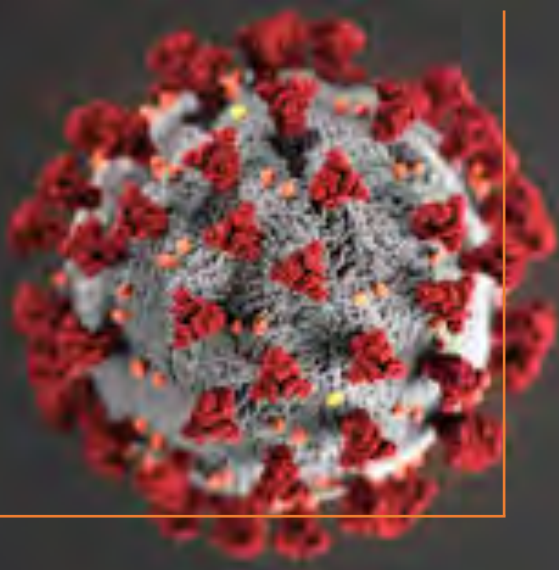


# **Crisis Communication Strategies to Position Cases in Litigation**

Richard Gabriel  
Decision Analysis







# U.S. UNEMPLOYMENT RATE, 1948-2020



SOURCE: NBC NEWS



# Crisis Communication

1. Identify the crisis
2. Identify constituents
3. Identify the reaction
4. Advocate to counselor
5. Step #1: Acknowledge
6. Step #2: Context
7. Step #3: Action
8. Lessons to facilitate change



Identify the Crisis



# **Boeing 737 Max**

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**Boeing website language:**

*“Valuing human life and well-being above all else.”*

*“Taking personal responsibility for our own actions.”*

*“Acting with integrity, consistency, and honesty in all that we do.”*



**Boeing 737  
Max**

---



***“This airplane is designed by clowns who are in turn supervised by monkeys.”***

***“Would you put your family on a Max simulator trained aircraft? I wouldn’t.”***

***“I still haven’t been forgiven by God for the covering up I did last year.”***

***“You can be away from an NG for 30 years and still be able to jump into a MAX? LOVE IT!!”***



**Boeing 737**

# What is the crisis?

- 346 people killed?
- All aircraft grounded by FAA?
- Halted orders for 737s and other aircraft?
- Internal documents?
- Lawsuits?
- Calls for congressional hearings?
- Potential criminal charges?
- All the above?

**CRISIS OF CONFIDENCE**

Identify the Constituents

# Constituents

- Families of victims
- Lawyers
- FAA
- Congress
- The Public
- Boeing



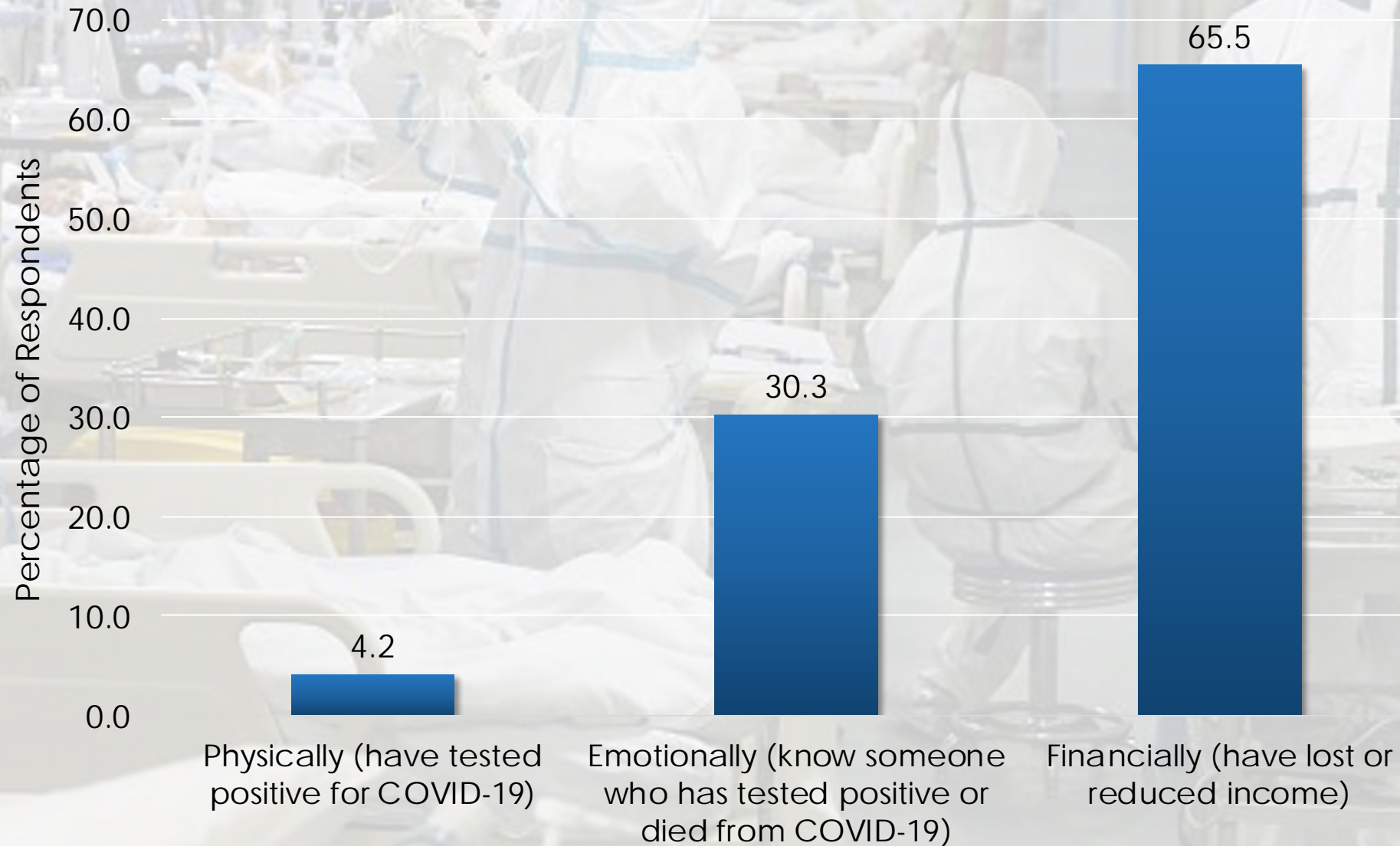
Identify the Reaction

# National Jury Attitudes COVID-19 Insurance Survey Results

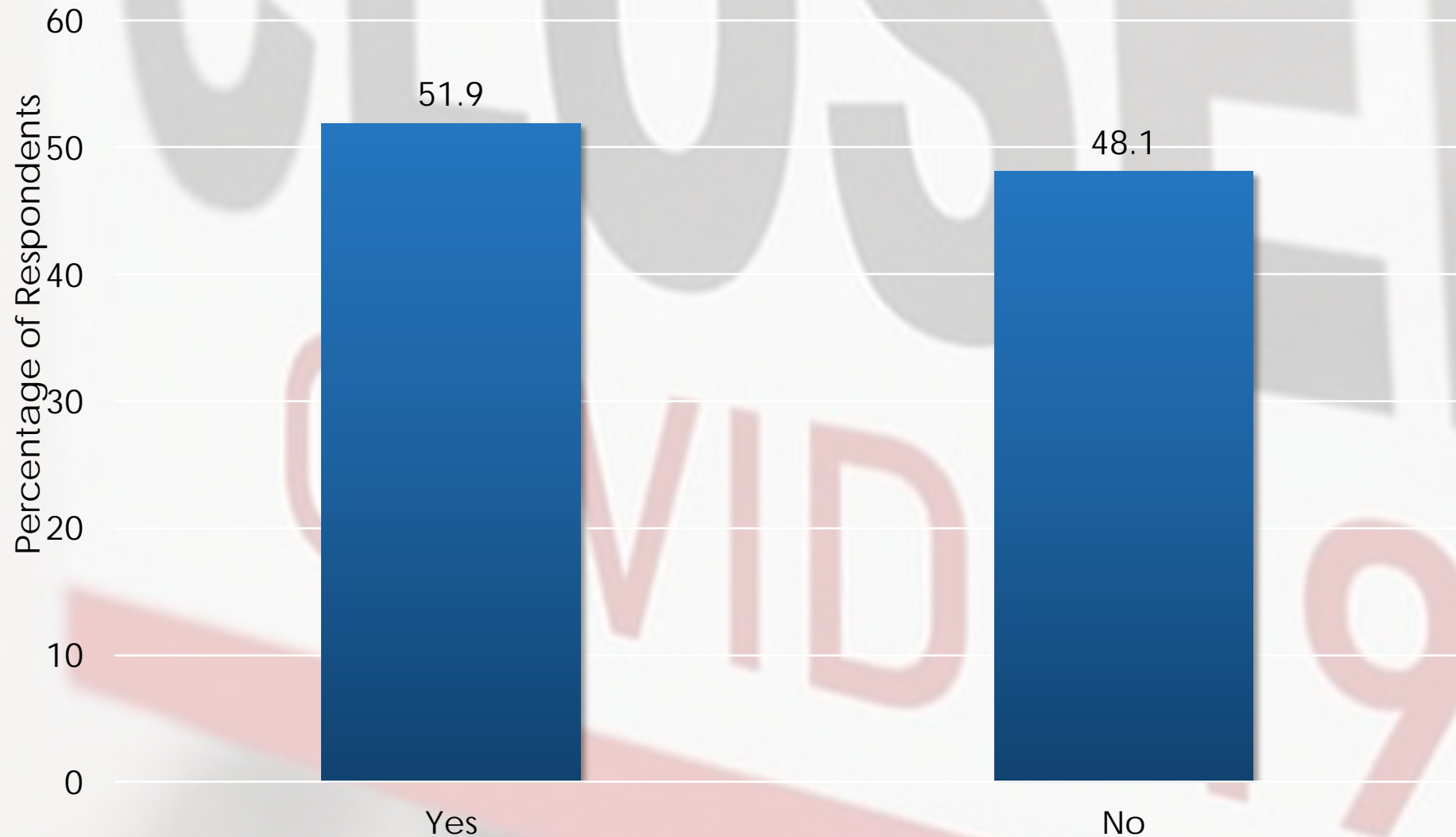
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802 Completed Responses

# If yes, how have you been impacted by COVID-19?



Regardless of what is written in an insurance policy, should insurance companies be obligated to cover all financial losses suffered by their insured businesses during the COVID-19 pandemic?





# Reaction – 7 Stages of Grief

1. Shock and denial
2. Pain and guilt
3. Anger and bargaining
4. Hopelessness and reflection
5. Clarity
6. Reconstruction
7. Acceptance

# Advocate to Counselor

JACK BAUER, ESQ.  
Armstrong, Battersby & Slayer  
P.O. Box 000100  
Washington, DC

Attorney for Plaintiffs  
JOHN DOE, JR., Individually and  
as Personal Representative for the  
Estate of John Doe, Sr., Deceased, MARY  
DOE, ROBERT DOE, WILLIAM DOE  
and JENNIFER DOE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JOHN DOE, JR., Individually and as )	CIVIL NO. XX-XXXXXX
Personal Representative for the Estate )	
of John Doe, Sr., Deceased, MARY )	COMPLAINT; DEMAND FOR
DOE, ROBERT DOE, WILLIAM )	JURY TRIAL; SUMMONS
DOE and JENNIFER DOE, )	
)	1. Wrongful Death
Plaintiffs, )	2. Negligence
)	3. Strict Liability
vs. )	4. Manufacturing Defect
)	5. Defective Design
BIG BOX, INC. and GET SLIM, )	6. Failure to Warn
INC., )	7. Breach of Implied Warranty
)	8. Punitive Damages
Defendants. )	
)	
_____ )	

**“Negligent”**

**“Careless”**

**“Profit over people”**

**“They violated the rules...”**

**“Community safety...”**

**“Send a message...”**

A close-up shot of a man in Roman-style armor, looking off to the side with a serious expression. His face is covered in dirt and has a visible blood wound on his forehead. The background is a blurred, misty outdoor setting.

**We put on our armor**



**We choose our weapons**



**“I want a shark!”**  
**- Corporate counsel in employment case**





# Three Traditional Defenses

1. “No we didn’t.”
2. “Legally, we are right.”
3. ”We are good/they are bad.”



# I. “No we didn’t.”

Your actions  
hurt me.

Our actions  
did not hurt  
you.



**Plaintiff**

**The expected denial angers  
and fuels further action.**



**Defendant**

FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT
943	944	945	946	947	948	949	950	

FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT
16	17	18	19	20	21	22	23	24	25	26

FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT
92	93	94	95	96	97	98	99	100		

## 2. “Legally, we are right.”

FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT
953	954	955	956	957	958	959	960	

FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT
27	28	29	30	31	32	33	34	35	36	37

FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT
103	104	105	106	107	108	109	110	111		

FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT
963	964	965	966	967	968	969	970	

FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT
38	39	40	41	42	43	44	45	46	47	48

FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT	FEDERAL SUPPLEMENT
114	115	116	117	118	119	120	121	122		



**3. “We are good/they are bad.”**



**These reactions often determine the trajectory of the case**

# Credibility Landmines

**Superlatives:**  
“completely safe”  
“insignificant”  
“great”

“We had to  
comply with  
regulations...”

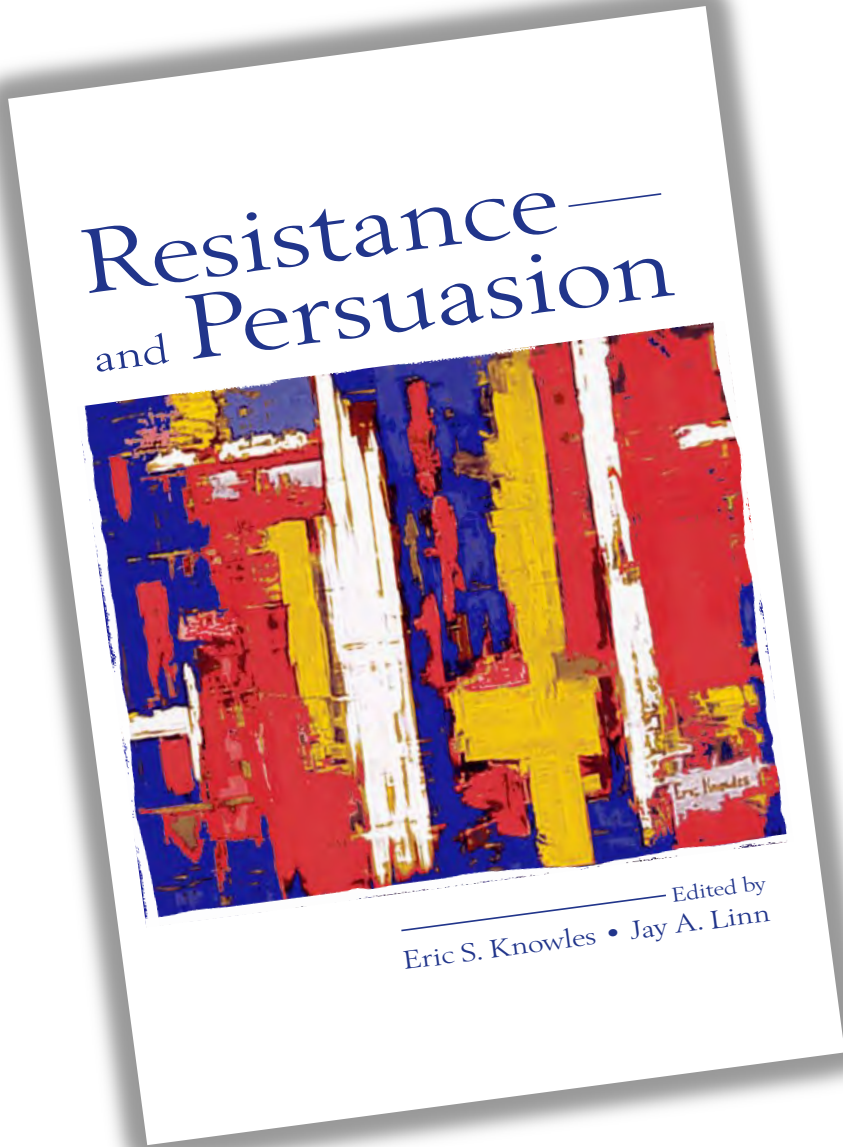
**Good  
Company  
Focus**

“We  
weren’t  
required  
to...”

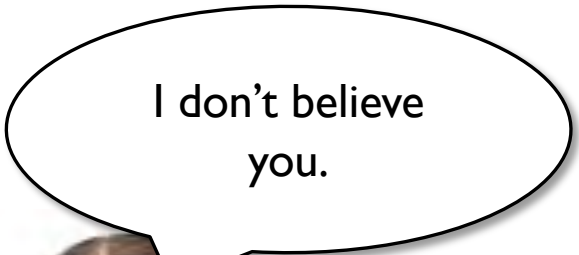
**Acronym  
Hell**

“We did  
more  
than we  
had to...”

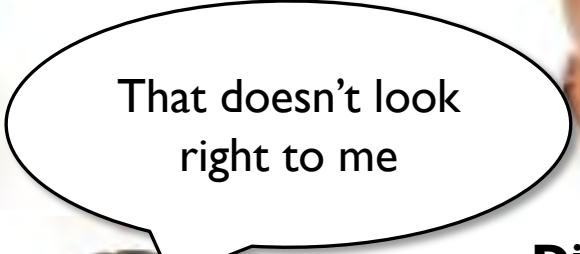
# The Four Faces of Resistance



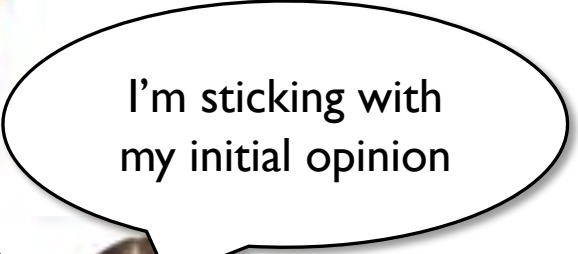
**Reactive**



**Distrust**



**Scrutiny**



**Inertial**

**Communication**

***Resistance***

***Receptivity***

***Adoption***

# Whose shoes do you stand in?

Third Party



Plaintiff

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Defendant



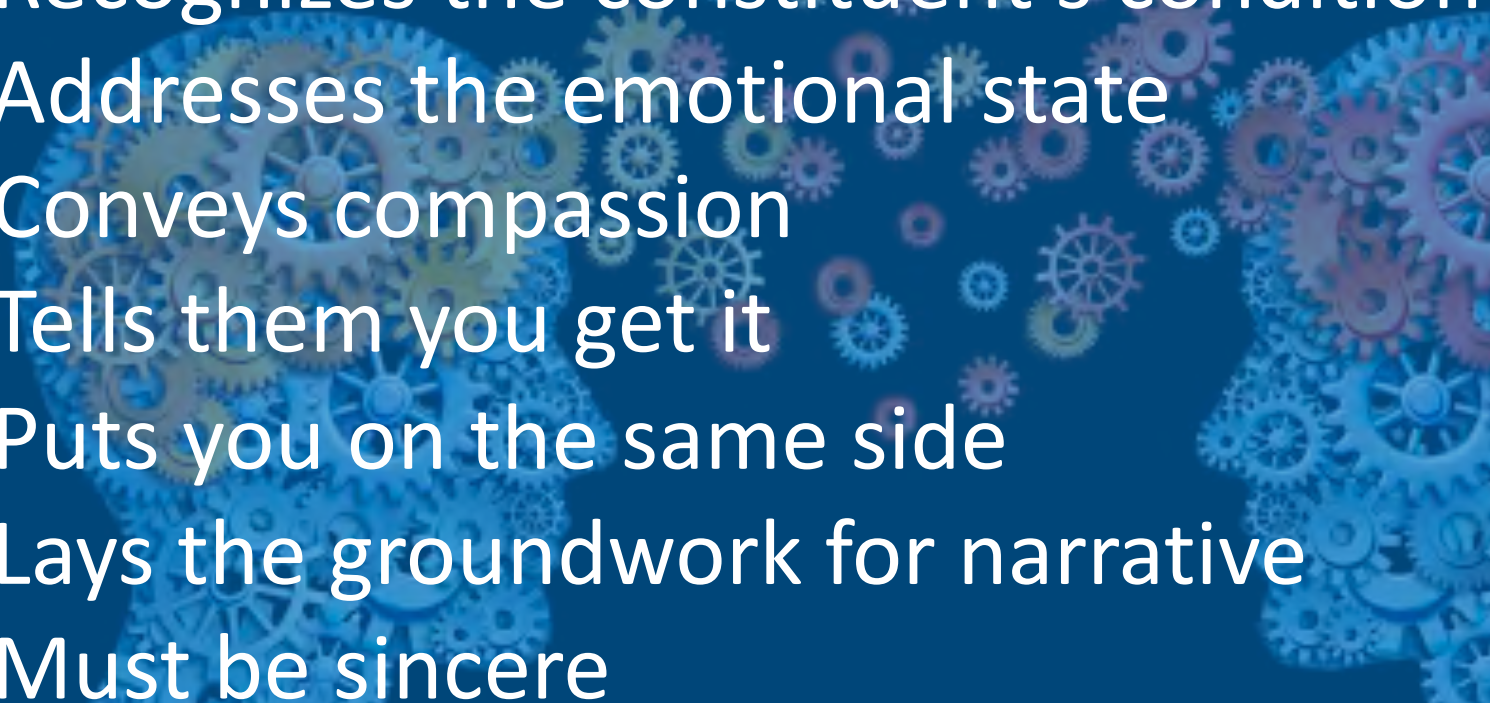
# Advocate to Counselor

---

- Identify their crises
- Identify their constituents
- Identify constituent reactions and needs
- Define goals for clients
  - Liability
  - Regulatory
  - Reputation
  - Policy

# Communication Step #1: Acknowledge

# Acknowledge the Crisis

- Recognizes the constituent's condition
  - Addresses the emotional state
  - Conveys compassion
  - Tells them you get it
  - Puts you on the same side
  - Lays the groundwork for narrative
  - Must be sincere
- 

# Communication Step #2: Context



**“Legally, we are right.”**



# P.R. Missteps

- “No comment”
- Pure denial
- Shifting blame
- No obligation
- The law says we are right
- Making it personal



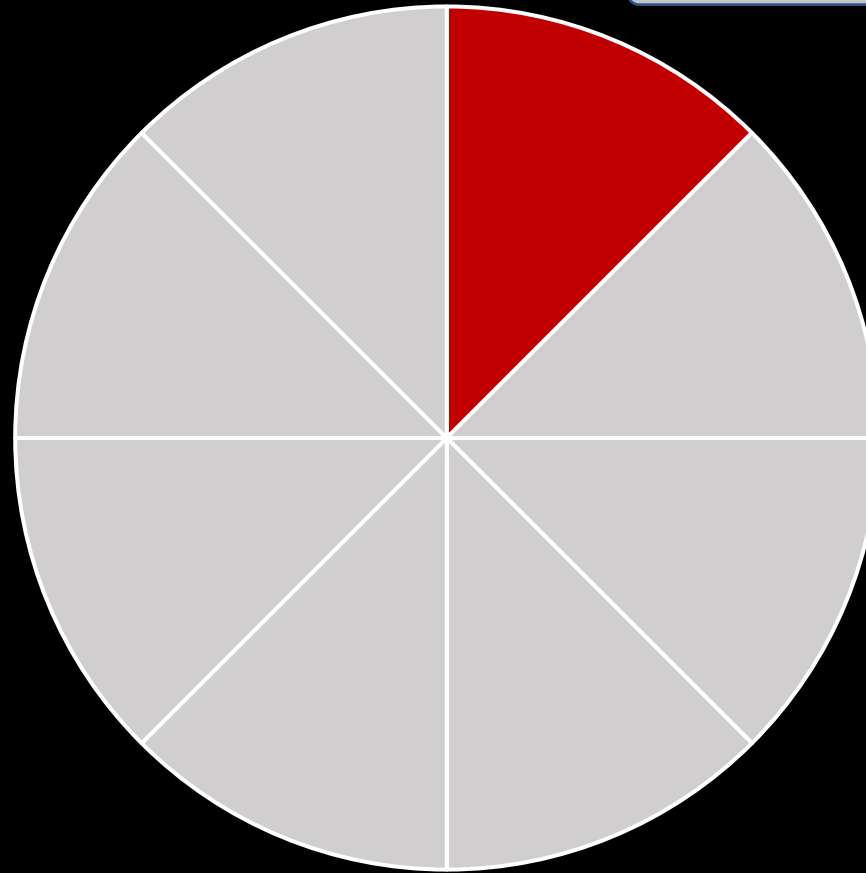
# Old Company Story

- ▶ **We are a good company.**
- ▶ **We have done a lot of great things.**
- ▶ **Here is what happened according to us.**
- ▶ **Here is why we are in accordance w/ policies, statutes, regulations, etc.**
- ▶ **Here is what our experts will say about why we are right.**
- ▶ **Here is what the law says about why we are right.**
- ▶ **We wouldn't do what the other side is saying because we are a good company.**



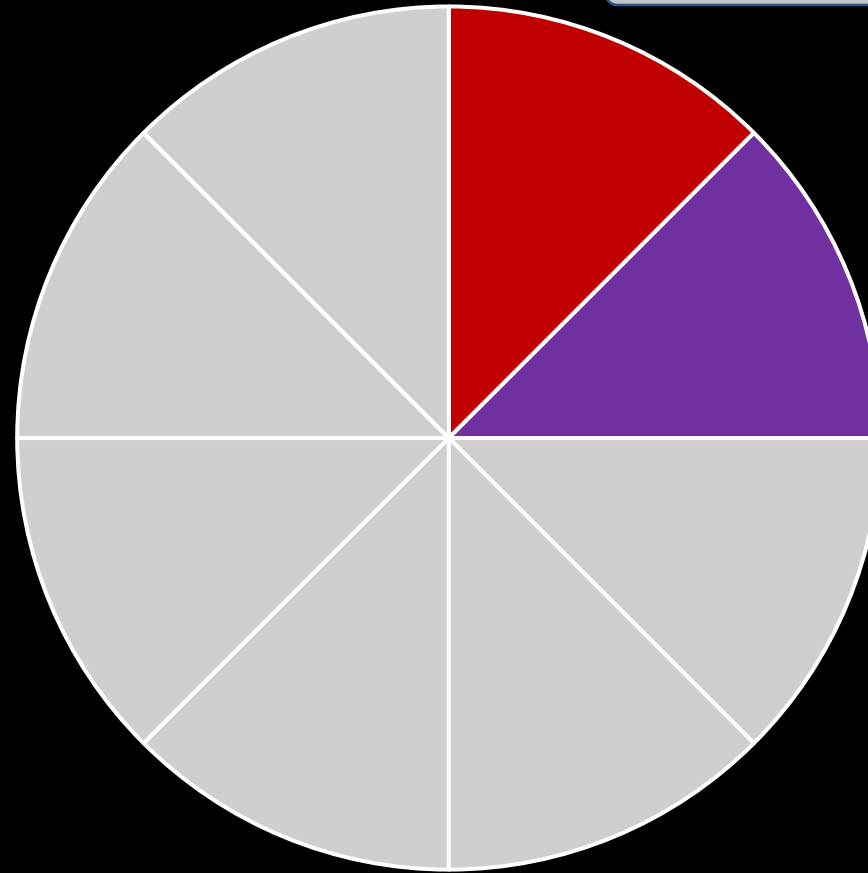
# 8 Step Case Story Structure

1. Who is the case about? Define the parties and their needs.



# 8 Step Case Story Structure

1. Who is the case about? Define the parties and their needs.



2. Where do they live? Define the world where the parties operate.

# The World



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# Where do they live?

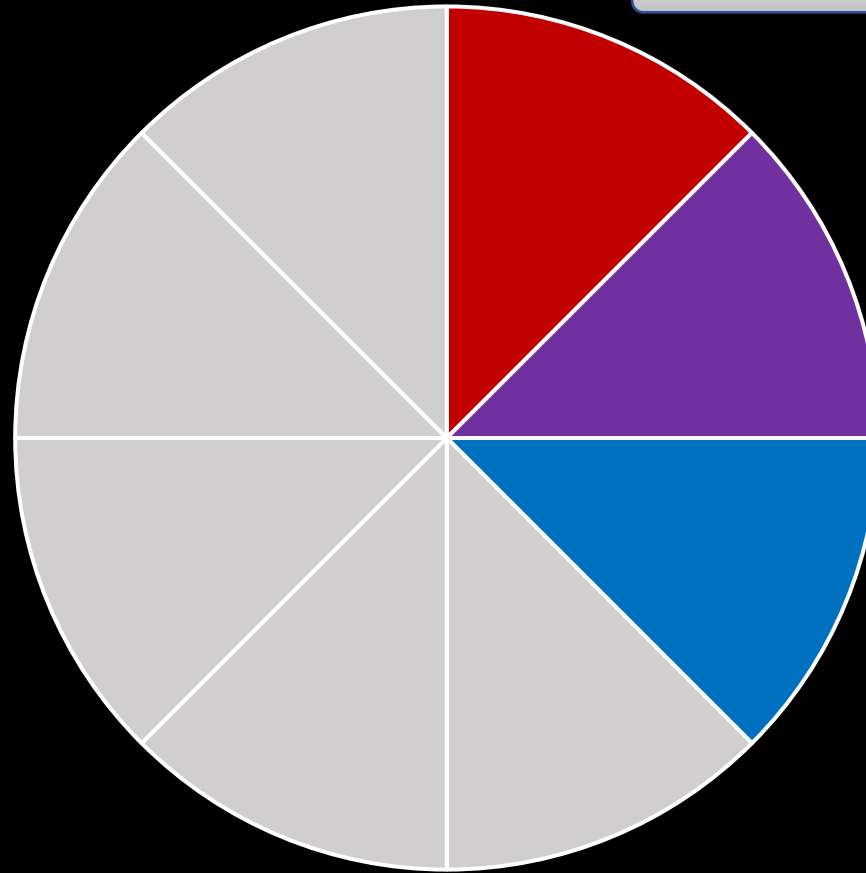
- **What background information does the public/jury/judge need to understand the context of the case?**
- **How does that industry/organization/company, etc. normally work?**

# 8 Step Case Story Structure

1. Who is the case about? Define the parties and their needs.

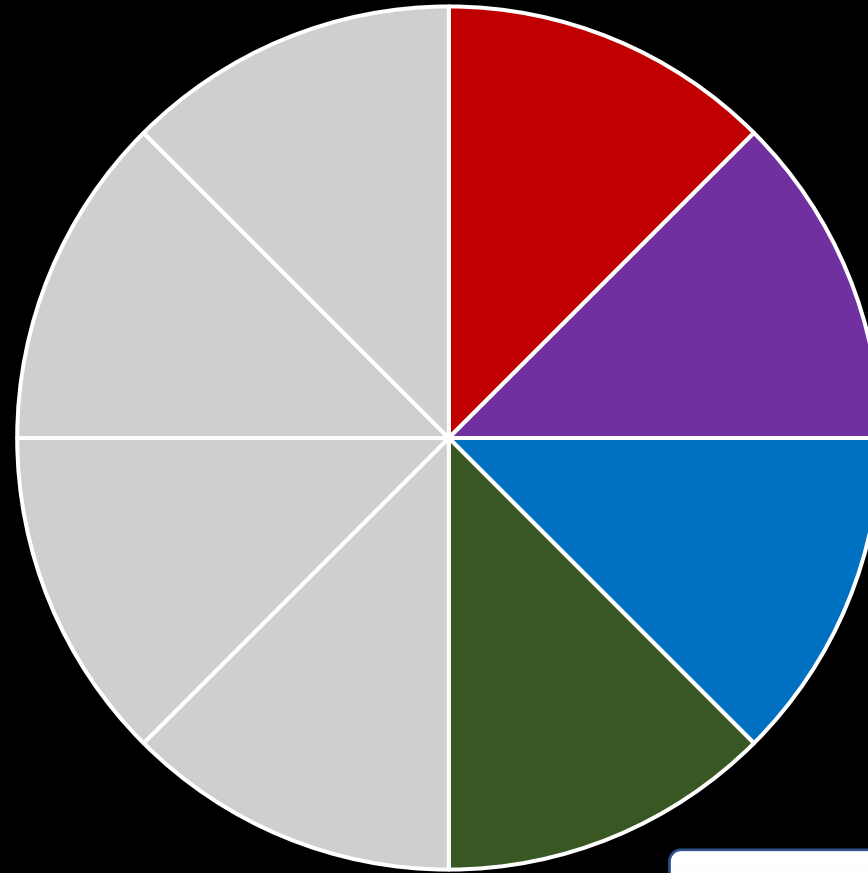
2. Where do they live? Define the world where the parties operate.

3. Define how the parties normally act.



# 8 Step Case Story Structure

1. Who is the case about? Define the parties and their needs.



2. Where do they live? Define the world where the parties operate.

3. Define how the parties normally act.

4. Define actions that conflict with how parties and world normally operates.

# 8 Step Case Story Structure

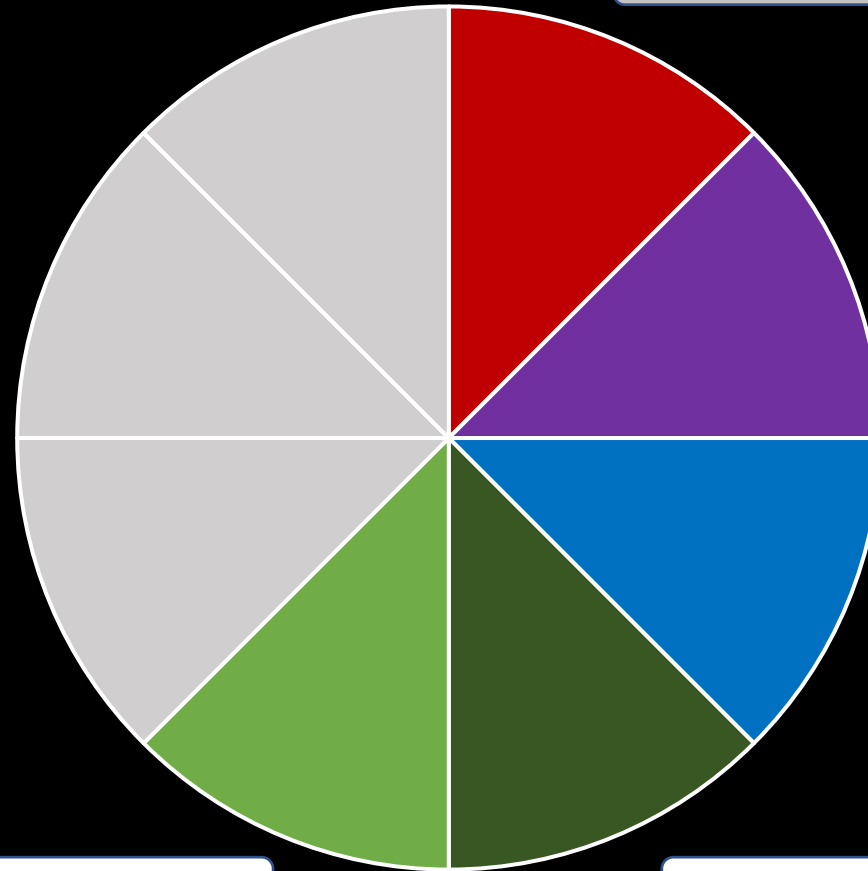
1. Who is the case about? Define the parties and their needs.

2. Where do they live? Define the world where the parties operate.

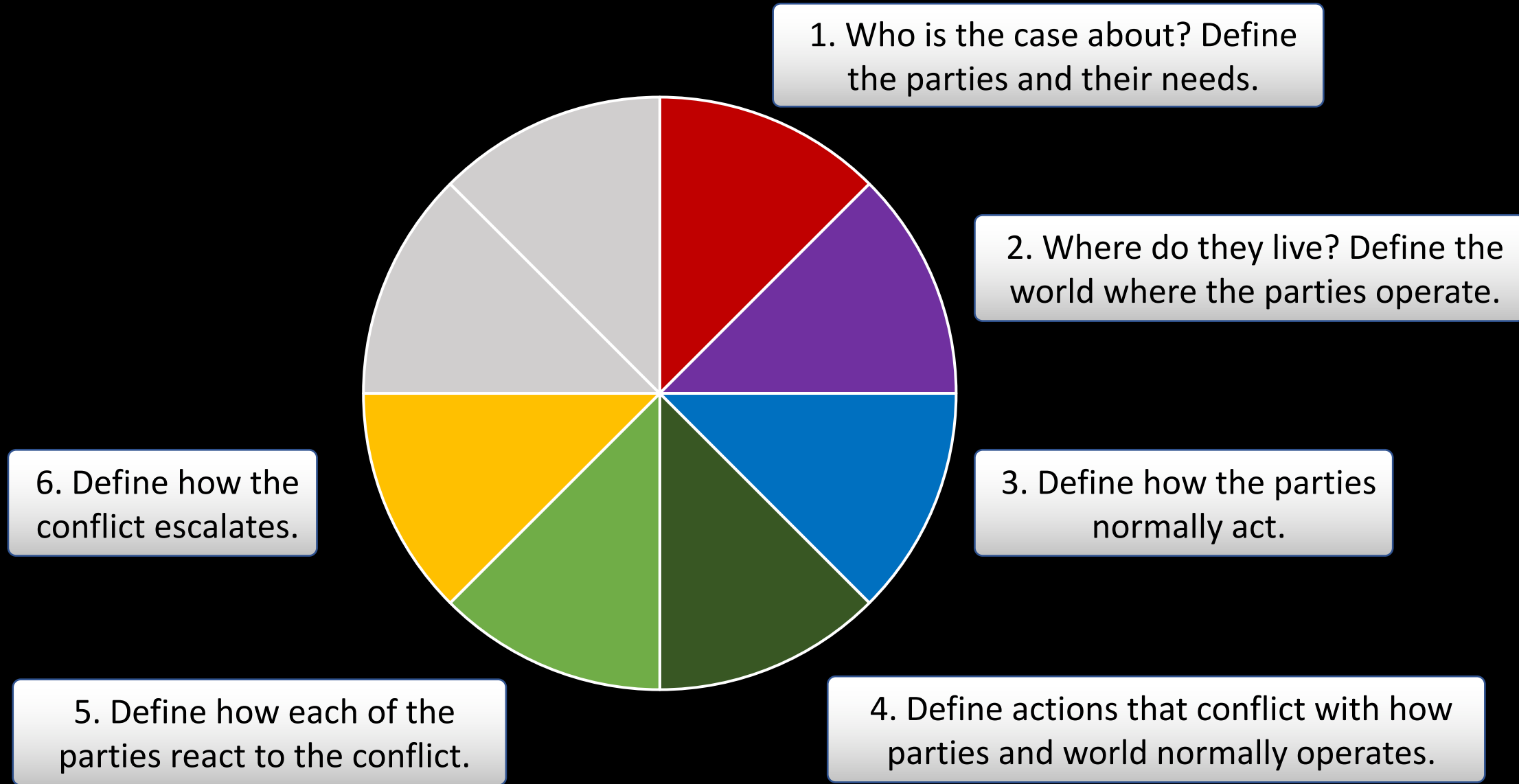
3. Define how the parties normally act.

4. Define actions that conflict with how parties and world normally operates.

5. Define how each of the parties react to the conflict.

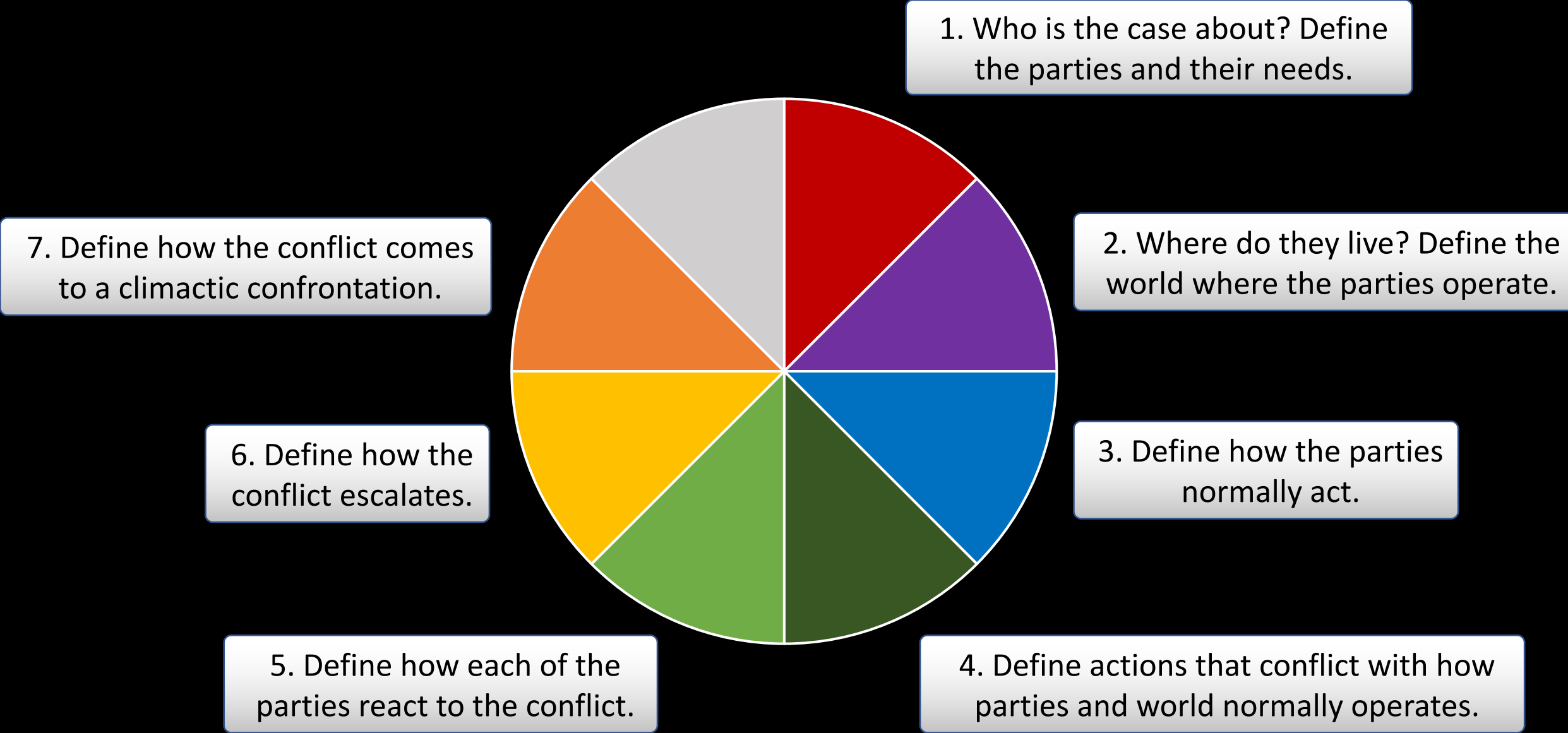


# 8 Step Case Story Structure

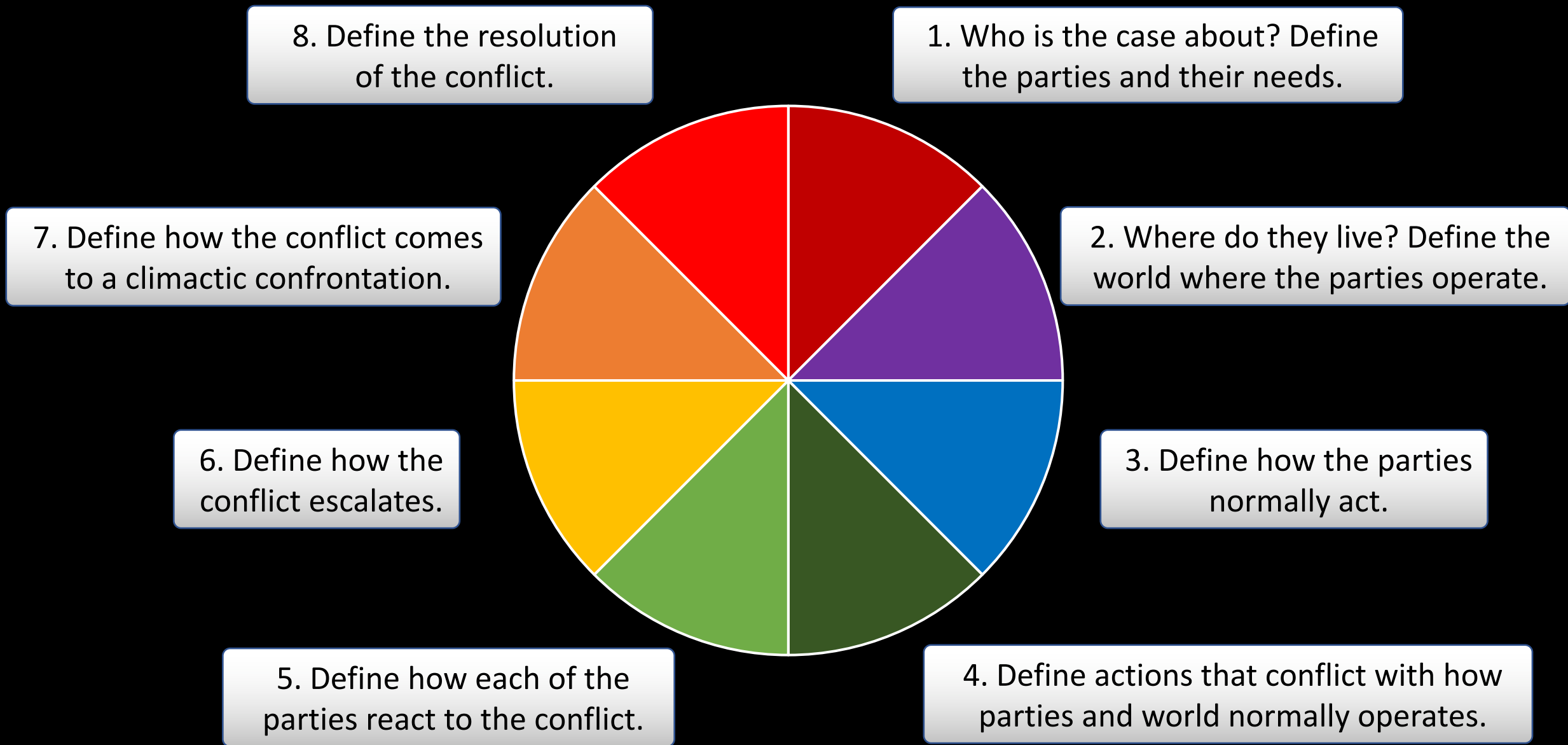




# 8 Step Case Story Structure



# 8 Step Case Story Structure





# **New Company Story**

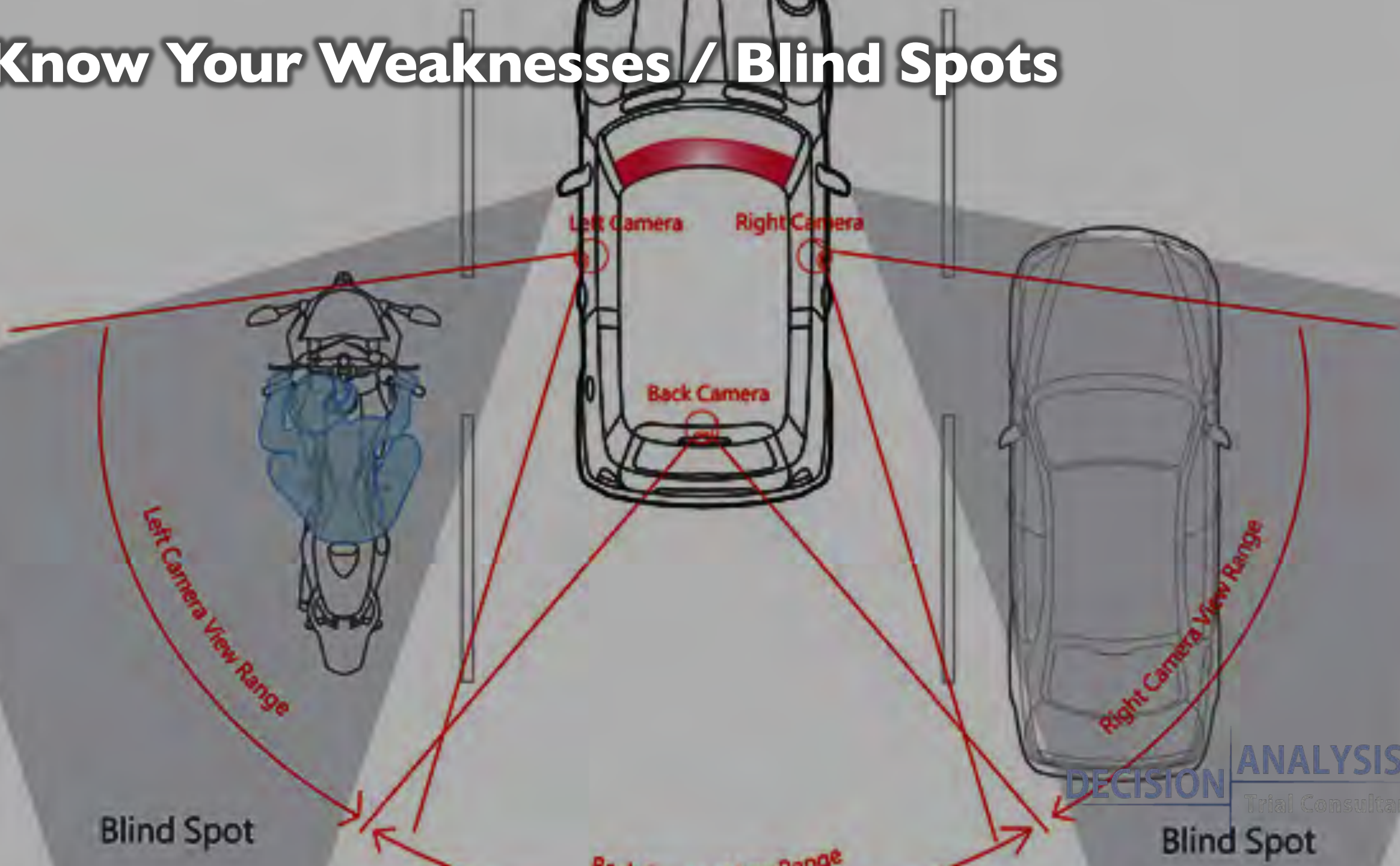
- 1. Industry explanation**
- 2. Who started the company and why**
- 3. Charming, weird, quirky, irrelevant, idiosyncratic anecdotes**
- 4. Chronology of growth**
- 5. Bumps, challenges, and problems**
- 6. How we overcame the problems**
- 7. Mistakes we made**
- 8. What we learned from our mistakes**
- 9. Where we are today**

# Embrace Undeniable Truths



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# Know Your Weaknesses / Blind Spots



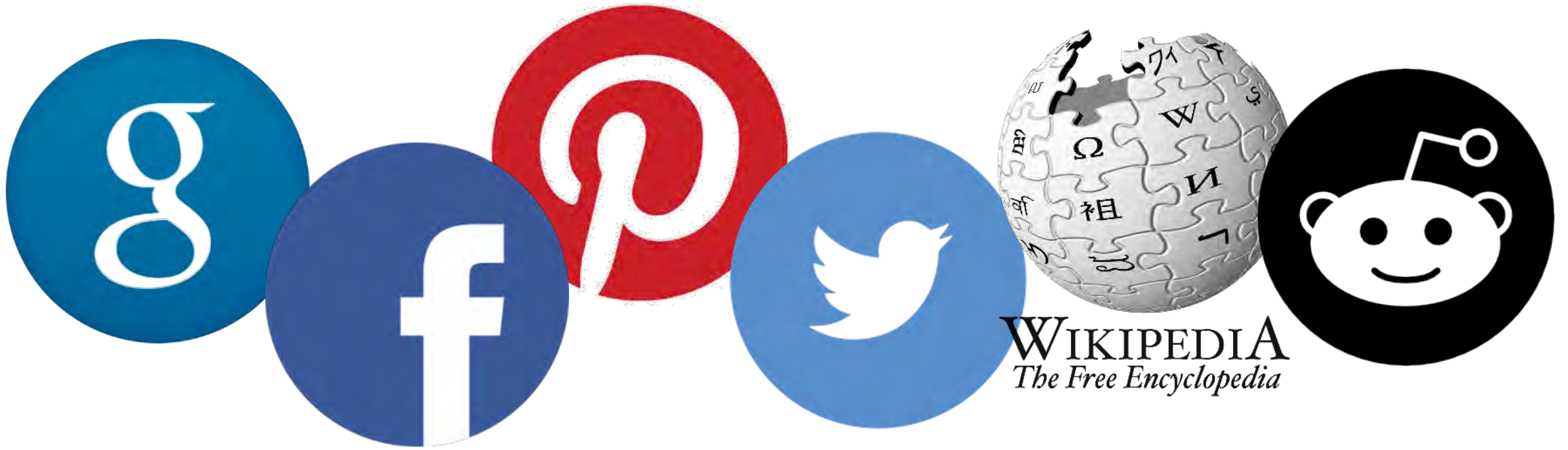
# Take the Path of Least Resistance



# Don't Chase the Rabbit

# Communication Step #3: Action





WIKIPEDIA  
*The Free Encyclopedia*



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# Action Plan

1. How are you going to investigate?
2. What policies are you going to review?
3. Who are you going to interview?
4. Who are you going to hire as an expert?
5. What research are you going to review?
6. What actions are you going to take?
7. Do you need to discipline?
8. Who do you need to reassure?

# Lessons Learned to Facilitate Change

# Lessons Learned



# DECISION ANALYSIS

Litigation Strategy

**For more information, CLEs or litigation strategy services, please feel free to write me at :  
[rgabriel@decisionanalysisinc.com](mailto:rgabriel@decisionanalysisinc.com)**



**OCP**

ONLINE COURTROOM PROJECT

For more information, [www.onlinecourtroom.org](http://www.onlinecourtroom.org)