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Can We Call a Truce?

Ten Tips for Negotiating Workplace Conflicts.

Whether two employees are fighting or a disgruntled client is on the verge of leaving, you—yes, you—can step in and help solve the problem. Master mediator Jeffrey Krivis, author of Improvisational Negotiation, shares some tricks of the trade.

San Francisco, CA (June 2006)—Conflict happens. It happens in all areas of business. Disputes can arise between employees, between business partners, between a company and a client. And if such issues are not settled, bad things can happen. Good people quit. Profitable relationships dissolve. Great companies go under. This has always been true, of course. But according to renowned mediator Jeffrey Krivis, in a global economy the implications of conflict are more profound than ever before.

“In a world where relationships matter more than ever, mediation skills matter more than ever,” says Krivis, author of *Improvisational Negotiation: A Mediator’s Stories of Conflict about Love, Money, Anger—and the Strategies That Resolved Them* (Jossey-Bass/A Wiley Imprint, 2006, ISBN: 0-7879-8038-2, \$35.00). “Companies can locate anywhere. People can work anywhere. Clients can stay with you or go with a competitor halfway around the globe. So whether you manage employees or clients or both, it’s critical to learn the art of bringing harmony out of conflict.”

Krivis serves corporations and individuals from all walks of life, helping them settle disputes before they end up in the courtroom. His book, which is packed with stories from his own career, reveals some fascinating ways he and other mediators have helped people stop beating their metaphorical heads against metaphorical brick walls and reach creative, mutually beneficial solutions.

What, exactly, *is* negotiation? Krivis says it's reframing a situation in order to get people to shift their positions in a way that makes a resolution possible. His own formula for negotiation is as follows:

Instinct + Information = Intuition
Intuition + Knowledge = Improvisation

In short, negotiation is part art and part science. You needn't become a certified mediator in order to settle a dispute at work or at home. You just need to understand some basics about human behavior, practice the fine art of paying attention, and offer yourself up as a neutral party who just wants to resolve the problem.

Here are ten insights and tricks of the trade Krivis suggests you use:

- **Let people tell their story.** When a person is deeply upset about something, he really *needs* to get his story out. This is a basic principle of mediation, and one that's important to remember when trying to resolve a conflict with an angry employee, client, or other associate. Yes, allowing people to speak their minds *can* increase the level of conflict with which you must deal. That's okay. You have to get through the conflict phase to find the solution. Feeling that he has finally "been heard" can dramatically change an angry person's outlook. Plus, as he tells his story, new information may come to light that allows a solution to naturally emerge.

"Independence Day," a story in Krivis's book, illustrates this truth. Dan, a systems analyst who had been downsized after 10 years with his company, was suing his former employer for wrongful termination. When he was finally allowed to tell his story in mediation, everyone was stunned by the raw emotion that came pouring out. "Dan had lost his parents as a child and had always spent Thanksgiving and Christmas with coworkers," reveals Krivis. "He saw the company as family—*literally*—and thus felt hurt and betrayed by the lay-off. As it turned out, the company was ultimately able to re-employ Dan as a consultant. He got to start his own business and his old company got to continue benefiting from his services. But if Dan hadn't been allowed to tell his story, and tell it in front of his old boss, the answer would never have presented itself."

- **If someone refuses to budge, take the spotlight off her. Isolation tends to create movement.** When you are mediating a multiparty conflict, you will often discover that there is one person who insists on taking a hard line approach. She refuses to compromise, shooting down every solution that's presented and holding out for what *she* wants. Krivis's suggestion? Take the attention off the "last woman (or man) standing" and begin settling around her (or him). "It's amazing how well the isolation technique works," he remarks. "You'll find that the holdout starts to anxiously call and send e-mails, trying to get things going again. When her perceived power is neutralized, she quickly sees the value of compromise."

- **When someone seems "locked up," dig for the emotion behind the stone face.** Krivis recently mediated a situation in which a famous television producer was on the verge of being sued for plagiarism. Essentially, the plaintiff claimed that the producer had "stolen" his idea for a

successful situation comedy TV show. When anyone talked to him about his case, he gave short, robotic answers and showed no emotion. So Krivis asked the plaintiff, “What is it you *really* want to achieve here?”

“The plaintiff almost broke down,” relates Krivis. “He said, ‘I never wanted to bring this case in the first place. I just want to break into television.’ So I returned to the producer and said, ‘Is there any way you can help this guy out?’ And the producer said, ‘Sure, let me talk to him.’ So I got the plaintiff an audience with this extremely well respected producer, and the producer ended up offering him a development deal. By tapping into this person’s repressed emotion, we were able to find a solution that made everyone happy.”

• **When people are picking flyspecks out of pepper, come in with a reality check.** Often in a conflict, the various parties are so focused on minutiae that they lose sight of the big picture and all its implications. As the mediator, you need to bring people back to reality by wrenching their attention away from the grain of sand and having them focus on the whole beach. Doing so may help resolution arrive at a startling speed.

“I was mediating a case in which a security officer was raped by a superior,” recalls Krivis. “Everyone was nitpicking the details, saying, ‘Well, we don’t know if we can believe the officer, so-and-so is biased, she’s asking for too much money, etc.’ I had to step in and say, ‘Let me paint the picture the way the jury is going to see it: the horrific crime of rape, a woman in distress, a thriving six-figure career cut short, and so forth. Now you go ahead and tell your story about the sand granule. By then the jury will have made its decision and you’re going to wish you had that moment back.’ Once I gave them the reality check, they came to an agreement right away.”

• **Identify the true impediment.** In every conflict, ask yourself *What is the true motivating factor here? What is really keeping this person from agreeing to a solution?* When you can identify the impediment, you can predict how the person will respond to certain ideas and you can shape negotiations accordingly. “I worked on a case in which a man was suing an entertainment company for wrongful termination and we just could not resolve it,” Krivis relates. “Finally, I happened to ask about the man’s family and found out that one of his kids had cerebral palsy. Suddenly, it all made sense. The plaintiff *had* to win the lawsuit because they didn’t have medical insurance to cover the child’s very expensive treatments. So that’s what was really driving the lawsuit. Armed with that knowledge, we got the company to agree to pay the man’s insurance for five years.”

• **Learn to “read minds.”** Mind reading is not magic. It is a combination of observation and intuition, which is born of experience. “You can learn a lot about how each party sees a dispute by paying attention to body language and listening closely not only to their words but also to the emotional tone behind their words,” writes Krivis. “If you give them the opportunity, most people involved in a dispute will gladly talk about themselves, which gives you a chance to ask more questions and gain more information about their perspective. Once you see things from their point of view, you can stay one step ahead of them by anticipating how they might react and managing the negotiation accordingly.” (*NOTE TO EDITOR: See tipsheet for more insights.*)

- **Think creatively about ways people can cooperate rather than clash.** In every negotiation, there is a tension between the desire to compete and the desire to cooperate. Be on the lookout for signals that support a cooperative environment. That's where the most creative solutions are born. Remember the consulting agreement that came out of the aforementioned "Independence Day" dispute? These kinds of "joint gains" are often born of conflict.

Another story in *Improvisational Negotiation* centers on Golden State Grocers and its objection to being billed for a three-week "training cruise" taken by its employees of its computer consulting firm Apex. Golden State felt ripped off by being charged for what looked like a vacation; Apex insisted that its employees worked intensively on Golden State's account during the cruise—and besides, "this is how it's done in consulting." The solution Krivis helped them find involved forming a whole new company, Golden Apex Seminars, which offered training services to other retailers. "Instead of spending my time divvying up the consulting bill, I spent it building up the relationship between the parties," he explains. "Suddenly, the money dispute that had started the mediation became secondary to the created value of a new, mutually beneficial business venture."

- **"Edit the script" to help people see their situation in a different light.** "People tend to get 'stuck' in their positions because they are telling what happened from a narrow viewpoint and in a negative and hopeless tone," remarks Krivis. "They've relayed their story over and over again and their perception has become their reality. They *can't* see the situation any other way unless you help them to do so."

"As the mediator, you can take a larger view that looks not at one party or the other 'winning' but at both parties working toward a mutual goal," he continues. "One way to help them get to this goal is to *edit their script*—retell their story about the dispute as a positive, forward-looking construction. In this way you literally give them the words to see their options in a new light."

- **Avoid the "winner's curse" by carefully pacing negotiation.** Believe it or not, it is possible to reach a solution too quickly. We all have an inner clock that lets us know how long a negotiation should take. When a deal seems too easy, a kind of buyer's remorse can set in that leaves people with second thoughts about the outcome. One or both parties may be left with the feeling that if things had moved more slowly, they might have cut a better deal. Here's the bottom line, says Krivis: don't rush the dance or the negotiation will fail. "Even when you know you can wrap things up quickly, it's to everyone's advantage to keep the negotiation proceeding normally, for a reasonable amount of time, before the inevitable settlement," he advises.

- **Finally, realize that every conflict can't be solved.** What if you've tried and tried to help two warring factions find a fair solution and you just can't? It may sound odd coming from a mediator, but Krivis points out that some conflicts just aren't winnable. "Not every negotiation is going to have a win-win outcome," he reflects. "Not everyone can live together in harmony. Look at Israel and Palestine. There are times you just have to accept that both parties are going to leave the table equally unhappy. When you've mediated enough conflicts, you will know in your gut when that time has arrived. Isolate the participants if possible and just move on."

All this talk of well-paced dances, inner clocks, and gut feelings may seem alien to “just the facts” business types, but Krivis says you’d better get comfortable with the idea that there are no hard and fast rules. Negotiation is all about going with the flow and seizing opportunities as they arise. You can familiarize yourself with the tools—indeed you *must*—but there’s no substitute for jumping right in.

“Improvisational negotiation is kind of like jazz,” he reflects. “You have to know your chords, your scales, your patterns, your licks. But ultimately, these are building blocks, not formulas. The chords you use depend on the chords you hear from the other participants, and vice versa. It’s a conversation. It’s organic. There are no limits on what can come out of mediation, and that’s what makes it such a powerful skill.”

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Jeffrey Krivis has been a successful mediator and a pioneer in the field for sixteen years and has served as the president of the International Academy of Mediators and the Southern California Mediation Association. Krivis is on the board of visitors of Pepperdine Law School and serves as an adjunct professor of law at the Straus Institute for Dispute Resolution. In 1993 he received the Dispute Resolution Lawyer of the Year Award. Contact him at his website, www.firstmediation.com.