allow reflection, but are confusing and frustrating

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Conflict Theory

CRIP Goals Govern Conflict

- Not all goals emerge in all disputes
- Goals overlap
- Relational and Identity goals drive disputes
- Content goals rarely satisfy parties in conflict

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Goals Emerge in Different Forms

- Content goals may emerge as relational, identity or process goals
- Often, parties cannot express relational goals, but act out the content goals

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Goals Shift During Conflict

- Prospective goals
- Transactive goals
- Retrospective goals

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Clarifying Conflict Goals Is Important

- Clear goals can be shared
- Clear goals can be altered
- Clear goals are achievable

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Reframing Goals

- A central technique of peacemaking is to help the parties clarify and reframe all of their goals.

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Conflict Escalation

- Escalation results from personality regression
- Five stages of escalation
- Each stage is reciprocal to human emotional development

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Conflict Theory

Escalation - Stage I

- Typified by normal, everyday life
- Conflict resolved through mutual care and empathy
- Look for objective solutions in a cooperative manner
- Conflict escalates with stubborn behavior

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Conflict Theory

Escalation - Stage II

- Fluctuation between cooperation and competition
- Acknowledge common interests, but own interest is paramount
- Information filter is limited to that favoring one's interests
- Persuasion, no showing of weakness
- Conflict escalates when persuasion fails

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Conflict Theory

Escalation - Stage III

- Fear that common ground has been lost
- No hope for reasonable outcome
- Interaction becomes hostile
- Parties retain lawyers
- Paradox--each side believes that by pressuring the other, the other will change
- Stereotyping is applied as negative identification to the other
- Power becomes important as empathy disappears
- Conflict escalates with a challenge to face or self-esteem

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Conflict Theory

Escalation - Stage IV

- Cognitive function regresses to 6 years old
- Party cannot consider Other's thoughts, feelings, or perspectives
- Both sides in roles from which they see no escape
- Hostility greatly intensifies
- Conflict escalates with attacks on identity

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Conflict Theory Escalation - Stage V

- Progressive regression in the form of a comprehensive ideology
- Totalizing of antagonistic perspectives
- Sacred values, convictions and superior moral obligations are now at stake
- Conflict has reached a hallucinatory-narcissistic stage
- Individual perceptions and evaluations disappear
- Party strives for total control through force and coercion
- Other responds with counter-coercion and counter-force

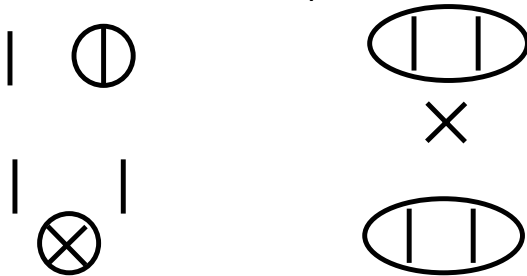
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Conflict Theory De-Escalation

- Parties must be walked back through the 5 stages
- People will start at different stages
- People will move at different rates
- Matters will be complicated if attorneys are escalated in their own conflict

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Conflict Resolution Classen's 4-Way Model



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Conflict Resolution

- *Theory of Mediation*
 - The nature of the conflict dictates the mediation process to be used and the conflict's likely outcome.

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Theorem No. 1

- As long as the conflict remains centered on content goals and has not escalated to Stage III, caucus-based, distributive mediation will tend to work.
- Corollary: Caucus-based, distributive mediation is not efficient or effective at high levels of conflict or when identity or relationship goals are in play.

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Theorem No. 2

- As long as the conflict remains centered on identity or relationship goals or has escalated above Stage II, no-caucus interest-based meditation processes are effective and efficient.
- Corollary: No-caucus interest-based meditation processes are not efficient or effective at low levels of escalation or when content goals are solely in play (e.g. pure distributive bargaining situations)

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Theorem No. 3

- Parties will be satisfied with their outcomes based on the nature of their conflict.
- Corollary No. 1: Outcomes based on settlements or mutual agreements will be satisfactory when the conflict is below Stage III and is not driven by relationship or identity.
- Corollary No. 2: Outcomes based on interest-based no caucus mediation principles will be satisfactory when the conflict is escalated above Stage III and is driven by relationship or identity goals.
- Corollary No. 3: Outcomes based on reconciliation will be satisfactory when the conflict is primarily driven by relationship and identity goals.

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Summary of Mediation Theory

Escalation Level	Conflict Goals			
	Content	Relationship	Identity	Process
Stages				
I-II	Caucus	No Caucus	No Caucus	No Caucus
III	No Caucus, then Caucus	No Caucus	No Caucus	No Caucus
IV-V	No Caucus	No Caucus	No Caucus	No Caucus

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Introduction to Interest-Based, No-Caucus Mediation

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Topics of Discussion

- Competition vs. Cooperation
- Interest-based Mediation
- Role Plays
- Summary and Questions

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Introduction

- Query: In a world of limited resources, how can we balance personal needs and interests against the competing needs and interests of others?
- And, how can we do this without being exploited by others?

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Competition vs. Cooperation

- Attributes of competition
 - My gain requires that you lose
 - Inefficient
 - Produces unnecessary conflict
- Attributes of cooperation
 - My gain requires that you gain as well
 - Efficient
 - Reduces unnecessary conflict
- If cooperation is so great, why doesn't everyone use it?...the Dollar Auction Game shows us why.

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Lessons from the Dollar Auction Game

- Three phases
- Perception controls behavior
- Escalation is pre-conscious
- Unwillingness to lose as commitment to a position grows
- In any conflict, ask "Am I in a Dollar Auction?"

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Interest-Based Mediation

- Step 1: Establish ground rules for discussion
- Step 2: Share perspectives and summarize
- Step 3: Identify interests, injustices, and polarities
- Step 4: Generate options
- Step 5: Craft an agreement from the options

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Step 1: Ground Rules

- One person speaks at a time
- Listener summarizes
- Speak the truth from heart and mind
- Remain respectful
- Process has to be fair

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Step 2: Perspectives

- Legal perspective
 - Bargaining in the shadow of the law
 - Law is important, but not necessarily controlling
- Personal perspective
 - Clarifying personal experience of the conflict
 - Deeper insights from perspective sharing
- Business perspective
 - What are the underlying business needs?
 - How can this conflict help satisfy those needs?
- Understanding the other perspective
 - Willingness to acknowledge other's perspective
 - Without giving up one's own perspective

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Step 3: Identify Interests, Injustices and Polarities

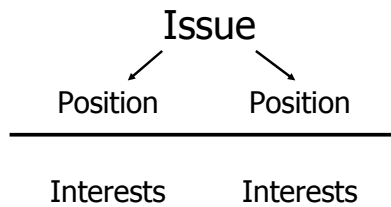
- Interests vs. Positions
- Injustices represent relationship and identity goals
- Polarities are unsolvable problems

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Interests vs. Positions

- Position—Demand made on other person
- Interest—Conflict goals, needs, or desires that underlie a demand
- Interests can be reconciled; positions cannot

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Injustices

- Injustices arise from identity and relationship conflicts
- Injustices are any perceptions of dignitary injury or offense
- Some common injustices:
 - Disrespect
 - Unequal treatment
 - Exploitation
 - Violation of trust
 - Unfair treatment
- Injustices are a matter of perception
- Often, injustices are experienced on both sides

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Polarities

- Polarities are issues that cannot be solved with a final solution.
- Elements:
 - Continuing in nature
 - Interdependent poles
- Examples:
 - Individual and Team
 - Flexible and clear
 - Centralized and decentralized
 - Autocratic and participatory

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Two Critical Questions

- Does the satisfaction of any interest or injustice exclude the satisfaction of any other interest?
 - If so, you have probably identified a polarity.
 - If not a polarity, set the competing interests aside.
- If all of the interests are satisfied, do we have the basis for an agreement?

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Importance of the Questions

- Demonstrates mutuality of interest
- Creates a commitment to agreement
 - Watch for any sign of hesitation
 - If you see it, call it out
- Minimizes hidden agendas and “nibbling”
- Challenges parties to be complete and thorough in their analysis
- Engages parties in collaborative problem-solving, not positional bargaining
- Satisfaction of all interests now becomes a joint problem shared by everyone

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Step 4: Generating Options

- Three options per person
- Each option must address all interests, injustices, and polarities
- High premium on creativity and humor

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Options re Interests

- Interests should not be cherry picked or ignored
- Best options look for ways to expand resources
- Satisfy the other's interests as much as one's own

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Options re Injustices

- Injustices can only be reconciled, not satisfied
- Types of reconciliation:
 - Acknowledgement that an injustice is has been experienced as real
 - Apology
 - Forgiveness

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Options re Polarities

- Recognizing the positive attributes of each pole
- Improving communication when the system slips into negative attributes of a pole
- Describing what a well-managed polarity would look like

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Step 5: Crafting an Agreement

- No single option will usually suffice
- Take best idea from all options
- Framework approach
- Issue approach

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Summary

- Interest-based mediation tends to preserve relationships
- Interest-based mediation fosters cooperative problem-solving over competitive power struggles
- Interest-based mediation takes less time and creates better agreements.

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Emerging Markets-Non-Litigated Disputes

- Partnership and corporate conflicts
- Real property conflicts
- Family business conflicts
- Employment disputes
- Public sector conflicts

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Emerging Markets—No Conflict

- Training and organizational development
- Strategic alliance formation
- Mergers & acquisitions
- Other negotiated business transactions

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Strategic Marketing

- Awareness
- Preference
- Choice
- Satisfaction

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Marketing Tactics

- Create awareness
 - Speaking
 - Writing
 - Newsletters
- Preference
 - Focus on emotional drivers
- Choice
 - Associate your name with peacemaking
- Satisfaction
 - Word of mouth

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Marketing Tactics

- Website
- Email newsletter
 - Lawyers' newsletter
 - Non-lawyer's newsletter
- Training, writing
- Viral marketing
 - Getting 3 influential people in your target market to endorse your work to 3 more, etc.

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Summary of the Class

- *Use CRIP to understand conflict goals*
- *Understand the 5 conflict styles*
- *Consider the 5 escalation stages*
- *Understand the different mediation styles and processes*
- *Choose the process to fit the conflict*
- *Interest-Based Mediation*
- *Market outside the shadow of the law*

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THE END

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