Avoiding Impasse

A party-centered approach to managing mediation risk

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Think first as a lawyer-mediator:

What are we lawyer-mediators trained to discuss most?

Litigation Risk

The lawyer's problem?

If there is a good chance I could lose in court, what arguments can I use in mediation to convince the Other to back off.

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So where do we so often keep our focus??

The facts

Disputants have much in common

They have to make:

- high-risk decisions
- in a high-stakes situation
- absolutely uncertain of --
  - the implementability of their decisions and
  - the consequences of their decisions

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The disputant's problem

How do people, like me, with high-stake problems and unknown risks get enough understanding and confidence to make a decision to let go of their dispute?

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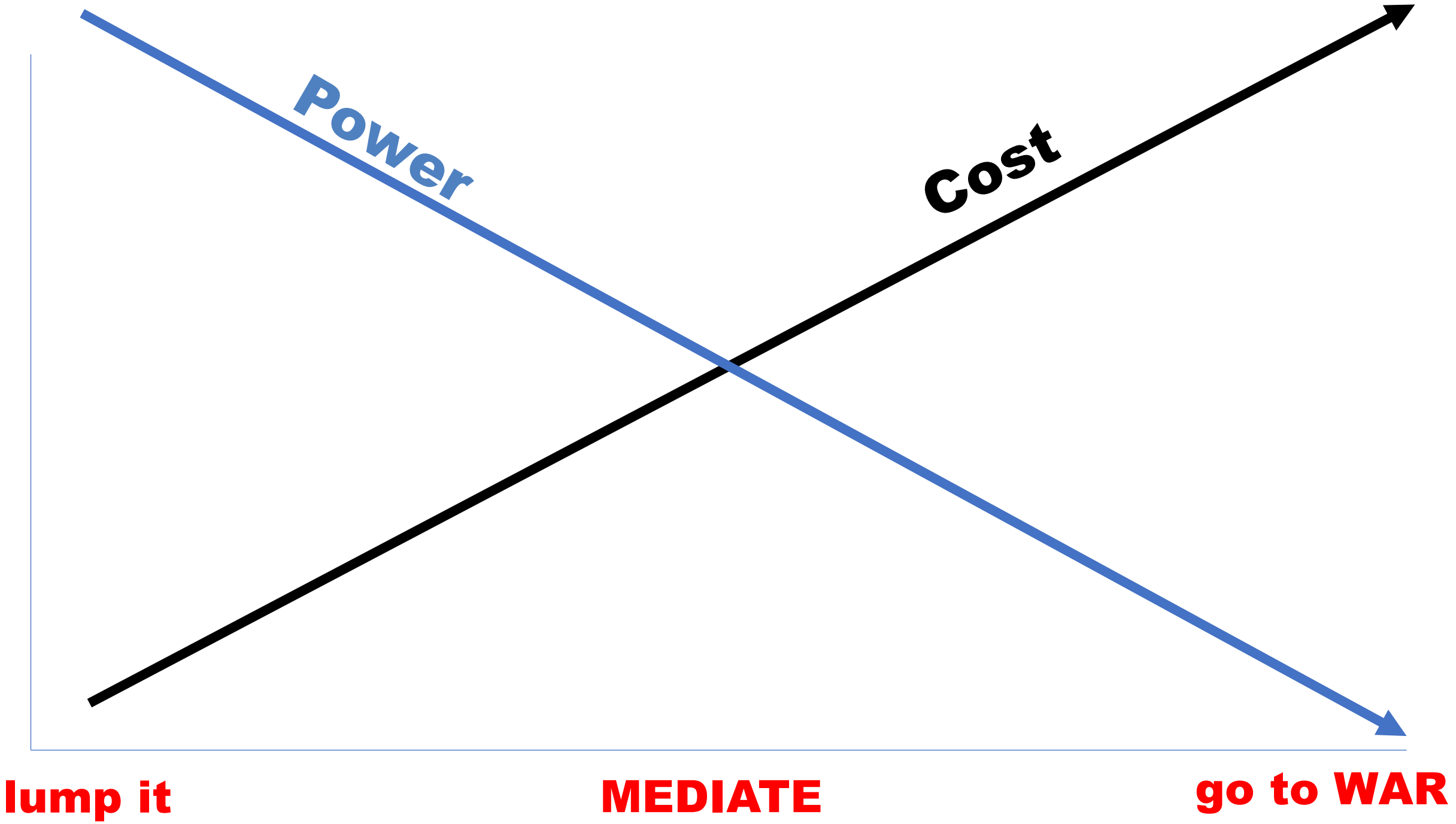
Power
Cost
lump it
MEDIATE
go to WAR

Types of Information

External Information

- Statements about the observable, objective world

Internal Information

- Statements about feelings, motives, and concerns

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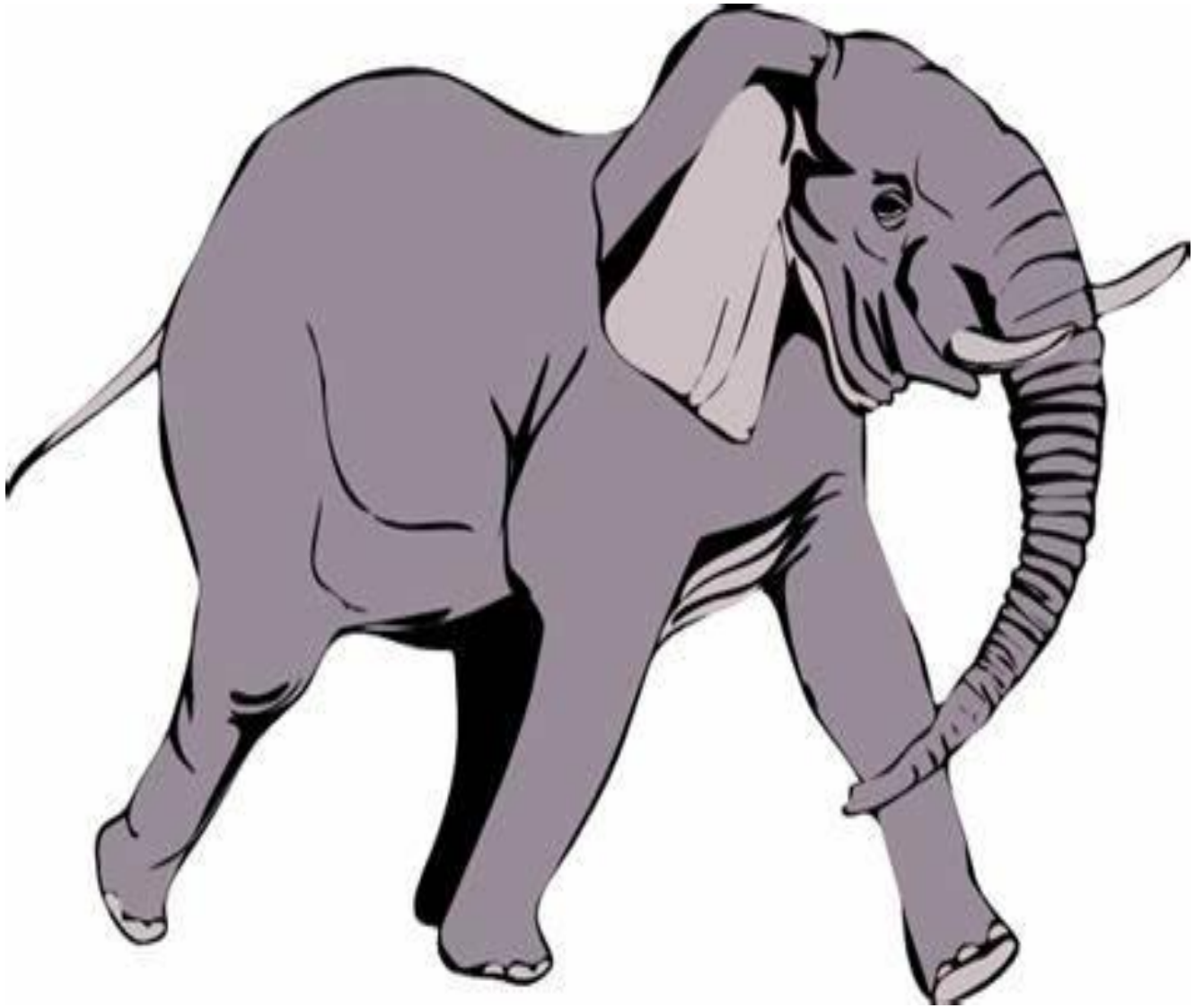

HUMAN RISK

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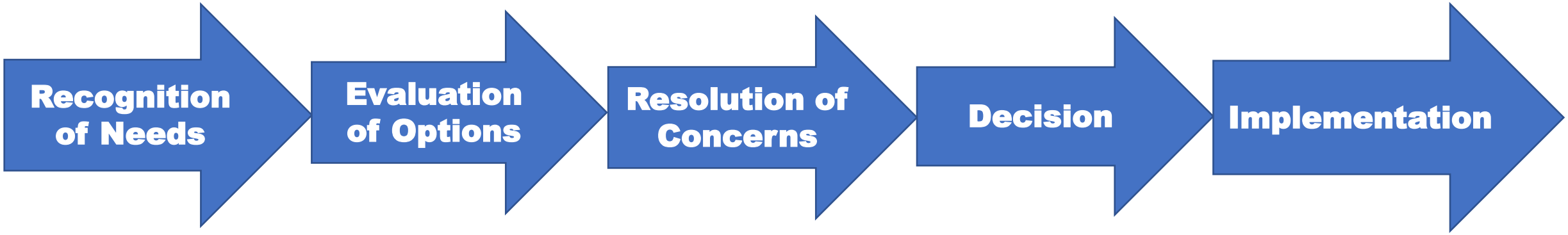
The decision-making process



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Step 1 of Decision-Making

Recognition of Needs

KEY ISSUE

Do I have a need to change?

Do I even have a problem?

What benefits would I get from solving it?

How serious is it?

Do I need to settle the case.... or

Do I need to resolve the problem that produced the case?

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Why, when we first hear of a problem, do we so often jump to a solution?

- It feels as if we're addi
  more value
- We want the
  nego forward
- The parties expect us to
  talk about solutions
- It's easy to do and we get
  good at it
- If we have a great idea we
  can't wait to talk about all
  it can offer

It's the WORST thing we can do.

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Want to avoid impasse?

- Don’t jump to solutions!
- Too-fast solutions lead to objections, even when the idea behind them is good

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Step 2 of Decision-Making

Recognition Of Needs → Evaluation of Options

KEY ISSUE

What are my alternatives, and which one is best?

Which option is cheaper?

Which one will my Board accept?

Will one option succeed better than others?

Can you help me brainstorm and see if there are other options we can develop?

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Want to avoid impasse?

Don’t fall in love

with your own solutions

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Step 3 of Decision-Making

Recognition of Needs → Evaluation of Options → Resolution of Concerns

What if they screw up?

Can I trust their claims?

What's in it for me? For my boss?

KEY ISSUE

What are the risks of going ahead?

How will it read in the Washington Post? The Wall Street Journal?

What will my family and friends say?

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Want to avoid impasse?

Respect their sense of consequences

- Don’t minimize them
- Don’t prescribe solutions
- Don’t pressure for quick resolutions
- Give the Other room to work them out

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Understand the same words can convey something different depending on the stage

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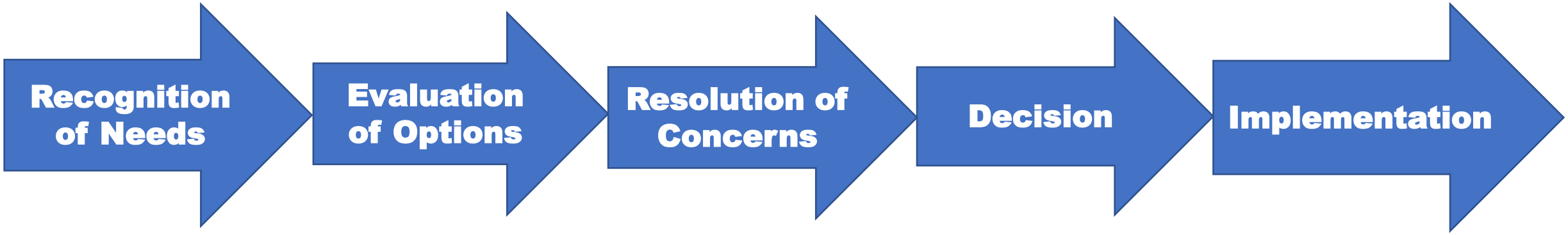
Respect the decision-making process



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Want to avoid impasse?

Use caucus strategically.

Joint meetings, too.

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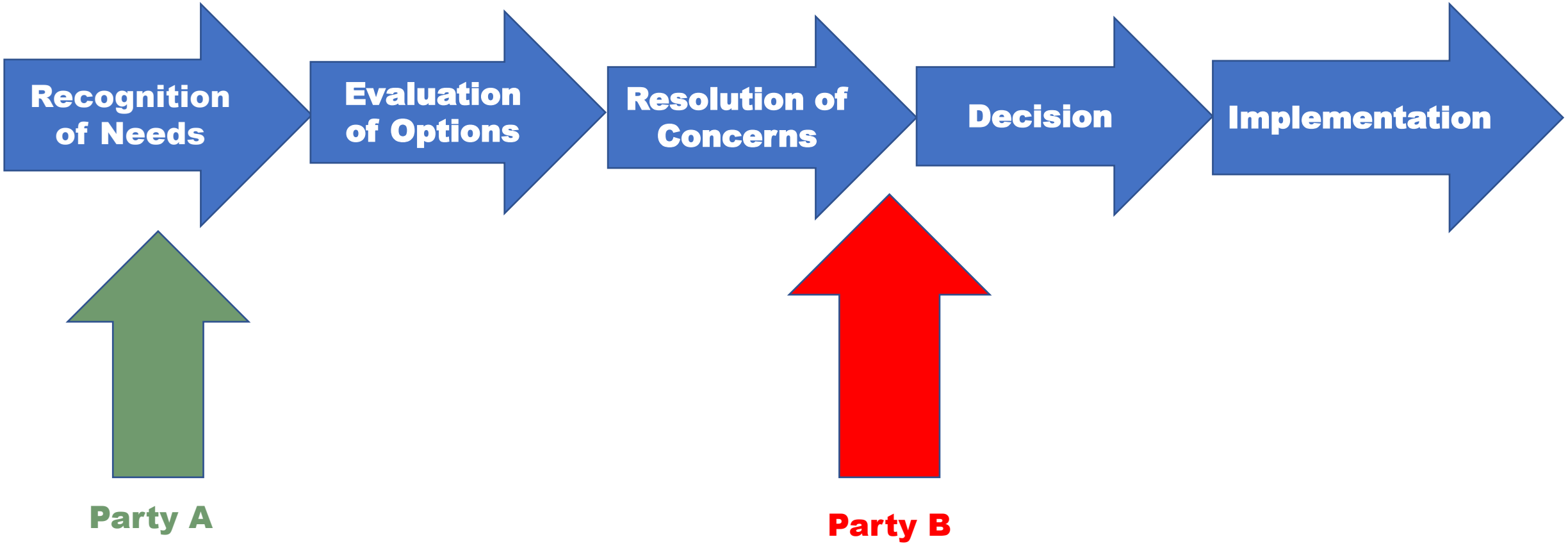
Let the parties' situation dictate strategy



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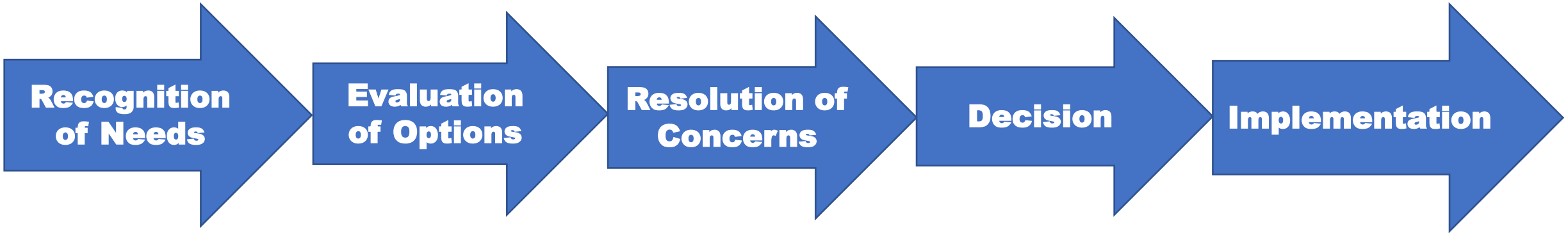
Respect the decision-making process



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Rethink your definition of sucess

A mediator succeeds, not when the agreement is signed,

But when the parties successfully implement the agreement

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If You Want to Learn More

- ***The Architect's Essentials of Negotiation*.** **(2nd ed.) By Ava J. Abramowitz (New York: John Wiley & Sons, 2009)**

- ***SPIN® Selling.*** **By Neil Rackham (New York: McGraw-Hill, 1988)**

- ***Major Account Sales Strategy*. By Neil Rackham (New York: McGraw-Hill, 1989)**

- ***Getting Partnering Right.*** **By Neil Rackham, et al (New York: McGraw-Hill, 1996)**

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