

Managing Truth Decay in the Intersection of Logic and Emotion

Presented by Sam Imperati, JD & Devin Howington, PhD

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[The presentation will be available on the CADRE website:
https://www.cadeworks.org/events/managing-truth-decay-
intersection-logic-and-emotion](https://www.cadeworks.org/events/managing-truth-decay-intersection-logic-and-emotion)

Technical Stuff:

- Please enter any questions or technical difficulties into the questions box.
- Thank you, in advance, for taking the time to respond to the brief survey at the end of the webinar!

How Do We Arrive at “Truth”?

What mediators need to know
about how parties experience
cognitive bias and emotion.

Sam Imperati, JD and
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Presenters



Sam Imperati, J.D.

- JD, UC Davis King Hall
- BA Humanities, Santa Clara
- Mediator, facilitator, trainer, teacher, author, lawyer, and Stand-Up Comedy Winner!
- Passionate about fairness, solving problems, and life!
- 2006 – 2020: Best Lawyers in America – ADR



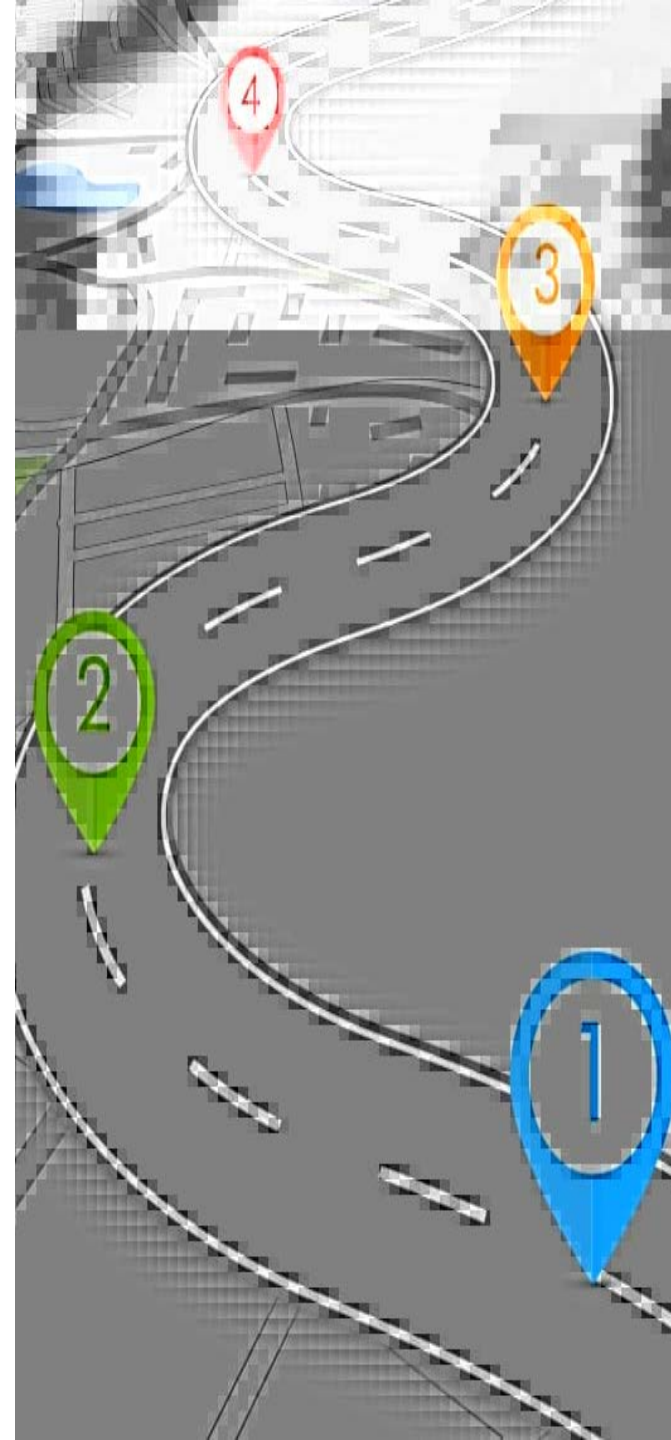
Devin Howington, Ph.D.

- PhD in Social Psychology, U of O
- MS Conflict Resolution, U of O
- Trained Mediator: Custody and Small Claims
- Experienced teacher: research methods, statistics, and social psychology
- Tries to keep Sam in line!

Presentation Roadmap

- How do people form their opinions and beliefs, and ultimately what they decide is “true”? What role do emotions play?
- Explore Rand’s Truth Decay Model to illuminate how the overreliance on opinion and a decay of trust in institutions impacts mediators, specifically those working in an institutional environment.
- Do mediators have an obligation to help parties find the “Truth” or should we simply help them discover their “truths?”
- Learn some tips and tools along the way!

We’ll raise lots of issues but give few (good) answers!



**What processes
do parties use to
arrive at the
“truth”?**

Understanding How People Think

System 1

- Generally automatic, affective (emotional).
- “Mental Shortcuts”- heuristics
- Efficient - few resources needed
- Examples:
 - *localize the source of a specific sound*
 - *complete the phrase "war and ..."*
 - *display disgust when seeing a gruesome image*
 - *read a text on a billboard*
 - *drive a car on an empty road*

System 2

- Slow, effortful, conscious, rule-based
- Used to monitor System 1
- Takes lots of resources
- Examples:
 - *dig into your memory to recognize a sound*
 - *determine the appropriateness of a behavior in a social setting*
 - *count the number of A's in a certain text*
 - *park into a tight parking space*

We rely on System 1 more than we like to admit

What are Cognitive and Implicit Biases?

1) **Cognitive Biases** = Shortcuts in our thinking make our judgments irrational. Our mind misfires in predictable ways and can cause errors in judgement.

- System 1
- All judgment and decision errors – not learned but pre-programmed
- Can only hope to adjust afterward, can't avoid!

2) **Implicit Biases** = The attitudes that affect our understanding and decisions in an unconscious manner. Typically referring to social prejudices.

- Activated without our awareness – System 1
- Can be both favorable and unfavorable assessments
- Built on learned social stereotypes



Why are we programmed to have cognitive bias?

COGNITIVE BIAS CHEAT SHEET BECAUSE THINKING IS HARD



1 TOO MUCH INFO

SO ONLY NOTICE...

- CHANGES
- BIZARRENES
- REPETITION
- CONFIRMATION



2 NOT ENOUGH MEANING

SO FILL IN GAPS WITH...

- PATTERNS
- GENERALITIES
- BENEFIT OF DOUBT
- EASIER PROBLEMS
- OUR CURRENT MINDSET



3 NOT ENOUGH TIME

SO ASSUME...

- WE'RE RIGHT
- WE CAN DO THIS
- NEAREST THING IS BEST
- FINISH WHAT'S STARTED
- KEEP OPTIONS OPEN
- EASIER IS BETTER



4 NOT ENOUGH MEMORY

SO SAVE SPACE BY...

- EDITING MEMORIES DOWN
- GENERALIZING
- KEEPING AN EXAMPLE
- USING EXTERNAL MEMORY

BY @BUSTER
[HTTP://BIT.LY/THINKING-IS-HARD](http://bit.ly/thinking-is-hard)

We're so darn human!

- **Confirmation Bias:** Only using or seeking out information that confirms their beliefs; devaluing information that doesn't fit with existing beliefs.
- **Naïve Realism:** The human tendency to believe we see the world objectively and without bias. We assume that others who do not share the same views must be ignorant, irrational, or biased.
- **Cognitive Dissonance:** The uncomfortable feeling people get when holding two “competing” ideas in mind at once. This compels us to get rid of the troubling thoughts by rationalizing our behavior or dehumanizing others.

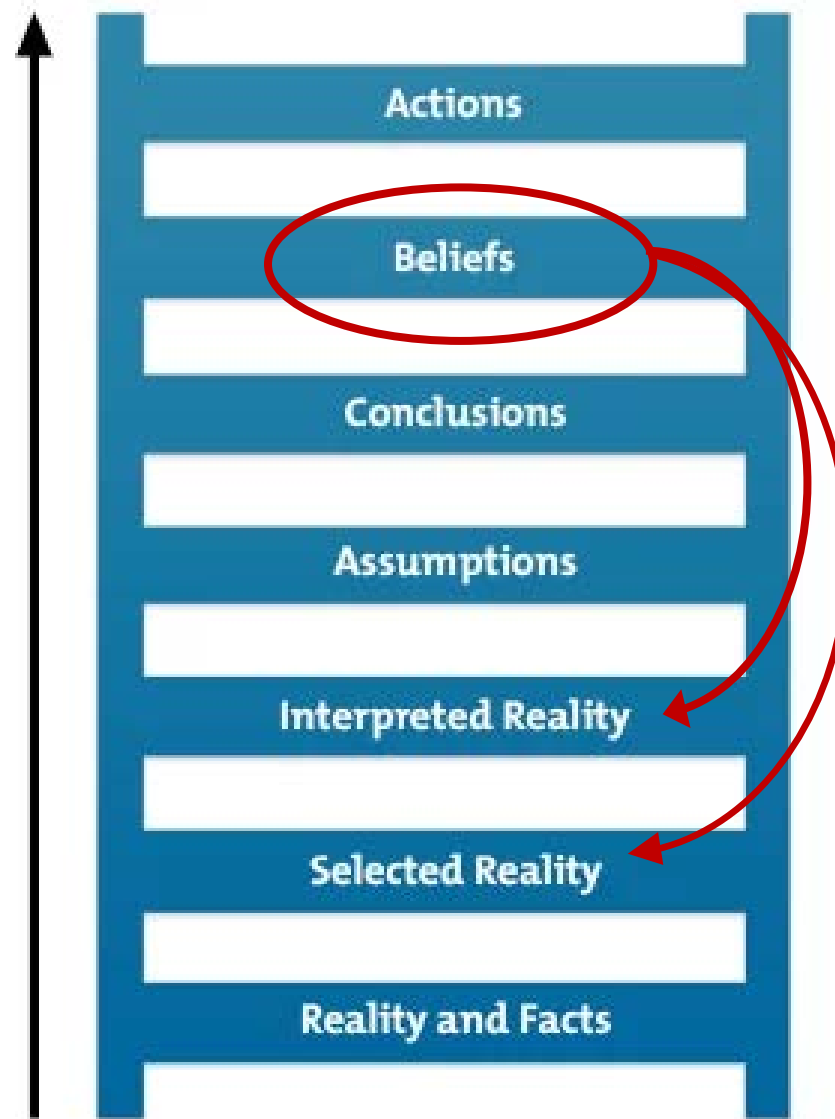
Cognitive Biases and Tips for Handling

Traps

Tips

<p>Anchoring: Getting stuck on the first offer/number they see and being unable to break free of that starting point. All other moves are in relation to that offer/number.</p>	<ul style="list-style-type: none">• Reality Testing• Tie to legitimate outside standards.• Anchoring happens if they feel under pressure to make a decision.• Give them time and be ready to give them more if they feel under pressure to make a quick decision.
<p>Availability Bias: Tendency to rely on information that is more readily available to them. Example: It's easy to think of the last fatal plane crash, but harder to think of a specific car crash, making people think planes are more dangerous than cars.</p>	<ul style="list-style-type: none">• Ask, "What information will they be relying upon and will the decisionmaker find it reasonable?"• Have them research, focus on facts, and avoid relying on gut instinct.
<p>Confirmation Bias: Only using or seeking out information that confirms their beliefs; devaluing information that doesn't fit with existing beliefs.</p>	<ul style="list-style-type: none">• Ask them to consider multiple perspectives.• Have them seek out people that challenge their opinions or ask you to be the "devil's advocate."

Ladder of Inference



The Ladder Explained

- Reality and facts are at the bottom. From there, parties:
 - Experience reality/facts selectively based on their beliefs and experience;
 - Interpret what they mean;
 - Apply assumptions, often without challenging them;
 - Draw conclusions based on their interpreted facts and assumptions;
 - Develop beliefs based on those conclusions; and
 - Take actions that seem "right" because they are belief-based.

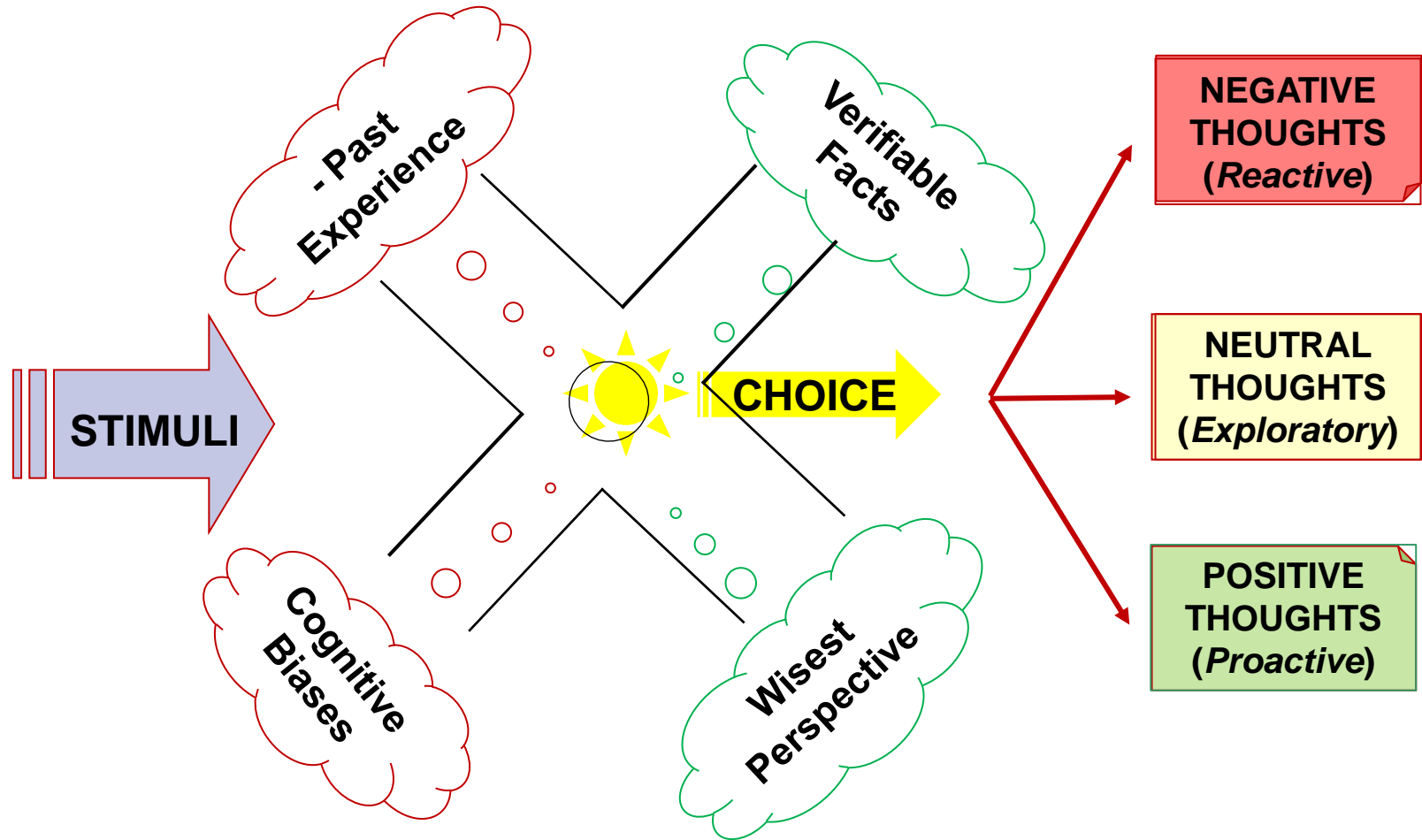
- Creates a vicious cycle. Soon they are literally jumping to conclusions by missing facts and skipping steps in the reasoning process. **Example: "A Better Time to Meet"**

Ladder of Inference Audit

Help parties audit the way they make inferences using the following questions. Have them imagine what their wisest friend would think, how the other person involved might answer these questions, or how they might feel one year from now.

- *What are the basic facts?*
- *Are these all of the facts (subtext: not just the ones you've chosen because they fit your belief)?*
- *What are all the possible interpretations of those facts?*
- *What assumptions are we making?*
- *Is there a provable basis for our assumptions?*
- *What other facts are out there and how could they impact our analysis?*
- *What actions should we take based on this new analysis?*
- *Why is this the "right" thing to do?*

Understand the Intersection of Logic & Emotion



“Our life is what our thoughts make it ...” Marcus Aurelius

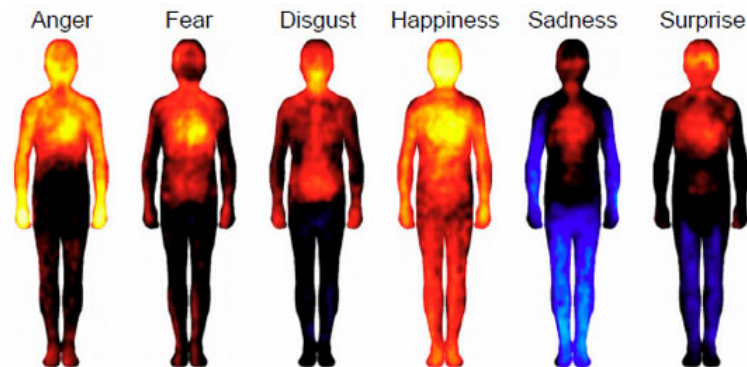
The Rational – Emotional Divide

- As mediators, we know a lot about how to analyze the facts and law, the odds of winning, and the likely outcome.
 - *Our dominant culture values the “rational” approach.*
- But the parties are human (like us!) – often complex, social, and emotional beings that can make decisions that aren’t always rational.
 - *Emotions are, for better or worse, the dominant driver of most people when they are making meaningful decisions.*
 - *It’s much easier to be rational when we are not inside the conflict our self!*

Emotions Impact Decision Making and It's Not Random!

- Anger and fear can affect risk perception:
 - *Angry people:*
 - *more optimistic about future events (approach)*
 - *they see less risk*
 - *Fearful people:*
 - *more pessimistic about future events (avoid)*
 - *they see greater risk*

Emotions serve a purpose and create differing motivations. We need to understand them to satisfy our parties' core concerns.

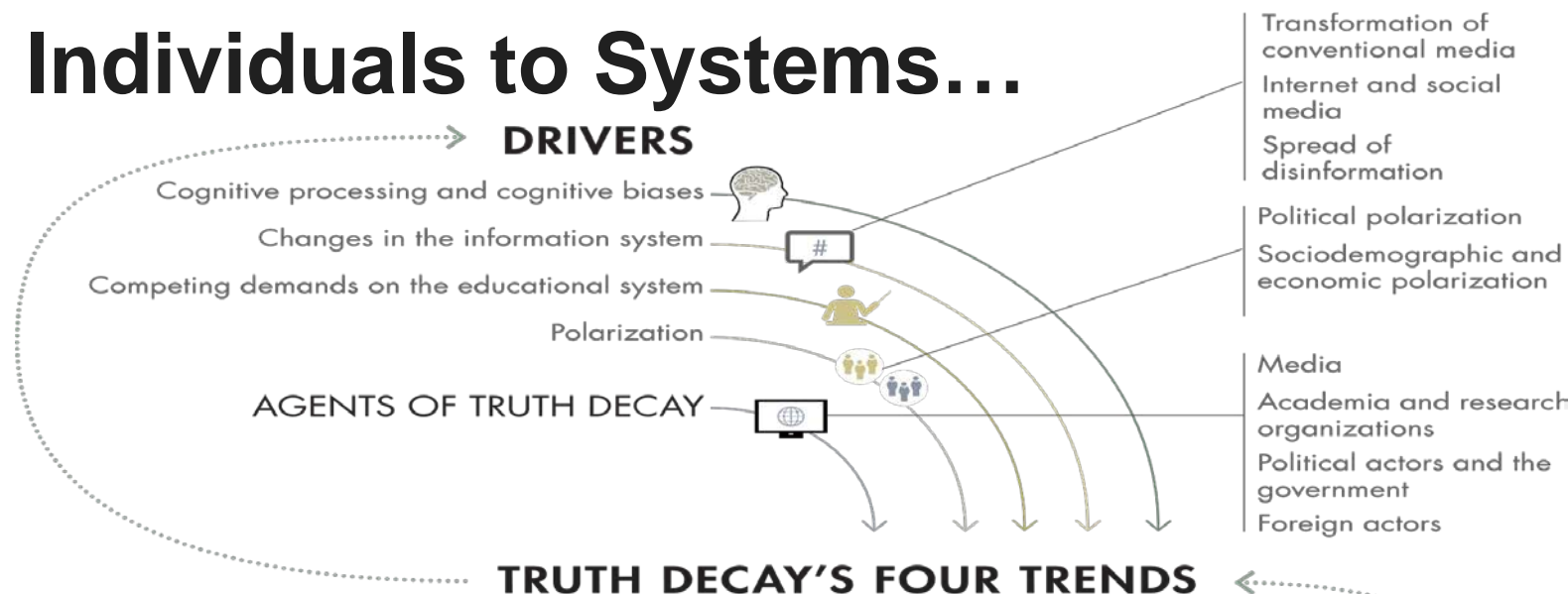


How do Parties Arrive at the Truth?

- Five key criteria parties use to evaluate the “truth”:
 - General acceptance by others,
 - Amount of supporting evidence,
 - Compatibility with their beliefs,
 - General coherence of the statement, and
 - Credibility of the source of the information
- Parties are looking for “fluent processing” and “cognitive simplicity.”



From Individuals to Systems...



TRUTH DECAY'S FOUR TRENDS

- Increasing disagreement about facts and data
- A blurring of the line between opinion and fact
- The increasing relative volume and resulting influence of opinion over fact
- Declining trust in formerly respected sources of factual information

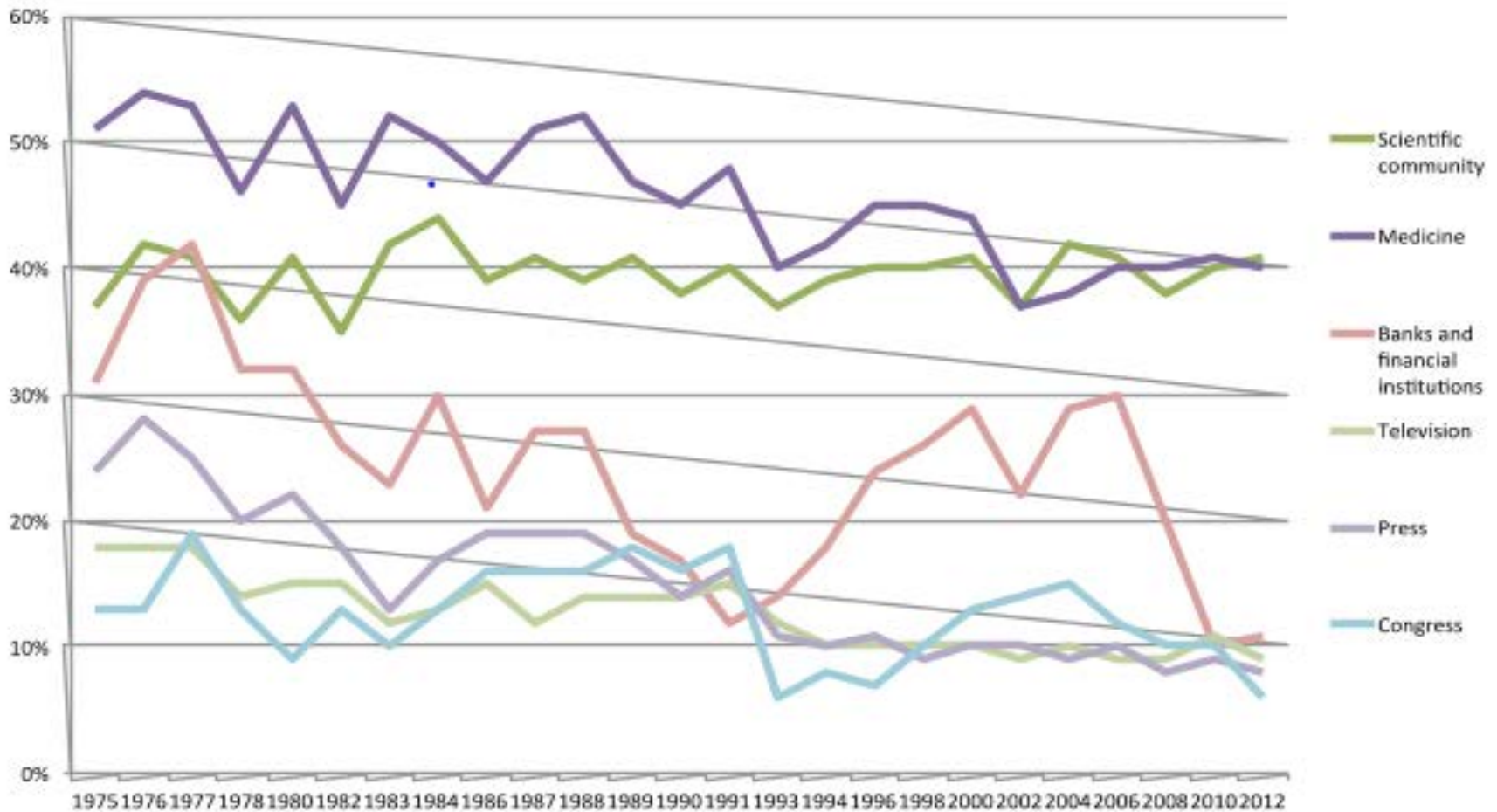
CONSEQUENCES

at the personal, community, national, and international levels

- Erosion of civil discourse
- Political paralysis
- Alienation and disengagement
- Uncertainty

Truth erosion leads to trust erosion

17% of Americans Trust the Government in 2019

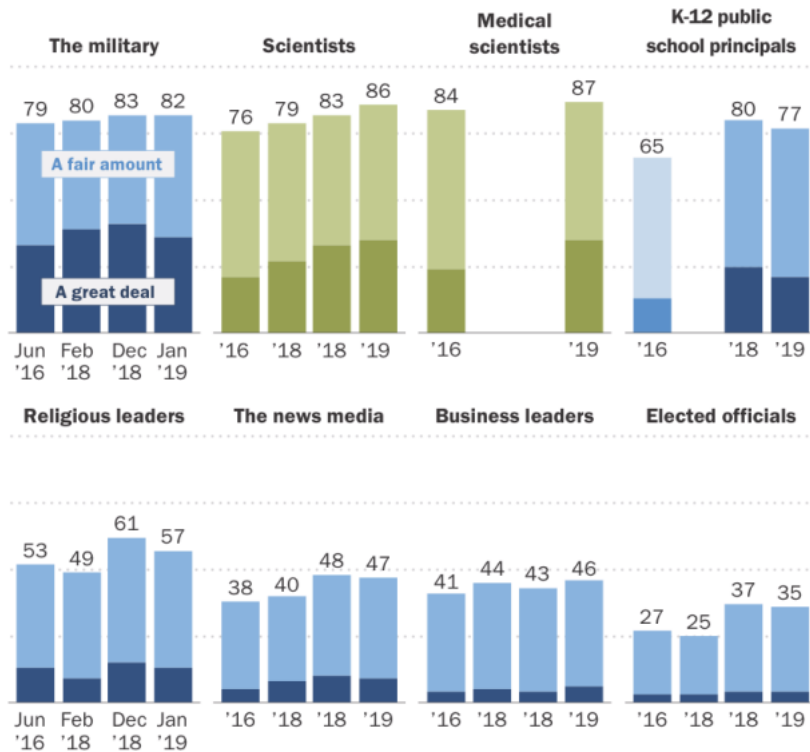


Source: NSF

Trust and Confidence in The Educational System

Americans' confidence that scientists act in the public interest is up since 2016

% of U.S. adults who say they have a great deal or fair amount of confidence in each of the following groups to act in the best interests of the public

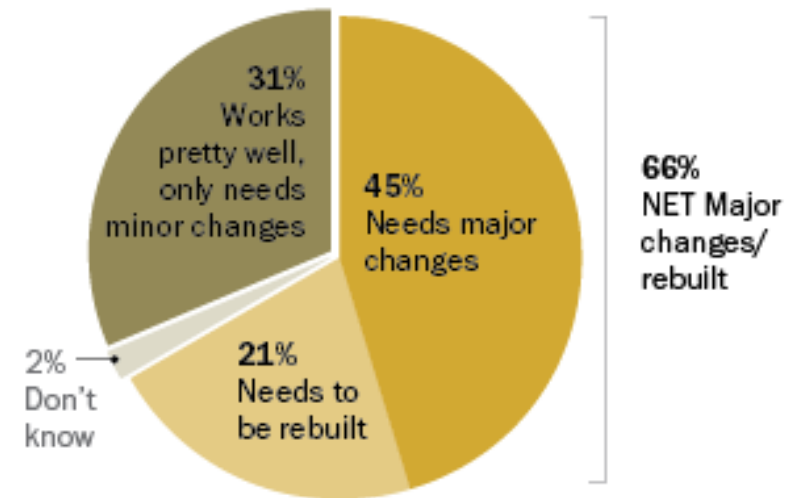


Note: In 2016, question asked about confidence in K-12 public school principals and superintendents. Respondents were randomly assigned to rate either their confidence in "scientists" or "medical scientists" in 2016 and 2019. Respondents who gave other responses or who did not give an answer are not shown.
 Source: Survey conducted Jan 7-21, 2019.
 "Trust and Mistrust in Americans' Views of Scientific Experts"

PEW RESEARCH CENTER

Views of the Education System

% saying the education system ...



PEW RESEARCH CENTER May 1-5, 2013.
 Figures may not add to 100% because of rounding.

PEW RESEARCH CENTER

**What does “truth”
really mean in
mediation?**

Words Matter



“Facts” = something that has actual existence:
objective reality

“Truths” = the body of real things, events, and
facts, the state of being the case

“Beliefs” = a state of mind in which confidence
is placed in some person or thing,
considered to be true or held as an
opinion

1. Which of the following should mediators focus on most?

A. Facts

B. Truths

C. Beliefs/Opinions

Perceptions of Truth in a Mediation

“What may appear as Truth to one person will often appear as untruth to another person. But that need not worry the seeker. Where there is honest effort, it will be realized that what appear to be different truths are like the countless and apparently different leaves of the same tree.” – Gandhi

- Is there one “Truth” when it comes to the content of our mediations or does everyone have their own “truth?”
- *“They Saw a Game”* – Hastorf and Cantril (1952)
 - Students watching a football game (the same tape!) constructed different realities on objective measurements depending on their affiliation with one team or the other.
- Reality is constructed and how should mediators deal with Truth Decay if the parties each have their own “truth”?

http://www.gandhi-manibhavan.org/gandhiphilosophy/philosophy_truth_meaning.htm

<http://www.pgpmmediation.com/get-hung-facts/> <http://mediationblog.kluwerarbitration.com/2018/02/08/map-not-territory/>

Operationalizing Mediation Standards

- Does **Self-Determination** outweigh your concerns?
- Can you maintain your **Impartial Regard** if you feel a party's relationship with the "truth" seems unfair to you? How would you do that?
- While you're not anyone's lawyer, does knowing or not knowing the "Truth" effect your obligations surrounding **Process and Substantive Competence**?
- Is their participation in good faith if they're "too flexible with the truth?" Did you discuss your "truth" concerns with them as recommended under **Good Faith Participation**?

“Deep Thoughts” With Devin and Sam!

- Is there one “Truth” when it comes to the content of our mediations or does everyone have their own “truth?”
- Reality is constructed, so how should mediators deal with Truth Decay if the parties each have their own “truth”?
- Is there an external objective and verifiable reality?
- Are there reasonably held beliefs where each person’s “reality” is different?
- **“Objective reality is not the whole scope of the human condition” Sam**
 - *After several hours of debate with Devin, who was pushing him to admit this!*

TOOL TIME



What tools should a mediator use, if a mediator should use tools?

What if it's easier for the parties to dispute the facts than it is to alter their deepest beliefs? The mind doesn't follow the facts. **Facts, as John Adams puts it, are stubborn things, but our minds are even more stubborn.**


Backfire Effect = When people's core beliefs are challenged, and they end up feeling even stronger about them.

Remind people that their beliefs are not "them!" People's previously held beliefs may have made sense given the information they had and remind them it's ok to update based on new information.

Give them a "Way Out With Dignity. (W.O.W.D.)

Manage Their Cognitive Conflict

“Cognitive Conflict” = Importance x Uncertainty

- 
- 1) High Importance and High Uncertainty
 - 2) High Importance and Low Uncertainty
 - 3) Low Importance and High Uncertainty
 - 4) Low Importance and Low Uncertainty

- Too Much Cognitive Conflict Can Create Panic
- Too Little Cognitive Conflict Can Create Apathy

**Manage Their Risk Biases With “BATNA” Analysis and
Focus them on MLATNA =
Most Likely Alternative To a Negotiated Agreement**

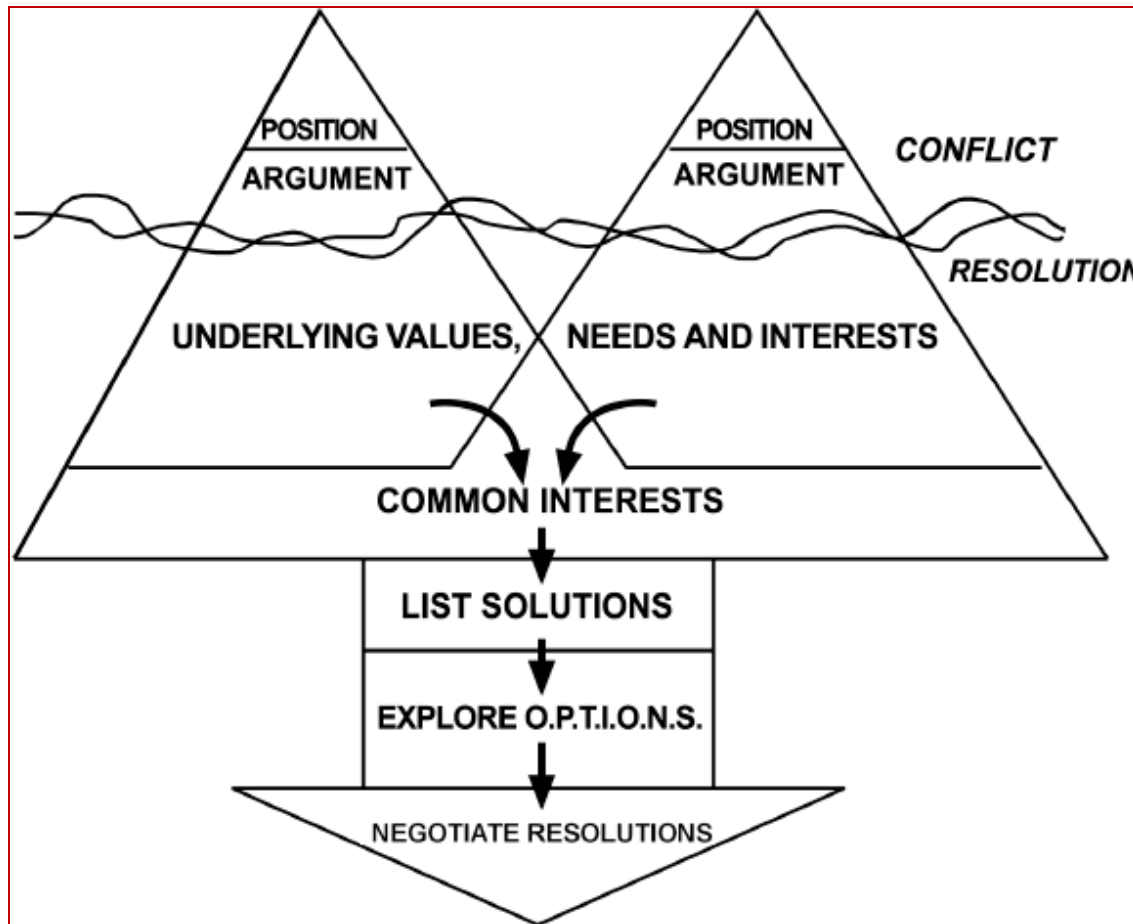
More Tools

- **Help parties understand *how* they determine “facts”:**
 - Normalize cognitive biases and changes in points of view (e.g., Anchoring, Fundamental Attribution Error, Confirmation Bias, Reactive Devaluation, etc.)
 - Help them be more open to the “facts” of others
- **Help parties understand *what* the facts are:**
 - Create an agreed-upon basis for “strong and reliable” information
 - Engage in joint fact-finding
- **Help parties with their non-fact-based processes to make decisions and form beliefs:**
 - Manage the “intersection of logic and emotion”
 - Help them “explore vs. debate”

Tools, continued

- **Help people determine what is important to them**
 - External reference points of fairness such as: Justice, Equity, Fairness, Law, Cultural Norms, etc.
 - Others?
- **Help each understand what is important to the other**
 - Focus on where they do agree
 - Get to a “truth” they can live with
- **Normalize the idea that each may have their “truth”**
 - It’s ok that they each see things differently if the issue is their “truths,” but if it’s not ...
 - If a party has their “truth,” perhaps it’s OK for the other person to have theirs

When we can't get any agreement on facts, just keep going deeper to find shared values or interests ...



Framing issue with an “umbrella question” accommodates multiple “truths”

How can we address _____
(interests of Party A)

while at the same time _____
(interests of Party B)

thereby satisfying our _____?
(common interests)

Example:

How can we support David’s opportunities to socialize while at the same time improving his academic progress; thereby ensuring David continues to develop into a happy and independent child?

Tools, continued

Uncertainty, strong emotions, and cognitive biases are all normal.

Explain: “We’re all so darn human and our first reactions are not always reliable. I’m confident you will make a good choice when the time comes.”

Say, “I sometimes catch myself reacting to suggestions from the other side. It helps when I don’t respond immediately and give myself time to objectively consider the situation.”

Because parties often think otherwise, explain **Correlation** is a connection between two variables. It doesn't necessarily mean that one caused the other. **Causation** is when one variable causes another ... and that’s what we have to prove.

Normalize Their Reactions

Tools, continued

- Give them time – We use shortcuts especially when time-pressured. Full-blown emotions are short-lived, 10 minutes can reduce the effects.
- Break problems into digestible chunks
- Ask them:
 - *“Have you seen _____ (relevant bias) in others?”*
 - *“I fall in that trap from time to time. Do you ever fall into it?”*
 - *“Knowing we all have biases, what do you think now?”*

“We all have excessive confidence in what we believe we know, and we fail to recognize our apparent inability to acknowledge the full extent of our ignorance and the uncertainty of the world we live in.”

Kahneman

Ask Open-Ended Questions Especially if They “Turn” on You

“Tell me more about that ...”

“What are you feeling right now?”

“Would it be helpful if ...?”

“Do you have any suggestions on how we can ...?”

“We all want a fair result. What standard can we look to?”

“What do you think I’m missing in assessing this situation?”

“We’re momentarily stuck, how can we get back on track?”



Questions to get to a deeper understanding of the issues

■ Amplify Contradictions & Widen the Lens

- *How do you decide which information to trust?*
- *Is there any part of the [other side's] position that makes sense to you?*

■ Ask Questions that Get to People's Motivations

- *What do you want the other side to understand about you?*
- *What do you want to understand about the other side?*

■ Listen More and Better

- *How do you feel, telling this story?*
- *Where does that (feeling, emotion, paranoia, distrust...) come from?*

■ Expose People to the Other Tribe & Counter Confirmation Bias

- *What do you think the other group wants?*
- *Help me make sense of this, because other people are saying...*

Questions from this great resource:

<https://thewholestory.solutionsjournalism.org/22-questions-that-complicate-the-narrative-47f2649efa0e>

Then, Ask if They Need a “Resolution” or a “Settlement”

	“Resolution”	“Settlement”
Definition	Durable, Satisfying Solution	Walk Away Equally Unhappy
Getting the Deal	Slower	Faster
Acceptance	Sooner	Later
Result	Success	Compliance
Maintenance	Low	High
Iceberg Location	Above Waterline	Below Waterline

Ask if they want to **“Build a Relationship and Fix the Problem”**
or

“Build a Case and Fix Blame?”

Final Thought



Go Forth and Help The Parties Navigate the Intersection of Logic and Emotion!

Thanks!

Extra Resources

Cognitive Biases and Tips for Handling

Traps

Tips

Construal Biases: Parties think others hold more extreme views than they do. For example, believing the employer in a union negotiation want to offer zero vacation days.

- Reality testing: Test their assumptions and have them put on their “third party” hat to see what an objective observer might think about the situation.
- Investigate these assumptions with the other side.

Endowment Effect: People value things they already own more than others value them because they see the concession as a loss of what is theirs.

- Use open-ended questions to uncover underlying interests.
- Normalize and help them decide what’s best with a cost/benefit analysis.

Fairness: Parties reject deals if they perceive their norms of fairness will be violated by accepting. Related, **The Just World Hypothesis:** Most clients prefer a just world and therefore presume it exists – and that things happen for fair reasons.

- Reality testing: Is the judgment likely to be fair? Is it unfair or just normal concessions in the process of negotiation?
- VECS and use open-ended questions to uncover their real interests.

Cognitive Biases and Tips for Handling

Traps

Tips

Framing Effects: Decisions are heavily influenced by the way they are presented. For example, you can buy beef that is 75% lean or buy beef that is 25% fat. Which would you prefer? Additionally, people tend to avoid risk with a gain frame but seek risks with a loss frame.

Fundamental Attribution Error: Tendency to assume other's actions are because of their characteristics (e.g. rude or selfish) rather than their situation (stressed or challenged by something external).

Overconfidence Bias: When clients place too much faith in their own knowledge and opinions. Often combined with **Anchoring**, meaning clients act on hunches because they have an unrealistic view of their abilities or the situation.

- Be mindful in how you present options. Are you presenting it as them avoiding a loss or gaining something?
- Consciously decide whether to frame as a loss or a gain.

- Suggest they be generous in interpreting the other side's actions.
- What are the reasons you might act as they are/have?

- "What sources of information do you tend to rely on for big decisions?"
- "Are these fact-based?"
- "Has our information been gathered systematically?"
- "Who else will have information?" 41

Cognitive Biases and Tips for Handling

Traps

Tips

<p>Reactive Devaluation: Dismissing a proposal from others on the assumption that it is either motivated by self-interest, or less valuable, or simply because they make them. “I don’t like that idea because they proposed it.”</p>	<ul style="list-style-type: none">• Walk them through a cost/benefit analysis to overcome their initial gut rejection.
<p>Recency Bias: tendency to overvalue the latest information available. People think the most recent information holds the most influence. Primacy: the reverse.</p>	<ul style="list-style-type: none">• Ask, “What information will they be relying upon and will the decisionmaker find it reasonable?”• Give them facts so they will be less likely to rely on gut instinct.• Repeat the facts, especially the ones that hurt.
<p>Sunk Costs: People tend to “throw good money after bad,” favoring options where we have already incurred substantial costs, even though these costs are gone.</p>	<ul style="list-style-type: none">• Help them with System 2 thinking by doing a cost/benefit (BATNA) analysis.• Help them realize that all options have the same future cost, because costs incurred are already lost.

The Ultimate Cheatsheet for Critical Thinking

Want to exercise critical thinking skills? Ask these questions whenever you discover or discuss new information. These are broad and versatile questions that have limitless applications!



Who	<ul style="list-style-type: none"> ... benefits from this? ... is this harmful to? ... makes decisions about this? ... is most directly affected? 	<ul style="list-style-type: none"> ... have you also heard discuss this? ... would be the best person to consult? ... will be the key people in this? ... deserves recognition for this?
What	<ul style="list-style-type: none"> ... are the strengths/weaknesses? ... is another perspective? ... is another alternative? ... would be a counter-argument? 	<ul style="list-style-type: none"> ... is the best/worst case scenario? ... is most/least important? ... can we do to make a positive change? ... is getting in the way of our action?
Where	<ul style="list-style-type: none"> ... would we see this in the real world? ... are there similar concepts/situations? ... is there the most need for this? ... in the world would this be a problem? 	<ul style="list-style-type: none"> ... can we get more information? ... do we go for help with this? ... will this idea take us? ... are the areas for improvement?
When	<ul style="list-style-type: none"> ... is this acceptable/unacceptable? ... would this benefit our society? ... would this cause a problem? ... is the best time to take action? 	<ul style="list-style-type: none"> ... will we know we've succeeded? ... has this played a part in our history? ... can we expect this to change? ... should we ask for help with this?
Why	<ul style="list-style-type: none"> ... is this a problem/challenge? ... is it relevant to me/others? ... is this the best/worst scenario? ... are people influenced by this? 	<ul style="list-style-type: none"> ... should people know about this? ... has it been this way for so long? ... have we allowed this to happen? ... is there a need for this today?
How	<ul style="list-style-type: none"> ... is this similar to _____? ... does this disrupt things? ... do we know the truth about this? ... will we approach this safely? 	<ul style="list-style-type: none"> ... does this benefit us/others? ... does this harm us/others? ... do we see this in the future? ... can we change this for our good?

Thank you for joining us!

Please take a few minutes to respond to this brief survey about your experience:

Webinar Survey:

<https://www.surveymonkey.com/r/manage-truth>

