

## **Managing Truth Decay in the Intersection of Logic and Emotion**

Presented by Sam Imperati, J.D. and Devin Howington, Ph.D.

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Reese >> Hi, everyone. I'm Melanie Reese and it is my honor to welcome you to our webinar with Sam Imperati and Devin Howington. The title is Managing Truth Decay In the Intersection of Logic and Emotion. Today's presentation is one of our continuing series of valuable CADRE Webinars. A few technical notes, phone lines have been muted to minimize interruption. At any point during the presentation you can enter any questions or comments with the questions box on your control panel. CADRE staff will be monitoring the comments and questions throughout the webinar. The power point for the webinar is available in the hand-out section of the control panel and on the CADRE website. This webinar will be archived on our website. We are extremely fortunate to have Sam and Devin with us today. Sam Imperati earned his JB from University of California Davis and is the Executive Director of ICM Resolution. Sam is a seasoned attorney having represented by the unions and individuals. In addition to serving as the chair for the Oregon State Bars 88 section, he's been highly respected in resolving conflict disputes, managing intense emotions, and training groups. I have attended several of Sam's trainings over the decades and always walked away with something new for my tool kit. We are excited to bring him here for you today. Dr. Devin Howington has her PHD in Social Psychology and a Master's in Conflict and Dispute Resolution. Devin is a senior ADR associate ICM Resolution, a child custody mediator, and a facilitator. She has extensive experience in assessing the attitudes and behaviors of individuals and is knowledgeable about culturally sensitive practices in conflict resolution, understanding [INAUDIBLE] in her personal perception of a psychology of conflict. Thank you both for joining us today, and I'll turn it over to the two of you.

Imperati >> Well, welcome everyone, and as you can see I was flying in front of you the title of this event is Managing Truth Decay and the Intersection of Logic and Emotion, but is that the truth? It could also be called How to Rearrive at the Truth What Mediators Need to Know about how Parties Experience come with the biases and emotions. So, we'll cover both topics as we go through this presentation. The only one note or warning I'll add to that kind introduction is that I also have won a stand-up comedy competition. So, you will have to suffer some attempts at humor throughout the day but please realize they're intended to bring some levity because we believe people learn better when they are smiling.

Howington >> Yes, and as you can see, Melanie really hit the highlights for us, so, I really appreciate that kind introduction, Melanie. And the important thing to know about what I'll be trying to do today is keep us focused and teach us about psychology and how that affects our perceptions of situations and of people, but mostly I'll try to keep Sam in line, so, I can't make any promises.

Imperati >> A tall task, thanks, Devin. All right. So, let's go through the presentation roadmap. We'll first query how do people form their opinions and beliefs, and ultimately what they decide is true. And within that, the intersection of logic and emotion comes the: What role do emotions play? The Rand Corporation put forth a Truth Decay model to illuminate how the overreliance on opinion and the decay and trust in institutions including educational institutions impacts mediators especially those who are working in an institutional environment, and this institution includes banking, government, any big entity. Rand Corporation's study indicated that truth is declining and it is if you will decaying. A quick funny aside we did a version to this presentation in back in Victoria, British, Columbia and on the program they mislabeled it. Instead of saying truth decay, they put tooth decay, and that got people wondering what in the heck are mediators going to talk about these would be tooth decay, but we'll try to focus on the truth. So, really the question here is do mediators have an obligation to help the parties Truth or should we simply help them discover their truth as we have described them. So, we hope to present some tips and tools along the way, but under the category of full disclosure and transparency, we're going to raise a lot of issues but give few of these good answers. So, this is more though provoking and provocative but there will be tips, tracks, traps, and tools to help us go forward. So, Devin what processes do the parties use to arrive at the truth?

Howington >> Okay, thanks, Sam. So, we'll start from some basic psychological processes that will help us get an idea of how we think and how that manifests itself in our later behaviors, our opinions that we have, etcetera. So, the first psychological concept I want to talk about is System 1 versus System 2 thinking. So, Daniel Kahneman in the book, "Thinking Fast and Slow," and his work, his Nobel Prize winning work prior to that explained these two systems to help us get an idea of how our brains work, okay? So, System One and these automatic affective meaning emotional ways of thinking that are so fast. So, this is where we use our mental shortcuts, which psychologists call heuristics but really these are shortcuts to figure out what's happening in the world, okay? So, this helps us determine what's happening around this. They're efficient. We don't need a lot of resources. We don't have to focus a lot of attention. We don't have to be, you know, wide awake. It uses very little resources this System One thinking. So, examples include localizing the source of a specific sound. What was that in that bush over to my left? Right? That's the kind of thing that we're talking about. Displaying disgust, that's sort of and when you're seeing a gruesome image, those sorts of things happen automatically. For once you learn tasks, they can move from System Two, which I'll talk about in just a second into System One, that's called automaticity. It's basically how things become really automatic in our minds. So, reading, and then we all didn't learn, know how to read, but then we learn how to read, and we can't see letters without forming words and sentences, and meaning, that becomes automatic. Driving can become automatic behavior too. How many of us have had the experience of making it home and not really realizing or remembering every

single step that we did to get there? We were thinking about our workday or what have you. So, those sorts of things can become System One behaviors. System Two are these slow effortful like conscious meaning we are actively turning [INAUDIBLE] and rule based thinking's. So, we used this to monitor System One, so, I take a mental shortcut and then I can say, "Hey, wait a minute, is that really right?" And monitor System One, so, for example, System One I'm walking through the forest, I see something long, cylindrical, brown, on the trail in front of me and I think, oh, that's a snake, oh, my goodness, and then I think System Two can come in and say, "Wait a minute, that's actually just a tree branch," look closely at it and so, that's how System Two can monitor System One. And there's some examples there. So, the point is, we rely on System One more than we really like to admit. We like to believe that we're really rational beings and System One can be rational. It can also be irrational but the same is for System Two. System Two can be really rational, but we can also have mistakes with System Two as well and I'll get into that. So, these systems service very well for the most part, particularly from an evolutionary standpoint but there are ways that these systems let us down. So, for us they actually come from the very design of each system. So, we like to call these biases, right? And so, what do we mean by bias? So, a cognitive bias is a shortcut in our thinking that make our judgements irrational and I'm using ear quotes and I'll do that a lot. I examine and both those ear quotes a lot and I will try to remember that you can't actually see us.

Imperati >> Which is an advantage. You're the one well, at least what I look like.

Howington >> Right, I really dressed up for this webinar, okay. So, our mind can misfire in predictable ways and cause errors in judgement and that can be a cognitive bias. And we'll go over what some of those cognitive biases are. So, these are not learned but preprogrammed and we can only hope to ingest afterwards. So, use System Two to monitor System One because these traps, these cognitive biases are really hard to avoid. So, a lot of people talk about implicit bias and I thought it was useful to discuss that today to. What are those? So, when people talk about implicit bias, these are attitudes that affect our understanding and decisions in an unconscious manner and typically when people talk about implicit bias, they're referring to social prejudices. So, for example, what is a social prejudice? So, we can probably think of many different ways people can be prejudiced.

Imperati >> Really? In today's society there's prejudice, huh, go on.

Howington >> Right? And so, these are also activated without, oh, our awareness because humans and have a very strong need to categorize and these can be both favorable, you know, the model stereotype, right? The stereotypes that people think are really good that can be favorable assessment and unfavorable assessment. It doesn't matter necessarily for the implicit bias. Most of the time we're talking about unfavorable assessments. And the way that implicit biases become part of System One thinking is because they are learned from our society and

there are social stereotypes. So, the [INAUDIBLE] is learned and how they get used is in System One thinking.

Imperati >> So, we recognize that those participating in this webinar very much appreciate and understand the cognitive biases and implicit biases. However, because they are so programmed, it's often that the participants in the mediation are impacted by these and are not as aware of their existence in the phenomena. So, explaining this concept to them, so, this is mediator as educator can be helpful. So, here's a quick cheat sheet because they're hard to understand when we're suffering from them ourselves. Then what are they caused by? Well, too much information, not enough meaning, so, we have to fill in gaps. Not enough time to process the information and not enough internal memory to be able to put all this together and say, "Wow, this karmage of bias is me spinning in the intersection of logic and emotion. And so, here are some examples and we all suffer from them. So, one is confirmation bias and this is something that I think we see almost without exception in every mediation. The parties come in and they're paying attention to and seeking out only that factual information presented that confirms they're preexisting beliefs. Well, the challenge with that is it devalues any information that doesn't fit that existing belief, so the belief frankly they're more likely to win than lose because they're not giving credence to those facts that are inconsistent with what they want the truth to be. This is compounded by naïve realism which basically says each party says, "I am perfect in every way." I see the world objectively and clearly without any bias. And if someone disagrees with me, they and therefore must be ignorant, or irrational, or biased. So, again, we discount any truth presented by someone who is thinking inconsistently with us and the mediator's job is to help the parties understand this human tendency in query ask to what extent if any it may be playing a role in this process. Similar to that is parties often are impacted by cognitive dissonance and this is when we hold two competing ideas in our minds at once. And when that happens, we give credence to the belief that supports our preexisting view and discounts the troubling thought by again, rationalizing our behavior is true, read here, naïve realism and theirs is not. So, for instance, in this contest of Special Ed, a party comes in and believes that my child needs X service. And the educational professional on the other side of the table says, "Well, in my professional experience, X won't work." So, therefore the parent is more likely to assume that the professional's qualifications aren't up to par because how could any rational person disagree with my belief that I know my child best and therefore, X is needed. Similarly, we have put here three cognitive biases and tips for handling. So, again, and almost every mediation people come in and anchor. Well, what does this mean? The person wanting something anchors high and says I want more than I really want to settle for and the person that doesn't want to give, for instance, a service is going to offer, oh, none or very little services because this is the used car purchase phenomenon where one party starts low. The other party starts high, and we do this settlement dance back and forth and the fear is that if I start in a reasonable zone, my reasonableness will not be reciprocated by the opposing party

and therefore, it's tactically to my advantage. Well, what do we with them as mediators, we do some reality testing. We always try to tie any proposals to legitimate outside standards. This could be court cases, past precedent that the school district has done or not done. And again, we need to give people time to process these because if you force them to make a decision too quickly, they're more likely to say no than yes. This is also influenced by availability bias. So, there's a bunch of information presented. We tend to only look at information that's readily available to us. So, a classic example, it's easy to think that the, oh, well, the last fatal plane crash, it's harder to think of a specific car crash making people think planes are more dangerous than cars and we all know from a statistical perspective flying is safer than driving, but because of the dramatic nature, we tend to remember that versus cars. And so, we ask them as a mediator what information would you think the other side will be relying upon, but perhaps, more importantly, what will the decision maker find reasonable? Have them focus on research. Focus on facts. Give them an opportunity to no longer rely on their gut instinct. So, this is mediator ask Columbo saying things like and it's obviously they need to be true, well, you know, there's a recent study that indicated A, B, and C. To what extent if any do you think that might influence what is the best decision for the child today as opposed to saying the best interests of the child are X. That's more evaluative. That's telling them parties move better outside of availability bias in anchoring if you ask them by presenting information. And finally, confirmation bias which is similar so we only seek out information that confirms our belief and we do devalue anything that doesn't. And so, have them, say to them, have you had an opportunity to talk with people that may think differently than you? Someone you trust or ask them and what extent if any do you think me playing the devil's advocate would help with this particular process? And there is several more of these slides at the end of your power point in the extra resources section.

Howington >> Yeah, so, just a note on that extra resource, each of those traps is a cognitive bias that we see a lot in mediation and a lot in our everyday lives, right? And we fall prey to these ourselves constantly. And so, there's quite a few explanations of those cognitive biases and then those tips that we've come up with.

Imperati >> And here's a useful exercise is offline is go through these various cognitive biases or traps, and identify the ones that you find most irritating in dealing with other people, and that will be a very easy task. And then take a few minutes to break and then go back through the same exercise and say, "What are the ones I most frequently fall trap to?" And that's a little more difficult exercise but certainly, so much more valuable.

Howington >> Right, so, I think many of you may have seen this ladder of Inference before. It's a tool developed by Peter Senge that really talks about how do people make sense of the world and what influences their actions, okay? So, the change, so, one thing to note that confirmation bias that Sam mentioned earlier plays out in this Ladder of Inference as well. And so, the way

this ladder works is we move from the bottom of the ladder and climb up it, okay. Reality in fact's are at the bottom, so, there exists a true state of the world, perhaps, right? We'll get into philosophy later, so, we experience that reality selectively based on the beliefs, interpret what they mean. We apply assumptions often without challenging them. It's really difficult to challenge our own assumptions, that's why we need those people in our lives that are challenging that help us with that, right? Draw conclusions based on their interpreted facts and assumptions. Develop the beliefs based on those conclusions and then finally at the top of the ladder take actions that seem right because they are, [INAUDIBLE] right, because they are belief based. And so, what I just explained is actually on the next slide. So, I'll skip over it. I'll leave it right here right now and talk a little bit more about this, but just know that the words that I just said are the next slide, so, I'll skip over that one when we get to it. The thing to note about this is that this can create a vicious cycle, so, we can start to skip facts and skip steps in the reasoning processes like we don't realize that what we're doing is selecting and interpreting a reality. And so, the way that our underlying psychology and our confirmation bias plays out in this ladder is that it's really a loop in that our beliefs tell us which realities to select and how to interpret that reality. And so, that kind of loop can affect the kinds of actions that we'll take and the conclusions that we make about others. So, for example, I have these special education scenarios. One of them is a better time to meet case number two and I'm not sure how if you all use these a lot, so, I'm going to just quickly give a summary of this. Basically a parent says wants to speak with a teacher about her daughter, that she wants to talk about her daughter forgetting her homework. She goes up to approach the teacher in the morning, and the teacher says, "I can't talk right now, after school's a much better time to catch me and to discuss these sorts of things." The parents a little frustrated but she goes home and then comes back after school only to find that the teacher is gone. And then now, she's really frustrated, right? And so, now, they're in mediation, imagine they're in mediation. And you can imagine that the parent and the teacher having different trips up this Ladder of Inference. The parent may come to the conclusion, you know, I've told the teacher I would be here after school and she's not here. Therefore, the teacher isn't concerned, and therefore, the teacher doesn't like me, you know? All of these conclusions that we can come with why someone would spurn you and not make a meeting. The teacher however, is going through the ladder and just thought she just said generally the after school time was better, and she didn't understand that the parent would take that to mean come see me this afternoon. So, this different trips through this Ladder of Inference can play out in our mediations, and so, this is what I said again, I'll skip through this about how the ladder works and then talk with you a little bit about how to help parties audit this ladder to have them imagine what their wisest friend would think and walk them through some of these questions. Some of my favorite ones are, you know, what are the basic facts? What are all the possible interpretations of those facts, right? And what other facts are out there and how could they impact us? So, again, call attention to that but the fact that

they are selecting some of the facts out of well, and think about this is the entirety of world, right? We have to go on what we can pay attention to and we can't pay attention to everything. So, we have to select some things and so, you can ask them what is it that you're selecting and that can be helpful in opening up how they might have made it and made a misstep on the ladder.

Imperati >> So, this concept we like to summarize is helping the parties navigate the intersection of logic and emotion. And it's ironic that the male trial attorney is doing this slide as opposed to the female social psychologist but this is the result of Devin trying to train me over the years. And I like to say in my opening statement something to the effect that in mediation, we tend to spin in the intersection of logic and emotion in that it's my job as the mediator to help you navigate that efficiently, safely, and reasonably and that's designed to help you make the best choices available to us. So, the concept very simplistically is stimuli exist. It could be something said or not said. It could be something that's done or not done, and the parties immediately go into that intersection and they're simultaneously bouncing and spinning in that intersection between negative past experiences which are speaking loud to them and there is however, an understanding that they hope to bring forth their wisest perspective but that's hard given those negative past experiences. Also, they're suffering as all humans do from those cognitive biases that are like muscle memory on a cognitive level, and but they're seeing verifiable facts that might be inconsistent with those biases and they're suffering from cognitive dissonance. That intersection is normal. I suggest to them that there are three options when information or stimuli comes to them. They can interpret that negatively, in which case, they're reactionary aspects fight and flight will come into play. They can experience in a proactive positive light or they can be in that neutral space exploratory. Most parties come into that intersection with being in a reactive mode. It's our job as mediators to create that neutral space first before the parties are likely to transition to a positive proactive thought. And obviously based on your experience and intuition, and judgment you would know when they are in that reactive state. It's pretty effortless to determine but sometimes it's not clear. One tip to determine pretty darn accurately if they're in that negative, oh, space or a neutral space or positive space, is to listen to their choice of verbs. Their verb tense is a subliminal clue as to their state of mind. If they are using past tense, it's usually about blaming. If they're using the present tense they are transitioning to that exploratory mode and if they are using the future tense, so, what are we going to do now to make this better? They are looking to fix the problem versus fixing blame. So, pay attention to the verb choice in their transition from past to present to future. That will be a pretty strong clue. So, the rational emotional divide: As mediators we know a lot about how to analyze the facts of loss, the odds of potentially prevailing in a given case, and the likely outcome. And that in part is because the dominant culture which has this northern European judicial overlay is that we value the rational approach and discount the emotive approach. And in fact, we know that

it's both that contribute, but the parties are humans just like us. We're often complex social and emotional beings and we can make decisions or say things that aren't always air quote rational. So, the bottom line are emotions for better or worse are the dominant driver of most people when they're making decisions in mediation. And as a card-carrying trial lawyer, the transition to appreciating the importance of emotions was the most difficult for me to make. And we all are by nature favor one or the other, especially, when we're under stress or in conflict. The danger here for me was subliminally preferring the party well, who was most rational. And not giving justice or fairness, or a procedure of due process to the one that's being emotional. So, well, and the reverse can be true. So, it's really helpful to check where we are in the language we speak, that particular process. So, clear emotions impact decision making. And so, there's a great study by Slovak and Peters Risk Perception and Affect that's cited in the lower left-hand, uh, corner there that's worth a read. And it says that basically anger and fear can affect the individual's risk perception, so, what do angry people do? They tend to be more optimistic. They see less risk. They're so reactionary to their frustration that they believe the future almost by definition has to be better. So, as Kenny Rogers said, "They don't know when to hold them, when to fold them and when to walk away, and when to run." The fearful person again, being fearful of the moment, being angry in the moment tends to be ironically more pessimistic about the future. They tend to avoid this. They seek greater risk. They're fearful that nothing good is going to come of this. So, emotions serve as survivalistic level purpose and create different motivations. Mediators need to understand them to help the parties understand them to satisfy their core concerns. So, we have a case here and it basically as Mr. Powell, hypothetically is not sharing what it is that he would like to see happen when the IEP team is discussing moving his son out of the General Ed classroom for additional time per day. He's only disagreeing with what the team is offering. The case manager says I understand you don't agree with the team's plan to move your son into resource rooms in the afternoon. Can you explain to us what you think will happen if Nathan spends more time out of the general educational classroom? And Mr. Powell responds I just don't want Nathan to be an outcast and not with his peers. When I was a kid, I was stuck in this darn Special Ed classes and missed out on a lot of what was happening. I don't want him to be left out like I was. So, what's going on here is his past experience is both some anger or frustration and fearfulness, which is making it harder for him to make that rational decision. So, now, then how do parties arrive at the truth when this kind of phenomenon, their anger, their fear is playing out?

Howington >> Okay. So, we've been talking about how people may perceive things, make judgments about others, make judgments about situations, and come to some conclusions on those issues, right? On interpersonal things, why did this person do this? What am I to believe is the next thing that we'll talk about. So, how do people judge what is quote, unquote fact or not. So, there are key criteria that are laid out in the citation paper that's cited here at the bottom. And how parties evaluate what is true. So, there are the general acceptance by others.

So, if I look around and all my friends believe the same thing, everyone in my school district believes the same thing. Whatever group that you're looking to; is this accepted as fact? That plays into how we evaluate truth. We look to the amount of supporting evidence. As a scientist I would say okay, is it one paper that has, you know, thirty participants in it that I'm going to believe is true or are there 20 papers that looked over thousands of participants and all coming to the same conclusion, right? So, I might look to that amount of supporting evidence. The other thing that we need to note at how people decide what is true or not, is their compatibility with their beliefs. So, we talked about this ease of narrative it when our brain categorizes things and it need to categorize things neatly. It has that need to categorize things neatly. My beliefs are held strongly and if something that is true is incompatible with my beliefs, then I'm experiencing cognitive dissonance and my choice is just to resolve that dissonance our either to not believe this thing or to believe that I was totally wrong and that I may be fallible and unable to judge appropriately what's true or not. Now, which of those is easier to do, right? I think that's where we get a lot of into a lot of trouble with saying well, that's not true. That's just way easier than something that turning it into ourselves and saying, "Oh, well, I messed up there." So, that can affect how people decide what's true. General coherence again, that's just kind of is it can I understand it? Is this the theory of relativity or, you know, some sort of discussion on the multiverse and, you know, playing her astrology like or can I understand it? The sun, we rotate around the sun, okay. That's something simple. If it's hard for me to even grasp, I don't even worry about whether it's true or not, right? So, general coherence does play a role and then finally, credibility of the source of that information. So, is this person that's telling me this? Is this institution that's telling me this, someone or something that I believe, so, we need that fluid processing in cognitive simplicity. So, we're moving now, from individuals and how we process information to how that plays out in the system. And so, this is where we get into what is truth decay? I know all of you signed up for truth decay, so, here it is. How do these individual processes fit into a larger system of what Rand calls truth decay? So, Rand Corporation, and the scientists Kavanaugh and Rich wrote and several other scientists have actually written about truth decay. And they call it an overreliance of opinion over fact and an erosion of trust in sources or facts. And they describe four trends that are what they describe as truth decay. That's an increasing disagreement about facts and data, a blurring of the line between opinion and fact. The increasing relative volume and resulting influence of opinion, and declining trust in formally respected sources of factual information. And so, you can see they also have identified what drives these trends cognitive cross the T's, and cognitive biases are part of what increases disagreement. And so, the things like social media, competing demands on the educational system, and things like not teaching critical thinking as much, I think, is one of the things that they were discussing, polarization. These all go into this blurring of the line between opinion and fact. Now, the outcomes of that, these consequences are things like the erosion of

civil discourse. I mean, it's harder to have a civil conversation between these polarized groups because we can't even agree on what is opinion and what is fact.

Imperati >> You're not saying some of this is going on today in this country, are you Devin?

Howington >> In fact, and it has been going on, so, truth erosion leads to trust erosion, so, an interesting step is that 17 percent of Americans trust the government in 2019. And you can see we've got several institutions here in this graph and trust in them has been declining basically since 1975. Now, trust in the banks and the banking really dropped off there around 2008.

Imperati >> Yeah, what happened with that?

Howington >> Well, I don't know, I can't remember. I think I decided to go to grad school around then.

Imperati >> Wow.

Howington >> So, another bit of data because you are working in an educational environment, I found some data on educational systems just to let you know kind of how people are feeling about that institution, so, you can see this set of graphs on the left, this is data from the Peer Research Center, they are the percentage of adults who say they have a great deal of confidence in K through 12 public school principals, which is on the right side of this graph that's on the left just to make things really confusing is pretty good. It's much better than religious leaders. It's much better than the news media. It's better than business leaders, and so, that can maybe give you some confidence that the trust that they have in confidence in K through 12 public school principals. However, at least 66 percent of people think that there needs to be changes in the educational system. So, your just think of these things as you're working in this environment. So, Sam, we've talked about truth and how people arrive at the truth, but what does truth really mean when we're in a mediation setting?

Imperati >> Well, so, this is one of the biggest issues I have struggled with in my transition from trial attorney to mediator, and when in doubt, I go to the front of all wisdom. Miriam Webster's dictionary and I pulled out their definitions of some of these words, which I think in society we use interchangeably and I think that's potentially problematic because these words facts, truth, and beliefs, and opinion are becoming terms are used interchangeably and our looseness with language, I think, can contribute to truth decay because in my experience, I see people asserting their beliefs or opinion as truth or facts, and it blurs the line, and makes it more challenging to determine what true north is. So, what are facts? Something that is actual existence, objective reality. What is a truth in the body of real things, events, facts, the state of being the case. Well, contrast that to beliefs, it's a state of mind in which confidence is placed in some person, thing, or statement considered to be true or held as an opinion. Those words according to Miriam Webster's dictionary have different meanings. So, we're going to conduct a brief poll here, which is designed to ask this question. If you had to pick, which of the

following should a mediator focus on most? So, you're in the middle of a mediation, you have to pick. I understand this is a forced choice and we're doing to deal with the intersection of logic and emotion, but if you had to pick are you going to do A, focus more on facts, B, truce, or C beliefs and opinions? So, your poll is open and I'll let you take over and give them any instructions that the participants need. So, the webinar host come online and give any instructions that are necessary.

CADRE >> Okay, folks, so just choose which answer you believe is best. We're going to close the poll probably in about 15 seconds and see all of you guys have gotten in your answers, and then Sam will take it away.

Imperati >> Thank you. Vote early and often is what basically they're saying.

CADRE >> Okay, Sam, so, right now, we're sharing the poll results. Back to you.

Imperati >> And-

Howington>> We don't see them-

Imperati >> We don't see the poll results, so, maybe you can just tell us what they are?

CADRE >> Sure, so, it looks like 40 percent of everyone thinks that facts are the things that mediators should focus on most. 23 percent believe truth and 37 percent believe belief and opinion.

Imperati >> So, just sit with that for a moment. Here is a group of sophisticated mediators and practitioners of their craft and we don't, well, and again, I appreciate the forced question, but we can't really agree on which of those three is more important to the extent there is a difference. So, depending on what mediator parties get, they could get a different mediator intervention or techniques based on the mediator's self-proclaimed preference for one over the other. We don't have time to resolve that, something simply to think about. So, let's move on to next and if you can turn it over to me, which you did and here we go.

Howington >> Okay, so, we're moving from the psychological to the philosophical you may have noticed and this qualified [INAUDIBLE] essentially says what appear to be different truths maybe different leaves on the same tree. So, parties may have different experiences and that maybe okay, right? What appears and so, is there one truth when it comes to the content of our mediations or does everyone have their own truth? So, this is one of those again, questions to ponder that we won't resolve. And an interesting back to the psychological, is that there's a very classic psychological study in which students from rival football schools watched a football game, the exact same tape, and had very different stories based on their affiliation. So, one team said there were 20 penalties against the other team they were playing just such dirty football. The other students from the other school said the same thing about the other team. So, we construct our reality even when looking at objective measurements based on our beliefs

and our affiliations. So, this is just to say that sometimes reality is constructed and how do mediators deal with truth decay if each party have their own truth?

Imperati >> And so, one reference point to do that is to look at mediation standards or quote conduct. We have the model code of mediator practice that's ACR, ABA, and AAA, they in Oregon we have core standards of mediation practice, but they usually talk about the same concepts. So, when thinking about these philosophical questions, which can impact the experience the parties have based on your decision truth, beliefs, opinions what have you. Look to the standards for guidance. Does the parties right to self-determination outweigh our concerns that they might not be giving as much credence to the facts and more credence to their just raw opinions. We ask ourselves and this is again, part of my transition, which has been going on unfortunately for 25 years, so, I'm glad it's continuing is how do I maintain my impartial regard if, you know, I feel a parties relationship with the "truth," seems unfair? If they simply will not recognize that there is objective reality outside their own prism of thought, that could be problematic when you're doing reality testing or BATNA testing? Well, yeah, we're not anyone's lawyer or a consultant, does not knowing what's ultimately going to happen by any decision maker affect our obligations surrounding process and substantive confidence? So, basically, we say as mediators we have some, at least process expertise, and substantive subject matter familiarity. Well, if we don't know like, you know, what the truth is likely to be if this goes through an adjudicative process, and we're just relying on managing the parties emotions, are we being as competent as the parties deserve? And what happens if they're participation in "good faith," is how should we say too flexible with the truth? You discuss your truth, your beliefs with them. Have and you recommend they proceed under good faith, these are challenges. So, here are some deep thoughts. Is there one truth when it comes to the content of our mediations or does everyone have their own? Is there an objective reality, verifiable reality? Are there reasonable held beliefs that reach [INAUDIBLE] reality is different, well, sure. So, I came to the conclusion after Devin pretty much [INAUDIBLE] that objective reality is not the whole scope of the human condition. She was quite proud.

Howington >> And to note I did not commit a word crime, I simply was engaging in debate with Sam just to know.

Imperati >> Exactly, so.

Howington >> Yeah?

Imperati >> So, what about some tools? You can only guess which one of us picked this clip art for the tools?

Howington >> Right, so, tool time, so, we are talking about the problem that mediators or sorry, the mediator, it is a problem that mediators have when parties may reject facts, "actual facts," if it doesn't fit with their beliefs. And so, one of this, this is called the backfire effect,

when people's poor beliefs are challenged and they end up feeling even stronger about them. There was a study that back in the mid 2000's when this was playing out that said then have people read information that said Bush knew that there were WMD's or that he didn't know that there were WMD's and depending on what you believe just going into it, the evidence that you read you actually felt more strongly. If you got disconfirming evidence, you felt more strongly that there actually were WMD's in Iraq. So, that was the backfire effect. One way to help people with this as a mediator to help with cognitive dissonance is to separate their beliefs from their core being. So, their beliefs are not then. They are not made up of their beliefs. The belief is something that you can have and you can tell people that peoples previously held beliefs and make sense given the information that you had at the time and remind them it's okay to update based on new information. So, this is just helping them have a way out with dignity and to save face.

Imperati >> And so, doing that, mediators need to appreciate and educate the parties that there's a concept called cognitive conflict. And this is a function of the importance of the issue to the participants and the uncertainty of the outcome of the mediation. So, obviously, there's more cognitive conflict but the issues are highly important. There's a high amount of uncertainty as the outcome, and less cognitive conflict, when there's no importance and low uncertainty. So, our jobs as mediators is to recognize it if there's too much cognitive conflict, that'll create panic. If there's too little it creates apathy. We do that then without appreciation. That's when we manage the risk biases with the classic BATNA analysis, best alternative to a negotiated agreement, but I think that's a missing [INAUDIBLE]. I think we should focus the parties on MLATNA, which is the most likely alternative to a negotiated agreement, because those people who are risk adverse will over emphasize their MLATNA worst agreement. People who are risk tolerant will over focus and rely on their BATNA, assuming that's more likely to happen than not, where the real action is at what's the most likely alternative to a negotiated agreement? So, what we have next is a bunch of tools and we're only going to highlight some of them because we've designed them to be as free standing as possible, meaning you can read them offline. So, Devin, take it away. What are some of the tools that are go to tools for you when you're mediating? Bless you.

Howington >> Sorry, so, a lot of them are part of the mediator education role that you mentioned earlier is you can explain to them how these processes work. Now, it doesn't knowing about a cognitive bias, does not mean that you will then avoid it, but at least you'll know it and can use your system to thinking to adjust what your bias was. So, you can help them by saying, "Look, there are cognitive biases." One thing, you know, that we're doing is confirmation bias that we only look for things that fit with our beliefs. So, let's take a moment and play devil's advocate and try to find evidence against our beliefs just as a thought experiment. So, you can do things like that sometimes. Of course, some parties are more open

to that than others and you'll have to use your mediator skill and intuition to know which parties might oh, receive that better than others. And help them be more open to the facts of others, and so, you can help also parties understand what the facts are, and this is you can do with the parties together agree upon what do we think the strong evidence is? And then you can get them to engage in joint fact finding. A few other ones, help people just determine what is important to them. So, sometimes what's important to them is to make sure that the law is being followed. Sometimes that is a sense of justice and those things may not line up right, and so, you need to explore their external reference points with them to find out what their conclusion might be. And normalize the idea that each may have their truth. I've said in a mediation before, now, I believe you and I believe you. And I think that's okay, and how can we move forward if both things may be true simultaneously?

Imperati >> So, when we can't get an agreement on facts, when both parties have their truth and they can't be reconciled to a third party perspective, what do we do? We go deeper to find their shared values and interests. This is just basic mediation 101 and interspace negotiation. Here's a chart that you are familiar with. The parties will come in, state their positions and arguments. Our job as mediators is dive below what I call the water line of adversarial banter here to explore your emotions. And sometimes I draw a very simple graphic of this and show them what this looks like because most people we ask them, "Well, what," you know, thank you, I understand your position. I understand your arguments but what are your underlying values, needs, and emotions? They're simply going to say, you know, to win. To get my way and this more graphically gives that a view of that, that they can better understand and move forward. And one way to do that is with the umbrella question and this was created by The National Coalition Building Institute International that really fesses me back to Sister Mary Fenton and Sister Mary Borjac who tag teamed taught 6th grade for me in Catholic School and they said things like there's no such thing as writing, just good rewriting. And they taught me to dive my own sentences. Well, here's what a broad question looks like. How can we address fill in the blanks for the interests of party A? Well, at the same time fill in the blanks are truths for party B. Thereby satisfy what everyone has in question. So, getting back to that fact pattern about father wanting son not to be taken out of the general population so, they could get peer development and that you might ask because you've been listening, understanding interests, and reframe your positions to interest, you might say, "You know, I've been listening to both of you and I see firmly held beliefs. It seems the question should your son stay in the general population or go to an extra class really is a false choice. The issue really we should be focusing on here is how can we support David's opportunities to socialize while at the same time improving his academic progress thereby ensuring David continues to develop into a happy and independent child? By framing both their truths in one sentence, the question creates the umbrella that both those things now, need to be satisfied while simultaneously focusing on that which they have in common. That's the most affective tip for bringing them together on one

page, and this is something if you haven't done already, we encourage you to add to your repertoire of mediator tools.

Howington >> Okay. And so, another thing is to this time really I'm not going to go into all this, a lot of words on the side which we understand that some of our slides are worry. This is so that you can take them and understand what we were talking about later. Then to note here is that we really need to attend to the strong emotions. We need to ensure that we're taking care of that emotional side and not just focusing on the rational. Just like I mentioned before, when we give our facts, sometimes people reject those. And so, you really need to make sure that you're attending to those emotional things and saying things like sometime I catch myself reacting to suggestions from the other side. Like, I can't even and give an anecdote about yourself if you want, that's a technique I use and then some people don't do that, but, you know, I know that when I'm in a foul mood and my husband suggests something, and I immediately don't want to listen to that suggestion. Even if it's a really good one, right? It's just I'm very reactive in the moment. And so, sometimes you can explain your reactivity and make him see then how that's happening for them without directly telling them you're being reactive which, I'm sure, will only cause more [INAUDIBLE].

Imperati >> Yeah.

Howington >> At least, that's what happens when I tell Sam he's being very reactive.

Imperati >> Wow.

Howington >> So, normalizing their reaction.

Imperati >> And just micro aggression.

Howington >> Okay. The next so, another thing because of what we learned about how cognitive biases work, we need to be sure to give them time because we're using all these shortcuts, cognitive shortcuts, and stereotypes and implicit biases are coming out when we are time pressured. So, if we allow people time they may come around. For emotions, even 10 minutes can reduce the effect of emotions and another thing that's helpful is to break problems into digestible chunks. Again, that's because our brains like simple stories, and we like to make sure things are being understood and not overwhelming for others. And finally, to get at those emotions, this is really important for when those emotions start to bubble up. You need to examine them leaning to the emotions that they're giving you because they're hopeful. So, these open-ended questions again, it's a really simple technique but just use it when you feel like you need to understand what is going on for them emotionally. So, what are you feeling right now? Tell me more about that? Things like that can be really helpful.

Imperati >> And this is a recent resource we just added over the weekend and we strongly recommend you take a look at it. It's journalistic in nature, but it's quite transformable to the

world that mediators and it's really saying we've amplified with this contradictions. Why no lenses? Ask questions to get to the people's motivation and the tool that I catch myself doing is when they're venting, I tend to get impatient the longer it goes on, but really, when they're venting, they truly are giving us a window into what's really important to them and going on for them, and that gives us the opportunity to translate positions into interests and come up with that umbrella question because ultimately, one frame of reference that and little ditty's we will use in mediation is really ask them, "You know, this is a difficult discussion." At the end of the day, you have a choice. You want to build a relationship and fix this problem or do you want to build a case and fix mine? Well, I do that in caucus. I won't necessarily do that in joint session, but I have. And I'll make a distinction here that we really need is a resolution where everyone walks away with their underlying business and personal goals reasonably satisfied versus something less durable, less satisfying, and harder to comply with. And that's a settlement where everyone walks away equally unhappy. So, I'll suggest to them, yeah, at the end and this is the post settlement, settlement technique where they have a deal. I'll take a breath, pause, and say, "You know, are we just settling this and it's really not durable and satisfied?" We got a deal but can we think more creatively and just sit with the fact that we want a deal that will have acceptance sooner and that will result in success, not just compliance. Can we make this process better? So, the final thought of the day before we take questions, is to say go forth and help parties navigate the intersection of logic and emotion. The work we do is so darn important, and so impactful to the participants in our processes, we need to help them and help ourselves navigate that intersection of logic and emotion. So, thank you for listening and we'll now open and turn it back over, and then for questioning.

Reese >> Thank you so much, Sam and Devin. And we all really very much appreciate the information that you've given to us. So, as we're approaching the 12th Pacific Time, the 12:45 point when we said we were going to be completed, I want to point everybody's direction to the feedback that we would like for you to give us, the survey monkey that's in the chat box. So, if you would, please, let us know what you thought about today's webinar and so, this value is very important to us. If you would just stay on the line for a little bit longer. There were a few questions, so, I if that's okay with you Sam and Devin, I'll go ahead and ask them.

Imperati >> Absolutely.

Reese >> Okay. So, one question, how do you address the he said she said situations regarding factual dispute?

Imperati >> Well, obviously, you know, it's so darn situational. It's hard to give a concrete example, but ultimately I will suggest and this is almost a quote of what I say is this is difficult folks. And ultimately, the question is going to be what will the adjudicator, the finder of fact more likely believe? And understand that, that person is not infallible. So, we don't necessarily need to resolve who is right and who is wrong. We need you to resolve what is the fact finder

most likely to do? And knowing that, and the risk associated with that, impasse is simply the place where people of good faith start, stop trying. Let's sit down and resolve this issue. Is there a way that works for both of you and I may repeat the umbrella question at that point.

Reese >> Thank you. Another question and this is addressing the slide number 18 where you had the issue of trust. On the graph, with all that information on there about the industry's lack of trust in government or that all Americans trust in those industries. So, let me read the question again: With that info, are the industry's lack of trust in government or all Americans trust in those industries?

Howington >> This was appear in research graph, and so, it's a sample of Americans that are involved, and so, I don't know, I think if you go to the source, it says "Trust and Mistrust in Americans: Views of Scientific Experts," and that survey was conducted actually in January of this year, so, it's fairly recent and I'm not sure I'm understanding completely the question, but I will point you to that source at the Pew Research Center if you have questions on how the sample that's involved which is what I think you're asking about.

Imperati >> How many people they ask, what type of people they ask. Was it voters, registered voters and what have you?

Reese >> But yeah, I think the question was really addressing: What is it about Americans' lack of trust or industries lack of trust?

Imperati >> It's America's-

Howington >> U.S. results.

Imperati >> U.S. adults lacking in trust in these industries.

Howington >> Right.

Reese >> Okay. On slide 31, the graph, the triangle indicated actions with oh, it was an acronym for options. What does OPTIONS stand for?

Imperati >> Well, good eagle eyes there. It is in fact an option and this is a little ditty that entertains me, and so Options means only proposals that include the needs of others succeed. Only options that include others needs succeed. And so, I will say to them if an option doesn't include everyone's needs it's really not an option, it's a position. And so, I like to broaden and explore all those options that include others needs. That's what we need to succeed, good eagle eyes, thank you.

Reese >> Next question, so, parents may have a difficult time being rational due to intense emotion about their child, which is understandable, but what about their attorneys? It seems like they often recommend going forward with cases even when the case law suggests a low probability of winning.

Imperati >> So-

Howington >> I'll let the attorney and take this one.

Imperati >> What? Yeah.

Howington >> It's a great question.

Imperati >> Yeah, give it to the attorney.

Howington >> What are they doing?

Imperati >> Yeah, then, look at, the world is a bell curve and so, are attorneys. You know, attorneys and one of the cognitive biases or implicit biases rather as attorneys are only out for themselves and only out to perpetuate the fight in hopes of every kid regaining more feed. You know, but yes, there are attorneys that do that, and there's not much you can do about that, but most attorneys are really trying to do what's best for their clients because they're not only because it's the right thing to do but also it's in their reputational interests based on referrals. So, here's the question I ask the attorney in front of the party. I will look to the party and say, "Yeah, with your permission, I'm going to ask your lawyer a question?" That's not really fair because she or he doesn't have a crystal ball any more than I do, but I'd like to know this is confidential, we're in caucus now, but if you were to adjudicate this case 100 times, what percentage of the time are you going to win? And the most frequent answer to that question is 70 percent, and most frequently a party looks to the attorney and says, "Wow, I thought we had a good case," and the lawyer turned to the party and says, "We do." But by forcing the lawyer to quantify words like good case, high chance of success, it immediately discounts that factor. And don't expect him to say, "Oh, yeah, we only have a 30 percent chance of winning." You get them to say 70 percent. Again, the most frequent number. That is enough of a minor message that gets conveyed and appreciated to show that there really is risk.

Howington >> And if you would, I'd like to point you to a quote on slide 33 which says, "We all have excessive confidence in what we believe we know. And we fail to recognize our apparent inability to acknowledge the full extent of our ignorance, and the uncertainty of the world that we live in." So, maybe the next one for you. Thirty-four, great, a quote by Daniel Kahneman. And actually, in that slide there is a resource our citation there is understanding and overcoming cognitive biases from lawyers and law students becoming a better lawyer through cognitive science. So, I think you might find something useful there as well. Again, we can treat them the same way as the parties and walk them through their own cognitive biases as well if we need to.

Reese >> I'm looking at the questions. I'm just checking to see if we have any new ones. Well, people just saying how wonderful you guys are.

Howington >> Oh, thank you.

Imperati >> Thank you.

Reese >> I like we have addressed the questions that have been posted, okay. I think we handled questions that have been posted. Sam and Devin, again, thank you so much for your time and your presentation. I learned quite a bit and I'm sure that, that's echoed throughout the audience here. Again, if you haven't had a chance to fill out the survey monkey please do so. That information is very important to us and keep your eyes open for our next webinar information, which will be coming soon. So, thank you again, everybody.

Imperati >> Thank you, go forth, do good, avoid evil, thanks.

Howington >> Thanks everyone.

Reese>> And bye.

Howington >> Bye.