

THE HABITS OF HIGHLY EFFECTIVE MEDIATORS

When people have a dispute, stress causes physiological changes in the brain and in the body. Under extreme stress most people experience a thinking disorder. Instead of behaving rationally, creatively, and compassionately, most of us go into a pattern of behavior known as fight or flight: we physically and verbally attack or we avoid conflict. Research shows that in this mode we are unable to get optimal solutions that resolve the conflict at its source. Other studies reveal certain cognitive barriers to settlement; ways in which our brains do not process information efficiently or accurately, that further complicate settlement.

A trained, neutral mediator can shift the fight or flight mode to cooperating, compromising, or collaborating by using certain techniques: establishing ground rules for the mediation, validating the perceptions of each party, uncovering the hidden motivation behind the demands, brainstorming options to meet both parties= needs, asking questions to clarify data, and establishing fair and relevant social norms by which parties can come to terms.

Mediation is a process that proceeds in steps. It is important to the success of the process that these steps occur in sequence. Failure to accomplish the first few steps will usually doom the mediation to a series of accusations and demands, rather than a problem solving session. Throughout the world, the same sequence of the same steps occurs!

- STAGE 1 MEDIATOR=S OPENING & GROUND RULES

- STAGE 2 TELLING THE STORIES
 (VENTING)
 VALIDATING THE PARTIES

- STAGE 3 CLARIFYING DATA:
 QUESTIONING & EXCHANGING
 ISSUES AND OBJECTIVES

- STAGE 4 BRAINSTORMING POSSIBILITIES:
 CREATING VALUE AND EXPLORING CREATIVELY

- STAGE 5 ESTABLISHING STANDARDS OF FAIRNESS:
 SEEKING OBJECTIVE EXTERNAL GUIDELINES

- STAGE 6 CREATING CLOSURE: SOLVING JOINT PROBLEM
 WITH BEHAVIOR OPTIONS OR SOCIAL NORMS

The mediator choreographs this process by first explaining it and getting commitment to it from the parties, then keeping everyone focused on the issues

and the needs. The parties are allowed to vent and the mediator acknowledges the feelings expressed by each without agreeing with either. Most people in conflict want to not only be heard but to be acknowledged by the listener. Simply repeating or summarizing what is heard then reflecting the underlying feeling back to the speaker can accomplish this validation of a person's perception and feelings. When a person experiences validation, her need to keep repeating her demands disappears. At that point data can be clarified and creative brainstorming can occur. Until validation occurs, each party will go on trying to get the mediator to agree with his position and to disagree with the other party's position. This keeps settlement from occurring and frustrates any attempt by the mediator to move the process through the agenda of issues.

During the clarification of data, certain issues to be resolved will emerge. Stating those succinctly, then organizing them in terms of which will be resolved first, is helpful in keeping the process orderly. A good tip is to take the easiest issues first and get them resolved before tackling the more difficult or contentious. In this way the mediator creates currency: "Look how much we have accomplished already. Let's keep working to get resolution of these last few issues." Sometimes a second session is needed to cover all of the issues on the agenda and all resolutions achieved at the first session remain settled until every issue has been settled, *i.e.*, a partial settlement is achieved on day 1.

Once the issues have been identified, the underlying need or motivation must be clearly stated. "You believe your new teeth are too long and you want them modified because you feel sad when you see yourself in the mirror. I am guessing you need acceptance and admiration from your family, friends, and colleagues and that your appearance is preventing that from happening. Did I get it all and did I get it right?" This may sound too therapeutic for a group of scientists, but all of you know the importance of a patient's emotions to healing and self-acceptance. Mediators may be lawyers, businesspeople, scientists, dentists, human resource professionals, doctors, nurses, managers, or psychologists, yet all must have a heightened acuteness of the people issues in mediation. Mediators must be mindful and have a high emotional quotient. Most already have a high I.Q. and are articulate. The best mediators combine the skills of a scientist (subject matter expertise), a counselor (wise, objective, compassionate and practical), and a good friend (realistic, appropriate, respectful, and supportive).

Practical tips on preventing as well as managing conflict include the following:

- _ Due diligence includes clear, consistent, and constant communication;
- _ Data creation, continuation, and perpetuation is critical;

- _ Develop a systems manual and train everyone together;
- _ Use phrases like "Help me to understand what you want";
- _ Create options for resolution that meet the needs of everyone;
- _ Establish standards for resolution that are relevant and fair;
- _ Evaluate solutions last, look at the feasibility, cost and benefit;
- _ Consider the power of an apology;
- _ Strive to improve a broken relationship;
- _ Include withdrawing a complaint as an option.

How do you create an atmosphere of safety, neutrality, and trust? Some mediators spend a few minutes before each mediation session clearing their head and literally creating a vacuum to be filled with information. Those of you familiar with the use of meditation and yoga understand this practice. Whether the issue is being too critical of your colleague or too impatient with the confused patient, as a mediator your duty is to the process. That means while you are facilitating the parties= negotiation you are, in one sense, a fly on the wall. This will also help in establishing rapport, uncovering information, and letting the solution come from the parties, not from you. When you are a great problem solver it is very tempting to fix their conflict. The goal of mediation is to empower the parties to discover their own solution. The reason mediated solutions are so satisfying is that when parties invest in their own answers they tend to implement them. When the answer comes from a third party (arbitrator, mediator, judge, or expert) the imposed decision is often resisted (appealed, not implemented, rejected, or sabotaged) and the most perfect solution doesn't get accomplished.

Waiting for parties to do this can be frustrating, particularly if you have a low tolerance for ambiguity. Research shows that for mediation to be effective the parties have to recognize the perception and feelings of the other side and they have to participate jointly in solving what, after all, is a joint problem! Being patient is a primary characteristic of excellent mediators. The truism that in the first 80% of the session only 20% of the work gets done, but in the last 20% of the time, 80% of the issues are resolved is one you will see unfolding as you mediate more and more cases in a collaborative, problem solving mode.

Kay Elliott reserves copyright

