

THE NEUROSCIENCE OF CONFLICT AND PEACE

A Dialogue Between a Lawyer - Mediator and a Cognitive Psychologist/Scientist - Engineer

Kay: For the last few weeks I, a law professor- mediator and a colleague, with degrees in psychology, have talked about the role of emotions in mediation in light of new advances in brain science. Technology exists that now allows us to actually see what is happening in the brain. That may someday find its way into the courtroom as evidence of guilt or innocence, say recent articles in the press. If we have come so far in neuroscience, why not use that knowledge to understand what is happening in cases where the parties seem stuck in protracted conflict? The idea for an article that is a dialogue came from the excellent dialogue, published in the Winter 2003 issue of the American Bar Association Dispute Resolution Magazine, in which Dwight Golann, also a law professor and mediator and his wife, Helaine Golann, a clinical psychologist, discussed the following question: *Why is it hard for lawyers to deal with emotional issues?* Jaynee and I used that article as a jumping off place for our discussion that was conducted on March 26 in Fort Worth Texas before a group of mediators who meet bimonthly and are collectively known as the Tarrant County Association of Mediators. What follows is part of that discussion, focused around some key problems that mediators experience.

Jaynee: When Kay asked me to engage in this dialogue for the purpose of publishing our thoughts, I was eager to have an opportunity to use the knowledge from my field to help mediators. I recently was trained as a mediator by Kay, and during those five days came to see how much what I know and do as a cognitive scientist could apply to mediation, the career I want to have next. Mediation training was an Aaha@ for me because at last my personality, background and scientific knowledge could be used in a way that seems most meaningful to me. I was particularly interested in looking at how the difficulty lawyers have in dealing with emotions in mediation could be somewhat overcome by a better understanding of what is going on in the brain when people are in conflict. The metaphor used by Helaine Golann in the article mentioned is very apt. Her husband said he felt unprofessional when he worked with emotions because...Ait=s not what lawyers do... Lawyers worry that if we start to let parties emote, the situation will blow up. It=ll be like uncapping a volcano - lava everywhere!@ She responded by pointing out that ...@no one can cap an emotional >volcano= and even if you could, it might not be a wise course. The pressure is there...Think of your job as allowing the lava to escape, while at the same time channeling it away from the >village=.@

Kay: With that metaphor as a touch point, let=s begin by looking inside the brain when a person is threatened or damaged by another and he is feeling uncomfortable. What is really going on in the brain at that time? What is the neuroscience of conflict?

Jaynee: Two places I looked at that, internal conflict and external conflict. Internally there is cognitive dissonance, which feels bad. When that happens, a person has some choices. She can alter her perception, choosing to see a person in a certain way. So a wife in an

abusive situation recognizes this is not what marriage is supposed to be, but there is shame attached to failing in her marriage (getting a divorce) so she makes a choice to resolve the internal conflict by rewriting the script - to not see the abuse by reframing it - or to change her perception of what marriage should be. She therefore removes the cognitive dissonance, feeling better, though she does not address the abuse issue directly. External conflict however is different. We have a built in fight or flight response, a survival mechanism in the sympathetic nervous system. As evolved creatures, when there is a threat or perceived threat, we associate that with one of the big three of negative emotions: anger, shame and fear. All of those are signals. Something in me is being threatened: my physical well being (fear); my psychological well being (I want to feel good about myself and someone is telling me I can't feel good about myself - shame); or you have threatened my thought process, identity, job, children, body, the structure of my home, my income - producing anger. In those situations I will marshal all my forces to fight or flee. That is an instantaneous response. No one can control that response. What can be controlled is the behavior after that response. The *mad* neurochemistry is a rush of adrenalin that comes along through the brain. Acetylcholine, a brain chemical, helps rush it in there faster. That adrenalin then triggers other parts of the brain and the body to get norepinephrine to your blood stream. That is a very uncomfortable, jittery feeling. Blood is leaving the stomach and is being pumped to the muscles in your arms and your legs, and now your blood stream is being suffused with glucose and other nutrients that your body is pulling out of your fibers and sending to your muscles to prepare you for physical action. That entire chemical reaction is happening to you from top to toe in an instant. Often you don't even realize that is what is happening - because it happens so fast - and you may not instantly realize what caused it but your body still knows it has been threatened. What you actually know is that you have to figure out how to channel all that additional energy. We as human beings associate all of this with emotions that are scary, when we don't have control.

Kay: In the legal system, attorneys speak for the client in negotiation and often in mediation because they do not believe their clients are capable of solving problems when all that adrenalin is pumping. Because clients empower attorneys to be their agents and advocates, because the attorney was not part of the initial conflict and is trained to be an objective and wise counselor, often the client's voice is not heard in mediation. The client still makes the ultimate decision, but is not always prepared before mediation to participate in the collaborative problem solving in a meaningful way. You were talking earlier about Williams Ury's new book with regard to using emotional energy to solve the problem. Does he say that clients can use their emotion to do problem solving?

Jayne: Yes! It can be a boost to problem solving because you can harness all that additional energy but only if the client acknowledges where it is coming from. If we are not self aware, and few of us have been trained to be that aware, we will use that energy to fight ourselves instead of fighting the problem and squander it. Attorneys need to be trained to help clients harness that energy in negotiation and mediation, just as they are trained to prepare clients to participate appropriately in trials. Ury's book, **The Power of a Positive No**, acknowledges that **Getting to Yes** is a good beginning, but the other side of the coin is there are times when you must say no. Those times are when you are protecting your

personal boundaries. AYes@ and ANo@ come from a dichotomy. No is me protecting myself while yes is me protecting our relationship. If I say yes it is at the cost of protecting myself. If I say no it is at the cost of damaging the relationship. But Ury shows powerfully how you can do both and resolve that dichotomy. He talks about the three - A track: a way of resolving the dichotomy. When there is a breach of our boundaries (values, identity etc.) and someone wants us to say yes, I have three possible *no=s* that are not healthy: Accommodate (I say yes but I really want to say no so I am resentful); Attack (anger at the audacity of your breaching my boundaries) or Avoid and hopefully the problem will go away on its own. Ury draws a bold, black line between those three maladaptive responses and the big three emotions that can come back and get us. Accommodating is responding out of guilt or shame because I want to preserve the relationship but I am not honoring myself. Attack is responding out of anger when you don=t really care about the relationship. At that point you care more about your boundaries. If you avoid you are responding out of fear of ruining the relationship. You are saying there is no problem rather than dealing with it. You are not giving an answer rather than giving the wrong answer. When a mediator sees any of those three common responses, she knows what is going on even though the party probably does not have that awareness.

Kay. How could an attorney prepare the client to use the power of a positive no to get to yes? How could the mediator, realizing these are maladaptive responses, move the parties away from them toward collaborative problem solving behavior?

Jayne: A mediator can be trained to see these responses, like a big neon sign, because the parties themselves are just aware of surface behaviors and usually do not realize what they are feeling or needing. Most people do not have high emotional intelligence in conflict, unless they have been coached. It may be difficult digging down to get them to realize what is motivating their behavior. There may be so much norepinephrine flying around the room you can smell it, but the mediator can=t do anything with it until the mediator puts the parties themselves in touch with it. Now that Ury has drawn the black line connecting the dots, the mediator can call the party out on their behavior: AI think you are saying yes when you mean no so lets talk about some of the guilt or shame that might be underneath that.@ If the mediator has heard something - a give away line - she can yank that back in and let them address it consciously: A I heard you say you would feel shamed at your church if you got a divorce - is that where this accommodating behavior is coming from?@ At that point the party may realize what is going on internally and say AHmmm, maybe that is what is going on@ and consciously choose to own their feeling of guilt or shame.

Kay. Could that be an example of active listening - a term that communication experts use a lot but that some attorneys find confusing? Is that the way counselors and therapists help parties deal with emotional turbulence? Why do we need active listening skills in mediation?

Jayne: That is exactly what active listening is! In therapy, clamming up is by far the more common and challenging response to emotional turbulence, as Helaine Golann stated in the article. Attorneys experience the same problems with clients and with witnesses. Active listening is going for content and then deciding whether the content matches the other cues

you're giving me. If you're telling me about some terrible tragedy in your life and you are acting like you are giving a weather report, there is a mismatch there. If you are telling me that your mother died when you were five, and you sound like you're describing last night's dinner, I am seeing a mismatch between the words and the look on your face. If the client has tears in his eyes, I can ask if he can tell me what he is feeling about what he is saying. The words spoken should be accompanied by the emotion I would ordinarily associate with them. If I am not seeing that congruence, I can use active listening to pull more out of you. Maybe you are not going to volunteer it, but we need to get the words and the emotion to match. Δ I see you doing this, is there more to it than that. I heard you say these words, is there more to it than that? I observe what you are giving me, can you give me more? I'm going to have to call you on the mismatch I am observing.Ⓜ Attorneys can be trained to use these same techniques and are intuitively using some of these skills when they perceive that clients or witnesses are either not being truthful or complete in their statements.

Kay: Language like this is probably going to be uncomfortable for lawyers because, as the article says, lawyers don't like talking about emotions. Lawyers also may not like the mediator pulling out their client to talk about their emotions. One safe way to accomplish this is to go to caucus, where the other side can't see the true emotions. Another way to do this is to have each party (not their lawyer) tell the conflict story to the other party who agrees to repeat it back, summarizing it until they each get it all and get it right from the other party's perspective. Robert Mnookin, of the Harvard Negotiation Program, demonstrated this at an ABA dispute resolution convention. The party who repeated back the conflict story of the other side revealed in the debrief that every time she repeated back the other story, she became a little less sure that her own position was correct. Why is that simple technique sometimes so powerful in terms of breaking down someone's resistance to listening to another person's perception, version of reality or position? What is happening in the brain when we begin to get closer to peace?

Jayne: My perception (my bubble, my life) is my reality, your perception (your bubble) is your reality. So what we have in conflict, when people tell their conflict story to the person they are in conflict with and that person repeats it back to them, is the two bubbles begin to overlap and there is some common space in which they can begin to construct the new story - the resolution and the future reality. Maybe it will be a shared reality if they can have a future relationship. Sometimes it is as simple as having someone visualize what it would be like to be in the other person's shoes. As a cognitive scientist I believe in the associative theory - you are not going to be able to change your perception or learn something new if you cannot link the new with something old already in your brain. I am a mother and I already know what it feels like to see my child in pain. In a mediation if I am having trouble connecting with the pain of my adversary, the mediator might say ΔYou are a mother and you have experienced your child in pain - almost as if it were your pain. Can you connect the pain of this other person sitting across from you with how that felt?Ⓜ If there is no connection point in me, the mediator won't be able to expand my perception. Since all humans have the same needs and feelings, though at different times and intensity levels, there should be a way of connecting.

Kay: It is the classic idea of separating the people from the problem - being empathetic to the human being (because you are one too and we all have the same needs and feelings) while remaining tough on the problem (if you can't prove this injury to a jury in this jurisdiction, your very real pain won't get you the kind of damages you are currently demanding. Our offer is based on data about what juries have actually awarded in cases like this, in this county, and is therefore realistic.)

In the next article, Jaynee and I will go further with this approach and will look more carefully at techniques for working through mixed and turbulent emotions to get to the peace and resolution that makes parties feel **good**. We will be looking at the neuroscience of peace and how mediators can do more to get to that place in the ever changing brain.

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