

Facilitating Change in Divorce Mediation

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Change is an interesting behavioral phenomenon. There is a part of us that wants or even needs an opportunity for change, and another part that appreciates a routine, a 'knowing' of what to expect. Too much of either can cause chaos or rigidity in our lives. There are times in our lives where we feel pulled in opposite directions known as cognitive dissonance. Considering brain circuitry it is easy to understand how we create cognitive dissonance within ourselves.

The limbic brain seeks the comfort of routines and certainty. The social aspect of our existence is housed in the limbic system. A sense of belonging, being part of a team, seeking harmony, and wanting to be loved are characteristics that value a degree of sameness. The basal ganglia control our habits. Anything that interferes with that hardwiring is met with resistance. In its extreme, this may result in a person's narrow view of 'my rules for me and my rules for you' and cause rigidity.

The prefrontal cortex (PFC) seeks to explore, conjure up new ideas, decides and is always curious. It is quite open to change and in fact, gets agitated when things do not move or improve. It is the part of the brain that can visualize and create movies of our future self. It allows us to set goals and broaden our view of what is possible and plan ahead.

There are many theories of change that help with reducing the internal conflict. In this paper I am reviewing three models, Transtheoretical model, Lewin's 3-step Change Theory and the Kubler-Ross Change Theory.

The Transtheoretical model focuses on stages and transitions within those stages. Staging refers to change as a phenomenon that occurs over time. Behavioural theory thought of change as an event whereas this model sees it more as a process. It is a spiral or cyclical model rather than a linear one and addresses in particular the readiness to change. This model is particularly interesting in my work as mediator.

In the pre-contemplation phase, a disputant gathers momentum. In the contemplation phase, a disputant may analyze cost and benefit of dealing with the conflict, but is not ready for action. In the preparation stage the disputant takes time to plan, consult with experts, reads about conflict management processes. In the action stage, the disputant participates in face-to-face dialog with his opponent and modifies his perception of the situation by analyzing new and changing perspectives on old information. S/he walks on eggshells as trust is fragile and relapsing to the old way of thinking about the situation is quick and easy. Following a mediated agreement, the maintenance stage is important in that new pathways need to be nurtured and regularly proven to be trustworthy. It is the stage of hard-wiring new behaviour by becoming confident with the new way of thinking. It is often the stage when successful mediation outcomes need to be explained to business partners or friends and family, parties not privy to the process. Since mediated solutions are often a departure from the initial positions held by disputants prior to mediation, this stage requires a disputant to gain self-confidence in order to save face with external stakeholders. An example of this is part of my first mediation example whereby the plaintiff needed to ring his wife to talk about a possible settlement that came about by insight. The trans-theoretical

model correlates to intention and behaviour. The heart of the model is its neuroscientific underpinning.

Another theory of interest in mediation is known as Lewin's 3-Step Change Theory of unfreezing (the existing situation), movement (towards new perspective) and refreezing (hard-wiring new behaviours and beliefs). To let go of limiting or restricting attitudes requires the mediator to provide an atmosphere of trust and interest-based communication skills. Why people hold certain beliefs or have certain expectations is explored at the level of needs or unmet needs. When a breakthrough occurs and parties see each other as "us against the problem" (not "you against me") a noticeable shift in attitude and body posture indicate that an insight has happened. To hard-wire new behaviors in basal ganglia the mediator helps parties (through various perceptual positions) visualize 'transferring' new behaviours to future situations.

The Kubler-Ross Stage Theory suggests that denial; anger, bargaining, depression and acceptance are a neuroscientific rationale for coping with change. Particularly when dealing with divorce matters, this theory has been helpful to parties in understanding their resistance to the change in their relationship as parents.

Appreciative Inquiry

In a presentation by Robyn Stratton-Berkessel I learned that Appreciative Inquiry (AI) is a change method and, as a change method, it is first and foremost an inquiry into what already works well before any change is introduced. This form of inquiry invites people to dialog and make meaning together around a specific topic or agenda. (Stratton-Berkessel, 2010)

In working with divorcing parents AI is an important aspect of my work as mediator. What's at stake is a change in parenting due to the division of one household into two. The hurt of separation and the fear of an unknown future are dominant factors in the negotiation process.

A psychotherapist, Marilee Goldberg (1998) in *The Art of the Question: A Guide to Short - Term Question - Centered Therapy*, described thinking as in internal question and answer phenomenon. She considers questions as virtually programming thoughts, feelings, behaviours, and outcomes, even though people typically are not aware of their internal questions or of the profound power they exert in shaping and directing their experiences and lives. By changing those questions, one can set in motion a different process leading to a different result.

In a recent situation where I was a parenting conflict coach, two divorcing parents were motivated by an affirmative topic (what's in the best interest of the children) to let go of hostilities towards each other and focus on the children's best interest. The very first question started this change when they went back in time and recalled exemplary parenting experiences. As they primed the negotiation with positive memories their desire to co-parent collaboratively in the future grew. Visualizing a parenting situation a year from now and embracing the values they considered to be their "DNA" of parenting, focusing on positive emotions and realistic hope, propelled them to work together in the best interest of the children.

Driving Change through Goals

I am particularly interested in implicit goal pursuit: when clients pursue a goal without being aware that they intend pursuing the goal. The following example refers to a post-mediation coaching session. I have altered the names and subject matter in a way that protects the privacy and confidentiality of the parties.

To minimize the effect of the separation for their son Joshua, Rachelle and Dennis agreed in mediation to take turns in organizing monthly fun outings together, resembling the “good old days”.

As the first such outing approached, Rachelle called to say that she was scared and worried about facing Dennis at the outing. Talking about the positive aspect of the carefully agreed upon activity in mediation only raised her anxiety and anticipation of an unpleasant confrontation, probably ending in a fight and more disappointment for Joshua. It was clear to me that the conversation needed to shift to include an “implicit goal pursuit” coaching session. She was creating a goal to prevent something, an avoidance goal. She was having internal dialog that created cognitive dissonance: I really want to go and I don’t want to go. She wanted to go because she thought she could have a good time with her son and her estranged husband; on the other hand she was afraid that the day would be terrible despite her best intentions because she was afraid of having a fight with Dennis. Rachelle needed to put everything into perspective: what was the worst thing that could happen at the outing? From her perspective, Dennis was going to comment on her ‘frivolous’ spending of ‘his’ (child support) money on the new dress she intended to wear. Honing in on her hot buttons she knew he could set her off in an instant.

Rachelle’s attention was focused on the threat created by the pursuit of a pleasant family day for Joshua. Intuitively, I decided to coach Rachelle in contingency planning: what if Dennis said what she predicted he would say? What has she done in the past that worked well in this or a similar situation? How could she respond assertively? How would she label her emotions and reappraise the situation; redirecting her attention to the intent of the day: a fun day for Joshua. We brought to life her intention for a successful day by visualizing Joshua’s outing to the zoo, his joyous expression of love for both his parents, his indulgence at the ice cream store, and holding hands and skipping along with a parent on either side. This visualization softened Rachelle’s facial expression; with a big smile she regained confidence that, yes, she was going to do this! Those were strong motivators for Rachelle; knowing how to take direct action to regulate her emotions, to appropriately respond to Dennis’s digs, and to stay cool under pressure. The certainty she gained by preparing for the worst case scenario gave her the confidence and competence to look forward to the family day as agreed to in mediation. Her left prefrontal cortex motivated goal-directed action, even when the action was potentially unpleasant. She knew that inhibitory control such as refraining from retaliatory dialog was possible through activation of the right inferior frontal gyrus as it is involved in response inhibition in the emotional and motor domains. Suzanne’s implicit self-regulation in pursuing her goal would probably be moderated by her commitment to her son Joshua. It was important that Suzanne stayed cognitively attuned to maintaining her goal, a fun family day for Joshua, by keeping a journal to reflect on “what if” scenarios and to practice appropriate responses.

This process of implicit goal pursuit can be summarized as an activation of a goal representation which works due to the concept of associated learning. If we pursued something in the past successfully thinking about it will activate the other (current need for similar behaviour). Through priming we manipulate attention. For example, a visualization

of the past successful pursuit prepares the brain for action and detects the reward signal. Thinking about it will also prime the motor area of the brain as well as associated muscles to carry out the action. This leads to goal pursuit outside awareness.

It is important to involve people in changes that affect them. The neuroscience approach is to involve people earlier in the *change* process and in a targeted way. As noted, parties going through separation and divorce, in conflict situations, benefit from being challenged to find original solutions to *change* related issues and, in the process of understanding how their unique insight can help, they change their mental maps and embrace change (Rock and Schwartz, 2006), providing an opportunity to move past the conflict with renewed motivation and commitment.

Effective change in dealing with parties in mediation necessitates addressing the underpinnings of the social brain as captured by the SCARF model (status, certainty, autonomy, relatedness and fairness). Conflict between parties arises frequently from a lack of certainty or predictability, a lack of autonomy and choice, and the absence of fairness. All cognitive decisions are made in an emotional context; there is no 'separating people from the problem,' as Fisher and Ury suggested in *Getting to Yes*.

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