

MEDIATION ACTIVITY

Smokey Bear Has an Image to Protect

Program Type:

- Mediation Scenario and Negotiations Facilitated by a Mediator
- Debriefing and Discussion with a Judge

Participants: Middle School, High School, Community College and University Students; and Lifelong Learners

Duration: 3 hours

Program Description

A fictional scenario, based on a real-life federal law that prohibits the use of the Smokey Bear character or name, is an exercise in mediation and conflict resolution. Using a simplistic fact pattern – to keep the focus on mediation skills, not the hypothetical – participants learn to differentiate between positions and interests when working through a conflict.

In a Nutshell

Adam Ford sets up his food truck for the outdoor enthusiasts who visit his small town in Colorado on their way to their summer hiking adventures in the national park. He names his business *Smokey Bear Outdoors* after the popular forest fire prevention character. Business is going well in the town square where Adam parks his truck until the day that he gets a visit from the Federal Forest Ranger. To Adam's surprise, the Ranger says using the Smokey Bear image is illegal. Adam will need mediation skills to find his out of this predicament. The following exercise identifies those skills and provides an opportunity to practice them.

- [Smokey Bear Mediation Activity: Program Agenda](#)
- [Smokey Bear Mediation Activity: Fictional Scenario](#)
- [Smokey Bear Mediation Activity: Notes for the Mediator](#)

**SMOKEY BEAR MEDIATION ACTIVITY
AGENDA**

Duration: 3 Hours

SMOKEY BEAR HAS AN IMAGE TO PROTECT

1:30 – 2:00 p.m. <i>(30 minutes)</i>	Students Go Through Security and Settle in the Courtroom Courtroom Orientation
2:00 – 2:15 p.m. <i>(15 minutes)</i>	Briefing by a Mediator: What Is Mediation and How Does It Work? Neutral Third Party Helping Parties Negotiate Positions v. Interests - Examples
2:15 – 2:30 p.m. <i>(15 minutes)</i>	Mediator Explains the Rules and Procedures for this Mediation 1. Interests/Positions Identification 2. Mediation Role Play Participants Read the Scenario Out Loud Participants Get Into Two Groups 1. Small Businessman 2. U.S. Forest Service
2:30 – 2:50 p.m. <i>(20 minutes)</i>	Activity: Small-Group Work and Reporting Out on Positions/Interests Teachers select students for mediation role play
2:50 – 3:10 p.m. <i>(20 minutes)</i>	Activity: Mediator Facilitates the Mediation Role Play
3:10 – 3:30 p.m. <i>(20 minutes)</i>	Debriefing and Discussion
3:30 – 4:00 p.m. <i>(30 minutes)</i>	Judge Enters the Courtroom Talks About Ways to Resolve Cases <ul style="list-style-type: none"> • Judge/Jury Decision • Settlement Hearing • Settlement Using Mediation Q/A Session Informal Socializing with the Judge and Law Clerks Group Photo
4:00 p.m.	Adjournment

SMOKEY BEAR MEDIATION ACTIVITY
FICTIONAL SCENARIO
SMOKEY BEAR HAS AN IMAGE TO PROTECT

Adam Ford lives in the picturesque tourist town of Silverton at the foot of Straight Arrow Mountain. The town is popular with outdoor enthusiasts who come there to hike, bike, fish, and camp. After working 20 years as a state forester, where he won awards for his nature and wildlife educational programs, Adam opens a general store for tourists in Silverton. He grew up there with the legend of Smokey Bear and names the store *Smokey Bear Outdoors* after the popular forest fire prevention character. He invests his family's savings in Smokey Bear logos, promotional items, and outdoor gear. Adam loves nature, and he can't think of a better way to earn a living.

About six months after opening his store, over coffee at the local café, the city attorney tells Adam about a federal law that makes illegal the use of the name or image of Smokey Bear for commercial purposes. Adam shrugs off the warning, thinking that this is America and he should have the freedom of speech to say what he wants to advertise his products. He also thinks no one would possibly notice or bother with his little general store.

A few weeks later, however, an official notice from the U.S. Forest Service arrives in the mail, informing Adam that he must stop using the Smokey Bear images, or face legal action by the federal government. Adam can't believe that the government would actually sue him in court over such a minor infraction. Besides, he has invested everything in Smokey Bear. He can't afford to lose his life savings.

However, a few months later, a Forest Service ranger stops by the store to give Adam a final warning. As it happens, the ranger arrives during the local parade that kicks off the tourist season. Adam is dressed as Smokey Bear and is carrying his store sign. The ranger takes some photos and leaves the scene without talking with Adam.

By the end of tourist season, Adam receives a certified letter containing a summons and complaint notifying him that he is being sued in federal court for violation of the law forbidding commercial use of the Smokey Bear image. The complaint informs him that the government is seeking a court order to force him to:

1. Change the name of his store and destroy all Smokey Bear items, signs and merchandise.
2. Pay the government any profits from the sale of Smokey Bear merchandise since he opened the store.
3. Pay a fine of \$1,000 for intentional violation of federal law.
4. Never again use the Smokey Bear image.

At their first court appearance before the judge, Adam's attorney and the lawyer representing the Forest Service agree to try mediation. They will attempt to reach a settlement agreement instead of spending time and money on the court case and trial.

Note: This exercise is based on a modified version of 18 U.S.C. § 711 (impermissible use of Smokey Bear character or name).

SMOKEY BEAR MEDIATION ACTIVITY
Notes for the Mediator Facilitating the Activity
SMOKEY BEAR HAS AN IMAGE TO PROTECT

Explain the Difference Between Positions and Interests

Position = What. You say **what** you want to see happen.

Interests = Why. You say **why** you want these things to happen – the underlying reasons.

Adam's Positions: What Actions He Wants

1. **No Fine.** Adam may have made a mistake, but he should not have to pay a fine or close his business.
2. **No Government Intervention.** The government should not be telling Adam and other small business owners how to brand and market their stores or merchandise. America prides itself on free enterprise and free speech.
3. **No Lawsuit.** The Forest Service should drop its action. Adam's store is too small and remote for his use of Smokey Bear to hurt anything.
4. **Use Different Communication Approach.** The Forest Service Ranger who took the pictures should have talked to Adam in person to give him the opportunity to make changes and avoid court action.
5. **Don't Close the Store.** Adam will not be able to pay the \$1,000 fine because he will have to close the store.

Adam's Interests/Underlying Reasons -- Why He Wants These Actions Taken

1. **Saving Forest Land.** Adam grew up in Silverton. He worked in the Straight Arrow National Park for more than two decades. He is dedicated to preventing fires and saving forest land – and that's good for his business selling Smokey Bear merchandise.
2. **Preserving Smokey's Image.** Keeping Smokey's image alive and relevant is best accomplished by circulating it more broadly and on different types of merchandise used by many categories and demographics of consumers.
3. **Keeping His Business.** Adam can't afford to lose his store because all of his life savings are tied up in it. Adam's business is helping the retail community grow so that the tourist trade and Straight Arrow forest land visits increase. He is willing to give a percentage of his proceeds to the Straight Arrow Conservation Fund.
4. **Maintaining a Positive Reputation.** One of Adam's biggest assets in the success of his business is his long-standing positive reputation for conservation and advocacy. He is an opinion leader in the community and has a lot of influence. Other retailers follow his lead.
5. **Wise Use of Forest Service Resources.** The Forest Service isn't staffed to find and enforce Smokey Bear image infractions. It should focus resources on its top priority – preventing forest fires. Adam's use of the Smokey Bear logo supports those efforts.

Forest Service Positions – What Actions They Want

1. **Punish Him.** Adam's actions were intentional and should be punished. He was on notice that he was violating the law as documented in the warning letter.
2. **Fine Him.** Since Adam intentionally violated the law, some kind of punishment is appropriate, including the maximum fine amount of \$1,000.
3. **Make Him Give Up Illegal Profits.** Adam should not be able to keep any profits he earned using the Smokey Bear image.
4. **Prevent Future Use.** The court should issue an order prohibiting Adam from using the image in the future. [If he violates the law again, the judge could rule he is in contempt of court and even put him in jail.]

Forest Service Interests/ Underlying Reasons: Why They Want These Actions Taken

1. **Maintain the Record Smokey Has Established in Preventing Forest Fires.** The Forest Service has achieved a high level of public awareness and a decrease in forest fires with the Smokey image. The Service does not want to tamper with that success.
2. **Need the Lost Revenue.** The Service makes tens of millions of dollars every year by selling licenses to commercial companies that use the Smokey Bear image. This money is an important percentage of the budget for firefighters and equipment.
3. **A Thriving Retail Market is Good for Everyone.** Maintaining and growing a thriving retail sector provides a stable tax base to support the forest land; sell goods and services for government workers; and provide the amenities tourists need and expect. A strong tourist trade drives up the number of visitors to Straight Arrow Mountain and the surrounding Forest Service land. Driving out a popular business will have a negative impact across the retail sector in Silverton.
4. **Can't Afford to Alienate the Community.** It is essential not to alienate the people of Silverton whom the Forest Service relies on for preventing, reporting, and containing forest fires in the area.
5. **Don't Want to Dilute Smokey's Message.** The Forest Service does not want to dilute Smokey's impact by oversaturating the market with images and merchandise that might cheapen the brand and make its eye-catching image dull and commonplace.