

MEDIATE THIS !

A CONTRACTOR, A WINNING BID AND A BROKEN PROMISE

BY STEVEN P. DINKIN

The National Conflict Resolution Center handles many disputes involving business contracts. We explore this category today by using an example of a freelancer who helped a client submit a bid for a government contract. In exchange for her assistance, the client promised to include her as a subcontractor at her standard hourly fee. After winning the bid, he notified her that he has decided he can only afford to pay half her standard rate.

Moral relativism is hardly a new business trend. But it seems to be on the rise, with brazen entrepreneurs now insisting that a formal agreement is just a starting point for a new round of negotiations.

Conflict resolution is straightforward when both parties adhere to the same ethical principles, like, say, the Golden Rule. When one party has no scruples, we need to shuffle the mediator's deck of strategies and options.

One such option is

WATNA, or the Worst Alternative to a Negotiated Agreement. Normally, mediations open with ice-breaker communication exercises that help the parties restore some level of trust. While they search for common ground, we hold off on consideration of fallback positions.

But this contractor has shattered trust by imposing an unjust decision abruptly. So we would move WATNA up and advise the freelancer to look for replacement projects. That pro-active stance would strengthen her bargaining position and her self-confidence.

She will need that emotional resilience to sustain her reputation for professionalism. It is still possible to salvage this business relationship. But if she can't, she must part ways with enough poise and grace that the client has no grounds to disparage her.

As always, the first step in resolving this conflict is respectful dialogue. The freelancer should inquire why the client "cannot afford" to pay the agreed-upon rate. Has a financial



GETTY IMAGES

This week's problem outlines a scenario about a freelancer who helped a client prepare a proposal for a contract, but the client changed the terms of the freelancer's compensation after winning the bid.

setback depleted his cash reserves? If so, could he pay her in full later on when he has more money?

If he really is in a tight spot, and the freelancer can wait for payment, she needs to do something that self-employed creative workers typically dread: Get the new agreement in writing, and emphasize that she will feel obliged to enforce it.

When a promise is reneged, whether in a person-

al or a business setting, we can only go forward by redrawing the lines of acceptable behavior. Calmly but firmly, the wronged party should stipulate that each person has the right to make decisions in her or his own interests and determine the appropriate response to any action.

This freelancer must regain her autonomy. It may be true that the client has fallen on hard times. In that

case, she has the *choice* either to accommodate him or to walk away from a broken deal and wish him better luck.

But what if he offers no rational ground for lowering her rate? Again, some entrepreneurs successfully boost profits by refusing to honor agreements and by exhausting their creditors in lengthy court battles.

In mediation, we call these "high conflict individ-

uals," and our preferred management strategy comes from the field of behavioral economics.

When an investment begins to lose value, some investors hang on too long. They can't bear the emotional pain of forfeiture, so they cling to false hopes of a course correction. This is called the "sunk cost fallacy," and it can slide people into compound losses and financial ruin.

This freelancer has sunk time and talent into work for a client, and she may never be compensated for it. If she can accept that, move on and broaden her professional horizons, she can launch other more productive client relationships.

Steven P. Dinkin is a professional mediator who has served as President of the San-Diego based National Conflict Resolution Center since 2003. **Do you have a conflict that needs a resolution?** Share your story with The Mediator via email at mediatethis@ncrconline.com or as an online submission by visiting www.ncrconline.com/MediateThis. All submissions will be kept anonymous.

NOTEBOOKS

From Union-Tribune reporting staff

OUTDOORS: ERNIE COWAN

Stop and smell the coyote melons

There was an autumn softness in the air as I day hiked with a friend along a portion of the Pacific Crest Trail near Warner Springs.

"What's that smell?" he asked as we scuffed along the well-worn path.

When I realized he wasn't talking about me, I became aware of a pungent odor as we passed a low-growing patch of bright green vegetation that stood out from the surrounding dry grass.

With large green leaves, huge yellow trumpet flowers and melons that looked like softball-sized watermelon, this was a plant that was hard to miss. And don't forget the smell.

This native plant is known by various names, including desert pumpkin, finger-leaved gourd and coyote melon, a name apparently given by Native Americans because it "was only good enough for coyotes to eat."

Even though these native plants look like small, round watermelons, this gourd is closely related to pumpkins. The fruit is the largest produced by any California native desert plant. A quick glance around the grasslands, and I quickly realized there was quite a crop.

We had become aware of the plant because it was still blooming and the 4-inch, bright yellow flowers are hard to miss, both visually and with your nose.

The "fragrance" of the flower is more aptly described by some as a powerful stench. You didn't need to put your nose to the blossom to realize it was very unpleasant.

No doubt this is nature's way of attracting insects to help with pollination. We did notice large numbers of flies buzzing about the flowers.

Despite the abundance of these melons, they were never considered as a primary food source by Native Americans, explorers or pioneer travelers.

The large fruit melons are shiny green and striped like watermelons when they first develop. They then turn yellow when ripe and eventually a pale brown as they dry out.

The fruit could be eaten if there were no other available food sources, but the seeds



ERNIE COWAN

The coyote melon resembles a watermelon.

are very bitter and foul tasting. However, as is often the case, even though not used for food, the seeds of the gourd were ground into powder and mixed with small bits of the plant's root to be used as a hand soap.

Another story associated with the name of this plant is from Native Americans in Arizona, who suggested that Indians would never plant such distasteful crops, so they must have been the result of seeds deposited in the scat of coyotes.

Even though humans don't find much to like about this plant, it is an important food source for local wildlife. Smaller animals will feed on the roots and vines

Local hikes

The San Diego Natural History Museum has launched its season of Canyon hiker, offering more than 75 free weekend treks from the coast to Anza-Borrego Desert State Park and from the Tijuana Estuary to Palomar Mountain. The series will be offered through June.

Hikes are led by trained citizen scientists and volunteers known as Canyoners.

Canyoners are San Diego Natural History Museum volunteers trained to teach appreciation of plants and animals in Southern California. Walks are open to the public; no reservations are required.

Hikes range from easy walks through native chaparral forests or along local rivers, to more challenging trips of 9 miles along a wildlife corridor from Anza-Borrego Desert to Cuyamaca Rancho state parks.

The hike schedule and interactive map are available online at sdnat.org/canyoners, and printed brochures are available at local outdoor retailers such as REI and Adventure 16 as well as at local Subaru dealerships.

To prepare for the hikes or to discover other hiking opportunities locally, hikers can get a copy of "Coast to Cactus: The Canyon Trail Guide to San Diego Outdoors" at the museum store.

Email ernie@packtrain.com

THE READERS' REPRESENTATIVE: ADRIAN VORE

Trying to find truth in campaign ads

Union-Tribune business writer Jennifer Van Grove has a tall order: Dig deep and try to make sense of the two opposing ballot measures that look to develop the Mission Valley stadium property.

Today's front page includes an In Depth story. In addition, a Back Story on the In Depth appears on A2. The A1 story explains the measures — who supports them, how will they affect the economy and taxpayers — describes the proposed developments and explains what a yes vote means.

San Diego city voters will cast ballots Nov. 6 on Measure E (SoccerCity) and Measure G (SDSU West). Voters can choose one, both or neither. Should both receive more than 50 percent, the measure with the most votes wins. If neither gets 50 percent, the city would probably seek redevelopment proposals.

Each plan wants to redevelop the site with a stadium, housing, commercial projects and a park. Beyond that, the two sides can barely agree on anything. Claims by one side are rebutted by the other as wrong. The back and forth goes on endlessly.

Van Grove has had to navigate this contentious and head-shakingly confusing environment to bring some sense of understanding to readers. One area she decided to wrestle down was the claims made in television campaign ads.

"I, along with other folks in the newsroom, started to notice an uptick in the number of stadium campaign ads on TV, and we'd talk about them in the newsroom," Van Grove said. "The car salesman-like figure in the SoccerCity ads was a conversation starter, for instance. Given what seemed like bogus claims from both sides, I floated the idea of fact-checking the ads on TV. I was only half serious at the time, not realizing what I was actually signing myself up for. But, as these things often go, my editor, Diana McCabe, thought it was a great idea."

It's been a nearly impossible task of trying to dissect both sides' ads — which claims are true, false, unclear, subjective.

To give you an idea about how combative the sides can be, Van Grove wrote an article that appeared in print Sept. 25. It was about a letter SDSU wrote to SoccerCity representatives asking them to stop making claims the university called misleading or inaccurate. SoccerCity project manager Nick Stone, in turn, responded with a 12-page letter to SDSU that defended each claim.

The first of the fact-checker stories on several ads appeared Sept. 23 on A1. A second

fact-checker story ran Sept. 28 in the B section about an ad by the SoccerCity side that featured soccer star Landon Donovan.

The stories check the claims, offer a U-T assessment on the claims and provide for a rebuttal. The rebuttal, by the way, is edited. It's not a verbatim free-for-all.

"Tough is an understatement," Van Grove said of the task. "The ballot measures propose developments that are mostly conceptual, and yet each side acts as if voters will get everything that's envisioned in their respective plan (stadium, river park, housing, etc.) and nothing at all with the opposition's plan. So I decided that we should evaluate the ads based on the actual guarantees of the measures, and not the hypothetical outcomes."

"I leaned heavily on the text of the measures and the city attorney's analysis. I transcribed the ads, picked out the specific claims and then divided claims into categories: provable facts, misleading claims and false information. Then I looked for evidence to support the classifications. If the evidence and the classification didn't align, I started the process over. And when in doubt, I went to my editor and a few other folks in the newsroom who are knowledgeable on the topic."

Van Grove said three distinct campaigns are at work: SoccerCity, SDSU West and No on SoccerCity. "I involved each of them in the process. I wanted to let their representatives know well before we went to print what our thinking was and why. They all pushed back against our assessments, which made for a number of uncomfortable, sometimes unpleasant, phone calls, in-person meetings and emails."

She said the fact-checkers will continue as new TV ads are released.

(*Note: Today is a heavy day for coverage of the stadium measures. Op-eds arguing for the respective initiatives appear on the opinion pages.*)

Flu shot photo

Several readers called and emailed over the lead photo that ran on A1 Friday. It showed a man reacting to getting a flu shot Thursday at a county clinic in Chula Vista. His mouth was agape as if he was bellowing in pain. One reader, a doctor, said the photo was misleading. Flu shots don't hurt, at least not that much.

Actually, the man was appearing to playfully react to the shot that day. The caption information should have indicated he was joking around.

FROM THE ARCHIVES | LOOKING BACK OVER 150 YEARS

OCTOBER 14, 1976: TASK FORCE TARGETS BORDER BANDITS

The San Diego Union-Tribune will mark its 150th anniversary in 2018 by presenting a significant front page from the archives each day throughout the year.

Thursday, October 14, 1976

In 1976 San Diego Police Chief Bill Kolender created a border crimes task force, the first unit of its type in the nation designed to curb violence against migrants who used the canyons between San Diego and Tijuana as a pathway to the United States.

The task force was disbanded 18 months later when Kolender said the work became too dangerous for officers.

Author Joseph Wambaugh chronicled the undercover squad in his 1984 book, "Lines and Shadows."

Here are the first few paragraphs of the story:

NEW POLICE TEAM

10 Stalk Bandits At Border

By Vi Murphy, Mexico Special Writer, The San Diego Union

Sgt. Jesus Manuel (Manny) Lopez, 29 — the kid who cried for a policeman's uniform when he was 3 years old — got his badge when he was 21.

This week, ability, experience and eight years of dedication to his work earned him one of the most unusual, dangerous and demanding duties ever assigned to an officer in the San Diego Police Department — that of leader of a newly-created border task force which went into action last Sunday for a 60-

day trial period.

Nightly, Lopez and his hand-picked, nine-man team play a deadly game of hide-and-seek with bandits lurking in the dark, isolated canyons north of the Mexican border.

They turn themselves into human bait for robbers, rapist and sadists who torture and beat their victims for pleasure and sometimes kill them.

Meet Rattlesnakes, Tarantulas

On forays into the canyons they have en-



countered rattlesnakes they cannot kill for fear of revealing their position, and tarantulas they pray will crawl off their bodies quickly.

The assignment given Manny Lopez and his nine Mexican-American officers from the San Diego Police Department is to flush out the border bandits preying on illegal aliens north of the border and bring them to justice.

Their job is to eliminate, so far as is possible, the savage assaults that have increased sharply during the past two years in the dark river bottoms, the isolated canyons and remote arroyos along an 18-mile stretch of border reaching from the Pacific Ocean inland to the fort of the San Jacinto Mountains.

They shift the location of their operation constantly so bandits never know where they will be encountered next.

"This is not to say our job is to guarantee

ONLINE: View this and other anniversary front pages online at sandiegouniontribune.com/150-years.