


**30th Annual DRC
Conference, *ADR:
Improving the
Resolution of
Civil Cases***



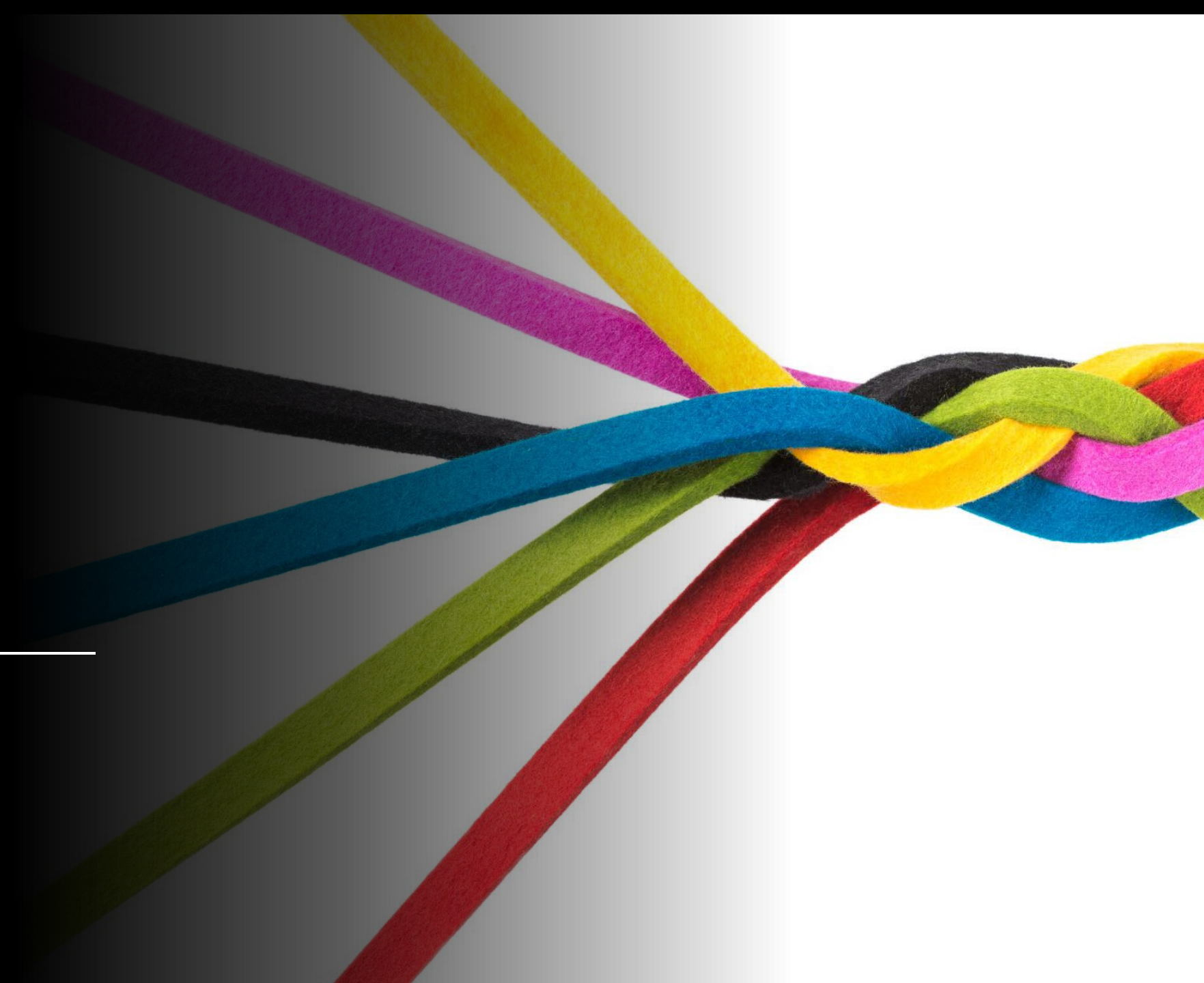
**“We must adjust to
changing times and still
hold to unchanging
principles.”**

— Jimmy Carter



You cannot change
what has already
happened. You can
always change the
way you respond.

— Ron Kaufman

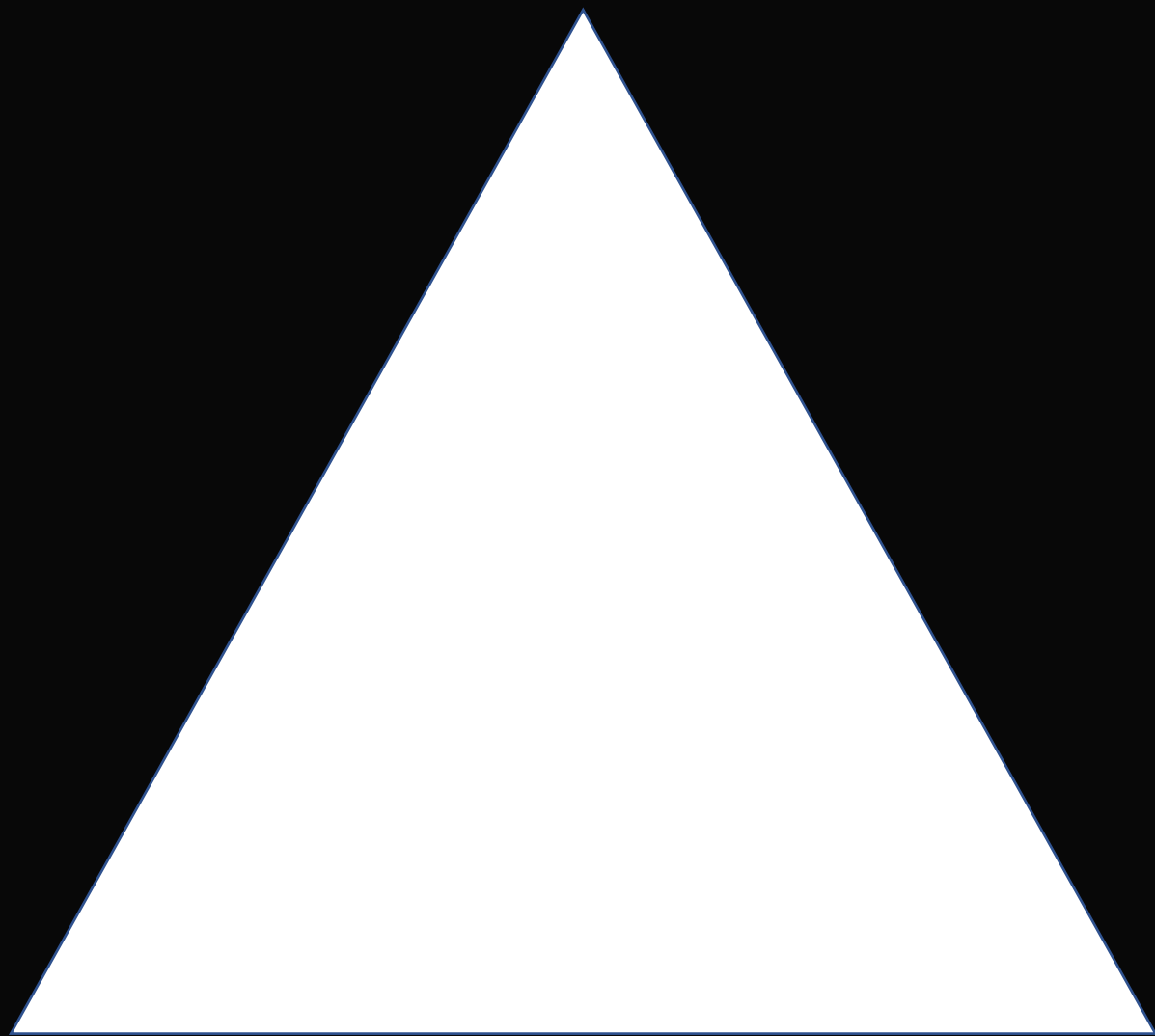


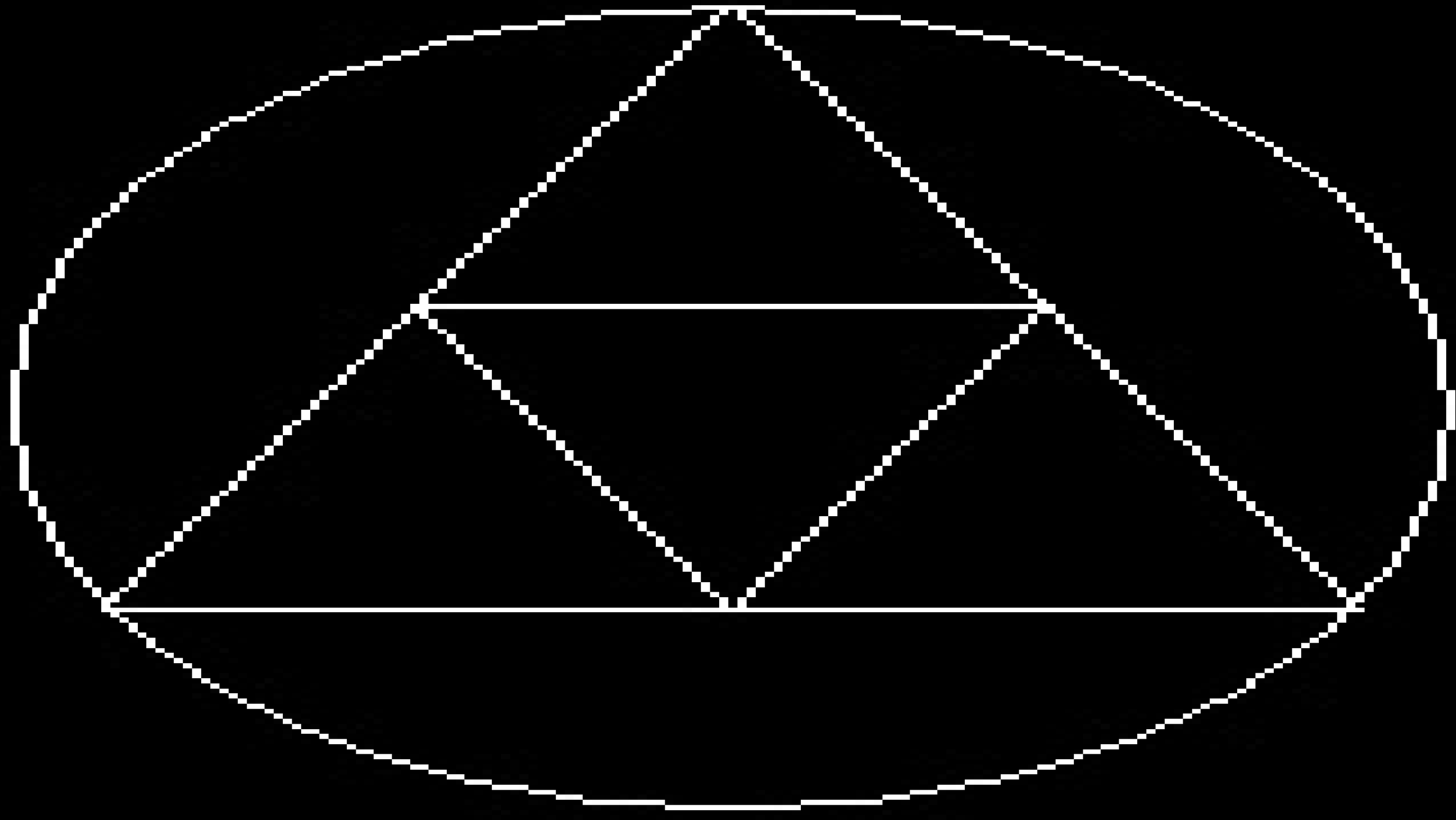






RELATIONSHIPS













• **IF IT FITS, IT BELONGS**

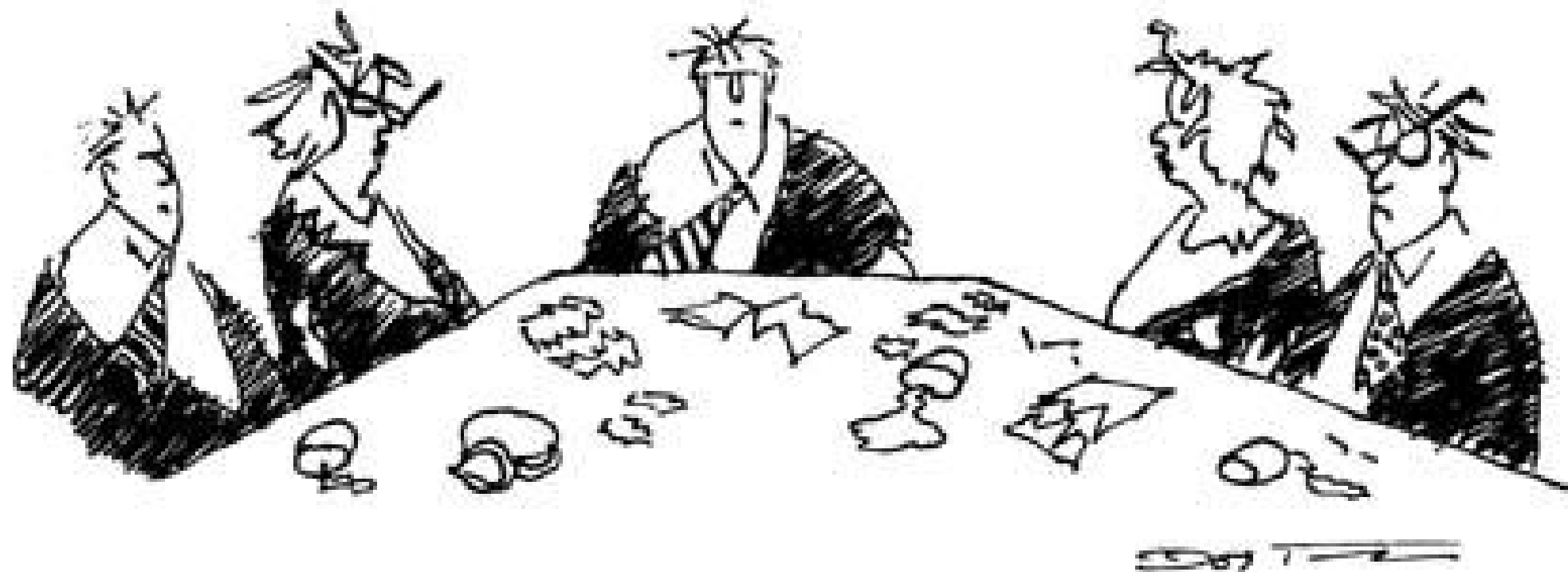
LITIGATOR MEDIATOR FORUM



The Mediator's Dilemma: Joint Session, or no joint session ?

Part Deux





The mediation had gotten off to an inauspicious start.

The chief peril of a **joint session** is that it denigrates into an adversarial exercise that drives a stake in the heart of settlement. The **joint session**, and indeed the entire **mediation**, can be hijacked by a party/attorney intent on demonstrating how they are going to crush the opposing party at trial.

When mediation participants are kept separated, and the mediator becomes nothing more than a messenger, communication suffers.

Mediation has been around for several thousand years, and the joint session has always been a pivotal part of that process.

A majority of JAMS mediators have experienced increased resistance to the use of initial joint sessions. The preference of attorneys is a primary consideration in deciding whether to have a joint session, and comments indicate mediator sensitivity to lawyer resistance.

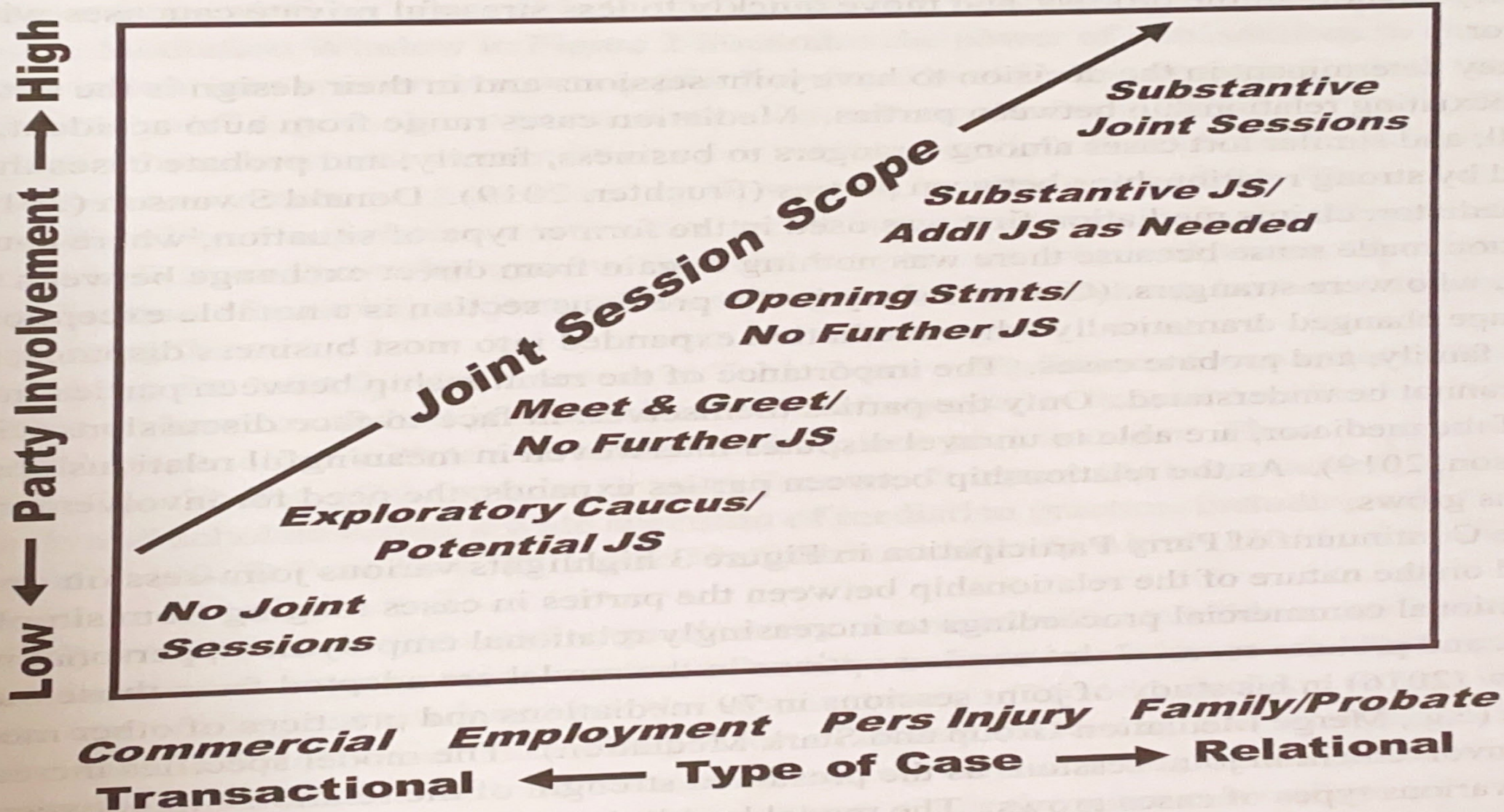
It is time to recognize changing circumstances and client preferences. Mediators need to deconstruct joint sessions to determine what purpose they currently serve, how they might be restructured, and what other methods are available to accomplish their intended purposes

“No mediator is going to make a living if she or he goes around telling experienced litigators to be more spiritual and take a more transformative path”.


DATA

A photograph showing four blue dice arranged in a row on a light-colored tiled floor. Each die has a white letter on its top face, spelling out the word 'DATA' from left to right. The dice are slightly tilted, and the background shows the grid lines of the floor tiles.

Figure 3: Continuum of Party Participation



Source: C.D. Bultena, K.R. Tilker, C.D. Ramser

- 
- If a decision is made to commence with a joint session, it is important for the mediator to set a positive tone in the opening remarks.
 - During the opening remarks prior to the joint session, it is important for the mediator to protect the process.

- Much of the structuring, and many of the strategies and techniques of the rationalist approach to negotiation and mediation are slowly being reconsidered in light of neuroscience and cognitive psychology.



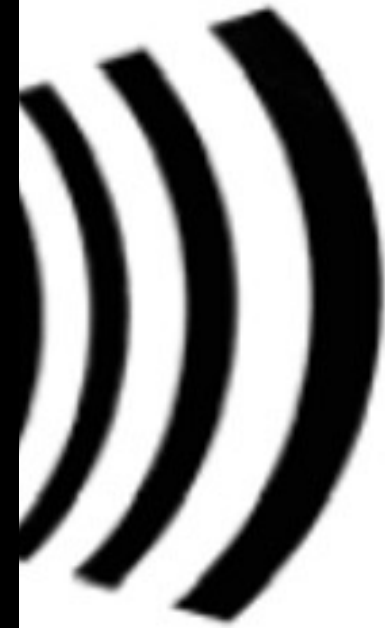
TAKE A STROLL THROUGH YOUR MIND

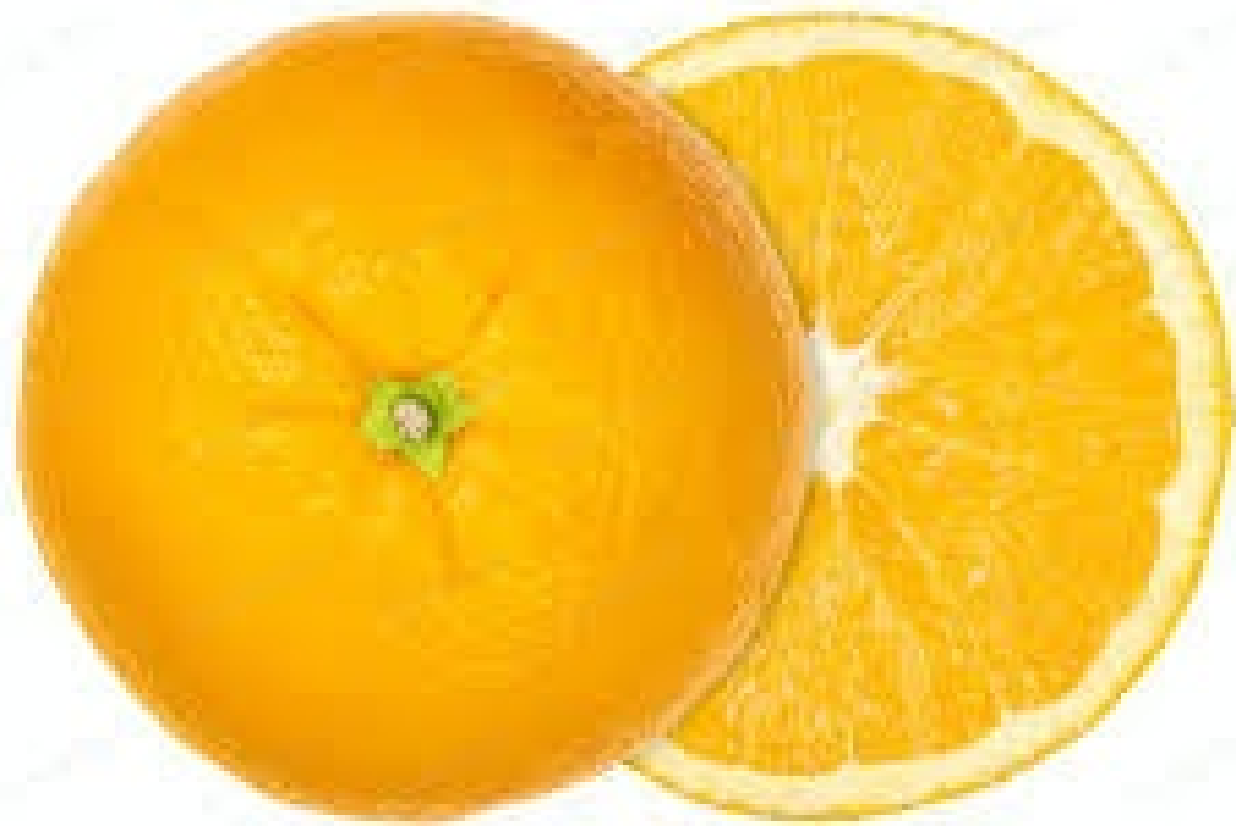


The Ethics of Control

- **Create the environment and ambiance**
- **Set the tone**
- **Achieve common purpose by understanding perspectives and positions**
- **Discern motives and interests by observing and listening**

LISTEN





OBSERVE



FedEx

Federal Express

amazon

The Amazon logo consists of the word "amazon" in a bold, dark blue, lowercase sans-serif font. Below the word is a curved orange arrow that starts under the letter 'a' and points to the right, ending under the letter 'n'.



Person 1

Person 2





• Video mediations can make people more comfortable and productive.

The New Normal



#214210434



THANK YOU
gknox1017@gmail.com



REFERENCES

- Don't Torch the Joint Session. Eric Galton and Tracy Allen. DISPUTE RESOLUTION MAGAZINE Fall 2014
- Reclaiming the Power of The Joint Session. Vol.12 Southern Journal of Business and Ethics, 2020
- <https://www.facebook.com/DouglasNoll/videos/how-to-listen-others-into-existence/1020139485409229/>
- Top 21 BENEFITS OF VIRTUAL MEDIATION. Eric Galton: lakeside mediation.com/2022/07/13
- Plaintiff magazine Healthy Joints In Mediation. Rebecca Grey. 2020 August
- Mediate.com The Shrinking Joint Session: Survey Results. Jay Folberg. March 15,2016