

# THE COMMON GROUND

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NATALIE PASKIEWICZ & ANA CRISTINA MALDONADO, CO-EDITORS



## MESSAGE FROM THE CHAIR

Oscar A. Sanchez, Esq.

It will indeed be a great day when emails, columns, texts, tweets, posts, and introductions such as this Message from the Chair **don't** contain with the words “**in** these uncertain **times**” or some similar phrase.



In the meantime, the Alternative Dispute Section of The Florida Bar will continue to put together programs and **CLE's** to help us navigate these uncertain times, we will continue to monitor proposed rule changes for ADR practitioners, and we will continue to urge everyone to be kind and understanding to each other—and to themselves. The Florida Bar has a Wellness Center with a Helpline (833-FL1-WELL), an e-Video Counselor, and other

resources for lawyers feeling the stress of these times. You matter. Please avail yourselves of these helpful tools, and please make others aware that they exist.

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## MESSAGE FROM THE CHAIR, CONTINUED

On a positive note, the ADR Section celebrates its members' enthusiastic embrace of virtual technology, such as Zoom, to continue to conduct mediations and help the courts clear backlogs, even as the court system grapples with the difficulties and dilemmas presented by in-person proceedings.

Trying times present opportunities to learn new and better ways of doing things. Out of the darkness comes the light. The ready acceptance of virtual technology by both mediators and the lawyers who use them has been accelerated by the pandemic. Virtual mediations have proven to be both cost-effective and useful. Many ADR practitioners and lawyers will continue to engage in virtual mediations well after the pandemic is in the rearview mirror.

In closing, take care of yourselves, be extra kind to yourselves and to others, and look for opportunities to improve your practice, in these uncertain times.

Oscar A. Sanchez  
2020-2021 ADR Section Chair  
[oscar@oasmediation.com](mailto:oscar@oasmediation.com)



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# Inaugural Arbitration Advocacy Institute November 13 Live GoToWebinar (Not Recorded for Resale—Early-Bird Discounts Until 10/31)

The ADR Section's inaugural [Arbitration Advocacy Institute](#) is a one-day, [virtual workshop](#) for attorney-arbitrators that will provide coaching on mechanics, technology and professionalism to help Florida attorneys boost their arbitration advocacy skills. Attendees will increase their knowledge of the arbitration process from beginning to end—distinct from mediation and litigation—and participate in virtual clinics for diverse arbitration practice areas.

More than 30 [skilled presenters](#) will demonstrate effective and ethical techniques that will enable participants to reach the highest levels of advocacy in arbitration. The prestigious faculty includes representatives from the American Arbitration Association, the Financial Industry Regulatory Authority, the American Health Lawyers Association and JAMS in addition to some of Florida's most experienced attorney-arbitrators. View the [event brochure](#).

The [event](#) is scheduled for Friday, Nov. 13 from 8:45 a.m. to 6 p.m. with an optional virtual networking hour on Nov. 12 at 5:30 p.m. Details and registration are available at [flabaradr.com/arbitration-advocacy-institute](http://flabaradr.com/arbitration-advocacy-institute).

- The November 13, 2020, [Arbitration Advocacy Institute](#) is a [live GoToWebinar](#) (not recorded for resale).
- [Course number 4222](#). Approved for 8.5 General CLE credits; 1.0 of which may be applied toward Professionalism, and 1.0 Technology credit. Participants earn 1.5 additional General CLE credits for participation in a Virtual Clinic.
- Early Bird Registration Until 10/31: ADR Section members \$100, non-section members \$145 (includes section membership).
- After 10/31: Section members \$185, non-section members \$230 (includes section membership).
- Law School Students \$60 (includes section membership).

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# The Mind of the Master Mediator From Eye-Rolls to Grimaces: Understanding Body Language in Virtual Mediations



By David Ross, Esq.,  
JAMS, New York, NY

This article explores the role of body language in virtual or remote mediations, where mediators see participants in a box and on a screen as opposed to in a chair and in person.

Understanding how mediators gather relevant information just by looking at **people's** facial expressions and reactions can help you become a more effective advocate and participant in virtual mediations. Below, I explain why **it's** crucial to be aware of your own body language, enabling you to make smart decisions that can boost your credibility, likability and persuasiveness with the mediator, as well as your clients, colleagues and adversaries.

Since JAMS began using virtual platforms exclusively in mid-March, the Master Mediators have settled hundreds of legal disputes. Importantly, they have mediated an extremely broad range of legal disputes, from personal injury to sexual harassment to complex commercial matters.

So, my findings and prescriptive thoughts relate to virtually *any type* of mediation.

As a reminder of my methodology, I share my interview questions and, using boxing terminology, provide a summation for the collective answers:

- Unanimous Decision
- Split Decision (winner by majority)
- Draw (no clear winner)

In a previous article, *Zeroing in on Zoom: What Good Mediators Really Think About Virtual Platforms*, the Master Mediators I interviewed weighed in on mediating using virtual platforms.

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<sup>1</sup> JAMS Master Mediators interviewed by David Ross include [David Geronemus](#), [Dina Jansenson](#), [Shelley Olsen](#), [Carol Wittenberg](#), [Peter Woodin](#) and [Michael Young](#).

<sup>2</sup> Available [here](#).

While they expressed a **Unanimous** preference for in-person mediations, they all recognized that, increasingly and by continued necessity, virtual mediation offers an unexpectedly effective alternative with upsides, including no travel time or related costs. They agree that virtual mediations are becoming easier and more natural.

Interestingly, two Master Mediators felt that virtual mediations can often be *more* enjoyable and *more* efficient than in-person mediations. Participants appearing from home feel more relaxed and, consequently, may be more transparent about what they really need to settle.

In sum, based on the collective view of the six Master Mediators—as well interviews with lawyers who have mediated virtually and my own experience conducting virtual mediations—virtual mediation works and, is here to stay.

With this in mind, I will now explore new issues particular to remote processes.

*Is “Upper-Body Language” Harder to Read in Virtual Mediations?*

NO—(Virtually) Unanimous Decision

## Why Body Language Matters

As Charles Craver, a leading expert on the role of body language in negotiation, writes in *Effective Legal Negotiation and Settlement*: “**Nonverbal** communication ... constitutes a majority of the communication conveyed in a negotiation.”

To be blunt, body language matters.

And it really matters to the Master Mediators as they try to assess the credibility of plaintiffs and defendants who, if the dispute **doesn't** settle, will likely be witnesses in an adjudicative proceeding.

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## The Mind of the Master Mediator From Eye-Rolls to Grimaces: Understanding Body Language in Virtual Mediations

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Effective mediators also assess the truthfulness and credibility of negotiators. For example, when a negotiator stakes out an extreme position or declares a bottom line, the mediator must determine in real time if they really mean it. And body language can help.

The Master Mediators also read body language to understand **people's** feelings, such as anger or disappointment, in order to acknowledge those feelings and build rapport. Feelings play a role in every mediation, whether the dispute involves allegations of sexual harassment, former partners working through a partnership dissolution, or a straight commercial dispute where people simply feel cheated or wronged.

Good mediators show clients that they are listening closely, with curiosity and compassion.

### Master Mediators Pay Close Attention to the Whole Person

While a few Master Mediators said that inconsistent statements and oral evasiveness matter more to them when assessing truthfulness and credibility, they all agreed that reading a **person's** body language can help a lot.

And they **didn't** pretend to know *how* they read body language so effectively, with one Master Mediator exclaiming, "**I can't** articulate how I do it. I just **can!**"

Their extraordinary skills are likely innate, developed through years of mediation experience. Intriguingly, several Master Mediators speculated that they honed their people-reading skills as children when they navigated complicated family dynamics, such as an overbearing or controlling parent.



### Your Face Is Your Canvas—Paint It Wisely

The Master Mediators agreed that while seeing a **person's** entire body and observing gestures and body positions often reveal useful information about feelings or state of mind, seeing a **person's** face matters most. And when only a few faces are on the screen, mediators can see expressions and micro-expressions *more* easily and *more* accurately than they can in person because everything is magnified.

As one Master Mediator put it, "**Eyes** and mouths are most important. I see emotions on their faces, even when they try to disguise or hide them." Another bluntly asserted, "**I** get as many clues from the neck up as from the whole body."

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**COVID-19**  
The new coronavirus

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Information and Resources



## The Mind of the Master Mediator From Eye-Rolls to Grimaces: Understanding Body Language in Virtual Mediations

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One Master Mediator told the story of an inexperienced lawyer who rolled her eyes and grimaced whenever she heard something she disagreed with or **didn't** believe, perhaps lulled into complacency given the relative informality of a virtual mediation compared to court. So, the Master Mediator took her aside to explain that eye-rolls show contempt and can alienate the person who is speaking, often making them less likely to want to share information or collaborate. The young lawyer promptly stopped the eye-rolling.

Effective negotiators and advocates control what they say and how they act, balancing being firm *and* being likable. Despite experiencing strong negative feelings, they maintain their composure and calmly listen while they control natural urges to interrupt, challenge assertions or launch personal attacks.

If you want an adversary to listen to *your* point of view, **it's** best to lead by example by listening to *their* point of view.

The same advice applies to how to interact with the mediator, with whom you want to build a positive, trusting and collaborative working relationship.

In my next article, titled “**Polo Shirts and Waterfalls: What to Wear and How to Appear on Virtual Mediations,**” I’ll tackle practical issues such as “**Strategic Implications of Your Clothing Choices,**” “**The Ins and Outs and Pros and Cons of Using Virtual Backgrounds,**” and more.<sup>3</sup>

<sup>3</sup> Future articles can be found on the [JAMS Blog](#).

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[David S. Ross, Esq.](#), has been a mediator with JAMS for nearly 30 years. He specializes in complex employment and commercial disputes and has resolved thousands of two-party and multi-party cases, including many class actions. Mr. Ross regularly handles high-profile cases involving celebrities, politicians and CEOs of global corporations.

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## Virtual Hearings and Trial After You've Reached an Impasse

By Elizabeth M. Edwards, Esq.,  
Family Law Attorney and Family Mediator  
The Law Offices of Barry I. Finkel, P.A., Fort Lauderdale

While jury trials, for the most part, are on hold during the Covid-19 pandemic, bench trials and mediations are proceeding virtually, and are proving to be a viable option for parties involved in civil and family law cases. Covid-19 has been a challenging time not only affecting the health and wellbeing of many people all around the world, but also changing the way that people do business. Fortunately, Florida courts, judges, attorneys, and mediators have adapted to virtual operations in stride, proving that we are able to conduct our line of work from anywhere.

Courthouses closed to the public and social distancing recommendations commenced in the middle of March, with no guidelines as to when operations would return to normal. Even with that uncertainty, within the first few weeks, mediators were able to successfully transition their mediation practices virtually. Similarly, Judges and courts were able to successfully transition from in person hearings and trials, to virtual appearances through virtual platforms, such as Zoom.

Online dispute resolution (ODR) has been around for years, but several mediators had not utilized this form of dispute resolution until the pandemic. Mediators and attorneys have now discovered that virtual mediation can be an efficient and effective way to resolve cases. Although while conducting and participating in a virtual mediation you miss the interaction of person to person contact, all aspects of a mediation that would usually take place in person can still be done virtually. Many virtual platforms have a breakout room feature which allows for parties to caucus and speak privately as they would be able to do in person, with the mediator having the ability to go back and forth between the breakout rooms. With the familiarity of ODR and the virtual platform, mediations can be conducted efficiently and effectively, and provide the means to bring a case to a resolution without the need for litigation. During the pandemic, people have enough stress in their lives.

Through the use of ODR, parties are able to settle cases and relieve some of the stress that prolonged litigation may cause. In the unfortunate event that ODR is not successful, parties, for the most part, still have the ability to access the courts during this unprecedented virtual era. While mediating, mediators should keep in mind how an impasse during Covid versus pre-Covid may send the case down a very different path.

Many different types of hearings were transitioned to a virtual platform, including motion calendar; non-evidentiary hearings; evidentiary hearings; and bench trials. The transition to virtual motion calendar hearings and non-evidentiary hearings appeared seamless and is an efficient way to conduct these types of hearings. Before the pandemic, attorneys would commute to the courthouse, wait for long periods of time for his or her case to be called, present the case and legal argument to the judge for five minutes, and then commute back to their offices. A hearing that may take only five minutes could take up to an hour or more of an **attorney's** time when factoring in the commute and waiting time. This can be expensive for the client. In the pandemic Zoom era, this process has changed drastically. Instead of the long commute and wait times, attorneys are able to log onto their computers or smart device from the comfort of their own home or office and wait in a virtual waiting room until the case is called by the judge.



## Virtual Hearings and Trial After You've Reached an Impasse

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This allows for attorneys to work on other cases while they are waiting to be called into the Zoom hearing. Once called by the judge, attorneys have the ability to make the same arguments as they would have in person. Thereafter, the judge issues a ruling. By uploading the proposed order through the case management system or other formats designated by the judge, the order can be signed and returned to the attorneys within minutes of the hearing, thereby making virtual motion calendar and non-evidentiary hearings efficient and cost effective for attorneys and parties.

Transitioning to virtual evidentiary hearings and bench trials have been successful as well. There is a lot of detail and preparation associated with virtual evidentiary hearings and trials. Although these types of hearings are able to proceed virtually, there are adjustments that all participants have to make from how things have been done in the past. Attorneys and judges have been accustomed to conducting these types of hearings in person. Having trials conducted virtually takes a bit of patience and adjustment. With an in-person trial, there is a benefit to observing a witness testify, including his or her non-verbal behavior and interpersonal body language, which can be lost when conducting a trial virtually. Notwithstanding, there is still the ability to successfully make opening statements and closing arguments; conducting direct and cross examination; entering evidence; stating objections, etc. However, virtual trials take a considerable amount of preparation and organization.



Prior to the pandemic, when an attorney prepared for trial, he or she had exhibits and copies ready to be presented in court. Similarly to an in-person trial, attorneys are still required to have their evidence prepared and pre-marked, but a virtual trial requires attorneys to go one step further. Now, attorneys must also pre-mark exhibits on their computer files. Then they must upload exhibits through the case management software, or as otherwise directed by the judge, in advance of the trial so the judge can easily access the exhibits. This also requires attorneys to provide his or her opposing counsel with the exhibits in advance of the trial. Many judges require attorneys to have discussions about the admissibility of exhibits prior to trial, which can streamline the process. There are also programs available to attorneys that help organize exhibits and present evidence at trial such as TrialPad. During the trial, when an attorney is ready to enter an exhibit into evidence, the attorney is able to select the document off of his or her computer and share the screen with all participants using the screen share feature allowing attorneys to successfully enter exhibits as they would do during an in-person trial.

Objections during a virtual trial are a bit different than objections in an in-person trial. During a Zoom trial, participants are unable to speak over one another, so if one attorney objects while the other attorney is speaking, the objection may not be heard by the judge or the party answering the question. However, this problem can be easily resolved by having an attorney hold up a sign to the camera which states “**Objection**” in bold lettering, or simply advising his or her client to wait until after the question is asked to see if an objection is made before responding. The latter should be done for an in-person trial as well. Zoom provides the option for virtual backgrounds which can make an otherwise messy room look professional. However, if you are utilizing that feature and hold a sign to the camera, the virtual background may prevent the judge from seeing the sign and the objection. **It's** also important to note, that any noise that is made in the vicinity of the **computer's** microphone can be picked up by Zoom. For example, if an attorney shuffles papers while another attorney is speaking it can commandeer the Zoom microphone, and that attorney can no longer be heard. Therefore, it is good practice that if an attorney is not speaking, his or her microphone should be muted.

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## Virtual Hearings and Trial After You've Reached an Impasse

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During trial, attorneys are accustomed to being in the same room as his or her clients, paralegals, and other attorneys who assist with presenting the case. When conducting a virtual trial, if more than one participant is in the same physical room, each having his or her own laptop or smart device logged into the Zoom hearing, only one device can be unmuted within the room, otherwise there may be feedback. Therefore, it is good practice that other devices logged into Zoom in the same room be muted with the microphone turned off. Similarly, when a witness is testifying, he or she should be in a separate physical room on his or her own device. Prior to trial, an attorney and his or her client should have a discussion as to how they will be able to communicate with each other during the Zoom trial. Although Zoom does have a chat feature, it may not

be confidential nor protect the attorney-client privilege. Accordingly, other methods of communication need to be utilized such as text messages and emails.

Evidentiary hearings and trials via Zoom take patience and adequate preparation. They can be just as effective as in-person, and most importantly, can bring cases to conclusion. The best way to feel comfortable and adequately prepared for any virtual legal proceeding is to practice. With practice and preparation, a participant can feel confident going into a virtual mediation, hearing or trial.

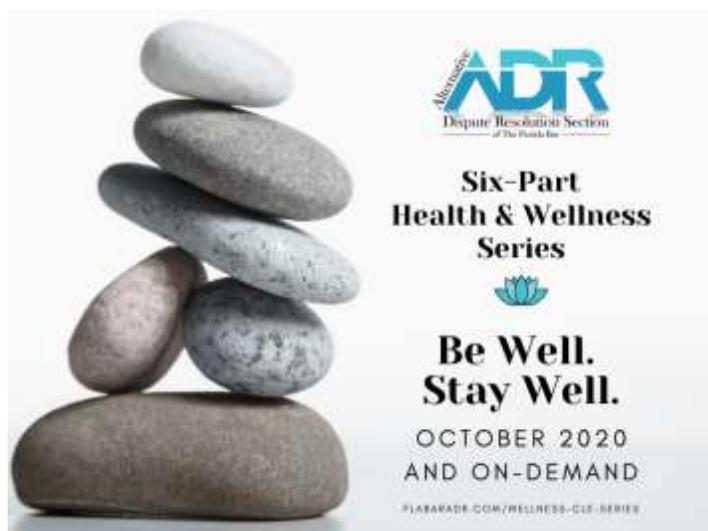
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[Elizabeth M. Edwards Esq.](#) is an accomplished Family Law Attorney and family mediator who prides herself in her ability to settle complex cases without the need for prolonged litigation.

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## Be Well. Stay Well. 6-Part Health & Wellness Series

Earn hard-to-get Mental Health Awareness CLE credits by attending or purchasing on-demand the ADR Section's six-part, online webinar series that focuses on practical tips for maintaining mental health and emotional well-being.



The section partnered with the University of Miami School of Law and Legal Services of Greater Miami, Inc. to produce the webinars. Topics range from “**The Ethical Considerations When Using Alternative Dispute Resolution to Bridge the Justice Gap,**” to “**Balancing** Wellness and the Ever-Present Demands of Technology.”

ADR Section Chair-Elect/Health & Wellness Committee Chair [Patrick Russell](#) initiated the series idea. A recent Florida Bar News [article](#) describes the series, which will feature prominent lecturers including University of Miami School of Law Professor [Scott L. Rogers](#), director of UM's Mindfulness in Law Program, and [Paula Black](#), a nationally recognized lawyer coach and author of “**A Lawyer's Guide to Creating a Life Not Just a Living.**”

Each course in the “Be Well. Stay Well.” health and wellness webinar series features a video introduction by Florida Bar President Dori Foster-Morales, an avid proponent of wellness for Florida lawyers and others in the legal community.

Visit [this link](#) to get the full schedule, registration links, on-demand purchase information and the latest updates on the series.



## Tips From the Masters: Strategies in Mediation

Interviews and edits by  
[Shari Elessar](#) and [Ana Cristina Maldonado](#)



“If I had six hours to chop down a tree, I’d spend the first hour sharpening the ax.” ~ Abraham Lincoln

To sharpen the ax of our knowledge, we asked our mediation experts several questions. Our panel included attorney-mediators Christy L. Foley, Mark A. Greenberg, Peter J. Grilli, A. Michelle Jernigan, Meah Tell, and Stanley Zamor.

**Editors’ Note:** Every mediator on the panel was interviewed independently and, for the first “best tip” question (regarding approaching difficult discussions), each mediator gave a similar answer that pointed to active listening and understanding the emotions driving the negotiations. After the first question, the distinctive style of each mediator emerges, showing various ways to approach *moving the parties* in mediation.

**What is your best tip for approaching difficult discussions in mediation?**

*Christy Foley:* Start by figuring out what is behind the battle. Let the people talk their side out and ask good questions to get to the bottom of what is really bothering them. If you help each person express what they feel is truly important, you can help them move forward.

*Mark Greenberg:* Listen. Allow the parties to vent. Be sure to let each side know that there is a reason to listen as part of this process.

*Peter Grilli:* Active Listening. Try to understand the emotions of the speaker. If someone feels like their emotions are understood, they are going to feel better and become more responsive. To be clear, active listening is not about why someone feels a certain way, but rather understanding how they feel, and reiterating how they feel in a manner in which they feel heard, or shows you wish to

understand. Author and speaker Doug Noll talks about this in his lectures on deep listening.

*Michelle Jernigan:* As the mediator, you set the tone of ‘in control’, but *not controlling*. Recognize that emotion is part of every dispute and needs to be expressed. I allow a certain level of anger and frustration, as long as it does not take over the process.

*Meah Tell:* The best way is to *embrace* the difficult discussions. When I was a very young mediator, I had a pro se divorce mediation and when everything was resolved and agreed upon, the husband told me that he just could not sign the Agreement, because the Lord told him not to. I decided (then) that when pitted against that, there was not much more I, a lowly mediator, could do. Now when the issue of religion comes up, I often try to explore that issue in more depth. I look to see if that discussion can actually help a party obtain resolution. I try to find out what are the **parties’** core values and principles, see how that guides the decision, and where can we move from there? Can their fundamental religious beliefs help them see the other party in a different light? What is their comfort level and what is making them uncomfortable? Try to find the **parties’** core values and principles, then try to uncover what is making them uncomfortable, and then working out from there, will help you obtain resolution.

*Stanley Zamor:* Getting through emotions with *discussion* is often what mediation is all about. Explain to the parties that mediation may be difficult and complex, but this is the time and place to have those hard conversations. In order to obtain “buy in” from the participants about the process, I ask them “**Is this okay?**” I prefer to do that up front together, but if necessary, I will have separate orientation sessions.

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## Tips From the Masters

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What techniques do you use (when negotiations are bogged down) to generate momentum?



*Christy Foley:* When we feel like we are losing momentum, I name it. I say, “I know we are hitting a wall, we are tired. What can you give me to jump start **this?**” Labeling helps parties move from feeling to thinking.

I do that in both rooms, before sharing anything with the other side. This allows me to know whether people are still committed to being in this mediation. If they give me an ‘**I don’t know**’, I will ask if they are willing to budge a tiny bit on X or Y. It can also help to be the cheerleader. “I am here with you and I want you to bust through the wall. If we make a dent on both sides, we can get a hole in the wall so we can make progress and not waste **anyone’s** time.”



*Mark Greenberg:* I use several techniques:

Sometimes when people get bogged down, I will switch to a subject area that narrows the issues to what they can more easily agree on.

This creates momentum and then **I’ll** deal with the emotions and get to the heart of what they cannot agree on. If it is simply money, **I’ll** use brackets to move people off psychological barriers. If it is not about money, I ask pointed questions, and see if I can get them to craft their own solutions.



*Peter Grilli:* Once they get into the mindset of a reasonable range, it renews momentum. I use a technique to allow people to define a “reasonable **range**” for settlement. I ask the parties, “Can we agree that there is no single number that is correct but rather a ‘**reasonable range?**’” and “Can you try not to get fixated on a single **number?**” For example, if they are somewhere below 25% apart, they have defined a reasonable range of settlement in which no number is exactly right or wrong. And I tell each party that it would be perfectly rational to settle within that “reasonable **range**”.



*Michelle Jernigan:* Brackets work. I have also used trial balloons, which is sending up a signal to see how the parties respond — for example, “If I could get the other side to accept x, would you pay **x?**” Talking to the attorneys separately without the parties to brainstorm can also be effective. Finally, I will sometimes use a **mediator’s** proposal, where the mediator suggests a solution, and the parties still retain the ability to accept or reject that solution.

**Editors’ Note:** Michelle elaborates on bracketing in a [short video](#) by The Florida Bar Young Lawyers division.



*Meah Tell:* Be proactive and continually engage all parties and attorneys. Help them search for options by emphasizing (i) narrowing the differences between the parties, (ii) areas where they can agree and (iii) note where they have worked hard toward settlement and acknowledge their contributions. I sometimes throw out “trial **balloons**” or alternatives I have seen in the past. Questions like “Do you think it might be helpful to propose **brackets?**” may also close gaps. If the parties do impasse, I encourage them to continue discussions and sometimes offer to continue to assist.

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## Tips From the Masters

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*Stanley Zamor:* I use a modified SWOT analysis, evaluating strengths, weaknesses, options and truth to help the **parties** see the risks of trial versus resolution. First, draw the quadrant. Second, ask the parties to help fill it in.

“Help me understand what I have heard from the other party about your challenges—can you re-state them for **me**?”

Make *them* do it. Try to get three points in each category. In caucus, use VED analysis to label issues as Vital, Essential and Desirable (your best day in court?), virtually using tools in Zoom or live using a white board. When the “What do you want to **happen**?” question has failed, turn to “How did we get **here**?” using AI (Appreciative Inquiry) which is a way of communicating and asking questions that can elicit the positive side of conflict and relationships within the mediation room.

**Editors’ Note:** Upchurch, Watson, White & Max provides a SWOT worksheet [here](#).

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“Tips From the Masters” is a collection of interviews with experienced Florida mediators who share insights and advice about various aspects of mediation. Learn pro tips from some of Florida’s top mediators. The column will appear in each issue of The Common Ground publication.

Do you have any favorite mediation tips or juicy war stories? Would you like to be interviewed for the “**Tips from the Masters**” column? Email [Cristina Maldonado](#) and [Shari Elessar](#) and let us know you are interested.

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## The Masters

[Christy L. Foley, Esq.](#) is a Florida Supreme Court certified circuit civil and county court mediator. She has been mediating since 2009, focusing on business law, employment law, insurance law, construction law, real estate law, technology law, and landlord/tenant law.

[Mark A. Greenberg, Esq.](#) brings over two decades of trial experience to his civil mediation practice. He has represented defendants and plaintiffs and has a rare combination of first-party coverage and third-party personal injury experience.

[Peter J. Grilli, Esq.](#) has been mediating since 1993 and has mediated more than 5,500 cases, including civil litigation in federal and state courts.

[A. Michelle Jernigan, Esq.](#) has mediated thousands of cases throughout Florida since launching her mediation career in 1987.

[Stanley Zamor](#) is a Florida Supreme Court Certified Circuit, County and Family Mediator, Primary Trainer and Qualified Arbitrator.



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## ON-DEMAND AND PODCAST CLE & CME

[Mindfulness, Social Connection and Well-Being: Resolving Inner Disputes and Reaching Resolution](#). We live at a time of great disruption and social isolation, physically, emotionally, and economically. This session explores insights associated with the effect of isolation and feelings of disconnection—whether occasioned by COVID-19 or aspect of the practice of law—and offers various practical approaches to well being and healing. 1 CLE; 1 Mental Illness Awareness CLE.

[Balancing Wellness and The Ever-Present Demands of Technology](#). An overview of the need to balance wellness with the demand to be “**connected**”, especially considering the impact of working from home during the pandemic. The course will cover best practices for setting technological boundaries and leveraging technology tools and leveraging technology tools to support balance and wellness. 1 CLE; 1 Technology CLE; 1 Mental Illness Awareness CLE.

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# Why Truth Is Not All That Matters: Misinformation, Self-Deception and Social Pressures

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Communication technologies facilitate the exchange of information. But what exactly are we exchanging? Is it facts, or is it opinions? Is it an accurate representation of reality or wishful thinking? The answer is not a very simple one, even when it appears obvious. For one, what is sent into the communication pipeline is not necessarily what we receive (or perceive) on the other end. It is important to try and remember that each conversation has more than one party, and each party comes to communicate with their own goals and agendas in mind. Sharing “**true**” information is not an end-goal in this process, but a mere conduit between our needs and the world outside. Not everyone goes into a conversation and posts on social media to share what they think to be useful information for others. The accuracy and factuality of information we share are often the last thing that comes to mind when we speak up or hit “**post**.”

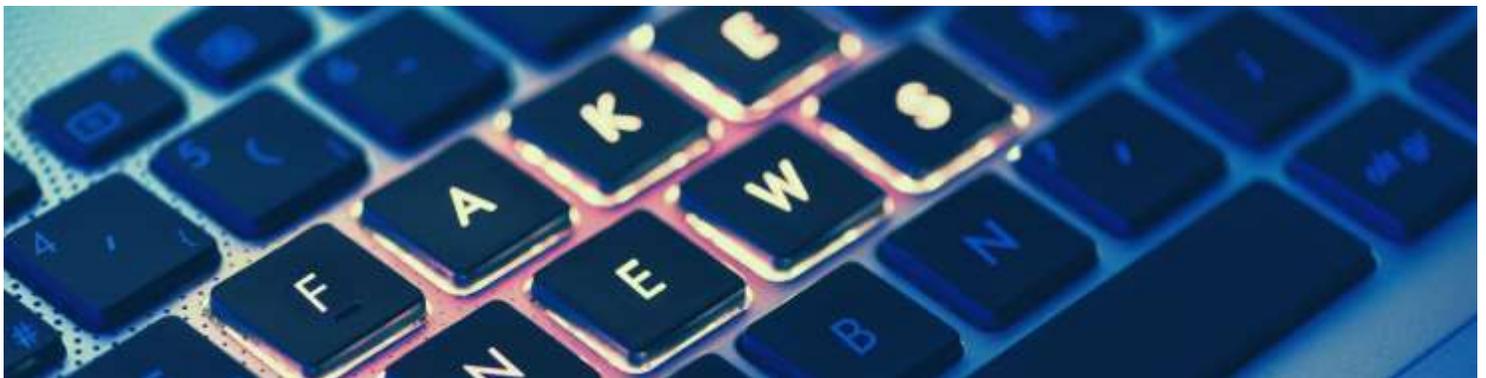
Research in the fields of Communications and Social Psychology has unveiled a few interesting tendencies in our relationship with information, many of which have to do with what we really use information and media for. We need to try our best to understand how communication technologies affect us, allow us to influence others, and help or prevent us from finding common ground. This need is especially pronounced right now, during the global pandemic, when we are forced to rely on technology

more than ever to stay connected, when staying informed means navigating through a myriad of choices.

Well before **Facebook’s** algorithm began filtering out the posts we may not like, we had started doing so ourselves. *Selective exposure* is a well-documented phenomenon ([since the 1960s](#)) in communication research. It describes our tendency to avoid information and content that contradict our beliefs and convictions. Changing a belief requires a serious effort and promises very little obvious reward. In fact, changing **one’s** mind on an important issue may alienate a person from a group of like-minded people and shatter their established social structures. This is not something humans, who survived through ages by relying on each other, evolved to do. In the age of on-demand global communication, refusing to consider another opinion and finding support for the one you already hold becomes so much easier. Just close that browser tab or block that acquaintance from your social media and your beliefs are safe exactly where they are.

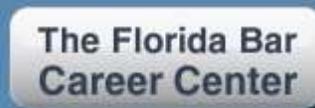
Even when we are forced to face facts and data contradicting what we believe to be true, we manage to force them into submission and make them support our arguments somehow.

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A [1975 study at Stanford](#) started the tradition of research on *confirmation bias*, or our desire and ability to make whatever new information we come across fit with our existing knowledge and beliefs. The Stanford study participants were asked to take part in a rather gruesome task, sorting through 25 suicide notes and figuring out which were real.

Some were led to believe they were very successful. They were told they guessed 24 out of 25 notes right. Others were told they only got 11 correct—worse than a coin toss. Neither of the two stories was a verified fact. Participants were simply randomly assigned to the two groups. Even after the study, when participants were debriefed and told that their stellar or terrible results were a complete sham, the “**successful**” group was still sure they were pretty good at sorting suicide notes and the other group thought they were quite bad at it. Since the initial study, the fields of psychology and communication have amassed a great deal of evidence that we cherry-pick facts and evidence, and simply ignore the obvious, to remain comfortable in our convictions.

It appears that we can easily ignore or misinterpret new information, but what about the old data stored on our marvelous personal computer, the human brain? Well, it turns out our hard drives are not as hard after all. An interesting research technique called “**lost at the mall**” originated from a [1995 study by Elizabeth Loftus](#). Professor Loftus had family members of study participants supply her with real memories about them, and then she added another one to the mix while interviewing her subjects, getting lost at a mall. A quarter of participants went along with the false, implanted recollection of their past lives; they even supplied the researcher with numerous details about their non-existent experience. They told Dr. Loftus all about the appearance of people who rescued them, as well as other sensory details of the created memory. Since then, numerous studies on false memories have used the “*lost at the mall*” technique and found a great deal more evidence of how unreliable our personal information storage facilities are.

An interesting detail about false memories, and possibly other subconscious massaging of

information we do, can be illustrated by a curious phenomenon dubbed “**the Mandela effect.**” Nelson Mandela, who was incarcerated in the 1980s, served as the President of South Africa between 1994 and 1999 and passed away in 2013. However, this fact did not stop people around the world from “**remembering**” that he died in prison in 1980s. [Fiona Broome, a self-described paranormal researcher](#), coined the term *Mandela Effect* first and used the phenomenon to explain all sorts of unexplained things on [the dedicated webpage](#) and beyond, illustrating how easily our minds rush to making connections and filling gaps. This non-scientific discovery helps illustrate how social our information manipulations could be. The “**lost at the mall**” study participants did not come up with false memories on their own, a researcher planted them. People did not recall news coverage of **Mandela’s** death by themselves, it was a shared “**memory**” in a community sharing a set of beliefs in paranormal and other phenomena. Community is a very important keyword here.

Our group identity is crucial for our perception of wellbeing, and there is [experimental data to prove that](#). Our need to belong is rooted in our evolution as a group species. It can [directly affect our memory](#), just like hunger would make us pay attention to food first and everything else later. But there is more to it. As we strive to fit in with our tribe (a political party, a religious group, a nation, a sports-team fan club, you name it), we avoid, disregard, and twist facts about our reality. A recent [article in Psychological Inquiry](#) reminds us that the social scientists studying these very phenomena are not immune to them either. It takes time and deliberate effort to minimize the unintended gaps and inaccuracies we cause in our worldview. Unfortunately, our relationship with information is anything but deliberate.



[Polls conducted by Pew Research](#) have shown social media outpacing newspapers in popularity as the main source of news; they are catching up to radio, news sites, and TV. On social media, [according to an MIT study](#), false news often spreads faster than the true news. A recent [report from Pew Research](#) showed that Americans relying on social media for

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news get their facts wrong more often than other groups. But why do social media “help” us get things wrong?

A [Columbia University study](#) showed that 6 out of 10 of us share “news stories” without reading, without any effort to verify the accuracy and authenticity of the content we share. A large [study from Stanford University](#) found that 82% of American middle schoolers struggle to distinguish neutral reporting from “false” news stories—such as intentionally fabricated disinformation, sponsored advertising labeled as such, and industry-financed reporting that was compromised by conflicts of interest. Anecdotal, workshops on misinformation and fake news I have conducted over the past few years left me convinced that this issue does not stop with young people. In fact, according to [a 2018 Pew Research study](#), older generations are worse at telling news and opinion apart. Even the journalism-major underclassmen that I have taught for the past

10 years struggle to distinguish news reports, editorials, and sponsored content. In my technical writing classes, I teach students the value of academic research, but also of its fluid nature and how it strives to paint a fuller picture of the world around us. **Today’s** knowledge may become outdated in light of new discoveries, but **Einstein’s** General Relativity does not necessarily nullify **Newton’s** discovery of gravity. To build a shared understanding and find a common language, it is important to remain *flexible and accepting* of new facts. Equally important is to remember that what we may see as a “**wrong**” picture of the world, may simply be lacking a few details. Ongoing open dialogue is key to common ground.

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