

G A R V E Y S C H U B E R T B A R E R

# Negotiation Techniques & Mediation For Property Tax Cases

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*The judge always wore a crown when he made rulings that could only be overturned by the "abuse of discretion" standard to let everyone know... "This is it, baby."*

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# Resolution Process

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- Negotiation
- Mediation
- Arbitration
- Judicial Settlement
- Litigation

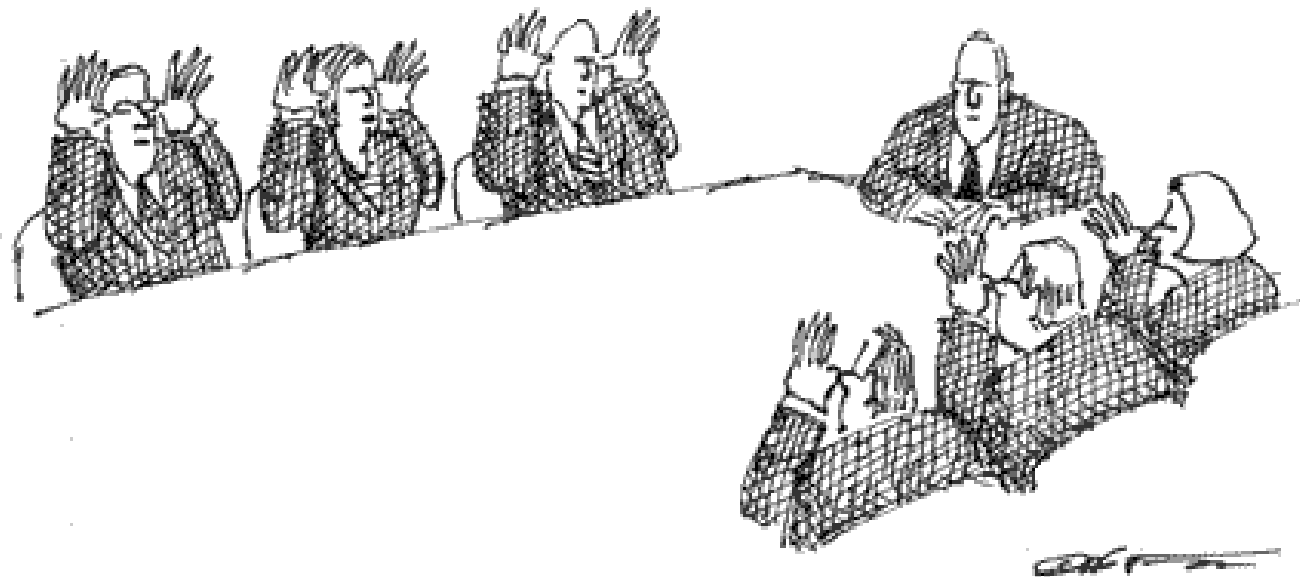


# Negotiation

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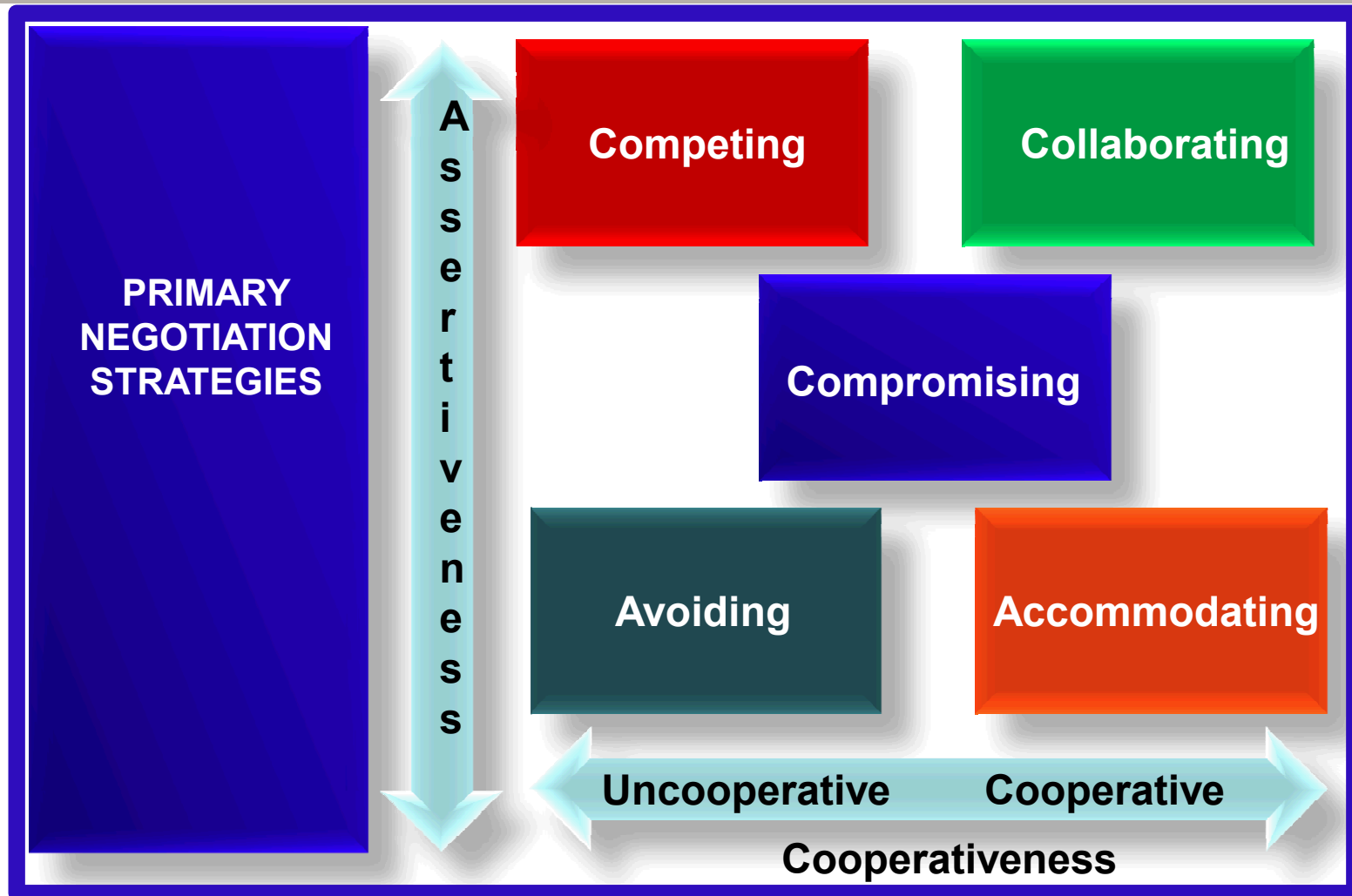
- To arrange for or bring about through discussion or conference a compromise





*The mediator sensed that the negotiations were in trouble.*

# Primary Negotiation Strategies



# Barriers to Negotiation

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- Poor communication skills
- Overreacting & emotional responses
- Misunderstandings
- Conditioned or learned responses
- Relationship dynamics

# Define Yourself

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- What are my strengths? limitations?
- Am I a good listener?
- Where am I psychologically vulnerable?  
emotionally vulnerable?
- What are my prejudices and biases?
- What kind of climate do I create in negotiations?
- How do I define “Fair”?
- What are my needs during negotiation?



# Communicate

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- No clear lines of communication = no negotiation.
- “Problems’ fall into three categories:
  - perception,
  - emotion, and
  - communication

# Active Listening

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## **Active listening is essential to effective negotiation.**

- Listen using your whole body, not just your ears.
- Listen for the whole message by paying attention to body language, feelings, the meaning of what is said and what is not said.
- Do not be prejudged because of previous history.
- Do not interrupt the other party.
- If you disagree, restate the other party's comments, present your point of view, and return the dialogue to the other party by asking for a reaction to your views.

## Active Listening (cont'd)

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- **Attending:** using non-verbal indicators such as leaning forward, a few nodding your head, sitting in an open, receptive posture (not verbally – very disruptive)
- **Paraphrasing:** repeating in your own words what the other person has said; the restatement should not judge in any way
- **Asking:** probing questions; identify and explore options and alternatives e.g., use probes – short, open questions to dig deeper into issues. “Then what/How?” Silence can be used to encourage the speaker to continue.
- **Encouraging:** asking person to “tell me more about” or try to give them a supportive comment like “I understand your approach.”  
“That is a good comparable sale.”

## Active Listening (cont'd)

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- **Reflecting:** playing back the communication as you hear and feel it, e.g., “you seem to feel very strongly about that”
- **Summarizing:** giving back a review or summary of what you heard. This helps make sure the communication is accurate and that the main ideas expressed reached you, then listen.
- **Clarifying:** asking for further clarification or any example to illustrate often helps find clarity in the meaning.
- **Speaking** from the self: using “I” statements, rather than speaking for others (we all think) or speaking in the passive tense.

## Active Listening (cont'd)

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- **Actively listen.**
  - If you can't get your counterpart to acknowledge your position, model good negotiating behavior. Acknowledge her point of view by asking open-ended questions. Strive to empathize with both the substance of her message and her underlying emotions.
- **Instead of reacting, “go to the balcony.”**
  - When faced with an intransigent negotiating partner, imagine that you're a spectator watching the interaction. How would you describe what you see in neutral terms?

## Active Listening (cont'd)

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- **Reframe the situation.**
  - After achieving a more neutral perspective, reframe difficult behavior in ways that appeal to joint interests, concerns, or needs. By incorporating the other side's point of view, you'll open up opportunities for creative solutions.
- **Build a “golden bridge.”**
  - Look for ways to give a potential spoiler an attractive choice or, at the very least, one that allows him to save face.

# Asking Questions

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- **CLOSED QUESTIONS** usually receive a short response and do not invite complex answers. They can be useful in clarifying details (for example, in ironing out the specifics of an agreement). They can be limiting if the goal is to learn more information or to clarify someone's interests.
- **LEADING QUESTIONS** suggest an answer or contain the information the questioner is looking to have confirmed. They are not usually useful in mediation, as they can cause a defensive response.

## Asking Questions (cont'd)

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- **WHY QUESTIONS** can help to understand the reasons that a particular position is held. However, depending on the tone with which they are asked or if several “why” questions are asked in a row, they can also feel like a cross-examination.
- **OPEN-ENDED QUESTIONS** usually elicit more than a one-word answer. They typically require a thoughtful response. They encourage the person who is answering to speak more and they provide more information than closed questions. They often start with the words “what” or “how.”



# Underlying Needs and Goals

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- Independent Needs
- Conflicting Needs
- Shared Needs

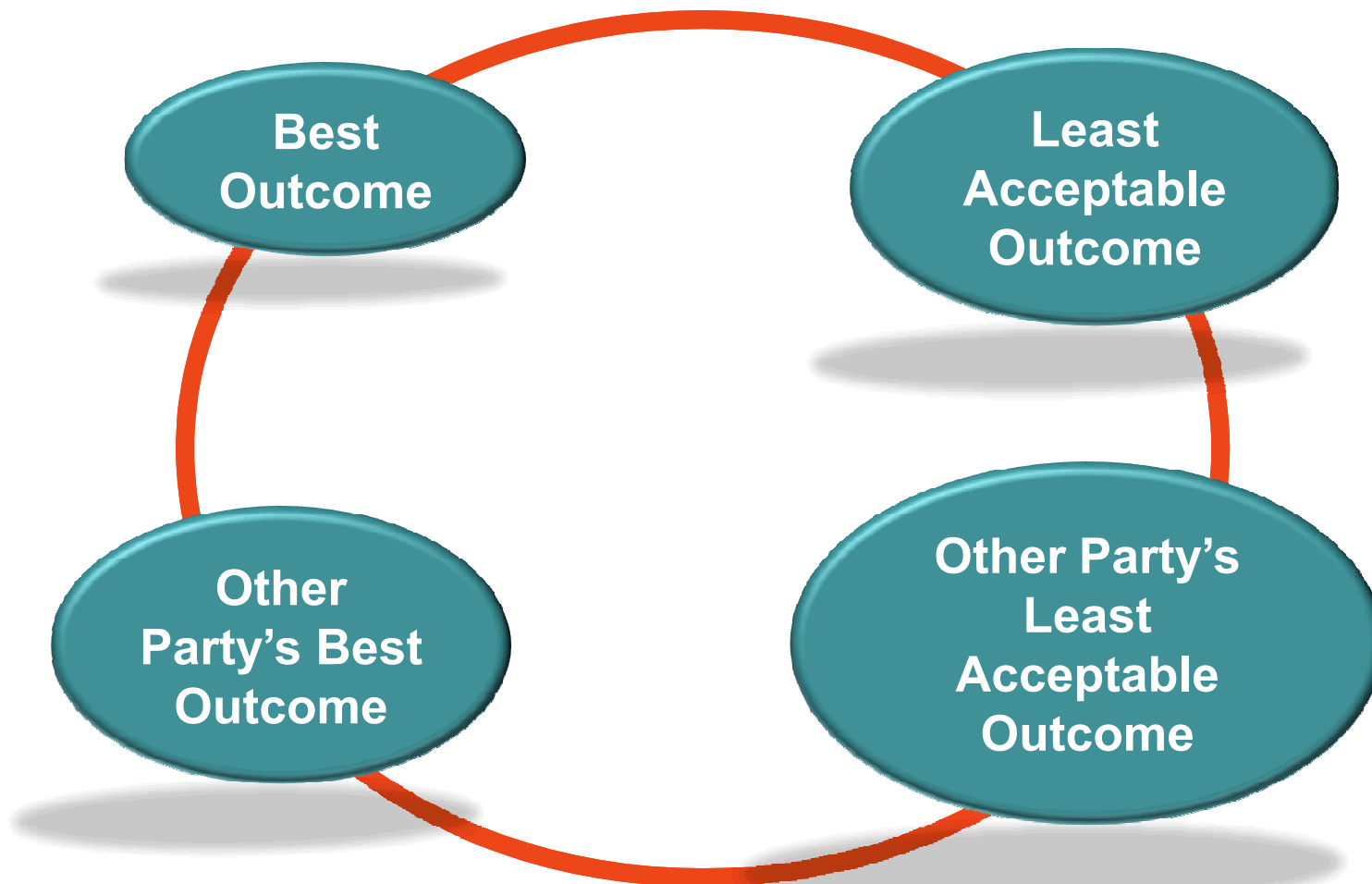
# Defining the Outcome

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- **BATNA:**
  - Best Alternative to a Negotiated Settlement
- **RESERVATION VALUE:**
  - The value which you would be indifferent between on entering into or not entering into an agreement.
- **ZOPA:**
  - Zone of Possible Agreement

# Identifying Outcomes

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# Negotiation Techniques

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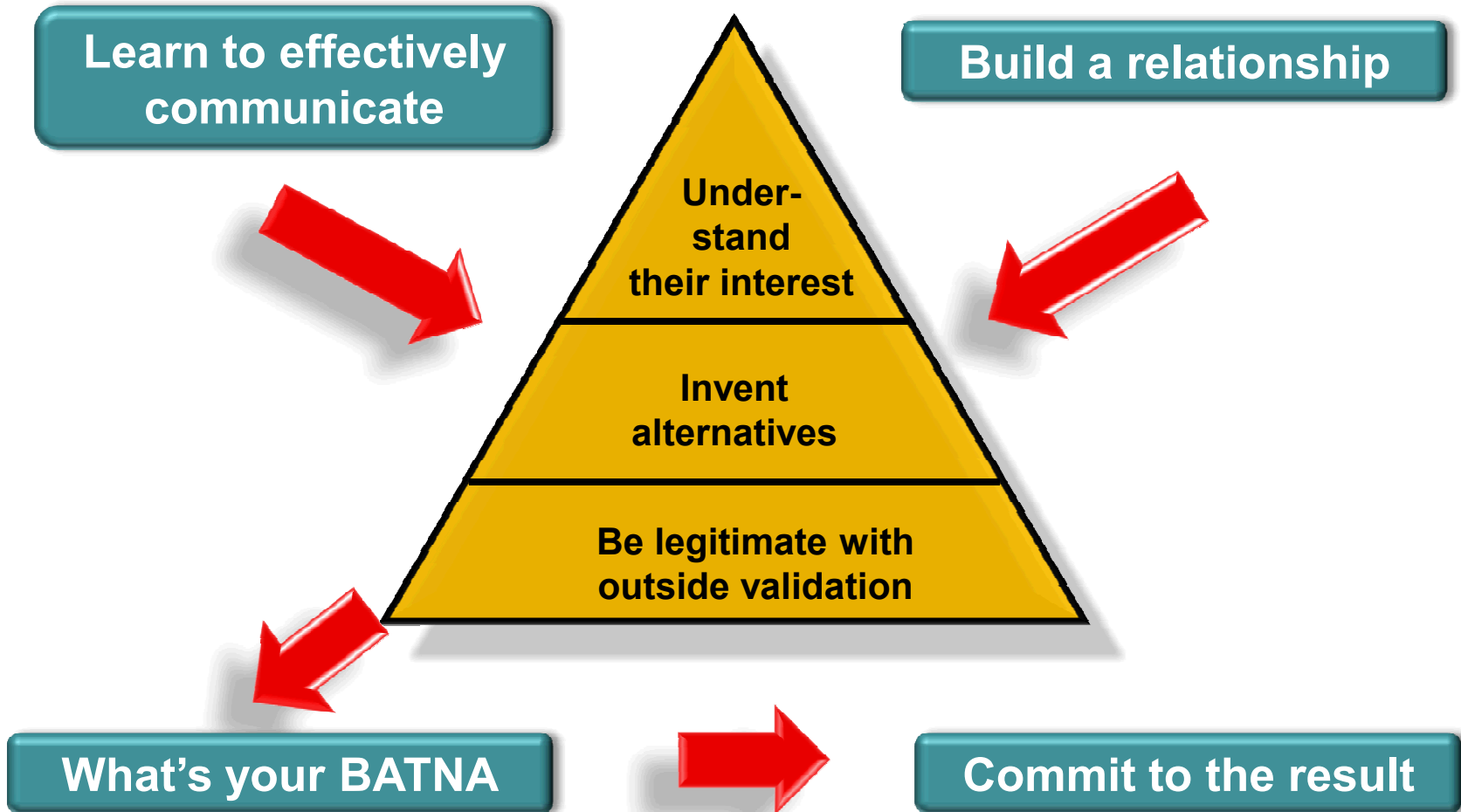
- Focusing the parties
- Clarifying the proposals
- Asking Open Ended Questions
- Paraphrasing
- Reframing
- Tracking and Summarizing positions
- Deal Testing
- Allowing Silence

# Finding Common Ground to Keep Moving Forward

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- Look for an early item to agree on
  - (have something you can give up in your pocket if possible)
- Bring into discussion shared needs/goals
- Circle back to the BATNA and OUTCOMES
- Remove Emotions
- Focus Back to the Deal
  - Circle Back – reiterate shared needs, earlier agreement

# Negotiation Model



# MEDIATION

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- The act or process of mediating; intervention between conflicting parties to promote reconciliation, settlement, or compromise.





*Sylvia sensed this was going to be one  
of her more contentious mediations.*

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# Mediation

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- Third party independent facilitator
- Voluntary
- No decision imposed



# Advantages of Negotiation

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- Early Settlement
  - Pre-Appraisal
  - Case Assessment by Both Sides
  - Cost Savings
  - Confidentiality of Documents



# Disadvantages of Negotiations

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- Government less inclined to resolve (without substantial evidence)
- Show me
- Government not prepared to negotiate



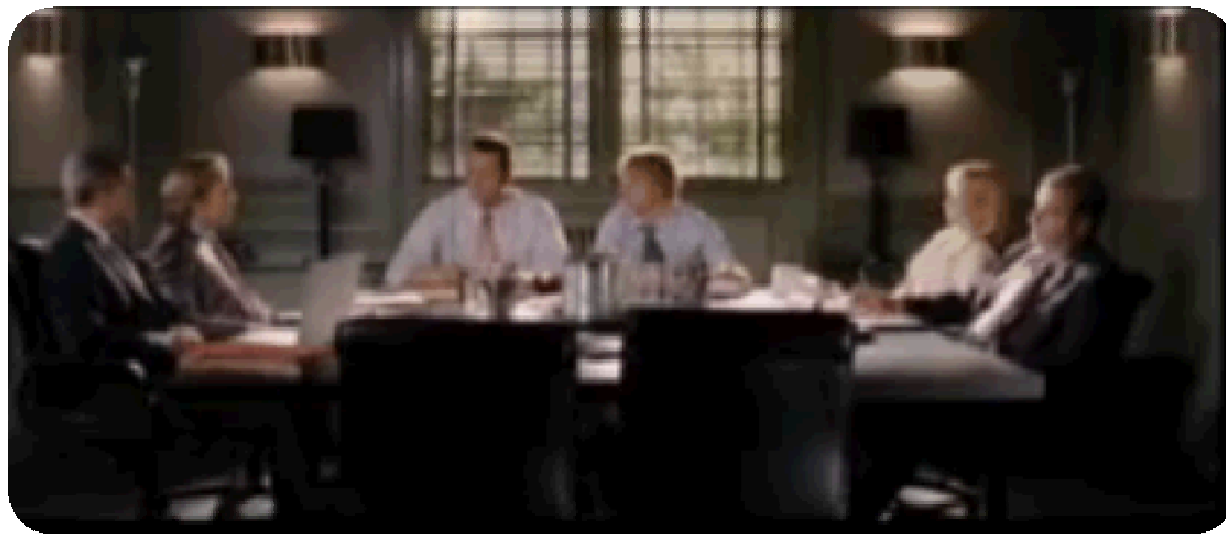
# Advantages of Mediation

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- Control cost
  - Early mediation
    - Limited discovery or exchange of information
- Control time
  - Choosing an early or later mediation
- Control process
  - Agreements on scope of discovery
- Control outcome
  - Creative solutions
    - Years under appeal
    - Eminent domain – non monetary
- Relationships

# Mediation – Wedding Crashers

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# Mediation Styles

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- **Facilitative**
  - Validation of points of view
  - Joint Interests
  - Assists in analyzing options
  - Joint sessions and caucuses
- **Evaluative**
  - Weakness and strengths
  - Recommendations to parties
  - Legal rights vs. interests
  - Shuttle diplomacy



*When pigheadedness brought the mediation to a standstill, Malcolm employed his unorthodox, but effective, samurai technique of negotiation.*

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# Case Analysis

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- Legal Issues
- Valuation Issues
  - Highest and Best Use
  - Economic Obsolescence
  - Sale Price
  - Contamination
- Other Negotiable Issues
- Payment under Protest
- Audit years
  - Single v multiple years
  - Significant changing facts
  - Economic obsolescence



# Any Special Rules?

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- Example:
  - burden of proof in property tax disputes
- Example:
  - risk of fee awards
- Value of what?
  - definition of subject property
  - what is being appraised
- What value?
  - definition of value

# Client Preparation

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- Strengths and Weaknesses
  - Your case
  - Department of Revenue's/County's case
- Costs and Risks
  - Legal
  - Valuation
- Negotiable Issues
- Remain Open

# Supporting Evidence

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- Discovery
  - Informal
  - Court Ordered
- Financial Records
- Depositions or Informal Conference



# Preparing for Formal Meeting

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- Re-examine Case
  - Has discovery changed the case
- Identify stakeholders for mediation
  - Within the company
  - Department of Revenue/County
- Evidence/experts
  - Land use issue
  - Appraisal issue
  - Industry Expert
- Estimate Points of Agreement - Outcomes
  - Legal/Appraisal/Key Issue defined



*The mediation had gotten off to an inauspicious start.*

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# Impediments to Settlement

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- Communication Failure
  - Clarifying the issues
- Lack of Information
  - Researching all issues/poor valuation appraisal
- Complexity Broken Down to Manageable Issues
- Unrealistic Expectations
- Legal Issue
- Stakeholders
  - Lack of authority
  - Missing external influence (appraiser)
- Government not Prepared

# Negotiation or Mediation

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- Case Evaluation
- Players
- Goals
  - Department of Revenue/County to listen or negotiate
  - Round one?
- Third Party needed to facilitate

# Success in Mediation

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- Significant Case Preparation
- Witness/Experts Prepared
- Mediation Brief







*Margaret's skills as a peacemaker had exceeded expectations at the mediation.*

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# Mediating

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- Mediation Agreement
  - Everyone sign
  - No secret agreements
- Opening
- Caucus
- Reconvening as a grouping
- 4-8 hours

# Settlement

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- Confidentiality - Resolved
- Agreement written out
  - Detailed
    - Tax years
    - Issues
- Creative
  - Additional Tax Years
  - Dollars v Issues
  - Issue v Dollars





*Notorious for favoring results over process, Maxwell efficiently removed the obstruction to settlement at the mediation ... however, he would soon be arrested.*

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# Bibliography

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- Difficult Conversations
- Making Money Talk
- Getting to Yes
- Getting Past No
- Beyond Winning
- Beyond Machiavelli
- Beyond Reason
- The Power of a Positive No