

MARRYING POSITIVE PSYCHOLOGY TO MEDIATION: USING APPRECIATIVE INQUIRY AND SOLUTION-FOCUSED COUNSELING TO IMPROVE THE PROCESS

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Positive analyses of mediation have been found in numerous studies of divorce mediation, community mediation, school mediation, parent-child mediation and organizational/labor mediation.¹ In a recent survey, even corporate counsel have said that mediation is their favorite process.²

Researchers of mediation in the criminal context have found that mediation has performed extremely well on a number of satisfaction scales, some of which are: whether the system was fair, whether the case was handled satisfactorily, whether the parties had an opportunity to tell their story, whether the parties' opinions were adequately considered, whether the judge or mediator was fair, whether the offender was held accountable, whether an apology or offering of forgiveness was given, whether the outcome was fair, and whether the outcome was considered to be satisfactory.

According to Barton Poulson, who reviewed the available empirical research on victim-offender mediation, victims said mediation "outperformed" courts on every issue except consideration of opinion, while offenders said mediation outperformed courts on all issues except satisfaction with the outcome. In no case did courts perform better than mediation.³

The successes of mediation are closely tied to the strength of the traditional mediation process, which invites the parties to "separate the people from the problem," encourages them to work "side by side, attacking the problem, not each other," and focuses not on positional bargaining, but on satisfying "underlying interests."⁴

The Traditional Mediation Model

The traditional mediation process involves a number of steps. How many depends on the model of mediation used by the mediator. However, in all mediations you generally will find these steps. First, the mediator begins with an introductory statement. Typically, this covers the purpose of mediation, the role of the mediator, communication ground rules, confidentiality matters, and the agenda for the session.⁵ Importantly, the opening statement emphasizes the voluntary nature of mediation and the parties' consent to continue with the mediation process.

The second step in the mediation process has the parties telling their individual stories in their own words about the dispute.⁶ This negative story telling has been considered a vital part of the success of mediation because the parties are able to vent their feelings and explain to each other how they view the facts and circumstances of the dispute. This type of direct, and sometimes emotional, party-to-party communication simply does not occur in court proceedings, which are orchestrated by attorneys in a question-and-answer format.

The third step in mediation has the parties identify the key issues in dispute and the underlying interests of the parties. The mediation then moves into a problem-solving stage that involves an exploration of options.⁷

The last step involves preparing a settlement agreement.

It can be seen from this outline of mediation that early on the process focuses on negative story-telling and then moves into traditional problem solving. I believe that there is great potential to improve this process by taking advantage of certain elements of positive psychology.

The Positive Psychology Movement

The positive psychology movement began as a result of the belief among some psychologists that the field of psychology had “created a deficit bias.”⁸ They argued that psychology’s emphasis on human deficiencies and pathologies merely guided practitioners to bring people to what might be considered a state of normal health. But it did not help people to transcend normalcy.

Positive psychology, by contrast, emphasizes positive experiences and traits. It studies how people flourish, focusing on wellbeing and the “good life.”⁹ As a result, it has been said that “positive psychology calls for as much focus on strength as on weakness, as much interest in building the best in life as repairing the worst, and as much attention to fulfilling the lives of healthy people as to healing the wounds of the distressed.”¹⁰ This is why positive psychologists and researchers tend to focus on positive subjects such as forgiveness, resilience, virtuousness, gratitude, appreciation, and fostering high quality relationships, strength-based development, leadership and management.¹¹

One of the axiomatic principles of the positive psychology movement is expressed in the following statement about the traditional problem-solving approach: “When we talk in earnest about a problem, the problem becomes more increasingly real and increasingly formidable.”¹² David Cooperrider, a founder of the “appreciative inquiry,” and his co-author, Suresh Srivastva, say that in traditional problem solving, people assume that something is broken and needs fixing. Thus in their words, “the function of problem solving is to integrate, stabilize, and help raise to its fullest potential the workings of the *status quo*.” They see limitations in this process because this goal implies that “one already has knowledge of what ‘should be.’” This, they explain, is an “inherently conservative” approach.¹³

As a result of this conservatism, Cooperrider asserts that traditional methods of problem solving are “painfully slow,” “rarely result in new vision,” and “are notorious for generating defensiveness.”¹⁴

Researchers have found that expressing negative emotions initiates an escalating cycle of emotions in the parties that makes resolution of conflict more difficult. One researcher explained this process in neurological terms:

Every ... anger-provoking thought or perception becomes a minitripping for amygdala-driven surges of catecholamines, each building on the hormonal momentum of those that went before. A second comes before the first has subsided, and a third on top of those, and so on.... Anger builds on anger.¹⁵

As this cycle builds, “edginess” and arousal increase dramatically. Once agitation reaches a high level, the parasympathetic response may take up to 48 hours to restore the body to its original state of calm.

Researchers know that high stress levels hamper creativity and cooperative behaviors. A brain scan of a person who is upset or anxious shows high activity in the amygdala and the right side of the prefrontal area while a brain scan of a person who is in a good mood indicates activity in the amygdala and the left side of the prefrontal area.¹⁶ Activity on the right side of the prefrontal cortex nourishes a negative cycle of emotions, while the right side nourishes positive emotions.

This strongly suggests that allowing participants to share their negative stories early in the mediation process could trigger enough emotion to limit the effectiveness of later brainstorming and problem-solving activities.¹⁷

Thus, it would seem beneficial to find an alternative that has a more positive effect on the participants.

The positive emotions emphasized in positive psychology could have a significant effect on human ability. The transition from negativity to optimism and positive emotions has been found to contribute to

motivation, social helpfulness, effective leadership, productive relationships, creativity, resilience, problem solving, improved decision making, learning, and facilitating change.¹⁸ If these positive emotions could be harnessed during mediation, they might facilitate the resolution of the conflict .

According to one researcher, “Embedded within the chaos that fosters conflict is the powerful energy of passion that, if properly harnessed, can lead to progress through actionable agreement.”¹⁹ Two practice-oriented outgrowths of the positive psychology movement that could be capable of harnessing this emotional power are the “appreciative inquiry” and solution-focused counseling.

The Appreciative Inquiry

The appreciative inquiry is an organizational development methodology that seeks to foster growth and change by identifying and using the central strengths and resources of an entity or individual.²⁰ The appreciative inquiry takes organizations and individuals through four stages called the “4-Ds”: discovery, dream, design and destiny. First, they discover the factors that “give life to the organization.” Second, they dream about what the organization ideally could become. Third, they design their social architecture in a way that would facilitate the desired future. Finally, they seek to make that future happen.²¹

This process seems transferable to alternative dispute resolution mechanisms (ADR) in general and to mediation in particular because ADR is consistent with a founding principle of appreciative inquiry.²² According to Cooperrider, one of the foundational principles of this methodology is that “relationships thrive where there is an appreciative eye—when people see the best in one another, when they can share their dreams and ultimate concerns in affirming ways, and when they are connected in full voice to create not just new worlds but better worlds.” The ability to see the best in others, even in the midst of conflict, requires individuals to reconstruct how they see one another. They need to adopt a different mental attitude, as one of Dostoevsky’s characters said, in order to “refashion the world.”

It has been said that positive psychology, and in particular appreciative inquiry, helps people discover “positive capacity” in others, which in turn triggers “an increased capacity to “perceive the successes of another, “access from memory the positive rather than negative aspects of the other,” and “perceive ambiguous situations for the positive rather than the negative possibilities.”²³ Accordingly, the appreciative inquiry can influence people “to respond to the positive images that others have of them.”²⁴ This leads to more social behavior and creates greater alertness, enthusiasm, determination, attentiveness, and energy among the interacting individuals.²⁵

Solution-Focused Counseling

Solution-focused counseling is a type of therapy that focuses on peoples’ strengths and their potential for accomplishment without regard to any limitations they may have. The basic premise is that people have “a reservoir of wisdom learned and forgotten” that they can use to overcome the problems they face.²⁶ In solution-focused counseling, counselors help their clients to tap into this reservoir in order to positively deal with and resolve conflicts in their lives.

For example, some questions they might ask a client are: How will your life be different when you have solved the problem? What is different about the times when you do not have this problem? Have you ever solved a similar problem or overcome a similar challenge in the past? How did you do it?

Because this technique focuses on strengths and abilities that an individual already possesses, it is innately positive. Therefore, it has the potential to trigger the kind of positive thinking that is needed to diminish conflict.

Improving Mediation

Adding appreciative inquiry and a solution-focused discussion to the traditional mediation process could infuse the process with greater positive emotion, unleashing the creativity and collaboration necessary to redirect the parties' focus from past difficulties towards a more positive, resolution-oriented future.

The potential for using the positive energy and strength-building that these two methodologies encourage in a mediation setting is exciting to ponder.

Instead of allowing negative storytelling to follow the mediator's opening statement, the mediator could meet privately with each side and focus on fostering appreciation of the other side. For example, the mediator could ask the caucusing party to identify the positive traits and behaviors they have witnessed or hope to find in the other side. Possible questions that a mediator might ask include:

- What was it about _____ that led you to decide to work with him/her on this project?
- What is it about _____ that leads you to believe that this mediation process will be successful?

The mediator could also ask:

- Tell me about a time when you and _____ were able to successfully work through a conflict in the past. What was it about the other person that made this possible? What did you do to invite the person to respond in this way?
- What has led you to have enough confidence in _____ to be willing to deal with this conflict through mediation?
- What do you believe about _____ that leads you to feel that a win/win agreement might be reached?
- In similar conflicts with others, what have you done that brought the conflict to a positive resolution?
- Tell me about a time when you felt really good about how you solved a conflict with another person that caused the relationship to flourish when you initially did not think it would.

These questions encourage the parties to think more positively about the person they will be negotiating with in mediation. This can only foster positive effect and diminish the tension and defensiveness. Thus, it could be a powerful tool for mediators.

While this initial discussion may prove valuable in a private caucus with each party, additional value is likely to accrue from engaging the parties in an open discussion of these items either after the initial caucus or following story-telling. This open discussion could break down negative perceptual barriers and encourage more positive collaborative interaction throughout the process.

Following the initial invitation to participate in positive discourse, the mediators and the parties would then determine whether to engage in storytelling or to move directly to problem solving. In many cases, telling one's story is essential for the individual to move beyond the experience and achieve both personal and interpersonal resolution. However, storytelling, when preceded by the type of positive conversation described above is likely to result in diminished negativity. In addition, the mediator may establish ground rules that respect the positive context that has been established to ensure that the process proceeds in an affirming way.

As for the solution-focused methodology, the most obvious stage in which the mediator could employ this technique is the problem-solving phase. In doing so, the goal would be to put the parties in a better frame of mind to come up with potential positive solutions to resolve the dispute. As was the case in the process discussed previously, this would largely be achieved through the use of affirming questions. Possible questions the mediator might ask during this phase might include:

- Have you ever solved a similar conflict in the past? If so, how did you do it?
- What was different in your life before you experienced this conflict?
- How do you think your life will be different when you resolve this conflict?

In order to generate possible solutions, the mediator could ask:

- What is the most positive outcome that you can realistically envision happening as a result of this mediation?
- What would it take for this to occur?
- Imagine that five years have passed, this problem is solved and the relationship between you and _____ is positive in nature. What would have happened to bring you to this place?
- What have you done in the past with others whom you care about to solve conflicts you experienced?
- What things, if done by the other person, would you find most affirming and beneficial in resolving this conflict?
- What things do you think you could do that would most positively contribute to the resolution of this conflict and the affirmation of the other person?
- What could you do that would most likely invite the other person to engage in the process in a way that would improve the quality of the mediation process and lead to a positive resolution?

These questions have power to affect the emotions of the parties in a positive manner. They invite the parties to step back from their own positions in the conflict and suggest a more empathetic and positive way of viewing each other and the conflict.²⁶ This can broaden the parties' perspectives and their understanding of the dispute, increase their commitment to the mediation process, and lead to greater creativity in envisioning possible solutions.

It is worth mentioning, however, that while appreciative and solution-focused questions may prove to be most valuable during the problem-solving or solution-seeking phase of mediation, they can be used throughout the process because they encourage a positive mindset about the process in which they are engaging. This mindset and approach could ultimately transform and reframe the mediation stages.

Conclusion

It is valuable to consider ways to improve an astoundingly effective means of resolving disputes. The appreciative inquiry and solution-focused discourse used in positive psychology have the potential to increase satisfaction with mediation and its outcome, and repair damaged relationships.

¹ Divorce: B.J. Bautz, & R.M. Hill, "Divorce Mediation in New Hampshire: A Voluntary Concept," 7(1) *Mediation Q.* 33-40 (1989), and C.W. Camplair & A.L. Stolberg, "Benefits of Court-Sponsored Divorce Mediation: A Study of Outcomes and Influences on Success," 7(3) *Mediation Q.* 199-213 (1990).

Community mediation: See generally M.S. Umbreit, *Mediating Interpersonal Conflicts: A Pathway to Peace* (CPI Pub. 1995), and Z. J. Eigen, "Voluntary Mediation in New York State," 52(3) *Dispute Resol. J.* 58-66 (1997).

School mediation: C.T. Araki, "Dispute Mediation in the Schools," 8(1), *Mediation Q.* 51-62 (1990), and J. Hart & M. Gunty, "The Impact of a Peer Mediation Program on an Elementary School Environment," 22(1) *Peace & Change* 76-91 (1997).

Organizational/labor mediation: American Arbitration Association-Sponsored Study, "Dispute-wise Business Management: Improving Economic Outcomes in Managing Business (2003), available at www.adr.org/si.asp?id=4124, and S. B. Goldberg, "How Interest-Based, Grievance Mediation Performs over the Long Term," 59(4) *Disp. Resol. J.* 8-15 (1995).

² Sheri Qualters/ "Survey Says Corporate Counsel Prefer Mediation, *Nat'l L.J. Online*, April 27, 2007, at www.cpradr.org/pressroom/press2609.pdf; David P. Lipsky & Ronald L. Seeber, "The Use of ADR in U.S. Corporations: Executive

Summary” (1997 Joint Initiative of Cornell Univ., the Foundation for the Prevention and Early Resolution of Conflict (PERC) and Price Waterhouse, LLP).

³ B. Poulson, “A Third Voice: A Review of Empirical Research on the Psychological Outcomes of Restorative Justice,” 2003(1) *Utah L. Rev.* 198.

⁴ R. Fisher *et al.*, *Getting to Yes: Negotiating Agreement Without Giving In* 11 (Random House 1981).

⁵ Umbreit, *supra* n. 1, at 27; see generally, P.B. Kestner & L. Ray, *The Conflict Resolution Training Program Participants Workbook* (Jossey-Bass 2002).

⁶ According to Umbreit, *supra*, n. 1, at 104, however, “divorce mediation does not usually begin with the parties telling their stories.” He explains this exception in the following way: “Opening statements of divorcing couples would usually offer premature solutions or a litany of reasons for the divorce. The parties would then proceed to defend the statements rather than analyze the issues together and consider options.” This exception reveals the potential problem of beginning difficult conversations with negative storytelling.

⁷ Umbreit, *supra* n. 1, at 27.

⁸ K.S. Cameron *et al.*, “Foundations of Positive Organizational Scholarship,” in *Positive Organizational Scholarship* 7 (Cameron, *et al.*, eds., Berrett-Koehler Pub. 2003).

⁹ K.M. Sutcliffe & T.J. Vogus, “Organizing for Resilience,” in *Positive Organizational Scholarship*, *supra* n. 8, at 98.

¹⁰ *Positive Organizational Scholarship*, *supra* n. 8, at 15.

¹¹ Forgiveness: T. Baskin & R.D. Enright, “Intervention Studies on Forgiveness: A Metaanalysis,” 82(1) *J. Counseling & Dev.* 79-90 (2004).

Shan Ferch, “Intentional Forgiving as a Counseling Intervention,” 76(13) *J. Counseling & Dev.* 261-70 (1998).

Resilience: Sutcliffe & Vogus, *supra* n. 9.

Virtuousness: K.S. Cameron, “Organizational Virtuousness and Performance,” in *Positive Organizational Scholarship*, *supra* n. 8, at 48-65.

Gratitude and appreciation: D.L. Cooperrider & D. Whitney, A Positive Revolution in Change: Appreciative Inquiry,” in *Appreciative Inquiry: An Emerging Direction for Organization Development* 9-30 (Cooperrider *et al.*, eds., Stipes Pub. 2001).

R. Emmons, “Acts of Gratitude in Organizations,” in *Positive Organizational Scholarship*, *supra* n. 8, at 85.

Fostering high quality relationships: J.D. Dutton & E.D. Heaphy, “The Power of High Quality Connections,” in *Positive Organizational Scholarship*, *supra* n. 8, at 263-78.

Strength-based development, leadership, and management: D.O. Clifton & J.K. Harter, “Investing in Strengths,” in *Positive Organizational Scholarship*, *supra* n. 8, at 111-21.

J.H. Zenger & J. Folkman, *The Extraordinary Leader: Turning Good Managers into Great Leaders* (McGraw-Hill 2002).

¹² K.J. & M. Gergen, *Social Construction: Entering the Dialogue* 50 (Taos Institute Pub. 2004).

¹³ D.L. Cooperrider & S. Srivastva, “Appreciative Inquiry in Organizational Life,” in *Appreciative Inquiry*, *supra* n. 11, at 82.

¹⁴ D.L. Cooperrider, “Resources for Getting Appreciative Inquiry Started: An Example OD Proposal,” in *Appreciative Inquiry*, *supra* n. 11, at 193.

¹⁵ D. Goleman, *Emotional Intelligence: Why It Can Matter More than IQ*. 61 (Bantam Books 1995).

¹⁶ D. Goleman *et al.*, *Primal Leadership: Realizing the Power of Emotional Intelligence* 45 (Harvard Bus. School Press 2002).

¹⁷ See generally, E. Jensen, *Teaching with the Brain in Mind* (Association for Supervision & Curriculum Development 1998).

¹⁸ Motivation: R.P. Bagozzi, “Positive and Negative Emotions in Organizations”; F. Luthans & B. Avolio, “Authentic Leadership Development,” in *Positive Organizational Scholarship*, *supra* n. 8, at 176-93, 241-58; Goleman *et al.*, *supra* n. 16.

Social helpfulness: Cooperrider, *supra* n. 14; Goleman *et al.*, *supra* n. 16.

Effective leadership: Goleman *et al.*, *supra* n. 16; Luthans & Avolio, *supra*, n. 18.

Productive relationships: D.L. Cooperrider, “Positive Image, Positive Action: The Affirmative Basis of Organizing,” in *Appreciative Inquiry*, *supra* n. 11.

Creativity: Goleman *et al.*, *supra* n. 16.

Resilience; Luthans & Avolio, *supra* n. 18.

Effective problem solving and decision making: Cooperrider, *supra* n. 14, Goleman *et al.*, *supra* n. 16.

Learning: Cooperrider, *supra* n. 14, and Jensen *supra* n. 17.

Facilitating change: G. Busche, “Five Theories of Change Embedded in Appreciative Inquiry,” in *Appreciative Inquiry*, *supra* n. 11.

¹⁹ S.L. Podziba, The Human Side of Complex Public Policy Mediation,” 19(4), *Negotiation J.* 289-90 (2003).

²⁰ Gergen, *supra* n. 12, at 57.

²¹ D. Cooperrider *et al.*, *Appreciative Inquiry: The Handbook* 38-41 (1st ed. Crown Custom Pub. 2003).

²² See K.L. Murrell, “International and Intellectual Roots of Appreciative Inquiry,” in *Appreciative Inquiry*, *supra* n. 13, at 109 (shows how using appreciative inquiry in organizations that are experiencing conflict can provide “the energy to correct deficiencies and improve methods”).

²³ D.L. Cooperrider & D. Whitney, “A Positive Revolution in Change: Appreciative Inquiry,” and Cooperrider, “Positive Image, Positive Action: The Affirmative Basis of Organizing, both in *Appreciative Inquiry*, *supra* n. 11, at 12, 38, 39 & 193. As this occurs, the gratitude that accompanies the appreciative process “serves as a moral motive, stimulating people to behave prosocially after

they have been the beneficiaries of other people's prosocial behavior." R. Emmons, "Acts of Gratitude in Organizations," in *Positive Organizational Scholarship*, *supra* n. 8, at 85.

²⁴ Cooperrider & Whitney, *supra* n. 23.

²⁵ Emmons, *supra* n. 23, at 86.

²⁶ W. H. O'Hanlon & M. Weiner-Davis, *In Search of Solutions: A New Direction in Psychotherapy* 1, 13 (W.W. Norton 1989).

²⁶ R. Kegan, & L.L. Lahey, *How the Way We Talk Can Change the Way We Work: Seven Languages for Transformation* 215 (Jossey Bass 2001).

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