# RAISING EMOTIONAL INTELLIGENCE AT THE MEDIATION TABLE

## A recipe to help parties tell their stories in self-distancing language

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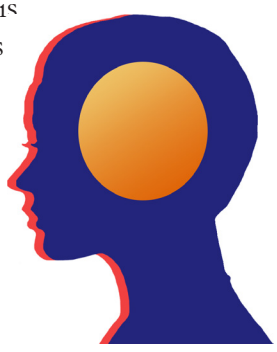
In an ideal world, everyone participating in a mediation would practice mindfulness meditation every day and would have the emotional intelligence, or EQ, to stay calm and rational throughout the process. The mediator and participants would be well versed in the tools of mindful awareness[1] and would have the understanding and self-control to continually remind themselves that as humans, when making decisions they are subject to confirmation bias and the other thinking errors described by psychologist Daniel Kahneman in his book *Thinking, Fast and Slow.*[2]

But alas, even if the mediator has mastered all of this (which is unlikely), others at the table probably have not. Most of us, including mediators, plod along with our unconscious stress response controlling our behavior in conflict situations, meaning that we react to conflict in business, the workplace, politics, or a marriage the same way we would to seeing a seven-foot alligator wriggling its way through the office door.[3] Our hearts race, our blood pressure soars, our pupils dilate, our lungs work more quickly, and our adrenal glands release adrenaline into the bloodstream.[4] Our cortisol also shoots up and can stay elevated for hours.[5]

Because our bodies evolved to deal with threats from predators and other dangers that lasted seconds rather than years, this fight/flight/freeze (or sometimes tend/befriend) response was, as developmental molecular biologist John Medina explains in his book *Brain Rules*, "primarily designed to get us moving as quickly as possible,"[6] a response that is usually distinctly unhelpful in the mediation setting.



In that perfect world, in addition to having high EQ, disputants would bring in a mediator at the beginning of their disagreement and work with him or her as the case unfolds, in a process better aligned with the way their brains and bodies actually function. In this scenario, by the time the negotiations got underway, everyone would be in a calmer state, with lower stress hormones and a greater ability to use the more evolved parts of their brains. For this reason, processes such as dispute resolution boards and Guided Choice, pioneered by Chicago mediator Paul Lurie and Swiss mediator Jeremy Lack, in which neutrals are enlisted early and help tailor an appropriate dispute resolution process, can be particularly effective.[7] Pre-session meetings, staggered sessions, and other tactics that provide time for stress hormones to dissipate between story-telling and negotiation also make biological sense.

The current reality, however, is that because of distance, process design, budgets, local mediation cultures, mediator habits, or court or institutional rules, many mediations involve only one session, often held over the course of one long, intense day. In such situations, mediators and attorneys would do well to embrace strategies that decrease fight/flight responses and increase emotional self-regulation, including one particularly promising approach based on studies led by psychology researchers Ozlem Ayduk of the University of California at Berkeley and Ethan Kross of the University of Michigan. Ayduk's and Kross's strategy, in short, is to have parties in a mediation think about and tell the story of their conflict in self-distancing language.

## Self-Distancing Language

To explain what they mean, Kross and Ayduk describe a heartbroken teenager named Tom. If Tom wonders, "Why did I feel that way in that situation?" Kross and Ayduk say, he is self-immersed. But if Tom steps back and changes his language, using "you" or his own name in that same question ("Why did Tom feel that way in that situation?"), he may be better able to consider his feelings from a self-distanced perspective. Simply changing the pronoun from first-person to second or third person, Kross and Ayduk's experiments show, can make a big difference in emotional self-regulation.[8]

Mediations often start with a request for a story. It's a sequence familiar to many mediators: After the mediator invites each party to provide background about the dispute, most participants respond with first-person tales, often emotional ones, about how they were wronged. Even if such opening presentations are waived, as is increasingly common in commercial mediations, first-person accounts of what happened generally come out in private caucuses.

Scientists have found that the way someone tells his or her story can have a significant impact on what happens in the brain and body. University of California psychiatry Professor Daniel J. Siegel notes that in particular, how people describe a negative event matters. "If we try to [tell the story] without reflection, if we simply revisit what happened," Siegel writes in his book, *Mindsight, The New Science of Personal Transformation*, "we can actually evoke the same reactive flow and fall back into the meltdown experience all over again."[9]

The brain perceives social threat similarly to how it senses physical threat.[10] Although scientists are learning more about the brain every day, most probably would agree that if someone could see a scan of her brain as she angrily described all the outrageously unfair ways she was wronged, she probably would see increased activity in the amygdala, a small almond-shaped bundle of neurons deep in the brain that is responsible for appraising and reacting to perceived threats and is particularly involved in fear and anxiety.[11] The amygdala is located in the limbic region above the brainstem. Some scientists call these areas the "reptile" or "lizard" brain because they evolved so long ago.

Although Kross's and Ayduk's studies do not specifically involve mediations, they show that people who think and talk about a negative event from a self-distanced visual perspective stay calmer, manage emotion more effectively, gain greater insight, show smaller increases in blood pressure, make wiser decisions, and ruminate less. The researchers have also linked adopting a self-distanced viewpoint to increased consideration of opposing viewpoints and constructive behaviors toward dating partners during conflicts.[12] In an article in *Psychology Today*, journalist Pamela Weintraub nicely summarized Kross's and Ayduk's self-distancing research, "By toggling the way we address the self – first person or third – we flip a switch in the cerebral cortex, the center of thought, and another in the amygdala, the seat of fear, moving closer to or further from our sense of self and all its emotional intensity."[13]

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In setting out on this research journey, Kross and Ayduk noted that numerous studies by scientists such as psychologists James W. Pennebaker and Timothy D. Wilson had shown that encouraging people to reflect (and journal) on negative experiences leads to significant physical and mental health benefits. The paradox was that many other studies found that thinking about such experiences could also cause "harmful ruminations that make them feel worse."[14] Kross and Ayduk decided to investigate whether a person would have a better outcome if he or she used self-distancing language in considering past negative events.

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Kross and Ayduk cued participants to recall an intense negative experience, usually "an event involving anger or sadness,"[15] and instructed them to visualize these experiences either through their own eyes (self-immersed) or from "the perspective of a fly on the wall" or "distant self" (self-distanced). When people focused on why they felt emotions instead of what their emotions were, while at the same time answering the questions from a self-distanced perspective, Kross and Ayduk found, they "manifested lower levels of anger."[16] When they thought about the same experiences up to a week later, participants experienced less anger and distress, ruminated less about the experiences over time, and avoided the increases in blood pressure and activity in parts of the brain involved with depression that occur with rumination.[17]

Kross's and Ayduk's research provides scientific support for the recommendation by Harvard Program on Negotiation Co-founder William Ury that people "go to the balcony" during challenging negotiations. By imagining themselves high up, overlooking the negotiation stage, Ury wrote in *Getting Past No*, they can attain a mental attitude of detachment and avoid reacting.[18]

## How This Might Work in Mediation

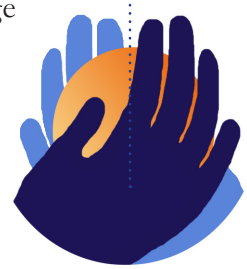
By cueing mediation participants to engage in self-distancing, mediators can let parties tell their stories, which can be a rich source for underlying needs and interests, without the risk of having the parties become overwhelmed by their emotions and lose their ability to engage in wise decision-making.

Mindful of the language Kross and Ayduk used to instruct participants in their experiments, I propose some adaptations that mediators could use to urge parties to exercise self-distancing.

- Stand back from this conflict for a minute as if you were not part of it. How did [first name of the person you are addressing] get here?
- Pretend for a moment that you are someone else watching all this, perhaps a friend. What about this situation made [first name of the person you are addressing] so angry?
- If you were watching a film of this dispute, seeing the people involved first getting into the conflict, how would you describe what you see?
- If you were in a theater balcony watching a play about this dispute, how would you describe the reasons for what the actors were feeling?
- Can you describe this dispute as if you were seeing it in your car's side mirror – behind you and far away?
- As you think and talk about this conflict, try to understand why you felt as you did, using the pronoun "you" or "[the first name of person you are addressing]" as often as possible. Ask yourself, 'Why did [first name] feel this way? What were the underlying causes and reasons for [first name's] feeings?'

Cueing participants to use self-distancing language could be helpful at several stages: in pre-mediation meetings, before parties or their lawyers make opening presentations (or otherwise communicate their stories in joint session or caucus); when emotions are high; when people seem mired in their own stress responses; or anytime people just seem stuck. Lawyers could use self-distancing to improve their own ability to negotiate and persuade: Ayduk and Kross have shown that people who thought about themselves in the second or third person before giving a speech turned in better performances and ruminated less afterward than those who thought in first person.[19]

Self-distancing language can be a crucial part of the package that Daniel Kahneman, Len Riskin, and Rachel Wohl describe: increasing emotional self-regulation and perspective-taking is consistent with research on mindfulness meditation and the positive effects of observing our own thoughts, including findings that the amygdala becomes thinner and other regions of the brain show increased gray matter density in people who meditate regularly.[20]



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Emotional intelligence can be an elusive – but hugely helpful – force in mediation. By putting the self-distancing techniques explored by Ayduk, Kross, and their colleagues to work throughout the mediation process, both mediators and attorneys can help parties make decisions based not just on emotions and reactions but on a better understanding of their situations and themselves.

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