

The Master Mediator

The Humble Neutral, At Your Service

BY ROBERT A. CREO

Pride is concerned with *who* is right. Humility is concerned with *what* is right.

—Ezra Taft Benson (1899-1994)

Humility leads to strength and not to weakness. It is the highest form of self-respect to admit mistakes and to make amends for them.

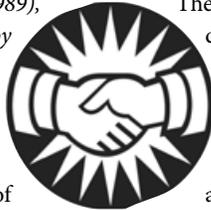
—John J. McCloy, Esq. (1895-1989),
Milbank, Tweed, Hadley & McCloy

Humility is considered a virtue. It is the opposite of pride, arrogance, or hubris. It is viewed as a reluctance to put yourself forward into the limelight or claim success resulting from your own contributions. Restraint and temperance distinguish humility from inauthentic self-depreciation.

Humility involves an accurate self-assessment which includes the ability to recognize our talents, the talents of others, and our limitations. Presentations of self are modest and involve sincere sharing of credit instead of seeking individualized praise.

There is an orientation toward others. This can include engaging with others in a manner that acknowledges that someone else on specific matters may have superior knowledge, skills, values, or interests.

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 (www.happy.lawyer), an initiative focusing on lawyer contentment, soft skills, and peak performance, which publishes The Effective Lawyer (www.effective.lawyer.lawyer) Blog. He is a long-time member of Alternatives' editorial board and of the CPR Institute's Panels of Distinguished Neutrals. His website is www.robertcreo.com.



THE SCIENCE

Researchers conclude that humility includes a self-awareness and openness that leads to critical thinking and perspective-taking. The lack of humility, which is often characterized as pride, results in a number of cognitive biases.

These are defects in thinking or rational decision making. A few of these related to humility, or its lack thereof, are:

- Self-serving bias, which involves holding ourselves out on subjective and positive elements or dynamics as better than most others. We consider ourselves above the norm in any self-evaluation or comparison to colleagues or others.
- Attribution bias is when you accept responsibility for your successes, yet attribute fault elsewhere, including on external circumstances or luck, for failures and misconduct.
- Cognitive conceit is a tendency to hold or display excessive confidence in the accuracy of our own judgments and beliefs.

Well-known corporate guru Jim Collins contends that humility is an essential element of excellent leadership skills. Without humility leaders become autocratic and fall into the cognitive bias traps. Effective leaders learn from their subordinates. They are open to a variety of options to solve problems without having to take the credit themselves.

Social scientists researching the concept of self-presentation and self-promotion coined the term "humblebragging." Humblebragging is being boastful or issuing self-aggrandizing bragging that is masked as a complaint or by misrepresentation as humility.

Humblebrags are designed to elicit sympathy or impress others. Studies have indicated that both forms of humblebragging—complaint or humility—are less effective than straightforward bragging or complaining.

Despite the belief that combining bragging with complaining or humility provides strate-

gic benefits, the professors found that humblebragging confers the benefits of neither, and instead backfires because of it being inauthentic. See Sezer, Gino, and Norton in the Sources and Additional Reading box at the end.

MEDIATION MODELING

Traditional mediation models focus on the role of the mediator as a facilitator and a guide and coach of the participants. Mediation is an alternative process relying upon the voice of the disputants themselves with the intention of empowering participants to make their own decisions. The mediation flag is embroidered with Self-Determination as its motto.

This differs from third-party, or institutional, determinations. Although the mediator is a third-party, substantive matters should be handled passively in a party-only cycle without the mediator having a slot on the decision wheelhouse.

Neutrality and mediator impartiality encompasses the trait of humility—the mediator has no agenda or independent interests which may align with one or more of the disputants.

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THE THEME

Master Mediator Columnist Bob Creo is examining emotions in mediation in a series of columns that stretch back to the July/August 2016 issue. Emotions are present in all participants in a mediation session, including the mediator. The dynamics of the overwhelming majority of litigated cases and interpersonal claims involve negative emotions. Many of these columns have focused on the negatives. (You can read these columns with a subscription at <http://bit.ly/1BUALop>.) But in more than three decades of serving as a neutral, notes Creo, there have been bright and shining moments of joy, serenity, hope, gratitude, grace, kindness, humor, and cheerfulness. The study of positive emotions continues this month with a focus on humility.

The Master Mediator

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Humility is a critical component in the fabric of the mediator's toolbox, rather than being a tool within it that can be used or lay dormant the entire process. Humility is part of the successful mediator's persona that is a core ingredient of effective mediation.

For decades I have heard from prominent and successful mediators that if they are perceived as having a "dog-in-the-fight," their effectiveness is compromised. I had not articulated it before reading the recent "humblebrag" research, but the ability to build trust, rapport, and credibility erodes with humblebragging.

A false sense of self-deprecation comes off as exactly that—false. Disputants want experienced and credentialed mediators. The mediators have to quickly build rapport and trust without singing their own praises, either in falsetto or aggressively.

I believe that when mediators focus on the people and problem at hand, and are guided by their own positive emotions and virtues, especially kindness, gratitude, and humility, the authenticity creating the connections between people arises in an organic and natural manner. See Robert A. Creo, *The Master Mediator—The Contagious Emotion: Gratitude Is Us*, 36 *Alternatives* 39 (March 2018)(available at <http://bit.ly/2GPwbfX>).

HUMILITY PROFILE, NOT

I like to give a shining example of the focus of this column from an actual mediation, which provides a "Do's and Don'ts" for mediators. Although I prefer to accent the positive, what is set forth is likely to be viewed in a negative light.

Nevertheless: Decades ago when mediation was less-often used, there were far fewer experienced mediators, and it was common to travel the corporate circuit over a broad geographic area.

A friend of mine was the chief financial officer of a corporation and was involved in a product liability claim in a western state. After the session, he recounted that the parties were close to a settlement but had reached impasse.

The mediator called everyone into a joint session to proclaim, "I have settled 86 cases in a row, and this case was not going to be the one

that breaks my streak."

He then re-caucused and began the shuttle to attempt to brow beat the two parties into a settlement. The CFO told me that the case did not settle, not because the gap in funds was insurmountable, but because the mediator had lost credibility since it was perceived he would say or do anything to maintain his streak.

The corporate defendants held fast and decided not to make any more offers that day.

Exhibit No. 1: You

The positive emotion examined here: Humility.

The mediation advice: Humility is a critical component in the fabric of the mediator's toolbox, but it's not a tool.

Isn't it a given for commercial mediators? Those marketing materials settlement rates definitely are not humble. Is there a line for humility? The Master Mediator looks at the title of this column.

The plaintiff did lower the demand, but it was too late. The damage had been done. The CFO decided to wait a few months to settle the claim outside of the mediation process.

Although I had my own doubts, I had maintained that professional mediators were not in the game to build their own stats. It made me acutely aware that even maintaining a "settlement rate" has the potential to undermine the integrity of the process.

From that point forward, I refused to respond to that type of query when being considered for potential assignments. I respond with varying degrees of civility, or hostility, as I stiff-arm the questioner and disdain any cooperative responses. I have been told point-blank that this push-back on settlement rates has eliminated me from some assignments.

This angered, more than humbled, me.

PAYING ATTENTION

As I write this particular column, I am struck

by the inherent tension of writing a column on humility under the heading, the Master Mediator.

Based upon the research on humblebragging—see the box at the end for more reading—perhaps it is a more reasonable choice than calling it The Humble Mediator. This might seem insincere but any mediator who has mastered the trade-craft does in fact serve with humility.

So, I leave you with the thought that we are usually at our best when humility trumps pride, including the "humblebrag" common in everyday life.

SUMMARY AND CHECKLIST

Here is a brief checklist for the practitioner.

1. Humility aligns with participant empowerment, voice, and self-determination.
2. Humility trumps pride.
3. Humblebrag is a common, and seductive trap.
4. Humility promotes critical thinking.
5. It really is about them—not you!

SOURCES AND ADDITIONAL READING

- Rob Nielsen, Jennifer A. Marrone & Holly S. Slay, A New Look at Humility: Exploring the Humility Concept and Its Role in Socialized Charismatic Leadership, 17 *J. of Leadership & Organizational Studies* 33 (2010)(abstract available at <http://bit.ly/2BTBF9J>).
- Jim Collins, Level 5 Leadership: The Triumph of Humility and Fierce Resolve, *Harvard Business Review* 66–76 (January 2001)(available at <http://bit.ly/2F5EzKG>).
- James C. Collins, Good to Great: Why Some Companies Make the Leap ... and Others Don't (2001).
- Ovul Sezer, Francesca Gino, and Michael I. Norton, Humblebragging: A Distinct—and Ineffective—Self-Presentation Strategy, 114(1) *J. of Personality and Social Psych.* 52 (January 2018)(working paper at <http://hbs.me/2qulRGi>).