

Applying Principles of Leadership Communication to Improve Mediation Outcomes

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This article suggests that mediators should develop leadership abilities and an understanding of human behavior in order to work productively with difficult parties. Mediators need to understand why parties and counsel behave as they do in mediated negotiations—why some make ultimatums, others are unwilling to commit, and others are ready to agree to any offer. This article suggests that the Q4 Dimensional Model of Behavior—a graphic tool used in business management that divides human behaviors into four categories—will help mediators understand different behavioral types in order to select appropriate strategies to advance the mediation.

You are the mediator in a complicated mediation with a history of acrimonious litigation involving multiple parties, their counsel, and representatives and counsel for an insurance carrier and a reinsurer. The parties came to the mediation with widely different monetary demands and offers. The joint mediation session began this morning. You completed your presentation of the mediation process, you described your role as mediator, and you informed the parties of the rules of conduct that you would like them to follow. As you turn to ask one of the plaintiffs for its opening statement, plaintiff's counsel bluntly announces, "I'm not sure why we're here. I have no intention of settling this case for less than a nominal haircut from our original demand. I can try this case and win it 99 out of 100 times. I really have nothing more to say. That's my deal, take or leave it." He sits back in his chair waiting for a reaction. Within seconds, a buzz of whispered conversation generates between defense counsel and their client representatives. Only the lawyer for the reinsurer seems unperturbed and shows no reaction. A couple of defense attorneys start to gather their belongings in preparation of walking out. Suddenly, another defense lawyer admonishes plaintiff's counsel, indicating that nothing will be resolved until outstanding discovery requests are fulfilled. Finally, another attorney, clearly avoiding the conflict, indicates a strong desire to concede to some of the plaintiff's demands.

Has this happened to you? The process has barely started and already there has been a complete breakdown in communication. Plaintiff's counsel began by engaging in very argumentative, assertive and negative behavior, triggering equally negative behavior in defense counsel. The attorneys' verbal and physical actions impaired the mediation, potentially dooming it to failure. As a mediator, how do you react? This article posits that good mediators react like good leaders, using leadership skills to keep the parties focused on dispute resolution.

What does being a good leader entail? In general, it means having an understanding of the stakeholders involved and being able to motivate

Like good leaders, good mediators motivate people to work through difficult problems in order to achieve particular goals.

them to diligently pursue one or more common goals. Leaders make it a priority to obtain and assess information needed to achieve a group's goals, such as higher production or sales levels. This involves identifying the interests and needs of the group, determining whether the group has sufficient resources, and anticipating possible barriers to achievement of the group's goals. Good leaders motivate and encourage stakeholders to explore potential solutions to achieve these goals.

The similarity between a good leader and a good mediator is striking. Mediators are tasked with helping parties with disparate views work together to find an acceptable, confidential, non-litigated solution to their dispute.¹

This article suggests that one proven leadership tool, the Q4 Dimensional Model of Behavior, developed by Drs. Robert Lefton and Victor Buzzota, can help mediators motivate mediation participants to remain committed to resolving their dispute and at the same time improve their own leadership skills. The Q4 model, which categorizes different types of communication behaviors, was designed to enhance leadership communication among employers, employees and peers, and thereby increase harmonious and efficient business decision making and management.² It can also be easily applied to mediation.

The Q4 Dimensional Model is depicted by two charts (Figures A and B). Figure A posits that individual behaviors fall into one of four quadrants, defined by two axes. The X-axis represents a spectrum of behavior, with hostile, unresponsive and disengaging behavior on one side, and warm, responsive and engaging behavior on the other. The Y-axis represents another spectrum,

tion. Creative participation in mediation and working “outside the box” is difficult for them. They worry about making a mistake. As an example, insurance adjusters who are unsure of their authority, display this behavior. They fear making a wrong decision or one that may have an impact on their continued employment.

Q3 behaviors include being social and friendly, good-natured, and quick to compromise and appease. The negotiator who simply wants to avoid confrontation and negativity is using Q3 behavior. While this behavior initially seems conducive to dispute resolution, it often falters through an inability to commit because people who exhibit Q3 behavior can also be disorganized and indecisive.

People exhibiting Q4 behaviors are the most rewarding with whom to work. They are confident and open-minded, inquiring and responsive, interested in the views of others and willing to collaborate in order to reach common goals. They make good leaders, good mediators and good

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with dominant and direct behavior on one side and indirect, passive behavior on the other.

The quadrants are:

Q1: Dominant, hostile, unresponsive behavior;

Q2: Submissive, withdrawn, unresponsive behavior;

Q3: Submissive, warm and engaged, but responsive behavior; and

Q4: Dominant, warm and engaged, but responsive behavior.

Figure B elaborates on the concepts of direct/indirect, active/proactive, and responsive/nonresponsive behavior.

Q1 behaviors are exemplified by being demanding, forcing ideas, and failing to listen or consider other positions. People who exhibit Q1 behavior appear angry and unreceptive to solutions, having no problem interrupting while others are speaking. They rarely give credit to others, highly valuing their status and adamant that they understand the only path to settlement.

People who exhibit Q2 behaviors tend to be aloof, non-committal, guarded and pessimistic. They procrastinate, often appearing insecure, indecisive and lacking in self-confidence. In negotiations, they have little or nothing to say and seem unreceptive to the prospect of media-

tion. Although they are willing to consider the weaknesses and strengths of their case and participate in the process of identifying needs and interests and devising and considering possible solutions to the dispute, they will not compromise quickly in order to appease other parties.

Keep in mind that the descriptions in the Q4 model are generalizations. In reality, behavior varies as negotiators and mediators communicate in different ways at varying points in the mediation. Their communication behavior may shift from one quadrant of the Q4 Model to another. Therefore, self-monitoring by the mediator is needed to guard against frustration and anger when the mediation is not going smoothly. Mediators need to continually work toward Q4 behavior as they manage the resolution of the dispute.

Using the Q4 Dimension in Mediation

The Q4 Dimensional Model can be used to train mediators to recognize the numerous changing behaviors they will encounter in mediation. As certain behaviors are identified, mediators choose and implement a strategy for dealing with the exhibited behavior that will keep all parties on track toward resolution. Mediator strate-

gies center around the use of “probes” in order to elicit, confirm, clarify or obtain information. Probes may include:

- *Asking Open-Ended Questions:* The mediator asks open-ended questions that pleasantly but firmly acknowledge the party’s comments, while expanding the inquiry to obtain more information or clarification. These questions should not direct the party to a specific conclusion. That is why leading questions and other types of manipulative probes should be avoided. They are highly ineffective methods of behavior management. People who exhibit Q1 and Q2 behaviors will not be pinned down by leading questions and can

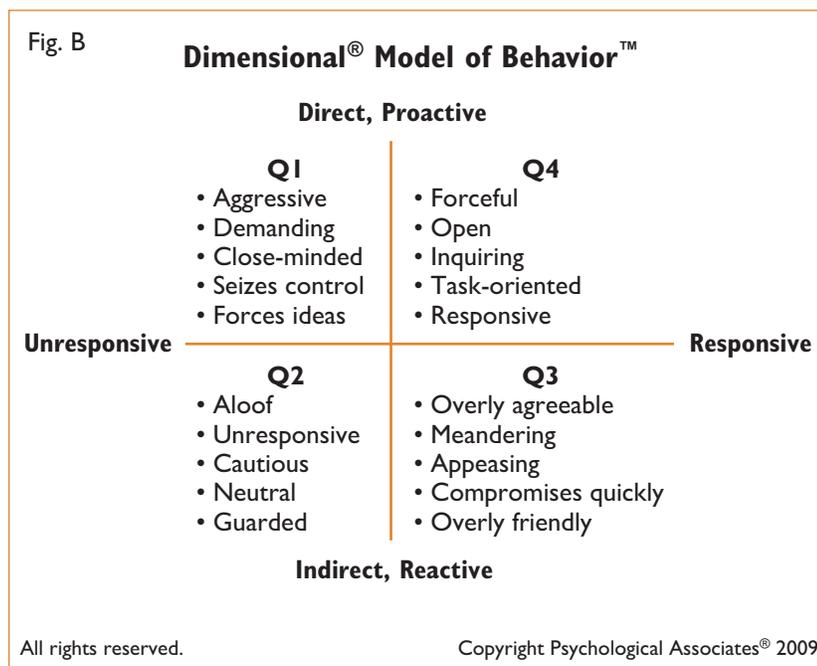
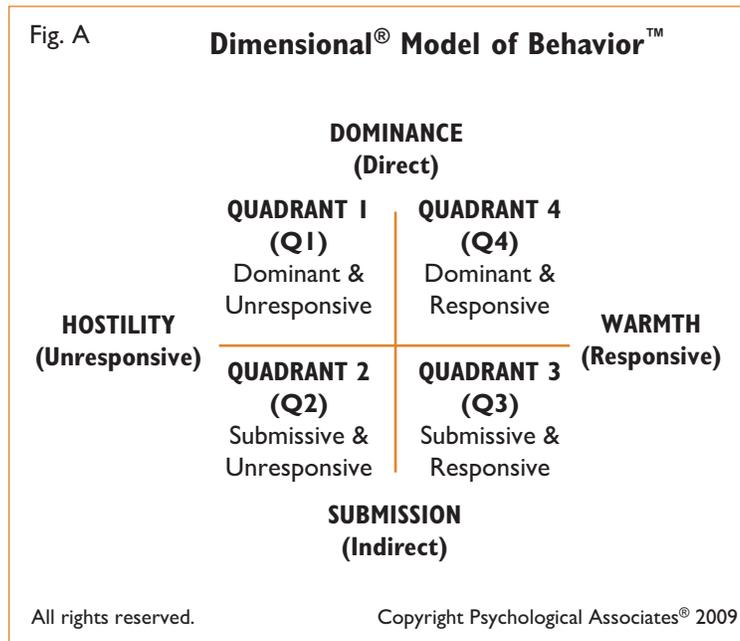
resent manipulative probes, such as, “You do want to resolve this, don’t you?”

- *Reframing a Party’s Statement:* The mediator summarizes what he or she believes a party has said (such as in a response to an open-ended question) and then asks whether this is indeed what the party meant. This combination of summarizing and questioning can delineate areas of agreement and identify disputed issues. Reframing can be very useful because a party is likely to be more receptive to listening to the elements of its position.

- *Using the Pause:* This technique is often used when a party or counsel engages in overt Q1 behavior. Instead of responding verbally, the mediator says nothing, while maintaining a pleasant or neutral demeanor. There are few actions as effective and disarming as a pause, particularly when used in response to ranting, emotional behavior, or when a party tries to seize control of the process or vehemently force its position on others.

- *Using Neutral Statements and Questions:* The mediator makes encouraging statements, for example, “Go on ... tell me more,” to motivate disclosure of information, and asks neutral questions to probe a party’s underlying theory of settlement. An example is, “Will you help me understand how you arrive at that conclusion ...?” Neutral statements and questions encourage participation in the process without being condescending or judgmental regarding a party’s position in the resolution discussion.

- *Making Reflective Statements:* Reflective statements express empathy. For example, saying, “I can understand how you see the issues ...” acknowledges a party’s feelings and encourages the venting of interfering emotions that, if not expressed, could derail the progress of the mediation. The mediator can then move the discussion to the issues that need to be resolved.



We can now apply the Q4 model to the participants in the hypothetical at the beginning of this article. Plaintiff's counsel unquestionably displayed Q1 behavior by issuing an ultimatum, indicating that he was unreceptive to negotiation. His use of an ultimatum when asked to present an opening statement was direct, dominant, proactive, and aggressive behavior. Using the language of Figure B, this attorney "seized control" of the proceedings and made clear that for him, settlement could only take place on his terms.

What about the defense counsel who began packing their bags to leave? We can presume from their behavior that they were angered and insulted by the ultimatum as well as the unresolved discovery dispute. Their behaviors can be characterized as Q1 when they acted out the acrimony of the litigation and as Q2 when they silently held in their anger as they prepared to leave.

What kind of behavior did the unengaged reinsurer's counsel display? His lack of interest in how the proceeding turns out suggests unresponsive Q2 behavior. This is not an uncommon posture for reinsurers, as the issue of their liability is often not at issue until later in the case. Then there is the attorney who is already offering concessions to return to the table. His willingness to please is classic Q3 behavior.

Finally there is the mediator's conduct to consider. His first priority in the hypothetical is to control his own reactions. Since Q1 behavior often triggers Q1 or Q2 behavior in others, the mediator must not succumb to Q1 behavior by allowing his anger or frustration to rise. Doing so would just fuel the fire and defeat the purpose of advancing the mediation.

Mediators faced with Q1 behaviors must remain flexible and confident, manage resistance to the collaborative mediation process and subtly create receptivity. This requires enormous patience. A technique a mediator can use to move the Q1 negotiator away from a hard line position is to seek information and clarification by asking a series of open-ended questions. After receiving a response, the mediator can use the reframing technique to summarize the Q1's position and then continue to ask open-ended questions to seek additional information in areas of continued misunderstanding or disagreement. Frequent pauses are also helpful, particularly when a Q1 party tries to control the communication or vehem-

There are few actions as effective and disarming as a pause.

mentally assert a position.

Dealing with Q2 behavior is difficult and time consuming. Our hypothetical Q2 negotiators are likely to be less receptive to settlement discussions even after they decide not to leave. Their communication is apt to become intensely negative or they may choose not to communicate at all, shifting between Q1 and Q2 behavior. As always, it is important for the mediator to continue to probe for

common areas of concern and interest. The mediator can make reflective statements to encourage venting of interfering emotions, which can make it possible for these negotiators to resume their participation in the process. The mediator can also use the pause technique if the Q2 party begins to engage in pompous Q1 behavior. When confronting Q2 behavior, the mediator needs to remain communicative.

The party exhibiting Q3 behavior in the hypothetical may seem easier to deal with because he is friendly and outwardly expressing a desire to settle. Because Q3 behavior often masks uncertainty and fear about the terms of a possible settlement, mediators usually need to spend a considerable amount of time making sure that a party exhibiting this behavior has the authority to settle or the ability to obtain that authority as settlement discussions progress. The mediator may use leading questions to make sure that the party's failure to provide concrete solutions does not undermine the resolution of the litigation.

Conclusion

The parties may not reach a negotiated settlement every time, but by using the Q4 Dimensional Model, mediators will learn to recognize different communication behaviors and understand how they change during mediation. This will prepare them to quickly and appropriately respond to communications that have an adverse impact on the process, with techniques that encourage genuine receptivity to mediation. Mediators who desire to improve their leadership skills will find the Q4 Model to be an enormous asset. ■

ENDNOTES

¹ For example, Rule 10.220 of the Florida Supreme Court Rules identifies mediator responsibilities to include reducing obstacles to communication, assisting parties in identifying issues in dispute, exploring alternatives for resolution, and facilitating a voluntary settlement on agreed terms.

² The Q4 Dimensional Model is aptly described in R.E. Lefton, & V.R. Buzzota, *Leadership Through People Skills* (McGraw Hill 2004).