

So the publication date does *not* represent “finality,” or even a pause in our effort for half a generation. The *NDR* started with two volumes in print, and the equivalent online. But we have included a subscription to the electronic edition in the price of every copy of the hard copy version—and the electronic edition will add a third volume.

We expect that the third volume will grow gradually, as we discover exciting new research, or simply encounter specialist scholars and (*very* highly selected) expert practitioners from cultures and domains of expertise we as yet

know little or nothing about.

Alternatives readers include a sample of both groups. So we would like to close by asking for the reader’s assistance: If you find occasion to look over our work as-published, and realize that someone you know possesses a kind of expertise about negotiation of which we are clearly innocent, we would very much appreciate hearing from you.

To borrow a phrase from our colleagues (and longtime contributors) at the Hostage Negotiation Team of the New York Police Department: *Talk to us!* Please email us, at

honeyman@convenor.com or andrea.schneider@marquette.edu, with your ideas. We will greatly appreciate it.

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The next focus is on the “what,” with short excerpts from several NDR chapters in each of the two following parts. Next month’s Part 2 will feature new discoveries about negotiation between individuals. And the final Part 3 will include selections from what we’ve learned about negotiation with and between groups, firms and other organizations.

The Master Mediator / Part 1 of 3

A Roundup: The Emotional Journey Review

BY ROBERT A. CREO

Let’s distill the past two years of publications by repeating the theme, and listing the core principles, tenets, concepts, and heuristics. (Original columns are cited and linked.)

Years of research and work by Antonio Damasio, a professor of neuroscience and director of the Brain and Creativity Institute at the University of Southern California Dornsife in Los Angeles, as well as others, that includes sophisticated studies with magnetic image scanning of the brain, has concluded that decision making is a holistic process that integrates logic, emotion, and values.



The traditional duality of separating reason and emotion is simplistic ... and dangerously inaccurate. Getting the Feel of Feelings, 34 *Alternatives* (July/August, 2016)(available at <https://bit.ly/2C1rLCS>).

Any approach to transform human beliefs, behaviors, and positions based upon strong emotions should be done in a transparent and mostly facilitative manner. The mediator’s openness about the process—and his or her own feelings—are instrumental in creating a setting that produces positive results. “Emotional Legitimacy: The Choices We Make,” 36 *Alternatives* 87 (June 2017)(available at <https://bit.ly/2zYBLvq>).

In this Part 1, we will re-visit the negative emotions. In Parts 2 and 3 over the next two issues, we will summarize neutral and positive emotions in mediation.

DEFUSING INTENSE EMOTIONS

Affect Labeling is very different from conversation. The participant is in his or her own lane and traveling at one’s own pace. There is no flipping back and forth on speaker-listener lanes and no multitasking as one hears and thinks about the words of the other. “Tell the Participant: ‘You Are

Very Angry.’ Then Wait. That’s ‘Affect Labeling.’ And It Works,” 36 *Alternatives* 115 (September 2018)(available at <https://bit.ly/2OPvgmI>).

SHAME

The majority of shame researchers and clinicians agree that the difference between shame and guilt is best understood as the difference between “I am bad” and “I did something bad.”

Guilt and shame, however, are present in civil disputes. People have acted, and others are harmed or perceive themselves as being

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THE THEME

Master Mediator Columnist Bob Creo is concluding a long look at emotions in mediation, summarizing here and over the next two issues the more than 20 columns in a series that stretches back to the July/August 2016 issue. Emotions are present in all participants in a mediation session, including the mediator, and regardless of setting. The series addresses both negative and positive emotions in the decision-making process. You can read the full columns in the Wiley Online Library at <http://bit.ly/1BUALop>.

The author is a Pittsburgh attorney-neutral who has served since 1979 as an arbitrator and mediator in the United States and internationally handling thousands of cases. He conducts negotiation and decision behavior courses that focus on neuroscience and the study of decision-making. He is annually recognized by Best Lawyers in America and was named in both 2017 and 2014 as Pittsburgh Mediator of the Year. He is the author of numerous publications, including “Alternative Dispute Resolution: Law, Procedure and Commentary for the Pennsylvania Practitioner” (George T. Bisel Co. 2006). He is the principal of Happy Effective Lawyer LLC, an initiative focusing on lawyer contentment, core competencies, soft skills, and peak performance, which publishes *The Effective Lawyer* (<https://happyeffectivelawyer.org/>) Blog. He is a longtime member of *Alternatives*’ editorial board and of the CPR Institute’s Panels of Distinguished Neutrals. His website is www.robertcreo.com.

The Master Mediator

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aggrieved. It is usually fruitful to probe all emotional platforms, especially shame and guilt.

I believe that mediation educates participants and allows them a forum to save face. That is about healing guilt, shame, and maintaining reputation. A settlement is the glass filled midway, which gives permission to participants to view it as half full or half empty. “On Emotions and Decisions,” 34 *Alternatives* 122 (September 2016)(available at <https://bit.ly/2yoHGGrG>).

REGRET AND REMORSE

Regret is a negative emotion and is classified as a subcategory of sadness.

It can be linked to feelings of shame, embarrassment, depression, annoyance, or guilt, although regret is considered to be distinct from guilt. Scientists contend that guilt is a much deeper emotional form of regret, and is derivative or subordinate in terms of emotional valence or intensity.

Although often used interchangeably, regret and remorse are not the same. Remorse has a stronger nexus to specific past actions that are considered by society, or in relationships, to be hurtful, shameful, or violent.

Remorse is coupled with acknowledgement, redemption and apology. Regret bounces around us internally as we reflect on our decisions, actions, and omissions. Anticipated regret is common.

Research indicates that people tend to overestimate how much regret they will feel in the future based upon their decisions and actions. Many contend that anticipated regret, about how badly you think you will feel, also is overestimated, probably since bad outcomes can be attributed to luck, unusual conditions, actions of others, or external factors rather than to internal shortcomings.

See “Having Second Thoughts? How Regret Motivates Settlement Decisions,” 35 *Alternatives* 72 (May 2017)(available at <https://bit.ly/2C3v7oY>).

ANGER

Angry people, including lawyers, must struggle not to lose objectivity, prudence, communication skills, and strategy borne in reflective thinking. “On Emotional Processes, and Anger,

in Two-Part Harmony: Where Decisions Really Come From,” 34 *Alternatives* 149 (November 2016)(available at <https://bit.ly/2CvpiSf>).

Anger, like most emotions, can be good, bad, or ugly. Mediators must embrace anger in all its manifestations. It can be a transformative tool to change the minds, and on especially good days, the hearts, of participants. “Embracing and Using Anger in Mediation,” 34 *Alternatives* 166 (December 2016)(available at <https://bit.ly/2yjrDv8>).

Ever-Changing Moods

The mission: To gather together some of the takeaways on the Master Mediator’s two-year examination of emotions in mediation.

This month’s summary focus: How to deal with negative emotions at the bargaining table.

Practice essential: ‘Mediators must embrace anger in all its manifestations. It can be a transformative tool to change the minds, and on especially good days, the hearts, of participants.’

DISGUST AND CONTEMPT

One perspective on disgust is that it expresses an intuitive knowledge which should be followed in guiding decisions, including in ADR and litigation.

This “wisdom of repugnance,” or the “yuck factor,” legitimizes decisions based upon any natural or “deep-seated” adverse reaction to an object, concept, or practice. The underpinning of the theory is that the human emotional reaction should be interpreted as evidence for intrinsic harm, danger, or evil character of that stimulus. “Coming to Grips with Disgust,” 35 *Alternatives* 9 (January 2017)(available at <https://bit.ly/2O9LbNj>).

Disgust and contempt fuel the desire to punish and send messages to the community. Once these are present, they need to be addressed as a legitimate interest in the conflict

that has to be balanced, and affirmatively chosen, or abandoned, in favor of the participants’ economic or other legitimate interests.

Contempt is not a patch of common ground relegated to an inconspicuous spot on the settlement landscape. Wise mediators recognize it as a barrier rather than a gateway emotion that can be converted or used in a beneficial manner. “Engaging Disgust: How to Settle, Contemptuously!” 35 *Alternatives* 21 (February 2017)(available at <https://bit.ly/2C11STX>).

FEAR AND ANXIETY

On a biological basis, anxiety usually triggers the “fleeing” emotion and response, rather than the “fighting” reaction, since the latter is generally tipped by anger.

Anxiety is often difficult to hide as it may be visible in facial expressions, voice, hesitation, pacing of words, and bodily movements. And anxiety and fear affect performance.

Fear, like most emotions, should be acknowledged, processed, embraced, dis-

MEDIATOR TOOLS TO ADDRESS DISGUST AND CONTEMPT

- Explore the possibility of apology or other non-economic conduct by the opposition as possible lubricants to resolution.
- Explore how adjudication or impasse affects the participants’ principles, values and respective identities. Ask them whether if there is an outcome unfavorable to their positions, it will change their core beliefs of the fairness, righteousness, or justice of their positions.
- Ask them to choose between advancing principle versus principal, and cost versus closure.
- Be explicit about working in the lower end of the spectrum of expediency over contentment. Do not ask, or expect them, to change their views of the other participants.
- If contempt trumps economics or reason, respect it and move on to impasse. Ask them if you can contact them in a couple days after everyone has had a chance to reflect upon it more in the away from the pressure of being present with the opposition.

carded, or otherwise used to further goals based upon the circumstances. It's a natural part of mediation life. "Fear and Anxiety as Tools of Hope," 35 *Alternatives* 131 (October 2017)(available at <https://bit.ly/2CwI7o5>).

SADNESS

Sadness is almost always related to loss. Loss is hurt and damage. Much loss is irrevocable.

Conventional wisdom is that most loss is preventable with a cognizable cause, source, or root. The pain or impact of loss also leads to anger, resentment, hate, and retribution against others responsible for the loss. Sadness usually stems from traumatic or highly important events pertaining to injury or loss of life or significant relationships.

Conventional coping mechanisms include avoiding or warding off sadness or other negative emotion, through distractions, immersion in activities and hyperactivities of short duration, medication, physical exercise and sports, or contemplative or spiritual practices.

When overcome by sadness, anger or other powerful emotions, the ability to communicate clearly is attenuated or lost. Emotional outbursts by counsel, a disputant or a witness usually results in clearing the courtroom, instructions to the jury to ignore emotions, or other adverse consequences on the offender.

So the emotional component of human behavior and holistic decision making is leached out by the legal procedures, and arguably the decision-making process. Of course, any litigator or judge will tell you that an unemotional, value-free verdict is elusive and difficult to achieve without rational thought processes guiding the outcomes. Jurors and judges are human beings subject to sympathy and empathetic connections regardless of any judicial roles or rules of evidence. "Coming to Grips with Sadness and its Multi-Colored Manifestations," 35 *Alternatives* 33 (March 2017)(available at <https://bit.ly/2IJGDr4>).

GRIEF

Patient listening, empathy, and little talk by the mediator are often effective working with grief in the mediation room.

The setting is often artificially out of focus because the reality is that money is not a substitute for the loss of a loved one, permanent injury

that limits life functions, or continual pain and suffering. Non-economic terms, such as apology, accident prevention safeguards, and memorials do help, but are not cure-alls. "Emotional Legitimacy: The Choices We Make," 35 *Alternatives* 87 (June 2017)(available at <https://bit.ly/2zYBLvq>).

ENVY

My experience is that most participants do not admit to having envy of a sibling, cousin, or rival from a co-founding family, the example with which the Master Mediator examined this emotion.

If confronted or accused of envy, they deny it. They usually respond with an insult, contempt, or a declaration of their own superiority and self-esteem.

My customary perspective is to try to identify jealousy and envy to myself only, rather than embrace it or attempt to use it as a platform for resolution. I prefer to work around it rather than directly grapple with it.

It is appropriate to resolve a matter by navigating the shoals of emotion. But if the journey is too long or too treacherous, and economic closure can be grasped from the powerful grips of jealousy, envy, and the herd of negative emotions, then, as this column concluded in June, "extend your fingertips . . . , and if it holds, it has been a good day." "Green: The Color of Money, and the Color of Envy," 36 *Alternatives* 89 (June 2018)(available at <https://bit.ly/2y6WLyQ>).

LONELINESS, BELONGING AND CONNECTION

Loneliness, along with isolation, exclusion, and being disconnected aren't common commercial mediation case characteristics. Conflict, however, often involves termination or transition of professional and social relationships.

Loneliness, or a sense of exclusion and isolation, can be common as a consequence of a breakup, discharge, divorce, or loss of any significant long-term relationship.

Many commercial disputes involve intense emotions and interpersonal relationships. A mediator who has grappled with conflict within a family business understands the emotional overlays and entanglements with control and economic issues.

My goal isn't to "cure" loneliness, nor provide therapy to vulnerable participants.

That is not mediation's purpose. The goal is to overcome this emotional barrier when it is present, and to create awareness in the participant that it should be addressed in a positive manner. "Avoiding Isolation, and Creating a Connection, To Help Lonely Parties Settle their Cases," 36 *Alternatives* 103 (July/August 2018)(available at <https://bit.ly/2E4ZcaA>).

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NAVIGATING NEGATIVE EMOTIONS: CHECKLIST & GUIDELINES

The focus of what follows is to summarize key principles of dealing with negative emotions, and to assist mediators in recognizing the array of choices available in many subject areas involving diverse participants.

This includes commercial entities whose decision makers are human beings with emotional content, identities, and enhanced public scrutiny resulting from social media exposure.

The key tenets are:

1. Mindful Listening—The goal is to understand, not to respond.
2. Be Authentic—Acknowledge what you feel to yourself and others, as appropriate. Empathy is natural and a mediator asset.
3. Explore negative emotions and encourage expression by participants.
4. Legitimize—but don't discount—negative emotions.
5. Speak softly and briefly; avoid lecturing or being a know-it-all.
6. Positive affirmation and actions usually are more productive than coercive approaches.
7. To guide properly, walk and talk side-by-side of the decision maker, not pulling or pushing to a recommended outcome.
8. A number of smaller, briefer caucus interchanges may be better than a marathon session on emotion. Tackling one emotion at a time and providing reflective downtime may be more productive.
9. Be respectful of identity-driving decisions and opportunities to save face.

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In Part 2 next month, Master Mediator columnist Bob Creo re-examines neutral emotions as factors in settling mediation matters.

