

**Mediator Insights:  
Bursting Bubbles by Challenging Mediation Truisms (Part 1)**

By: Sylvia Mayer

**Trust is Necessary.**

**The Best Negotiated Outcomes are Win-Win.**

Are these two oft-touted truisms really true? Dan Oblinger and Allan Tsang challenge these and other “myths” in *Negotiation Mythbusters*. Thought-provoking and insightful, their book forces us to think more deeply about the fundamental underpinnings of negotiation and mediation.

**Is Trust Necessary?**

Think about it for a minute. Do you trust a stranger (i.e., the mediator)? Or someone who just sued you or breached your contract (i.e., the opposing party)? Probably not. But you can still negotiate and mediate with them. You can still reach an agreement or compromise. So, is trust necessary?

Often what we refer to as “trust is necessary” in a mediation or negotiation is shorthand for recognizing the critical importance of safety, consent, and connection.

*Safety.* Parties must feel safe to engage in a negotiation. They need to feel safe to ask questions and share information. They need to be open and present to engage fully in the dialog necessary to find a path to resolution. How do we create a safe space? Through consent and connection.

*Consent.* It is not a negotiation if one party cannot say no. Each participant must have the right to consent – to say yes or no – for the parties to engage in a negotiation. The ability of either party to say no is what encourages both parties to seek out solutions and find a path to resolution.

*Connection.* Mediators often use trust-building tools to connect with parties in a mediation. This connection then allows parties to feel safe sharing their emotions, concerns, goals, and interests. In turn, through sharing, exploration,

and validation, parties become receptive to new ideas, compromise, and resolution.

### **Is Win-Win the Goal?**

The concept of “win-win” comes from game theory. But games and negotiation are very different. Even for cooperative games (win-win situations), games have clearly defined winners and losers. Games also have detailed rules, a distinct start and end, and a pre-determined and agreed-upon definition of what it means to win.

In contrast, negotiation and mediation are forms of complex human interaction. There may or may not be rules governing the process. There is no distinct start and end. There is no pre-determined and agreed-upon definition of what it means to win. Instead, what is perceived as a “win” varies by party and may evolve over time.

Oblinger and Tsang bust the myth of win-win by pointing out the obvious – negotiation (and, by extension, mediation) is not a game. Durable agreements must be mutually beneficial, but mutually beneficial is not the same thing as win-win.

While the distinctions drawn above may be seen as semantic, the authors’ points are well taken that consent and safety are at the core of successful mediation and negotiation, rather than trust and win-win.

*Author’s Note: As a mediator, I am a “forever student” always seeking new ways to help people find a path to resolution in mediation. “Negotiation Mythbusters” by Dan Oblinger and Allan Tsang inspired this post. Reading their book challenged my view of many oft-touted truisms about mediation and negotiation. If you aren’t a reader, but still interested in what they have to say, then you may enjoy this podcast in which they talk about their book: Negotiations Ninja Podcast, Busting Negotiation Myths with Dan Oblinger and Allan Tsang (July 27, 2020), <https://www.negotiations.ninja/podcast/busting-negotiation-myths-with-dan-oblinger-and-allan-tsang-ep-146/>.*