

12th Open Forum - Munich, September 9, 2010

**Two more
reasons...**

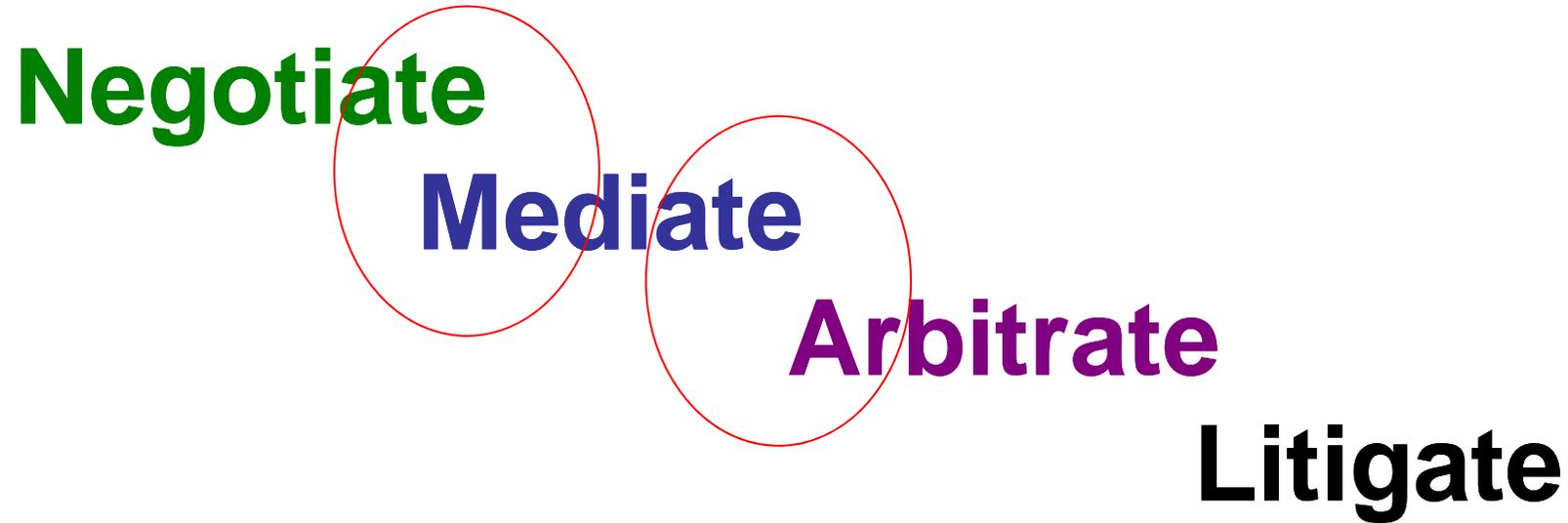
**...to use
mediation**

**Irena Vanenkova
Executive Director
International Mediation Institute
The Hague**



www.IMImediation.org

12th Open Forum - Munich, September 9, 2010



Negotiate

Mediate

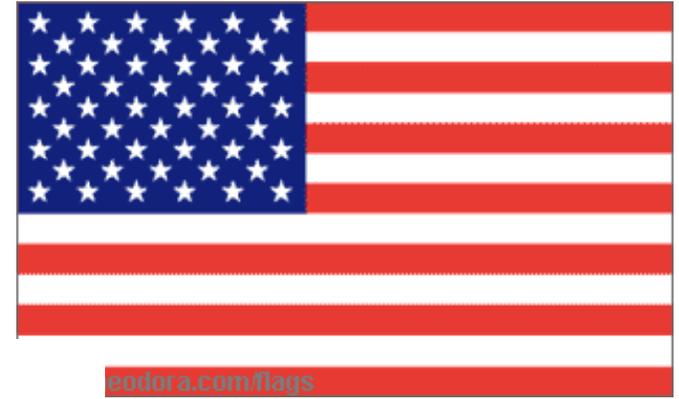
Arbitrate

Litigate

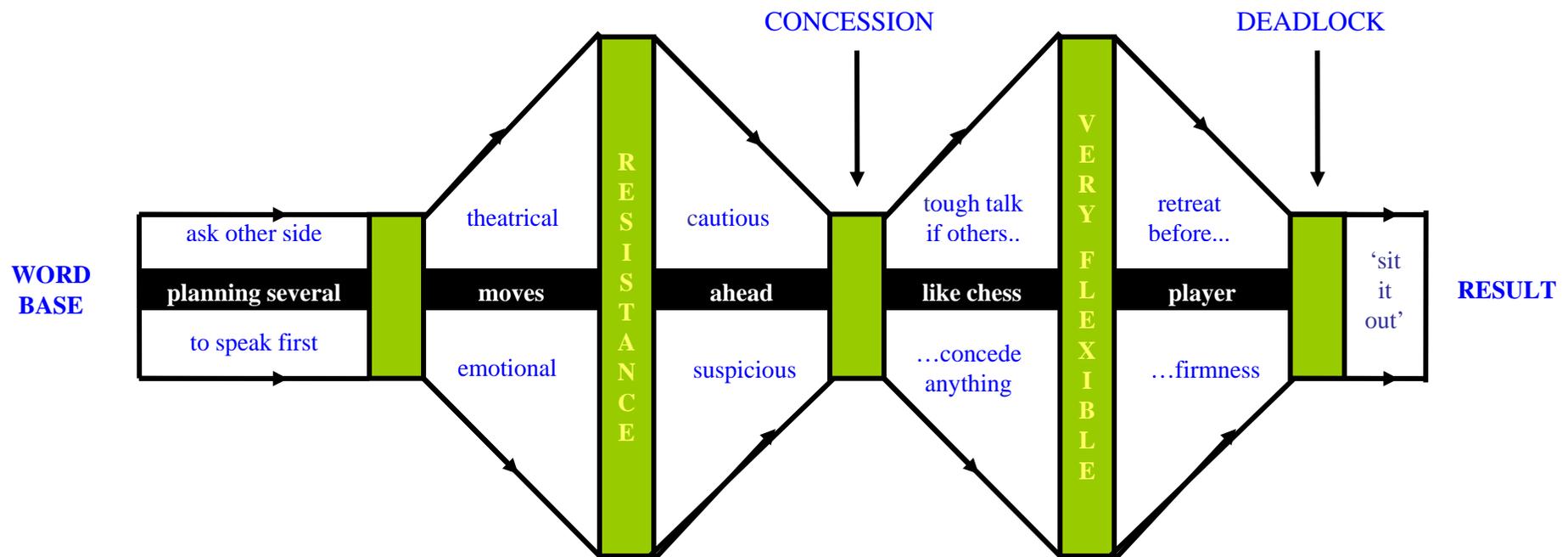
**Culture is more often
a source of conflict than of synergy.
Cultural differences are a nuisance at best
and are often a disaster.**

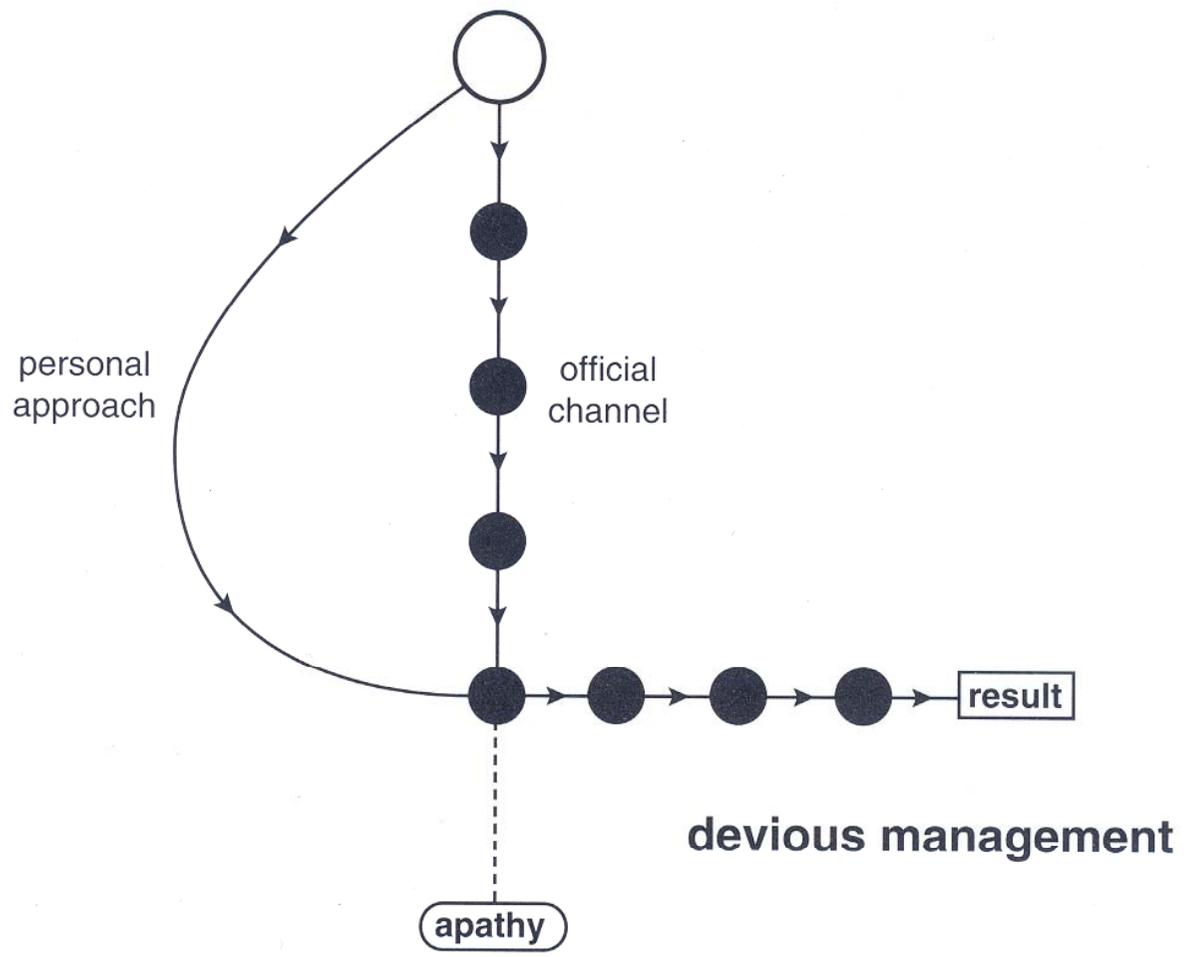
**Dr. Geert Hofstede
Cultures & Organizations - Software of the Mind
2005**





Russian Negotiation Paradigm





Russian Negotiation Culture

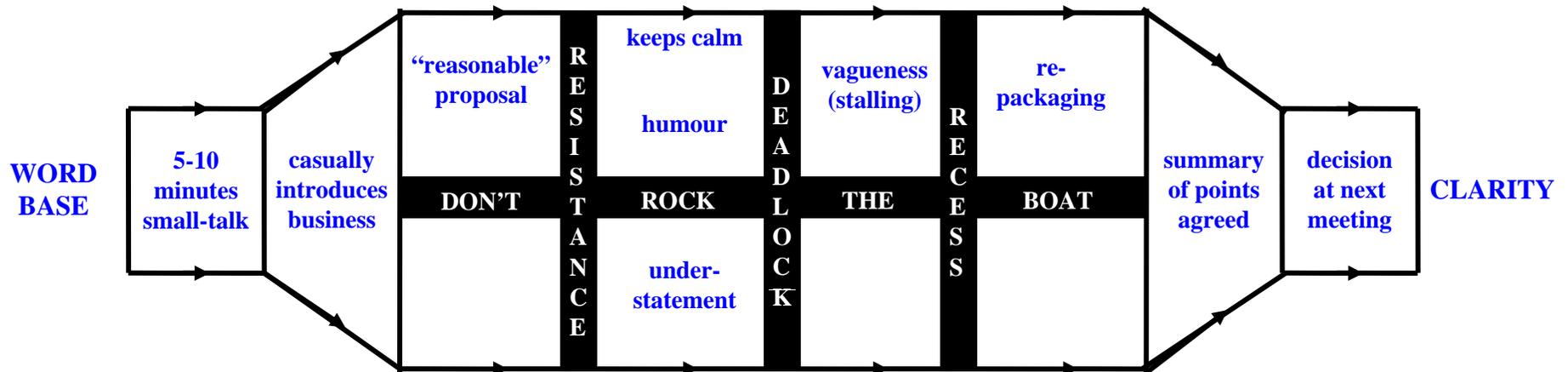
- Asian as well as European
- Negotiation is chess
- Formalities and Informalities
- Swings from formality to emotion
- Someone else decides
- Agreements are not necessarily binding



**Experience is what you get
When you don't get what you want**

Russian proverb

British Negotiation Paradigm

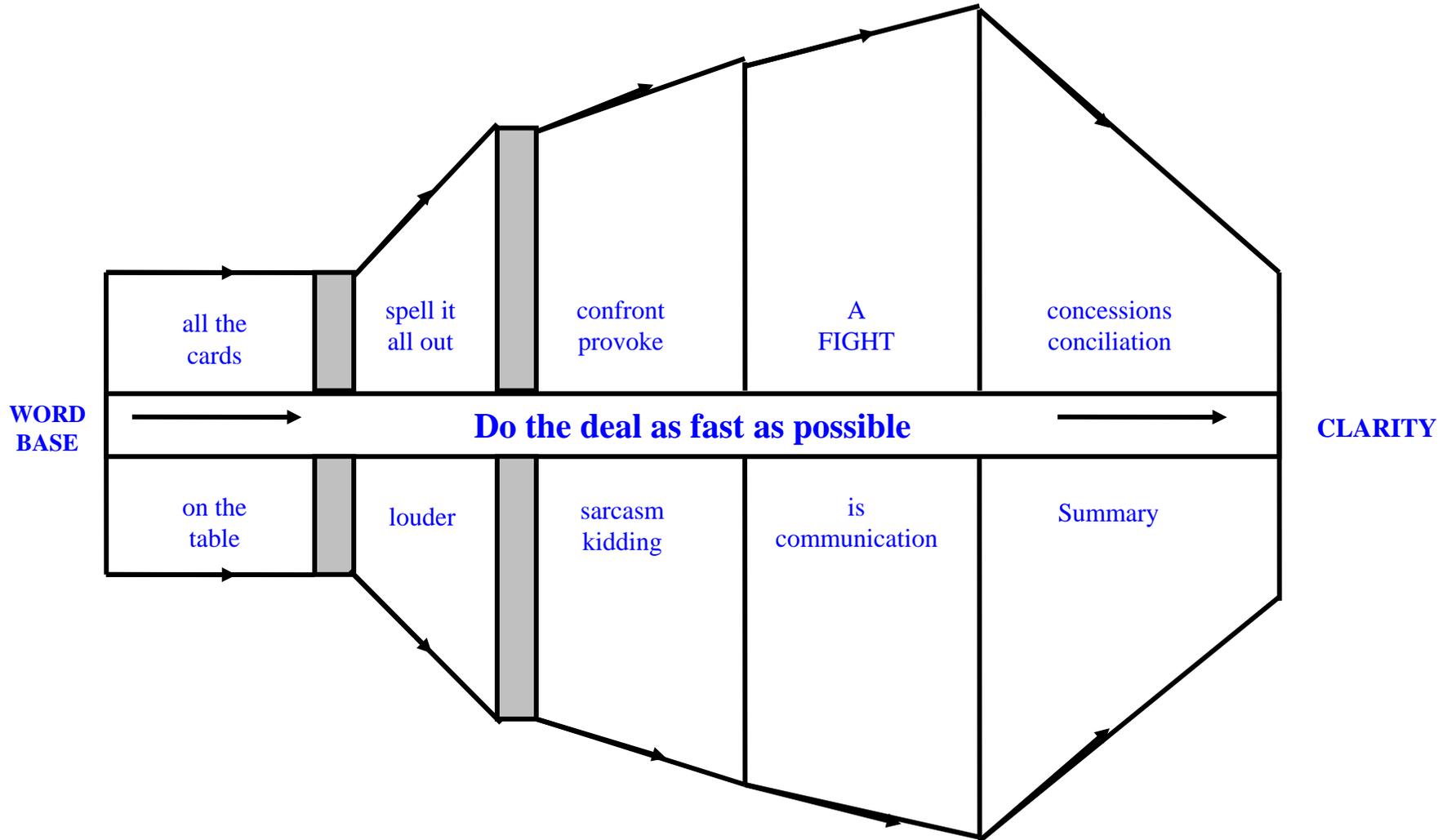


British Negotiation Culture

- Don't rock the boat
- Negotiation is cricket
- Jokes mask seriousness
- Polite. Stiff upper lip
- Confident, fair play
- Hide true feelings

“To be perfectly frank & honest...”

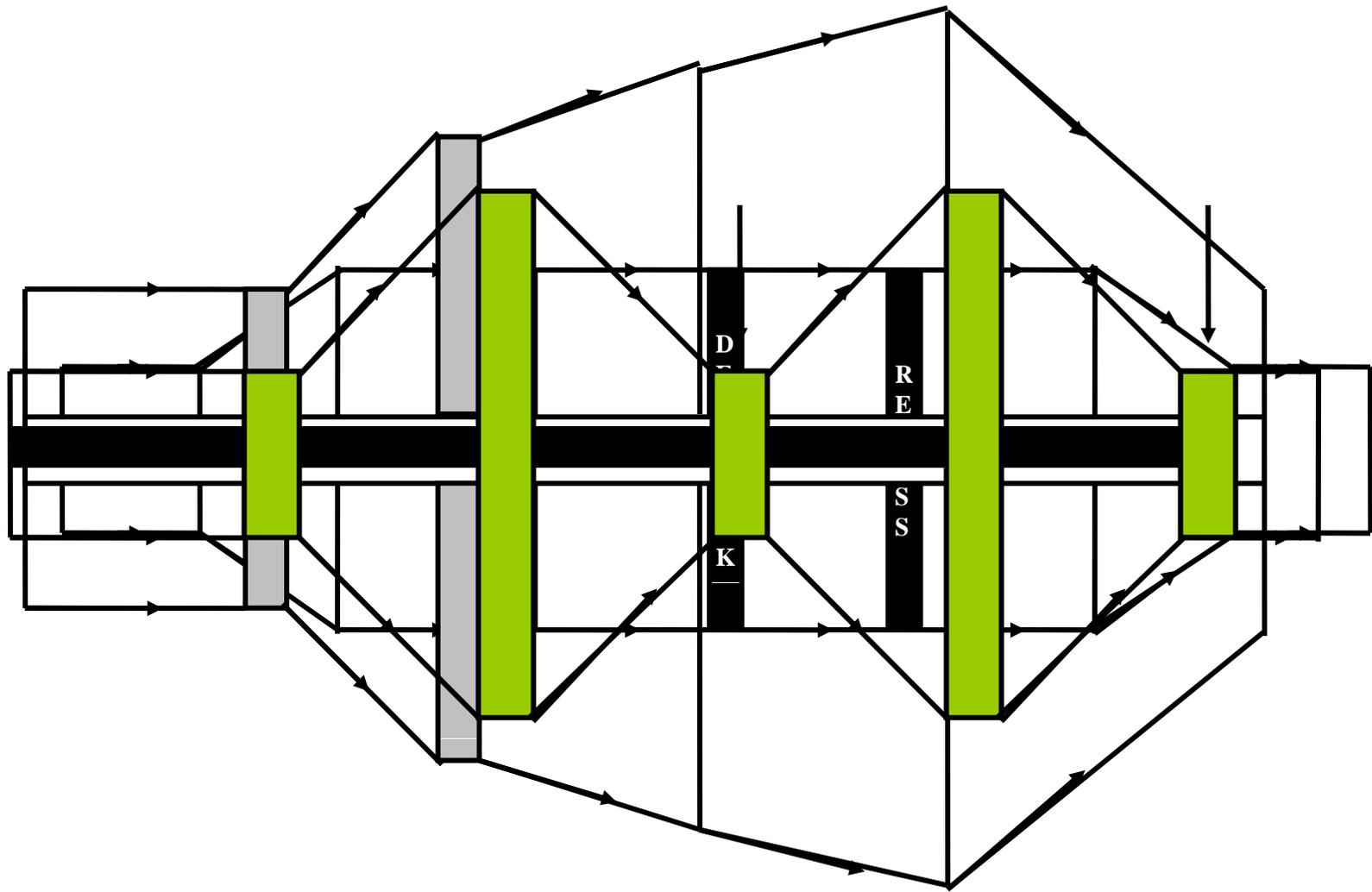
American Negotiation Paradigm



American Negotiation Culture

- Immediate hand of friendship
- Upside down, inside out, back-to-front
- Informality
- Use lawyers for aggression
- Bottom line
- Agreements are Holy Grail
- Decide NOW!

“Let me put my cards on the table...”





Available on the iPad

Home

Finance

Technology

Innovation

BOARDROOM STRUGGLES July 24, 2008, 1:32PM EST

text size: T | T

Dudley Flees Russia in TNK-BP Shareholder Fight

The chief of BP's Russian affiliate, sounding exhausted, hopes to keep operating the joint venture from abroad

by [Stanley Reed](#)

In the latest twist in the battle between BP ([BP](#)) and its Russian shareholders—Alfa, Access, and Renova—BP announced on July 24 that Robert Dudley, chief executive of its Russian affiliate, TNK-BP, was temporarily leaving Russia. Dudley had been under pressure from BP's Russian partners and from the Russian authorities. His Russian visa was set to expire on July 29, and it was questionable whether it would be renewed. BP says that it supports Dudley and that he will continue to run TNK-BP from outside Russia. BP won't disclose where Dudley will be based.

EUROPE

[Russian Firefighters Use Break in Smog](#)

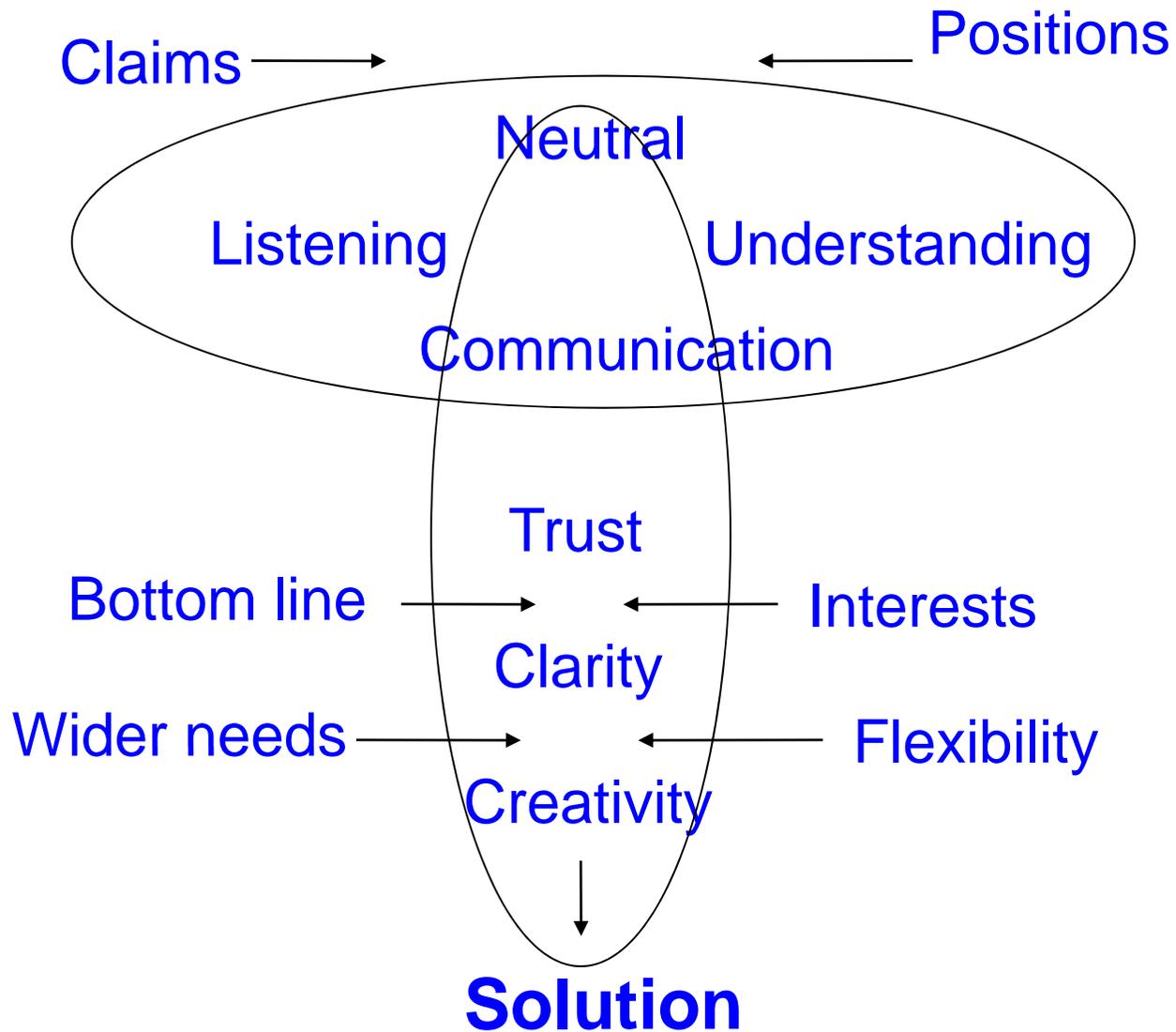
[Russian Economy Grew 5.2% on Commodities](#)

[Jailed in Dubai, Accused Face Long Wait](#)

[Istithmar Sells London Building for \\$272M](#)

[Sanofi Hostile Genzyme Bid Unlikely](#)

Problem



Mediation can be a solution...

- **Mediators can help in cross cultural deals**
- **Mediators do not replace negotiators**
- **Need truly cross-culturally skilled mediators**

Negotiate

Mediate

Arbitrate

Litigate

QuickTime™ and a
decompressor
are needed to see this picture.

In deal-making...

- Parties usually on friendly terms
- Communications good
- Open minds – looking for opportunities
- Willingness to consider options
- Everyone apparently attentive, positive

What possible value
can a mediator add?

But...

- Distrust is never far below surface
- Everyone wants the biggest slice
- Most negotiations are highly positional
- Friendships are usually superficial
- Hidden agendas
- Bargaining issues & misunderstandings arise
- Deal drafting and deal closing is never easy

**So might it help to use a neutral
to help us make a deal?**

An example...

HIGH SUMMER

AVAILABLE AS FROM MAY

THE BOTTLE DOG WHITE
BY BOTTLE DOG VINTAGE





TESTED AT HIGH ALTITUDE

AMERICAN CLASSIC

Chicago
FLIGHT EQUIPMENT

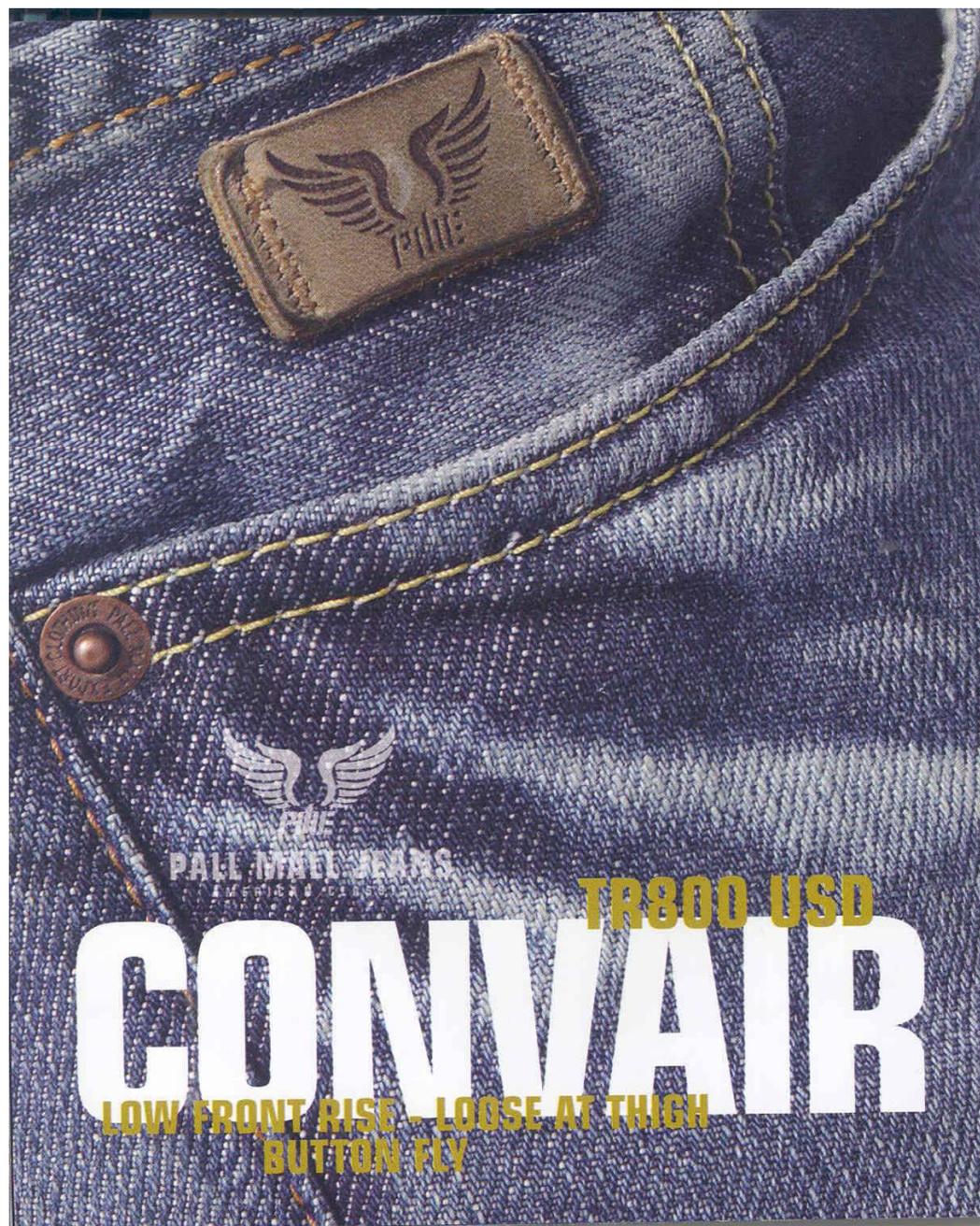


Southern
SKY FREIGHTERS

P.M.F. 80.0 LOW 41.0

CARGO AIR TRANSPORT
PALL MALL

TSS 6120C 549 LAGOON

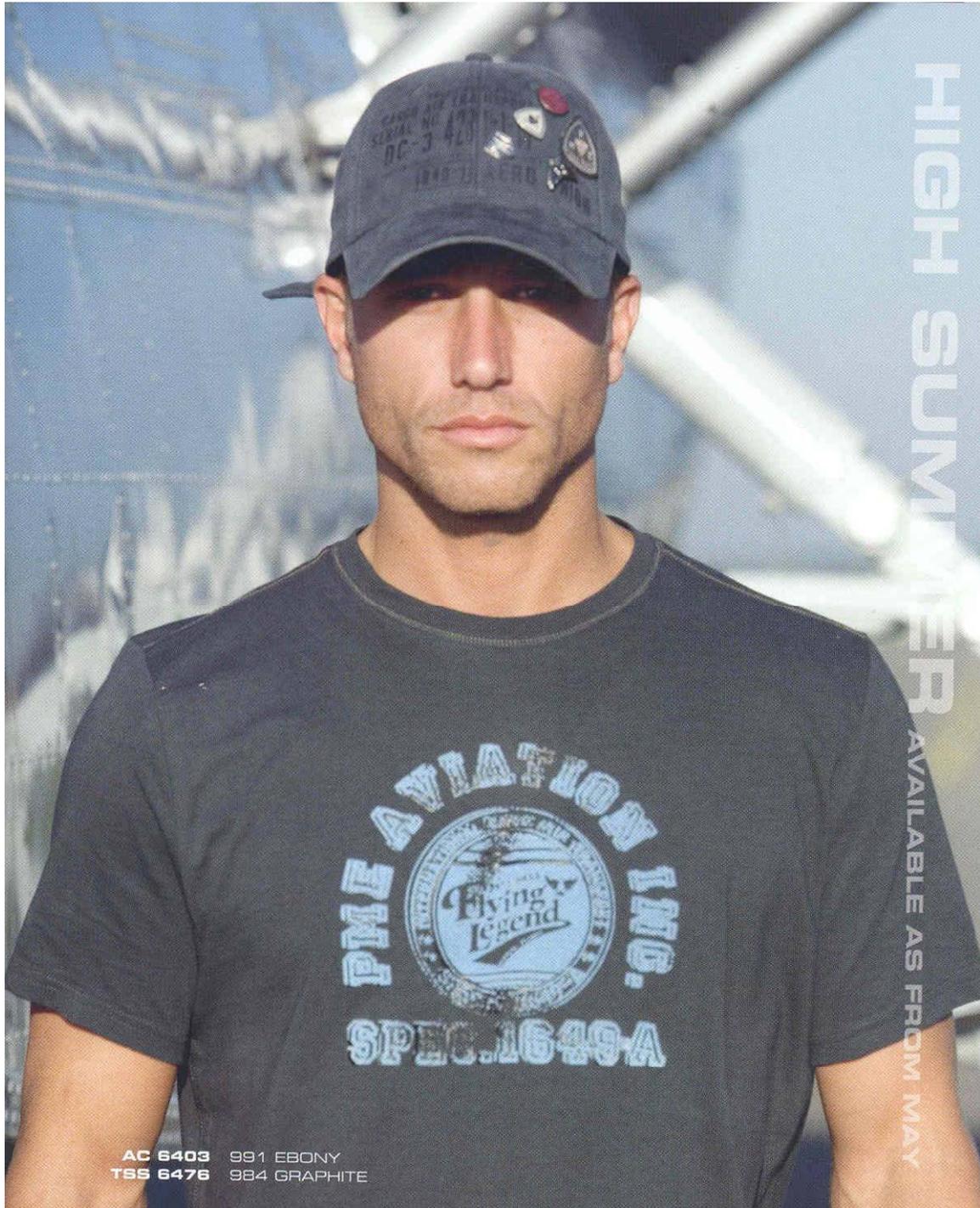


THE PALL MALL JEANS
AMERICAN CLOTHING

TR800 USD

CONVAIR

LOW FRONT RISE - LOOSE AT THIGH
BUTTON FLY



HIGH SUMMER AVAILABLE AS FROM MAY

AC 6403 991 EBONY
TSS 6476 984 GRAPHITE

Main Facts

- **BAT owned trademarks used by P MEC**
- **P MEC was the exclusive licensee**
- **BAT wanted to sell the trademarks**
- **P MEC wanted to buy the trademarks**
- **No other party was in the frame**



Valuation

- **A huge gap in perceived valuation**
 - Apparently unbridgable
- **It needed a different approach**
 - A creative approach
- **Arbitration discussed – and rejected**
 - Mediation discussed – and rejected
- **Arb-Med was a compromise**
 - Parties agreed to share the cost 50/50

Arb-Med Process

- **Provider recommended 3 Neutrals**
 - BAT invited PMEC to make the choice
- **Mediation agreement for a 1 day process**
 - **Morning to be spent as an Arbitration**
 - Over lunch, Neutral to decide the valuation
 - Place the valuation in a sealed envelope
 - **Afternoon to be spent as a Mediation**
 - With the Neutral changing hats from Arbitrator to Mediator
 - **If no agreed outcome by 4pm – open envelope**
 - And both parties would be bound by the result

Entered into Binding Dispute Resolution Agreement

- **Share costs equally**
 - Neutral & Valuation expert
- **Based on a standard Arbitration Agreement**
 - With a Mediation Phase bolted on
- **If resolved in Mediation Phase**
 - Envelope only to be opened if both parties agree





Arb-Med Learnings

- Without the neutral, deal would have failed
- Would have failed vice-versa (ie as Med-Arb)
- No dispute – it was about asset valuation
- The psychology of the envelope
- Seen as the ultimate WATNA for both parties
- Human instinct to control one's own destiny
- Levelling the playing field, flexible process
- Neutral did not try to play Mr Negotiator
 - Always left the parties in control of their own deal

Summary

- Mediation is as flexible and adaptable as Negotiation
- Mediation is just a form of assisted Negotiation
- A Neutral takes the process from the problem
- It's often the best way to generate Outcomes



***Creativity can solve
almost any problem.
The creative act,
the defeat of habit by originality,
overcomes everything.***

**George Lois
American Advertising Guru
Author of What's the Big Idea?**