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Collaboration Across Small and Great Divides: Teamwork, Tensions, and Client-Centered Solutions

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**http://www.law.unlv.edu/faculty_nancyRapoport.html**
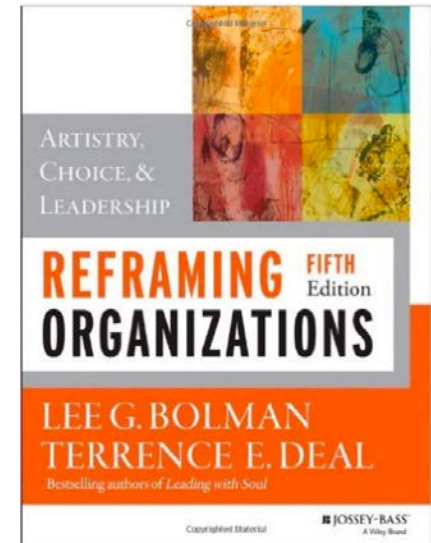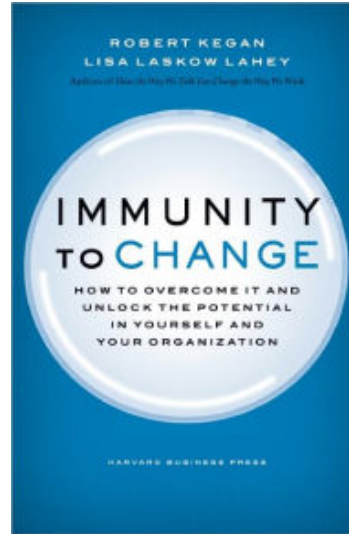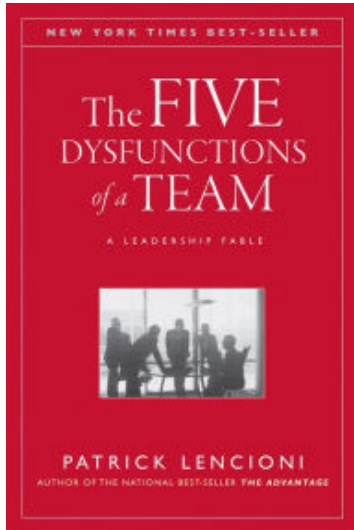**http://nancyrapoport.blogspot.com/**

What would you change about your work, if you could change something?

Today's conversation will cover:

- Why teamwork matters.

- What gets in the way of teamwork.

- Cognitive errors and their effects on collaboration.

- Incentives and nudges.

- Teamwork's benefits for clients.

I am in love with these books:
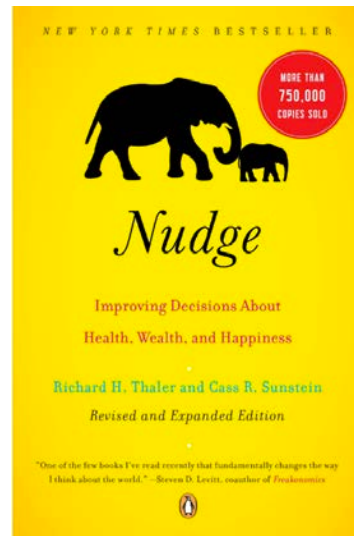
Why teamwork matters:

Why teamwork matters.

"[I]magine a basketball coach in the locker room at half-time. He calls the team's center into his office to talk with him one-on-one about the first half, and then he does the same with the point guard, then shooting guard, the small forward, and the power forward, without any of them knowing what everyone else was talking about. That's not a team. That's a collection of individuals."

--PATRICK LENCIONI, THE FIVE DYSFUNCTIONS OF A TEAM: A LEADERSHIP FABLE 83 (2002).

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Groups vs. teams:

- Group: a collection of individuals.
  - Groups *might* achieve a common goal, but it's because, by working on their own particular projects, the combination of work gels into the goal.

- Team: a collection of individuals who use their particular skills to achieve a common goal.
  - Every team member understand what he or she is contributing to the team's goal.

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Does this statement resonate?

Why we are ruder at work than we are in the street

I did not set out to be uncivil to my colleagues. This is just how office life has become

Lucy Kellaway

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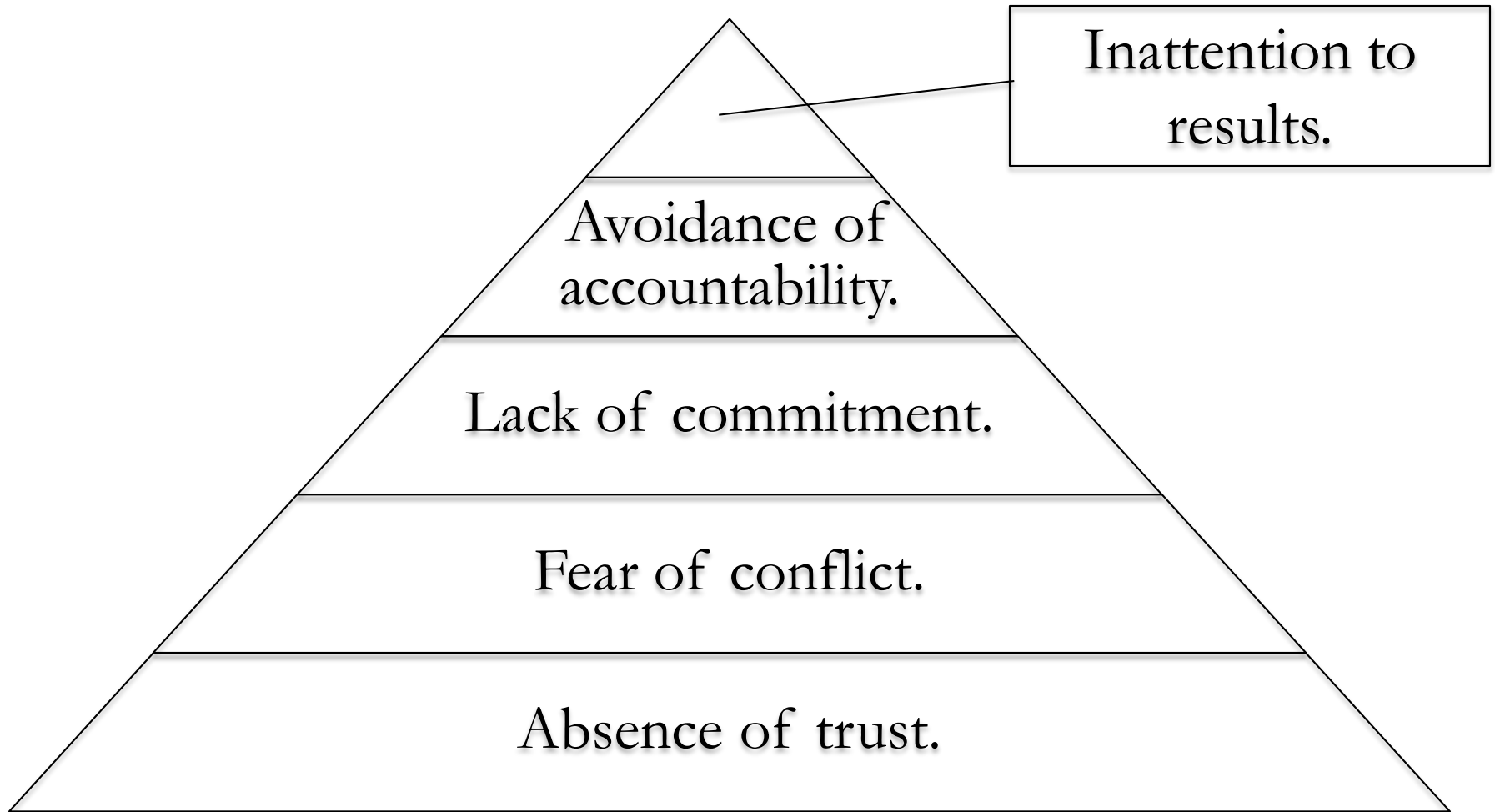# Do a mental tally of your life at work:

- When are you happiest?
- When are your clients happiest?
- When is your boss happiest?

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On a team, the team members:

1.   … trust one another.

2.   … engage in unfiltered conflict around ideas.

3.   … commit to decisions and plans of action.

4.   … hold one another accountable for delivering against those plans.

5.   … focus on the achievement of collective results.

--PATRICK LENCIONI, THE FIVE DYSFUNCTIONS OF A TEAM: A LEADERSHIP FABLE 189-90 (2002).

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What gets in the way of teamwork?

Inattention to results.

Avoidance of accountability.
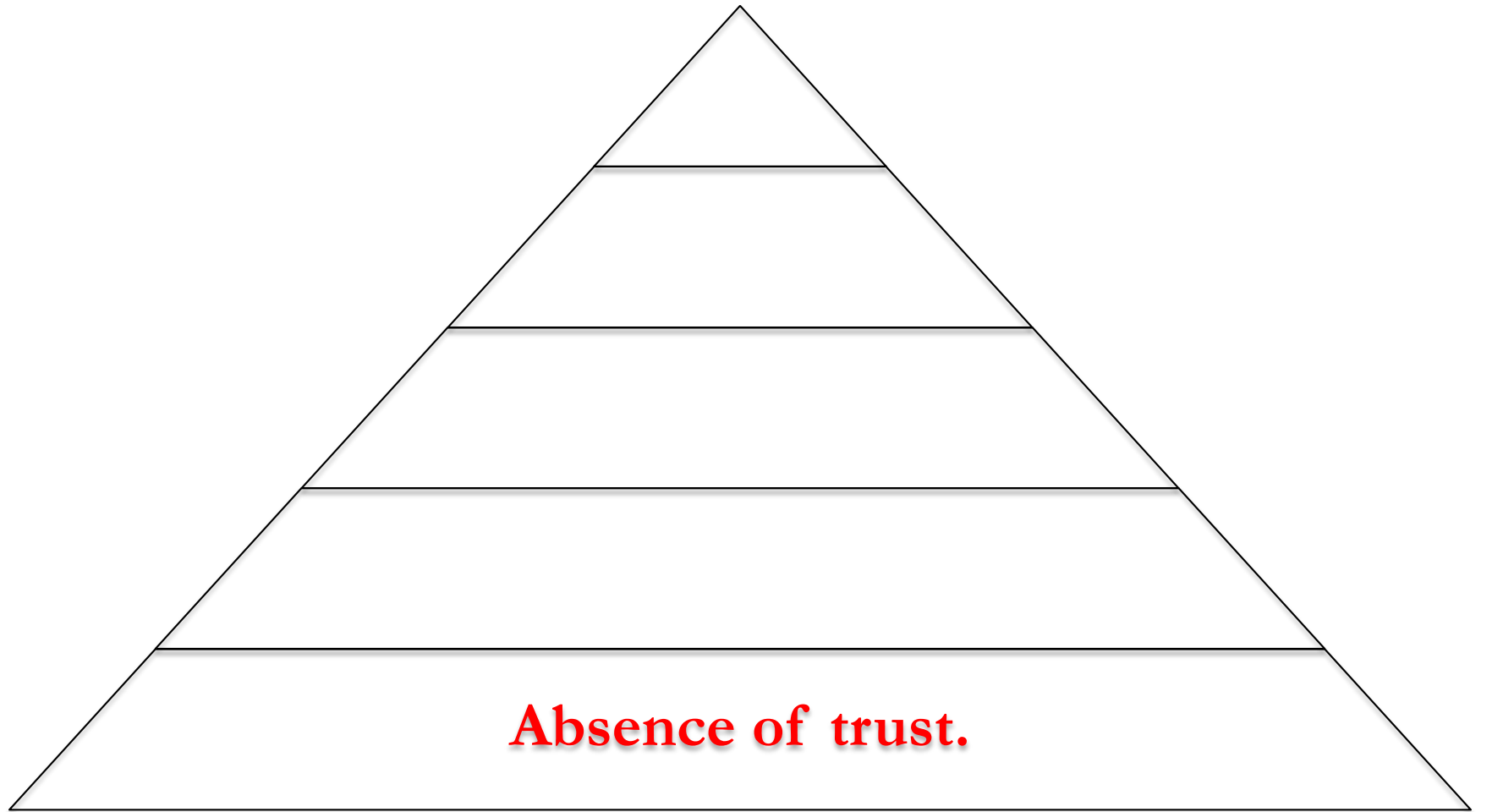
Lack of commitment.

Fear of conflict.

Absence of trust.

--PATRICK LENCIONI, THE FIVE DYSFUNCTIONS OF A TEAM: A LEADERSHIP FABLE 188 (2002) ("hand-drawn" version).

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Absence of trust:

Absence of trust.

Fear of conflict:

Fear of conflict.

Absence of trust.

Lack of commitment:
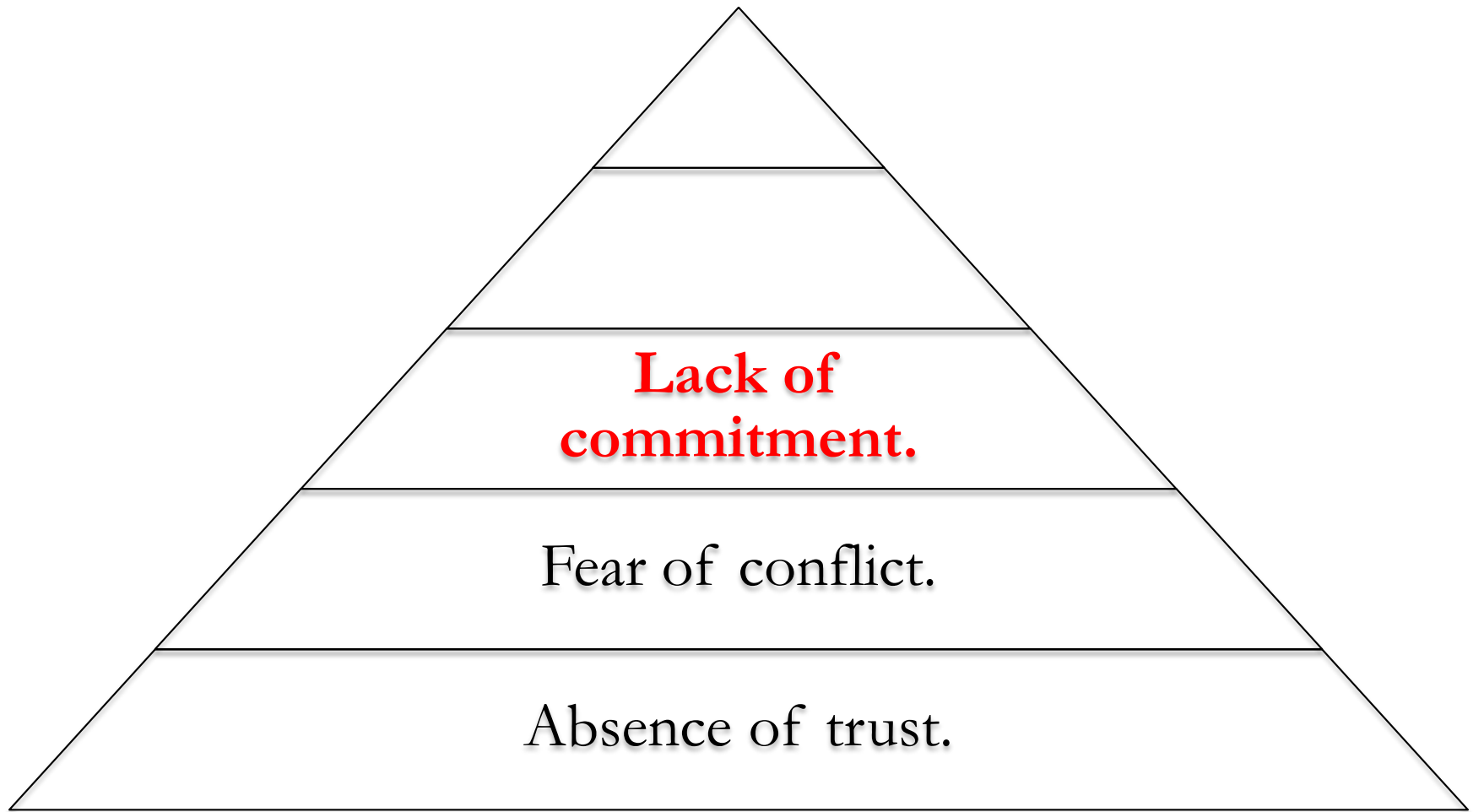
Avoidance of accountability:

Inattention to results:

Inattention to results.

Avoidance of accountability.

Lack of commitment.

Fear of conflict.

Absence of trust.
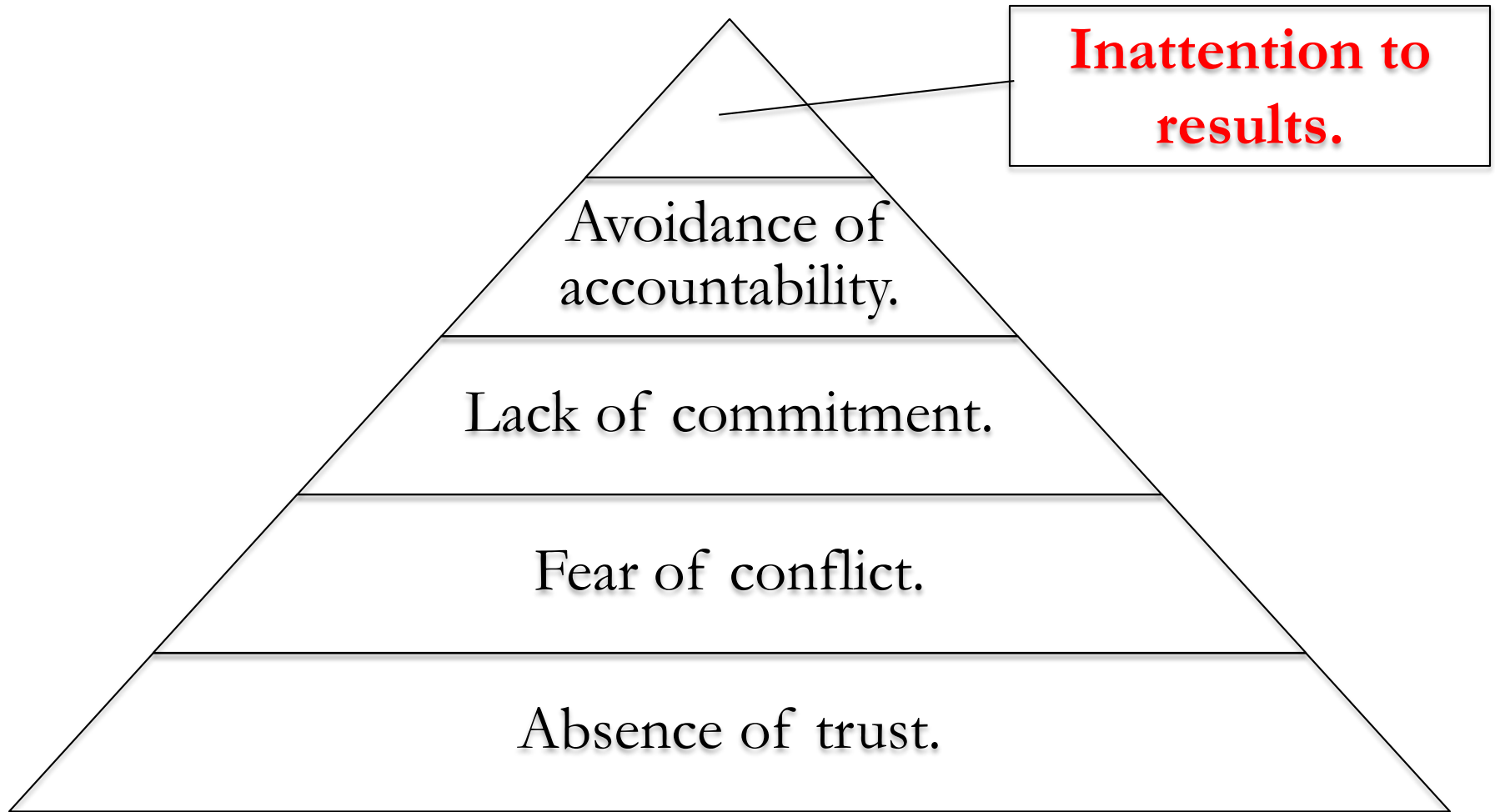
Mapping the team dysfunction pyramid to Maslow's hierarchy:

Left pyramid (team dysfunction), from top to bottom:
- Inattention to results.
- Avoidance of accountability.
- Lack of commitment.
- Fear of conflict.
- Absence of trust.

Right pyramid (Maslow's hierarchy), from top to bottom:
- **Self-actualization:** achieving one's full potential, including creative activities
- **Esteem needs:** prestige and feeling of accomplishment
- **Belongingness and love needs:** intimate relationships, friends
- **Safety needs:** security, safety
- **Physiological needs:** food, water, warmth, rest

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What does it take to move from a group to a team?

- Effort by each member of the group to work on these five potential problems AND

- A leader who understands how to form a team AND

- A leaders who can give appropriate feedback to individual group members AND

- A leader who is willing to warn and, if necessary, <u>fire someone</u> who does not want to play for the team.

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Once you have a team, "are you there yet"?

- No, but having a team is a good start.
- Now, let's turn to cognitive errors:
  - The person.
  - The situation.

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Some basic cognitive errors and biases:

- Cognitive dissonance.

- Diffusion of responsibility.

- Anchoring.

- Confirmation bias.

- Hindsight bias.

- Social pressure.

- Top all of that off with the exhaustion of a full-time practice, and you can see how errors get made.

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Cognitive dissonance.

"I am a good person."

"I am doing a bad thing."

"There's a good reason I'm doing this."

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My new favorite cognitive dissonance clip:

[SNIP]

From *Concussion* (Columbia Pictures 2015).

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When it comes to cognitive dissonance, there are no lobsters, only frogs.

- Diffusion of responsibility (also called the "bystander effect").

  – "Someone else will do it."

  From *Enron: The Smartest Guys in the Room* (Magnolia Home Pictures 2005).

[SNIP]

Anchoring in action:

- Focusing on one factor = anchoring error.

[SNIP]

https://www.youtube.com/watch?v=5odWkym0RMw.

Confirmation bias and hindsight bias.

- [Confirmation bias](#) = new information interpreted to confirm old beliefs.

- [Hindsight bias](#) = "I knew it all along" interpretation of new information.

Social pressure and changes in a group's norms:

- Solomon Asch.
- The two most likely cognitive errors affecting most organizations?
  - Social pressure and diffusion of responsibility.
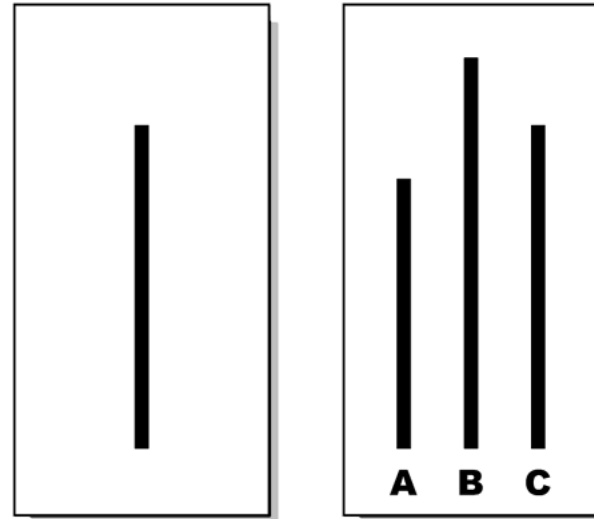
How cognitive errors can affect your behavior.

- Talking yourself into believing that something you did was OK, even when it wasn't OK.

- Assuming that, if you discover a problem, everyone else knows it, too, so you don't have to act on your discovery.

- Letting "everyone else does it" determine whether you do it, too.

- Focusing on one factor and ignoring all others.

Having a gate isn't the same as having one that works.

So let's assume:

- You've formed strong teams.
- You're aware of cognitive errors (even though no one can prevent them).
- Can you "nudge" people into better behavior to get around the fact that we're all subject to cognitive errors?
  - Maybe.

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Every step you see has a "prep step" that created it.

"Prep step" in dance = incentives at work.

Main points:

- People work to meet the incentives they're given—whatever those incentives may be.

  - To change behavior, it's important first to identify the incentives that triggered that behavior.

  - Every change in incentives involves a risk of creating new, bad incentives.

- Humans make certain cognitive errors.

- An organization's culture matters.

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# Subtle default rules and other ways of changing behavior:

Examples of bad incentives:

Let's start with why I want to "nudge" organizations:

- My work as a fee examiner got me started thinking about this topic.

- Are there little changes that we could make inside organizations that might help them:

  – Run better/be more profitable?

  – Serve clients better?

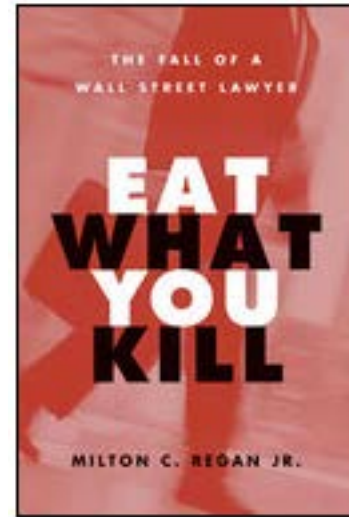 – Encourage more ethical behavior?

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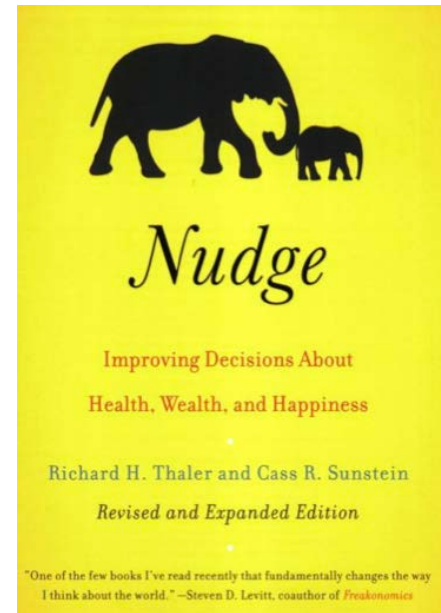
All organizations can use a nudge or two.

- A law firm isn't that unique an organization.
- Again, it's all about an organization's <u>culture</u> and about <u>incentives</u> w/i that culture.

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To change culture, first figure out what it is.

- It's not what we say, it's what we <u>do</u>.

Enron wasn't an anomaly.

- WorldCom.

- HealthSouth—Aaron Beam, former HealthSouth CFO:

   "So when we had trouble hitting Wall Street expectations, [Scrushy] encouraged us to cook the books. I was intimidated by [Scrushy]. . . . I was afraid to stand up to him."*

* John L. Smith, *HealthSouth co-founder knows how greed grows on you, Las Vegas Review-Journal,* May 19, 2010, at B1.

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Every organization has a culture.

- Determining how to bill clients.
- Working collaboratively within and across departments.
- Finding ways to get new clients and to keep current ones.

Can we "nudge" people to behave differently?

- Both definitions of "nudge" work very well.
- What incentives work for/against the behavior we want?
- What default rules (opt-in? opt-out?) might we use to change behavior?
  - Opt-in vs. opt-out: organ donations.

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Can we even fix the problem?

- Increased punishment alone won't work.
  – Smart people and risk of sanctions.
  – General counsel as influencers of corporate culture.*

* Colin Marks & Nancy B. Rapoport, *Corporate Ethical Responsibility and the Lawyer's Role in a Contemporary Democracy,* 77 FORDHAM L. REV. 1269 (2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1376475 .
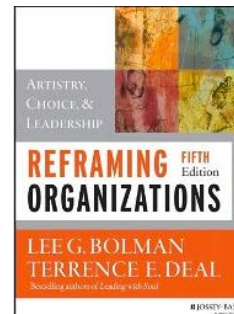
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Given our cognitive predilictions, what can we do?

- We need to be conscious of the fact that humans can find themselves doing dumb things.

- We also need to think about the ways that our organizations can help us do, or hinder us from doing, what we should be doing.

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Setting the correct cultural expectations is a <u>first</u> step—but not the only necessary one.

- Does the firm encourage the sharing of clients, or is it an "eat what you kill" kind of system?

- Does the firm tolerate bad behavior from star performers?

  – John Gellene—Milbank.

- The "symbolic" frame and the stories we tell about an organization.

A culture's myths predict future behavior.

- Stories of bravery and cowardice.
  - Celebrating "successes"?
  - Punishing "failures"?
  - "False positives"?

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Your own organizations.

- Bending the rules for "top performers"?
- What gets rewarded?
  - Enron's code of ethics: "RICE."

What does your culture celebrate?

Starting to change culture—perceived losses and perceived gains

- What we take away will bother people more than what we give them.
  - Marissa Meyer's decision to take away Yahoo's flextime.

- What could you change to change behavior in your organization?
- What possible unintended consequences might there be?

And, now, it's your turn:

- Ideas? Questions?
- For some of my ideas on this topic, see:
  - [Nancy B. Rapoport, *"Nudging" Better Lawyer Behavior: Using Default Rules and Incentives to Change Behavior in Law Firms*, 4 St. Mary's J. L. Ethics & Malp. 42 (2014)](#).
  - [Randy D. Gordon & Nancy B. Rapoport, *Virtuous Billing*, 15 Nev. L.J. 698 (2015)](#).

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