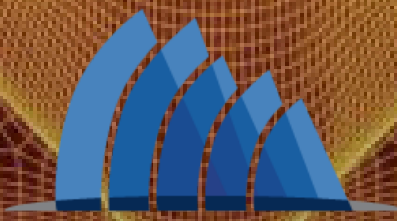


The Mediator's Mind[®]

A MENTAL MODEL FOR SUCCESS
IN MEDIATION



EDWARDS
MEDIATION ACADEMY
Online Training From Global Experts

BRUCE A. EDWARDS



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BRUCE A. EDWARDS

TABLE OF CONTENTS

CHAPTER 1 <i>What is the Mediator's Mind?</i>	1
CHAPTER 2 <i>Is Mindfulness the same as a Mediator's Mind?</i>	5
CHAPTER 3 <i>How Does One Cultivate a Mediator's Mind?</i>	10
CHAPTER 4 <i>How Does the Mediator's Mind Translate to Successful Performance?</i>	15
CHAPTER 5 <i>What are Examples of the Mediator's Mind in Action?</i>	18
CHAPTER 6 <i>Can a Mediator's Mind Help a Troubled World?</i>	23

CHAPTER 1
What is the Mediator's Mind?

The *Mediator's Mind* is a term I coined early in my mediation career to highlight and emphasize the critical importance of how we think about mediation and how that reflective process influences our every action. More specifically, the *Mediator's Mind* describes a psychological construct reflecting the fact that from a neurobiological perspective how we think about the world around us shapes our perceptions, filters our communication and directs our actions. In short, what we think becomes who we are.

In the world of mediation, the *Mediator's Mind* begins with a reflective process of envisioning ourselves as participants in the conflict environment and the dispute resolution process more particularly. I think about it as the process of looking inward to make the view looking outward more clear. Regardless of whether we see ourselves as evaluative, facilitative, transformative or transcendent in our mediation role, the starting point for consideration is that our reflective thoughts shape our every intervention.

For example, do we emphasize convening and work

with the parties to design a process that meets their needs and interests? Do we prioritize listening to people and for how long? What role do we give emotions, including our own, in highly charged conflict environments? What words do we choose to strengthen connections while not risking further division? Is our ultimate objective resolution of the dispute or do we define our intervention more broadly? How one chooses to answer these questions shapes the development of your *Mediator's Mind*.

Prior to my career in law, my educational background was in psychology. Once I began my mediation career almost 40 years ago, I had the good fortune to train with and learn from a mediator and psychotherapist from Vienna, Austria, Dr. Mario Patera. It's only natural that I viewed my nascent mediation experiences through a psychological lens. Over 8,000 mediations later I still reflect on my daily practices to better understand how my mental preparation, and ultimately, my *Mediator's Mind*, has impacted my moment-to-moment interventions in mediation.

Years ago, I wrote an article for the California Lawyer magazine entitled “Check Your Ego At The Door.” The concept was that if we could simply envision ourselves as a “guest” invited into someone else’s dispute, we would have the mental model required to approach the parties with respect, curiosity and empathy. Conversely, we would be less inclined to insert our own opinions and answers too quickly and without first exhausting every effort to understand different perspectives. Over the years, I’ve revisited this topic with students in my mediation training courses and debated whether the word “guest” might be better labeled “host” to connote a more proactive role. Regardless, the point remains the same; how we construct our mental framework formulates our Mediator’s Mind and sets the course for a thousand different decisions and actions that will influence both the quality and outcome of our every interaction.

CHAPTER 2

Is Mindfulness the same as a Mediator's Mind?

The short answer is no. While the two concepts are related, the *Mediator's Mind* differs from mindfulness as the former speaks to a broader mindset while the latter describes a process of focusing attention in the moment. We have earlier defined the *Mediator's Mind* broadly as a psychological construct reflecting a holistic view of our role in mediation. In contrast, mindfulness is defined as "a mental state achieved by focusing one's awareness on the present moment."

Mindfulness training in life, and for application in mediation, teaches us to focus our attention in the moment free from distractions, including the distraction of one's own internal dialogue. Clearly, our ability to be present and focus our attention in the moment can only lead to greater understanding and enhance our connections in mediation.

In further attempting to differentiate between Mindfulness and a *Mediator's Mind*, I find it helpful to think about orchestra music. The *Mediator's Mind*

reflects the totality of music composition as interpreted by the conductor and delivered to the listening audience by one hundred or more musicians. Mindfulness describes the tonal quality of notes brought to life moment to moment by an individual musician. This metaphor allows us to think about mindfulness more as a technique used by mediators to implement the broader vision of the *Mediator's Mind*.

A mediation example may prove instructive here as well. I recently began mediation in a case involving the death of an industrial worker who was horribly burned in an industrial accident. My *Mediator's Mind* developed slowly as I prepared to design a process wherein the corporate defendant decision makers could interact productively with plaintiff's counsel and family including use of a joint session. I also engaged in pre-mediation phone calls with counsel in an effort to set the right tone and better comprehend the disputed facts giving rise to the fatal accident. Thorough preparation, including reflecting on my own emotions triggered by graphic photographs and family impact statements, helped prepare my

Mediator's Mind as I approached the day of mediation. While I engage mindfulness practices generally, I also implement certain techniques during the mediation itself that helps bring about mindfulness and focuses my attention. One of those techniques I routinely implement is when I place my hand on the doorknob and prepare to enter a room for a difficult conversation. In that moment, I close my eyes, take two or three deep breaths and focus my thoughts on what/who sits awaiting me on the other side of the door as I prepare to marshal my best efforts. I consciously try my best to clear my mind of unwelcome distractions and prepare to engage a level of connection once described as "listening to the air". In this manner, I began the joint session attended by all parties, including the plaintiff's widow and young children, wherein I can best describe my state of mind as "hyper-focused." This exemplifies what is meant by mindfulness.

This mediation example best illustrates the difference between a Mediator's Mind, a self-generated macro perspective and mindfulness, one of many techniques

used by mediators to implement that vision. Understanding the difference between these important but related concepts represents the first step toward mastering both.

CHAPTER 3
**How Does One Cultivate a
Mediator's Mind?**

The danger in life is not knowing what you don't know, or in the case of mediation, what you should know. Cultivating a Mediator's Mind begins with an understanding of the role our mind plays in influencing our thoughts and behaviors. Unfortunately, most training programs, and hence most new mediators, are quick to focus on skill development. What is lacking though is personal development, specifically self-reflection and self-management, cornerstones of the Mediator's Mind. The effort to master mediation competency without first developing personal competency creates a blind spot that leaves training less than complete. It also inhibits the formulation of an integrated perspective of thoughts and actions, or Mediator's Mind, essential to success in mediation.

DEVELOPING SELF MANAGEMENT

1

- Sharpen your ability to focus attention on communicating
- Use your internal voice productively while engaging with others in conversation
- Understand your own biases and account for them as you intervene with others



2

- Master your body language
- Pay attention to “somatic markers” - physical responses to external stimuli
- Visualize yourself in action
- Prepare for navigating the physical demands of conflict resolution

3

- Exercise and strengthen your emotional muscle
- Evaluate what shape you're in
- Scale your current emotional state (+ and -)
- Engage in reflective exercises
- Exercise self-care and self-compassion

The formulation of this concept of a Mediator's Mind predates my college academic experience in psychology. Fortuitously, the seeds were planted years ago when, as a high school athlete in Palo Alto, I was invited to participate in a program offered through the psychology department at Stanford University.

The goal of the program was to use relaxation and visualization techniques to first envision and later cultivate peak athletic performance. We were introduced to visualization techniques through hypnosis and relaxation techniques through meditation, all aimed at visualizing success, improving performance and reducing stress. Over the course of a semester, athletes from around the area, and reflecting a variety of sports, came together on Monday nights for a three-hour session of intense mental training and discussion. While I didn't go on to become an Olympic athlete, out of that experience came an epiphany; if mental imagery and relaxation techniques could bring about athletic success, why not success in other areas of life. I proceeded to use this approach to imagining and preparing for

academic success first in college and later in law school. My academic career in psychology that followed, brought further intellectual validation to these early lessons. I continued using these techniques as a young adult as I approached the Bar exam and faced challenges early in my career as a young litigator. It was only natural then that when I left the practice of law to professionalize the use of mediation in commercial disputes, I brought with me the mental model that had helped me achieve earlier successes in life. Thus, the *Mediator's Mind* was born.

Cultivating a *Mediator's Mind* is a lifelong journey. Just as one's life is dynamic and reflects ever evolving growth and development, so too does the *Mediator's Mind* continue to grow and evolve. Life experiences combined with ongoing education, formal or otherwise, all require continued reflection and self-assessment. This is why I describe the *Mediator's Mind* as having been molded in soft clay, to acknowledge our brain's plasticity and the importance of continued refinement. The most successful mediators employ a variety of reflective processes to ensure they have a

growth oriented mental model that will continue to serve them in an ever-evolving conflict environment.

CHAPTER 4

How Does the Mediator's Mind Translate to Successful Performance?

Again, the road to success in mediation begins by developing a mindset forged by critical self-evaluation and steeped in specific intervention methodologies. Self-assessment begins by asking oneself the difficult questions: Who am I at this stage of life and how do I envision my potential role in a dispute resolution process? What are the innate skills that I bring to the table and how do I envision putting those skills to their highest and best use? How open am I to acknowledging what I don't know and addressing new skill development with humility and curiosity?

Equally important in the formation of a Mediator's Mind is how one addresses broader questions about specific objectives and interventions in mediation. For example, do I see my intervention as transactional, helping the parties to reach a deal, or am I open to expanding the discussion to bring about a longer more durable solution? How do I function in an environment of high emotion and what value do I place on restoring relationships? Am I prepared to follow the guidance and direction of the parties in

contrast to feeling the need to set the direction and timing of negotiations? Am I prepared to set aside my ego for the sake of assisting others in their hour of need? These are but a few of the overarching considerations that will confront all mediators throughout their professional lives. Formulating clear answers, and skills, in response to these and other challenging moments will help shape your *Mediator's Mind*.

Once formulated, your *Mediator's Mind* serves as a moment-to-moment touch stone that allows you to focus on those specific behaviors that support your mental model while avoiding those distractions and counterproductive behaviors that undermine success. Stated differently, fashioning a *Mediator's Mind* will lead to success in mediation by influencing behaviors that are congruent with process objectives and outcome determinative goals. Ultimately, I liken my *Mediator's mind* to a North Star, there to guide me through moments of impasse and uncertainty in the mediation process while illuminating the path towards a desired destination.

CHAPTER 5

What are Examples of the Mediator's Mind in Action?

The purpose of cultivating a Mediator's Mind is to help shape and put into action a thoughtful and strategic mindset. It serves no one to have a thoughtful mediator who can't translate a "mindset" into "mind action." How one segues from a mental model into specific actions and behaviors lies at the heart of mediation training and effectiveness. Indeed, I've taught mediation in more than 30 countries and to thousands of aspiring mediators while attempting to answer this very question. I've also developed an online curriculum for mediation training called Edwards Mediation Academy (edwardsmediationacademy.com). My overarching focus begins by ensuring that aspiring mediators understand the importance of preparing their Mediator's Mind and continued by teaching the specific skills required to effectively implement that vision every day in the conflict environment.

Let me answer the question of how to implement a Mediator's Mind with more specificity. If I approach mediation with a Mediator's Mind that broadly reflects the almost sacred opportunity of being invited into someone else's dispute, I can begin to envision what

my intervention will look like and how I can best prepare myself to meet the challenge. I know to begin by inviting the parties and their clients to engage me pre mediation in designing a process that meets their needs. On certain occasions, my convening activities may extend to a site visit to view a construction problem or a home visit to see how an injured person is coping in the aftermath of a tragic accident. From the beginning, I will stress to the parties that this process was designed to secure their participation, and that participation includes authentic emotions as we begin to sort through factual and legal discussions.

On the day of mediation, I am mentally and physically prepared having familiarized myself with the parties pre mediation positions and having sufficient rest and nutrition to sustain a potentially arduous day. From the beginning, my *Mediator's Mind* is focused on providing the broadest possible solutions so I will emphasize open ended and interest-based questions as I help the parties refine their thinking about needs and interests. I will offer the opportunity of a face-to-face

exchange knowing that I may need to educate and convince parties of the value proposition behind a joint session.

Whether meeting with parties in joint sessions or in private meetings, I will listen to a fault. I wear as a badge of honor when people report in mediation “no one has ever listened to me this way before.” Through listening, I am seeking to connect with parties as I draw them into a new and different conversation, one that encourages conflict participants to go deeper into what lies beneath the conflict and stated positions.

I will decelerate the process knowing that many people can't be rushed through issues involving longstanding disagreement and high emotional content. I will transition to more formal negotiation only when the parties appear ready and not based on any artificial or contrived timeframe.

I will work tirelessly through negotiation while exploring a full range of creative solutions. I will respect the parties' levels of stress, anxiety and fatigue as I coach

and guide them through a negotiation process intended to maximize value for all sides.

I will be attentive along the way to use words and create opportunities to deescalate the conflict while simultaneously searching for ways to improve if not harmonize relationships. And finally, when a deal can be reached, I will do my best to create a lasting, durable agreement that everyone can feel good about by bringing the parties together to praise their efforts and discuss final steps toward resolution.

For each of these laudable objectives there exist a variety of skills and techniques available to mediators to achieve them. After all, a skilled mediator is like a master carpenter with an oversized toolbox. Yes, there is value in having the necessary tools but what separates the master from the journeyman is knowing when and how to employ those tools, often with a practiced hand and in a nuanced manner, that distinguishes good from great.

CHAPTER 6

Can a Mediator's Mind Help a Troubled World?

It's a painful observation but a necessary one that people are dying around the world today because the lessons of respectful dialogue and collaborative problem solving haven't taken root with our world leaders. In addition to wars and other border conflicts, we are faced with existential problems like never before seen; problems like climate change, human migration, pandemics, wealth disparity, and resource scarcity to name but a few. Most of these issues are cross border issues and time sensitive meaning traditional methods of dispute resolution may prove of limited value. The majority of these issues, left unaddressed, will escalate and do so exponentially. Our potential salvation lies in seeking out adaptive, scientifically sound, cross border agreements that may be best pursued through alternative dispute resolution processes such as mediation.

To get there, we need to train a generation of stakeholders from the political, religious and business communities of the wisdom and power of collaborative problem solving. This means realigning thinking about the cost of conflict and how one

defines success. In other words, developing a Mediator's Mind favoring solution oriented and respectful dialogue where principled discussions can occur without disruptive rhetoric or fear of violence.

We need to instill in this generation and the next a Mediator's Mind that seeks to promote transcendent behaviors defined as those rising above the conflict. William Ury, Harvard professor and author of the seminal book on dispute resolution, "Getting to Yes" speaks to this concept when he encourages those involved in intense conflict to "go to the balcony" and look for a higher perspective, a perspective not caught up in conflict.

We need to promote conflict resolution skills by teaching students from the moment they enter school that dispute resolution skills are as critical to their future success as reading and writing skills are thought to be. The Mediator's Mind should be taught to diplomats, government leaders and community activists seeking to bring about positive changes in their communities. Regardless of one's chosen

profession or station in life, development of a Mediator's Mind should be viewed as a philosophical approach to peaceful co-existence and collaborative problem solving, two laudable goals that remain in short supply. Regardless of one's religious beliefs or political affiliation, one thing we should all be able to agree upon, continued divisiveness and its attendant exclusionary populism will not solve our world problems. Only informed, inclusive, forward looking solutions will address a troubled world. A Mediator's Mind offers us the ability to move forward collectively and effectively toward a less troubled future.

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