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Commercial Mediation Master Class

aka

Better Business Partnerships, Better Conversations and Better Outcomes

28 and 29 July 2014

Welcome!!

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Managing Relationships, Resolving Differences and Reducing Conflict

…

and *Collaborating* generally

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Commercial Risk Management

…

more bangs for less bucks…

“best value”…

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or....

"I wish we had had this conversation a year ago...."

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or....

"I meant what I said but I wish I'd said it differently … It didn't come out quite right…"

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Strategic Conversations in Challenging Situations

aka

High Performance Communication

The Head, the Body and the Soul

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“Educare”….

It’s all here already…

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Working at the margins…

little things…

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Clean the filter …

- we jump to conclusions
- assume that we are right
- but... can often be wrong!

- “90% of errors of thinking are errors of perception”
- confirmation bias: our tendency to reinforcement shapes our response – WWSIATI – missing the obvious
- http://www.youtube.com/watch?v=IGQmdoK_ZfY
- thinking fast and slow
- wisdom of crowds?
- reactive devaluation/ attribution error

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we need to be open to different perspectives, views and ideas –

"they" may be as right as we are?

"In retrospect, everyone is wrong…." !!

Sometimes us…..

Sometimes others…..

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Keep your Filters Clean!

There are two (several?) sides to most stories……

It just depends on where you are standing…..
or where you start from…..

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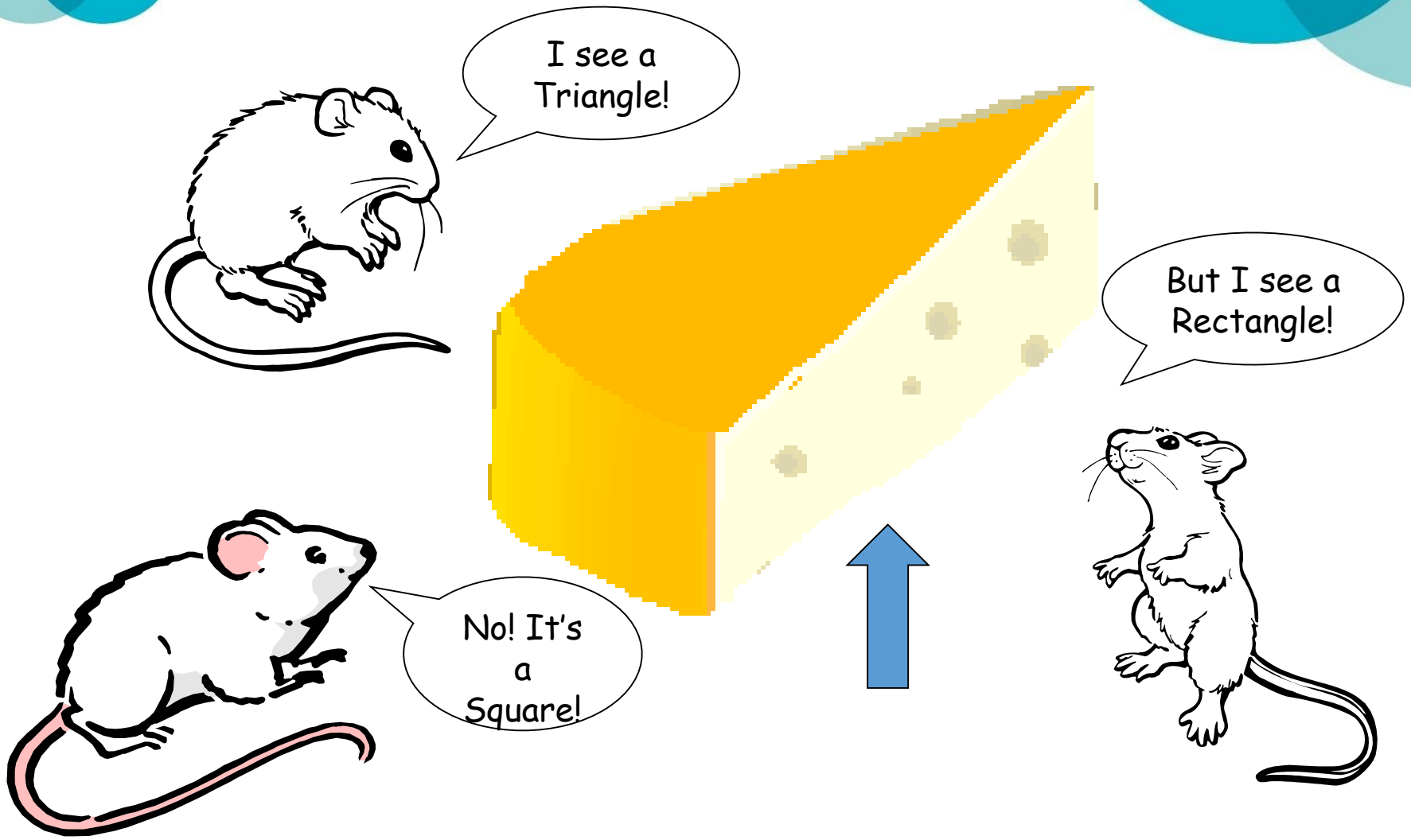

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"Everyone thinks of changing the
world, but no-one thinks of changing him (her) self" Tolstoy

It's all we can ever do……..

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Humility

Responsibility

Courage

Discipline

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"It's not our differences that divide us. It's our judgments about each other that do."

Meg Wheatley

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"We are used to thinking about competitions in which there is only one winner....But the world is rarely like that...The key to doing well lies not in overcoming others, but in eliciting their cooperation."

Robert Axelrod

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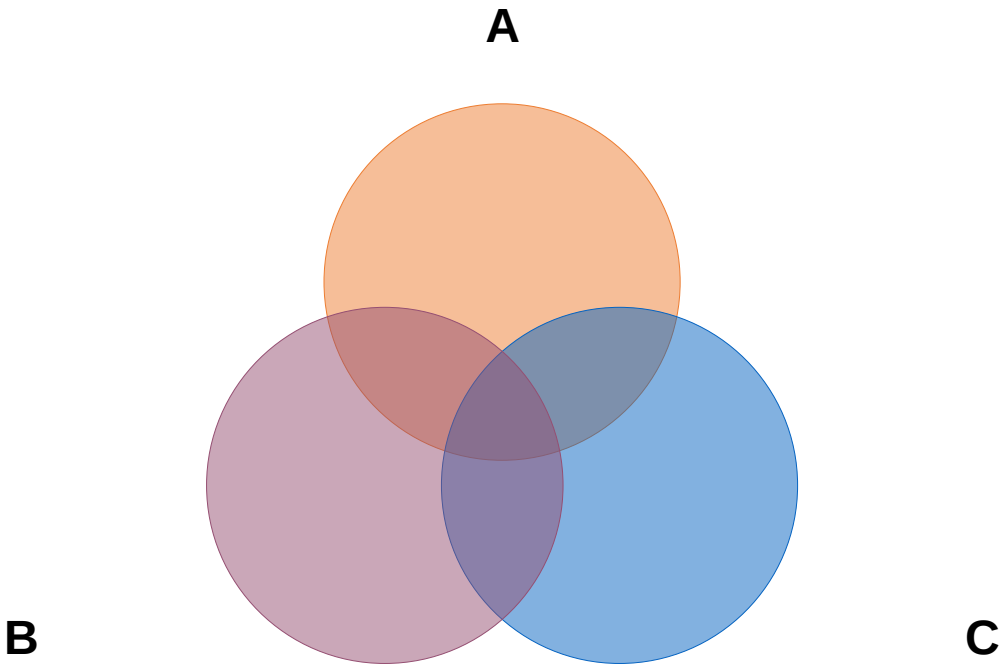
The need: to find the common ground



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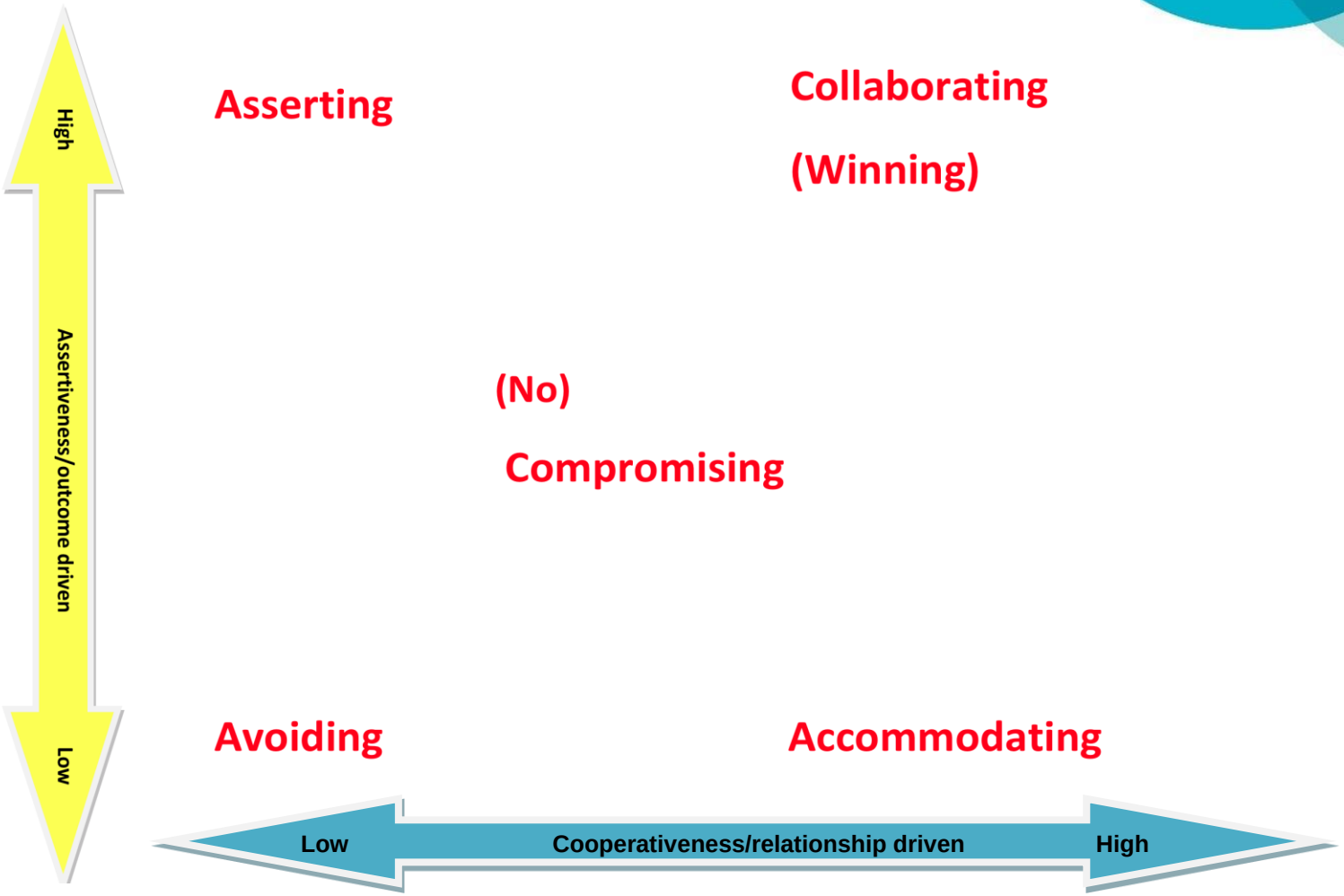

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Gain Game: what we learn

- need to know the rules / objectives / identify “value”
- different styles and perceptions
- emotion is always present
- importance of trust: “like life……..” - do as you say
- balancing trust and risk: short term / long term gain
- clarification and verification helps - consistency
- need a decision-making structure
- time pressures cause difficulty – take break / PAUSE
- reputation easily lost
- desire for revenge…..Tit for Tat

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Gain: Gain

- co-operative tends to produce best result
- aggressive tends to be ineffective
- focus on maximising gains not losses
- if you gain, not matter if other “side” gains also - enlightened self interest
- “do what need to satisfy the other at least cost to you”?

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The Prisoner's Dilemma

"…although it is a simple mathematical idea, it turns out to be an enchanted trap that has ensnared some of the brightest minds for decades…

….gave me the first critical insights into why our traditional understanding of evolution is incomplete…

….we need a third evolutionary force, that of cooperation….

…the Dilemma has played a key role in cementing the foundations for an understanding of human cooperation."

Nowak: Super Cooperators: Evolution, Altruism and Human Behaviour

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Nelson Mandela

- "I never sought to undermine Mr de Klerk, for the practical reason that the weaker he was, the weaker the negotiations process. To make peace with an enemy one must work with that enemy, and the enemy must become one's partner."

- *Irreconcilable confrontation gave way to peaceful co-operation. Only through effective negotiation could both sides hope to meet their needs. Neither side could win without the other*.

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Principled v Positional Negotiators

- use good communication skills
- know that relationships vital
- separate people from the problem
- seek options for mutual gain
- focus on interests, future
- are open to new ideas
- make concessions to gain –rec/y
- look for creative outcome
- add value, save time

- *threatening*
- *aggressive*
- *emotional*
- *haggle*
- *focus on positions, blame*
- *conceal information*
- *concede little*
- *achieve compromise? zero sum*
- *incur cost, delay*

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Barriers to effective negotiation

- Adversarial, competitive culture
- Posturing / taking positions / exaggeration / ego
- Pressure from / identification with minister's / principal's position
- Fear, lack of trust / feelings of threat
- Personal / institutional animosity / baggage
- Different perceptions of strengths / risks
- Lack of verification / justification / authority
- Pressure of time
- ***Delay or Failure in communication***

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What we intend to communicate and what others take from what we say and do may be quite different.....

The Communication Chasm

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"I know you believe you *understand* what you think I said.

But I am not sure you realise that what you ***heard*** is not what I meant"

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Strategic Conversations

How can we do it better?

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A Structure for Strategic Conversations

- Preparing – planning in advance – setting objectives….
- Rapport building– the importance of good relationships: separate people from the problem*: respect and rigour*
- Understanding - exploring what it's really all about: the underlying issues - *what and why*
- Developing *then* evaluating options – finding possible, creative ways forward
- Deciding – selecting a solution(s) which works – and will stick
- Implementing – making it work
- Evaluating - how did we do? what worked? what didn't?

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Preparation?

- *What are my objectives? / What do I need to achieve?*
- *What are my concerns?*
- *What might be their concerns?*
- *What do I need to say / do?*
- *What might they need to hear from me?*
- *Where might misunderstandings have arisen?*
- *What is the common ground?*
- *What don't I understand?*
- *What happens if we don't sort this?*

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Establishing Rapport

"Rapport is the ultimate tool for producing results with other people"

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Rapport?

- separate people from the problem
- respect and rigour
- location, location, time and timing
- detoxify the language – every word carefully chosen
- focus on (common) interests; be interested….
- don’t judge behaviour; value the person – relationships vital

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http://www.youtube.com/watch_popup?v=Hzgzim5m7oU&vq=medium

REFRAMING!!

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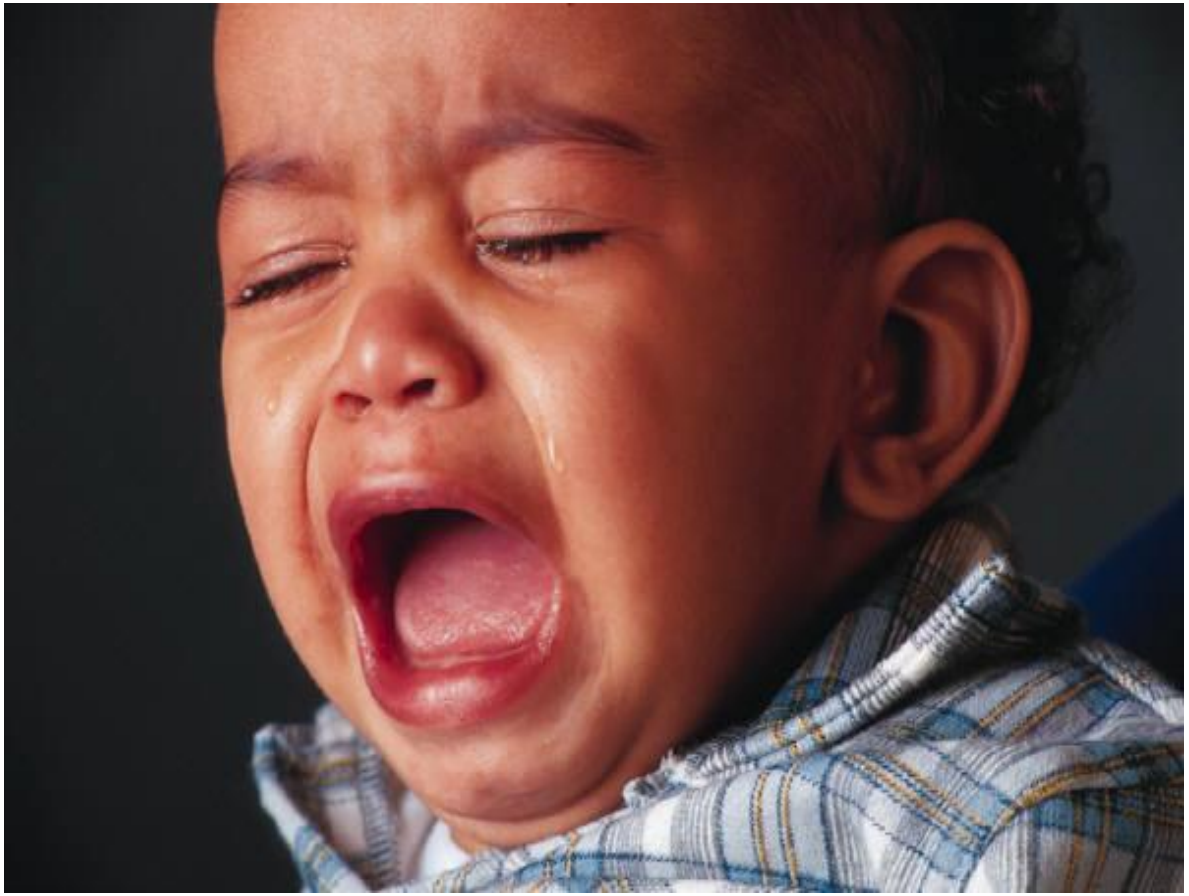
An Aside on Emotion?



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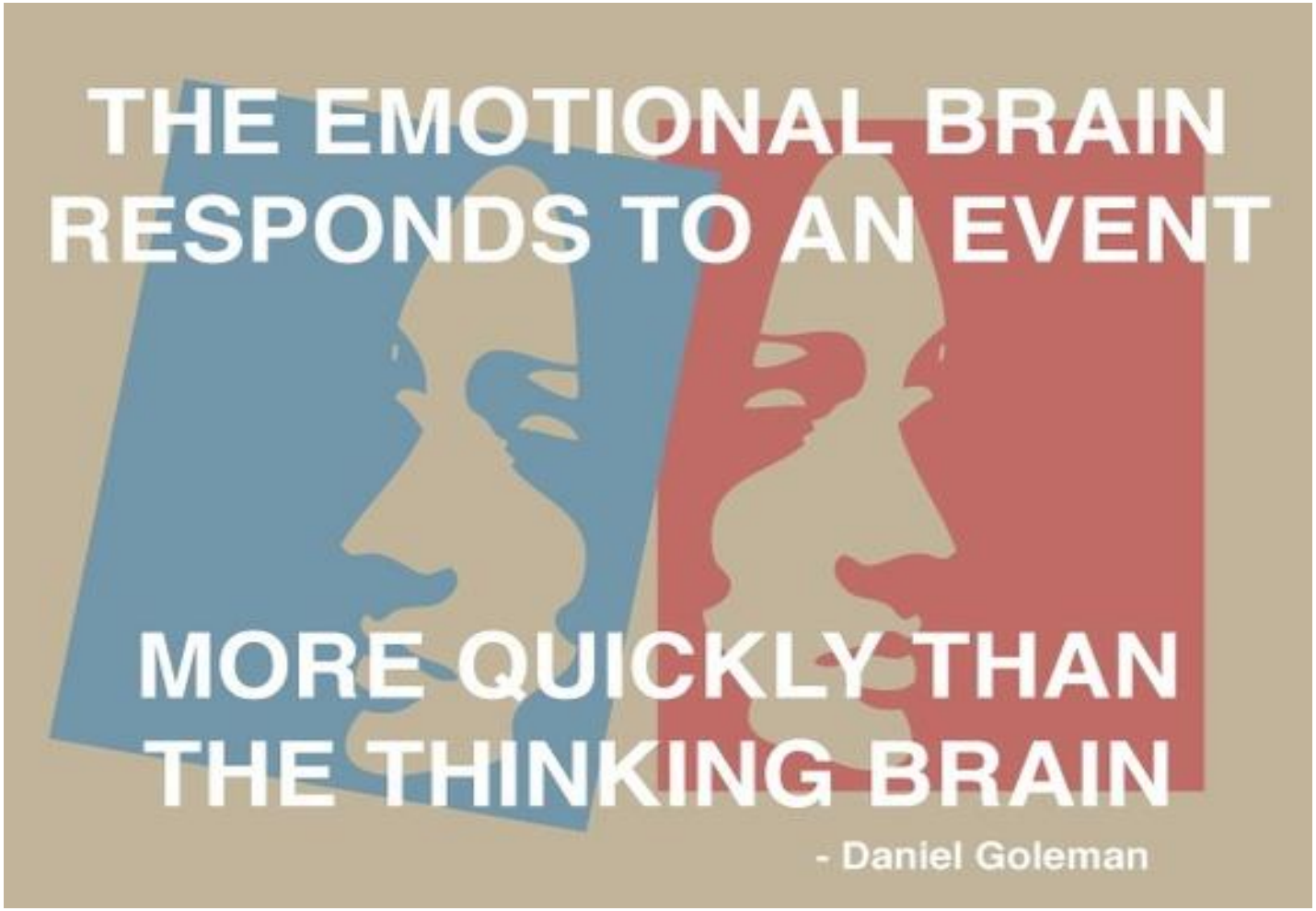

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Where are our emotions?

The brain as a result of evolution?

- Level 1 The **reptilian** brain: survival
- Level 2 The **limbic** system : emotions (amygdala)
- Level 3 The **neocortex**: high order thinking & cognition

"The body is the shadow of the soul"

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Reptilian brain

- Fight or flight response
- Fear and reward networks:
- Avoid pain and danger = Away reflex
- Seek rewards = Towards reflex

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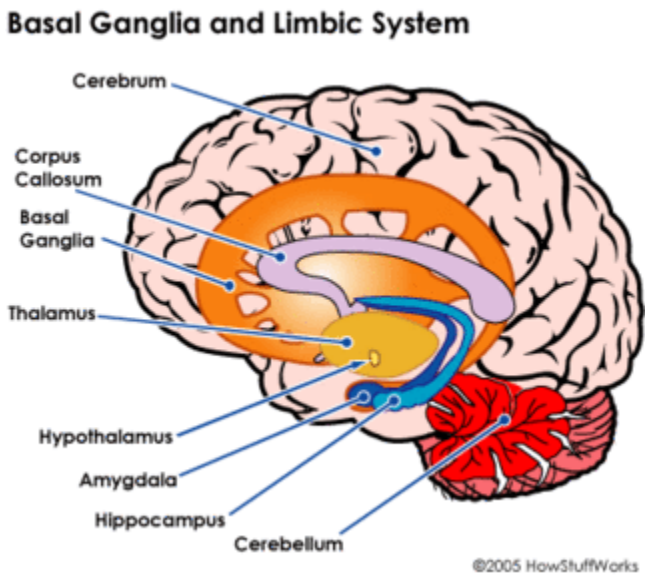
Emotional brain



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Emotional brain

Key components:

- **Amygdala** – integrator of cognitive and emotional content
- **Hippocampus** – remembers emotions associated with past events
- **Hypothalamus** –central to initiating stress response; releases chemicals into the body
- **PFC** in emotional regulation (Phineas Gage)

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Understanding?

- *What really happened?*
- *What do I need to find out?*
- *What are we missing?*
- *What questions do I need to ask?*
- *Of whom?*
- *When?*
- *How?*

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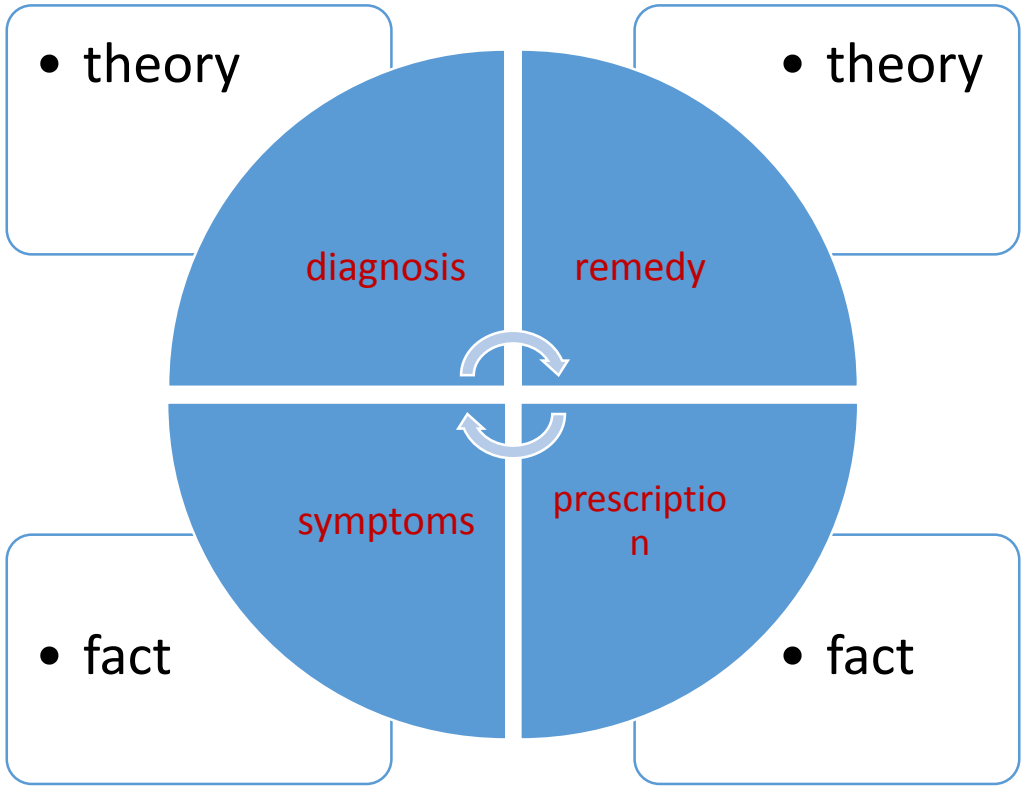
Harvard Circle Chart



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Key Questions

- What want?
- What need?
- What feel?
- What pressures?
- What priorities?
- What alternatives?
- What concerns?
- What future?
- What implications?

- *Why? what reasons?*
- *Why? specifically?*
- *Why?*
- *Why?*
- *Why?*
- *How achieve?*
- *How feel?*
- *Why important?*
- *How affect .....?*

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Getting below the surface

- ‘**What** do you really think about…?’
- ‘What is this really about?’
- **‘What really worries you?’**
- ‘What have we not understood?’
- ‘What else do we need to know?’
- ‘What is in our common interests?’
- ‘**Where** and **why** do we diverge?’
- ‘**How** can we address this issue?’
- ‘What happens if we can’t work together?’

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KPQ s *(Advanced Performance Institute)*

- Start with your strategic objective and design between one and three KPQs for each objective
- Spend some time and effort to agree the final list of KPQs (try to keep only the critical few)
- Engage people and subject matter experts in the creation of your KPQs
- If possible formulate your KPQ as an open question
- Focus your question on the now and the future, and not on the past
- Create a short, focused, clear and unambiguous question.
- Refine and improve your KPQs as you use them.

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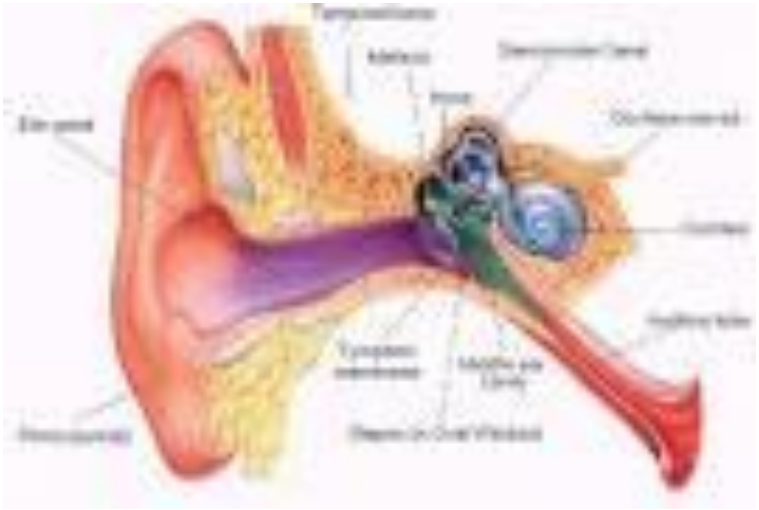

….and listening…..

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"He knew the precise psychological moment when to say nothing"

Oscar Wilde

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Being Heard….and Telling their Story

A	• Acknowledgement
A	• Acceptance
R	• Recognition
R	• Reassurance
E	• Exploration
E	• Explanation

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It’s not about the nail……

http://www.youtube.com/watch?v=-4EDhdAHrOg

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Give to Gain…..!

Find out what they need….

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"You never really understand things from another person's point of view… until you climb into his skin and walk around in it."

Atticus Finch

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"it's a people business and we need to work together….

I now *understand* the human side and the hurt you felt"

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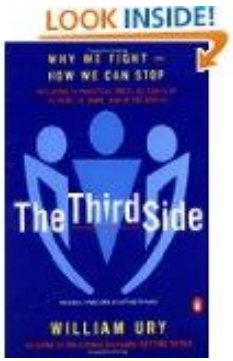
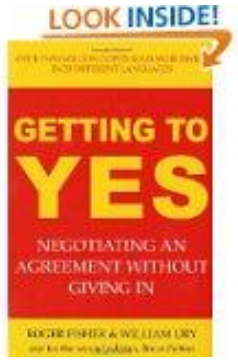
Building Golden Bridges
..and Writing Victory Speeches



Getting to Yes

The Role of the Third Side



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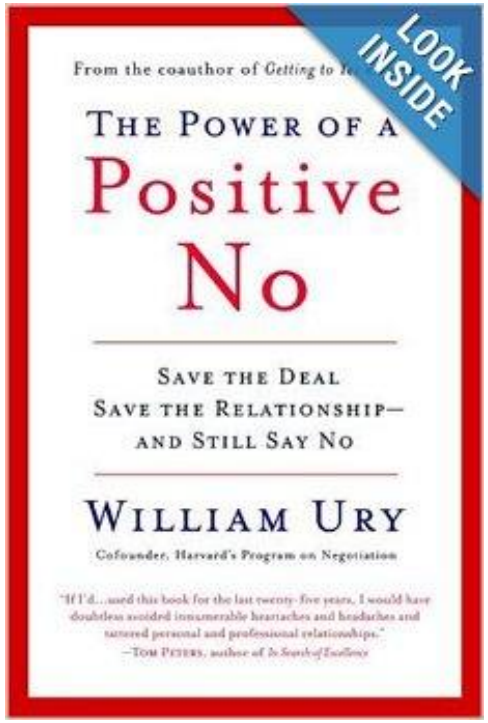
The Power of a Positive No



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Straw Men and Wizards

BATNAS and WATNAS

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Balconies, Precipices and Crises

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Have we covered...?

- Shift mindsets from win/lose to mutual gains / joint objectives / common interests / common "enemy" or cause
- Keep in mind the big picture - always – don't sweat the small stuff
- Avoid bottom line thinking - yours, theirs or anyone else's
- Take them to the precipice but don't push or threaten….
- Surprise them
- Identify a unilateral concession – and wait for the reciprocal response - recognise different weighting and values
- Change the teams / the setting / the time - or back off
- Don't put money at the front - take your time: expand the axes: non-monetary value?

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Top Tips?

see workbook / cards

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There's so much more.....!

Pause....

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Strategic Conversations

What else needs to be said that has not been said – by you?

What do others need to hear from you?

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Some useful ideas

- The meaning of any communication is the response it gets
- The identity of a person is different from the behaviour they demonstrate
- It is possible to find a positive intention behind all behaviour
- People make the best choices available to them at the time
- The person with the greatest flexibility of thinking and behaviour is likely to have the greatest influence

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A Protocol for Strategic Conversations?

8 Commitments?

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"We[, the signatories to this protocol,] agree that it is in the interests of our [business, organisation, employees, and those with whom we contract/do business] that all communications are conducted civilly and with dignity. Therefore, we agree to:

- listen carefully to all points of view and seek fully to understand what concerns and motivates those with differing views from our own;
- acknowledge that there are many points of view and that these have validity alongside our own;
- show respect and courtesy to all individuals and organisations with which we have dealings;
- express our own views clearly and honestly with transparency about our motives and our interests;
- use language carefully and avoid personal or other remarks which might cause unnecessary offence;
- ask questions if we do not understand what others are saying or proposing;
- respond to questions asked of us with clarity and openness;
- support what we say with clear and credible information wherever that is available."

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www.collaborativescotland.org

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Assume that people are trying their best….

The person with the greatest flexibility of thinking and behaviour is likely to have the greatest influence

Try it…..!

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