


The Art of Asking Questions in Mediation and Negotiation

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PROGRAM ON NEGOTIATION
HARVARD LAW SCHOOL



1

Agenda

Stories

Theory

Practice

Conclusions

Q & A

2

Agenda

Stories (how can questions best be deployed?)

Theory (why are questions so powerful?)

Practice (how do questions make us feel?)

Conclusions (what have we learned?)


Q & A

3

Our goal for this workshop: Making it one of our super-powers to ask effective and, when needed, transformative questions

4

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HARVARD UNIVERSITY
Native American Program

HOME / ABOUT US /

Acknowledgement of Land and People

Harvard University is located on the traditional and ancestral land of the Massachusetts, the original inhabitants of what is now known as Boston and Cambridge. We pay respect to the people of the Massachusetts Tribe, past and present, and honor the land itself which remains sacred to the Massachusetts People.


<https://hunap.harvard.edu/land-acknowledgement>

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- Acknowledgement of Land and People
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5

Acknowledgment of Land and People



WIKIPEDIA
The Free Encyclopedia

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Massachusett

From Wikipedia, the free encyclopedia


This article is about the Native American tribe. For the U.S. state, see Massachusetts.

The **Massachusett** are a Native American people and ethnic group in the United States Commonwealth of Massachusetts, mostly inhabiting their traditional homeland which covers much of present-day Greater Boston. The people take their name from the indigenous name for the Blue Hills overlooking Boston Harbor from the south, which was a ceremonial and sacred area for the people of the region.

As some of the first people to make contact with the European explorers and English colonists, the Massachusett and other coastal peoples were almost decimated from an outbreak of leptospirosis circa 1619, which had mortality rates as high as 90% in these areas. This was followed by devastating impacts of virgin soil epidemics such as smallpox, influenza, scarlet fever and others that the indigenous people lacked natural immunity. Their territories, on the more fertile and flat coastlines, with access to coastal resources, was mostly taken over by English colonists, as the Massachusett were too few in number to put up any effective resistance.

Under the missionary John Eliot, the majority of the Massachusett were converted to Christianity and settled in "Praying towns" established where the converted Indians were expected to submit to the colonial laws, accept some elements of English culture and forced to abandon their traditional religion, but were allowed to use their language. Through intermediaries, Eliot learned the language and even published a translation of the Bible. The language, related to other Eastern Algonquian languages but more specifically, the regional languages of southern New England, would slowly fade, ceasing to serve as the primary language of the Massachusett communities by the 1750s, and the language was likely

Massachusett
Massachusett (Massachusetts)
Muhsachuweesu/Másachšaut
(Wópanak)



Location of the Massachusett and related peoples of southern New England.

Total population
Total population ~150
80 Ponkapog Massachusett (2011)^[1]

6

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3

Acknowledgment of Land and People



<https://americanindian.si.edu>

7



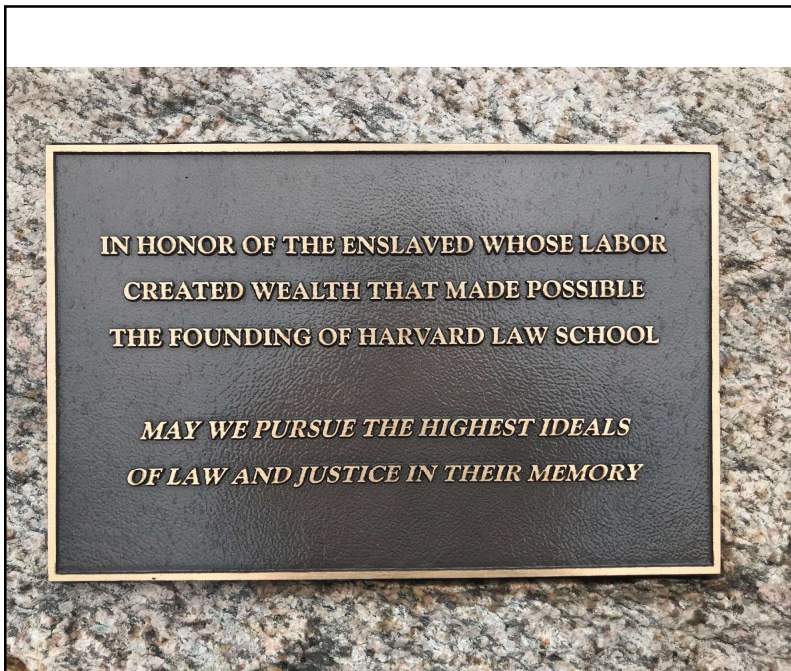
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8



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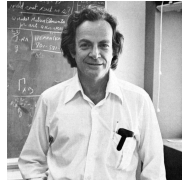
**HARVARD
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10

On the art of asking questions . . .

“If you don’t understand, ask questions. If you’re uncomfortable about asking questions, say you are uncomfortable about asking questions, and then ask anyway.”

- Chimamanda Ngozi Adichie
(novelist)



“Knowledge is having the right answers. Intelligence is asking the right questions. Wisdom is knowing when to ask the right questions.”

- Richard Feynman (physicist)



11

Advice from a veteran mediator/arbitrator:

- ***“When I first started arbitrating and mediating, I asked a lot of questions in the arbitrations, and I made a lot of statements in the mediations.”***
- ***“It got me into a lot of trouble.”***
- ***“Now, when I’m in an arbitration, I only make statements, and when I’m mediating, all I do is ask questions.”***
- ***“That works much better.”***

12



Mediation is . . .

. . . the art of asking questions.

13



Negotiation is . . .

. . . the art of asking questions.

14

Four Stories About Questions

- “Sally Soprano”
 - First job interview
 - The whistleblower
 - The indignant teacher
- Negotiation**
- Mediation**

15

Four Stories About Questions

“Sally Soprano”

- Hasn’t had a lead opera role in two years
- **Lyric Opera just lost their lead soprano – show time is in three weeks**

16

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Teaching Materials and Publications

PROGRAM ON NEGOTIATION
HARVARD LAW SCHOOL



Employment Negotiation Role-Play:

Sally Soprano I

Norbert Jacker and Mark Gordon

Two-party integrative negotiation between agents for an opera singer and an opera house regarding a possible contract for an upcoming production

**ZOPA (Zone of Possible Agreement) for salary:
\$25,000 - \$45,000**

PRODUCT OPTIONS

Choose an option ▼


FORMAT OPTIONS

17

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PROGRAM ON NEGOTIATION
HARVARD LAW SCHOOL



Employment Negotiation Role-Play:

Sally Soprano I

Norbert Jacker and Mark Gordon

Two-party integrative negotiation between agents for an opera singer and an opera house regarding a possible contract for an upcoming production

Two negotiators:

- Sally's agent
- Lyric Opera business manager

PRODUCT OPTIONS

Choose an option ▼


FORMAT OPTIONS

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Two-party integrative negotiation between agents for an opera singer and an opera house regarding a possible contract for an upcoming production

PRODUCT OPTIONS

Choose an option ▼

FORMAT OPTIONS

Two Rounds:

- Associate attorneys paired up and negotiated
- Then two partners did a demonstration


19

Four Stories About Questions

“Sally Soprano”

- Hasn’t had a lead opera role in two years
- Lyric Opera just lost their lead soprano – show time is in three weeks
- **Winning negotiation strategy:**

Claudia,
representing
Lyric Opera



20

Four Stories About Questions

“Sally Soprano”

- Hasn't had a lead opera role in two years
- Lyric Opera just lost their lead soprano – show time is in three weeks
- **Winning negotiation strategy: ask questions**



21

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22

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23

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24

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TAKEAWAYS?



25

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TAKEAWAYS?

Bill Ury, Possible:

“Effective negotiators are persuasive listeners. They listen more than they talk”

26

Four Stories About Questions

My late wife's first job interview

- Clinical social worker
- Job posting: \$40K - \$45K / year
- **She was offered the job at \$40K**

27

Four Stories About Questions

My late wife's first job interview

- **"Is \$40K the best you can do on the salary?"**

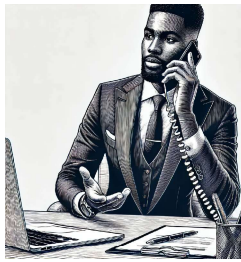


28

Four Stories About Questions

My late wife's first job interview

- "Is \$40K the best you can do on the salary?"
 - *"We can make it \$42.5K – are you able to start right away?"*



29

Four Stories About Questions

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- **"What would you be looking for in someone that you paid \$45K?"**



30

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- "What would you be looking for in someone that you paid \$45K?"
 - *[Silence]*

31

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 - *[Silence]*
 - *"You're a really good negotiator – we can start you at \$45K."*



32

Four Stories About Questions

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TAKEAWAYS?

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33

Four Stories About Questions

My late wife's first job interview

Using questions to direct the focus of the negotiation

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34

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35

Four Stories About Questions

The whistleblower

- Worked for a major corporation
- Complained frequently about ethics violations → fired
- Mediation → bargaining impasse
- **I looked at his resume . . .**

36

Four Stories About Questions

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- Complained frequently about ethics violations → fired
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YOUR NAME
 Your Address 123
 Anywhere St., Any City, ST 12321
 +1212-233-2323
 your_name@gmail.com @gmail

HIGHLIGHTS OF SKILLS AND QUALIFICATIONS/PROFILE/ETC.

- Highly Oriented Professional: Proven track record of achieving measurable results and exceeding goals in [industry/field].
- Technical Proficiency: Proficient in Microsoft Office Suite, [other relevant software/tools], with a strong ability for learning new technologies.
- Adaptive and Resilient: Flexible and adaptable in fast-paced environments, with the ability to prioritize tasks and meet deadlines.

WORK EXPERIENCE

Company Name, Location	Month, Year - Present
Job Title	
Key Responsibilities	
[Details of your main duties and responsibilities in abbreviated form]	
• Collaborated closely with cross-functional teams to streamline processes and optimize workflow efficiency.	
• Conducted market research and competitive analysis to inform strategic decisions.	
• Managed complex projects, ensuring timely completion and adherence to budget.	
• [Additional responsibilities]	
U.S. Army	Active and operational, providing [details of military service and achievements]

EDUCATION

- Degree in [Major/Field of Study]
- Name of Institution, Location
- Graduated Month, Year

PROFESSIONAL SUMMARY

Results-oriented professional with [number] years of experience in [industry/field]. Skilled in [key skills and competencies]. Strong [communication/leadership/analytical] capabilities. Seeking to leverage experience and expertise in [desired position].

ADDITIONAL SECTIONS

- Certifications [List of relevant certifications]
- Awards and Honors [Mention any notable awards]
- Volunteer Experience [Optional: Address]
- Professional Affiliations [Mention if applicable]

REFERENCES

Use this space to add them in, or you can put References Available on request.

37

Four Stories About Questions

The whistleblower

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- Complained frequently about ethics violations → fired
- Mediation → bargaining impasse
- I looked at his resume . . .
- **“What was it like in the military?”**

38

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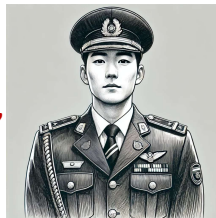
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40

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- Mediation → bargaining impasse
- I looked at his resume . . .
- **“What was it like in the military?”**



TAKEAWAYS?

Effective questions don't need a specific agenda – curiosity and compassion suffice.

41

Four Stories About Questions

The indignant teacher

- Rose – veteran teacher, former head of the union local
- . . . about to be fired for major verbal outburst involving fellow teachers and students
- ***[Interrupting] “Rose, can I ask you a question?”***
- ***“Has anyone ever thanked you for what you have done for this school?”***

42

Four Stories About Questions

The indignant teacher

- **“Her mouth dropped open and she immediately burst into tears and started sobbing uncontrollably.”**



43

Four Stories About Questions

The indignant teacher

- **“Her mouth dropped open and she immediately burst into tears and started sobbing uncontrollably.”**
- **“I turned to the other teachers and asked if they would each turn to Rose, tell her one thing that she had contributed to the school, and thank her for having done it.”**
- **“Now they all started crying, and as they told their stories of Rose’s dedication to the teachers and the school, their accusativeness, her defensiveness, and the atmosphere of impasse were completely transformed.”**

44

Four Stories About Questions

The indignant teacher

- Ken: *“Are we done?”*
- Rose: *“I need to apologize to all the other teachers.”*
- Teachers: *“We’re coming with you.”*

45

Four Stories About Questions

The indignant teacher

- **“Has anyone ever thanked you for what you have done for this school?”**

Ken Cloke, “No More Teacher’s Dirty Looks” - <https://mediate.com/the-vibrations-of-conflict/>

46

Four Stories About Questions

The indignant teacher

- “Has anyone ever thanked you for what you have done for this school?”
- “So, Ken, what inspired you to ask that impactful question in the midst of all the recrimination?”
- “I felt inside myself the place where she was stuck and the question I would most want to be asked if I were her.”

47

Four Stories About Questions

The indignant teacher

TAKEAWAYS?

- “Has anyone ever thanked you for what you have done for this school?”
- “So, Ken, what inspired you to ask that impactful question in the midst of all the recrimination?”
- “I felt inside myself the place where she was stuck and the question I would most want to be asked if I were her.”

Questions can cut through our defenses and open our hearts

48

Theory – Why Are Questions So Powerful?

- Directing the conversation

49

Theory – Why Are Questions So Powerful?

- Directing the conversation



"Oh, just one more thing!"

Peter Falk as Lt. Frank Columbo (1968 – 2003)

50

Theory – Why Are Questions So Powerful?

- Directing the conversation
- **Empowering the recipient of the question**
 - Open-ended questions
 - Leading questions
 - Clarifying questions

51

Theory – Why Are Questions So Powerful?

- Directing the conversation
- Empowering the recipient of the question
- Creating the experience of being seen
- **Creating the experience of feeling heard**

52

Theory – Why Are Questions So Powerful?

- **Inviting a narrative**



“The story . . . is one of the basic tools invented by the human mind for the purpose of understanding.” - Ursula K. Le Guin

53

Theory – Why Are Questions So Powerful?

- Inviting a narrative
- Confirming our understanding
 - ***“What I’m hearing you say is _____ -- am I getting that right?”***

54

Theory – Why Are Questions So Powerful?

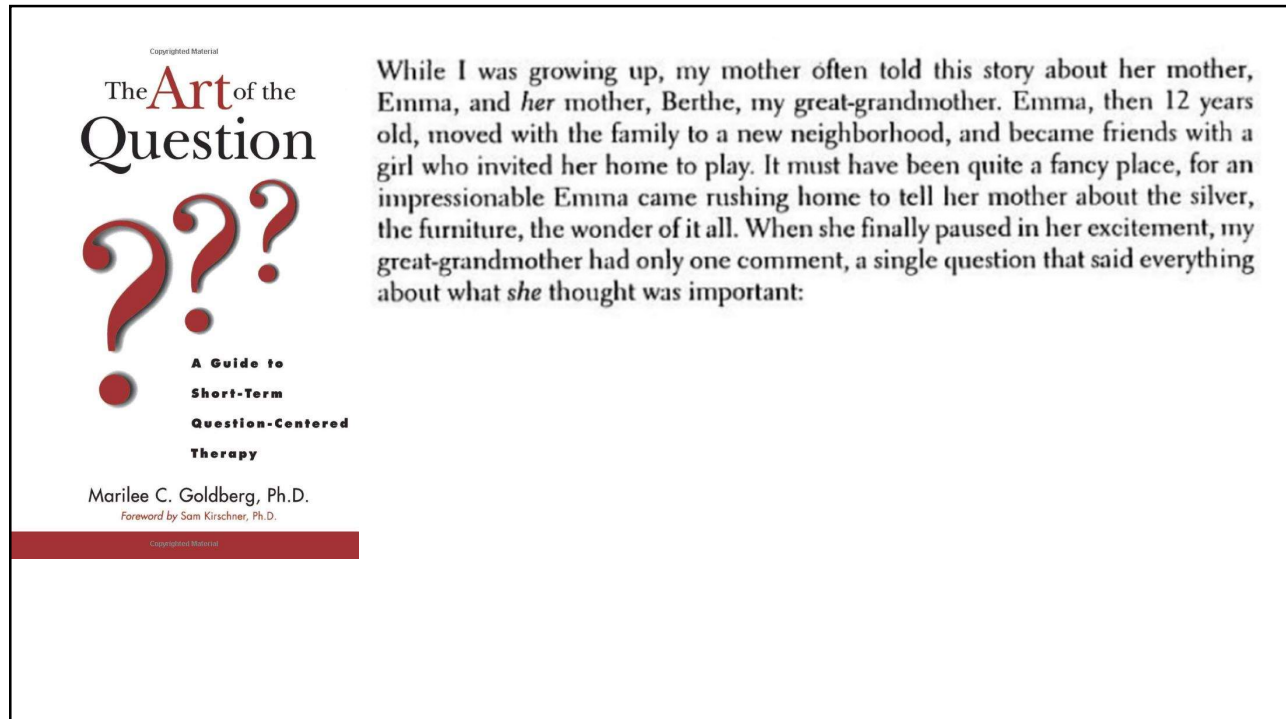
- Inviting a narrative
- Confirming our understanding
- Broadening the scope of topics or narrowing them
- **Digging deeper or moving the conversation up a level**

55

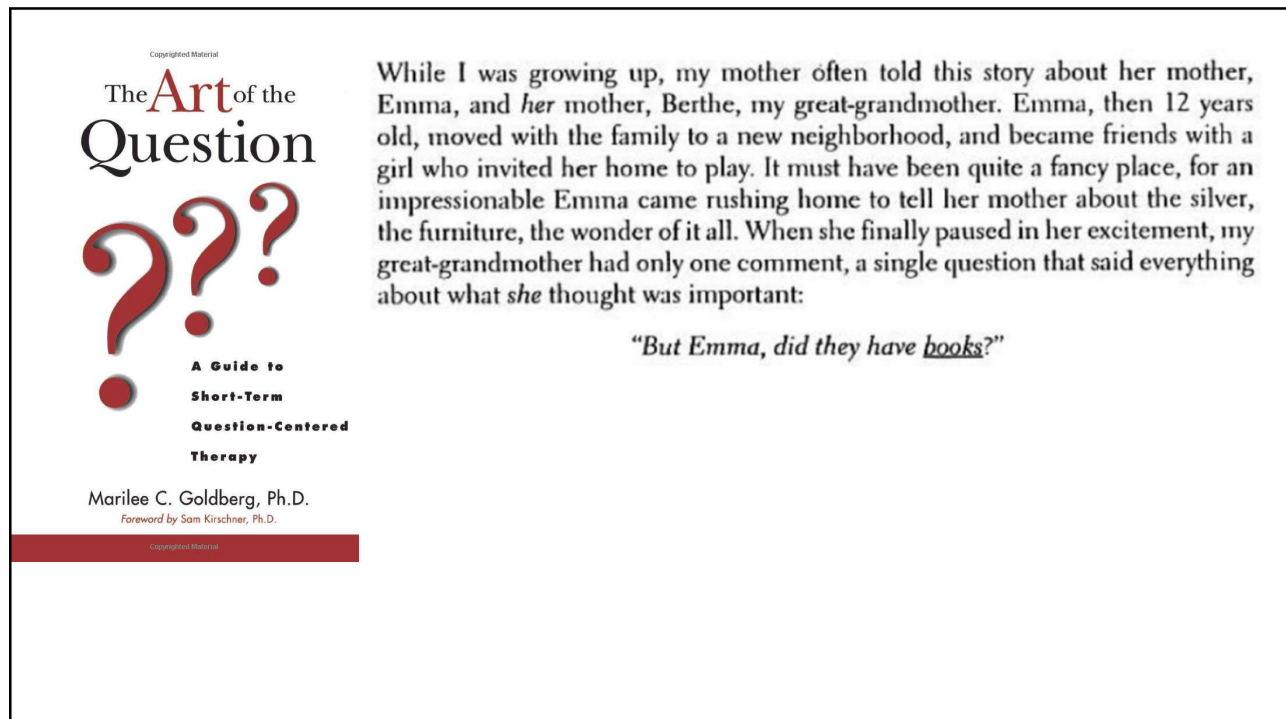
Theory – Why Are Questions So Powerful?

- Showing respect and empathy
- Fostering relationship and connection (and thereby, influence)
- **Revealing what the questioner cares about**

56



57



58

Theory – Why Are Questions So Powerful?

- Show respect and empathy
- Foster relationship and connection (and thereby, influence)
- Reveal what the questioner cares about
- **Validate the other's autonomy**

59

Carter - Reagan Presidential Debate (Oct. 1980)



60

In Practice

Inquiry works!

Kim Cameron, "Positive Leadership: Strategies for Extraordinary Performance" (2008)

	TEAM PERFORMANCE		
	High	Medium	Low
Positive Statement Ratio (supportive, encouraging, appreciation versus critical, disapproval, contradictory)	5.6 to 1	1.8 to 1	0.36 to 1
Inquiry/Advocacy Ratio (questioning versus asserting)	1.1 to 1	0.67 to 1	0.05 to 1
Others/Self Ratio (external versus internal focus)	0.94 to 1	0.62 to 1	0.03 to 1
Connectivity Average (mutual influence, assistance, interaction)	32	22	18

Source: Losada & Heaphy, 2004

61

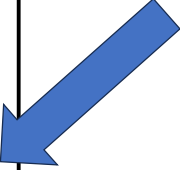
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62

In Practice

Inquiry works!



The Gottman Institute

<https://www.gottman.com/blog/10-questions-happy-couples-constantly-asking-one-another/>

63

In Practice

Obstacles to asking questions . . .

- Fear of judgment
 - Maybe it seems like a dumb question? Or already addressed?
- Fear of losing control
 - Does it undermine our position of authority?
- Cultural norms / hierarchy
- **Lack of receptivity**

64

In Practice

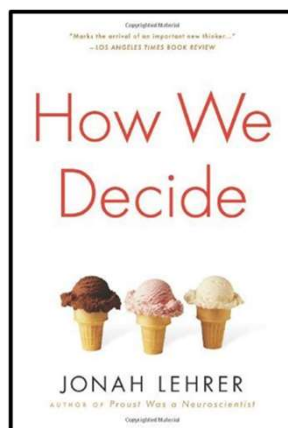
Overcoming the obstacles . . .

- Name the concern
- Humility
- Genuine non-judgmental curiosity
- Compassion
- Foster safety / trust
- **Apologize when we goof!!**

65

In Practice

- **Central Role of Emotion**



66

In Practice

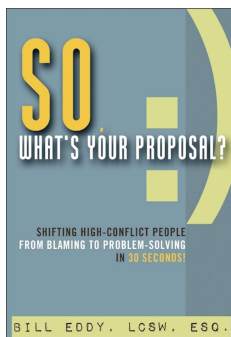
- Central Role of Emotion
 - Managing Emotion
 - Eliciting Emotion
 - Avoiding Emotional Minefields
- The Art of Listening
- **Asking the Hard Questions**

67

In Practice

Managing Party's Intense Emotion

- Bill Eddy's question: "So, what's your proposal?"

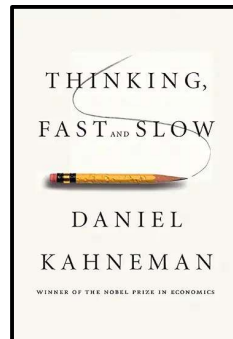
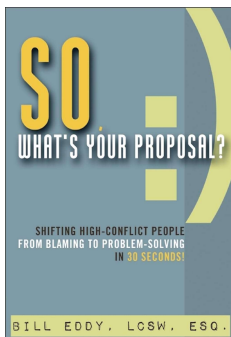


68

In Practice

Managing Party's Intense Emotion

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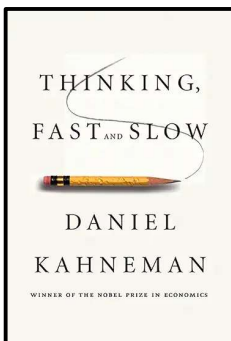


69

In Practice

Managing Party's Intense Emotion

- Bill Eddy's question: "So, what's your proposal?"



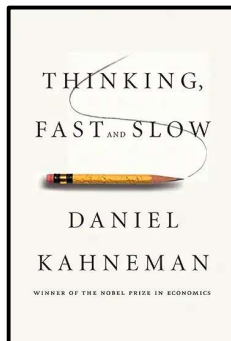
- **System 1 (fast, intuitive, emotional)**
- **System 2 (slow, logical)**

70

In Practice

Managing Party's Intense Emotion

- Bill Eddy's question: "So, what's your proposal?"



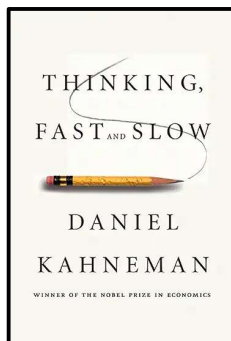
- System 1 (fast, intuitive, emotional)
- **System 2 (slow, logical)**

71

In Practice

Managing Party's Intense Emotion

- Bill Eddy's question: "So, what's your proposal?"



- System 1 (fast, intuitive, emotional)
- System 2 (slow, logical)
- **The doctor who wanted revenge**

72

In Practice

Eliciting Emotion (e.g., Rose's case)

- Consider the context for your question:
 - **Caucus?**



73

In Practice

Eliciting Emotion (e.g., Rose's case)

- Consider the context for your question:
 - Caucus?
 - **Joint session?**



74

In Practice

Eliciting Emotion (e.g., Rose's case)

- Consider the context for your question:
 - Caucus?
 - Joint session?
 - Who's asking?
 - Asked when?
 - **Trust / safety?**

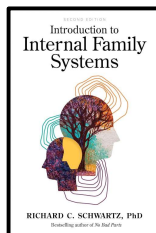


75

In Practice

Avoiding Emotional Minefields

- Consider what wary / defensive parts might get triggered by your question:



- Judgment / Blame
- Embarrassment
- Boundary violations
- Partiality

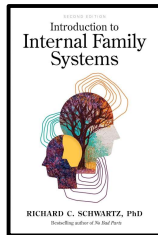
Mike Elkin: In conflict situations, our protective parts see any ambiguous stimulus as an attack unless conclusively proved otherwise.

76

In Practice

Avoiding Emotional Minefields

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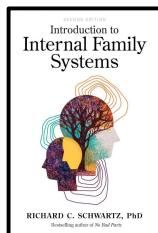
Nota bene: good intent is vital but not enough – consider impact!!

77

In Practice

Avoiding Emotional Minefields

- Consider what wary / defensive parts might get triggered by your question:



- Judgment / Blame
- Embarrassment
- Boundary violations
- Partiality

Susan Podziba's exercise on crafting effective questions - www.Podziba.com

78

The Art of Listening . . .



Just Google “the art of listening”

79

Ken Cloke on the art of listening . . .



https://www.youtube.com/watch?v=bw3_EkTe_sl
(30:33 - 31:54)

80

Ken Cloke on what we're listening for . . .

- Facts
- Interpretations
- Subjective experiences
- Roles
- Intentions
- Emotions
- Interests
- Dreams
- Fears
- Defensiveness
- Humiliation
- Self-esteem
- Insecurity
- Resistance
- Denial
- Insults
- Stereotypes / Prejudices
- Cries for help
- Apologies
- Requests for forgiveness

81

Listening means . . .

- Both the words *and* the music
- **Communication impact:**
 - **Body language and facial expressions (55%)**
 - **Tone of voice (38%)**
 - **Choice of words (7%)**
 - Source: Dr. Albert Mehrabian, *Silent Messages* (1971)

82

The Art of Listening

- Active listening styles
 - Looping
 - Thoughtful questions
 - . . . or both
- Matching dialog styles
- The role of intuition
- **The power of silence**

83

The Art of Listening – Final Thoughts

Pay attention to:

- What are we listening to?
- What are we listening for?
- Where are we listening from?

- Jennifer Cohen

www.sevenstonesleadership.com

84

In Practice – Reality Testing in Mediation

Understanding each side's BATNA / MLATNA

BATNA – best alternative to a negotiated agreement

MLATNA – most likely alternative to a negotiated agreement

85

In Practice – Reality Testing in Mediation

Understanding each side's BATNA / MLATNA

- “If the case doesn't settle, what do you see as the strengths and weaknesses for each side in court?”
- “. . . likely costs of litigation for each side?”
- “. . . likely impact on relationships?”
- “. . . likely impact on your life?”

Avoid becoming the enemy

- “I'm imagining myself on your side of the table and wondering how I would handle the ____ issue – is that issue a concern for you?”

Coaching the negotiation

- “What do you think the other side's response might be to your proposal?”

86

In Practice – Additional Questions

Regarding apology

“If you could rewind the video, is there anything you would do differently?”

Regarding diversity issues

“What are some things that it would be useful for me to know about you and this conflict in order to be helpful here?”

Regarding distributive bargaining

“How far in your direction do you think the other side might be willing to go?” (*not* “what’s your bottom line?”)

87

In Practice – A Few Caveats

Questions are not the only tools in our toolbox

- Reframing
- Stories (personal or non-personal)
- Metaphors
- Brainstorming options

88

In Practice – A Few Caveats

Curiosity vs. emotional / cultural boundaries

- Questions can connect us or divide us
- Asking permission (do no harm)

89

In Practice – A Few Caveats

Power imbalances and diversity factors

- **Economic power**
 - Employer - employee
 - Landlord - tenant
 - Insurer - insured
 - Manufacturer - consumer
 - Doctor - patient
 - Teacher - student

90

In Practice – A Few Caveats

Power imbalances and diversity factors

- Economic power
- **Impact of difference**
 - Race, gender, class, religion, ethnicity, disability, age, LGBTQ+, and other factors
 - How do these factors affect our questions?
 - . . . and how our questions are heard?

91

In Practice – A Few Caveats

Power imbalances and diversity factors

- Economic power
- Impact of difference
- **Legal representation**
 - Are some questions OK for lawyers to ask (because of their role)?
 - Does the presence of lawyers change the focus of what we're asking about?

92

Conclusions – The Art of Asking Questions

- **Ask yourself first: what is our purpose?**

93

Conclusions – The Art of Asking Questions

- What is our purpose?
 - **Early stages: relational**

94

Conclusions – The Art of Asking Questions

- What is our purpose?
- Consider the context
- Consider emotional impact
 - Eliciting emotion
 - Managing emotion
- Humility
 - Be ready to apologize
- Ask the hard questions mindfully
- **Compassion and curiosity**

95

Conclusions – The Art of Asking Questions

- A final word: As you use your superpower of asking **effective, transformative questions . . .**



96



Namaste

97

Questions from lawyers . . .

<https://www.youtube.com/watch?v=GSu7BGbyJqc>



98

Questions from therapists . . .

<https://www.youtube.com/watch?v=rerM3wbdnYs>



99