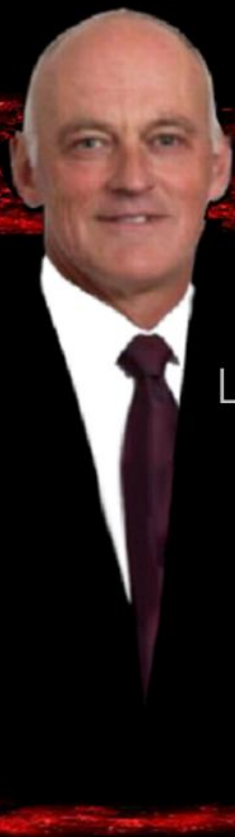




NEGOTIATING BIAS IN CONFLICT

Ref CRMC302



Lessons from **CODE RED THE NEGOTIATORS**

understanding the art of negotiation

JOHN THOMSON
t h e n e g o t i a t o r



CODE RED
the negotiators

LESSONS NOTES FROM AN EXPERT

NEGOTIATING BIAS IN CONFLICT

CODE RED THE NEGOTIATORS, Lessons From An Expert, is a unique series of invaluable lesson notes and resource for students, teachers and those considering using professional mediation services. The guides are extracts from John Thomson's books and training manuals and offers practical insights and strategies applicable to real-life situations.

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Bias, We All Have Them

Opinions are the flavours that make communication and relationships exciting and diverse, forming the foundation of debate and reason they open the windows of our minds and allow others to see who we are, where we have come from and where we hope to go.

They can be as magical as the colours of a rainbow and the scent of a rose or as the toxic character of a traumatised personality and the destructive force of anger and pain.

Opinions are also the foundation of bias and when bias is expressed, provides insight into our values, beliefs, past experiences and fears.

By definition, bias includes an inclination or prejudice for or against a fact, event, person or group, especially in a way considered to be unfair or a departure from fact or natural law, and a deliberate or ignorant systematic distortion of a result due to a factor not allowed for in its development or derivation. They are inherent predispositions that overlay and limit objectivity and factual interpretations of truth.

Therefore, mediators and arbitrators must understand the psychology of bias, its influence on reasoning and decision-making, and offer corresponding debiasing strategies for each to ensure an impartial resolution based on substantiated truth and fact.

A wide range of unique biases apply to specific interrelation environmental modelling, including workplace, planning, and social biases that are specific to their genre. This lesson examines the five biases resolution specialists must quickly identify to mitigate claimant or respondent bias, which may compromise objectivity and reinforce dependence on perceptions rather than factual truths, leading to an impasse or failure to find a resolution.

- Confounding bias - expedience
- Confirming bias - similarity
- Negativity bias – distance
- Recency bias – experience
- Idiosyncratic bias – safety

When Bias Comes

Unlike the grounded rational understanding of proven truths referred to as 'episteme'

knowledge, bias is subjective, governed by emotional responses to experience and becomes the foundation of 'doxa,' a flawed process that influences the values and beliefs of individuals or groups and if re-enforced by 'wordsmiths,'¹ they become accepted as common doctrine in religion, politics and social

behaviour. Once embraced by a community, those beliefs become deeply entrenched in multi-generational cultural and ideological frameworks that influence behaviours, social norms, and institutional policies regardless of their alignment with objective truths handed down from generation to generation.

opinions as absolute or foundational beliefs are at conflict with natural and tested truths

Using doxa is skilful art of influence of the propagandist. Goebbels² who as a wordsmith convinced German society to kill six million Jews. He said, "if you repeat a lie often, people will soon believe it, and when they believe it, you will even come to believe it yourself."

An example of this is evident in the COVID-19 Pandemic Response Acts, where the population accepted harsh 'lockdown' conditions while charismatic leaders told the population it was for their personal safety. Three years later, despite the continued existence of the same SARS-Cov-2 Virus infection and the apparent lack of Government concern, death rates amongst those who

became inoculated were identical to those who refused.

Bias is not confined to societies and institutional groups but also occurs within individuals.

Created within our DNA as survival responses, the highly developed ability to reason, predict future outcomes, design and create is unique to the human species. It is also our weakness, shaped by suffering, pain, loss, and our relatively short life span, and drives our emotions and feelings.

Inherent within reasoning, logic, and perceptions of time (*projected outcomes*), we utilise self-talk and cognitive argument,³

¹ Wordsmiths: Plato's critical use of rhetoric and the influence of persuasive speech, particularly in dialogues such as "Gorgias" and "Phaedrus."

² Joseph Goebbels: 1897 -1945: Minister of propaganda for the German Third Reich under Adolf Hitler. A master orator and propagandist.

³ Cognitive Argument: The ability to think and reason to support or refute a conclusion or belief.

which are influenced by feelings, past experiences, fears and pre-existing beliefs which leads to distortions and the irrational or exaggerated thought patterns that cause individuals to perceive reality inaccurately.

Self-talk, the argument that exists inside the minds of those in crisis and conflict, is typically critical, pessimistic, and self-defeating. It reinforces negative beliefs and biases about themselves. The

argument can become so convincing it can determine future behaviour, even destiny becoming self-fulfilling prophecy.

While self-talk and the resulting negativity bias are assumed to be an ancestral adaptive evolutionary process developed by continually being exposed to immediate environmental threats that have no place in the resolution, restoration, and healing processes.



Bias and the Law

All evidence is tested at law as admissible, inadmissible, sustainable or unsustainable.

Admissible evidence must meet specific legal standards including relevance and probative⁴ value and it must outweigh any prejudicial effect.

Examples of admissible evidence are;

- Physical evidence: *(i.e. wrecked vehicle or broken product)*
- Documentary evidence: *(i.e. contracts, emails etc)*
- Corroborative evidence: *(i.e. two or more people*

independently stating they saw or heard the same thing)

- Demonstrative evidence: *(i.e. a similar functional product used to explain non-functioning products)*
- Expert evidence: *(i.e. scientific or specialist expert evidence proven by testing)*

Inadmissible evidence cannot be presented or considered because it violates fair, focused, reliable and relevant facts and may include hearsay evidence.

Examples of inadmissible evidence are;

- Hearsay evidence: *(saying what another person said but that*

⁴ Probative def: Having the quality or function of proving or demonstrating qualification of something.

person cannot be tested as the credibility of their statement)

- Prejudicial evidence: *(when the danger of unfair prejudice outweighs its value)*
- Character or personal physical evidence *(typical in the 17th and 18th Century, a witch had a crooked nose, or a thief had small eyes)*
- Speculative evidence *(conjecture, presumption or biased opinion)*

Ask an Eskimo and a Pacific Islander to define a beautiful landscape would result in two very different definitions because beauty is subject to cultural,

spiritual and environmental bias. While subjectivity between people of the same culture and environment will be consistent, all evidence must be tested.

If truth is not held to a high standard, credibility is quickly lost despite honourable intentions. An example is the 'Me Too' movement, which lost credibility and collapsed when it failed to disavow false claims, failed to hold to the principles of 'innocent until proven guilty,' and embraced those who 'felt' feelings associated with, but not subject to violation.

Subjectivity - Rose Coloured Glasses

In casual use, the term 'opinion' expresses a person's subjectivity, perspective, understanding, particular feelings, beliefs, and desires. While opinions hold significant value in a wide range of aspects of social interaction, enriching discussions and leading to a more comprehensive understanding of complex issues, resolution decisions are not based on philosophy or social reconstruction.

The subjective questions, 'what do you think?' 'what do you feel?' 'how did you react?' gives the practitioner quick insight into one or more of the five primary biases

individuals may hold. These questions are at odds with 'what did you see?' 'what did you do?' and 'what happened?'

Subjective of opinions can vary widely from person to person and are often referred to as 'looking through rose-coloured glasses' being overlays that distort interpretation or judgement give rise to perceived justified preferential treatment or entitlement.

Investigation of a subjective matters usually results in non-conclusive findings, or it may deal with facts which are sought to be

disputed by logical fallacy, the pattern of reasoning rendered invalid by a flaw in its logical

structure and shaped by those entitled to their opinions.

all opinion is subject to higher and more favourable opinion

An example of a verifiable fact is that America was involved in the Vietnam War versus the subjective opinion that America was right (or wrong) to become involved in the Vietnam War. The latter, an opinion may be supported by facts and principles but, when challenged becomes an argument.

Reinforcing the theory of 'doxa,' millions of protestors took to the streets to express their 'feelings' about America's involvement in Vietnam, which in time became 'belief' and contributed to the downfall of the Nixon Government.

The longer a feeling exists, the more likely it is to become a perceived truth, making it increasingly difficult to assess facts when disputing parties project their 'feelings' as truth.

Pre-emptive projection theory examines the power of subliminal suggestion to influence outcomes. While legitimate psychological nuances within negotiation tactics, too often uninformed and naive participants become victims of highly attendant claimants and respondents who wittingly attempt to influence outcomes in their favour.

Often with high narcissistic tendencies and critical, demeaning speech towards other participants, immature and inexperienced resolution specialists may be subject to the influence of argument and may express presuppositions through their own bias, adding further complexity to an unsatisfactory negotiated resolution.



Four Dimensions Of Understanding

All bias is four-dimensional and requires exceptional skill for a conflict resolution specialist to navigate. Using the definition of 'doxa' gives insight into the evolutionary phases of bias, 'to appear, to seem, to think, to accept.'

Plato identified the four consolidation phases of bias as 'I feel,' 'I think,' 'I believe,' and 'it is.'

The four questions all analysts and negotiation specialists must ask are;

- What do you feel?
- What do you think?
- What do you believe?
- Why do you believe that?

The first two questions give insight into the participant's E.Q. and identify their self-awareness, self-regulation (*the way they manage their emotions*), motivations and social adaptivity. This gives us clues as to how quickly we can resolve underlying causes of conflict.

The second two questions identify participants' I.Q. and their ability to problem-solve, think critically, explore and manipulate abstract concepts and develop rational reasoning.

Doxa emerges today in orthodoxy (*tradition and ritual*) and heterodoxy (*Populism⁵, modernism, and peer conformity*) as binding influences, and once accepted, become deeply entrenched in spiritual and cultural reasoning.

Driven by diverse perspectives and values, they morph, evolving as absolute facts or truths, and become expressions of the complex and contentious nature of modern cultural and spiritual landscapes.

In direct opposition to democratic values and fair and equitable justice, doxa's are evident in the rise of religious radicalism (*i.e: justifiable destruction of innocence*), cultural divisiveness (*ie: identity and racial politics*) and disruptive social diversity (*i.e: nationalism, gender and racial*

⁵ Populism: To reveal the oppressed and, in doing so, not seek to bring change but seek to preserve and

promote the oppressed way of life, regarding it as a source of good.

rights), where natural or prevailing laws are challenged and replaced by 'justifiable true belief,' which through constant

reiteration, acceptance by notaries, populists and enforced at law, become accepted truths.

any deviation from facts of truth can be manipulated

Professor James Herricks ⁶ stated, *'due to compromised individual and societal opinions, as well as opinions not counted for due to apathy, bias is not homogeneous, nor agreeable with tested truths, rather, it is pliable and imperfect, the outcome of an ongoing*

power struggle between clashing subjectivity, dogma, justified action and personal experience.'

Simply explained, any deviation from facts of truth can be manipulated.



Examples of Bias and How To Manage Them

The psychology, cognitive ability, cultural and spiritual values of individuals profoundly shape their bias and, responses to further information inputs.

The subject is too wide to examine critically within this lesson note. We examine three common forms to give practitioners insight and explain bias's complex character and

influence on negotiated outcomes.

- Conforming Bias
- Confirmation Bias
- Anchoring Bias

While the study of bias is categorized into several general categories, practitioners may choose to research and examine some of the other more commonly recognized forms of bias not covered in this lesson.

⁶ James Herrick 1954-2024: Academic Professor
University of California: The History of Theory and
Rhetoric:

These include;

- Availability Heuristic
- Hindsight Bias
- Overconfidence Bias
- Dunning-Kruger Effect
- Stereotypical Bias
- Implicit Bias
- In-group Bias (favouring others)
- Out-group Bias (disfavouring)
- Selection Bias
- Observer Bias
- Publication Bias (Media Bias)

◦ Funding Bias

◦ Cultural Bias:

These categories can encompass numerous specific biases, and researchers continuously explore and identify different forms of bias across various disciplines. Recognizing and understanding these biases is crucial for improving critical thinking, decision-making, and research integrity.

Conforming Bias

Conformity is the tendency to adjust beliefs and opinions to fit in with and please others. Instead of making decision independently of others, individuals take cues, seeking acceptance from the group they associate with and adjust their beliefs to conform with those people.

Agreeableness is the condition of being socially homogenous, friendly and considerate, but its weakness is that individuals usually surrender their personal moral rights and legal entitlements as a result.

Social behavioural surveys indicate that once a consensus of

between 12% and 15% is achieved within a group, 78% of the remaining individuals respond with the same actions or make the same decision, even if they know that the decision is wrong.

Influence on Perspectives:

Conformists tend not to want to 'rock the boat,' or be subject to group disapproval. They require the approval of their broader society and social groups, often failing to communicate clearly and accurately and assert their inner desires or needs. They struggle to accept criticism and avoid conflict, leading to ambiguity of opinion and

behaviours which may appear to be contradictory or oppositional.

When confronted with defeat or loss, conformists become indifferent, unemotional and detached. This is most evident when they experience sudden break downs of relationship and the abandonment of friends seeking to make significant changes and the establishment of new beginnings.

Outcomes

Often insecure and uncertain, conformists are slow to 'open up,' being reluctant to tell you everything until they are certain you approve of or accept their rhetoric, beliefs, expectations and explanations.

If they are complicit in or cause for conflict, whether through mistaken belief, ignorance or malicious intent, they will avoid confronting the real issues and

engage in 'skiamachy⁷,' a psychological process of counterfeit argument often referred to as 'battle of the shadows.' Too often the battle is with their own internal insecurity. This becomes the source for the supply of irrelevant information, and for many, a reluctance to accept reality.

Cautionary Note

Entrenched conformity tends to force people to project their insecurities, fears, or unresolved issues onto others. By attributing these negative traits to someone else (*the group they conform with*), they try to avoid confronting their own shortcomings, culpability and vulnerabilities.

Almost always, the inability to find resolution on entirely acceptable terms for the conformist is attributed to a failing of the mediator or negotiator.

Confirmation Bias

Confirmation bias is the tendency to search for, interpret, and

remember information that reinforces preexisting beliefs or

⁷ Skiamachy def: from the Greek 'skia' meaning shadow, 'makhia' meaning battle.

hypotheses. This bias gives disproportionate weight to information supports a person's view while disregarding or undervaluing evidence that contradicts that information.

Confirmation bias is common, a cognitive shortcut we use when gathering and interpreting information. Evaluating the value and probity of evidence takes time and energy, so our brain looks for short cuts to make the process more efficient.

Often expressed as, 'told you so' or 'I knew that would happen' and at its lowest form, the language of resignation and a presumptuous disposition that reinforces inattentiveness, unintelligent reasoning and leads to judgemental and narcissistic behaviours towards those that are perceived as wrong.

Influence on Perspectives:

Confirming behaviour limits curiosity and openness to 'learning and experience⁸,' the natural instincts that enable understanding of the 'big picture.' When challenged, individuals may become more

entrenched in their views, strengthening their commitment and justifications to existing assumptions or ideologies and expressing their positions in a manner referred to as 'belligerent,' 'dogmatic,' or 'pig headed.'

Typical behaviours include overstepping boundaries of social conduct and ignoring the feelings and opinions of others, assuming authority or familiarity without appropriate basis or consent and displaying certainty when there they have no knowledge or experience.

Outcomes:

In organizational contexts, confirmation bias can result in suboptimal decisions as decision-makers overlook important contradictory but critical information. This causes individuals to avoid or ignore challenging or contradictory information, resulting in the manipulation of information to affirm their existing view.

This condition was clearly demonstrated in the 2024 U.S. elections, where the Democrats

⁸ OTL Openness To Learning. The Hendricks Scale measures the six facets of learning and experience. Active imagination, aesthetic sensitivity,

attentiveness to inner feelings, preference for variety, intellectual curiosity and a willingness to challenge authority.

believed they had won the elections months before the vote, and failing to listen to independent pollsters, and failed to take action to counter the grass root concerns of lower and middle-class Americans.

Predisposition beliefs (*confirmation bias*) lead to a failure to correctly analyse evolving facts and communication failures because of a failure to recognise critical facts between individuals or groups with differing beliefs, experiences and viewpoints.

Cautionary Note

Individuals prone to confirmation tend to agree with 'what-ever' when in groups or in counselling sessions, but when they step

away, revert to their previous flawed ideology and beliefs. Clinging to preexisting beliefs or opinions, they disregard contrary evidence and resist change resulting in deadlocks or stagnation and procrastination.

Any agreement reached may reflect a superficial consensus because confirmation bias prevents alignment with the 'now facts,' leading to future conflicts or dissatisfaction. These individuals almost always feel pressured to conform and later express dissatisfaction saying their true opinions were not heard which can lead to resentment and deteriorate relationships, affecting future negotiations.

Anchoring Bias

Anchoring bias refers to the tendency to make decisions based on the first piece of information encountered (*the "anchor"*) when making decisions. That information becomes a pivot from which subsequent judgments and evaluations are

influenced, even if it is irrelevant or incorrect.

An example of this bias was evident in the Tversky and Kahneman⁹ experiment, which involved all United Nations (UN) members to estimate the

⁹ Amos Tversky and Daniel Kahneman were psychologists who collaborated on influential work

that explored human decision-making biases and failures. *Confirming Bias* 1974

percentage of African countries in the United Nations. After being shown a random number (*the anchor*), despite knowing the number of seats, a disproportionate number were significantly influenced by the initial number, illustrating the anchoring effect. When pre-emptive research is not done objectively and impartially, or in low-skill-capable environments, the 'anchor' could be referred to as the 'tail that wags the dog.'

Influence on perspectives

The first number or piece of information presented can significantly influence later judgments. Apparent in low functioning individuals anchoring bias can lead to cognitive overload, where individuals may not have the capacity to process all relevant information fully. They then rely on the anchor as a simplifying heuristic.

Outcomes

Studies have shown anchoring bias in all sectors, including

pricing, judicial decisions, and medical diagnoses. For instance, jurors may rely on the initial sentencing recommendations as anchors, which can influence their final verdicts.

These individuals tend to take the first offer of settlement or act as an anchor that affects all future discussions. Negotiators may adjust their counteroffers based on the initial proposal rather than an objective assessment of value.

Cautionary Note

Practitioners, as impartial umpires within the resolution process, must be attentive to the impaired cognitive ability of individuals exhibiting high-functioning anchoring bias.

Suggestions and alternative views may be misconstrued as 'facts' while primary evidence is relegated or ignored as being considered superficial, leading to maligned outcomes and possibly exposing practitioners to future civil claims by those they represent.

References:

- Beck, A. T. (1976). *Cognitive Therapy and the Emotional Disorders*. Penguin Books.
- Meichenbaum, D. (1993). *Stress Inoculation Training: A Cognitive Behavioral Approach*. New York: Plenum Press.
- Greenberg, J., & Colman, A. M. (2016). *Social Identity Theory*. In *Encyclopedia of Personality and Individual Differences* (pp. 1-4). Springer.
- Tversky, A., & Kahneman, D. (1974). "Judgment under Uncertainty: Heuristics and Biases." *Science*, 185(4157), 1124-1131. DOI: 10.1126/science.185.4157.1124
- Eagly, A. H., & Chaiken, S. (1993). *The Psychology of Attitudes*. Harcourt Brace Jovanovich College Publishers.
- Landau, M. J., et al. (2015). "The Role of Social Identity in the Perception of Injustice: Understanding the Anxiety around Groups and Conflicts." *Journal of Social Issues*, 71(1), 1-20. DOI: 10.1111/josi.12096

Recommended Reading

James A. Herrick: *The History and Theory of Rhetoric: An Introduction*



Recommended Reading In This Series

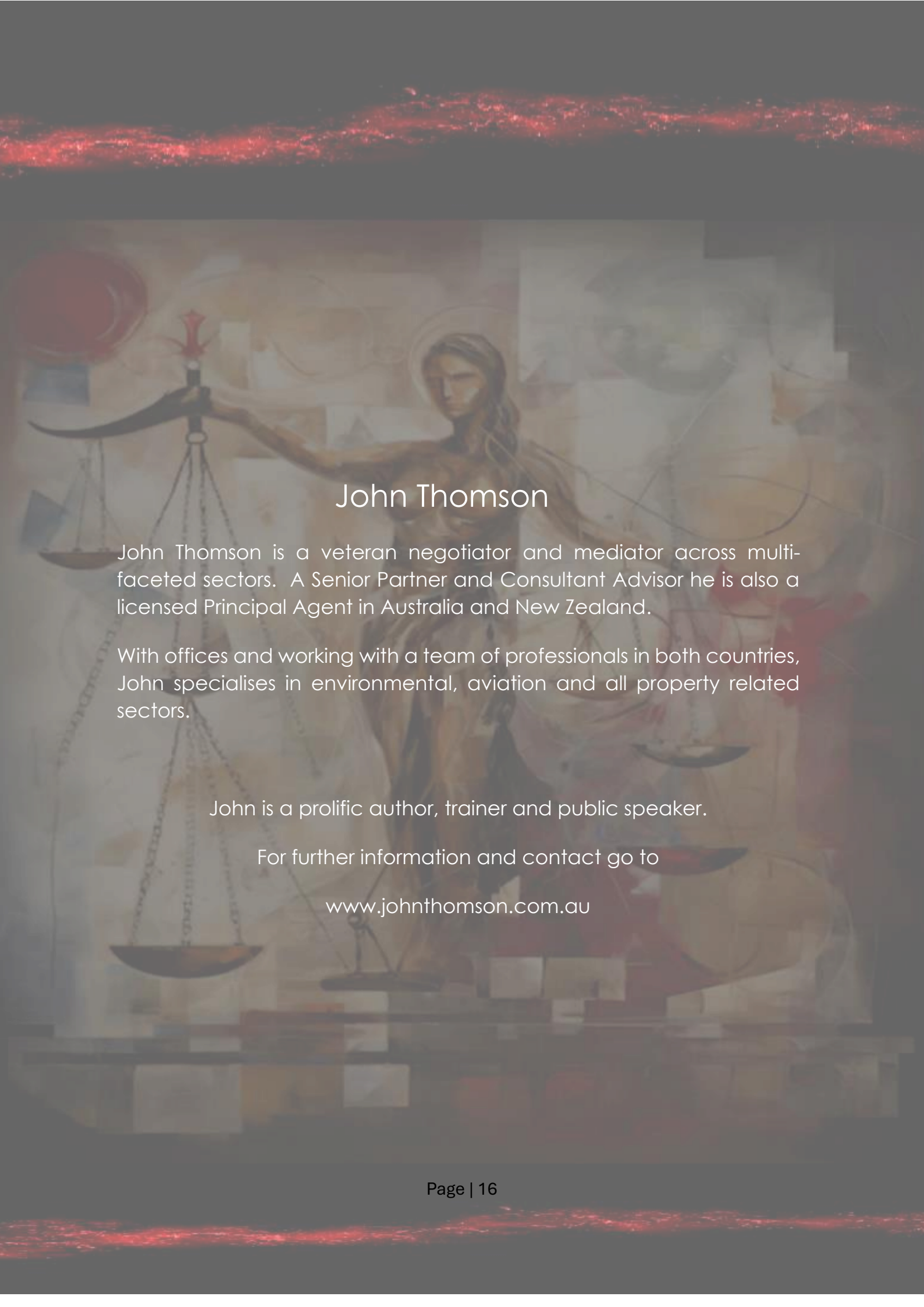
CODE RED Master Class Lesson Notes are available in downloadable and printable format from our online platforms. The following subjects are closely linked with the contents of this lesson and are recommended reading.

- CRMC405 **Origins Of Conflict, Why People Create Trouble**
- CRMC422 **Openness, Keys To Quick Recovery**
- CRMC433 **Ying and Yang, The Devil Within**
- CRMC306 **When They Say They Did Nothing Wrong**
- CRMC404 **Emotional Regulation, Controlling Run-Away Feelings**



YouTube CODE RED THE NEGOTIATORS

The entire series of lesson notes is available in audio visual format on Youtube. There are two ways to access audio-visual videos.



John Thomson

John Thomson is a veteran negotiator and mediator across multi-faceted sectors. A Senior Partner and Consultant Advisor he is also a licensed Principal Agent in Australia and New Zealand.

With offices and working with a team of professionals in both countries, John specialises in environmental, aviation and all property related sectors.

John is a prolific author, trainer and public speaker.

For further information and contact go to

www.johnthomson.com.au