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*“Building Bridges Not Walls:
Essentials of a Successful Mediation”*
GEMME Ireland Event, 25th October 2023
Dublin

A Mediator’s perspective

Bill Holohan, Solicitor & Senior Counsel

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Solicitor Advocate

As a solicitor I personally have argued cases, (without counsel) in (almost) all Courts* - District Court, Circuit Court, High Court and Supreme Court, and I am no stranger to litigation.



***Pre dates the setting up of the Court of Appeal.**

Solicitor Advocate

260

The Irish Reports

[1999]

**The Director of Public Prosecutions, Prosecutor, v.
Tivoli Cinema Limited, Defendant** [S.C. No. 82 of 1998]

Supreme Court

7th December, 1998

Licensing Acts - Intoxicating liquor - Theatre licence - Whether intoxicating liquor sold or exposed for sale other than during permitted time - Whether patrons admitted to theatre after 9.30 p.m. without previously having paid for seat for performance - Whether "seat" includes place to stand - Whether playing of pre-recorded music constitutes "performance" - Excise Act, 1835 (5 & 6 Will. 4, c.39), s. 7 - Public Health (Ireland) Act, 1890 (53 & 54 Vic., c.59), s. 51 - Intoxicating Liquor Act, 1927 (No. 15), ss. 1, 20 and 21.

Legally, a seat is not a traditional "seat" in a place of public entertainment or a theatre. It is the airspace you displace while there.

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THE HIGH COURT

[2003 193 SP]

BETWEEN

BILL HOLOHAN

PLAINTIFF

AND

SHIELA (OTHERWISE SILE) AUGHEY

DEFENDANT

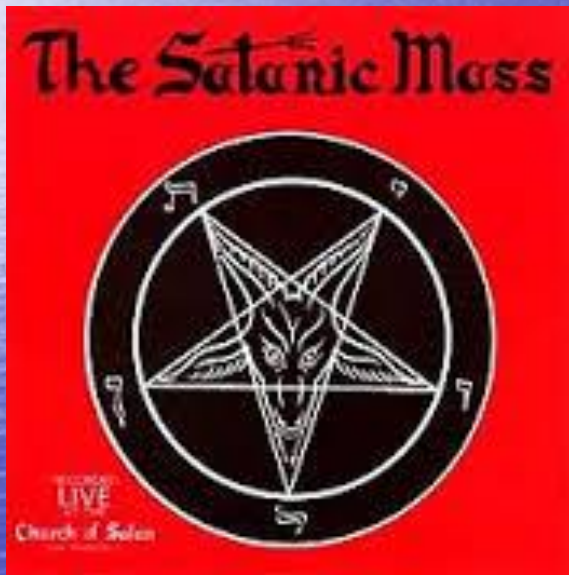
JUDGMENT of Ms. Justice Finlay Geoghegan delivered on the 28th day of June 2004.

**Bill Holohan the litigant.
Holohan v Aughey, [2004] IEHC 115.**

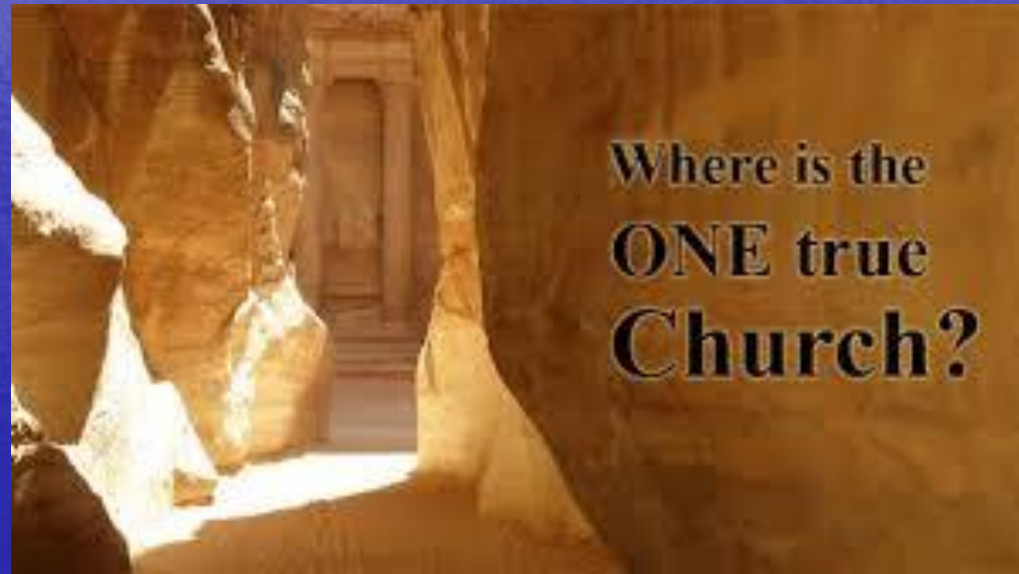
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The Moment of Conversion



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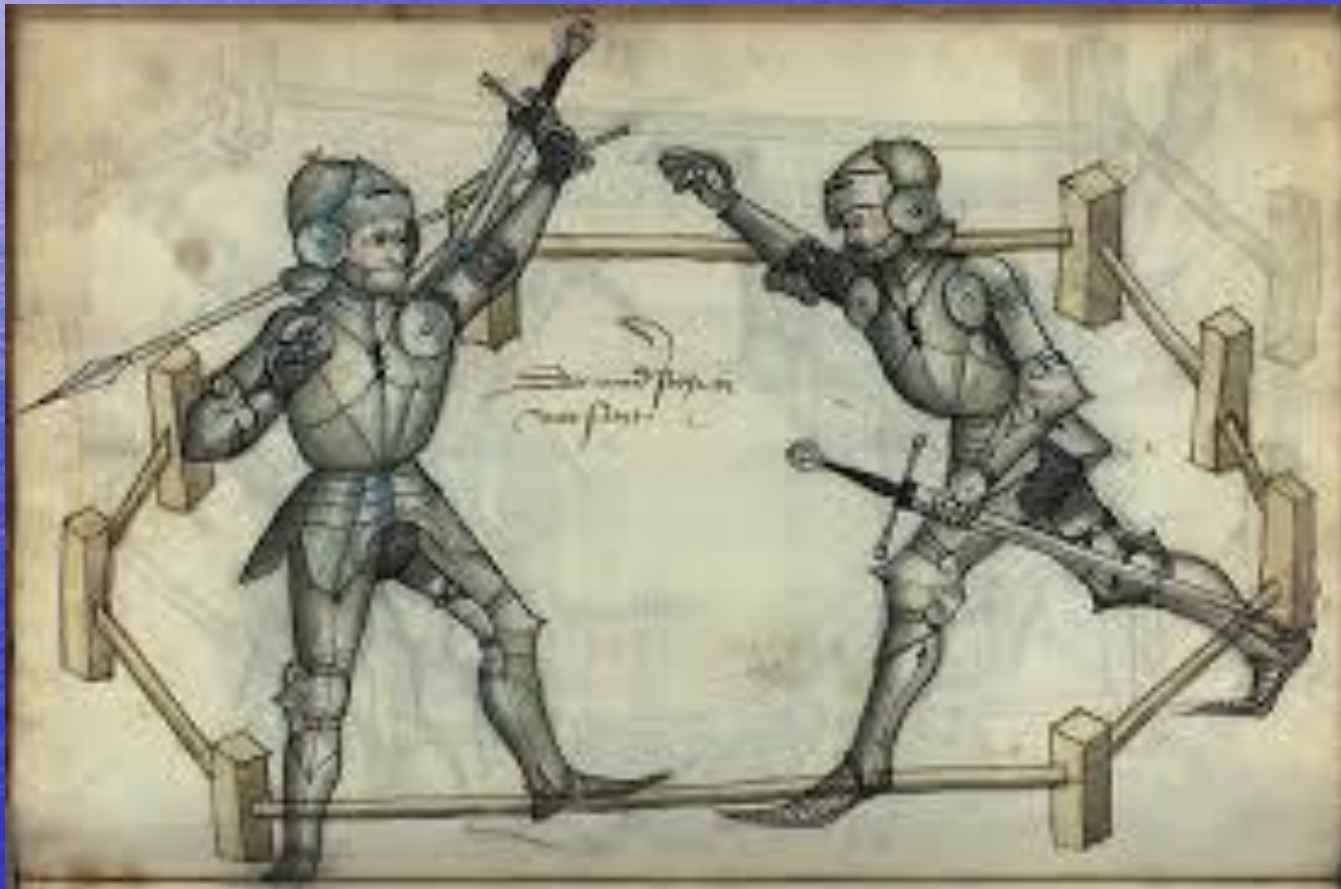
**From The Satanic Church of Litigation to
The One True Church of Mediation**

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Deciding matters before 1819

Trial by battle.



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The reason for a Pauline conversion



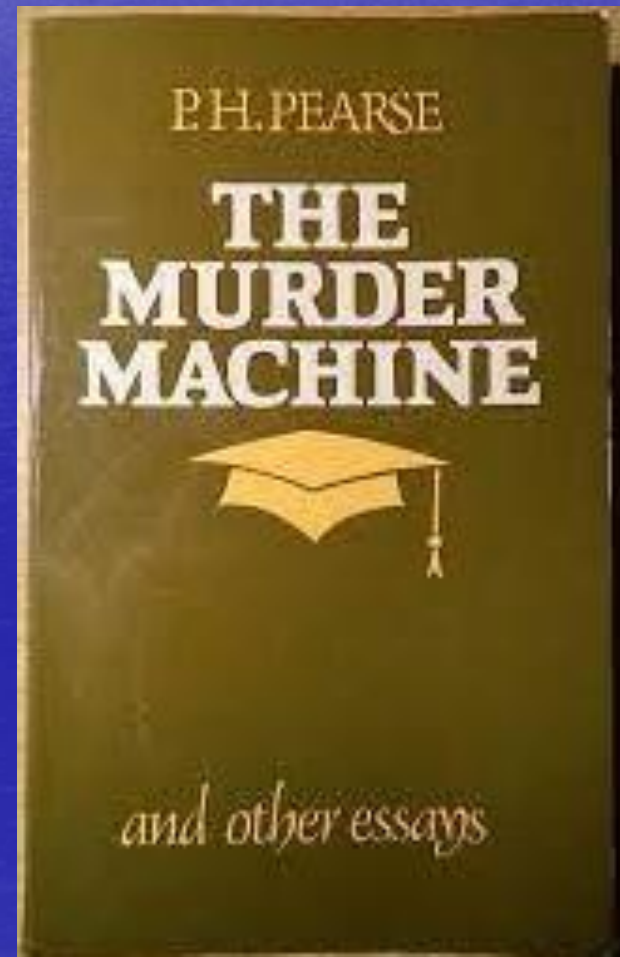
In 2017, then chief justice Frank Clarke remarked that it had *"increasingly become the case that many types of litigation are moving beyond the resources of all but a few"*.

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The reason for a Pauline conversion

The Murder Machine is a pamphlet published by Patrick Pearse in January 1916 on the topic of educating Irish school-going children and was the description he applied to the then system of education, a term he might now apply to the legal system.



Irish School of Yoga Ltd -v- Nicole Henkel Murphy, [2012] IEHC 218.



Laffoy J: "What is at stake in these proceedings is totally disproportionate to the costs which will be incurred in pursuing a High Court action."

Garritt-Critchley and Others v Ronnan and Solarpower PV Limited [2014] EWHC 1774 (Ch).

"Parties don't know whether in truth they are too far apart unless they sit down and explore settlement".



**Fitzpatrick -v- Board of Management of St Mary's
Touraneena National School & anor.,
[2013] IESC 62.**

MacMenamin J:

“There are limits to what lawyers can achieve, other than give full and careful legal advice. But for the future, courts may well, in cases such as this, ask the question why was there no mediation process? Why did COMMUNICATION break down?.”



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“Building Bridges Not Walls: Essentials of a Successful Mediation.”



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**“Building Bridges Not Walls:
Essentials of a Successful Mediation.”**

The importance of perspective rather than perception.



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“Building Bridges Not Walls: Essentials of a Successful Mediation.”

The importance of perspective rather than perception.



- **“There is no point in someone being stupid, unless they have a chance to prove it!”**

**Mary Holohan, (Philosopher and mother),
born 1930.**

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**“Building Bridges Not Walls:
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The importance of perspective rather than perception.



Empty
Full

**Perception
vs
Perspective**
What is the difference?

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“Building Bridges Not Walls: Essentials of a Successful Mediation.”

The importance of perspective rather than perception.



The perspective is more
important than the perception.

Amit Abraham

quote fancy

Lawyers as the gatekeepers

Lawyers need to understand Mediation before they can discharge their section 14 duty to advise the clients.



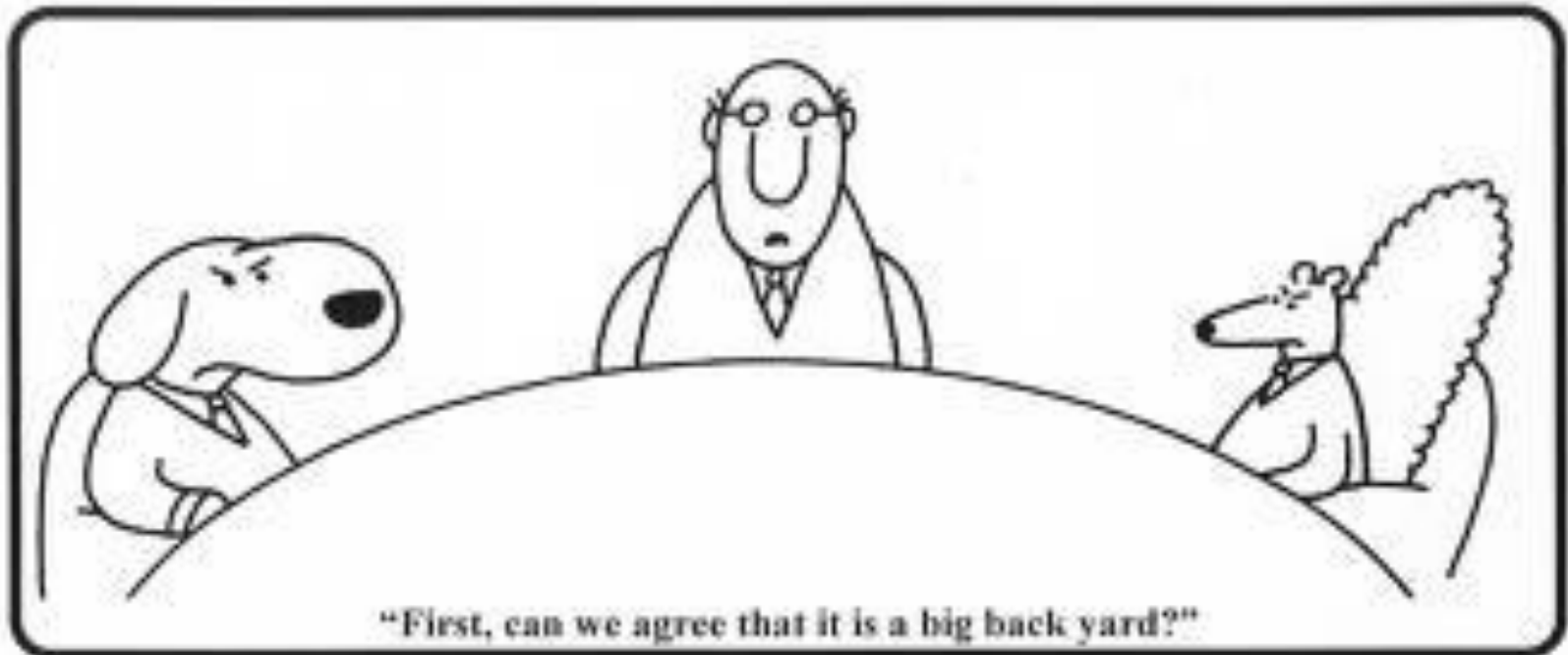
Something told the mediator the lawyers might not have briefed their clients properly on what to expect during mediation

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Believing one's own hype.



"He was right, dead right, as he drove along, and the fellow who killed him was dead, dead wrong".

Believing one's own hype.

That was a very well laid out, rational point.

But I will still hold to my emotional opinion based on no facts or evidence.



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The importance of perspective rather than perception.



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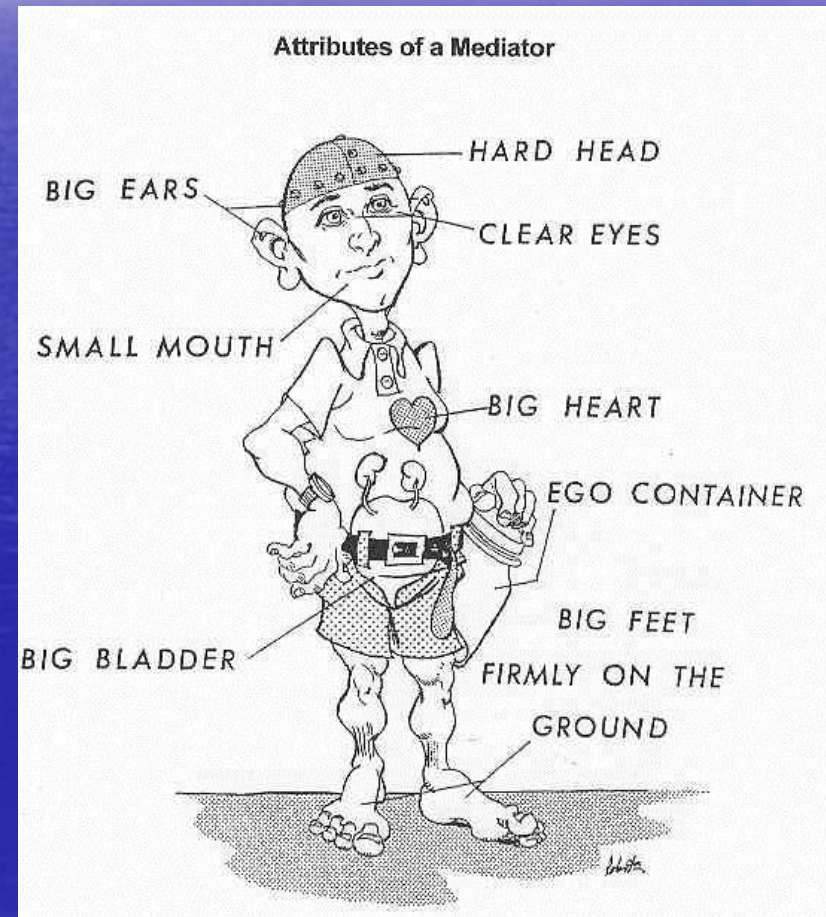
Mediation facilitates true understanding



Changing the perception – personal drivers.

The Mediation Act 2017.

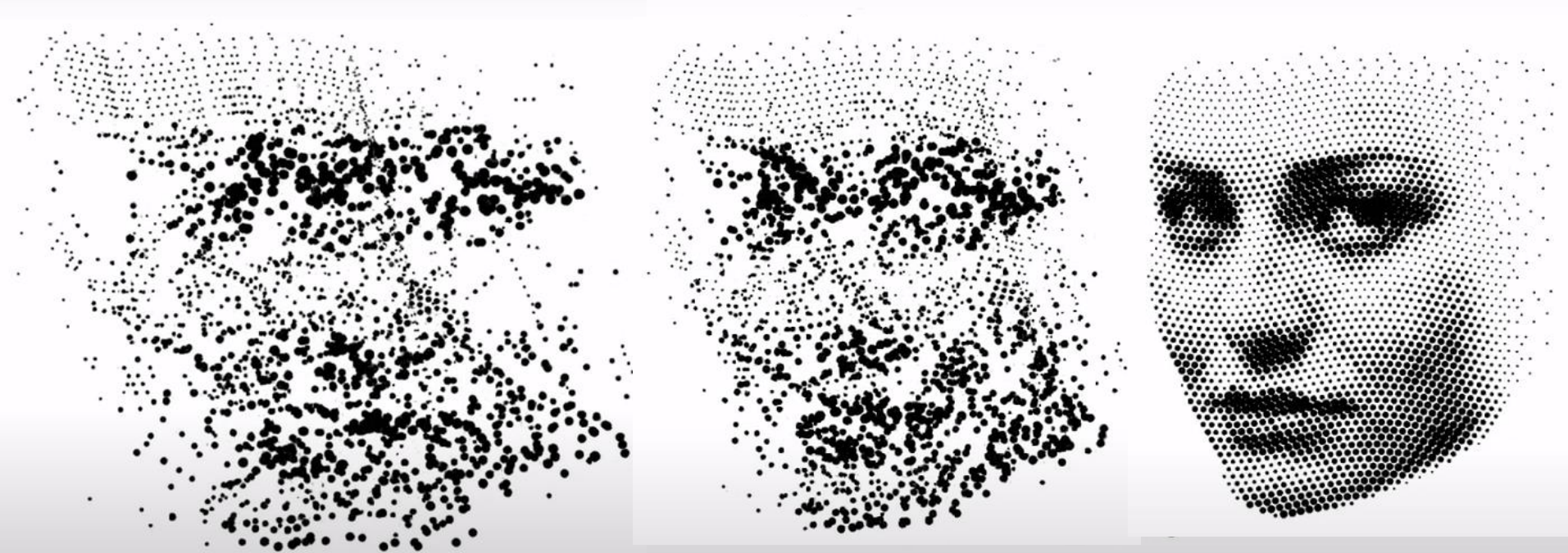
- ❖ **“mediator”** means a **person appointed under an agreement to mediate to assist the parties to the agreement to reach a mutually acceptable agreement** to resolve the dispute the subject of the agreement;



Mediation facilitates true understanding

INSIDER
Art

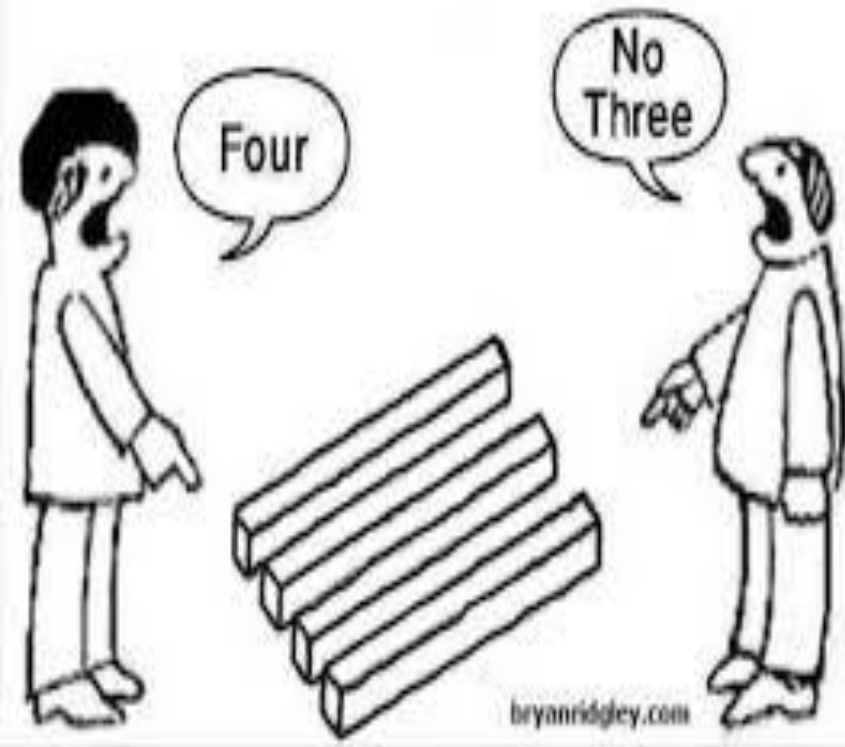
Illusion Sculptures Only Appear If You Stand In The Right Spot | Master Craft | Insider Art



Changing the perception – personal drivers.

Focus on the future, not the past.

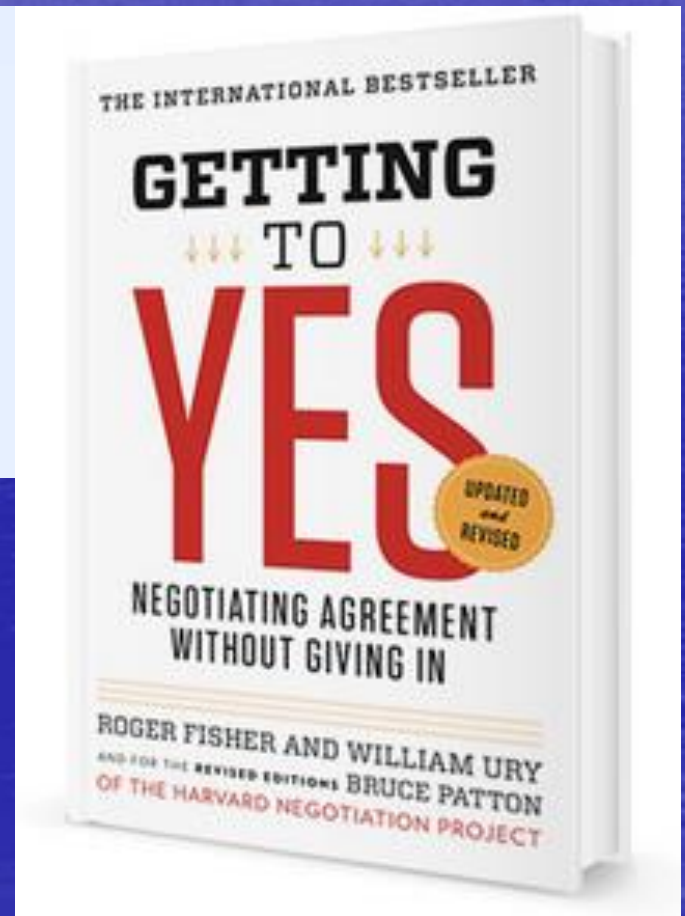
Reality can be so complex that equally valid observations from differing perspectives can appear to be contradictory.



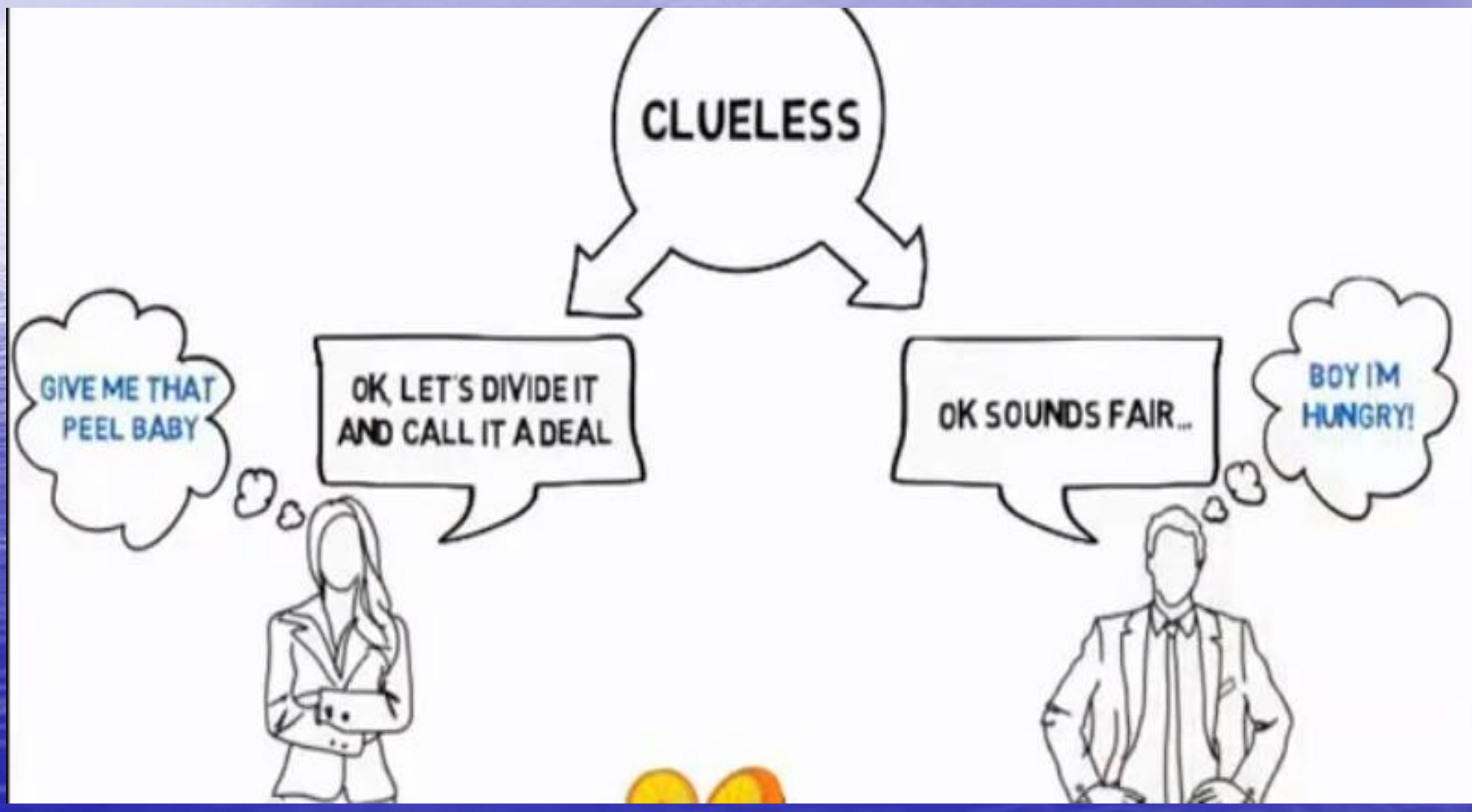
"Four versions of the past,
- what the Plaintiff says
happened,
- what the Defendant says
happened,
- what may actually have
happened, and
- what the judge decides
happened, ". *

Getting to Yes Roger Fisher and William Ury

the orange quarrel:
beyond win-win



Getting to Yes.



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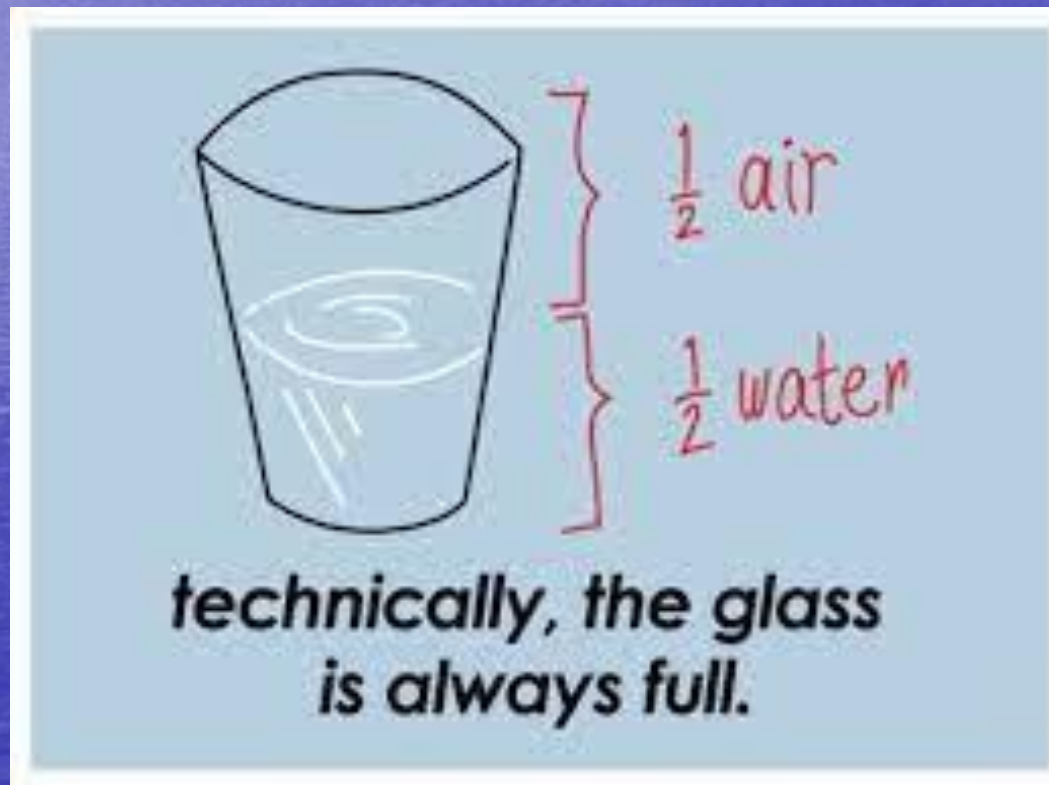
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Mediation facilitates true understanding



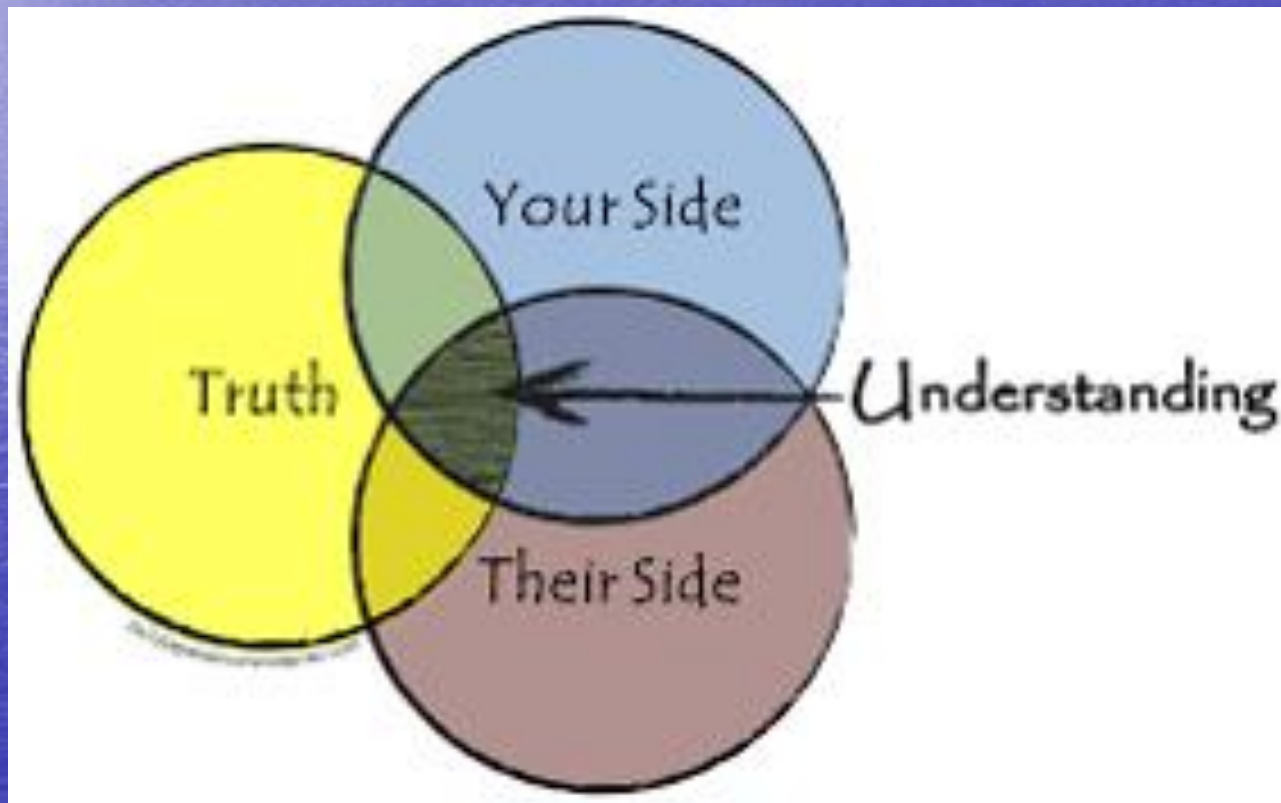
Changing the perception of personal drivers.

Mediation facilitates true understanding



Changing the perception – personal drivers.

Mediation facilitates true understanding



Changing the perception – personal drivers.

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Mediation facilitates true understanding



Mediation facilitates true understanding



Changing the perception – personal drivers.

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Mediation facilitates true understanding



Changing the perception – personal drivers.

Creating a new business future



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Creating the future

“Let's not dwell on matters historical lest they become matters hysterical”

– Bill Holohan

**“THE BEST WAY
TO PREDICT YOUR
FUTURE IS TO
CREATE IT”**

Abraham Lincoln

HOLOHAN LAW



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