OVERCOMING CHALLENGES IN DIFFICULT VIRTUAL CONVERSATIONS

Prepared by advanced students in Columbia Law School's Mediation Clinic

COMMON DIFFICULTIES

- Inability to read facial expressions and body language
- Without visual cues, it may be difficult to detect feelings or confusion
- Potential confusion over when to speak and possible arguments over procedure
- Participants are more susceptible to distractions (i.e. email, social media)
- Having more than two speakers may generate confusion as to who is saying what
- Technological malfunctions may inhibit clear communication (i.e. if the call drops and needs to be resumed)
- Firm endpoint to the conversation may create an undue sense of finality

- Harder to deal with and understand the meaning of silence
- Increased sense of distance
- Identity-related information asymmetries (where one-party identity is known and the other isn't) impact participants' behavior
- Possible reactions to identity-related information asymmetry include: shut-down sparked by lack of trust; increased aggression resulting from feeling that one party has violated norms of openness and reciprocity; mistaken focus solely on arguments and logic rather than consider how information asymmetries factor in; a search for more identity-related information; assumptions)

RECOMMENDATIONS

Process Management

- Control the conditions (time of day, # of participating speakers on the call, whether certain speakers will be calling in from the same location, procedural expectations, technology involved)
- Set procedural expectations (i.e. one speaker at a time, non-speakers muting their microphones to reduce background noise)
- Ensure everyone is certain about how the call will be conducted (accurate conference number, quiet call location, etc.)
- Remind speakers to self-identify before speaking
- Encourage requests for repetition when something is difficult to hear
- Use video where possible and maintain eye contact

Party Preparation

- Dress as you would for an in-person meeting
- Eat in advance and consider how the call time might coincide with mealtimes
- Prepare talking points and specifics and review notes in advance of the call

- Remind yourself not to assign blame or make assumptions before the call
- Limit distractions on your desk and focus yourself while waiting for the call to begin – don't check emails or browse the web

Enhance Communication and Prevent Misunderstanding

- Ask if it's still a good time to talk
  - Be aware of signs that a party may need to reschedule (people who ramble or who seem to be upset/distracted for reasons unrelated to the call may be good candidates)
- Remember: attitude, facial expression, and posture can be heard over the phone
- Present yourself as a specific, identifiable, individual person – people tend to be more generous and empathetic as a counterparty becomes less abstract
- Pay attention to vocal cues (pitch, modulation, what is said and how it is said, etc.) as sources of information about the internal state of the speaker
- If you are on the wrong side of an identity-related information asymmetry, focus on the identity-related information that *is* available and direct your energy towards crafting creative solutions and asking clarifying questions, rather than getting more identity-related information
- Avoid interruptions, even to ask for clarification
  - Write down questions to ask after the person is finished speaking (allowing people to finish speaking will not only ensure that they feel heard, it will also give you a fuller picture of the issue or question involved)
- Be specific (re: topic, examples, potential remedies)
- Take good notes – avoid starting from square one in the future or needing to ask people to repeat themselves
- Get comfortable with silence, and resist the urge to interrupt a period of silence even if uncomfortable
  - If you are concerned the call has dropped, wait longer than you ordinarily would to check with the other party – they may just need a moment to think
- Be present – keep unrelated problems or concerns off your mind during the call
- If mediating, assert authority and control at the outset