

The Thoughtful Mediator

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In mediation we are well used to focusing on feelings and dealing with emotional energy, commonly expressed as anger, frustration, sorrow, irritation or hopelessness. Turning this energy to good use in resolution, through empathy, is a core and very effective skill. When parties feel better through being listened to and understood at an emotional level, they become better disposed towards changing and agreeing a way forward.

Change, however, can come about in more than one way. While how we feel affects our cognitive processing and our behaviour, there is a three-way reciprocation effect – changing any one of the stances affects the others. So, thinking more usefully about something acts on the feelings we have about it, reduces stress and can result in different behaviour. Similarly, a change in behaviour can lead to a change in feelings which can lead to a change in thinking.

Daniel Kahneman's recent book 'Thinking, Fast and Slow' offers some interesting insights for mediators working on the cognitive side of resolution. He describes two systems of thinking. System 1 is emotional, gut-instinct and speedy. It's probably what we think of as 'animal intelligence' and can be very useful in situations where we need to react quickly. System 2 is rational, slower, and oversees System 1 reactions, providing a much more rigorous response. It is what we tend to see as 'human intelligence' and has undoubtedly been the type of thinking which has led to many of the breakthroughs in science, medicine, technology and philosophy.

We use both systems but each has its drawbacks. System 1, being quick, jumps to conclusions on the basis of very little fact. It makes connections too easily where there may be no connections. As mediators we are familiar with parties discovering early in joint session how some assumptions they hold are incorrect. This changes the thinking which, in turn, changes how they feel, which in turn changes how they behave. This understanding of a wrong assumption is often the 'lightbulb' moment. Reality testing parties' assumptions yields useful advances.

But wait a moment ! Isn't System 2 supposed to be watching the System 1 responses ? If so, how did these wrong assumptions survive ? The answer is that System 2 does act as censor, but its drawback is that it is lazy and all too often agrees with whatever System 1 suggests. The customs official simply waves through the holiday crowds, so to speak. This slower type of thinking takes effort and we are so very easily distracted.

Kahneman's book has considerable empirical evidence to support his views and one example is a study of eight parole judges and their decision-making. The judges spent all day reviewing applications for parole with an average time of six minutes on each case. It was found that approvals reached 65% shortly after the judges had a meal, but had reached close to 0% by the time that their next meal was due. It appeared that the default position adopted by the judges was refusal, and this was more likely to be the result as the judges became tired and hungry. The conclusion was not that hungry judges are vindictive, but rather that reasoning requires energy and the type of reasoning needed in hearing parole requests requires a good deal of energy. Note that this is physical energy (i.e. glucose) rather than just what we call 'mental energy'. For mediators working on the parties' cognitive stance, therefore, make sure to provide not only breaks but also energy boosts in the form of biscuits, fruit, chocolate and other nibbles such as jellybeans!

Kahneman also refers to a simple puzzle to test our intuitive responses. Without thinking this through, what is your answer to the following puzzle ? A bat and a ball cost €1.10. The bat costs one euro more than the ball. How much does the ball cost?

The lesson is that intuitive responses can often be wrong, while a more thoughtful response requires energy and a focus that we just may not be up to right now.

For mediators, there is a rich vein of ore in the parties' thinking which is worth examining in detail. What assumptions have been made, not just about the conflict but also about other matters – what responsibilities do you think employees have in the workplace, how do you think neighbours should live

side by side, what do you think is the right thing to do when a marriage breaks down?

Be aware also of your own situation as the mediator. Does your System 1 jump to conclusion too quickly about the parties ? Are your cognitive tasks (e.g. formulating the right question) too onerous and are you lacking in energy or rest ? Remember, the mediator can call breaks for themselves as much as for the parties.

And, if you think of it, make sure to have a few jellybeans.

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