
Kluwer Mediation Blog

Mediator = Manipulator?

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The word “manipulation” has a bad name. It is usually used to denote devious and underhand behaviour. If we say that someone is being manipulative or that someone is a manipulative person then we are usually disapproving.

Mediators are manipulators, and master mediators are master manipulators. I respond here to [Rick Weiler's recent post](#), in which he presented the idea that tough and even abusive mediators may well get better results. I found this rather repulsive when I first read it, and I would not recommend mediators insulting their clients. I certainly object to the underlying idea that whatever it takes to get to settlement, it is settlement that counts. The research Rick Weiler quotes states that “hostile mediators can positively influence negotiators’ motivation and ability to resolve conflict.” Yes, sometimes we feel we have to ask difficult questions, and sometimes we state what we see as hard truths, but I would like to think I never treat my clients disrespectfully and even thereby coerce them to settlement.

And yet, a mediator who, as in Rick Weiler’s scenario, tells his or her clients he or she is not willing to have time wasted so they had better work hard on sorting out their dispute (if such a mediator exists), is using this kind of language because he or she wants his clients to “move on and move forward,” something many would see as a perfectly genuine goal of mediation. The mediator wants the clients to do something, and he or she uses this tough strategy for this end.

And so: when I sit between my clients and the door to make it just a little harder for them to walk out, or when I engage with one person I feel needs more support, or who I feel needs to be heard, or who needs to be kept in check (whatever my hypothesis is), then I am manipulating. And I am doing so because I believe that this will increase the chance of a good process and a good result.

When I practice the skills of active listening, and invite clients to tell their stories, and show that I want to understand how they felt, I am doing this because I am hypothesizing that this will be good for the outcome of the mediation. I am even taking the audacious step of assuming it will be good for the people whose concerns need to be heard. That it will transform them, even. Thinking about it, this is pretty presumptuous.

When mediators suggest caucus, they are manipulating. When mediators ask about

the alternatives to agreement, they are manipulating. When mediators ask their clients to stick to an agreed agenda they are manipulating. When mediators summarize the main issues or interests, but cleverly leave out what they think might not be helpful just at this moment, they are manipulating. And when mediators do not use empathy, but choose to “move on,” they are manipulating.

Mediation is in essence the art of manipulating people, isn't it?

Well, yes it is. Webster's dictionary defines manipulation as “to manage or utilize skillfully.” I suppose mediators can go along with that. A further definition is “to control or play upon by artful, unfair, or insidious means especially to one's own advantage.” Well, as a mediator I do “control or play upon by artful means” (or try to), but are these means sometimes “unfair” and “insidious,” or even to my “own advantage”?

There are important questions here about the relationship between a mediator and his or her clients. What right do we have as mediators to expect clients to gain a new perspective, and yet this is what we do, all the time? What right do we have to expect them to think of creative solutions? What right to ask them to see the other party's point of view?

A courtroom judge does not do this. He or she listens to the arguments and decides according to the law. It is not a judge's main aim to change or persuade the parties in any way. It is a mediator's aim to do precisely that.

I draw several conclusions.

First of all, I ask myself if am I really interested in the people I work with as people, or more in their role as figures in the process of the mediation (as in the game of chess, for example). If the latter, it would be time to retire from the profession. Do I really care?

Secondly: I need to know that I cannot care too much, that there are limits and thus things that mediation cannot achieve, and that I cannot achieve as a mediator, and that I should not be trying to achieve these things.

Thirdly: I have to tread carefully. All the time, when mediating, there can be three storylines going on in my mind: the first is the storyline the parties are presenting and which I am trying to understand, the second is the storyline in my own mind in which every intervention I try, every question I ask, every approach I take (whether I am the empathetic nice guy or the tough dealbroker) is something I am doing consciously. I need to be aware that I am doing x, y or z, and to choose that intervention with a readiness to drop it at any moment if it isn't working. It is like a film running constantly in my mind and that film is the process: what am I doing now, what am I asking now and why, etc. (The third story line concerns my own emotional reactions and my efforts to stay aware of them so as not to let them confuse matters, but I will have to write another blog about this theme, as it would distract here).

And my practice? Not insulting, no. Hopefully not coercive. Respectful yes. Not hell-bent on settlement (and not measuring my success as a mediator by settlement rates

calculated in percentages), but nonetheless focused on solutions. Occasionally insistent. Sometimes submissive.

Above all, I say openly to my clients that I will be asking questions and guiding process, and if I ask or suggest anything they are not comfortable with, they should ask me to explain it, or resist it or refuse it and ask for something else. I do not say this just in an opening statement (which is probably the most overrated thing we learn in much mediation training), but repeat it throughout the mediation, at moments when my hypothesis on good manipulative process tells me that it is opportune to do so. I often make my reasons for a process-based move transparent.

In other words, I tell the parties that I will be manipulating them and I then ask them to influence the ways in which I do it. After all, getting a buy-in on your own manipulative process is another of the artful mediator's manipulative tools, isn't it?

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