

# PSYCHOLOGY OF CONFLICT- REPLACING DISPOSITIONAL ATTRIBUTION WITH EMPATHY

Mediating in a Diverse World

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# EXISTENTIALISM?

- Philosophy?
- Cultural Movement?
- Mode of Thinking?
- It' general concepts answer many questions presented to litigators, mediators, counselors etc. in dealing with parties to a dispute.

# EXISTENTIALISM

- Why do otherwise sensible, intelligent, rational people appear to act so irrationally when involved in conflict?
- Why are nations led to the brink of war by the intransigent stances adopted by their leaders?
- Why are business oriented, cost-conscious, risk-averse CEOs willing to drag their companies into often futile protracted litigation?
- Why are family members willing to squander their inheritance when that very inheritance diminishes day by day in prolonged lawsuits?
- Why do employees, neighbors, and even “friends” disrupt their daily lives with seemingly trivial disagreements that the litigation process escalates into war?

# EXISTENTIALISM

Common theme in existentialism – we are all thrown in to a world of uncertainty.

We must cope with freedom of choice, “truth,” objectivity (one person’s “Fair” is another’s “injustice), and often the ABSURDITY of a situation.

**Soren Kierkegaard** – fear v anxiety, paradoxical relationship between truth, objectivity, and subjectivity...

No universal (objective) truth, but rather truth is what is true to the individual.

# EXISTENTIALISM

- **Ellis** on Attribution vs empathy
- Mediator can help parties by encouraging them to accept the fact that they may never be able to fully comprehend the other party's action or thought-by stressing that there is no such thing as absolute, objective truth – especially in the context of a courtroom (much less a world) setting.
- **Heidegger**- discusses our existence as it relates to others and to society/the world. We do not exist in isolation.
- Focus on time and existence. “Everything begins with the future...” A party's obsessive analysis of things past may demand more emphasis on the unquestionable fact that past time cannot be retrieved (slavery reparations, holocaust...apartheid...)

# EXISTENTIALISM

- The past, the present, and the future are not distinct entities – all three present in every moment of our existence
- “if a human being is aware of himself as a being based upon the facts of his past and also as projected towards the future which he chooses, then he will take full responsibility for his life, and will recognize that his choices are his own, not dictated any longer by what people in general do or expect.” –Warnock on Heidegger

# EXISTENTIALISM

- “The “French Existentialists”
- Jean-Paul Sartre (1905-1980)
- “what do we mean by saying that existence precedes essence? We mean that man first of all exists, encounters himself, surges up in the world – and defines himself afterwards. If man, as the existentialist sees him, is not definable, it is because to begin with he is nothing. He will not be anything until later, and then he will be what he makes of himself.”
- Man has freedom of choice- but that freedom brings heavy responsibility-YOU ARE RESPONSIBLE FOR YOUR ACTIONS

# EXISTENTIALISM

- And finally...Albert Camus
- The Myth of Sisyphus
- The Stranger
- The “Absurdity of Life” comes from trying to attach logical and universal value/meaning to things that aren’t really absolute.



## ROLE OF THE MEDIATOR

- Start with the premise that the single most vital objective is to secure an attitude shift on the part of one or more parties in conflict
- Without such a change, the parties are likely to remain in the same entrenched position as when they entered the conflict – creating little prospect of settling the dispute.
- “Tao Observation – if we change the way we look at things, the things we look at change.”
- Shift in attitude is fundamentally a shift in perception

## ROLE OF THE MEDIATOR

- Perception may be about issues directly related to the dispute OR may be entirely peripheral
- Perception may be of another person, another person's behavior, may be real or imagined, of one's own self awareness, of expectations as to possible outcomes of the dispute (judge, jury, loss of relationship with child, loss of control, loss of "face"...and on and on).
- Mediator can attempt to gently direct the parties to move to a different perception – of themselves, of each other, of the dispute

## ROLE OF THE MEDIATOR

- Nobody said this is easy...
- People become hardened in their positions. Yet despite the rigid positions and intransigence, the mediator is expected to secure a paradigm shift in hardened attitudes – and to do so in a relatively short period of time.
- This shift will not likely be achieved through the application of logic or reason. Certainly not through the overt expression of disapproval by the mediator.

## ROLE OF THE MEDIATOR

- Common sense is not always “common.” What’s logical to one is often illogical to the other. (Most existential thinkers even question the concept of “common sense or even “human nature.”
- Perception becomes reality
- Same is true of “Fair” or “Justice” Unreliable, relative terms when applied to all disputes. (Same with “Truth”)

**“IT’S NOT A JUSTICE SYSTEM – IT’S A  
LEGAL SYSTEM”...CHIEF WIGGUMS**



# A WORD ABOUT “JUSTICE”

- Mediation provides not only “substantive justice” but also provides “procedural justice”
- England/Wales Small Claims mediation program “favorable” rating

## REPLACE DISPOSITIONAL ATTRIBUTION WITH EMPATHY

- “When I was five years old, my mother always told me that happiness was the key to life. When I went to school, they asked me what I wanted to be when I grew up. I wrote down "happy." They told me I didn't understand the assignment, and I told them they didn't understand life .”

...JL

# DISPOSITIONAL ATTRIBUTION

- **George Carlin-**“Have you ever noticed when driving on the freeway, that anyone who is driving slower than you is an idiot and anyone driving faster than you is a maniac.” – multiple views of what is” normal”
- Baseball hats?
- Cognitive Dissonance –we all want to think we’re “normal”
- “Black Lives Matter” and so on...
- Lawyers are not exempt from this



## DEALING WITH PERCEPTIONS...

- Caucus – sometimes easier to dig deeply into perceptions...But..
- Conference... “an Art, not a Science”
- Don’t forget – lawyers may have to deal with these issues with their clients – unfortunately, many don’t – leaving the mediator to handle
- Worse yet – fuel the fire by completely subjective (I’m going to win for you) approach

## DEALING WITH PERCEPTIONS

- Role of mediator is to dispel misperceptions and false assumptions
- Current “national psyche” is very polarizing and more things are “black and white” or viewed antagonistically as “It’s either US or THEM”
- Big problem with juries today
- Look for that window of unity and commonality (why my pre session discussion is SO important) What exactly exists in YOUR world?
- Divorcing couples may actually have a common vision of what is best for the children – but each has the view that they are better suited to provide it.

## DEALING WITH THESE CHALLENGES

- Next to listening, perhaps the greatest “skill” the mediator must possess is well developed COMMUNICATION skills.
- There can be no more powerful tool for the creation of a trusting relationship and the building of rapport than for the party to believe that the mediator is truly and faithfully listening.
- When this trust is achieved, it can enable the mediator to more effectively challenge and reality-test in attempting to achieve a vital perception shift.

## TRUST AND RAPPORT

- Hopefully, mediation creates a “safe” environment in which the parties may more easily relax and candidly express their views.
- Rapport is usually established over time, often in social, school, work or other situations – mediator has to establish this in a ridiculously short time in an already toxic environment

## DEVELOPING LISTENING SKILLS

- Is this skill “intuitive” or the result of intense and meticulous training?
- Every day “listening skills” are often NOT what the mediator needs to develop
- This is why Randolph believes good listening skills may actually be “counter intuitive” – we listen with OUR best interests in mind
- We have a persistent urge to interrupt
- We translate what someone says into our world (reality/ context)
- p 38 Randolph –Regents University London criteria –almost all involve COMMUNICATION

## LISTENING SKILLS

- “Reflecting back” – paraphrasing and summarizing – Randolph feels are psychologically persuasive to convince the party that you are actively listening.
- Don’t be a tape recorder – be reflective in your responses to let the party know that you have not only heard, but have thought about their comments – could be as simple as paraphrasing

## EMOTIONS (FEELINGS?)

Are we talking physical or psychological?  
Are there only 4? 130?

Plato – feeling seems to lie somewhere between mere life-processes of the body, of some of which we are barely conscious or even unconscious, and the conscious exercise of rational thought.

The “existential” view of feelings – they make us acutely aware of our existence. –Wrong or right, they are part of our reality

As an aside – “hugs after successful session”

# EMOTIONS

- Per Sartre – Emotions are “reflective” or “unreflective”
- Unreflective = instantaneous and not consciously controllable
- Reflective = result (to some extent) of some “thought”
- Examples?



## AND THE ANSWER IS...

- Unreflective - Fear, anger, disgust, passion
- Reflective – guilt, shame, jealousy
- Sartre postulates that once an emotion becomes “reflective” it ceases to really be an emotion

## REFLECTIVE VS UNREFLECTIVE

- Difference may be important to a mediator.
- A mediator may be in a position to assist a party to analyze a reflective emotion and through that analysis work to fashion a perception shift.
- Unreflective emotions, on the other hand may be impermeable and resistant to analysis. These emotions may need to be accepted by the mediator in a non-judgmental manner so they can be confronted, defused, and possibly deflected.

## NOT QUITE SO SIMPLE...

- Seldom are we dealing with a single, easily recognized and definable emotion
- Often a mix - for example – anger coupled with frustration and disappointment...
- Perhaps guilt that we are so angry and disappointed...etc
- Emotion needs to be examined – next door neighbor encroaches six inches onto your property. Are you more angered about the minimal encroachment, or the fact that they never consulted with you (in which case you would possibly have worked things out)

## ANGER AND LOSS

- Anger is one of the most predominate emotions mediators deal with, and it is usually associated with some (real or perceived) loss
- Loss can be tangible (money, property, land, etc.) or metaphysical (time, energy, control, respect etc.)
- Suppressing emotion in a joint session may be counter productive because display of emotion will likely reveal the real roots of the dispute.
- Should the mediator shield the other party from this reality?
- This is where the ART of mediation needs to outshine the SCIENCE of conflict

## DISSECTING/DEALING WITH ANGER

- “Anyone can become angry. That is easy. But to be angry with the right person, to the right degree, at the right time, for the right purpose, and in the right way, that is not easy”...Aristotle

## SELF ESTEEM

- self esteem – Powerful motivating factor – and a major focus of “Transformative” mediating.
- The corollary – fear of disapproval, is an inherent component of self esteem

## SELF-ESTEEM

- Sartre – we can only become aware of who we are through the judgment of others.
- Need for approval is not static, always present
- Self esteem can be shattered in an instant by a comment, or even a look
- This is why apology can so dramatically change the landscape
- Heartfelt apology can be hard to give and hard to accept – but powerful

## SELF ESTEEM

- However – the person whose approval is of prime and utmost importance – is one's self
- Can the mediator change someone's perception from reacting to the other party's "disapproval" to focusing on their self approval?
- Despite the assurances that the mediator is "neutral" the parties will always be seeking to obtain the mediator's approval



## SELF ESTEEM

- Corporate and community self esteem can be powerful
- “Keeping up with then Joneses”
- Beating your football team
- Besmirching your company’s reputation
- WE ALL NEED TO BE VALUED
- (A word about prejudice and bigotry)

## SELF ESTEEM/CONTROL

- The need for control as a element of self esteem is a powerful way we cope with uncertainty and change. – If the family dynamic changes (as it must in divorce) – am I going to lose all (or some) control?
- Many disputes fueled by the fear that you will lose, or the other party will gain, control.
- Behaviors encountered by mediator to exert “control”
- P. 74 Randolph

## SELF ESTEEM/GOLDEN BRIDGE

- Sun Tzu –from The Art of War:“ A wise conquering general is one who builds a Golden Bridge upon which his defeated enemy can retreat”

# VALUES

- Heidegger – “Our value systems are the result of our making choices”
- We can choose to live with one value system (honesty/truthfulness are necessary to live a valuable life) or choose another system placing a lesser value on honesty, and a greater value on “success”
- These values tend to evolve from experience – what has served us well?
- Value systems can be individual or “group” ... “India Standard Time,” adherence to rules, need for tangible rewards
- A mediator must often need to work within those value systems rather than try to change them

# SEDIMENTATIONS

- “Human beings become stuck or fixed in certain beliefs and behavior patterns that deposit themselves deep down in our belief systems in a similar fashion to the sediment that sinks to the bottom of liquid” –Merleau-Ponty
- These “sedimentations” are often subconscious (habitual) that one’s ”normal” behavior may appear totally irrational to another observer (obsessive conduct, ie.-”neat-freak”)
- Little things I think are normal or innocuous may be unduly irritating to others
- Sometimes the mediator must work to remain non-judgmental and move on, rather than to challenge these “values” and possibly make the part more entrenched in defending their position

# POLARITIES

- We don't live in a black and white world – but our society seems to be headed there
- The mediator can attempt to move the parties into a “middle ground” by focusing on areas of agreement (even if minor or peripheral) to blur the lines between the poles.
- This is why it is so important for the mediator to learn as much as possible about each party's world (existence) as possible – even if only in a short time.

# INTERPERSONAL RELATIONSHIPS

- Sartre – “Hell is other people.”
- Perhaps nowhere more than in interpersonal relationships is the need to be heard at the core of conflict.
- We cannot exist in isolation- interaction is inherent in life –
- Psychiatrists stock in trade is giving a voice to their patients
- Counsellors attempt to encourage couples to really “hear” what the other is saying
- Mediators must satisfy the party’s need to be heard.

## PRACTICAL MEDIATION APPLICATIONS

- Motivation to litigate:
- Vindication – to be proved right
- Need for revenge - for the other party to feel the same or similar pain
- Need for humiliation – for the other party to be shamed
- Need for compensation – to recover perceived losses
- ARE THESE NEEDS OR ASPIRATIONS?



## SELF ESTEEM/GOLDEN BRIDGE

- Sun Tzu –from The Art of War:“ A wise conquering general is one who builds a Golden Bridge upon which his defeated enemy can retreat”

# THE FUTURE OF PSYCHOLOGY IN MEDIATION

- Why isn't mediation taking off more rapidly? This conundrum is expressed in an article published in 2010 in the *New Law Journal* as follows:
- “Imagine for a moment that Mediation is a product – a stain remover – that can be purchased from any supermarket. Almost all who have used it praise it highly. The product does what it says on the tin: it is cheap, quick, is easy to use, and saves time, cost and energy. On the adjacent shelf is another stain remover called Litigation. Almost all who have used it are highly critical of it: it frequently fails to deliver its promise of success: it is extremely slow and difficult to use, leaves an unpleasant odor behind, and takes up huge amounts of time, money and energy. Yet people queue up to purchase Litigation and leave Mediation on the shelf. Why?