

Negotiation Tricks for Successful Mediators: The Framing Effect

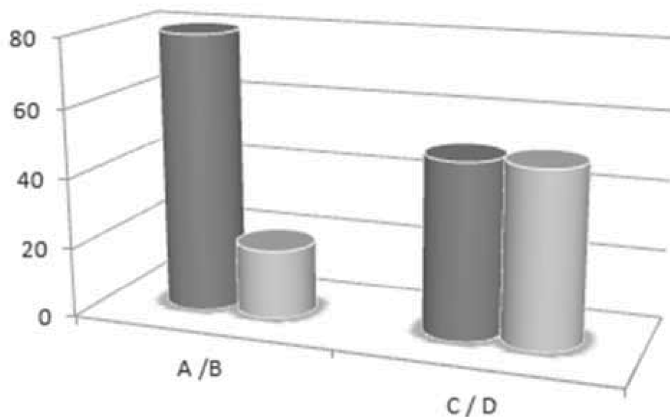
By Claudia Winkler

On February 13, 2013 a group of 120 Harvard students was confronted with an atypical life-or-death decision.

“Imagine you are leading a country that experiences an unprecedented epidemic, expected to kill 600 people. Two alternative programs to fight the disease have been proposed and you have exact scientific estimates of the consequences following the implementation of either. If program A is adopted, 200 people will be saved. If program B is adopted, there is a one-third probability that all people will be saved and a two-thirds probability that no people will be saved. Which would you chose?”

The author, a member of the class, instantly logged “A” into the little voting device that had been distributed to collect the students’ individual responses.

“Now how would you decide if the two alternative programs you have to chose from were the following. If program C is adopted, 400 people will die. If program D is adopted, there is a one-third probability that nobody will die and a two-thirds probability that 600 people will die.”



The author chose “D.” Seconds after the last student made her choice a bar chart appeared on the big screen.

In the first, positively formulated version of the question, 80% of the students voted for program A, the safe strategy that saves 200 people. Only 20% chose program B, the risky strategy. In the second, negatively formulated version of the question, only 50% chose the safe program, while the rest opted for the riskier one. It does not take much explanation to show that options A and C are the same. In option A 200 out of 600 people are saved; in option C 400 out of 600 people die, leaving 200 saved. Options B and D are the same too. Option B has a one-third probability that all will be saved. Option D has a two-

thirds probability that no one will be saved, i.e., one-third possibility that all will be saved.

Realizing that they had failed to correctly conceptualize the presented numbers and make a rational decision based on them, some students joked about having chosen the right profession to apply their excellent numerical skills to. Others stared at the numbers skeptically. All were confused about the decisions they had just made. *We had been framed.*

The Power of Framing

Framing is an innate skill, used by our subconscious every day. Framing makes us declare some aspects of a situation we experience meaningful, but not others. Framing helps us to draw other people’s or our own attention to a specific aspect of an issue. Framing defines our individual angle on the world. Framing influences our perceptions and decisions. Framing is our process of constructing and representing our interpretation of a situation.

Good negotiators take frequent advantage of framing as a means of representing a subject and purposefully presenting issues in ways advantageous to them. The most prominent example is the shift from positions to interests, as Fischer & Ury have taught for decades.¹ Other tools of framing include: losses versus gains, short versus long horizons, aggregation versus segregation and superordinate versus concrete goals. All these framing mechanisms can also provide mediators with a variety of tools helpful to influence the parties’ perceptions and decisions.

Framing in Mediation

Mediators do not have negotiation power. We do not have leverage points or bargaining strengths. In fact we lack any (direct) power to compel an agreement between the parties. Our greatest power lies in the committed trust in us to be the liaison between the parties and in being relied upon to help them communicate and to use our persuasive skills to assist them in coming to an agreement.

(Re-)framing, subconsciously or purposefully, is every mediator’s most used and most powerful tool. With both parties strongly believing that their views are right, the mediator is called to reframe this self-centered approach to a more solution-oriented, problem-solving and collaborative perspective. Restating and reframing negative, egocentric, positional and unproductive statements or viewpoints to more positive, open, interest-based and productive communication can take the same issue from an impasse to a solvable conflict.

Successful framing as a mediator is more difficult than as a negotiator as it requires the mediator to first get to a full understanding of the parties’ views of the dispute. Once in sync with a party’s construction of reality the me-

diator needs to “pierce the party’s operative mythology and alter, shift, or transform the context of a dispute so that it is susceptible to resolution.”² By “context” Benjamin means the “framing or understanding of the dispute, how a party views what the fight is about and presents it.”

Therefore, the challenge for the mediator is to recognize the frame that the parties operate in. The mediator can then, step by step, provide them with an alternative way of conceptualizing their conflict in a common frame by 1) acknowledging their own frame, 2) merging their frames of thinking on a meta level by identifying their common interests, to then 3) creating a more productive and cooperative framework for both parties.

The mediator might be inclined to make rational arguments to accomplish this. From our balcony perspective it is easy to see why and how the parties are being irrational or “ill-framed.” But the power of the mediator does not rest in rationality or logical argument; the parties already have their rational arguments. It is often not enough to explain to them why and how they should see their issue differently. It is not enough to study beetles under the microscope and know everything about them. In order to truly be able to understand and have influence we have to understand what it *feels* like to be a beetle. Only the full understanding of the rational and emotional power of the parties’ frames can allow a mediator to pick them up and show—rather than tell—them how to reframe the issue in a way that is consistent with their world-view but transforms their perception of impasse into a resolvable dispute.

The “frame adoption hypothesis,” as developed in negotiation literature, suggests that frames adopted and communicated by one party will influence the frame adopted by the other, helping the convergence of the parties’ views of their situations.³ *Argumentum a minori ad maius*, given the influence of the negotiating opponents on each other’s frames, it seems to be safe to assume that the framing efforts of the mediator will have an even more powerful influence on the perceived realities of the parties. In fact, frame selection results, as in the opening experiment, have been shown to rarely derive from the parties’ communication but from external sources.⁴ The mediator can be considered such an external source. Studies have also shown that frames suggested by “experienced players,” a role mediators often embody, can have a strong influence on the behavior of the players, i.e., parties.⁵ Assuming that every frame the parties bring into the mediation is malleable by a skilled mediator, and considering framing’s tremendous potential value to aid the solution of a dispute, more emphasis should be placed on the use of framing as a mediator’s most precious tool in helping parties resolve their dispute.

Mediators can use reframing to reinterpret the circumstances of a mediation in a multitude of ways, including the mediation process and the parties’ expectations

thereof, issues of what is considered just and fair, and the parties’ identity concerns.⁶ While of incredible power, these sophisticated tools of social cognition are beyond the scope of this article, which focuses on reframing the substantive issues on the table.

Prospect Theory

One of the most effective framing techniques and the one that has been proven to have the strongest impact on decision making⁷ is called “Prospect Theory”⁸ or the “gain or loss frame” (let’s call it “GOLF”). The GOLF conceptualizes any outcome, issue or decision as either a gain or a loss, seeking to take advantage of scientific research that shows that human beings value gain and loss differently.

The core finding of Prospect Theory is that “losses loom larger than gains.”⁹ The pleasure of winning \$100 is experienced less intensely than the pain of losing the same \$100. Losses are experienced more strongly than would be expected on the basis of purely numerical, logical judgment, assuming a perfect correlation between an increase in value/happiness and a decrease in value/happiness.

GOLF Frames

Often GOLFs are self-created cognitive representations of a party’s perceived bargaining situation. It is also possible that a party adopts a frame that is communicated by the other side or by the mediator. The difference in behavior and results depending on the parties’ perceptions, i.e., frames, has been proven by many experiments (e.g., bargaining games) that systematically provide different sets of instructions and other exogenous sources to strategically place negotiators in different GOLFs.

One example is framing into *profit* versus *expense*. For example, in a study with MBA students and professional buyers, one half of the participants received instructions describing the negotiation outcome and terms as possible expenses, the other half received the same numbers framed as possible profits to make.¹⁰ Another way to articulate the alternative frames would be to communicate “I really have to make a *profit*” vis-à-vis “I really need to cut *expenses*.”¹¹

Effects of GOLFing

The way perceived gains or perceived losses affect people’s emotions with different magnitude leads to a series of impacts on thinking and behavior in negotiations and mediations. Recent brain studies using magnetic response imaging have provided biological explanations for this phenomenon by showing that different parts of our brain deal with information framed as potential gains and information framed as potential losses.¹² The influences on our behavior can be grouped into three categories.

Risk-taking. Because of our higher sensitivity to losses, humans tend to go with the more conservative strategy in gain-frame situations but adopt higher risk strategies when faced with possible losses, trying everything to

avoid them. This means that we show a more risk-averse attitude towards solutions framed as gains and more risk-seeking attitude if confronted with solutions framed as losses.¹³ This behavior is explained by our negative emotional connections with loss-frame situations.

Demands. Studies have shown that the average demand a party makes is higher if the party operates under a loss-frame, particularly when the party perceives that the other side is also adopting a loss frame. In contrast, negotiations framed in a gain-frame tend to involve lower demands.¹⁴

Compromises/Concessions. A similar phenomenon has been witnessed in the parties' willingness to make concessions. Average concessions are lower when faced with a loss-frame, while gain-frames tend to produce higher concessions.¹⁵ Interestingly, smaller concession will be *perceived* as bigger by the other side when operating in a loss-frame setting rather than in a gain-frame.¹⁶ This can result in the interesting paradox of parties in loss-frames offering smaller concessions than parties in gain-frames, yet those smaller concessions will be perceived as larger.

Overall, negotiations framed as losses seem to have a higher risk to create an impasse¹⁷ while negotiations framed as gains are more likely to settle¹⁸ and are expected to yield greater mutual gain.¹⁹ The increased willingness to make risky decisions in a loss frame setting results in greater willingness to walk away from an objectively beneficial deal that would beat the party's BATNA (Best Alternative to Negotiated Agreement) but falls short of the party's established (negative) reference point. On the other side, decisions framed as possible losses have been shown to create higher motivation for the parties to make a bigger effort to come to a resolution. Parties take more risks and invest more effort to avoid losses than to obtain gains.²⁰

Summarizing all these findings, GOLFing can yield the following effects:

GAIN-Frame Effects	LOSS-Frame Effects
Thinking "decrease in gains"	Thinking "increase in losses"
Conservative strategies (risk-averse)	Risky strategies (risk-seeking)
Lower demands	Higher demands
Larger and more concessions	Aversive to making concessions (but same size concession will loom bigger if presented in loss frame)
Less motivation to find a solution	Framing a decision as possible loss motivates parties to invest time and energy
More likely to settle; greater mutual gain	More impasses and conflict escalation

"We Had Been Framed"

All this serves as an explanation for why the voting results the students rendered in the above-mentioned experiment fell so far from meeting the standards for a rational, educated decision. When this experiment was first conducted by Amos Tversky and Daniel Kahneman in 1981, program A, presented in a positive frame ("saves 200 lives"), was chosen by 72% of participants. Program C, where the same choice was presented in a negative frame ("400 people will die"), was chosen by only 22%.²¹

Changing the GOLF from positive to negative in this hypothetical scenario led to an almost perfect reversal of programs chosen by the two different groups of professionals involved in Kahneman's study.²² Being given the negative framework in the second scenario, people responded with a higher readiness to take risks than in the positively framed scenario. The certain death of 400 people seems less acceptable than the two-thirds chance of the death of 600 people. In contrast to that, in the positive scenario, the certain rescue of 200 people seems better than the one-third possibility of saving all 600. With positive outcomes in mind we prefer risk-averse, safe options. With negative outcomes in mind we prefer risk-taking.

This example of GOLFing shows how decisively a changing of frames can influence the way we *perceive* a problem or a solution. Choices between gambles and sure things are resolved differently, depending on whether the outcome is perceived as positive or negative. Changing the frame in one or the other way can be as influential as turning around our entire assessment of a situation or an option.

Recommendations for Mediators

Like any powerful tool, framing needs careful handling. Being cognizant that we are all subject to the power of frames and realizing how we can utilize the same in helping parties to resolve conflict is only the first step. The recommendations below help ensure most effective use of this valuable technique.

1. As mediators we should try to be more mindful about the way we communicate with the parties. What are the frames we have in mind for this mediation and what is the frame we are conveying to the parties by the use of our specific terms and language?
2. In caucusing situations we have to make sure we use our language to accurately represent not only the substantive message provided to us but also the frame in which it was communicated (e.g. small concessions appearing bigger in loss-frames).
3. When listening to the parties' stories we can watch their language to find out whether they are thinking in a loss- or in a gain-frame by recognizing key words such as gain, profit, income, benefits, earn-

ings, winning or loss, expense, damage, concession, cost, compromise, outlay, etc.

4. Once understanding how the parties perceive their situations we can slowly help them conceptualize their conflict in a more productive way, keeping it in line with their world-view but gently refocusing their perceptions.
5. We can be aware that framing a decision as a gain will encourage the parties to make bigger concessions and be more risk-averse, making the resolution of the conflict and a mutually beneficial outcome more likely.
6. We can frame a decision as a possible loss to boost the parties' motivation to more seriously invest their time and energy in the mediation.
7. We can use framing to emphasize the full value of an offer.
8. We can make a concession by one side seem more generous and cooperative to the other by presenting it in a loss-frame.
9. We can shift frames when confronted with an impasse or an escalation of a negotiation. Often framing can break a stalemate because both parties, while negotiating in good faith, have framed the problem differently and cannot see why the other side will not accept their "objectively" fair offer.

and Intergroup Negotiation: A Cognitive Perspective, in FRAMING MATTERS. PERSPECTIVES ON NEGOTIATION RESEARCH AND PRACTICE IN COMMUNICATION 71, 73 (W.A. Donohue, R.G. Rogan & S. Kaufman eds. 2011).

8. Prospect Theory has been developed in behavioral economic science by Daniel Kahneman and Amos Tversky. See Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision under Risk*, ECONOMETRICA, 263 (1979).
9. Amos Tversky & Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice*, SCIENCE 453, 456 (1981).
10. Paul H. Schurr, *Effects of Gain and Loss Decision Frames on Risky Purchase Negotiations*, 72 JOURNAL OF APPLIED PSYCHOLOGY 351 (1987).
11. McGinn, *supra* note 4, at 6-7.
12. Cf. Weller et al., *Neural correlates of adaptive decision making for risky gains and losses*, PSYCHOLOGICAL SCIENCE 958 (2007).
13. Curseu, *supra* note 7, at 77.
14. De Dreu, *supra* note 3, at 100-101; in their paper, De Dreu et al. analyze the influence on the dynamics between the parties depending on their own frames and their perception of the other side's frame or the other side's communicated frame.
15. De Dreu, *supra* note 3, at 100; Curseu, *supra* note 7, at 83; McGinn, *supra* note 4, at 6.
16. De Dreu, *supra* note 3, at 99.
17. George Wu, *Two Psychological Traps in Negotiation*, HARVARD BUSINESS SCHOOL CASES (1996).
18. De Dreu, *supra* note 3, at 91.
19. McGinn, *supra* note 4, at 6.
20. Steven Handel, *Framing Motivation in Terms of Losses*, The Emotion Machine (March 20, 2013), available at <http://www.theemotionmachine.com/framing-motivation-in-terms-of-losses>.
21. Tversky & Kahneman, *supra* note 9, at 453.
22. In contrast to the opening example in this article, the original experiment by Tversky & Kahneman was conducted using separate testing groups for the positive and the negative scenario. The less pronounced results for the negative scenario, programs C and D, in the opening example (Harvard 50%-50%; Tversky & Kahneman 22%-88%), can be explained by the pre-existing knowledge of the positive options by the Harvard participants when deciding on the negative options.

Endnotes

1. Roger Fisher, William Ury & Bruce Patton, *Getting to YES* (2011).
2. Robert D. Benjamin, *The Constructive Uses of Deception: Skills, Strategies, and Techniques of the Folkloric Trickster Figure and Their Application by Mediators*, 13(1) *Mediation Quarterly* 3, 7 (1995).
3. De Dreu et al., *Effects of Gain-Loss Frames in Negotiation: Loss Aversion, Mismatching, and Frame Adoption*, 60 *Organizational Behavior and Human Decision Process* 90, 92 (1994).
4. Kathleen L. McGinn & Markus Nöth, *Communicating Framing in Negotiations*, Harvard Business School Working Paper 12-109, June 13, 2013, 8.
5. McGinn, *supra* note 4, at 7.
6. See very detailed Barbara Gray, *Mediation as Framing and Framing within Mediation*, in *The Blackwell Handbook of Mediation* 193 (M. S. Herrman ed., 2009).
7. Ayanna K. Thomas & Peter R. Millar, *Reducing the Framing Effect in Older and Younger Adults by Encouraging Analytic Processing* 67(2), *THE JOURNALS OF GERONTOLOGY. SERIES B, PSYCHOLOGICAL SCIENCES AND SOCIAL SCIENCES* 139 (2012), available at <http://ase.tufts.edu/psychology/caml/pdfs/Thomas&Millar2011.pdf>; for the same conclusion and research references on how the framing effect works differently well on various individuals and groups see also Petru L. Curseu, *Framing Effects in Small-Group*

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