

## Discovering Benefits

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January 2004

In a previous article, “A Benefit Resolution Mindset,” we looked at fear, comfort zones, and a single solution mindset as elements that can cause resolution resistance at a mediation table and tilt the balance away from benefits to loss laden choices.

We saw how a single solution mindset often represents a positional option (100% gain, 0% loss). Here we will look at techniques for discovering benefits including question asking, using a benefit matrix, and reality testing.

### A Benefit Resolution Mindset: Review

If the fear of loss outweighs the benefit of the offer, then it will be impossible for the party to choose resolution. I often see people make decisions around a fear of loss and a desire to be better off. If there is a benefit that, in their minds, will make them better off, then the decision is easy. If the benefit offered cannot outweigh the loss, then the decision is easy.

Complainants engage in conflict to either: stop the loss, lessen the loss, or get back what was lost. While it may not be possible to rebalance the scales of justice by returning what was lost, in the complainant’s mind *something* can be put on the scale to restore balance. In some ways, just coming to the mediation table can represent loss to the respondent. To the respondent, giving up something as a settlement creates an imbalance in the scales of justice. One of the roles of a mediator with a benefit resolution mindset is to identify the benefit of gain and the fear of loss pivot point. Identifying potential benefits may tilt the balance away from the fear of loss.

Every conflict has a benefit scenario at work. The fight is for something, tangible or intangible. The benefit typically relates to the outcome: to gain something, to not lose something, to minimize the loss. The mediator can discover benefit(s), and interest(s), for the parties by doing need exploration around their positional solutions. A critical question, then is, “How to shift the weight of the balance away from fear of loss, beyond the positional solution that has them stuck, and onto key benefit(s) and best interest(s), for each party?”

### Discovering Benefit

You have to discover benefit(s) a participant might choose. An informed choice will be the benefit for the party. A party will always choose a benefit within their comfort zone, within their understanding. If a mediator fails to explore options enough for a party to understand a benefit(s) within an option for his or her need and purpose, then that party will never be comfortable choosing that option. That choice will never outweigh the fear of loss.

If a manager chooses not to settle at the table because, "I did nothing wrong!" then, for this manager this choice is better (more comfortable, of greater benefit, representing greater gain) than giving something up to the complainant.

Questions a good mediator must ask are, "Did the manager have an opportunity to explore the multiple options available within the structure of this dispute? Were the multiple possibilities weighed in regard to the greatest benefit?"

Another way of asking these questions for the mediator, "Did the manager have the chance to consider the loss within his or her choice, as well as the losses within the other options?" There may have been a choice representing less loss that was not explored.

Discovery techniques I use include asking questions and listening carefully, reviewing a benefit matrix, and reality testing.

### Ask Questions, Listen Carefully

On average people think of themselves 95% of the time. If you will just listen carefully, long enough, they will "slip" and tell you what is important to them. They can't help it. With 95% of their thought process revolving around them, what they say will be about them. The danger comes when a mediator, narrows his or her listening range to what relates to the complaint or what relates to the complainant's demands. Listen to discover about them (both parties); what's better in their eyes; what's better for their purposes; what's better for their needs.

I did a civil case, revolving around money owed. The parties negotiated down to a \$5.00 difference and stopped. This mediation was going to court over \$5.00. I heard, in the stalemate, "It's the principle of the thing." Experience teaches me that "principle" is very difficult to work around. I have seen parties willing to spend \$80,000.00 instead of reaching a resolution that cost them \$20.00 because it was "the principle of the thing." So, I went into a second caucus with "principle" standing at the door of my imagination like some fancy butler waiting to introduce no-agreement into the room.

She would not pay the \$5.00. Nor would she consider paying \$4.00, \$3.00, \$2.50, \$2.00, or \$1.00. With a litany of "No's" ringing in my ears she concluded, "I can't afford any more out of my paycheck. I have gone as low as I can and still have enough to live off of for the month." Bingo! There was only one more question left to ask....

She had been negotiating the entire time under the desire (and therefore, the assumption) to pay this off in one payment out of one month's check. She told us this early in the mediation, but I forgot it. Now, at impasse, it comes up again. The respondent was negotiating the entire time under the willingness (and therefore, the assumption) to get monthly payments spread out over several months.

The question: "What if you were able to pay this off in 2 payments instead of one?" Listening carefully and asking good questions, I find it is not the "principle" of the matter, but her monthly budget, and her desire to conclude this matter quickly that is important to her.

In your quest to discover benefits, six questions will be your guides: who, what, when, where, why, how. All of these are open-ended questions. Combinations of these questions, choosing and applying them skillfully, will result in enough talking for you to listen to carefully.

### Exploring Benefits

I sometimes use a benefit/loss matrix with parties to discover benefits, investigate interests, and explore options. This matrix aids the benefit discovery process.

#### **Benefit Matrix**

Option	Benefit	Loss
#1	100%	0%
#2	70%	50%
#3	60%	10%
#4	10%	10%
#5	0%	100%
Etc.	%	%

Note: Option #1 is positional.

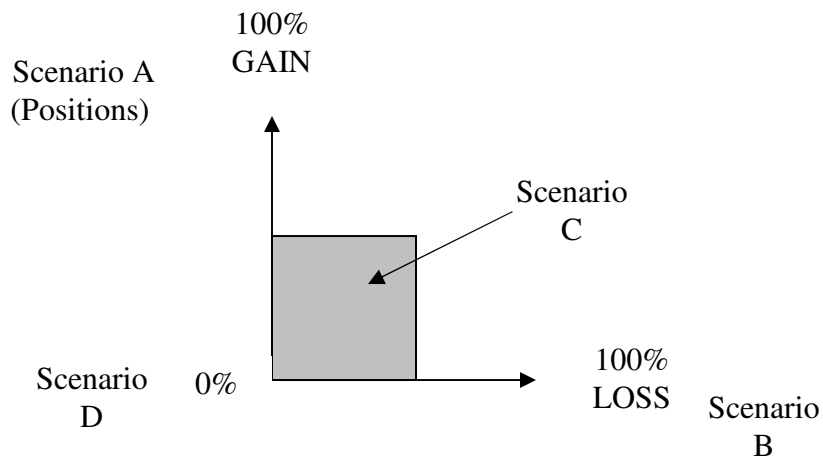
It is possible to win 70% and lose 50% (given tangible and intangible items)

It is possible to win 10% and lose 10% (given tangible and intangible items)

Questioning around a benefit/loss matrix often breaks the 'I benefit/you lose' (or 'you benefit/I loss') assumptions parties carry into the room with them. There is only one scenario that defines a 100% benefit with 0% loss – their position. Their single solution mindset begs for a fight to gain all and lose nothing: the fundamental characteristic of a position. Unless the other party (they both have positions) says "Yes" to the positional solution, loss is inevitable. The only question left to explore and therefore requiring an intentional choice is the degree of loss and gain – lesser loss and lesser gain.

GAIN	NO LOSS
LOSS	NO GAIN

- |   |
|---|
| <p>A. GAIN WITH NO LOSS<br/> B. LOSS WITH NO GAIN<br/> C. GAIN WITH LOSS<br/> D. NO LOSS WITH NO GAIN</p> |
|---|



It was a landlord/tenant case: security deposit issue. Each party's position was representative of Scenario A above, "I get all the money back," "I keep all the money." With the first resounding "NO" (which in fact occurs at filing in court) comes inevitable loss – it is only a matter of identifying, and in some cases, quantifying it. With loss on the table and knowing that people make decisions around benefit/gain, the entire conversation can take on the tone of deciding which benefit represents the most acceptable loss.

That is, they come to the mediation table and to the judge to determine what Scenario C will specifically look like – they think they are going to fight to persuade someone to grant them Scenario A, but at filing, Scenario A is metaphysically impossible. If nothing else, they lose time and energy on the pursuit of Scenario A. Can they go before a judge and receive Scenario B (loss with no gain)? Probably not, they gain something (some benefit) in the choice to go to the judge. Therefore, in their mind what is spent on the possibility of gain without loss has greater benefit than accepting any loss (tangible or intangible) outright.

In the end, this case did not settle. In the end, the respondent decides he would rather a judge tell him to give up the money than self-select a loss at the mediation table. It was more comfortable to have a judge impose his loss than intentionally choose his loss himself. The mediation process was able to empower him to choose a psychological

benefit, turning to a more comfortable process. It was easier for him to live with an imposing outcome. Did the mediation fail? Did he make the wrong decision? I did not ask him, “What benefit(s) would there be to choosing an outcome here today?” I probably should have. However, his psychological need, and the powerful pull of his comfort zone convince me that his choice would probably remain the same.

Recently, I had a party tell me, “It would cost too much dignity to accept his terms here today.”

“What if a judge rules the same terms?” I asked.

“Then, I would do it, because the judge says so.”

Again, is there any benefit(s) in resolving this at the mediation table today? In this case any benefit of settling at the mediation table cannot outweigh the loss of dignity. Therefore, the benefit of having a judge decide is more comfortable. A judge ruling a loss provides greater sanctuary for dignity, than self-sacrifice for the sake of saving energy, time, or expense.

### Reality Testing

Whereas, the benefit matrix works well as a discovery technique for identifying outcome benefits, reality testing is another discovery technique that works well for identifying process benefits.

Reality testing was taught to me as a loss scenario technique. It was a tool you pulled out when a party was stuck in an “unrealistic” option. Unrealistic options were described as outrageous money demands, unlikely courtroom scenarios, and blatant denial of obvious weaknesses in their case. The technique sounded something like this:

What do you think a judge might say?

What costs do you anticipate going to court?

Are you willing to spend \$1,000.00 in attorney fees in order to win a ruling for \$10.00?

What will you do if you lose in court?

How much time & energy do you anticipate giving to preparing your court case?

Teaching reality testing this way focuses on the fear of loss – “you should settle at the mediation table because it could cost you more going to court.” While it is true most parties fail to consider potential negative outcomes of a court proceeding, it is not always necessary to tilt the scale heavily to the side of loss to feed an informed decision. In fact, increasing the weight of the loss side of the balance in order to get a party to question a potential outcome could just as easily engage the gravitational pull of a comfortable process choice. Were anxiety, frustration, confusion increases so increases a comfort zone’s gravitational pull. So, is there any surprise that anxiety around outcome choices could increase a desire for a comfortable process choice?

Can we do reality testing as a benefit scenario, maybe engaging both sides of the benefit/loss matrix? Is it worth saying:

Let's talk about the benefits to you for spending more money, energy, and time pursuing the case in court.

Let's talk about the benefits to the other party for spending more money, energy, and time pursuing this case in court.

Let's talk about any benefit(s) to you in letting a judge decide the outcome of this case for you.

Let's talk about any benefit(s) to you in pursuing a win/lose context in order to resolve this dispute.

What are the benefits to you resolving this dispute here today?

Wait a minute! If we list a bunch of benefits, won't the party naturally decide to go to court? Only if the party believes that the benefit(s) outweigh the fear of loss. Remember, we can presuppose a fear of loss within every conflict. We often overlook or ignore benefit(s). Besides, the decision stands a greater chance of meeting our criteria of being informed and representing the party's best interest when reality testing encompasses benefit, as well as loss scenarios (for each party).

Reality testing from a benefit point of view may lend itself more smoothly to need exploration, discovering key benefit(s) and best interest(s).

### Discovering Interests

Many of the same techniques for discovering benefit(s) work effectively for discovering interests, for example: asking questions and listening carefully. Resolution techniques do not work in isolation. A party's comment could reveal benefit and interest during need exploration.

Additional techniques for discovering interest(s) include: steering away from the "truth," exploring multiple scenarios, and painting a picture. These techniques will drive past many obstacles blocking a party's understanding of his or her own interest(s). Because it is comfortable for parties to think positionally (single solution, 100% gain with 0% loss) they often do not take the time to investigate their own interests, let alone the potential interests of their opponent.

For me, about 75% of my work at the mediation table encompasses need exploration in general and discovering interest(s) in particular. I will develop this topic more at a later date.

### Conclusion

Parties in conflict need three things and should be able to expect them, at least, from the mediator: a party needs and deserves respect, a party needs and deserves to have someone listen and hear him or her, and a party needs and deserves honest consideration

of his or her ideas, needs, and options. While it may not be within the willingness or the ability of the other party in the dispute to meet these needs, a skillful mediator can certainly provide for these needs within the scope of the mediation process and within the bounds of neutrality.

The facilitative mediation model is designed to empower parties to make an informed decision in their own best interest. Caucus, as a tool within this model, utilizes private meetings in order to explore key benefits and best interests for each party using brainstorming, roleplaying, playing devil's advocate, trying on each option (in detail) before deciding, and picture painting. Philosophically the facilitative model is designed to keep the responsibility of the conflict, its dynamics, consequences and outcome "in the laps," if you will, of the disputing parties.

In my next article, "Discovering Interests," we will detail techniques for discovering interests.