

California State Bar
Family Law Section

**Don't Let High-Stress
Negotiations Make You Crazy,
Part 1**



by Ronald S. Granberg

How difficult your job is depends on:

- The extent to which your job duties are:
 - Important,
 - Complicated, and
 - Emotionally charged
- Lawyers must sometimes represent interests in conflict with our personal belief systems . . .
- . . . and must sometimes ignore our personal and emotional reactions.
- A lawyer's shortcomings harm others.

Business & Professions Code (2002)

§ 6231 Lawyers Assistance Program is established to rehabilitate lawyers (substance abuse or mental impairment)

§ 6232 Program admission through:

- State Bar Court referral, following initiation of disciplinary proceedings; or
- Voluntary self-referral

§ 6233 Program confidentiality “shall be absolute unless waived by the attorney”

Confidential and Convenient

Lawyers Assistance Program Rules

http://rules.calbar.ca.gov/Portals/10/documents/Rules_Title3_Div2-Ch5-LAP.pdf

Free MCLE

<http://www.calbarlap.com/lap-video.html>

The Twenty Questions Self-Assessment

http://www.calbarlap.com/LAP_20-Questions-Test.pdf

Anxiety Self-Assessment

http://www.calbarlap.com/LAP_Anxiety-Test.pdf

Depression Self-Assessment

http://www.calbarlap.com/LAP_Depression-Test.pdf

Created in 2010:

A new “Orientation and Assessment Service,” assists a participating attorney in determining whether s/he will benefit more from:

- The traditional, highly-structured “Monitored LAP” (877-527-4435) or
- The new, less structured “Support LAP” (800-341-0572)

Resources provide choices:

LAP short-term counseling

800-341-0572

LAP career counseling

800-341-0572

LAP supportive recovery program

877-527-4435

www.otherbar.org

www.unhooked.com/lawyers

ADP requires LAP, but not vice versa

The State Bar Court's Alternative Discipline Program (ADP) is only for attorneys with pending disciplinary matters.

In order to be eligible for ADP, the attorney must be enrolled in LAP.

LAP is for all attorneys with substance abuse or mental health issues, regardless of whether they have pending disciplinary matters.

Why focus on negotiations?

- A negotiation can be particularly:
 - Important,
 - Complicated, and
 - Emotionally charged.
- Negotiations are uniquely designed to drive us crazy because (unlike in court):
 - No procedural rules
 - No behavioral imperatives
 - (Unless mediated) No conduct referee

Can psychological theory be useful?

Ah, science:

- Physical sciences are hard
- Social sciences are soft

Can psychological analyses of our relationships with Clients and Opposing Counsel help us:

- Maintain our sanity?
- Improve our efficacy and efficiency?
- Reduce “take the edge off” needs?

Psychology and constructs

Psychology is a deep subject

- Psychology is “the study of the soul”:
 - logia (λογία) = “study of”
 - psukhē (ψυχή) = “soul”

Scientists need constructs

- A construct is “A working hypothesis or concept; a theoretical entity” (a construct commonly involves jargon)

Four theses about constructs:

- You can change another person's behavior **A LITTLE BIT** (if at all)
- You can change another person's attitude **A TINY LITTLE BIT** (if at all)
- You **ALREADY UNDERSTAND HUMAN BEHAVIOR** with no constructs
- If a construct stops being useful, **IGNORE THE CONSTRUCT**

Eight Psycho-sensible Constructs

1. Harry Stack Sullivan's "Self System"
2. Distortion, Denial, Projection, Transference
3. Elizabeth Kübler-Ross' "Five Stages of Grief"
4. Lenore Walker's "Cycle of Abuse"
5. Understanding the Triune Brain
6. Eric Berne's "Transactional Analysis"
7. Harvard Negotiation Project (William Ury)
8. DSM Personality Disorders

Eric Berne, M.D.
(deceased)

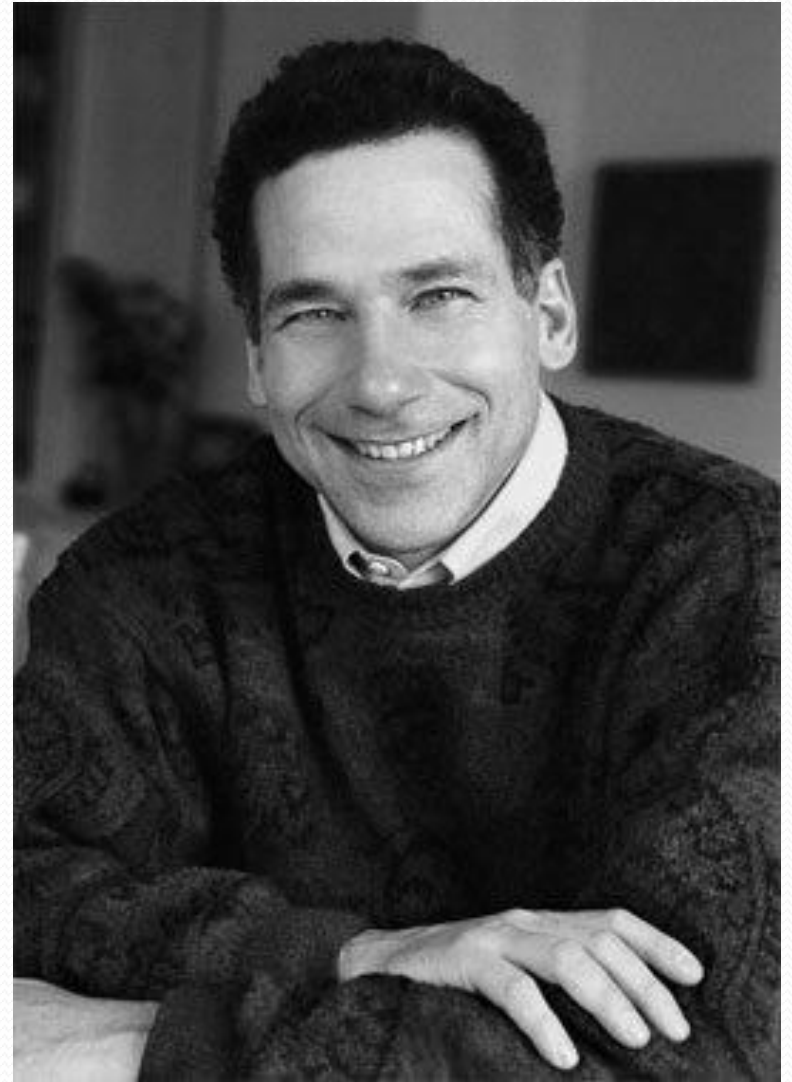
Carmel psychiatrist
Games People Play



William Ury, Ph.D.
Harvard Negotiation
Project

Getting To Yes
Getting Past No

(*Getting To Yes* co-author
Roger Fisher died in August, 2012)



Mental conditions:

Axis II: Personality Disorders

Cluster B

- Narcissism (grandiose delusions)
- Histrionic (drama specialist)
- Borderline (unstable sense of self)

Cluster C

- Dependent (relinquishes control)

Your spheres of influence:

- How can you influence your **Client's** attitudes and conduct?
 - *Are there ways to keep your Client from going crazy?*
- How can you influence **Opposing Counsel's** attitudes and conduct?
 - *Are there ways to keep Opposing Counsel from making everyone crazy?*
- How can you control **your** attitudes and conduct?
 - *Are there ways to keep yourself from going crazy?*

Your goals:

- Understand the mental conditions of your Client, Opposing Counsel and yourself.
- Use your understanding to:
 - Achieve a satisfactory result
 - Stimulate sanity and productivity during negotiations
 - Promote health and job satisfaction

TWELVE ISSUES:

Mental Condition

Substance Abuse

**Your
Client**

How Identify?
What Steps?

How Identify?
What Steps?

**Opposing
Counsel**

How Identify?
What Steps?

How Identify?
What Steps?

You

How Identify?
What Steps?

How Identify?
What Steps?

**Opposing
Party**

So Simple, So Difficult:

Berne:

Client needs recognition (“strokes”)

And so does Opposing Counsel

Ury:

Client needs recognition (“to be heard”)

And so does Opposing Counsel

My Personal/Professional Goals:

being calm, conscious, considerate



**Ego-dystonic:
“No, Not Me”**

Harry Stack Sullivan, M.D.



Sullivan's Books

- *The Interpersonal Theory of Psychiatry* (1953)
- *Conceptions of Modern Psychiatry* (1947, revised in 1966)
- *Schizophrenia as a Human Process* (1962)
- *Personal Psychopathology* (1933, revised in 1972)

Sullivan's "Self System"

GOOD ME

I acknowledge something
I *like* about myself

BAD ME

I acknowledge something
I *don't like* about myself

NOT ME

I **refuse** to acknowledge something
I *REALLY don't like* about myself

Shrink Rap

GOOD ME

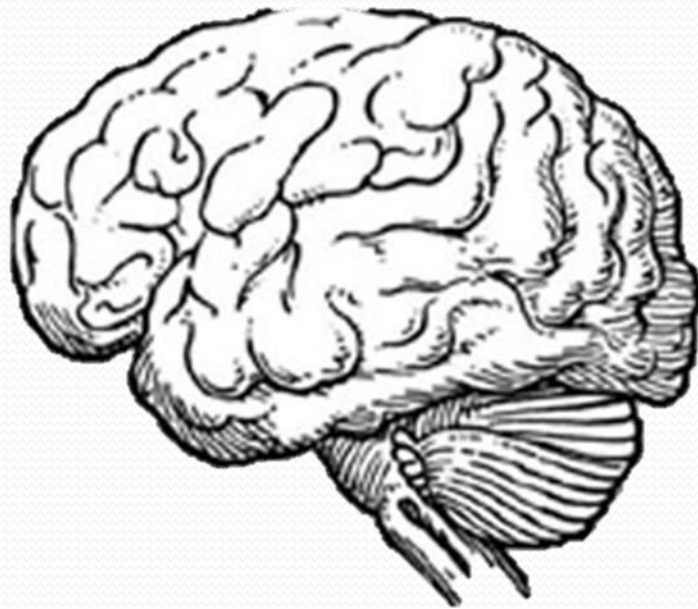
“Ego-syntonic”

BAD ME

“Ego-syntonic”

NOT ME

“Ego-dystonic” (aka “ego-alien”)



Your Distortions, My Distortions

Four Smart Folks . . .

- **Aesop:** “The injury we do and the one we suffer are not weighed in the same scales.”
- **Benjamin Franklin:** “The world is full of fools, and yet everyone has wisdom enough to manage the affairs of his neighbor.”
- **J. Pierpoint Morgan:** “A man generally has two reasons for doing a thing. One that sounds good, and a real one.”
- **Mark Twain:** “Nothing so needs reforming as other people's habits.”



I AM

YOU ARE

S/HE IS

Confident

Vain

Narcissistic

Clever

Over-reaching

Specious

Zealous

Unreasonable

Obstructionist

Empathetic

Emotional

High-strung

Passionate

Alarmist

Hysterical

Distortions 'R Us

- Selective Inattention / “Not Me”
- Denial, rationalization
- Confirmation Bias (self-fulfilling prophecy)
- Over-identification with “the cause”
- What does Client see? What do you see?
- Two examples of projection:
 - Transference
(Client misperceives Attorney)
 - Counter-Transference
(Attorney misperceives Client)



The Five Stages of Grief

Elisabeth Kübler-Ross, M.D.



Kübler-Ross' Books

On Death & Dying (1969)

AIDS: The Ultimate Challenge
(1988)

On Grief and Grieving:

*Finding the Meaning of Grief
Through the Five Stages of Loss*
(2005)

Five Stages of Grief

- Denial
- Anger
- Bargaining
- Depression
- Acceptance

(not necessarily in isolation, or in order)

Death of a Partnership Agreement

Denial: “She would **never** leave me!”

Anger: “She’s leaving! I’m going to **hurt her!**”

Bargaining: “If she will rejoin the partnership, I will **reduce my perks!**”

Depression: “I’m **ruined** – my life is **over!**”

Acceptance: “Hey, maybe I can operate this partnership **without her.**”

A Disordered Personality:

- **Denial**
- **Anger**
- ~~Bargaining~~
- **Depression**
- ~~Acceptance~~



The Cycle of Abuse

Lenore Walker, Ed.D.



Walker's Books

The Battered Woman (1979)

Handbook of Feminist Therapy (1984)

The Male Batterer (1985)

Handbook on Child Sexual Abuse
(1988)

*Introduction to Forensic Psychology:
Clinical and Social Psychology
Perspectives* (2004)

The Four Stages of Abuse:

1. Tension Building
2. “Blowup”
3. “Honeymoon”
4. Calm



Our Triune Brains

Three Brains in One

Reptilian Brain (*basal ganglia*)

Heartbeat, breathing, digestion

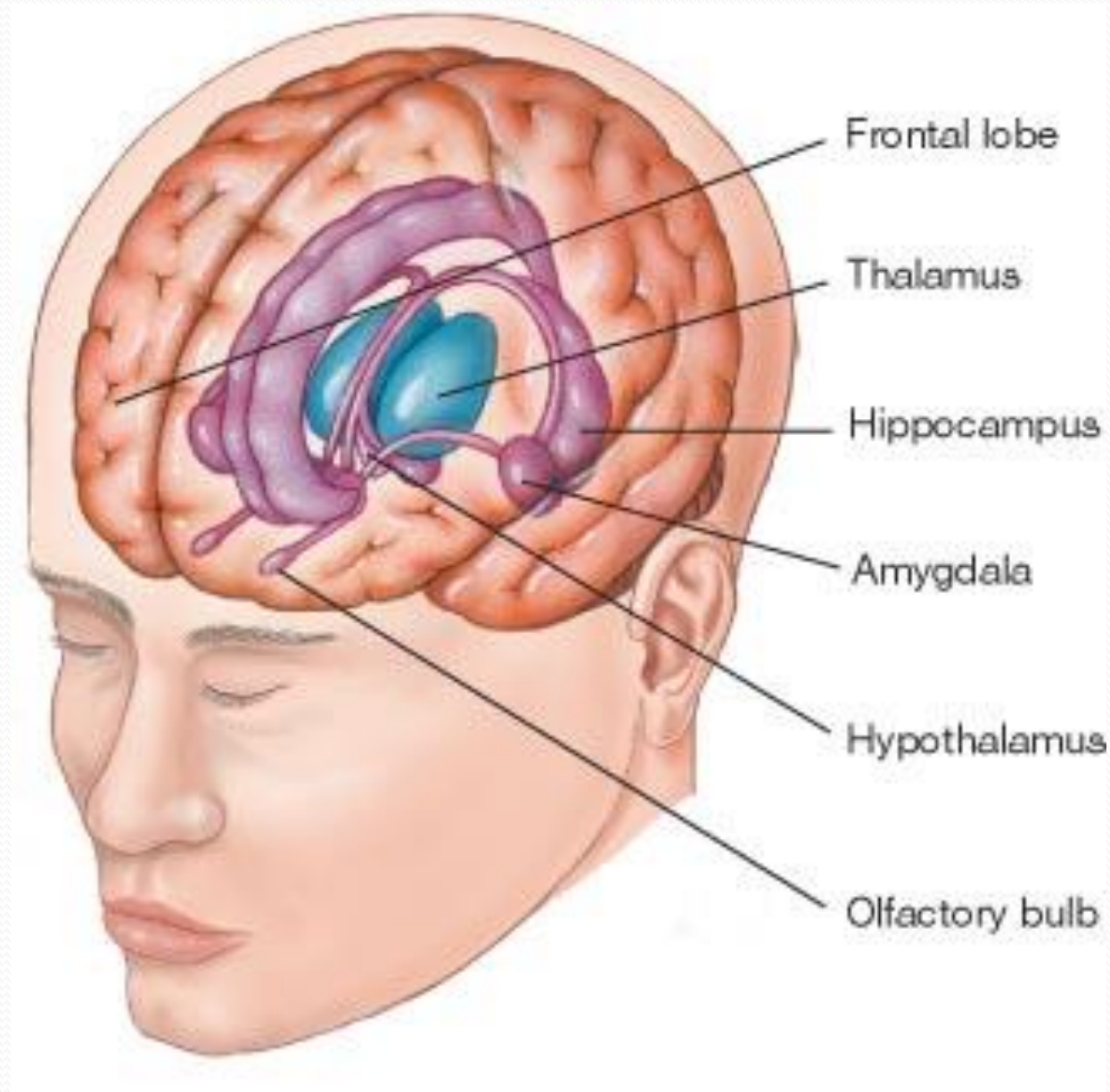
Limbic Brain (*hippocampus, hypothalamus, thalamus, amygdala*)

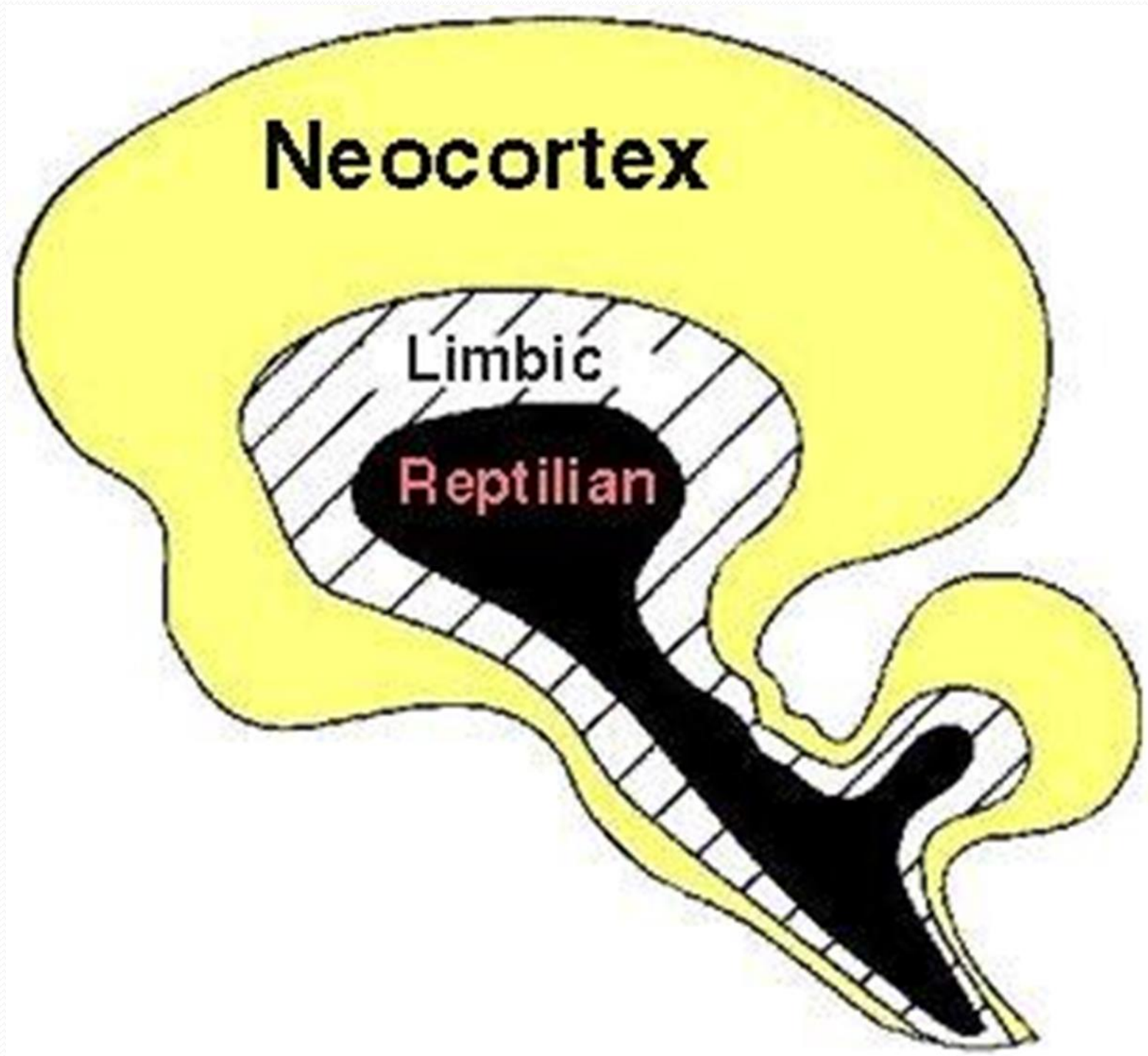
Emotions involving social behaviors

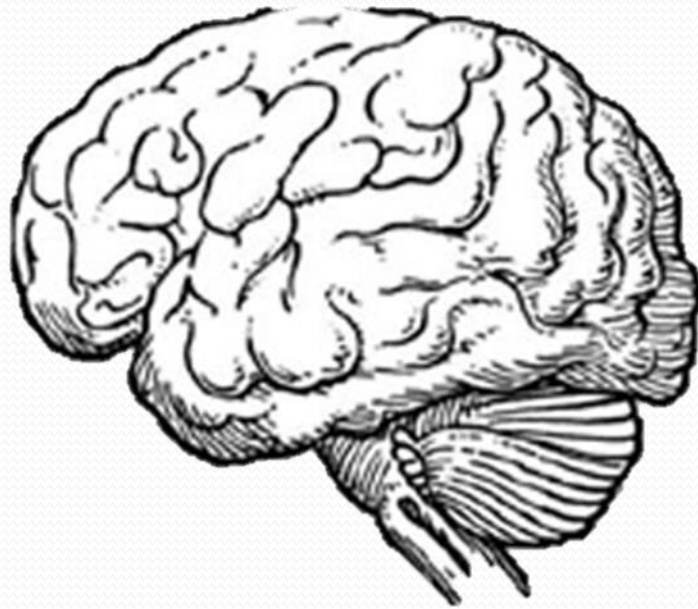
Neocortex (*cerebrum*)

Cognition

Limbic Brain







**Stress Control:
Don't Let Lawyering
Make You Crazy**

Adrenaline and Survival

Danger requires either
flight or **fight**

Fear

Activates the **flight** reaction

Anger

Activates the **fight** reaction

Our Four Innate Emotions

Joy (Client doesn't need help)

Sadness (Your role: settle the case)

Fear **Daily difficulty**

Anger **Daily difficulty**

**Conclusion: fear and anger
are a lawyer's daily difficulties**

Emotional state vs. attitude

“Emotional State”: fear

“Attitude” (longer-lasting):

- stress
- anxiety
- apprehension

Emotional state vs. attitude

“Emotional State”: anger

“Attitude” (longer-lasting):

- resentment
- hostility
- contempt
- hatred

Righteous Indignation, anyone?

Fear: A reaction to a **perceived threat**

Anger: A reaction to a **perceived wrong**

Vicious cycle:

A “perceived threat”
is a “perceived wrong”

A “perceived wrong”
is a “perceived threat”

Vicious Cycle (of Abuse)

Fear → Anger → Fear → Anger →

Fear → Anger → Fear → Anger →

Fear → Anger → Fear → Anger →

Fear → Anger → Fear → Anger

Be Conscious of Stress Sources

Stress Processor, Esq.

Controls emotions (calm)

Aware of self (conscious)

Broad-minded (considerate)

A wonderful person (in other words, **you**)

Stress Dumper, Esq.

Controlled by emotions

Unaware of self (“ego-dystonic”)

Narrow-minded, immature, self-obsessed, needy

A total jerk (in other words, **OC**)

Dumping for Dummies

- Dumping 101:
 - Be a glowering, grouchy jerk
- Recommendation for **bullies**
 - Be overtly angry and **aggressive**
- Suggestion for **cowardly bullies**
 - Be deviously **passive-aggressive**
- (Tip: substance abuse helps!)

Identifying substance abuse:

Alcohol:

- Alcohol smell on breath, clothes
- Slurred speech
- Eyes unusually bright

Cocaine:

- Frequent sniffing
- Irritability
- Sweaty

Identifying substance abuse:

Methamphetamine:

- Scabs on face, arms
- Bad teeth

Opiates:

- Pinpoint pupils
- Thirsty
- Needle marks

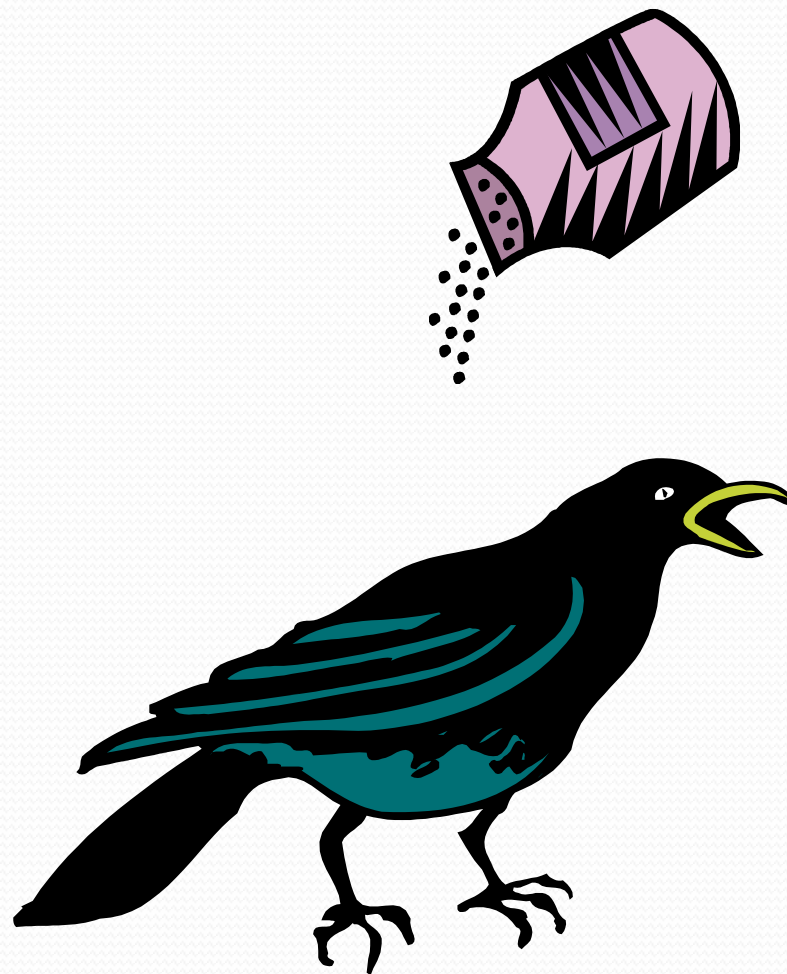
All:

- Takes break, returns changed/relieved

Those pesky other people . . .

- Problem creators vs. Problem solvers
- Sources vs. Sinks
- Givers vs. Takers
- Optimists vs. Pessimists
- We all know how difficult it is to **talk nice** to someone being **nasty**

Approved Negotiation Technique: Eating Crow



My Recognition Mission

I (with difficulty) practice saying:

- “You’re right.”
- “I’ve been wrong about . . .”
- “You make a valid point about . . .”
- “Now I see how you could properly conclude . . .”
- “The reason I was making a mistake about _____ was because . . .”

Not a Good Morning

OC telephones you in a rage at 8:00 a.m., ranting five minutes of unjustified, nonstop disparagements about you and your Client.

The rant leaves you speechless.

After the call:

- OC (Dumper) feels better
- You (Dumpee) feel worse

Three Response Options

1. Return fire / “dump” stress back

Gratifying to Dumper?

What effect on case?

2. Hold fire / “process” stress

Gratifying to Dumper?

What effect on case?

3. Calm, objective response

“This isn’t productive. We’ll talk later.”

What effect on case?

Righteous Dumping

“Dumping” has meant **unjustified** unloading

But sometimes anger **is justified**

Harvard Negotiation Project: “don’t get angry”

But righteous anger can be useful:

- Firing back immediately may be good strategy
- (*A personal preference*) Dunning non-paying clients while angry

Offer a Stip?

Counsel, I offer a stipulation that:

- my client is **The Embodiment of All Evil**, and
- your client is **The Embodiment of All Good**.

With that stipulation in place, may we now discuss resolving the case?

Exercise: World Class Processor

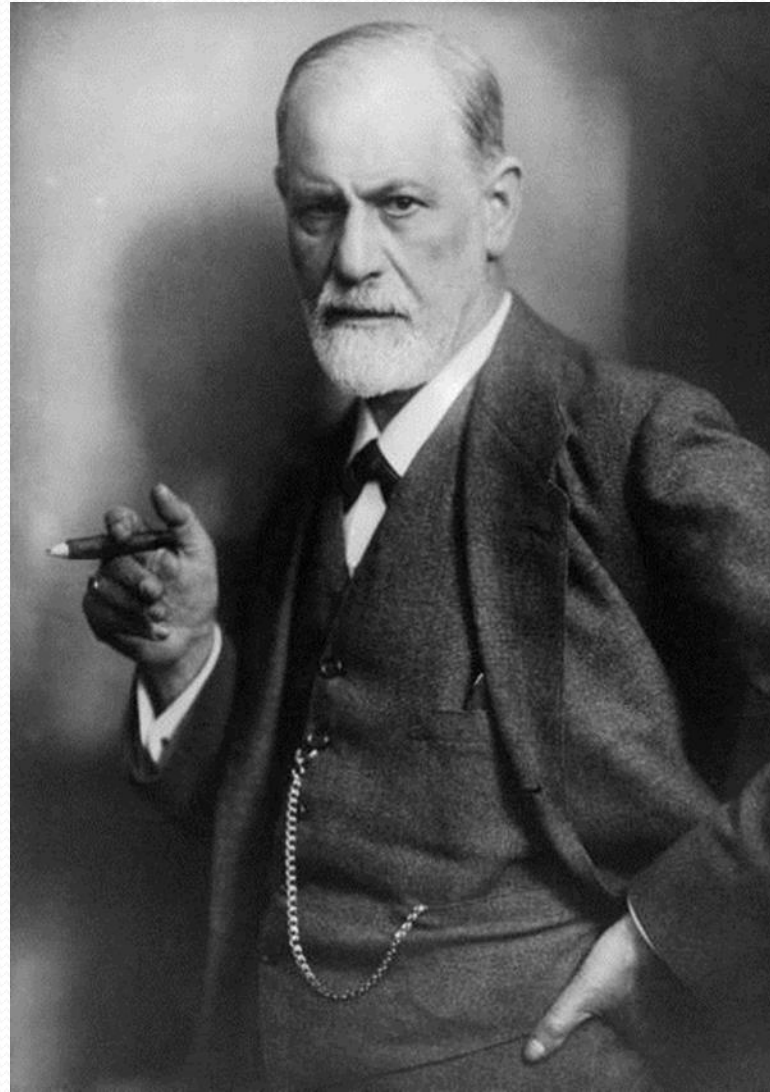
Exercise processes stress:

- ✓ Norepinephrine (neurotransmitter that regulates emotion) is altered in both the frontal cortex and the hippocampus
- ✓ The effect of exercise on mood is similar to the effect of an antidepressant

Seven More Stress Processers

1. Breathe deeply
2. Count to ten (100?)
3. Pray/Meditate
4. Take a nap
5. Appreciate nature
6. Music/art/literature
7. Perform a random act of kindness

Sigmund Says . . .



Three Personality Structures

S

Superego

E

Ego

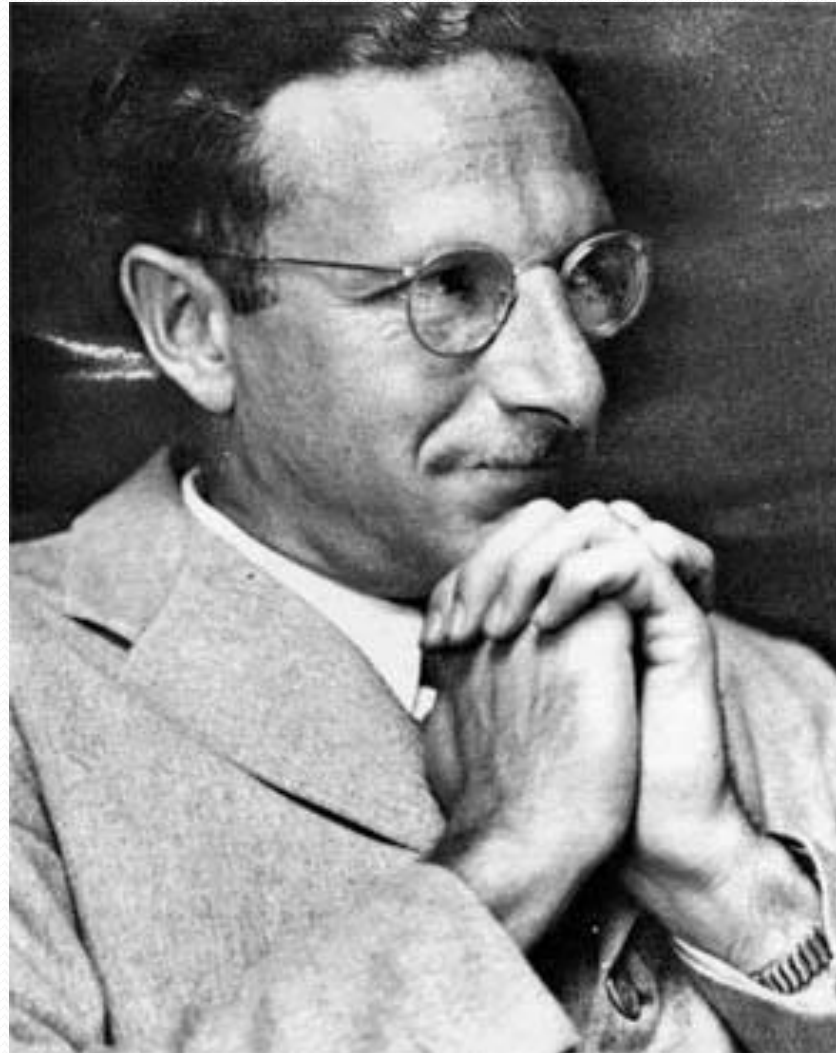
I

Id



Transactional Analysis

Eric Berne, M.D.



Berne's Books

*Transactional Analysis in
Psychotherapy* (1961)

*Games People Play: the Psychology of
Human Relations* (1964)

What Do You Say After You Say Hello?
(1973)

*A Layman's Guide to Psychiatry and
Psychoanalysis* (1975)

“Different Strokes”

- A “stroke” is a unit of interpersonal recognition
- WW II orphans (Kübler-Ross, Bowlby)
- Society tallies strokes
- A negative stroke is better than no stroke
- Interpersonal recognition is eventually given to everyone, whether by: parent, teacher, employer, cop, judge, jailor

What's in a Name?

Frances Gumm =

Judy Garland

Muzyad Yakhoob =

Danny Thomas

Walter Matuschanskayasky =

Walter Matthau

Harold J. Smith =

Jay Silverheels

Freudian Psychoanalysis: Three Personality Structures

S

Superego

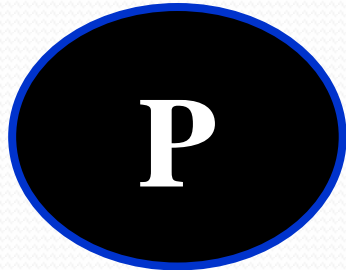
E

Ego

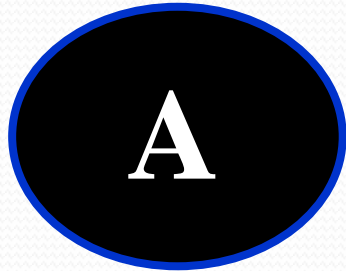
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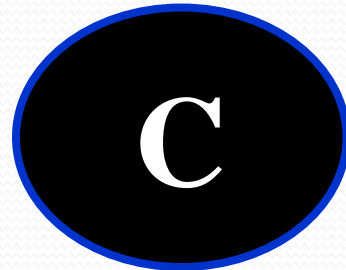
Transactional Analysis: Three Personality Structures



Parent

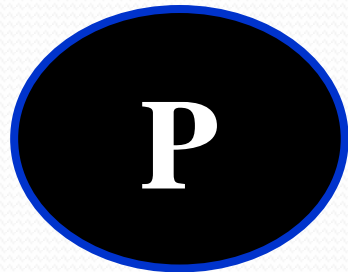


Adult

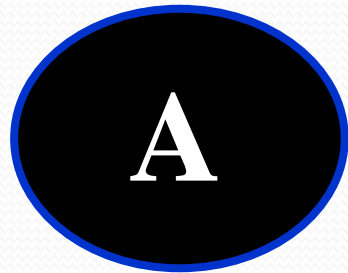


Child

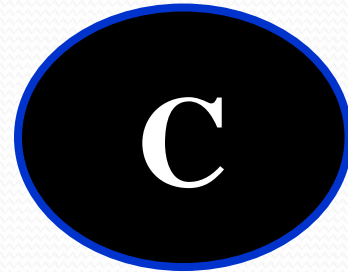
Transactional Analysis: Three Personality Structures



Exteropsyché

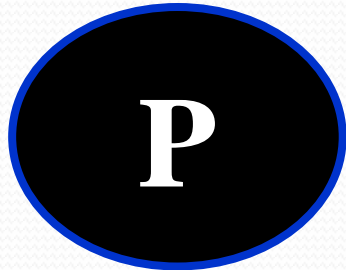


Neopsyché

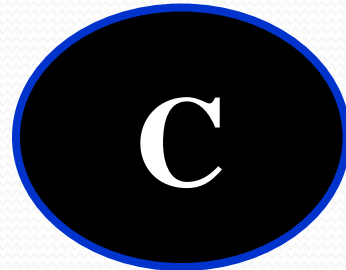
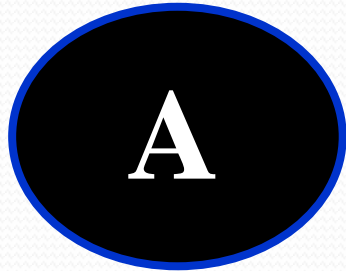


Archeopsyché

Transactional Analysis: Three Personality Structures

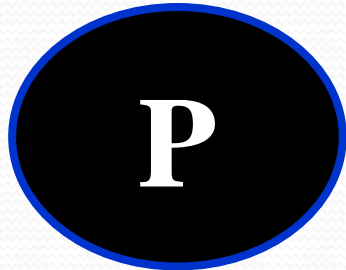


Nurture

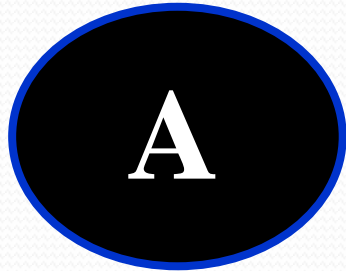


Nature

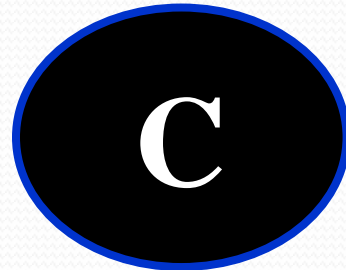
Transactional Analysis: Three Personality Structures



Rules

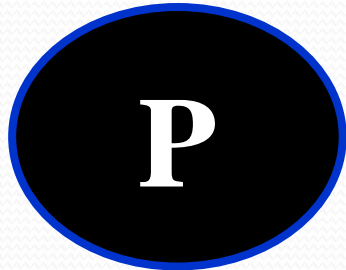


Society

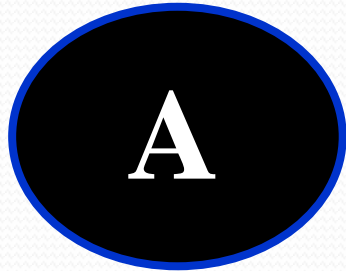


Needs

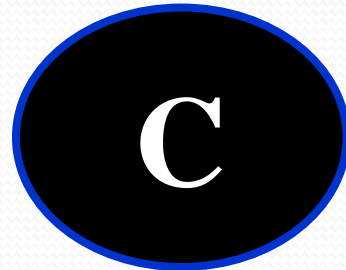
Transactional Analysis: Three Personality Structures



Law

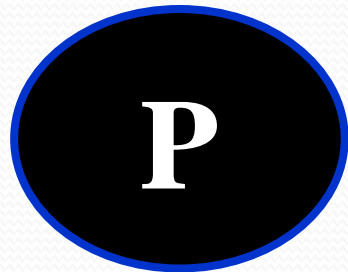


Ruling

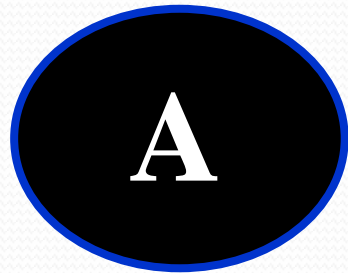


Case Facts

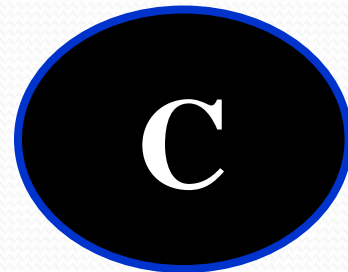
Transactional Analysis: Three Personality Structures



Taught

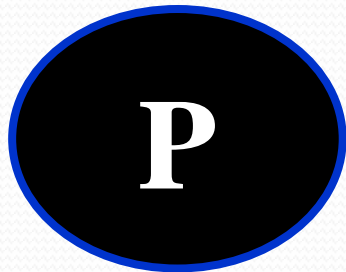


Thought

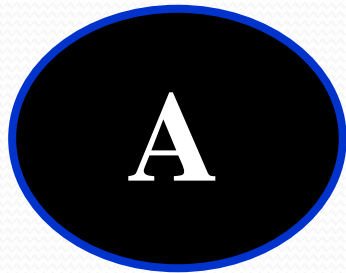


Felt

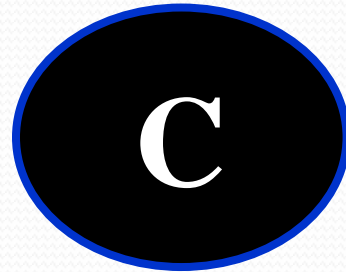
Transactional Analysis: Three Personality Structures



Subjective



“Objective”



Subjective

Ego States

- **Parent**
Copied attitudes I think my parents had toward me when I was a child
- **Adult**
Rational/objective
Mediator between Parent and Child
- **Child**
Emotional/needy/immature/whiny
Spontaneous/creative/charming

Posture

- **Parent**
Leaning forward, impatient, finger-pointing
- **Adult**
Attentive, interested, sitting straight, non-threatened, non-threatening
- **Child**
Squirmy, laughing, giggling, angry, sulky, slumped, depressed

Speech/Vocabulary

- **Parent**
Always/never, critical, prejudiced, patronizing (“judgmental”)
- **Adult**
What/who/where/why/how, comparisons (“reasoned statements”)
- **Child**
I want, I need, I wish (“baby talk”)

Four Human Hungers

- Food Hunger
- Stimulus Hunger
- Recognition Hunger
- Structure Hunger

Things We Do

A “Transaction”

- Any interpersonal interaction

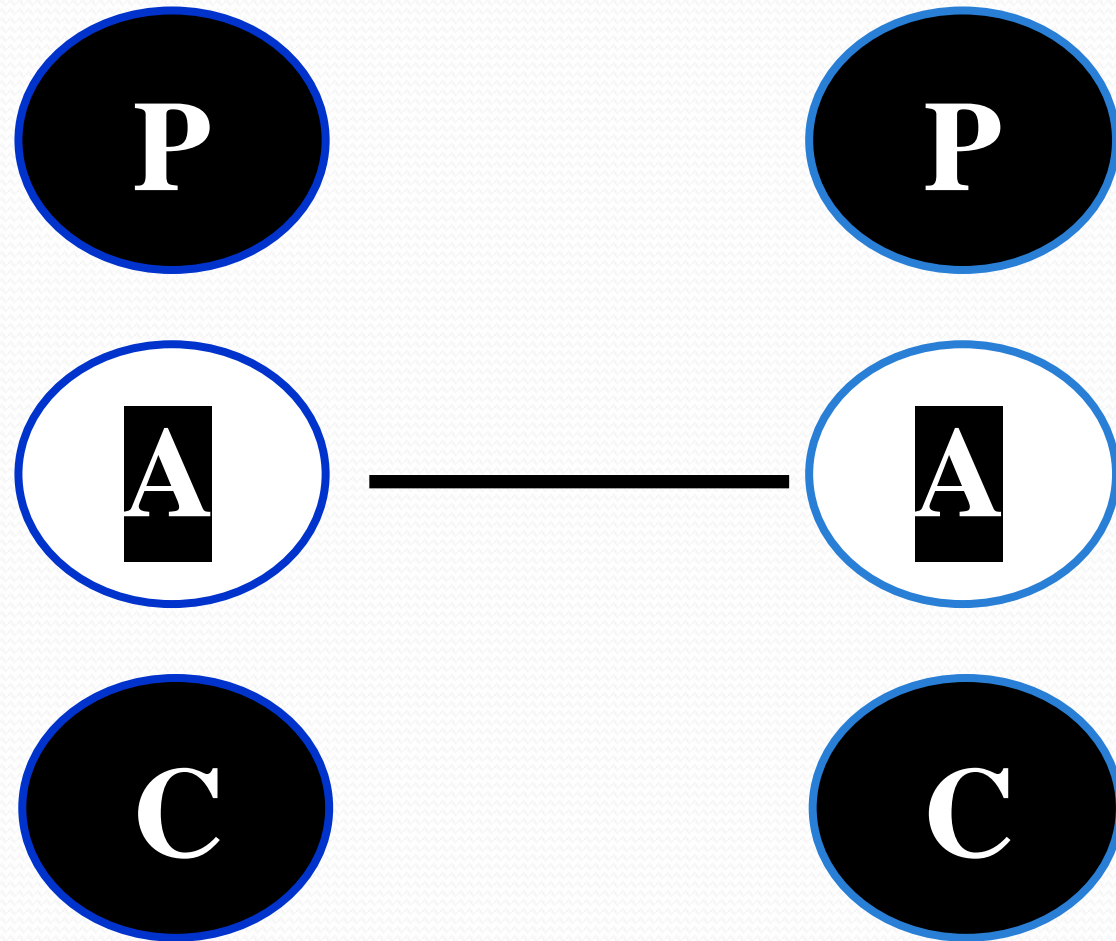
A “Pastime”

- A good-faith transaction

A “Game”

- A bad-faith (ulterior motive) transaction

Transactional Analysis: Adult-Adult Transaction



Pastimes

- “Who won?”
- “Do you know . . . ?”
- “What became of . . . ?”
- “Ever been . . . ?”
- “How much?”
- “Apple stock”
- “Kitchen”

Pastimes

- “Balance Sheet”
- “Wardrobe”
- “Look Ma, no hands!”
- “PTA”
- “Ain’t it Awful”
- “Bad Partner”
- “Morning After”

A Game

- **Game**

An ongoing series of complementary ulterior transactions progressing to a predictable outcome

- **Game Goal**

“Payoff” = emotional “reward”

- **Split-Level (Bad Faith) Construction**

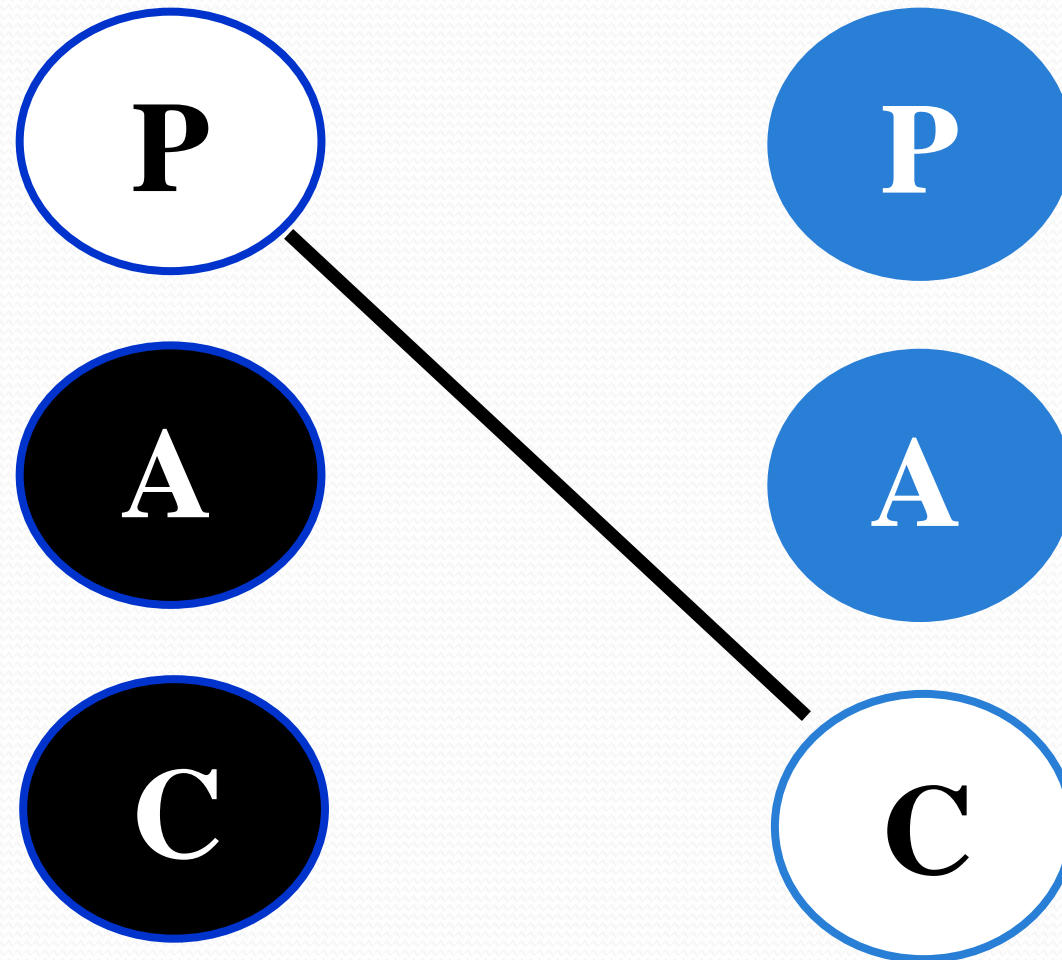
Superficially plausible (Adult-Adult)
BUT contains hidden motive

My Parent Abuses Your Child

I play the Game of “Gotcha”

- You repair my car well – but add a \$5.50 “extra”
- I explode, insult you, your company, your mother
- **Ostensibly:** Adult-Adult transaction
- **Actually:** my Parent abuses your Child
- My payoffs:
 - Safely vent my anger
 - Batter your Child
 - Feel powerful and superior

Transactional Analysis: Parent-Child Transaction

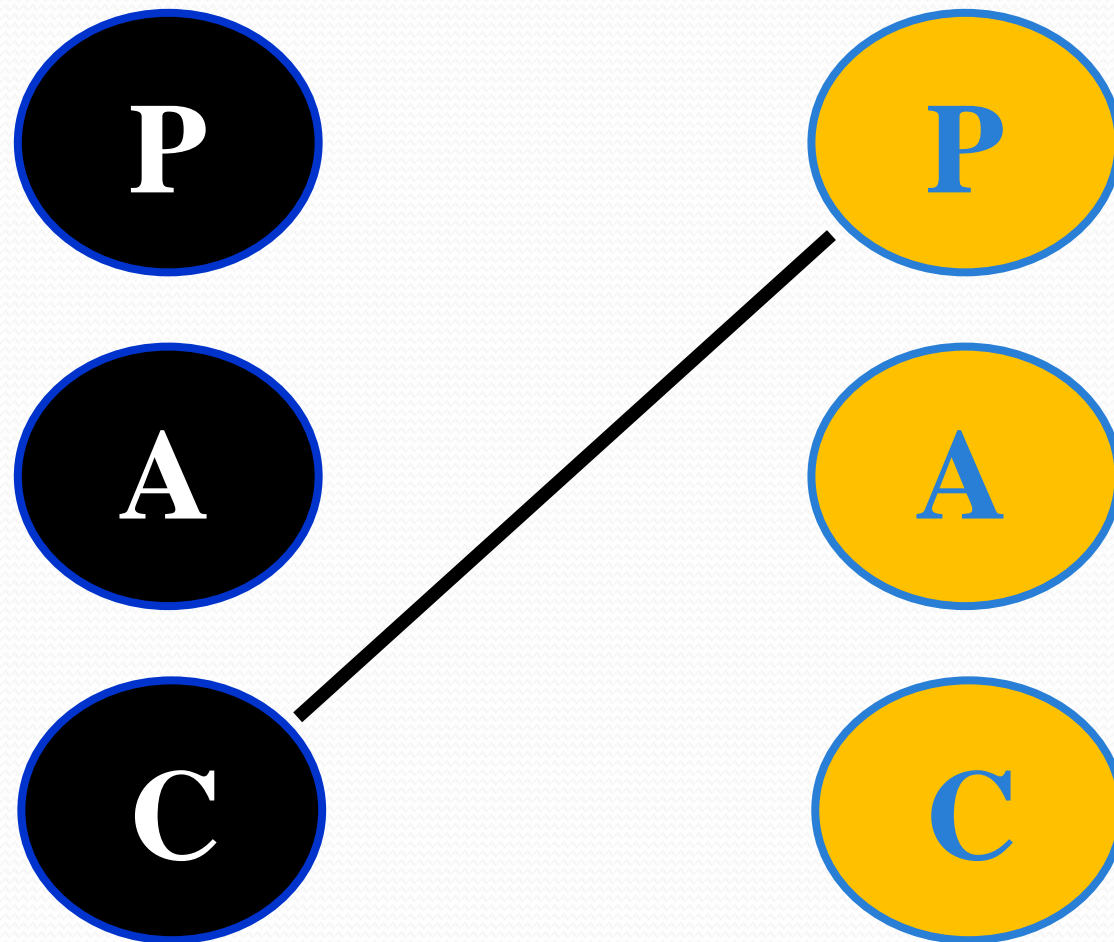


My Child Abuses Your Parent

I play the Game of “Oops”

- You are my social host
- I spill guacamole, coffee, red wine
- **Ostensibly:** Adult-Adult transaction
- **Actually:** my Child abuses your Parent
- My payoffs:
 - Safely vent my passive-aggression
 - Frustrate your Parent
 - Compel socially-mandated forgiveness
 - Feel powerful and superior

Transactional Analysis: Child-Parent Transaction



Gotcha vs. Oops

“Gotcha”

- Aggressive
- My Parent dominates your Child
- Revenge for ancient neglect/abuse?

“Oops”

- Passive-Aggressive
- My Child dominates your Adult
- Revenge for ancient neglect/abuse?

Gotcha Client vs. Oops Client

Aggressive/Gotcha Client:

- Example: the fee complainer

Passive-Aggressive/Oops Client:

- Example: the fee promisor

Anger makes me angry

(So does getting stiffed for fees)

Part 2: on January 22nd

1. The three faces of DSM, Axis II
2. Depression in the profession
3. Negotiating with a rock
4. Your limits of client control
5. The 411 on 664.6

Part 2

6. Negotiation heroes: Eric Berne, M.D. and William Ury, Ph.D.
7. Avoid the “three S’s” – getting stiffed, slandered and sued
8. Boundaries, client loyalty and lawyer sanity
9. Achieving the BATNA without the bat

**California State Bar
Family Law Section**

**Don't Let High-Stress
Negotiations Make You Crazy,
Part 2**

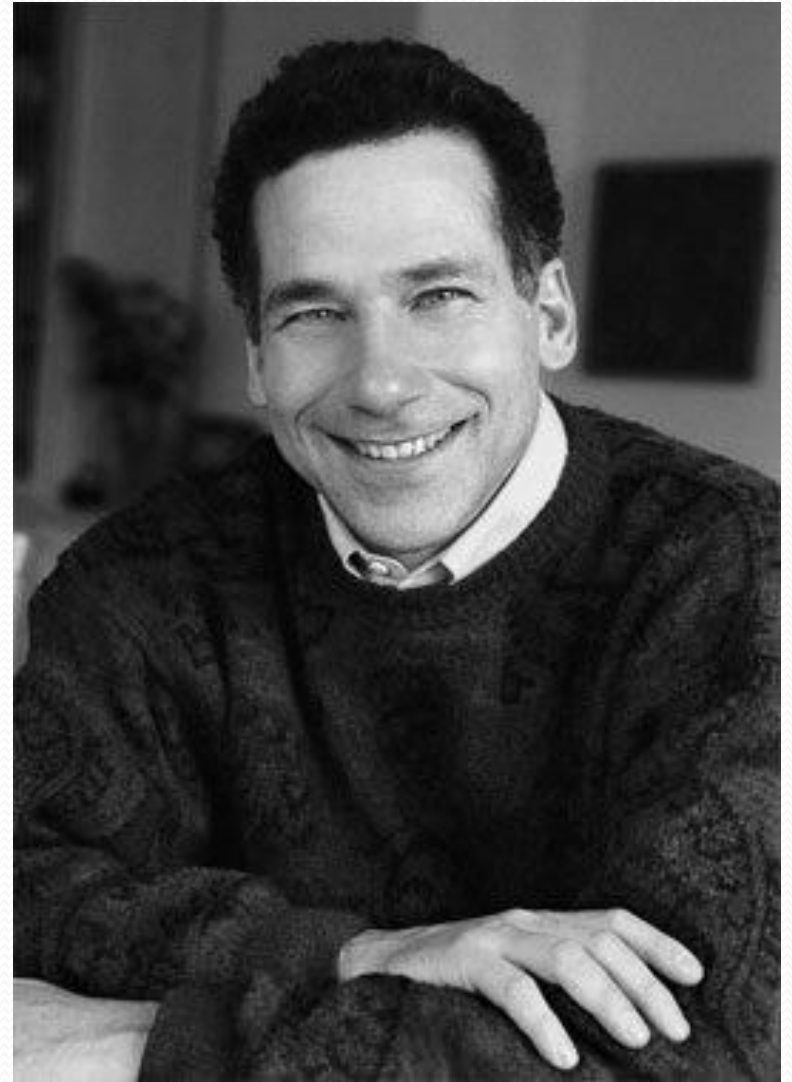


by Ronald S. Granberg

Eric Berne, M.D.
Transactional Analysis
Games People Play



William Ury, Ph.D.
Harvard Negotiation
Project
Getting To Yes
Getting Past No



TA & Harvard Negotiations Project

Berne:

Opposing Team needs recognition –
“strokes” – and so does Client

Ury:

Opposing Team needs recognition –
“to be heard” – and so does Client

Professional/Personal Goals:

calm, conscious, considerate

Review: webinar goals

- Understand mental conditions of:
 - Your Opposing Team
 - Your Client
 - Yourself
- Achieve satisfactory professional results while:
 - Promoting sanity
 - “Keeping the edge off”

Eight Psycho-sensible Constructs

1. Harry Stack Sullivan's "Self System"
2. Distortion, Denial, Projection, Transference
3. Elizabeth Kübler-Ross' "Five Stages of Grief"
4. Lenore Walker's "Cycle of Abuse"
5. Understanding the Triune Brain
6. Eric Berne's "Transactional Analysis"
7. Harvard Negotiation Project (William Ury)
8. DSM Personality Disorders

Review of Psycho-sensible Constructs

1. **Harry Stack Sullivan's "Self System"**
2. ~~Distortion, Denial, Projection, Transference~~
3. **Elizabeth Kübler-Ross' "Five Stages of Grief"**
4. **Lenore Walker's "Cycle of Abuse"**
5. ~~Understanding the Triune Brain~~
6. **Eric Berne's "Transactional Analysis"**
7. ~~Harvard Negotiation Project (William Ury)~~
8. ~~DSM Personality Disorders~~

Harry Stack Sullivan, M.D.



Shrink Rap

GOOD ME

“Ego-syntonic”

BAD ME

“Ego-syntonic”

NOT ME

“Ego-dystonic” (aka “ego-alien”)

Elisabeth Kübler-Ross, M.D.



Five Stages of Grief

- Denial
- Anger
- Bargaining
- Depression
- Acceptance

(not necessarily in isolation, or in order)

Lenore Walker, Ed.D.



The Four Stages of Abuse:

1. Tension Building
2. “Blowup”
3. “Honeymoon”
4. Calm

Freudian Psychoanalysis: Three Personality Structures

S

Superego

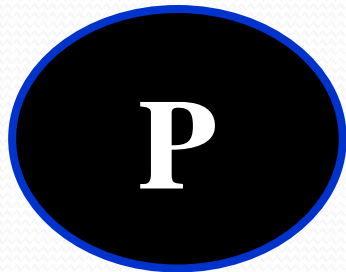
E

Ego

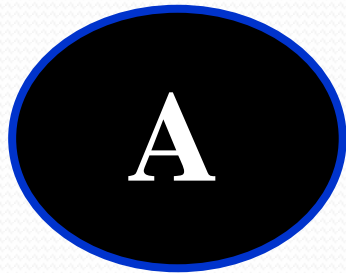
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Id

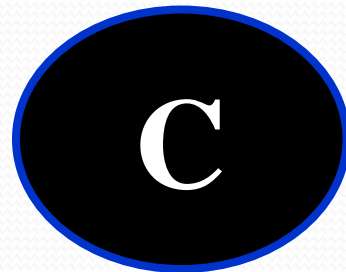
Transactional Analysis: Three Personality Structures



Parent



Adult



Child

Things We Do

A “Transaction”

- Any interpersonal interaction

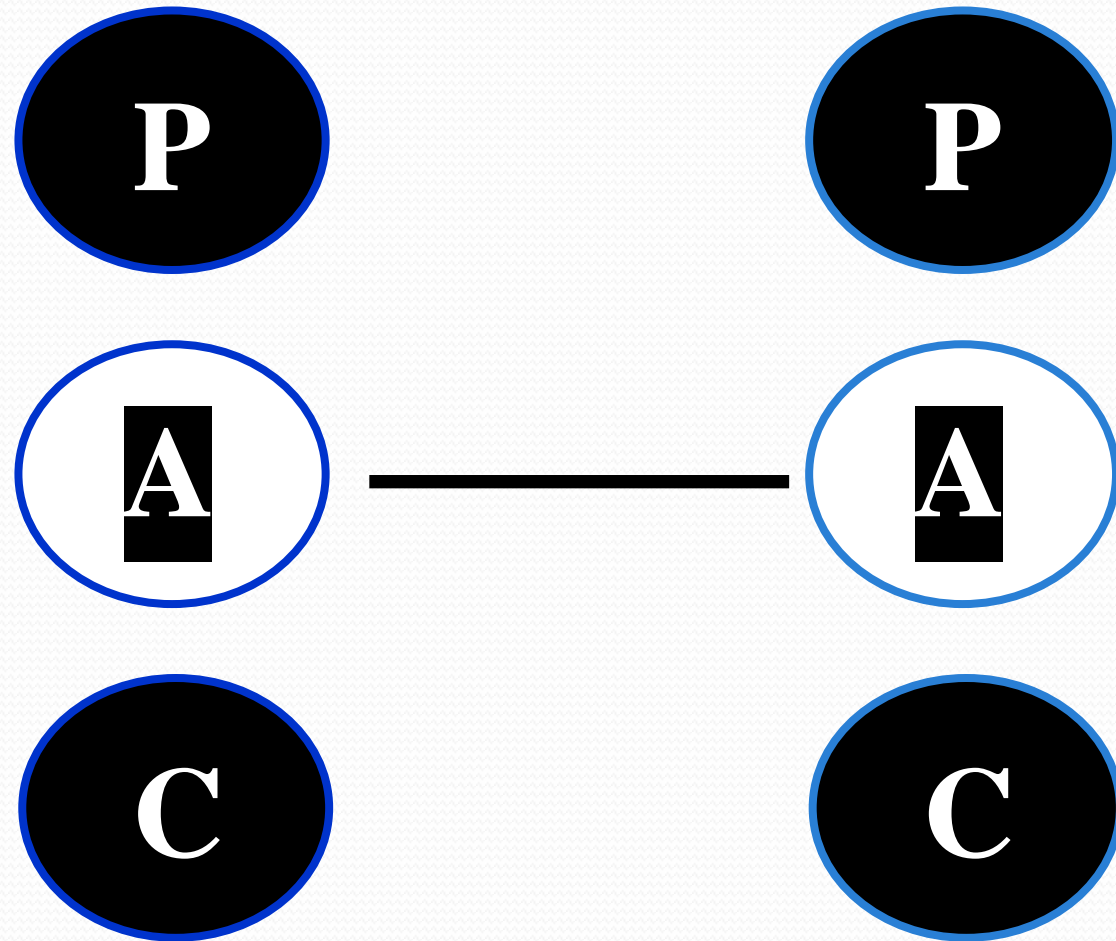
A “Pastime”

- A good-faith transaction

A “Game”

- A bad-faith (ulterior motive) transaction

Transactional Analysis: Adult-Adult Transaction



A Game

- **Game**

An ongoing series of complementary ulterior transactions progressing to a predictable outcome

- **Game Goal**

“Payoff” = emotional “reward”

- **Split-Level (Bad Faith) Construction**

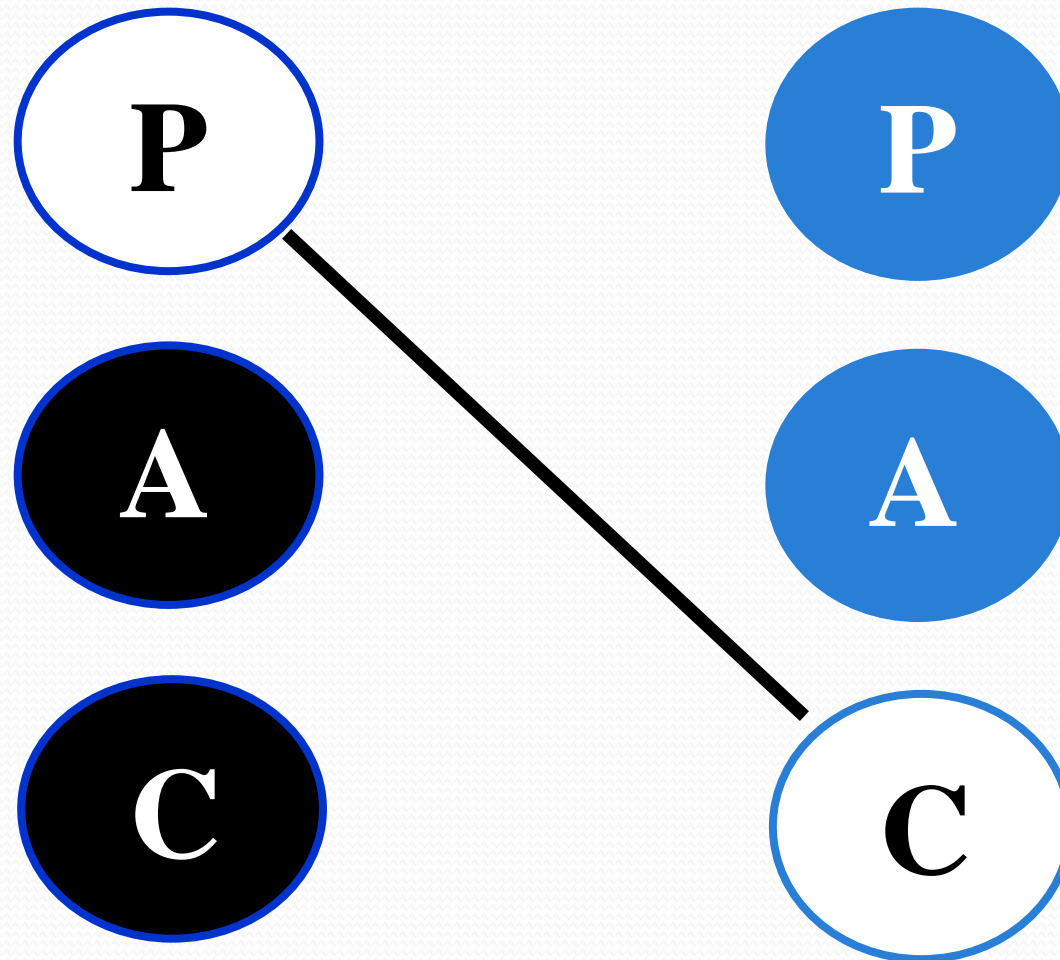
Superficially plausible (Adult-Adult)
BUT contains hidden motive

My Parent Abuses Your Child

I play the Game of “Gotcha”

- You repair my car well – but add a \$5.50 “extra”
- I explode, insulting you, your company, your mother
- **Ostensibly:** Adult-Adult transaction
- **Actually:** my Parent abuses your Child
- My payoffs:
 - Safely vent my anger
 - Batter your Child
 - Feel powerful and superior

Transactional Analysis: Parent-Child Transaction

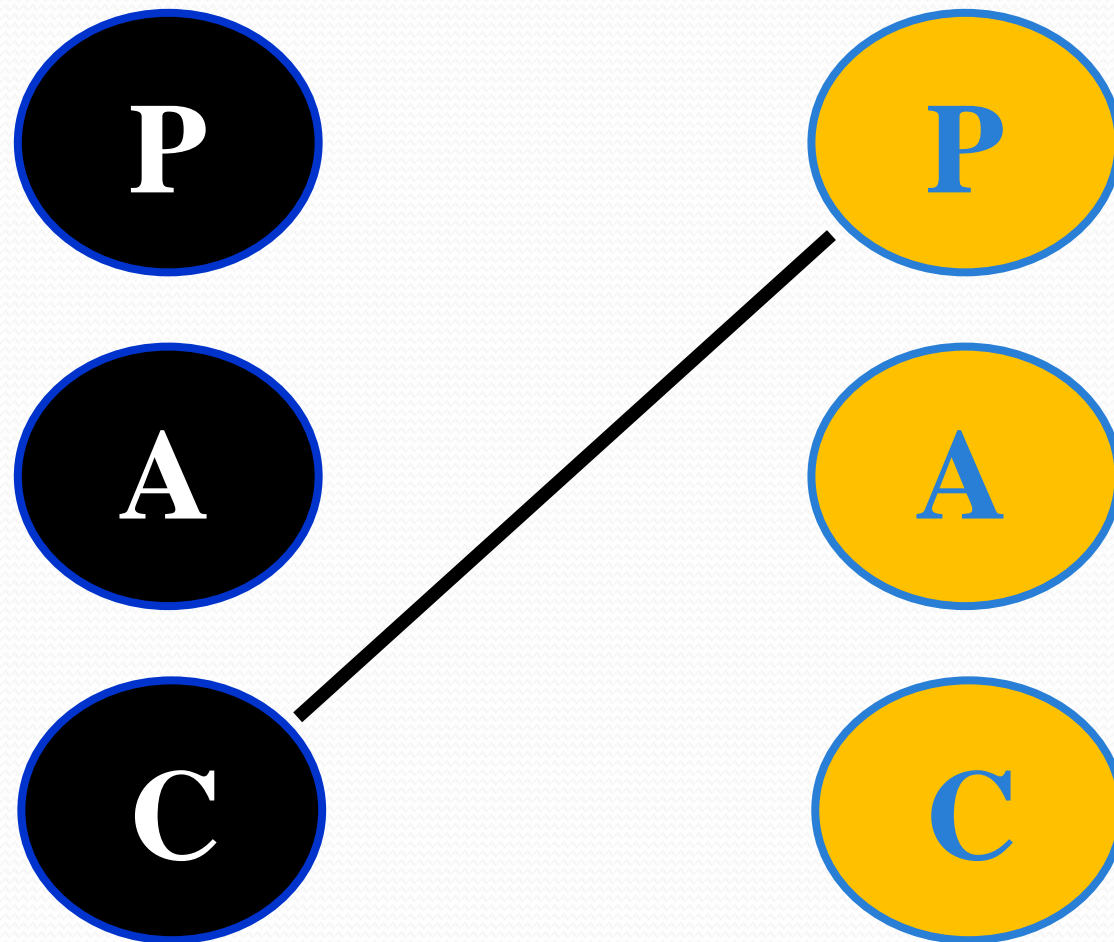


My Child Abuses Your Parent

I play the Game of “Oops”

- You are my social host
- I spill guacamole, coffee, red wine
- **Ostensibly:** Adult-Adult transaction
- **Actually:** my Child abuses your Parent
- My payoffs:
 - Safely vent my passive-aggression
 - Frustrate your Parent
 - Compel socially-mandated forgiveness
 - Feel powerful and superior

Transactional Analysis: Child-Parent Transaction



Gotcha vs. Oops

“Gotcha”

- Aggressive
- My Parent dominates your Child
- Revenge for ancient neglect/abuse?

“Oops”

- Passive-Aggressive
- My Child dominates your Adult
- Revenge for ancient neglect/abuse?

Gotcha Client vs. Oops Client

(Personal stories – stiffed for fees)

Aggressive/Gotcha Client:

- Example: the fee complainer

Passive-Aggressive/Oops Client:

- Example: the fee promisor

Freedom's not just another word

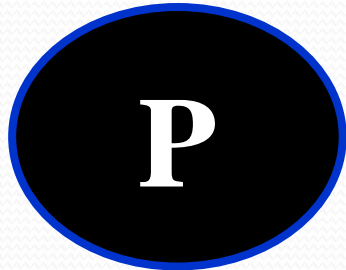
“Macro Freedoms” are created in:

- Legislatures
- Appellate Courts

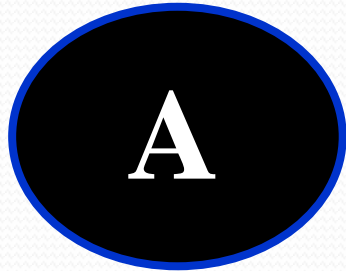
“Micro Freedoms” are created in:

- Trial Courts
- Law Offices

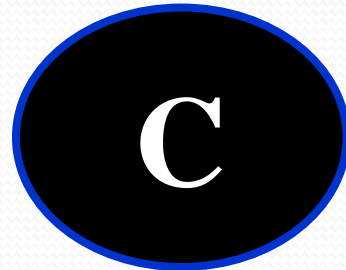
Maximize Your Client's Options: There is Freedom in Choices



Parent



Adult

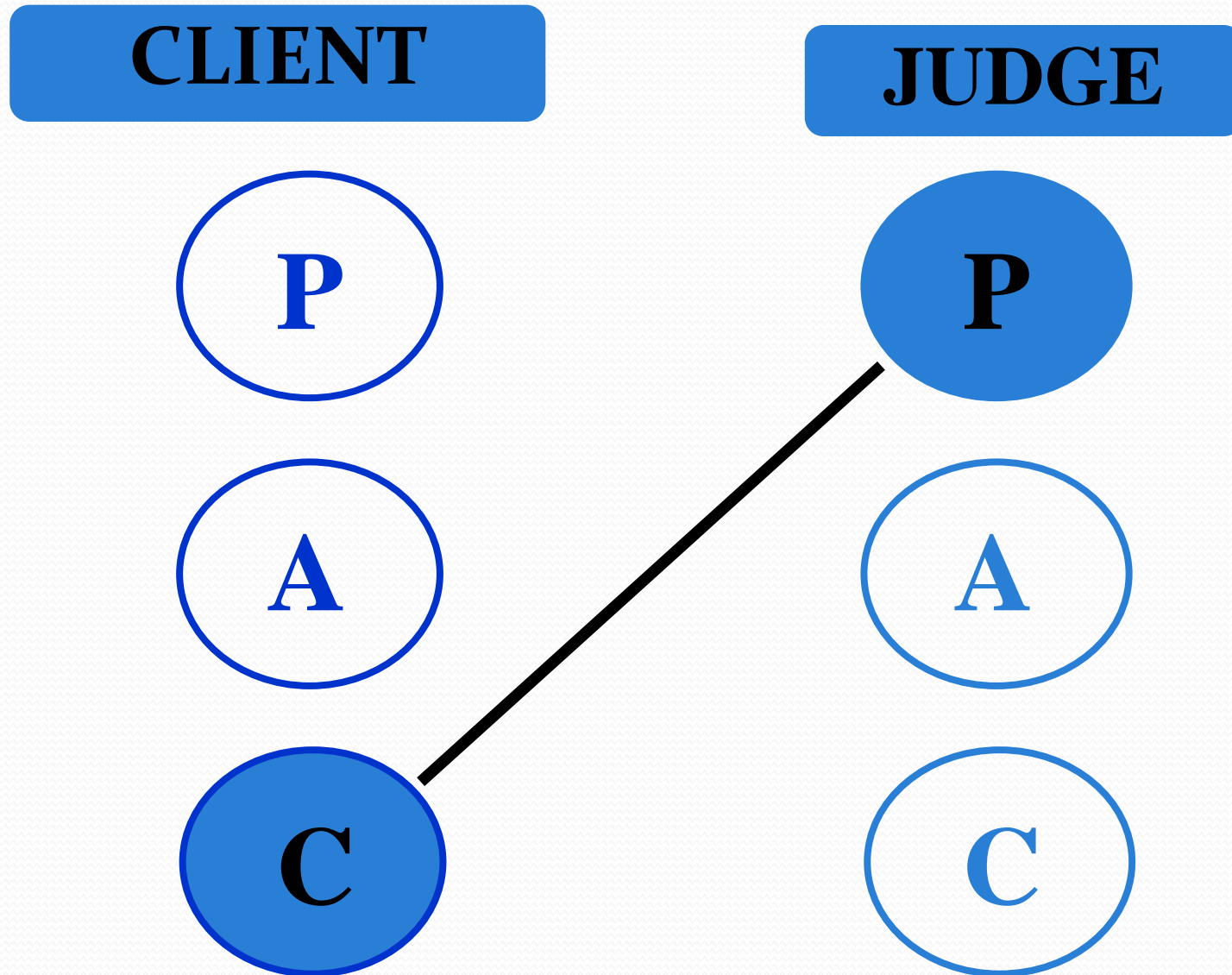


Child

Absence of Freedom I

Client is a Child
(i.e., lacks freedom) if s/he:
I. Goes to trial

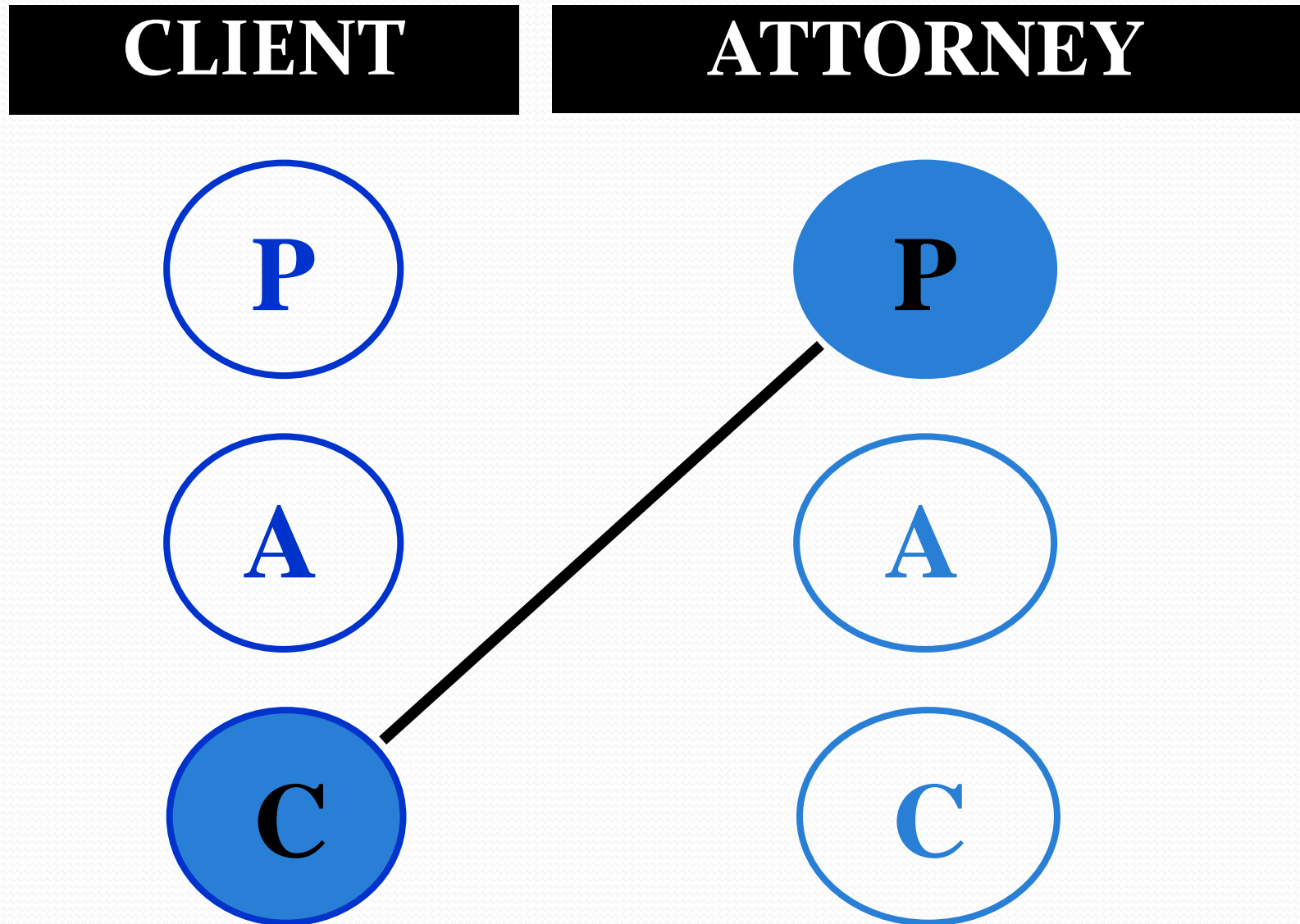
No Freedom: Judge



Absence of Freedom II

Client is a Child
(i.e., lacks freedom) if s/he:
II. Settles due to coercion of
an overbearing lawyer

No Freedom: Overbearing Attorney



Your Art

Help your Client gain freedom by:

I. Avoiding court

II. Without coercion

(i.e., Client attains fair settlement
through his/her autonomous
Adult decision-making)

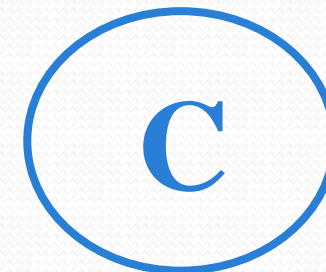
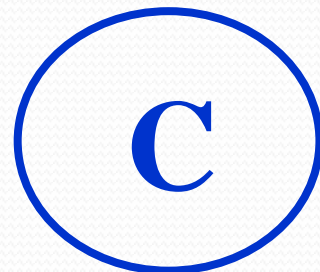
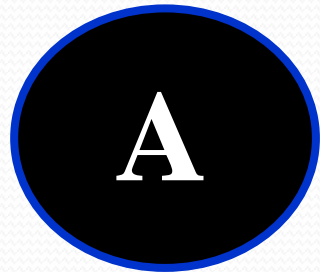
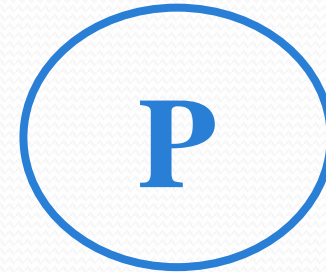
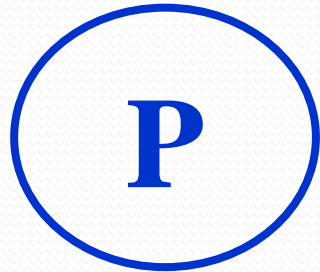
The Three Reasons a Case Doesn't Settle:

- **REASON ONE:**
Opposing Party is a jerk
- **REASON TWO:**
Opposing Counsel is a jerk
- **REASON THREE:**
Your Client is a jerk
- **(never let there be a
fourth reason)**

Freedom: Fair Settlement

CLIENT

OPPONENT



Changes, changes . . .

- **QUESTION:**
 - How many psychologists does it take to change a light bulb?
- **ANSWER:**
 - Only one, but the light bulb has to really want to change.

Changes, changes . . .

Professional of the *cloth*?

Professional of the *couch*?

Professional of the *court*?

We lawyers have *practical advantages*
over clergy and mental health
professionals

Our job is *easier* due to the highly-
orchestrated *psychodrama of litigation*







Changes, changes . . .

We pre-condition our clients toward settlement by explaining:

- Advantages of settlement
- Most cases settle (98.2%)
- Serial opportunities for settlement

Changes, changes . . .

Client's psycho-legal journey:

- Client prepares pleadings 
- Client reads OP's pleadings 
- OP is deposed 
- Client is deposed 
- Client's stlmt. conf. statement 
- OP's stlmt. conf. statement 

COUNSELOR at Law

- “Let the tool do the work”
- Pace Client
- Pre-settlement conference speech:
 - “I am your advocate – ready, willing and able” - BUT -
 - “Trials can be risky”
 - So – How does [*this proposal*] sound?

Desired Result

- We want to obtain a resolution that:
 - Is fair, and that
 - *Client considers fair*
- “Looks good and feels good – today and tomorrow”
- We warn our clients about good ole’ “Uncle Eric”
- (CCP 664.6 problem prevention)

How Much Client Control?

At what point will you stop trying to convince Client to abandon the untenable position s/he wants you to take, and decide instead to let Client “hear it from the judge”?

At what point in your “helping” process do you become an “Overbearing Attorney”?

Your goal is to maximize Client freedom: so how hard will you push?

Give Up Persuasion Efforts?

Case-by-case decisions:

- Is Client asking you to take a factual position that:
 - Is untruthful (easy decision)
 - May be untruthful (difficult decision)
- How difficult has persuading Client become?
- How crazy has Client become?
- Is Client current on fees?

The Nose Knows

In Edmond Rostand's 1897 play *Cyrano de Bergerac*, poet Cyrano helped a handsome, inarticulate man woo the fair Roxane.

Cyrano on swordsmanship: "A sword handle is like a bird – hold it too tightly and you will crush it; hold it too loosely and it will fly away!"







How hard should you push Client?

The **perfect amount . . .**

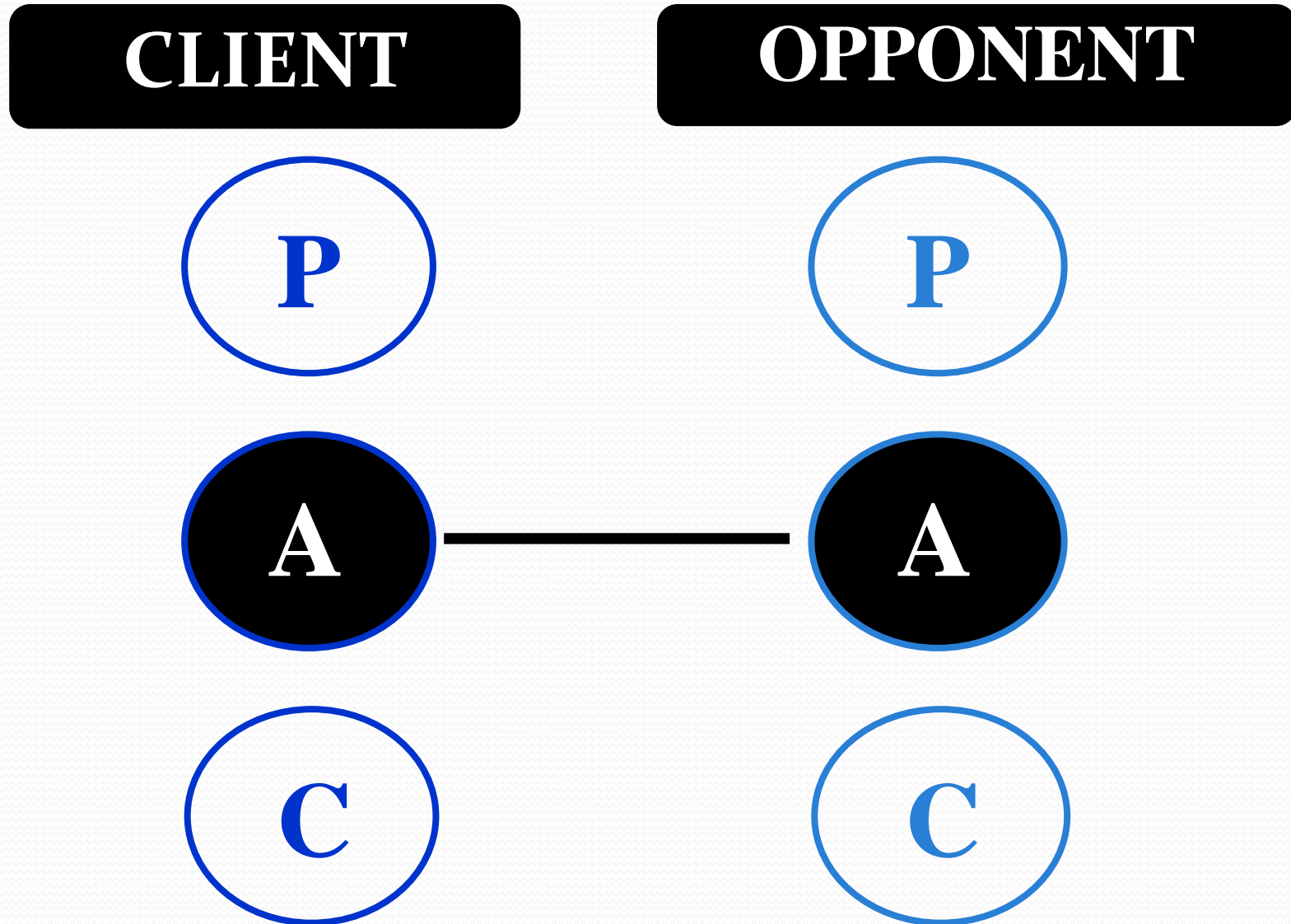
. . . at the perfect time.

Competent Opposing Counsel

OP's psycho-legal journey:

- OP prepares pleadings 
- OP reads Client's pleadings 
- Client is deposed 
- OP is deposed 
- OP stlmt. conf. statement 
- Client's stlmt. conf. statement 

Freedom: Fair Settlement



Of Course, Some Don't Settle

The road to a fair settlement largely parallels the road to a well-presented trial . . .

. . . the roads are called
“Preparation.”

I respect both viewpoints . . .

- **Loyalist Viewpoint:**
“Once I’m in a case, I very seldom withdraw. I’m willing to put up with a lot of guff.”
- **Self-Preservation Viewpoint:**
“If a client goes 30 days without replenishing the evergreen retainer, I file a motion to be relieved as attorney of record.”



Diagnostic and Statistical Manual of Mental Disorders

A Somewhat Spotted History . . .

A woman who refused bend to a man's will was diagnosed with *hysteria*

In 1851 American physician Samuel A. Cartwright “discovered” *drapetomania* – the mental illness that caused black slaves to flee captivity

In 1974 the American Psychiatric Association's membership voted 58% to 42% to delete homosexuality as a DSM illness category

The autistic community has coined the term “neurodiversity,” which may prove is useful in the advancement of “identity politics”

A Diagnostic and Statistical Manual

- **1917**: precursor
- **1952**: APA's first DSM
- **1994**: DSM-IV
- **2000**: DSM-IV-TR (“text revision”)
- **when?**: DSM-5 expected

Axis I: Major Mental Disorders

- schizophrenia
- bipolar disorder
- depression
- anxiety disorders
- autism spectrum disorders*
- ADHD* **DSM-IV had these on Axis II*

Axis II: Personality Disorders

Enduring patterns of maladaptive:

- feeling
- thinking
- interpersonal functioning
- impulse control

Axis II: Personality Disorders

Cluster A

- “*odd or eccentric*”

Cluster B

- “*dramatic, emotional, erratic*”

Cluster C

- “*anxious or fearful*”

Axis II: Personality Disorders

Cluster A

“odd or eccentric”

- paranoid
- schizoid
- schizotypal

Axis II: Personality Disorders

Cluster B

“dramatic, emotional, erratic”

- **narcissistic**
- **borderline**
- **histrionic**
- **antisocial**

Axis II: Personality Disorders

Cluster C

“anxious or fearful”

- **dependent**
- **avoidant**
- **obsessive-compulsive**

Some “D” Words

- Personality **Disease**
- Personality **Disorder** (DSM-speak)
- Personality **Dysfunction**
- Personality **Disturbance**
- Personality **Disorientation**
- Personality **Dynamic**
- Narcissistic personality “disorder” vs. Narcissistic personality “type”

Narcissistic (DSM 301.81)

- **Grandiose** sense of importance
- Fantasies of unlimited power, love, success, beauty
- Requires excessive admiration
- Expects preferential treatment
- Incapable of empathy

Dependent (DSM 301.6)

- **Wants others to assume control** and responsibility
- Incapable of making decisions
- Incapable of disagreeing with others
- Will self-sacrifice (even tolerate abuse) in order to “tag along”

Histrionic (DSM 301:50)

- **Feels unappreciated** if not the center of attention
- Shallow emotional expression (“fishing for compliments”)
- Excessive display of emotions
- Highly suggestible
- Sexually provocative

Borderline (DSM 301.83)

- **Must avoid abandonment**
 - (which would mean “*I am bad*”)
- Unstable sense of self and self-image
- Self-destructive impulsivity
- Intense, rocky relationships

Autism spectrum (DSM 299.00)

- **Impaired social interactions**
- Lack of emotional reciprocity
- Reduced eye contact, facial expressions, gestures, posture
- Underdeveloped language and other communication skills
- Repetitive behaviors

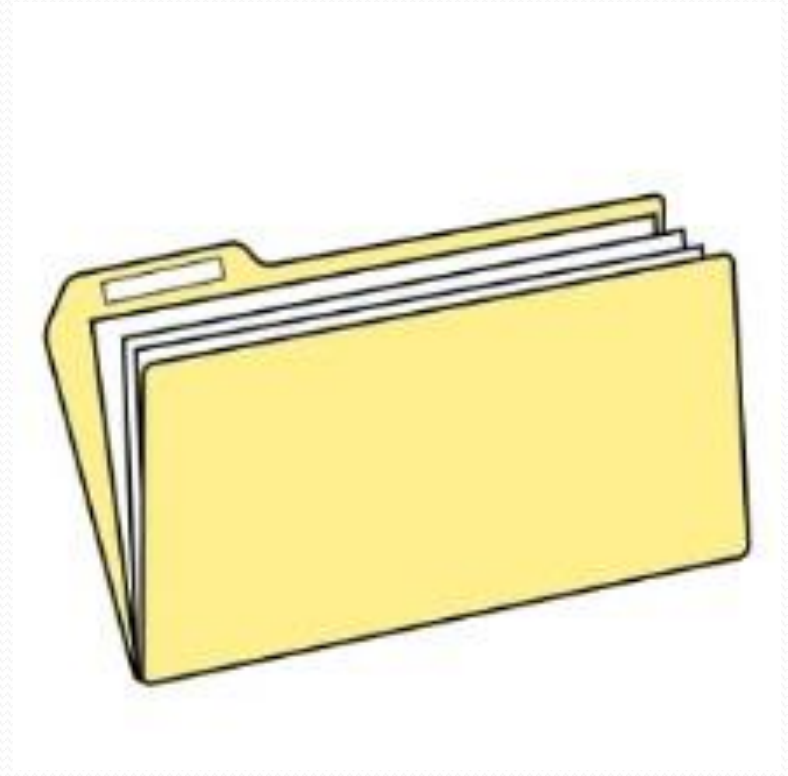
Five Clients:

- Narcissistic
- Dependent
- Histrionic
- Borderline
- Autism Spectrum



Five Clients:

- Narcissistic
- Dependent
- Histrionic
- Borderline
- Autism Spectrum



Litigator viewpoints

- Perceive the world as a very threatening place (e.g., threat of abandonment)
- Experience chronic inner distress (e.g., obsess about risk of abandonment)
- Exhibit significant adverse behaviors (e.g., rage at a perceived hint of abandonment)
- View relationships from rigid and adversarial perspectives (everyone is either an ally or enemy)

Personality-disordered persons:

- Perceive the world as a very threatening place (e.g., threat of abandonment)
- Experience chronic inner distress (e.g., obsess about risk of abandonment)
- Exhibit significant adverse behaviors (e.g., rage at a perceived hint of abandonment)
- View relationships from rigid and adversarial perspectives (everyone is either an ally or enemy)

Personality-disordered persons:

- Cling rigidly to inaccurate beliefs about the other person when the beliefs are challenged (because being challenged is perceived as a threat)
- Have excessive needs to control others
- Therefore, (understandably) engage in intense conflicts
- Therefore, (understandably) strive to maintain those conflicts

Personality-disordered persons:

- Experiencing confrontation much more deeply than most people
- Experiencing interpersonal rejection much more deeply than most people
- Likely to make false statements
- Lying is justified in their eyes as appropriate punishment

Personality-disordered persons:

- Stuck in the denial, depression and/or anger stages of grief
- Distortions:
 - Emotional reasoning
 - All-or-nothing thinking
 - Personalization of benign events
- Stubborn avoidance of accepting responsibility

Litigator's World View

- Don't lie
- Bargaining and acceptance stages of grief
- Avoid Distortions:
 - Logical reasoning
 - Nuanced thinking
 - Don't personalize benign events
- Responsibility must be accepted



A Sane, Sober Lawyer?

AVOID THE THREE S's:

Stiffed (on your Fee)

Sued (for Malpractice)

Slandered



**Bad
Client**

Good Client

- Sincere
- Truthful
- Helpful
- Patient
- Tolerant
- Courteous
- Reasonable
- **TAKES RESPONSIBILITY**

Bad Client

- Irritable
- Whiny
- Selfish
- Narrow-minded
- Accusatory
- Uncooperative
- Unreasonable
- **AVOIDS RESPONSIBILITY**

“PERSONAL RESPONSIBILITY”



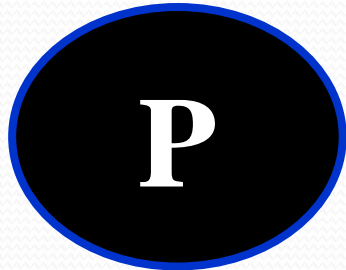
**Bad
Client**



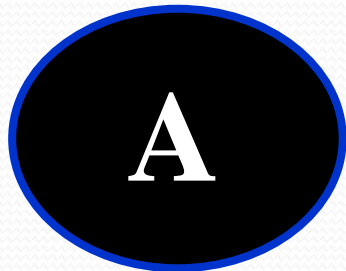
**Good
Client**

**What Makes
the Difference?**

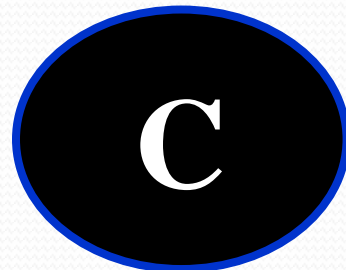
Transactional Analysis: Three Personality Structures



Subjective



“Objective”



Subjective

Objectification Rocks!

- Lawyer repeats **Client's statement** (reflective listening)
- Client writes it out
- Lawyer whiteboards it, photographs it
- Lawyer confirms it in writing
- Lawyer records it in Client's presence
- Lawyer presents it to another lawyer in firm

Canned Speeches

- “If OP were sitting here [*indicate empty chair*] and I asked him to state his view of the facts, what would he say?”
- “Of course, we need OP’s cooperation in order for this negotiation to succeed. Do you think a remark like the one you made about [*specify insult*] will have a tendency to make her MORE cooperative or LESS cooperative? What effect do you think it would have on the tone of the negotiation if you were to apologize for the remark when we reconvene?”

Sneaky Shifts

Role shifts happen incrementally, and can be subtle

If you were Marcel Marceau, would you be making:

- the “welcoming arms” gesture, or
- the “warding off” gesture?

When I have become consistently adversarial with Client (“occasionally adversarial” is par for the course) I try to take a step back and analyze the relationship. (Hear any warning bells?)

A Tool's Two Ends

In my ADVOCATE role:

- Business end is for Opposing Party
- Social end is for Client (Client likes this)

In my REALITY CHECKER role:

- Business end is for Client
- Social end for me (Client doesn't like this)
(I try to remember to remind Client that:
"I'm on your side")

Any Sanity for a Lawyer?

Avoiding Client “true believers”

Having a “case” not a “cause”

Spelling “principle” with an “al”

King Solomon story

Maintain boundaries . . .



Doctors Without Borders



Lawyers Without Boundaries

“Calling All Boundaries”

Evenings/weekends in peace

Released from your “cell”

One lawyer’s isolationism

Avoiding social togetherness

Never riding together

What about Client’s mental health?

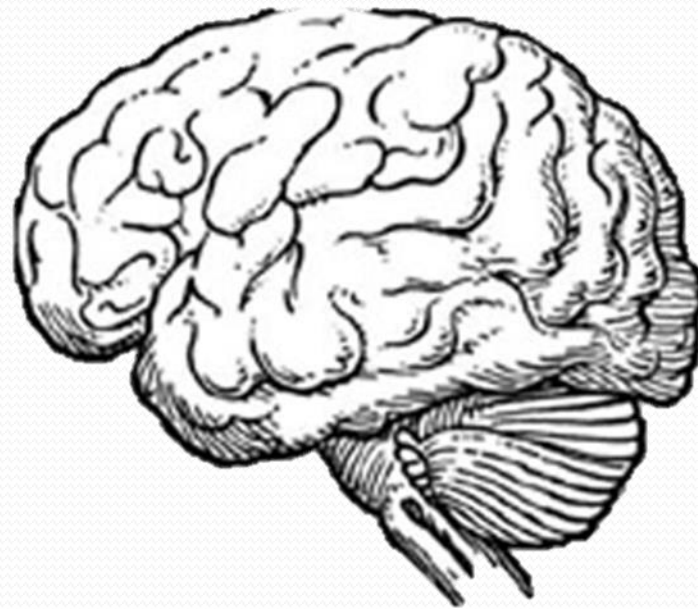
I Respect Both Viewpoints

Total Outsource Viewpoint:

“I’m qualified as lawyer, but unqualified as a therapist. (Plus, my hourly rate is higher.)
Here are three names.”

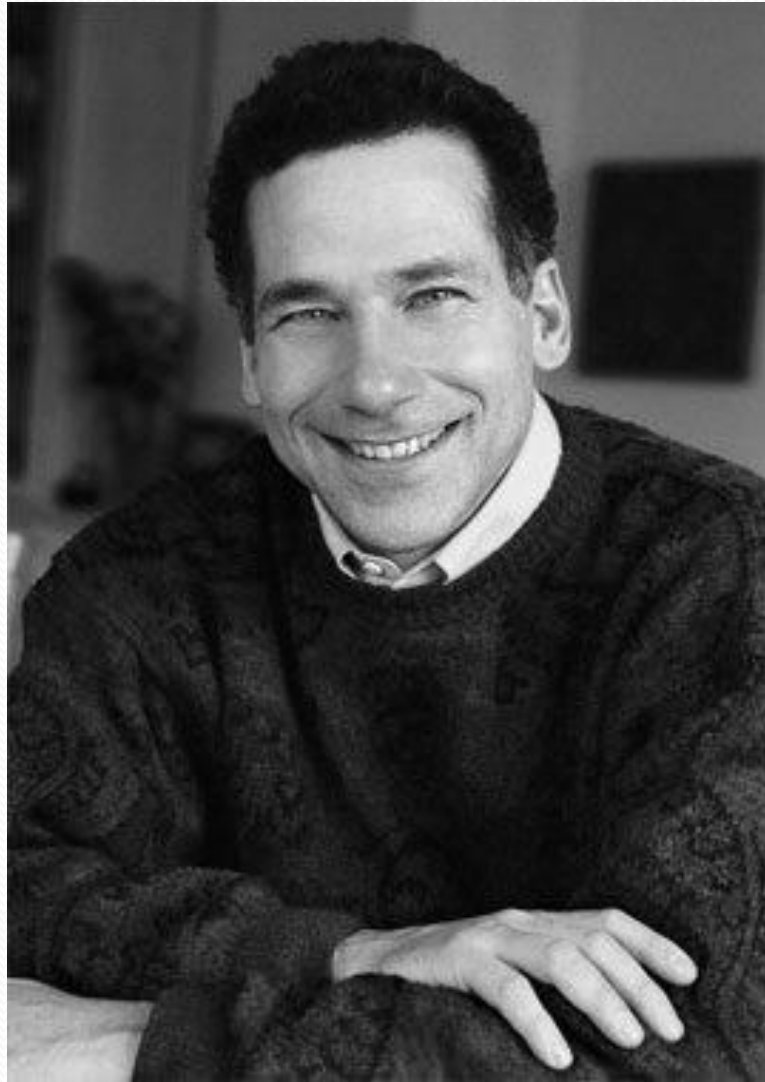
Two (or Three) Questions Viewpoint:

1. “How have you been sleeping?”
 2. “How has your appetite been?”
 3. (“Ever thought about harming yourself?”)
- “Here are three names.”



William Ury's Negotiation Psychology

William Ury, Ph.D.



Ury's Books

Getting to Yes: Negotiating an Agreement Without Giving In (co-authored with Roger Fisher) (1981)

Getting Past No (1991)

Why Must We Fight: From the Battlefield to the Schoolyard (2001)

The Power of a Positive No (2007)

Attorney Sunflower

- 28 years old
- Born in Mendocino
- Passed the California bar exam last year
- Hobbies:
 - Making macramé flower pot holders
 - Reading Beatrix Potter books
 - Practicing autoharp and kazoo
 - Playing Frisbee (intermediate level)

More about Sunflower

- Father: Marijuana Farmer
- Mother: Wind Chime Designer
- Values instilled by parents:
 - Eat organic foods in meditative silence
 - Compromise is heroic
 - Conquest through force is shameful
 - Courtrooms are obscene
- Practices family law in Mendocino

Sunflower's Negotiation Strategies

1. Make concessions to cultivate the relationship
2. Change your position easily
3. Accept one-sided losses to reach an agreement
4. Insist on agreement

Attorney Sabrina

- 28 years old
- Born in Manhattan
- Passed the California bar exam last year
- Hobbies:
 - Chess (master level)
 - Writings of Niccolò Machiavelli
 - Performing concert piano and violin
 - Tae Kwon Do (third *dan*)

More about Sabrina

- Father: Neurosurgeon
- Mother: U.S. Marine Colonel
- Values instilled by parents:
 - Heated political debates during dinner
 - Conquest through force is heroic
 - Compromise is shameful
 - Courtrooms are fields of glory
- Practices family law in Los Angeles

Sabrina's Negotiation Strategies

1. Demand concessions as a condition of the relationship
2. Dig in to your position
3. Demand one-sided gains as the price of an agreement
4. Insist on your position

Sunflower's Negotiation Strategies

1. Make concessions to cultivate the relationship
2. Change your position easily
3. Accept one-sided losses to reach an agreement
4. Insist on agreement

Ury Says: Begin by Analyzing Your

BATNA

Best

WATNA

Worst

MLATNA

Most Likely

**Alternative
to a
Negotiated
Agreement**

Principled Negotiation

- Involve your opponent early on – because an opponent who wasn't part of the **process** is unlikely to be satisfied with the **product**
- Give your opponent **recognition**
(*does this sound like Eric Berne?*)
- Frankly state your opponent's interests
- Frankly state your Client's interests

PROBLEM

Positional Negotiation

SOFT

Make concessions to cultivate relationship.

Change your position easily.

HARD

Demand concessions as a condition of relationship.

Dig in to your position.

SOLUTION

Interest-Based Negotiation

PRINCIPLED

Separate the people from the problem.

Focus on interests, not positions.

PROBLEM

Positional Negotiation

SOFT

Accept one-sided losses to reach agreement.

Insist on agreement.

HARD

Demand one-sided gains as the price of agreement.

Insist on your position.

SOLUTION

Interest-Based Negotiation

PRINCIPLED

Invent options for mutual gain.

Insist on using objective criteria.

PROBLEM

Positional Negotiation

SOFT

Participants are friends.

The goal is agreement.

Make concessions to cultivate relationship.

Be soft on the people and the problem.

Trust others.

Change your position easily.

Make offers.

HARD

Participants are adversaries.

The goal is victory.

Demand concessions as a condition of relationship.

Be hard on the problem and the people.

Distrust others.

Dig in to your position.

Make threats.

SOLUTION

Interest-Based Negotiation

PRINCIPLED

Participants are problem solvers.

The goal is a wise outcome reached efficiently and amicably.

Separate the people from the problem.

Be soft on the people, hard on the problem.

Proceed independently of trust.

Focus on interests, not positions.

Explore interests.

PROBLEM

Positional Negotiation

SOFT

Disclose your bottom line.

Accept one-sided losses to reach agreement.

Search for the single answer: the one *they* will accept.

Insist on agreement.

Try to avoid a contest of will.

Yield to pressure.

HARD

Mislead as to your bottom line.

Demand one-sided gains as the price of agreement.

Search for the single answer: the one *you* will accept.

Insist on your position.

Try to win a contest of will.

Apply pressure.

SOLUTION

Interest-Based Negotiation

PRINCIPLED

Avoid having a bottom line.

Invent options for mutual gain.

Develop multiple options to choose from; decide later.

Insist on using objective criteria.

Try to reach a result based on standards independent of will.

Reason and be open to reasons; yield to principle, not pressure.

Learn to Dance the “Ury Five-Step”

1. Don't react: “Go to the balcony”
2. Don't argue: “Step to their side”
3. Don't reject: “Reframe”
4. Don't push: “Build them a golden bridge”
5. Don't escalate: “Use power to educate”

1. Don't react: “Go to the balcony”

"Speak when you are angry and you will make the best speech you will ever regret"

Don't get mad, don't get even: Get what you want

Avoid your three dangerous natural reactions:

- breaking off (*“I’ll take my ball and go home”*)
- striking back (*does this sound like stress dumping?*)
- giving in (*does this sound like stress processing?*)

Identify the stone walls, the attacks, and the tricks

Know your hot buttons . . .

Your Opponent: Pushing Buttons

- Made you wait
- Gave you a low chair, with window glare
- *Comment #1*: “I see that you’re putting on a little weight, aren’t you?”
- Took a phone call
- Finished coffee without offering you any
- *Comment #2*: “Are you still having some difficulty keeping things organized?”

2. Don't argue: “Step to their side”

- Give your opponent recognition
- Agree whenever possible
- Make "yes...and" statements
 - (Avoid "but" statements)
- Make "I" statements
 - (Avoid "you" statements)

(More “Step to their side”)

- State loudly and clearly all areas of agreement
- Practice active listening:
 - “Let me see if I can state your interests, and please correct me if I’m wrong.”
- Opponents who believe their interests are being ignored will:
 - Repeat/rephrase them, and
 - Ignore your interests

3. Don't reject: “Reframe”

- Ask for your opponent's advice
- Engage your opponent with open-ended questions
- Ask problem-solving questions:
 - Why?
 - Why not?
 - What if _____?
 - What makes that fair?

(More “Reframe”)

- Negotiate the rules of the game
- Defuse a negotiating trick by:
 - Naming the trick, and
 - Asking clarifying questions
- Reframe an **attack against you** as an **attack against the problem**
- Test a stone wall by ignoring it
- Tap the power of silence

4. Don't push: “Build a bridge”

- Don't overlook human needs
- Overcome classic obstacles to an agreement:
 - “Too much too fast”
 - Your opponent's fear of losing face
 - “Not your opponent's idea”
 - Your opponent's unmet interests
- Don't assume a fixed pie

(More “Build a bridge”)

- Involve your opponent:
 - Ask for constructive criticism
 - Ask for ideas, then build on them
 - Offer a choice
- Help your opponent save face by helping write the “victory speech”

5. Don't escalate: “Educate”

- Close the deal by getting aggressive
- Demonstrate the legitimacy of your MLATNA
- Don't threaten - warn
- Educate your opponent about consequences with reality-testing questions:
 - What do you think I will do if we don't settle?
 - What will you do if we don't settle?

The End

