The Tortoise And The Hare

BY ANNE COLLIER ON APRIL 14, 2016 ·

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The tension in an organization struggling with change boils down to this: the change either goes too far or not far enough. The story below illustrates this problem, and the analysis that follows suggests how a firm leader may successfully address it.

Meet the Tortoise and the Hare

THIS ISSUE OF LP TODAY

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Terry, the M&A practice group chair, looks up from his desk just as Jamie barges into his office, fuming, "I can't believe it! You want us to start using checklists for every merger?! What a colossal waste of time! You don't think *I* know how to close a deal?! I've been doing this for a decade longer than anyone else here. Who's going to draft the checklist? How are you going to ensure it touches on *everything*? And, what if we create this checklist and it somehow gets on the internet? We'll look ridiculous; people will think we don't know how to practice law!"

That same day, at the M&A group lunch, Bailey, a lateral partner, sniggers, "I can't believe you're just now creating a deal checklist. If we're really striving to be cutting edge and efficient, we've got to change a lot—profiling our matters so that everyone can find what they need instead of reinventing the wheel. At my old firm, we did that and managed to increase our profits per partner by value billing. Not only did we save time working with our existing clients, but also more clients hired us because we produced higher-quality work at a lower cost."

As Bailey touts the benefits of a knowledge management system, Jamie walks in and protests, "That's the most ridiculous thing I've ever heard. I am skeptical we can even get a merger checklist right; how can you expect to properly profile all our matters? It's more work than it's worth!"

Bailey replies, "Jamie, sure, the checklists won't be perfect, but even with the imperfections they save a lot of time and are great tools for the more junior lawyers. Over time, people get used to using the system and the system evolves to become more efficient. But hey, we're not even there yet; we're still in the stone ages, BC – before checklists."

Terry overhears the conversation, thinking about how to get everyone to accept the checklist and, more importantly, the fact and pace of change. Why are Jamie and Bailey reacting so differently to the change?

"Who knew that change and thinking about change could be so complicated?" Terry thinks aloud. Even if the change is one we advocate for, embrace and want, it can cause stress. Terry knows that Jamie and Bailey want the firm to be more efficient and attractive to clients, laterals and associate hires; the rub is that neither will align with whether, how and how fast the group is implementing its knowledge management strategy.

Understand the Tortoise and the Hare

Here's what's happening: you are either the agent of change or change happens to you. You are the agent of change when you take a new job, move up the ranks, take on new responsibility, or embrace and work to implement a knowledge management strategy such as a checklist system. Change happens to you when the market for your services crashes and you are made redundant, your firm's business model morphs, or new leadership brings new visions and work practices that you don't much care for, such as a checklist system.

Bridges' Model explains transition.

Regardless of whether you are the agent or victim of change, the experience of change can be brutal. A noted organizational consultant, William Bridges, described in 1991 what happens in people's minds during the three stages of change and the corresponding emotions (referred to as "Bridges' Transition Model"):

- **Stage 1: Ending, Losing, and Letting Go**. Resistance and emotional upheaval mark this stage. Even when you embrace change, you will experience this stage, if only for a very short time.
- **Stage 2: The Neutral Zone**. This stage is spaced between the old and new; people hold on to the old way, but are trying to adapt to the new way. People can experience resentment and low productivity.
- **Stage 3: The New Beginning**. During this stage people embrace change and are excited about it. They experience early wins and productivity gains.

Cognitive theory helps explain differing reactions to change.

The intensity and speed with which a lawyer moves through the three stages depends on a number of factors, including the lawyer's problem-solving style. A well-regarded model of problem-solving style was

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developed by psychologist Michael Kirton, known as Adaption-Innovation Theory (A-I Theory). The model posits a continuum between two styles – *adaptive* and *innovative*. It describes how one deals with the paradox of structure, which is the seemingly incongruent notion that structure both enables and limits problem solving. Kirton developed a series of standardized questions, known as the Kirton Adaption-Innovation Inventory (KAI), to determine where people fall within the continuum.

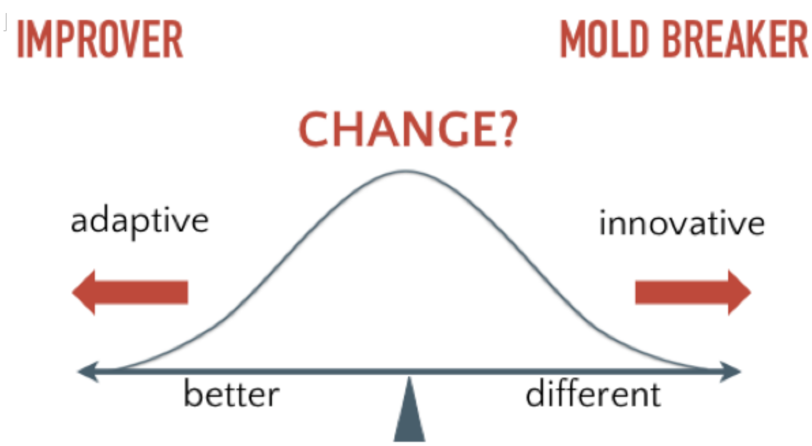
Apply the theories to law firm change.

Under A-I Theory, the preferred problem-solving style of people who are more *adaptive* is to leverage the system in place, as-is, to solve problems. The type of change they advocate for are improvements; they want to make the *current system* better. They are also risk averse, because they don't want to damage the current system, and require a high degree of structure to be comfortable solving problems.

People who are more *innovative* prefer the efficiency and flexibility of devising a solution, and then modifying or replacing the system or process to accommodate that solution. They are also less risk averse and more interested in trying something different than their more *adaptive* colleagues. The tension at the law firm in the story is between lawyers who are more *adaptive* like Jamie, the senior practitioner, who believes the checklist change goes too far, and those who are more *innovative* like Bailey, the lateral, who believes the checklist does not go far enough.

Under Bridges' Model, so-called resisters—like Jamie—resist because they're still in Stage 1 and are likely experiencing fear, denial, anger, sadness, disorientation, frustration, uncertainty or a sense of loss. Consider also that the more *adaptive* strive to solve problems caused by the change by working out every detail to a very specific degree, and, emergent problem solving and trial and error are not strengths of the more *adaptive*. This means that any change that is more than a mere refinement of the current system would entail working out all of the details before launching the new system. This is exactly what Jamie, who is upset and concerned, complains about.

The bell curve below represents the distribution of problem-solving styles, and shows that most people are not on either end of the spectrum. Most people prefer both improving and jettisoning the current system in moderation.



When it comes to a radical change (and remember, whether the change is radical is in the eye of the beholder), the more *adaptive* are likely to resist, and the *innovative* are more likely to advocate for it. Similarly, when it comes to tweaking or perfecting the current system, the more *adaptive* are more likely to advocate and the more *innovative* will resist because the change doesn't go far enough.

Because most law firms consider or implement changes that require a problem-solving style that is more *innovative* than many of their lawyers' problem-solving styles, firms experience resistance from the more *adaptive,* who are the ones who spend more time in Stage 1; complaints and upset are the evidence.

Coopting The Tortoise and The Hare

If your organization is going through change, your colleagues will likely divide into advocates and resisters to varying degrees: the latter think the former are looking to get rid of the current system too quickly, and the former think the latter hold on to the system for too long. Dubbing someone as a resister or an advocate is only useful insofar as it identifies who's still in Stage 1 of Bridge's Model. Importantly, don't forget the lawyers of all problem-solving styles are valuable to the process precisely because they offer differing insights and perspectives.

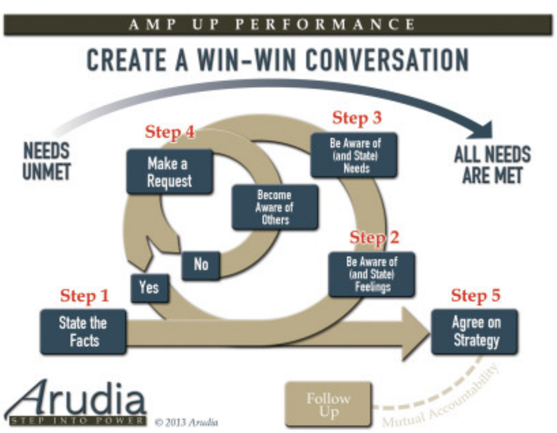
Change the style of the conversation.

To successfully manage change, don't criticize colleagues who seem to be slowing the process down. Instead, support them by empathizing, communicating openly, and leveraging their perspective. Remember, so-called resisters resist because they're likely experiencing fear, denial, anger, sadness, disorientation, frustration, uncertainty, or a sense of loss. This doesn't mean they are not making valid points, however.

Be sure to listen for the essence of your colleague's feelings and needs, and follow the Win-Win Conversation Model, which I developed in response to clients' needs to have more productive conversations when resolving issues likely to elicit defensiveness and upset. At *Win-Win's* foundation is the paradigm shift from scrutinizing issues in terms of good-versus-bad to a needs-focused analysis. This means that rather than assess whether Jamie's concerns are right or wrong, Terry needs to listen for Jamie's feelings and needs to develop a strategy that meets both the firm's needs for achieving greater efficiency and efficacy and Jamie's needs. In this manner Terry will achieve alignment.

To have a *Win-Win Conversation* follow the model below*:*

- **Step 1: State the Facts** neutrally and without judgment. This means stating the facts very concisely and avoiding loaded words such as "should" while maintaining a matter-of-fact demeanor and tone.
- **Step 2: Be Aware of and State Feelings** as you deem necessary. Feelings such as concern and frustration are common and generally considered acceptable in the workplace.
- **Step 3: Be Aware of (and State) Needs** as necessary. It's important to distinguish between needs the range of strategies that might satisfy those needs.
- **Step 4: Make a Request** using the "magic" language, "would you be willing to…?" The phrase is effective because it is clearly a request, as distinguished from a demand, as is thus more likely to foster collaboration and alignment.
- **Step 5: Agree on Strategy** by working through details such as deadlines, resource needs, and the like.



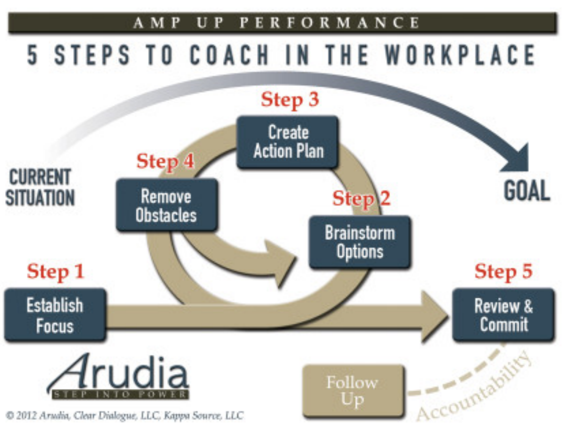
At its foundation, *Win-Win* requires you to distinguish between goal and strategy, be aware of your own and other's feelings and needs on the matter, and to work towards a strategy that meets all needs. In implementing change, be sure to distinguish between goals and strategy, getting alignment on the former first. It's easier to work through a challenge when you start with agreement on something. Remember, if a lawyer resists a change citing implementation difficulties or that the result won't be perfect enough, your colleague is likely still in Stage 1. This is because your colleague is more *adaptive* than the style of problem-solving best suited to managing the change, meaning that the change requires a greater paradigm shift than the lawyer's preferred problem-solving style.

Use coaching skills.

When it comes to supporting the lawyer in implementing the change, also use *Coaching Skills,* which is the use of open-ended questions to collaboratively identify a solution that meets that lawyer's needs. Think about it: if a colleague resists a change and all you do is reiterate how great the change is, you're not going to achieve alignment. If, on the other hand, you're using *Coaching Skills* along with *Win-Win*, you are more likely to achieve buy-in, and leverage your colleague's best thinking not just on meeting his or her needs, but on how to implement change more effectively and with less stress for all.

The coaching model below outlines a five-step problem solving process. The use of open-ended questions is the hallmark of a coaching style of communication.

- **Step 1: Establish the Focus** of the conversation, which means asking open-ended questions to clarify the topic, goal and takeaway for the conversation. This is the one step of the model for which a leader might establish the focus by stating it him or herself.
- **Step 2: Brainstorm Options.** Ask open-ended questions to support your colleague in identifying options.
- **Step 3: Create the Action Plan.** Ask open-ended questions to support your colleague in developing an action plan. This step is particularly important for colleagues who, like Jamie, garner comfort from working out detailed steps.
- **Step 4: Remove Obstacles.** Ask open-ended questions to support your colleague in identifying challenges to successfully execute the plan created in Step 3.
- **Step 5: Review & Commit.** Ask open-ended questions to support your colleague in reviewing and committing to what he or she will do, by when and establish follow up. This is the most forgotten step, but it is important to ensure everyone is on the same page.
- **Follow Up.** Ask open-ended questions to support your colleague in establishing what worked, what didn't, and what the opportunities for improvement are. In this manner, accountability is a positive, supportive experience.



Here's what a conversation between Terry and Jamie might sound like:

Win-Win Steps 1 through 4: Terry begins with, "Jamie, this morning when you stopped by to raise issues with our proposed checklist system, I was concerned; the fact you feel so strongly gives me pause—I don't want to overlook anything critical. Would you be willing to share more detail about your concerns?"

Jamie responds, "Thanks Terry. I appreciate that you aren't letting this be another 'have-to' program designed in a vacuum. I have a number of concerns, the biggest of which is that the checklist will end up being a broken crutch—doing more bad than good. I don't want the more junior lawyers to turn off their brains and fully rely on a checklist. I can just hear it now, "But I used the checklist… " as an excuse. That's unacceptable to me and our clients certainly won't accept it!"

Win-Win Inner loop of Awareness of Others: Terry says, "It sounds as though your real concern is that the quality of work will decline rather than improve, at least from the more junior lawyers."

Nodding, Jaime says, "You got it. I can just see the associates using the checklist as an excuse. That's just unacceptable!"

Switching to *Coaching Skills* and following the *5 Steps to Coach in the Workplace*, Terry asks, "What would you like to see happen?"

Jamie, softening, responds, "Well, I am not saying the checklist is completely harebrained, not only does the checklist have to be very thorough, but lawyers need to be trained to use it properly. I'd like to be comfortable the checklist is a tool, not a broken crutch. We have to make sure that it improves our work."

Further honing the focus on their conversation and then using *Step 2: Brainstorm Options*, Terry says, "I couldn't agree more. Let's come up with a strategy for ensuring that the checklist works. What do you think we need to do here?" Notice Terry's use of the pronoun "we" to further engage Jamie in the process.

Pausing to think, Jamie then adamantly suggests, "We need to pilot whatever we do, which has to include a serious vetting by everyone, including our risk-management carrier."

Terry asks several more open-ended questions, which Jamie answers with increasing interest and intensity. Using *Win-Win Step 4: Make A Request*, Terry asks, "Would you be willing to lead our efforts?"

Jaime responds, "Yes, but only if you give me the time to do this right."

Delighted and relieved, Terry, using *Step 3: Create the Action Plan*, asks, "Great! What's your first step?"

Jaime responds and they co-create the action plan.

To ensure that Jamie succeeds, Terry uses *Step 4: Remove Barriers*, asking, "What support and resources do you need from the firm?"

Jamie responds, "Believe it or not, I'd like to involve Bailey and several other lawyers at different levels. I need to leverage the different experience levels and perspectives."

Using *Step 5: Review and Commit*, Terry says, "Done! Continue to think about what we can do to support you efforts. I can't tell you how much I personally appreciate your willingness to take this one. Would you recap so I am sure I understand both the plan and your resource needs?"

Jamie happily reviews all that details on the plan, identifying a few more steps along the way.

Using these communication tools, Terry gained an understanding of the behavioral issues at play, having private conversations with Jamie and similarly-minded colleagues using coaching questions. Terry adapted the implementation of the checklists initiative to address the major concerns expressed—implementing it in a pilot and then phasing it in; making use of the checklists voluntary for a period; and bringing those most concerned into the drafting process to reassure them with a sense of ownership and control. He sought to convince colleagues that checklists are taken very seriously among M&A practitioners by arranging a presentation by the senior risk manager at the firm's professional liability carrier illustrating problems that have occurred in M&A deals and why the carrier strongly favors checklists to address them. This effort required time, but as a result, the checklists project was able to move forward with the support—grudging in some cases but nonetheless real—of most of lawyers in the M&A group.

Conclusion

So, if you're a practice leader trying to lessen resistance—that is, help your colleague move through the stages of transition—be sure to listen for the essence of your colleague's feelings and needs by using *Win-Win* and then engage in collaborative problem solving using *Coaching Skills*. Communicate a clear picture of the change's benefits that you will provide the support necessary to successfully transition and thrive long term. Don't forget to acknowledge difficulties and to take the time to explain the reasons for change. Authentic communication goes a long way toward moving people successfully through change.

Change happens and we all make the transition eventually. If we didn't, how would we progress?

About the Author

Anne Collier *is the founder of Arudia, an executive coaching and leadership development firm in the Washington, DC area. She is a board member of the Women's Bar Associations of DC, a member of the ABA Law Practice Division's Knowledge Strategy Group, and a frequent author. Follow Anne on Twitter @stepintopower.*

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