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Advanced Communication Skills: Moving Beyond Argument To Dialogue

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Advanced Communication Skills: Moving Beyond Argument To Dialogue

In beginning mediation trainings, trainees spend a lot of time practicing communication techniques: reframing, rephrasing, reflective listening and “I” statements. Yet as important as communication is to success in mediation, after those first few trainings little is said about improving your mediation communication skills. Here are a few advanced communication techniques for your mediator’s toolbox in addition to all that reframing and rephrasing: reading facial expressions, listening to the meta-message, listening for shame and trauma, conflict as contact, forgetting in conflict and remembering in agreement, detoxifying information, normalizing affect and handling sensitive topics.

Reading Facial Expressions: Reading a client’s body language is important in mediation. After all, we communicate with much more than words. To begin to read a client’s facial expressions, one technique is to make eye contact with the left of his or her face, preferably with your left eye or left side of your face. Simply put, we wear our emotions on the left side of our face because the right hemisphere of the brain houses emotional feeling. By tuning into what’s happening with the left side of a client’s body, a mediator can sometimes read an emotional reaction that may not be clear with words alone. Believe it or not, this also helps clients calm down.

Other non-verbal cues include clients who are still wearing their wedding rings despite their decision to divorce, clients who come to mediation kissing and holding hands, clients who sit next to each other rather than across the table, and clients who cry easily at simple discussions and who are hard to console. Some other things to note: does the date of the appointment coincide with an important

milestone in the relationship? Do clients say that they're ready to mediate, and then immediately pick a fight or never return necessary paperwork?

Basically, these are all outward manifestations of ambivalence, which is the simultaneous back-and-forth conflicted feelings that most divorcing clients seem to experience. One moment, the divorce is necessary and must be completed as soon as possible, and the next moment the client waivers, not sure if the divorce is a good idea or not. One moment, clients are working well on an agreement, and the next moment they are fighting over what was just settled. Ambivalence is evidence of unfinished emotional business, either for the parties as individuals or as a couple.

Ambivalence is an underlying force at work in the toughest cases. You can watch for ambivalence by observing the parties' behavior, the date of the appointment, and by reading the left side of their faces. By paying attention to and addressing the client's ambivalence, as uncomfortable as it may make you feel, you are proactively working to prevent impasse.

Listening for the Meta-Message: What are you listening for and what are you hearing? It's important to tune into both parties in an even-handed way. Communication in mediation is different than it is in therapy, collaborative law or litigation, and while that sounds simple to say, it's easy to forget to shift your perspective if you handle many different types of cases in your practice. In litigation, lawyers are trained to ask only closed-end questions to which they know the answer. In client appointments, lawyers ask fact-based questions and are looking for information. Therapists are trained to ask open ended questions to which they don't know the answers.

Collaborative processes like mediation encourage open ended communication, exploration and sharing of ideas. In mediation, although the questions are designed to encourage open-ended communication, it's also the mediator's responsibility to make sure that the communication is focused toward the agenda and aimed at making progress toward resolution. In therapy, the therapist might encourage the conversation take its own direction with some very light guidance from the therapist, while in mediation the conversation is more agreement focused. The mediator needs to help the parties strike a balance between having discussions necessary for healing and closure as well as making sure those discussions don't stray too far from the task at hand.

Listening for Shame and Trauma: It's easy to become seduced by the content of the discussion in mediation, but the words clients use are only part of the story. Many clients will posit that a past event triggered whatever conflict they are currently experiencing, blaming a past affair, gambling habit, unplanned

pregnancy, or other traumatic event of choice as the sole source of their present problems.

Mediators need to remember that although those events may *galvanize* a situation, they have not *caused* the situation. It is important for the mediator to not be seduced by the symptoms, caught up in the content or the many manifestations of the problem, no matter how much the clients want to hang the demise of a relationship on a single event. Mediation gives parties the opportunity to confront the impediments to agreements, including the ambivalence that taboo material creates, in such a way that it brings about new levels of awareness and consciousness. Mediators can help clients do this by moving focus away from the past single event to identifying and working with the actual ruptures in the relationship.

Similarly, when clients issue complaints, they're really talking about unmet or unaddressed needs. For example, a complaint about an imbalance of power might really be about the client's inarticulate anxiety about being unworthy and inadequate. Fueling the complaint may be an undigested trauma that is re-enacted over time and ultimately undercuts one's sense of confidence. Unaddressed, these feelings of inferiority can become a loop of self-sabotaging ideas and behaviors. For example, the client may be backing away from mediation yet it may actually be that same client who desperately wants to participate and be taken seriously.

It's part of the mediator's job to turn complaints into requests for assistance and to help the client to frame the request in such a way that the other can hear and respond to in a productive way.

Remember, too, that how clients manage themselves in mediation likely harkens back to attachment styles formed in childhood and brought into adulthood. Without going into a lengthy explanation of attachment styles, suffice it to say that patterns formed in childhood influence how adults act, especially when they're in a traumatic situation like divorce. The content you are hearing may be a re-traumatization of an earlier unresolved family of origin issue that is playing out in the current marital relationship. So it's very important to listen to more than the parties' words.

It is our job to monitor and work with the verbal and non-verbal signs of ambivalence introduced when the taboo issues surrounding traumatic material can no longer be hidden or ignored. When not dealt with properly, these can become the impasses of mediation. Impasse in our work is akin to looking at a Polaroid picture. There is a much larger back story than the snapshot we're seeing at that moment in our office. Impasse is a glimpse into the empathic disconnects, self-fulfilling fears and interlocking pathology that have affixed,

taken root and grown from early on in the genesis of the conflict. In a mediation session we're coming into the middle of an ongoing conversation (conflict), not the beginning.

Mediators can only reveal and decode a small cross-section of the individual and interpersonal historical build-up that has been laid down and the residue that remains. We can only focus on the area of the cross-section involved in accomplishing the divorce. We do not allow clients to ignore the deeper levels and issues that cause an impasse; rather, we attempt to navigate it with good-faith skill and sensitivity.

Conflict as Contact: Another reason to listen beyond the words is that sometimes people use conflict as an attempt to stay in touch with each other.¹ Resolution of conflict would be one way of letting go and being free of the other. As mediators we need to help clients remember "Anger is a great place to start, but a horrible place to stay."²

Another way to understand people in conflict is that clients may not know another way to communicate or they haven't remembered to leave room for each other to be in the relationship. Caught up in the problems at hand, the clients no longer think of the other person and his or her needs, but only themselves. In redefining the relationship through divorce, the agreement can represent new ways of remembering each other. Finding room for each other in the agreement is a key to resolving conflict.

Being lost in conflict is another way of saying, "I don't remember what's important to or about you," or it's a way to negate the pain of "you don't love me anymore." If people in conflict can forget the life partner or negate the dream of the promise of marriage, it's easier to cope (at least on the surface) with the disappointment of the failure of that marriage. The mediator then becomes an intermediary in the dialogue.

We humans can't seem to face our imperfections on our own. So not only do mediators act as the intermediary and regulator of the hostile energy, we restore what has been forgotten by reminding parties of what needs to be remembered in the details of agreements.

Moving Beyond Conflict as Contact: As a mediator, it's important to find tools to help clients to feel and then release their pain, without remaining in pain. Sometimes the simple act of talking about the pain out loud can help clear the air. For example, if one party calls the other a liar the mediator could ask the accused to think back and articulate what the accuser may mean. Bringing out

¹ Isaac Berman, Ph.D.

² Rabbi Jonathan Omer-Man

the specifics helps the client to let go of the hurt. Letting go is the first stage toward being agreement-ready.

In the agreement, the mediator can use neutral two-way statements and proposals that address both parties although only one may have the problem or complaint at the moment. For example: the mediator can suggest adding reciprocal, neutrally phrased language about house rules like watching R-rated movies with the children. In addition to reframing and rephrasing, the mediator can ask the clients to give each other the benefit of doubt with whatever it was that happened in the past with the goal to develop greater trust of one another. For example, the mediator could help a client figure out how to say, "If I had known how much that action was going to hurt you, I never would have done it," while encouraging the other party to believe that although the action hurt that this had not been the intention. Be patient, because for many clients the temptation to blame and shame may be irresistible, especially early in the mediation.

Forgetting in Conflict, Remembering in Agreement: This is where you will put your reframing and rephrasing skills to use. The goal is to make sure each party feels heard and taken seriously irrespective of whether the other party agrees with that perspective. Remind clients that listening is not the same thing as obeying or agreeing. It's important that clients feel like you truly understand them, and better still if they believe the other party has truly listened. As you're guiding one client through telling his or her story, you can turn to the other party and ask "Is there any new information that has been shared that is different from what was shared in the past?" and spend a moment talking about what it's like to communicate.

Detoxifying Information to Digest New or Discomforting Information: Many complaints mediation participants voice may be offensive to the other party, or something that the other party will be reluctant to acknowledge. A good example of this is domestic violence or cruel treatment. The alleged perpetrator may be reluctant to admit to wrongdoing, but for the purposes of mediation it isn't necessary for him or her to confess. The mediator can point out that whether or not it happened isn't as important as that fact that now one party is afraid of the other. The dynamic in the relationship has caused confusion or fear in the other party and that confusion or fear becomes the problem to be solved. By taking the guilt and blame out of the equation, it's easier to negotiate a resolution.

Normalizing Affect: Another communication technique that is useful in mediation is to normalize the situation, and to let the clients know that what they're going through is normal, even if it's difficult. Remind them that even positive change can be stressful. Statistically, the first 18 months after physical separation is the 'crazy making time' in any divorce and it is statistically normal to experience the roller coaster of emotions up to 3 years post-separation. The

mediator can use empathy and acknowledgement, e.g., “I know it’s hard” and “I can appreciate why you feel that way, but...” or “You are not alone in feeling that way....”

The mediator can also introduce the idea of taking action consistent with one’s Enlightened Self-Interest.³ The idea is that if my former spouse is reasonably pleased with any given situation that he or she will be more cooperative and easier to work with, thereby making my own situation easier. The mediator can encourage clients to give the other party the benefit of the doubt when there’s a question about the motive behind a certain action. By giving the other party the benefit of the doubt, the client can avoid feeling slighted or hurt. For example, by encouraging the client to say, “I’m sure that his/her failure to return the child’s new coat when he/she dropped the child off was an oversight, and that it wasn’t meant to punish me” helps the client to remain calm when asking for the coat’s return. For more difficult situations, the mediator can ask “What would help the other party to put this issue to rest, even if you don’t think he/she deserves it?”...or...”What can you do to put the other party’s mind at ease? How can you get on the other party’s side to get him or her on your side?”

This benefit of the doubt also works for the required financial disclosures. The more forthcoming and co-operative the parties are, the more trustworthy each becomes. Because full financial disclosure is required anyway, encouraging both parties to offer financial documents and disclosures before the other party has to ask for them is an easy way to help clients begin to rebuild trust.

Handling Sensitive Topics: Always narrate for the parties what you intend to do. Work with empathy and compassion to get cooperation, and never rush in where you do not have permission to go. For example, the mediator could ask “We’re going to be going into some very sensitive material now. Are you ready? If it gets to be too much, give the time-out sign and we’ll take a break, knowing that we will come back to the discussion,” or...”The irony of divorce is that the difficult discussions and boundaries that were necessary in your marriage are also required as part of the divorce.”

As the mediator the goal is to understand another’s perspective without the appearance of alignment. For lawyers or therapists this can be tough because they’re trained to align with and empathize with one client only. The key is to create a relationship with all of the mediation participants without either or both feeling like you’ve become biased.

Conclusion: As cases become higher conflict and more difficult to settle, the parties’ desire to collaborate may not easily translate into settlement opportunities. Deep communication on important issues does not come naturally

³ This term was coined by economist Adam Smith in discussing the invisible hand of efficiency.



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to everyone, and it's particularly difficult for clients who are no longer invested in pleasing each other on a spousal or intimate basis. While reframing and rephrasing are the cornerstones of mediation communication, continuing the discussion on how to enhance communication in mediation is essential to cultivating artistry in your mediation practice.