



SUPREME COURT
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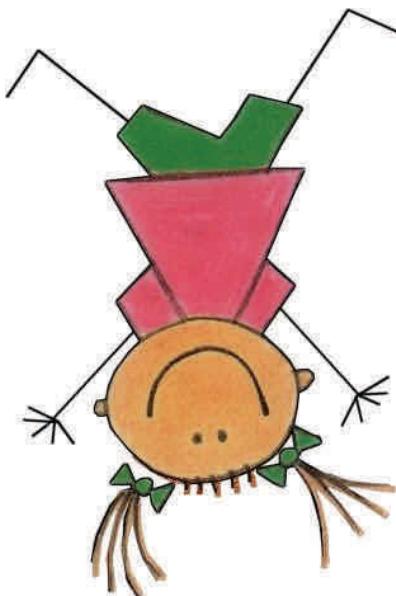
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Flipping the ABCs

From time to time a mediator or facilitator faces a situation that calls for fresh ideas to get around a barrier or create a solution, but everyone involved comes up short. Such situation encompasses more than impasse. It may be a factual reality that there is no solution to be found – at least in the near term. In other cases, a mix of cognitive and emotional factors cloud one's ability to think creatively. Factors paralyzing thought then compound each other to negative effect (the opposite of success breeding success). That is when one hopes the neutral can apply different techniques to trigger more productive thought.

Experts in scientific fields like psychology and neuroscience explore interesting, important studies about mental function and how to optimize thought processes. Not being such an expert, and recognizing that a little bit of knowledge can be a dangerous thing, this author would not pretend to write authoritatively about their study conclusions. But as professionals we each can observe our own experiences, read and absorb information from the discussions made available to us, and develop our own approaches to deploy when facing seemingly insoluble problems. This article shares one simple, shorthand guide I developed when I needed to think about a problem differently.

This method has been useful in mediation trainings and for clients who want a technique to use when they need to reboot their own thought processes - especially after the mediator or facilitator has left. It can be used as a coping mechanism to prevent recurrence of disputes. I called it, "***Flipping the ABCs***." Whether it is helpful in any situation depends on the individual using it. Although it is reproduced here, I would first like to explain some of my thinking behind it. (Others might read different ideas into it.)

How often have we been admonished or reminded in our daily lives that, "it's our assumptions that will get us every time"? In fact, forms of checking and double checking are included in risk management protocols in various industries. The tragic consequences of acting on incorrect assumptions can include air accidents, misdirected police shootings ("I thought he was taking out a gun..."), or surgery on the wrong patient or body part.

There must be some reason our brains make assumptions for us and do it so commonly that we are not even aware that is what is occurring. Perhaps this mental habit of ours as human beings is a product of evolution and served some survival instincts. But the fact is that assumptions are made on a daily basis and oftentimes that does not end up well. An example of a negative aspect of such thought shortcut has been labeled “Attribution theory”- a theory apparently much dissected by experts. A layperson’s take is that when something unfortunate has taken place due to the action of “the other person,” one assumes that it was their bad act, a product of their failure or bad intention. But if it was a result of one’s own action or inaction, we assume it was unintentional, beyond our control. In other words, we have a deep seated tendency to forgive ourselves but blame others easily.

Emotions accompany that assignment of blame. Isn’t it natural or common enough to get mad when we think someone has hurt or offended us? And once we are angry, the situation can deteriorate. Brain scans have demonstrated that once emotions are triggered, the amygdala is activated while pathways in the brain that facilitate logic and rational thought process are literally impeded. As a result, we do not think as clearly and productively to help us reason our way back out of the problem. The words that come out of one’s mouth in times of great upset might be, “I am just too upset to talk right now. I can’t think straight.” Studies of the brain show that such statement is likely an accurate description of fact and not simply someone emoting. Even worse, we might take action that creates or worsens dissension and dispute.

Assumptions or cognitive biases can not only mislead us in sizing up a situation and failing to recognize important clues or risks but also prevent us from learning and taking in new information or other perspectives. Our teachers, mentors, and parents were right all along: it is our assumptions that can get us every time.

A common example of making negative assumptions arises in healthcare administration. As a health care executive once explained it, when communications in his facility were poor or lacking, the players tended to fill in the gap with this unspoken question or attitude: “Now what are they trying to do to me?” Even if the question is not uttered, the behavior of the individual is based on the thought. (Those who work in healthcare conflict will likely shake their heads with understanding and agreement that this does indeed happen).

Harvard Business School professor Francesca Gino described another example of common cognitive bias or assumption of which most of us are not aware at the American Bar Association’s Dispute Resolution Section Annual Conference in 2016. She conducted a simple exercise among audience members to show that contrary to what we might often assume or

¹As an example of work examining mental processes, including heuristics and mental biases, one could look into the works of Daniel Kahneman and Amos Tversky. A more recent publication by Daniel Kahneman, Thinking Fast and Slow, Farrar, Straus and Giroux, 2011, is a challenging and stimulating analysis of how the human brain works.

believe (that we are insecure), most people actually overrate their abilities and performance. It is theorized that this might explain, for example, the behaviors of some CEOs who might disregard or not even seek and heed the advice of others before making big decisions. They either think they can do what they want, or they can do no wrong, or they are above accountability for things that don't turn out right.

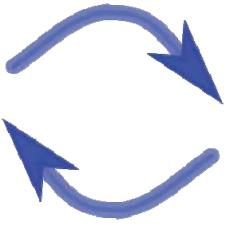
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Unexamined thinking and conclusions can give rise to the dispute in the first place; later when the dispute is being addressed in a mediation, the assumptions can prevent the parties from fixing it. Accordingly, mediators want to unearth hidden assumptions and/or encourage parties to reexamine them. Mediators can start in the preparation phase to lead parties and their lawyers to identify and articulate assumptions and suspend them long enough to ask what else they should try to find out that might be relevant to the problem. Ask the parties to consider how they think the problem got started. What conclusions or judgments about the situation or the other party were drawn that could bear a second look? What else would they like to know that could shed light on the situation and its resolution? These are objective, gentle questions that do not necessarily threaten a person.

Another essential mediation skill – reframing - fits in nicely with the concept of trying to dislodge the impact of unproductive assumptions. What a relief it can be to hear a very touchy or provocative issue and situation stated in a very different way! The mind can be literally freed from the weight of the emotion that subtly or not accompanied how the problem was stated and perceived before.

Perhaps “**Flipping the ABCs**” (see page 4) will strike you as a useful reminder to introduce the practice of recognizing and then correcting invalid assumptions. It is important to be sensitive to not making the person who made an erroneous assumption (including yourself) feel “dumb” for an incorrect assumption. You might observe that the parties even become curious and more involved in the shared process of looking for solutions - two important steps toward learning.

Submitted by Jeanne F. Franklin, JD, who is a Virginia certified General District Court mediator, licensed attorney in Virginia, member and past Chairperson of the Council of the Virginia Joint Committee on Alternative Dispute Resolution, and past President of the Virginia Bar Association.



Flipping the ABCs

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We all sometimes play the same message in our heads over and over, reinforcing our positions and opinions, inhibiting open minded inquiry, problem-solving and learning. Sometimes we don't even know that is what we are doing. Perhaps it is especially true when we are upset about the matter in which we are involved.

These are often the **ABCs** of fatigued, "old", or unproductive thinking:

- A** ssumptions
- B** lame
- C** riticism

To break the unhelpful thought pattern, try "**Flipping the ABCs:**"

- C** huck the assumptions, at least momentarily, and check out facts and perceptions
- B** egin again to frame (define) the situation
- A** cknowledge other facts, perspectives or possibilities

See what **Flipping the ABCs** allows you to do in terms of improving the discussion and problem-solving.

