

The Opening

In the anatomy of a “classic” mediation, The Opening is possibly the most important part of the mediation. When we look at what you will cover in the Opening, this may not be at all apparent. A lot of what is covered in the Opening is “housekeeping stuff”. However, the Opening sets the tone for the rest of the mediation and can be instrumental in the success or failure of the mediation (depending on how you measure success - more on that later in the course.)

It is important to remember that this may be the first time that the participants have met you and they are still evaluating you, as a mediator, or evaluating whether “this mediation stuff, whatever it is” is going to be productive. Remember also, that they are going to see you as an expert - and possibly see you in an arbitrator role at this stage (unless they are very familiar with mediation).

You have four goals in the Opening: *First*, to educate the participants as to what mediation is and what your role will be as a mediator. *Secondly*, for the participants to develop (a) a sense of confidence and trust that the mediator can manage the mediation in a way that is safe for them, and (b) that the mediator will act in an impartial manner. (Notice I said “act impartial” not “be impartial” – because most of the time we are not.) *Thirdly*, to reach agreement on how we will proceed in the mediation. i.e. what guidelines can we agree on for conducting this mediation. *Fourthly and most important*, to give the participants hope that they can resolve this dispute, i.e. empowering the participants!

So, you see, you have a lot of work to do in the Opening. Where the mediation goes from there will depend a lot on how effective your Opening is. Let’s have a shot at it. I would start by addressing the participants and making eye contact primarily with them – regardless of who else is in the room. My goal is to empower the participants to negotiate this situation themselves – and not to hand over their negotiating power to an attorney, family member or other representative - if such are in the room. So, for most of the Opening, I would speak directly to them.

Good morning! Thank you for taking the time out to be here - and to work together to resolve the differences that brought you here. (I pause here)

(Analysis: In this short sentence, I have done three things:

- 1) I have thanked them which acknowledges them and makes them feel good.
- 2) I have set the tone for a cooperative model “working together.” Here I am leaning on their perception of me as an expert by “telling them “Hey, guys, this is what we are going to be doing here – working

together". People weight what experts say more heavily so I am using that right now. (So, am I "directing" them, guiding them or throwing my weight around here and is this good or bad?)

- 3) I have already given them hope. By stating "to resolve your differences" I am setting an optimistic tone. I am saying: "You can do it, guys!" Notice the contrast if I had said: "to see if you can resolve your differences." In this latter, there is an element of doubt – the "if". I always speak as if they **will** resolve their differences.

Obviously, all the above must be said in a genuine tone, not too rapidly, and with eye contact – which means that if the participants are sitting on either side of you, you will be moving your head – if not your body – towards both as you speak)

"My name is Mary Miller. I am a mediator with -----, and Kate and I will be assisting you in working things out today – in a way that will work for both of you."

OR If I am meeting someone in a private practice, I might say:

"My name is Mary Miller. I would be glad to share with you any further information you need on my background as a mediator. Primarily, I see my job as assisting you to work things out in a way that will work for both of you."

(Analysis: This time I have done five things with these statements.

1. I have introduced myself. Obviously, I need to introduce myself and I give them my name again now, even if they have been told it before, because people forget names.
2. I have reassured them that they are in capable hands. Notice I do not dwell on my background. If I am working for an outside agency, there is an assumption that the agency has employed a competent mediator. In private practice, the participants usually have a biography on me by the time they come to see me, and this statement leaves it up to them to ask me more questions about my qualifications if they want to. Notice, I do not try to "sell" them on myself here. If it is right for me to be their mediator, they will sense that and stay with me.
3. For the first time, I have defined the role of the mediator– to assist you (not to decide for you). I am going to have to keep repeating this in several different ways so they "get it". It is a foreign concept for most people.

4. Once again, I have empowered them - "to work things out". I am in effect, telling them: "Guys, you can do this" (and what's more you will be doing it.)
5. "in a way that works for both of you." I have now raised another possibility. Maybe they can both get what they want. Surprise, surprise! I want to keep giving them hope. Because participants tend to see the mediator as the expert, what the mediator says carries a lot of weight.

I want you both to know that I have never met either one of you before (if relevant) and I know nothing about (very little about) what brings you to this table. I will be learning from you both about your needs and concerns as we go along. It is important for you to know that my job is to help you work things out in a way that is satisfactory for both of you. I am not a judge, or an arbitrator and I am not here to represent or advocate for either of you. I want you, particularly, to understand the difference between arbitration and mediation because many people get them confused. An arbitrator is like a judge. An arbitrator listens to both sides of the story and then decides. I'm not going to do that! My job is to listen to both of you and to help YOU make the decisions that are best for you and that you both can live with.

(Analysis: Basically, this paragraph is about explaining my neutrality and explaining in more detail the role of a mediator as a facilitator. Notice that I am careful not to use words like "tell your story" or worse still "tell your side of the story." This is very easy to do. Such words imply that it is one "side" against another and that promotes an adversarial tone. We don't want that. I use words like "brings you to this table" or "what brought you here." I usually mention arbitration because of the confusion between arbitration and mediation which many professionals are not even clear about.)

Before we go on just let me check and see if I have your names correctly. (check) "Am I pronouncing them correctly?"

(Analysis: People's names are very important to them, so it is important we have no confusion around them and that we pronounce them correctly. I take my cue from how the participants introduce themselves to me as to whether I address them by their first or last names. If in doubt, I address them by their last names until I am sure they are comfortable with first names. Note: use of first names is more common in the USA than in any other country so be aware of cultural differences. Two hints here. Very often the information given you will have the participants' addresses, sometimes their social security numbers and sometimes their age or birth date or other identifying data. It is very important that you do

not let the other participant see this information unless you are sure they already have this information on the other participant. I usually keep it in a folder underneath the pad I am writing on. If I leave the room, it leaves with me. The other hint is to write down the participants' names on the writing pad you are using with the name of the person on your left on the left side of the pad and the name of the person on your right on the right side of the pad. This is particularly useful if you think you may get the names confused.)

Before we begin, I want to explain to you what communication guidelines we have found in the past to be most helpful to use in the mediation process.

(Analysis: Earlier in my practice I used to tell the participants what ground rules we will be using and then get their agreement. Now I call them guidelines and share with them what has worked in the past and give them the choice of using them or not. This way the participants are asked to discuss and come up with their own procedural guidelines, so the participants also decide on how the mediation will be conducted. i.e. the participants retain both "process power" and "content power." Notice at this stage, I am reminding the participants that the mediation has not yet begun, and I still have a few things to go over.)

Part of what we are here to do is to understand each other's concerns. One of the guidelines we have found helpful is for each person to be given the opportunity to speak without being interrupted. That's not always easy to do when people feel strongly about something but is it something you might find useful to try?

(Usually the answer is "yes") Because sometimes it is hard to do that, I have given you each paper and pencils so that you can take notes. That way if you feel you want to speak while the other person is speaking (I try not to use the word "interrupt") you can use the pad to write down what you want to say instead. You will both have an opportunity to speak as often as you need to. (Pause and wait for reaction)

Another guideline we have found useful is to try to use language that does not offend or push anyone's hot buttons. Is that something you might find useful?

Once we understand the issues and what is behind those issues, then we need to work together to find a resolution that meets the needs of both of you. That might mean we must be very creative. We may need to explore different possibilities. I am sure that when the times comes, you will select the one that fits best for you.

When we reach agreement, we will write it up and when you are comfortable with the wording, I will ask you to sign it.

(Analysis: Notice I suggest only two guidelines as more is probably too many, then I wait for their response. Only occasionally do they want to proceed without guidelines. I suggest these guidelines because they are the most difficult for the participants to keep and they will frequently break these guidelines in the mediation. Sometimes, you let them if you feel it is furthering the mediation and sometimes you gently remind them of what they had agreed to, when you feel it is not furthering the mediation. The bottom line here is that you have set an expectation as to the boundaries of the mediation. This helps people feel safe. Notice also, that I explain the process - that first we will understand each other and then we will look for resolutions and then when you are comfortable we sign an agreement.

I no longer say, "if you reach agreement..." I always say "when you reach agreement..." I have found the wording makes a big difference. You want to sow the seeds of hope - let them know that you believe they can reach agreement and in fact, that's what most people do, and you are expecting them to do it too. I keep repeating myself and telling them that they can do it. When you speak this way, people will live up to your expectation of them! It absolutely works!

If they had attorneys, I would say: "...after consulting with your attorneys, I will ask you to sign the agreement.")

I will be keeping what goes on in this room confidential. You might see me taking notes as we go along just to help me keep track of the issues but at the end of this mediation, those notes are destroyed, and the only record of what went on here will be in the written agreement that you both sign that will address the concerns that you have.

If they have brought someone else with them, I will define that person's role at this point. In mediation, we prefer that you speak for yourself rather than having someone else speak for you. (If there are attorney in the room, I will now address the attorney directly by saying) "This is a different process than what you are used to. If you need to confer with your client, I will certainly give you the opportunity to do that. What is important to know is that it is not you or I who have to live with this agreement, it is these two people here and so it is important for them to craft their own agreement in their own words." If there are other people in the room, I will now address them directly by saying: "My experience has been that (union representatives), (family members) have been most helpful in helping the participants move toward agreement and I am sure you will too."

(Analysis: you will note that I again reinforce that I expect they will sign an agreement. I now cover my commitment to confidentiality, what I do with notes (often very important to participants), caucusing (we will discuss that more later in the course) and most important I now address the role of the other people in the room. Let's talk about that.

Firstly, who you would let into the mediation? Remember that an agreement is only as good as the participants' ability to keep the agreement in place. In negotiation, we learn about constituents and how negotiators must go back and face their "constituents". Well, our participants also must face their constituents and will face pressure from family members and possibly attorneys as well. What you want to do with the constituents is to win them over and most of all to make sure they understand the mediation process too. For this reason, I include anyone and everyone who comes to the mediation into the room during the Opening Statement, even if the participants only want a few selected people to stay –or none. I have done Opening Statements where the room has been full of people standing and sitting -crushing room only – but where all but a few left afterwards. I don't suggest to the participants that they bring other people with them (though I might if I foresaw a particularly problematic constituent). This educates the constituents as well and they feel somewhat included and are more likely to support the agreement at the end.

Usually we meet in mediation for several hours, but I am ready to work with you for if it takes for us to understand each other and to reach agreement. Do either of you have any limitations on your time here today?

You may not smoke in this room, but please let me know if at any time, you need a bathroom or smoke break.

Do you have any questions about what I have said, or about the process of mediation before we begin?

(Analysis: how long we will meet, (important to find out early on what the time constraints are so you can work within those), smoking, bathroom and any questions they may have are the final issues we cover in the mediation. Notice I once again state my expectation that they will be signing an agreement.

Many mediators or mediation organizations require participants to sign "An Agreement to Mediate" at this stage, which outlines just what you have covered. The main reason for this is to reduce the liability of the mediator or the mediation organization! So far, mediators have rarely been sued, but most do carry special mediator insurance and that insurance requires that we explain the mediation process. Getting participants to sign a statement at this stage, is proof that we have done that. In complex mediations, which have legal implications, like divorce, "An Agreement to Mediate" is particularly important.

Can you see now how important the Opening is? It is important not to race through it, but to speak slowly and with pauses, making sure you are not favoring one participant over another with your body language or with eye contact. Do you see how, through your choice of words, you can send a very important, sub-

conscious message to everyone in the room about expectation, hope and the tone the mediation will take? They will pick this up and follow your lead from here.

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Recognizing and working with needs

An important part of moving from bargaining over positions toward mutual problem solving is identifying the needs underlying positions or concerns. Positional bargaining usually involves blaming and demanding and offers only the possibilities of a win-lose solution or a compromise of both positions. Need based negotiation, on the other hand, allows the participants to work together to solve the problem in a way that meets their most important needs.

Positions are specific solutions that people put forward to meet their perceived needs. Often, positions are most strongly asserted in early stages of negotiations. Positions are often expressed as demands.

Needs are what motivate people to seek a solution to a problem or conflict. Often, people need help clarifying what their real needs are.

Examples:

POSITION – WHAT I WANT:	You must get rid of your dog.
NEED – WHY I WANT IT:	<i>I need to feel safe when I go outside.</i>
POSITION – WHAT I WANT:	I must have the car tonight.
NEED – WHY I WANT IT:	<i>I need transportation to the meeting tonight.</i>
POSITION – WHAT I WANT:	I want to stop that real estate development next door.
NEED – WHY I WANT IT:	<i>I need peace and quiet.</i>

Uncovering Needs

Although there are usually many ways to satisfy a person's needs, often a person has come to believe that their position or solution is the **ONLY** way their needs can be met.

To discover underlying needs, it is helpful to find out why the person wants the solution s/he originally proposed. Once we understand the advantages that

solution has for them, we have discovered their 'need.' When a solution is stated, ask questions such as:

"Why is that important to you?"

"What would that solution accomplish?"

"What changes would that solution make in your life?"

"What if that did happen?"

"How would that affect you?"

"How would you experience that?"

"What would that mean to you?"

When people discover and tell about their underlying needs, they will be able to move away from their entrenched positions and open possibilities for new options and mutual gains.

Sometimes, rather than stating a **position**, a person will focus on their concerns: *"I can't stand the way he's always giving me assignments at the last minute!"*

To bring out the underlying needs, ask questions such as:

"What bothers you most about that situation?"

"How does it affect you when that happens?"

Understanding More About Needs

In any given situation, each person will usually have many needs. Needs can be either **substantive** (concerning the content or substance of the dispute), **procedural** (concerning the process by which a decision was made, how a dispute is handled or how a settlement will be implemented) or **psychological** (concerning the relationship and/or the emotional aspects of a situation).

Examples of needs from a variety of types of disputes follow:

Employment

"I want my job description to reflect the work I actually do, and I want my rate of pay to be within the range of similar professionals." (**Substantive**)

"I need to feel respected for the work I do." (**Psychological**)

"I want to be consulted before decisions are made that affect my job."
(Procedural)

Environmental/Public Policy

"We want to preserve as much habitat for wildlife as possible." **(Substantive)**

"We want our input taken seriously. We'd like to be part of the decision-making on this issue." **(Procedural)**

"We'd like to build a more positive relationship, so we can work together on future issues." **(Psychological)**

Often, the procedural or psychological needs go unrecognized or are ignored. This is a mistake because often a participant's procedural or psychological needs may be more important or compelling than his or her substantive needs. If the procedural or psychological needs are addressed, it is often easier to make progress on the substantive issues.

How to Work with Needs

- Focus on needs that are shared by the participants, or are compatible, and build on those. For example: *"We both want to be treated with respect . . ."*
- Work to meet some of the procedural and psychological needs during negotiations. For example:
 - Treat each person with respect.
 - Validate each person's concerns or perspectives.
 - Communicate with each other to heal past hurts or clear up misunderstandings.
- Include everyone's needs in the definition of the problem. For example: *"What we are looking for is a solution that assures that the grass seed farmers can get rid of their straw in an economically feasible manner and the public who are using highways can be protected from the dangers of smoke from field burning."*
- Foster an attitude of working together as allies on a common problem. For example: *"This is our joint problem. We got into this situation together and we can get out of it together."*
- Look for creative solutions which address everyone's needs.

"Everything needs of people are important and valid to them."

“We’re looking for a solution that allows everyone to have as many needs met as possible.”

“There’s probably more than one solution that will meet the needs of all of us.”

Defining the Problem in Terms of Needs

Once everyone's needs have been clarified, it is helpful to redefine the problem originally presented in terms of how to meet everyone's priority needs.

Definitions of problems that are stated in terms of clashing *solutions* lead, inevitably, to win-lose results.

"I must have the car tonight."

"But I've got to use it to get to my meeting across town."

If this problem is defined in terms of who gets the car tonight, only one of two outcomes is possible: one person will get the car and the other will not. One person wins, the other loses.

However, once the underlying needs for transportation are identified, it becomes clear that use of the car is only one possible way of meeting those needs. An entire range of other solutions can now be considered.

What's the Difference between Collaborating and Compromising?

First, it's helpful to distinguish the conflict behaviors people use from the decisions they reach. Two people may begin collaborating (problem solving), discover that no integrative (win-win) outcomes are possible and, therefore, settle for a compromise.

As behaviors, collaborating and compromising are quite different. Collaborating means working with each other to seek solutions which satisfy both participants. This digging into an issue is an attempt to find innovative possibilities. It also means being open and exploratory. In contrast, compromising means seeking an expedient settlement which only partially satisfies both people. It doesn't dig into the underlying problem, but rather seeks a more superficial arrangement – e.g., splitting the difference. It is based upon partial concessions – giving up something to get something – and may be played close to the vest. Compromise splits the pie, while collaboration attempts to make the pie larger.

Feelings Inventories

The following are words we use when we want to express a combination of emotional states and physical sensations. This list is neither exhaustive nor definitive. It is meant as a starting place to support anyone who wishes to engage in a process of deepening self-discovery and to facilitate greater understanding and connection between people.

There are two parts to this list: feelings we may have when our needs are being met and feelings we may have when our needs are not being met.

Feelings when your needs are satisfied:

Affectionate: Compassionate, friendly, loving, open-hearted, sympathetic, tender, warm

Confident: Empowered, open, proud, safe, secure

Engaged: Absorbed, alert, curious, engrossed, enchanted, entranced, fascinated, interested, intrigued, involved, spellbound, stimulated

Inspired: Amazed, awed, wonder

Excited: Animated, ardent, aroused, astonished, dazzled, eager, energetic, enthusiastic, giddy, invigorated, lively, passionate, surprised, vibrant

Exhilarated: Blissful, ecstatic, elated, enthralled, exuberant, radiant, rapturous, thrilled

Grateful: Appreciative, moved, thankful, touched

Hopeful: Expectant, encouraged, optimistic

Joyful: Amused, delighted, glad, happy, jubilant, pleased, tickled

Peaceful: Calm, clear-headed, comfortable, centered, content, fulfilled, mellow, quiet, relaxed, renewed, satisfied, serene, still, tranquil, trusting

Refreshed: Enlivened, rejuvenated, rested, restored, revived

Feelings when your needs are not satisfied:

Afraid: Apprehensive, dread, foreboding, frightened, mistrustful, panicked, petrified, scared, suspicious, terrified, wary, worried

Annoyed: Aggravated, dismayed, disgruntled, displeased, exasperated, frustrated, impatient, irritated, irked

Angry: Enraged, furious, incensed, indignant, irate, livid, outraged, resentful

Aversion: Animosity, appalled, contempt, disgusted, dislike, hate, horrified

Confused: Ambivalent, baffled, bewildered, dazed, hesitant, lost, mystified, perplexed, puzzled

Disconnected: Alienated, aloof, apathetic, bored, cold, detached, distracted, indifferent, numb, removed, uninterested, withdrawn

Disquiet: Agitated, alarmed, discombobulated, disconcerted, disturbed, rattled, restless, shocked, startled, surprised, troubled, turbulent, turmoil, uncomfortable, uneasy

Tense: Anxious, cranky, distressed, distraught, edgy, fidgety, frazzled, irritable, jittery, nervous, overwhelmed, restless, stressed-out

Vulnerable: Fragile, guarded, helpless, insecure, leery, reserved, sensitive, shaky

Yearning: Envious, jealous, longing, nostalgic, pining, wistful

Needs inventory:

The following list of needs is neither exhaustive nor definitive. It is meant as a starting place to support anyone who wishes to engage in a process of deepening self-discovery and to facilitate greater understanding and connection between people.

Connection: Acceptance, affection, appreciation, belonging, cooperation, communication, closeness, community, companionship, compassion, consideration, consistency, empathy, inclusion, intimacy, love, mutually, nurturing, respect, self-respect, safety, security, stability, support, known, understood, trust, warmth

Honesty: Authenticity, integrity, presence

Play: Joy, humor

Peace: Beauty, communion, ease, equality, harmony, inspiration, order

Well-Being: Air, food, movement, exercise, rest, sleep, expression, shelter, touch, water

Meaning: Awareness, celebration, challenge, clarity, competence, consciousness, contribution, creativity, discovery, efficacy, effectiveness, growth, hope, learning, mourning, participation, purpose, stimulation, matter, understanding

Autonomy: Choice, freedom, independence, space, spontaneity

Exploring Options

The purpose of trying to identify the underlying needs is to see what solutions you can come up with for meeting those needs. If the needs are not properly identified, then creative options cannot be generated. An option is just that - an option. It is not written in stone. It can be built on, modified or discarded altogether. One of the reasons for confidentiality in mediation, (or a request that participants agree not to use anything said in mediation as evidence in future legal disputes,) is so that people feel free to throw out ideas, play with them, and then withdraw them from the table if need be. True solution-building is about brainstorming. In my experience, participants are at their most creative when the stakes are high (i.e. the issues are very important to both participants) and the BATNAs of both participants are equally unattractive. In other words, the participants have no choice but to find a solution even when the situation looks impossible. This forces them to push past the usual “wall” we come up against when we look at things in the usual way. For example, do you have much invested in what restaurant you go to dinner in tonight? Unless you eat only kosher or halal food, or you are on a special diet – probably not. The issue is not that important to you and, for most people, it is probably a good one to compromise or give in on – especially if you want to develop the relationship. However, what is your investment in your child’s education? If you cannot find a solution that meets the child’s needs, what are you going to do? Because this is an issue which is very important to most of us, we will likely continue to seek options. We will “stay in the question”; we will continue researching; we will keep discussing it with other people until we finally “push past that wall” and come up with a solution that we might not have otherwise have thought of.

Participants may not be able to have what they came into the negotiation to get – usually their stated positions (solutions) – but they may be able to find another way to meet their underlying needs.

The first thing a mediator (and a negotiator) should do after identifying the underlying needs is to “expand the pie.” Is there a way that both participants can get what they want? The classic example of this in negotiation is the “orange example.” Two sisters walk into a kitchen and reach for the one and only orange left. They start to fight over who gets the orange but being good sisters, they agree to a compromise. They cut the orange in half. One sister takes her share of the orange, peels it, eats the flesh and throws away the peel. The other sister takes her half of the orange, peels it, throws away the flesh and uses the peel to bake a cake! If they had analyzed the underlying needs instead of jumping to conclusions and insisting on their positions, they could both have had everything they wanted. They did not expand the pie. They assumed of limited resources.

Expanding the pie requires a certain belief system. It requires that we drop the prevalent belief that there are limited resources and come from a belief in an

abundance of possibilities. Some people even take it a step further and say, “the universe will provide”. In fact, there is evidence that if we do “stay in the question” without having an answer right now, the answer will come (the “aha” moments). If we stay, exploring solutions no matter how many dead ends we come up against, we will eventually find one which works. This is in fact how scientists work. They keep exploring no matter how many roadblocks they come to, and eventually work out a solution.

The biggest problems in creating options are the limiting beliefs of the participants. “That won’t work”. “We’ve tried that before.” “The boss won’t buy that...” “They would never agree to that.” In brainstorming – separate the role of generating ideas from the role of evaluating the ideas. In mediation, encourage the participants to generate first, modify and evaluate later.! “Just because you can’t think of a solution does not mean it does not exist!” (I say this in mediation – except I use the “we” word – not the “you” word) The evidence is out that in brainstorming $1 + 1 = 3$. Also $3 + 5 = 11$ which is even better! In other words, two heads brainstorming together will come up with more ideas than two people brainstorming individually. I sometimes do an exercise in class to demonstrate this.

The last challenge is to get rid of your ego – as a mediator! You do not have all the answers – even if you are an expert in the field. Your job is to help the real experts in the situation access the answers. The participants are the only experts in THEIR situation. Your job is to help them find ways to create them or access the solutions that are already floating around in the universe waiting to be discovered! If we can help the participants, change their belief systems about what is possible, drop their positions, and “stay in the question”, eventually solutions will be generated that will meet the underlying needs of both participants. (Notice I said solutions – not solution – usually there is more than one.)

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Maintaining Hope: One Mediator's Personal Story

By now you will have noticed that I mention the word “hope” a lot in mediation. I have talked about the mediator’s role in maintaining hope and using language that affirms the participants’ resources and ability to resolve their differences. Although it is not emphasized in mediation literature, I believe that “giving hope” is one of the main functions of the mediator. This belief grew originally out of a personal experience and has been reinforced throughout the years as I have observed the effect on individuals as I have focused on this aspect of mediation. Hope gives the participants confidence in their own abilities. Hope expands the possibilities – like ripples in a circle, expanding outwards -and, Hope raises the spirits to a lighter more positive, energy level. Let me share with you my personal story.

When I first started my private practice in divorce mediation, none of my mediations resulted in Agreements. Usually, after a couple of sessions, the couples would not come back. I could not work out what I was doing wrong. I had been doing community mediations for a while with relative success. I went back over what I was doing in my mediations and I could not identify anything that stood out that I was consistently doing inappropriately. Yes, there were things that I could have done differently and better, but nothing that ran consistently through all my mediations. A pattern of couples starting with me and then not coming back had been established, and I did not know why.

I went to an attorney mediator, Sally Pope, * who had been in the field a lot longer, and whom I considered a mentor, and I discussed the problem with her. Sally herself, had been mentored by John Haynes. She listened very carefully to what I was telling her and then said very gently: “Mary, it seems to me that you’re getting sucked into their despair and hopelessness.” This was something I had never thought of and I had never read about. I did not know what to say. She continued: “Mary, you’ve got to acknowledge them!”

I started to practice what she suggested, and the results were astounding. My mediations began to turn around overnight! Couples began to stay with the process and to reach Agreement. It took me a while before I fully realized the significance of what Sally had shared with me. I began to observe the energy in the room, my own behavior and the impact of the encouraging comments I was making. In those days, I was dealing in divorce cases. When divorcing, couples come into the room, they bring with them tremendous sadness, grief, fear, guilt and anger. Not exactly uplifting energies! Their hopes for the future have been dashed; most of them still care about each other on some level, but at least one of them has decided that he/she no longer wants to be in a life partnership with the other person. And there is a lot at stake- children, financial security, friends/relatives in common, etc.- all to be negotiated.

It is very easy for the mediator to be sucked into those negative energies of sadness, grief, fear, guilt and anger. Energies can be felt. Negative energies are very heavy, dense energies. They drag you down. You feel depressed and hopeless. In divorce, couples are probably at one of the lowest points in their lives. (Divorce is supposed to be the second most traumatic event in anyone's life – after death of someone close to you.) In other non-divorce mediations, there may not be so much at stake and the intensity of the negative energies may not be as great, but some form of negative energy is usually present in any conflict that has escalated to a point where the participants need mediation.

As I observed myself, I realized that I had been “sucked into” the depression and sense of despair and hopelessness that these couples brought into the room. Some people might say that I had been absorbing their negative energies. As I became aware of this, I consciously chose to stay outside of those energies and was then able to make simple but truthful remarks that acknowledged the participants and helped them feel better about themselves and about what they could achieve. Examples are: “You are both streaks ahead of the rest of the population because you have chosen to come to mediation and try and develop a plan together, and not many people do that.” Or, “You really worked hard today. I know you will work things out as we stay together, in the process.” Or, “Thanks for staying in the process. I know we still have a few challenges ahead of us, but I am confident we can work through them in a way that works for everyone.” Or, “I can see from the time you both have taken out to be here, that it is really important to you to resolve these issues together in mediation – and you will.” Try this approach and you will find the results are just astounding. People want to be hopeful and they want to believe it is possible to reach resolution, but nothing else, and nobody else, in their environment supports this belief.

Never say anything that you do not believe in your gut to be true. Always find something positive to say about them and/or the process. Speak with confidence and acknowledge genuinely. I have discovered that the participants always believe you! It is amazing the power of a confident voice and a few positive words. It can turn around a whole mediation.

There is the story of a divorced father who went through a very painful, lengthy (non-mediated) court divorce. After the divorce, he found the hostility between him and his wife so great that they could not have a conversation (about the kids) without ending up screaming at each other. He decided he no longer wanted “to stay in that place” and he decided to try this “stupid” technique of acknowledging his ex-wife – although every ounce of his body resisted acknowledging her in any way! He says the following weekend he was driving to her place to pick up his kids and he was trying to think of something positive to say to her. He could not think of anything! As he walked up the steps to the front door, he was still racking his brains. She opened the door and the kids were standing right behind

her. He said later the comment just “popped out of my mouth”. He said: “Thanks for having the kids ready for me.” He said it genuinely and she just melted. It was the beginning of a new way of relating for them. It took a few months, but by stepping out of the old way of relating, he enabled them both to try a new way of being with each other. By now you should know that in negotiation, it only takes one person to change, for the whole negotiation to move forward in a different direction powerfully.

So, that is my story! I hope it has convinced you of the power of acknowledgment and the power of hope. I also hope that you try this approach! I am confident that it will have the same result for you. When you build the participants’ confidence in them and in their own resources, you give them an incredible gift.

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