

NE-ACR Newsletter

Vol. 11, No. 1

Winter 2005

Social Psychology and Mediation: Theory to practice

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Mediators manage a dynamic process in which individuals working within a group setting explore interests and solve problems. Thus, mediators can benefit by learning from other experts who also study individuals and groups. Social psychology is the study of individuals' behavior in groups: how people acquire and process information and how people act and react with others. Learning from the theories developed by social psychologists can assist mediators in applying those principles to their practice.

In the Fall 2004 NE-ACR Newsletter, Gajan Retnasaba discussed social psychology theory concerning three types of biased assimilation of information: overconfidence, a self-serving world view and reactive devaluation. What follows is an article in which a social psychologist describes five theories and principles developed by social psychologists (naïve realism; anchoring; reactive devaluation; loss aversion and framing) and a mediator offers some tips for applying those principles to the practice of mediation.

Naïve Realism

The theory of naïve realism, developed by Lee Ross and his colleagues (Ross 1995)) starts with the understanding that people believe that they see the world as it really is. They therefore assume that most others share their view of the world (since it is the accurate one), and that those who do not either do not have the proper information, are being stubborn, or have some bias or ideology that prevents them from seeing the world

objectively. Thus, while people acknowledge that others have biases that prevent them from viewing the world objectively, they do not acknowledge that their own perceptions might be similarly biased.

Relevant corollaries from the theory of naïve realism:

- people assume most judges and neutrals will share their view of the world
- people are likely to be confident that providing the right information to others who do not share their views is likely to convince them of the "correct" view
- recipients of that information, however, are actually likely to assimilate the information in a way that makes the recipient more certain that their own viewpoint is in fact correct

Mediator's Takeaway

Many mediators will recognize naïve realism through their own experiences. For all mediators, the theory provides powerful tools for reframing the narrative as it unfolds in the course of the mediation. Knowing that the apparent gulf between the parties is a gap resulting from normal human nature makes it easier for the mediator to help the parties. The mediator will understand that each party is captive to their own perceptions.

Understanding this is central to the mediator's ability to remain neutral-to resist the trap of choosing "right" from "wrong." The mediator also understands that, however difficult, changing perceptions may be the only way for a party to evaluate new information. This may be as simple as asking a party to imagine the situation from the vantage of the other party; perhaps even asking the party to sit (literally) in the chair of the other party. Even though many mediators understand these techniques intuitively, naïve realism provides a logical framework for understanding why parties persist in having different views. For some, mediation can be a process to help the parties go beyond naïve realism to a more nuanced view of the world and an appreciation of the fact that what we see depends upon where we sit.

Anchoring

Thinking takes energy. Our brains are designed to limit the energy expended whenever possible. We do this by using mental shortcuts, or heuristics, to solve certain types of problems. The more our brain is being taxed (by stress, by other tasks, etc.) the more likely we are to resort to mental shortcuts to do some of the thinking work for us. It is important to note that we do this because it is generally an effective strategy; the few times these shortcuts lead us astray are worth the saved energy overall.

One such heuristic is called the anchoring heuristic, or sometimes anchoring and adjustment. When asked to guess at a number we will sometimes use another number as an anchor, and then adjust our estimates accordingly-deciding first whether the number we are trying to guess at is higher or lower than the known anchor, and by how much. This is often helpful when the anchor has some meaning. Unfortunately, we may use the

heuristic even when the anchor is random, and routinely we do not adjust enough from that anchor.

In a study designed to demonstrate the possible mistakes that can arise from this mental shortcut (Kahneman & Tversky 1974), participants were asked to guess the percentage of African countries in the United Nations after first spinning a wheel with numbers 1-100 printed on it. The number which came up on the wheel served as the anchor although it was seen by all participants to be random-that is, the anchor contained no information that might actually help them solve the problem. So, for example, a participant might spin the wheel and land on the number 5. She would then be asked, "Are there more or fewer than 5 percent of African countries in the U.N.? What is the percentage?" The results showed that participants who spun a lower number gave lower estimates for the percentage of countries in the U.N. than participants who spun a higher number.

One simple experiment: ask two small groups (or individuals) "How long (in miles) is the Mississippi River?" With one group, add the following: "Is it longer or shorter than 500 miles?" With another group, add the following: "Is it longer or shorter than 3,000 miles?" When both groups give an answer expressed in miles, each will anchor on the "information" contained in the second question. The first group will invariably answer: "Longer than 500 miles" and when pressed for a specific number, will almost always be lower than the second group. This works even when both groups hear the questions being asked of the other group.

Mediator's Takeaway

From Jim: I first heard of this principle of anchoring as the Mississippi River experiment. At first, I could not believe that merely asking the second question (longer or shorter than 500 miles) would actually influence the result. It does. Whether teaching law students, young associates or seasoned trial lawyers, I have found no group that is immune to the principle of anchoring. This is powerful stuff.

In a mediation, one recurrent problem is initiating the actual substantive settlement dialogue: "*What is the demand?*" "*What are they offering?*" "*I don't want to move first because I don't want to bid against myself.*" "Would you like a better answer to this dilemma than the weak comment, "*Well, somebody has to start the bidding?*"

Understanding anchoring gives the mediator a better tool to work with. The mediator can explain to each party that the other party will be influenced by whatever proposal is put forth. This explanation may encourage one party to make the first move.

There is a profound advantage in being the first mover in a settlement negotiation. The responding party must react to the offer or demand presented. Whether they realize it or not, the responding party is reacting in the framework created by the demand or offer. They will anchor to a number offered even though they may not want to and may not realize that they have done so. "How long is the Mississippi River?" "What is this case

worth?" Is it worth more or less than [a settlement demand/offer]?" You can ask each party, "Wouldn't you prefer to be the one to frame the discussion leading to the answer?"

Reactive Devaluation

Another heuristic particularly relevant to negotiations is an assumption many make in a conflict situation that what is good for the other side must be bad for their side, and vice versa. Like all heuristics, this is sometimes a helpful assumption-it may help us evaluate evidence in situations with incomplete information. However, it is not always true, and thus can lead us astray.

Reactive devaluation was first labeled and demonstrated by Ross (Ross 1995). If you have a choice between two concessions you can make to me, and you offer one, I will assume that you offered the one that was better for you, and therefore worse for me, and will instantly prefer the non-offered concession to the offered one. Thus I value your concession more before you offer it than after.

Mediator's Takeaway

Reactive devaluation as a concept may be the most well-known to mediators. We encounter it right from the beginning of the mediation process. When one party proposes the name of a mediator, the other party may reject it on no ground more substantial than reactive devaluation. Those who train mediation advocates have learned to counter this heuristic by pointing to positive advantages that may accrue to the responding party when the mediator is nominated by the other party. *"The party who nominated the mediator trusts the mediator already. That may be good for you if the mediator is called upon to point out the weaknesses in their case or to help them understand the benefits of your settlement proposal."* When the other party proposes a certain mediator, don't oppose automatically.

Mediators aware of this phenomenon can also assist the parties when making a settlement proposal or suggesting a new approach to settlement. When a novel settlement approach is made, a frequent first response may be: *"Is this their idea?"* That question may be a prelude to reactive devaluation. In some cases the best proposals are those that just appear, not owned by either party and not presented as a mediator's proposal. Sometimes I use the metaphor of the magic duck of Groucho Marx: it descends from the ceiling with the prize in its beak. Owned by no one, the proposal is available for all to consider on its own merits.

Loss Aversion and Framing

Kahneman & Tversky (1981) provided another important discovery about the ways in which people's behavior is less than perfectly rational. One aspect of behavior explained by their work is that people make different decisions in risky situations when the situation is framed in terms of the gains they would receive rather than in terms of the losses they would incur. Specifically, people are risk averse when a problem is framed in terms of a

gain, and risk seeking when framed in terms of a loss. So, people generally would rather have \$5 guaranteed than flip a coin for a chance to win either \$10 or nothing at all. (Statisticians would point out that even this preference is irrational, as the expected outcome of the two options is identical.) However, rather than incur a guaranteed loss of \$5, people would rather flip the coin for a chance to either lose nothing or lose \$10.

More broadly, loss aversion is one indication that people pay as much attention to the framing of a situation as they pay to the facts. For example, Ross and colleagues (Ross & Samuels, 1993, unpublished manuscript) demonstrated that people were more likely to cooperate in a game labeled "The Community Game" than they were to cooperate in a game labeled "The Wall Street Game"-even though the rules of the games and the advantages of cooperating were the same.

Mediator's Takeaway

Loss aversion is both real and powerful. With that in mind, a tip for mediators: *Frame proposals as gains*. Give the party something very concrete that they have now earned from the mediation process that they risk losing by walking away from the mediation. Some mediators do this by presenting an interim settlement proposal in writing and handing the document directly to a party. If the party decides to reject the offer, the mediator requests return of the document embodying the offer.

Re-framing is one of the most-used tools in the mediator's toolbox. When we know that most problems arise from perceptions based on each party's point of view, re-framing is the most adaptable tool for helping parties change perceptions.

Conclusion

Social psychology provides rich resources for mediators. Reading some of the literature and the experiments of social psychology leads to new insights and understandings of how people think and act. Sometimes, what social psychologists describe is what you already know. However, you may often be surprised to learn how the mind really works and how seemingly minor adjustments can exert powerful influences on how people behave.

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