Harnessing the Power of the Master Mediator

Seeing new things in the same old rooms

with Lee Jay Berman

Tennessee ADR Commission

13th Annual Advanced Mediation Techniques Workshop

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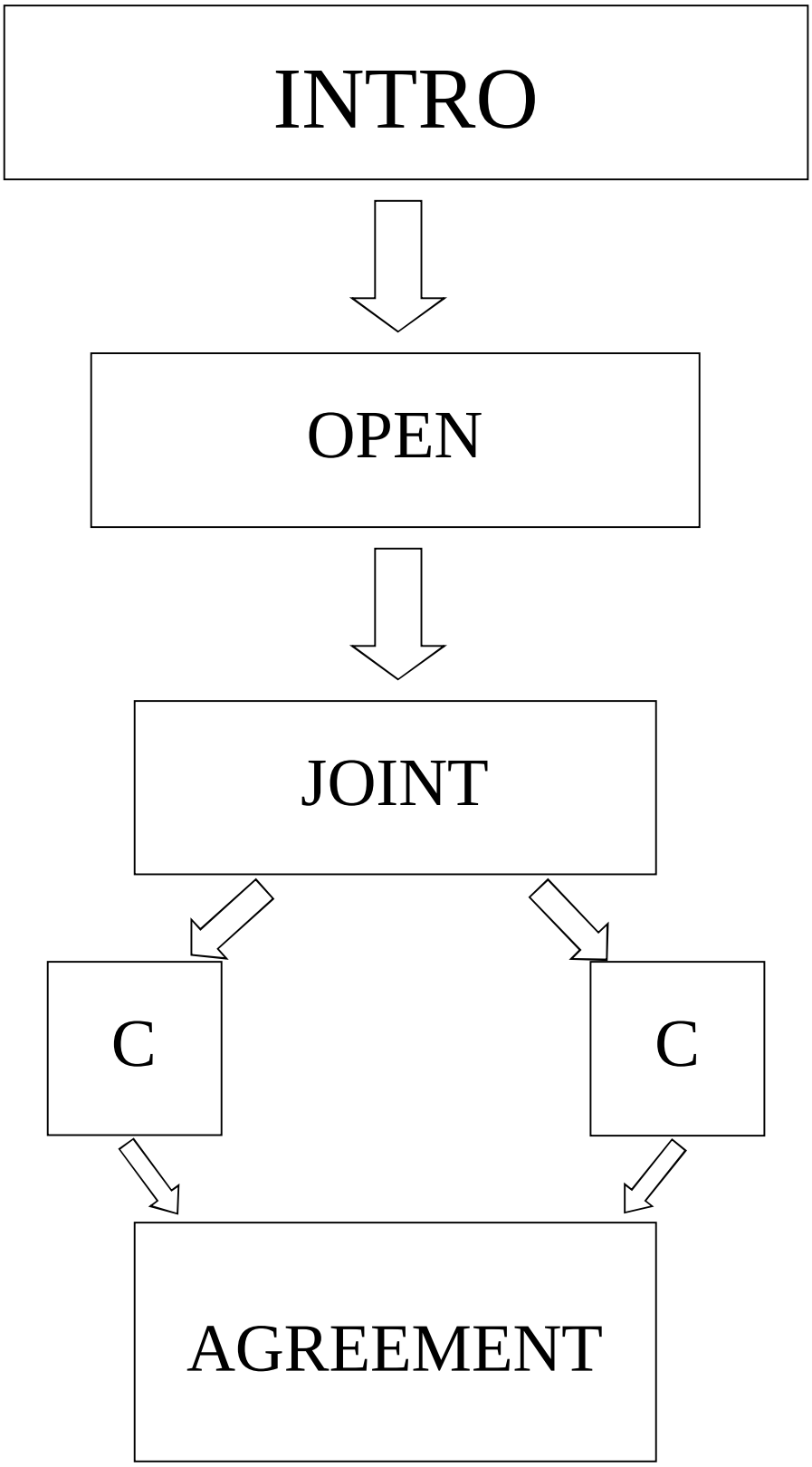
INTRO
OPEN
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AGREEMENT

The Master Mediator

By Lee Jay Berman (with a tremendous amount of attribution to David Deida)

Step into the fullness of our being – intense, focused, powerful and clear, and directly connected to our intuition." -Dennis Mead-Shikaly

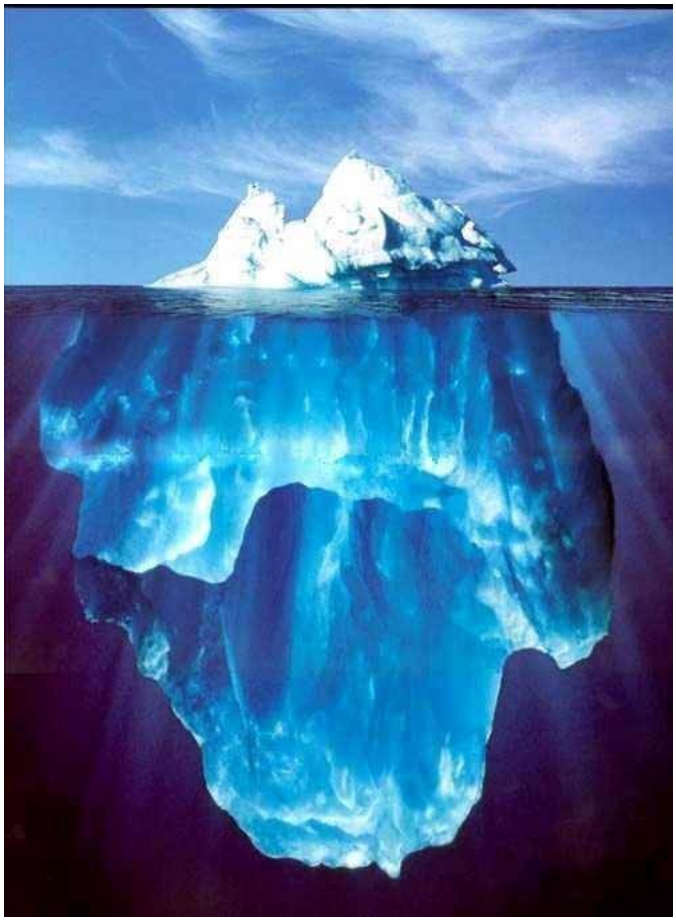
The Master Mediator isn't a bully evaluator, posturing and banging heads together like a big-time wrestler, nor a spineless message carrier masquerading as a facilitator, succumbing to the moods of the participants, smiling and starry-eyed. He has embraced both his inner masculine and feminine, and he no longer holds onto either of them. She doesn't need to be right all the time, nor does she need to be always safe, cooperative, sharing and liked. He simply lives from his deepest core, fearlessly giving his gifts, feeling through the fleeting moment into the openness of existence, totally committed to magnifying love and peace.

Some mediators are comfortable. In mediating, they want, or perhaps need, to operate from a place that is comfortable. Perhaps they rely on either their substantive knowledge, experience and influence or their people skills, charm and persuasiveness. They are happy with the effort they give, if they feel they gave their best. They're not interested in the artful nuances of the work or in personal growth. For these people, this course will be irrelevant, possibly even offensive.

It is time to evolve beyond the macho jerk ideal, all spine and no heart. It is also time to evolve beyond the sensitive, caring wimp ideal, all heart and no spine. Heart, spine, spirit and mind must be integrated into a single mediator, and then transgressed in the fullest embodiment of consciousness possible, which requires a deep realization of the infinite openness of the present moment.

This takes a lot of inner work. It requires a new level of awareness and enlightenment, and a deeper level consciousness. It means learning on new levels. It means a whole new set of tools to incorporate fluidly. And it takes a new kind of courage.

What we see, and what we let others see.

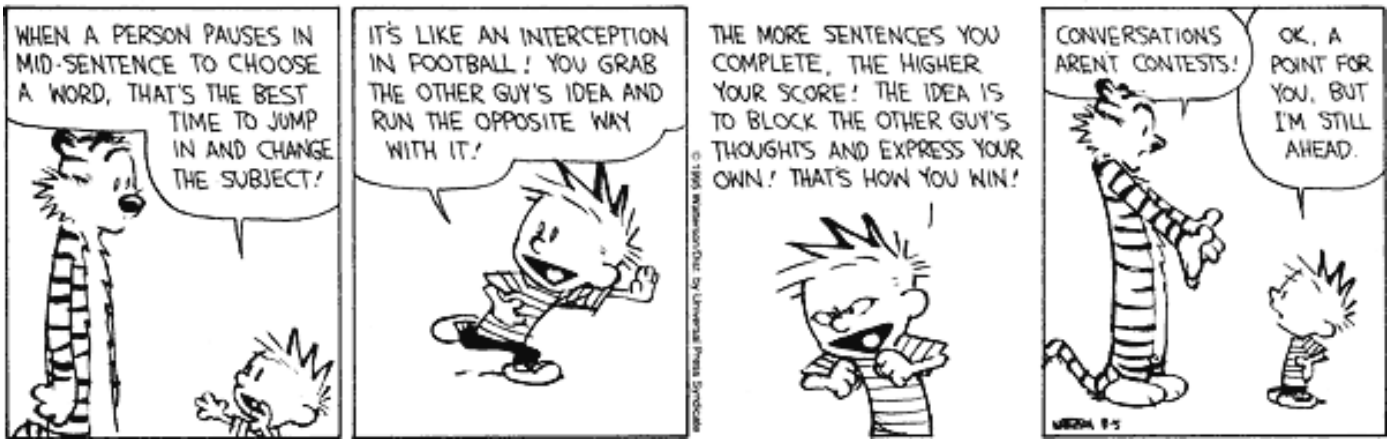


What is really going on with us, and with others.
All others. All the time.

VERBAL

COMMUNICATION

SKILLS



ADVANCED COMMUNICATION STYLES

To say that communication style is an art form is an understatement. But after one has reached the level of management where their responsibilities include being diplomatic, having difficult conversations with subordinates and peer managers alike, resolving conflict, and managing the delicate balance of the work force, conjures the title of Daniel Goldsmith's 2007 book ***What got you here won't get you there: how successful people become even more successful.*** What I mean is that managers must master advanced communication and facilitation skills in order to survive. For this, we turn to the work of psychologist John Heron in ***The Complete Facilitator's Handbook***. He developed the Heron Model, which Leadership Development Partners has adapted into the Advanced Communication Styles model.

As managers help, coach and lead people, we explored earlier in Thomas Kilmann's work that they share the tensions between the importance of the content of the message and the importance of the relationship. In putting that work into play, they benefit by thinking about what communication style they want to use. Each message can be delivered, according to Goldsmith, in one of six styles. The art is in deciding which will be the most effective in a given moment, under that circumstance, and with that person or team. Oh, and in doing so in a split second between the time one has the impulse to intervene in the moment, and when one begins to speak. Easy, right? Actually, if a person can focus on the following matrix, it is not as hard as it might sound at first.

Style	Approach	Intent or Goal
Authoritative	**Prescriptive**	• Direct • Give advice and guidance
	Informative	• Give you view and experience • Offer choices
	Confronting	• Challenge the other person's thinking • Hold up a mirror
Facilitative	**Cathartic**	• Help them express their feelings • Empathize with them
	Catalytic	• Ask questions to encourage fresh thinking • Self problem solving
	Supportive	• Demonstrate support • Increase their confidence

In this model, the two primary modalities are that one is either being Authoritative or Facilitative. In the authoritative style, the speaker is more directive and leads more, resulting in an intervention in which the speaker is very involved. In the facilitative style, the intervention involves the speaker less directly, and centers the focus around the listener. This is the first thing to figure out – who is this about? It may help to think of authoritative as "the importance of the issue" and facilitative as "the importance of the relationship", as in the Kilmann grid.

ADVANCED COMMUNICATION STYLES

Within the **Authoritative style**, there are three approaches:

Perscriptive provides an answer, it is direct and tells the person the solution.
It can be said to be directing or dictating the activities of the team.

Informative provides information, offers choices, and gives the person options.
It can be said to be giving the team new information or offering them insights.

Confronting provides behavioral observations and gives them awareness and insight.
It can be said to be challenging the team or bringing their actions into the open.

Within the **Enabling style**, there are also three approaches:

Cathartic provides listening and allows the person to feel heard and understood.
It can be said to help the team surface and then move beyond constricting emotions.

Catalytic provides prompting and questioning to allow the person to find a solution.
It can be said to help the team do it for themselves or make their own plan.

Supportive provides support and confidence, allowing the person to better engage.
It can be said to show the team that you value it and that you are willing to pitch in.

Quick Quiz:

1. In your group, take turns delivering the message that the team's last proposal was unsuccessful and that they need to go back to the drawing board and begin again from scratch. Can you say it using each of the six approaches or voices? Can you stretch them so that they sound like six completely different approaches?

2. Discuss which comes the easiest for you and which is more difficult for each of you.

3. Why do you think that is the case?

4. Are there benefits to using these different voices?

5. What does each voice do to the team's relationships and chemistry.

6. Which is the best approach for a team?

(Quiz continues on the next page)

ADVANCED COMMUNICATION STYLES

Private Quick Quiz:

When is it most useful to use your preferred style? What situations or factors indicate to you that it is the best approach?

_____

_____

In what circumstances is your preferred style not effective with a team?

_____

_____

Which communication style(s) would you most want to develop for the future?

_____

_____

In what situations would you most benefit from using them?

_____

_____

What do you need to do in order to start using these newer advanced communication styles?

_____

_____

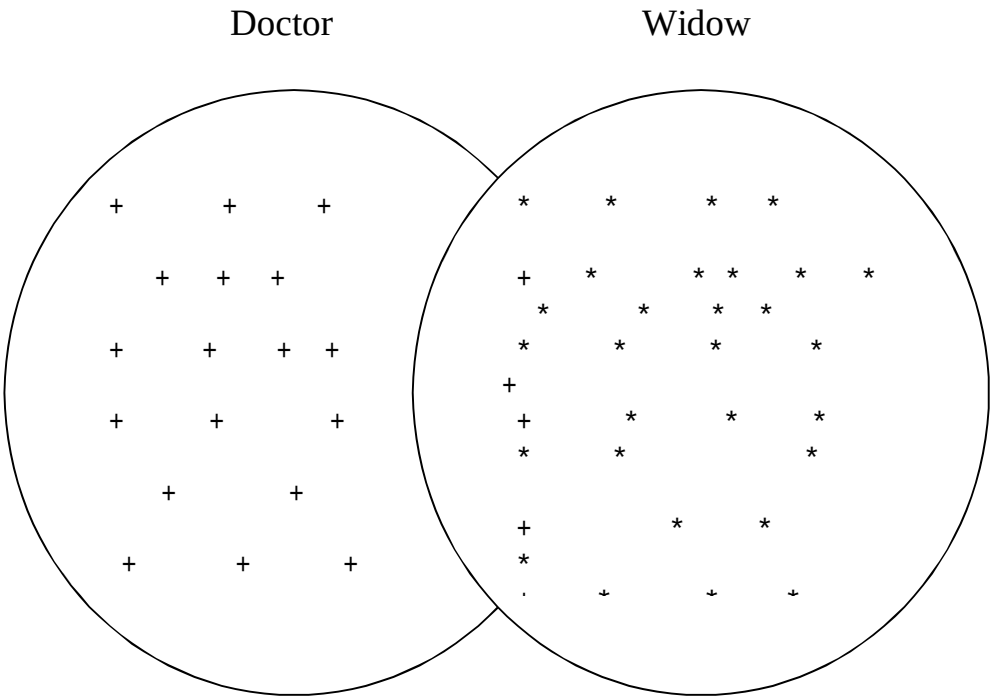
What do you need to do in order to start thinking in and applying these advanced styles?

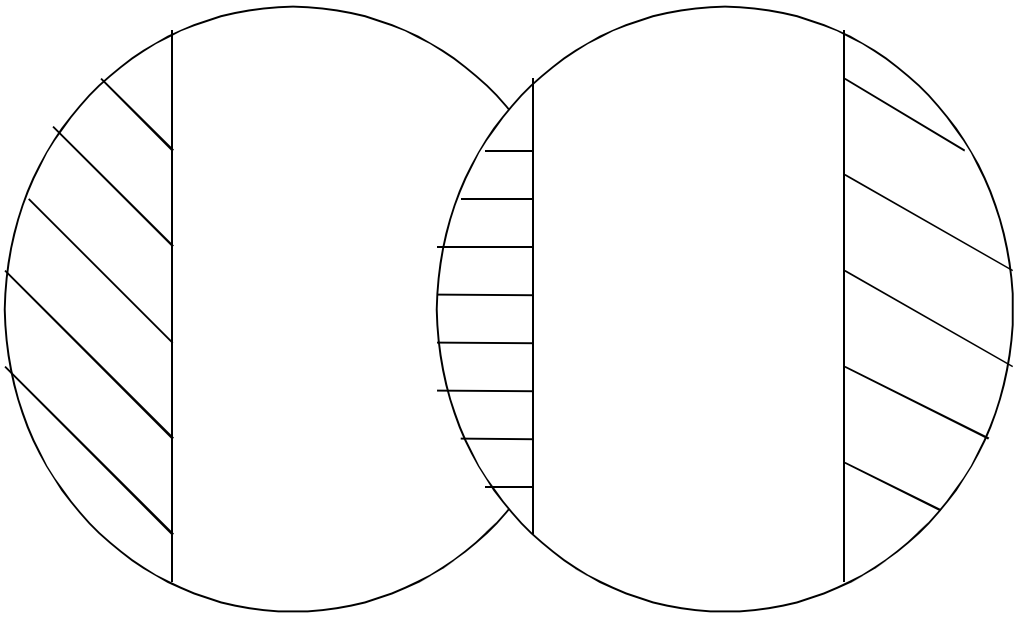
_____

_____

Can you commit to working on these styles until you are fluent in them and able to be versatile in your delivery of them and fluid in moving between them as the situation dictates?

Speaking to Parts of Them





VERBAL COMMUNICATION TECHNIQUES

FACILITATION TOOLS

Flexibility.

This is the most important of all tools. Mediation is an art form, not a science. There is no single right way to mediate. A good mediator must be prepared to do whatever works best with those folks at that time. The structure taught in basic mediation skills courses is an important fallback position for structure, but it will never unfold the same way twice. The mediator needs to be the most flexible at the table.

Framing.

Focusing the participants is a fundamental role of the mediator. The participants inherently give the mediator the power to focus the discussion. The mediator must then keep them framed with only one topic open for discussion at any given time.

Rounding Off The Edges.

$1,000,000 becomes "a serious amount of money" or "being seriously compensated" in order to allow the participant the room to be flexible and save face later in he process should the amount change.

Bifurcating Issues.

Separating large, complex issues into smaller, more manageable pieces which can be resolved more easily in parts.

Normalization.

Participants will typically come to mediation convinced that their dispute may well be unresolvable. They need to hear from the mediator that their situation is, in fact, fully solvable, in fact, from your experience, you know that situations such as theirs, and even much more difficult cases are routinely resolved through the mediation process. It eases their anxiety and allows them to focus on how they want the dispute to work out, rather than *if* it will work out.

Speaking through other voices.

Never saying "This is That", try instead "Some folks find that This is sometimes That."

The three F's work well here: Feel, Felt and Found. It goes something like this:

> *"I know how you feel. I have seen others who felt that way at this point in a dispute. What these folks found that worked for them was _____. Of course, others in this situation have found _____ helpful. Could one of those solutions work for you?"*

VERBAL COMMUNICATION TECHNIQUES

FACILITATION TOOLS

Mutualization.

Helping the participants recognize that the dispute is not the other person's *fault*, but that they share the dispute, it is both of their problem. "We have a problem, so where do we want to go from here?" or “How should we get past this stumbling block?”

Reframing.

Restating a comment by recognizing the positive intention behind it or contained in it, while omitting any derogatory language. Or by extracting and highlighting the nugget buried in the rant. I may sound something like when someone says something like, “I can’t believe I’m doing this because I don’t feel like I owe them anything at all, but I’ll agree to pay $X if that will bring closure to this.”, then you might want to say something like, “OK, so I hear that you’re willing to make them an offer to settle! Good! Thank you. Let’s see what kind of response we can get to that.”

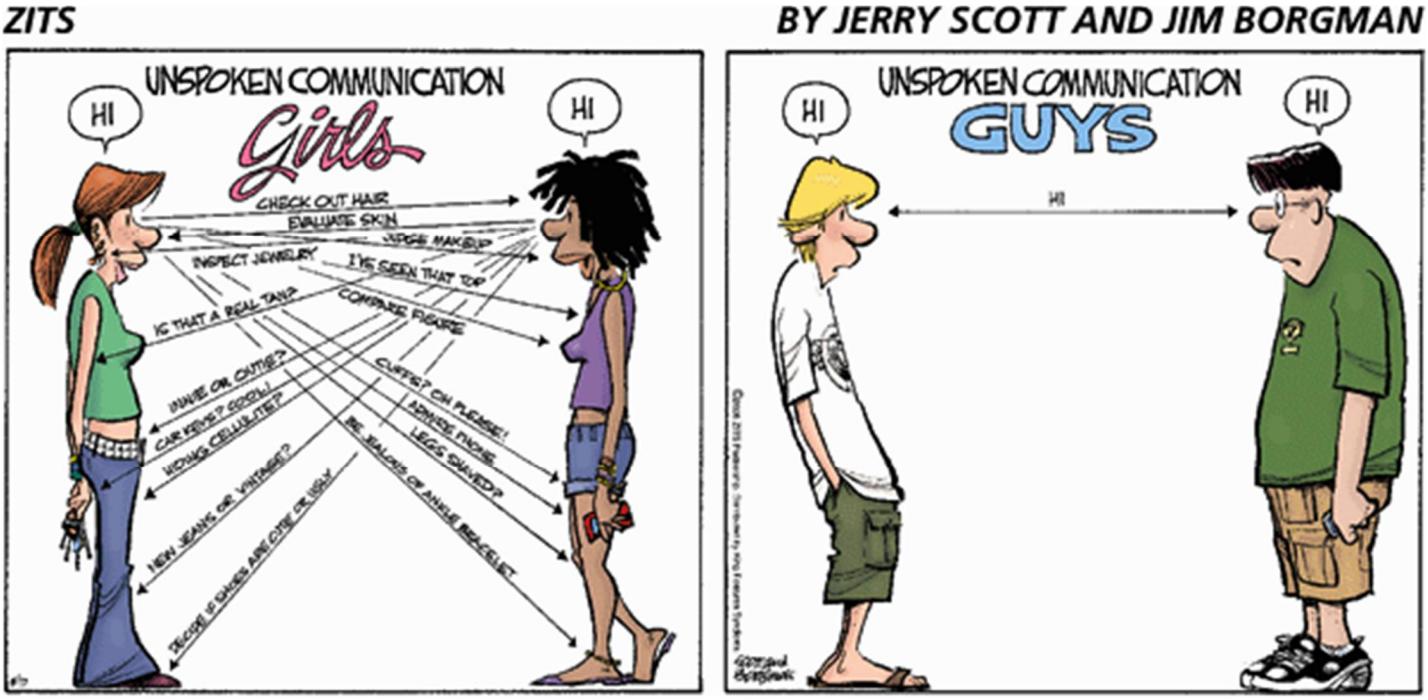
Generalization.

When we need to give an instruction or an admonishment to one participant, but we don’t want to single them out, perhaps risking embarrassing them, what we can do is generalize the instruction, and ideally not immediately following the inappropriate action, by giving the instruction or suggestion to the whole group at once. It may sound something like. “Because it’s important to me that I hear everything that each of you has to say, it really helps me if you all try to only speak one person at a time. When you talk at the same time, I can’t really hear any of you, and that just means we’ll need to be here longer as I go back over what each of you has said. Can we agree to that?”

NON-VERBAL

COMMUNICATION

SKILLS



NEURO-LINGUISTIC PROGRAMMING

PERCEPTUAL SYSTEMS

People differ in the way they receive and process information. People generally have five senses through which they absorb and process information about their environment:

Seeing Hearing Touching Smelling Tasting.

Although Smell and Taste are powerful memory tools, they play a substantially smaller role in our daily learning, at least in our society (other than food, when was the last time you licked something to learn about it?). This leaves the three major ways human beings learn about and perceive their world:

1.	**VISUAL**	about 50% on the average
2.	**AUDITORY**	about 15% on the average
3.	**KINESTHETIC**	about 35% on the average

Although we all possess all of these abilities, life has taught us to favor or prefer one particular method for processing information. The reason is that our brains cannot process all of this information at once, so we have conditioned ourselves to develop a preference in how we perceive the world. For purposes of this discussion, we will generalize about people being one or the other.

While it may be important for your own personal self-awareness to assess how much you fit into each of these three areas, it is more important as a mediator to heighten your awareness about all three so that you can communicate most effectively with people, no matter how they learn. If you as mediator can determine how a participant likes to process information (visual, kinesthetic or auditory), you will have a great advantage in effectively communicating with that participant, and translating what the other participant(s) are saying or feeling. The flip side is that these learning techniques can get in the way of one's ability to process information. If one participant is strictly visual and the other is telling a long he-said/she-said story without much visual interest, the visual learner will become visible frustrated. The thing about a particular message that makes it such a revelation to one person, can be the very thing that gets in the way of another person understanding it.

In normal communication, studies have shown that on the average we absorb information in the following proportions in person and on the telephone:

	In Person	On Phone
Words / Content	7%	15.6%
Tone of Voice	38%	84.4%
Physiology / Body Language	55%	-0-
	100%	100%

NEURO-LINGUISTIC PROGRAMMING (Cont'd)

VISUAL learners match information to pictures as they learn it. They pair a visual experience to the information and they retrieve it by finding the equivalent of a photo or playing a scene from a movie. Seeing where they were when a piece of information entered their consciousness triggers the memory of the information.

AUDITORY learners hear the information to process it. They can hear your voice giving them the information as they recall it. To retrieve it, they literally replay the audio tape and listen to it again. Auditory learners include "Auditory Digital" learners who focus especially on facts and numbers. These are the math geniuses and historians who can recall thousands of dates throughout history. These people, for obvious reasons, are more comfortable on the phone than kinesthetic or visual people who need to see or touch the person as they talk.

KINESTHETIC learners absorb information through touch, texture and the environment. They are literally our touchy, feely friends. Kinesthetic learners also learn through smell and taste. They typically verbalize their recollection as the essence or mood of an event. This is what they intake when they do not actually touch the thing they are describing. They will describe a "feeling" of a moment. They will buy art and clothing because of texture.

Knowing all of this:

How might each of these three types of learners dress and present themselves?

Visual people tend to be very visually pleasing. Visual people's colors will always match and coordinate; they will rarely have any "loose ends" (long belts, sashes or fringes). Their hair will be neat, usually short. Men's facial hair will be immaculately groomed and women's shoes and handbags will always match (or they will apologize out loud assuming that everyone else has noticed).

Auditory people will often wear loud colors or brightly colored accessories or jewelry. They will wear loud hair colors. Sometimes you will see them in a rainbow of bright colors that don't even match each other, except in volume. Often, Auditory people wear smooth clothing such as structured silks and finished wool gabardines, so they don't make noise or get in the way of their concentration.

Kinesthetic people wear whatever feels good—the big, warm, cozy sweater or the flannels (wool and cotton). Kinesthetic people don't concern themselves much with colors, either in matching them or in using them at all. They are usually found in earth toned, soft, natural fibers that are two sizes too large and with soft, comfortable shoes. Their hair is usually uncombed or permed, often in a ponytail.

How do they talk? **Visuals** talk quickly and don't move much.
Auditories talk in rhythm.
Kinesthetics use lots of gestures.

What kinds of cars do they drive? What kinds of food do they eat?
What kind of music and dancing do they prefer? What kind of furniture do they buy?

NEURO-LINGUISTIC PROGRAMMING (Cont'd)

EYE MOVEMENTS

One method of identifying how people like to process information is to watch their eye movements when they search their mind to gather information. We actually use different areas of the brain depending on whether we store information visually, auditorily or kinesthetically. The brain also stores memories in a different area from where it creates new information.

The eyes must move in certain directions to facilitate the brain's accessing the proper area. What's more, these sensory preferences tend to be especially pronounced under situations of stress. Therefore in a mediation, to the educated observer, most participants will teach us how they learn:

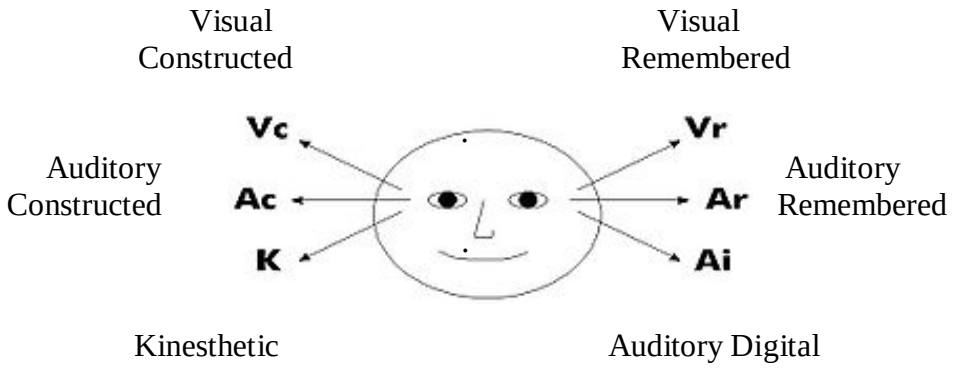
Visual Search	**=**	**Eyes Up or Defocused**
Auditory Search	**=**	**Eyes Ahead or One Side**
Kinesthetic Search	**=**	**Eyes Down to Strong Side**

A Visual search usually moves the eyes up or defocuses them. A Kinesthetic search usually moves the eyes down and toward the strong hand (to the right if right-handed). An auditory search either focuses the eyes directly ahead, often to the speaker or it moves the eyes to one side or the other (as if to the ears).

Additionally, the left and right sides of the brain process different types of information. The left side of the brain stores your logical, calculating, and historical talents. The right side stores your creative and emotional thoughts.

Therefore, if one looks up and to the left, they are accessing visual history. If they look up and to the right, they are creating a visual in order to describe it. The same goes for sounds on each side of the eyes. Down and to the strong side is feeling a sensation or proprioceptive feeling (muscle movement). Down and to the weak side is Auditory Digital (evaluative or talking to one's self).

As this figure looks at you, the eyes will tell which part of the brain is being accessed:



NEURO-LINGUISTIC PROGRAMMING (Cont'd)

SENSORY-BASED WORDS

There are other ways to tell how a person learns. As Jim Melamed says, "Even a blind mediator (or and auditory mediator) can easily figure out how a participant likes to process their information". The participant will, literally, tell the mediator by the types of words that they choose. Here are some examples of common phrases as typically used by each group:

Visual Learners: I See, Look at it this way, I can't picture it, I can imagine.

Auditory Learners: I Hear, Sounds right, Listen to me, How does this sound?

Kinesthetic Learners: I Feel, I sense, I can't grasp it, I need time to get my arms around it

Examples of other sensory-based words and phrases:

Visual		Auditory		Kinesthetic	
Look	Reflect	Say	Ring	Touch	Push
Picture	Clarify	Loud	Ask	Handle	Stress
Imagine	Examine	Tone	Discuss	Contact	Tangible
Visualize	Focus	Accent	Remark	Solid	Concrete
Insight	Foresee	Resonate	Vocalize	Warm	Hold
Perspective	Illusion	Sound	Tell	Cold	Heavy
Scene	Watch	Rhythm	Speechless	Rough	Sensitive
Blank	Outlook	Deaf	Dissonant	Tackle	Smooth

I see what you mean	On the same wavelength	Hold on a second
I am looking at an idea	Living in harmony	Thick skinned
We see eye-to-eye	Turn a deaf ear	Scratch the surface
Show me what you mean	Music to my ears	Feels right to me
It appears to me	Word for word	Can't put my finger on it
I have a hazy notion	Unheard of	Heated argument
He has a blind spot	In a manner of speaking	It smells funny to me
Shed some light on it	Calling the shots	A cool customer
The future looks bright	Rings true	I'll be in touch
My mind's eye	Loud and clear	Get your arms around it

> "A wise man hears one word, and understands two."
> - *Yiddush Proverb*

NEURO-LINGUISTIC PROGRAMMING (Cont'd)

BUILDING RAPPORT

Matching, Pacing, and Leading.

Matching is subtly developing a physical and emotional rapport with the participants. Mirroring their body language (especially that of the party not speaking) with respect to legs, arms, hands, etc. makes them more at ease. Matching also extends to using key phrases and words, and gestures. Using their words back to them makes them trust that the mediator understands where they are coming from. Used properly and appropriately, analogies within their industry or surrounding their hobbies are very agreeable tools.

Pacing means moving and speaking at a pace that approximates the pace of the participants.

Leading follows once the rapport is established. At this point,the parties will unconsciously follow the mediator's lead. Perhaps leaning in, more actively over a document, the participants will follow and lean in if they are in concert with the mediator.

Language for Matching, Pacing and Leading.

Recognizing and acknowledging each person's feelings and position before making suggestions is important to let them know you hear them. It is the "used car salesman" mediator who fails this acknowledgement and simply attempts to move the participants. In doing the recognizing at the top of a statement, be careful not to use words like "but" or "however" as transition words. They can negate what was said directly before them, which in many cases is exactly what the participants needed to hear.

Icons.

Technically called Cognitive Anchoring, this is the use of using gestures paired with an understood meaning during the mediation. The thumb toward the window can come to signify the courthouse (their other option or BATNA). When a gesture is shared between mediator and participants (or one in caucus), the bond of understanding is created, thereby deepening the trust and willingness to collaborate. In a case with repeated sessions such as a divorce case, if one participant is a golfer, a golf swing in caucus, paired with the question of how was your week, can serve to relax the person and allow them to pick up where they left off at the end of last session without having to rebuild all of the rapport and goodwill both between the mediator and parties and between the parties themselves. It can create a "come in from the rat race" environment, as opposed to the "I don't want to work on this dispute, I want to go run my business or play with my kids." approach that many walk in with for the first session.

> "The heart knows reasons that reason knows nothing of."
> *-Blaise Pascal*

PERSPECTIVE

&

MANIPULATION

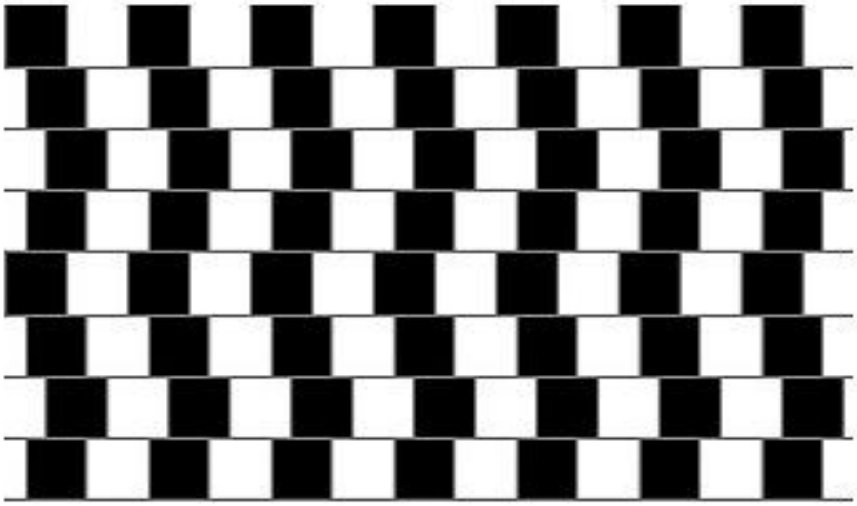
PERCEPTION IS EVERYTHING

The best conflict resolvers can hold two different truths at the same time, and not feel compelled to decide. Given that two people can look at the same set of facts and see two different things. Before one can decide which perspective is "correct", that person must fully understand both perspectives. Can you?

A Face Of A Native American... Or An Eskimo?

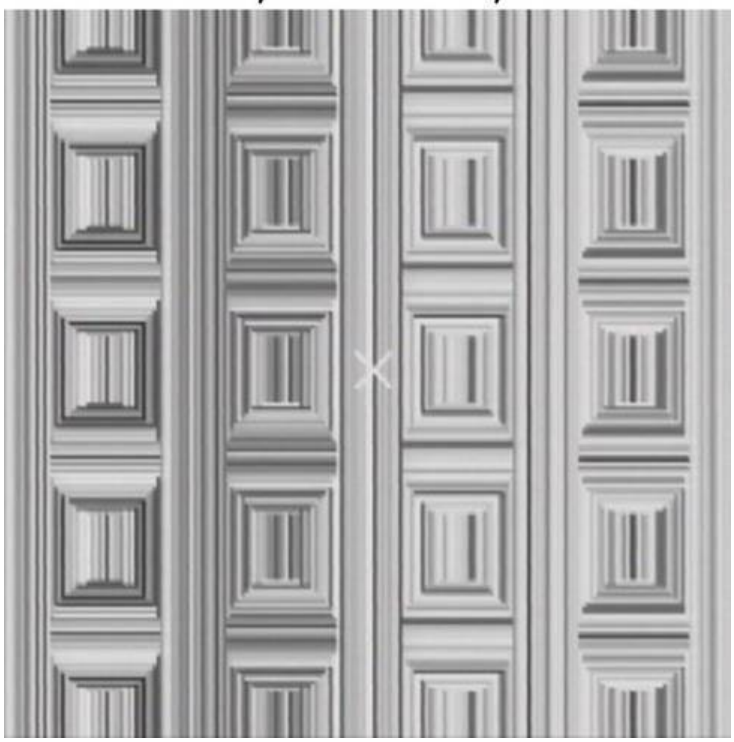
Old Woman...Or Young Girl?
hint:The old woman's nose is the young girls chin.

PERCEPTION IS EVERYTHING



Are the horizontal lines parallel or do they slope?

How many circles do you see?



THE THREE COMMUNICATION STATES PEOPLE USE TO MANIPULATE

A D U L T	**A D U L T**
P A R E N T	**P A R E N T**
C H I L D	**C H I L D**

Everybody is in one of these three states all of the time.

Each style can affect the others depending on which state each is in.
Similar to the childhood game of Rock/Paper/Scissors:
Each style can "win" or be effective depending the state the other person chooses.

Parent dominates Child
When one takes on the tone of a scolding Parent (critical, judgmental),
it can send the listener into the Child state (fear, emotional).

Child manipulates Adult
When one takes on the state of a helpless Child (scared, needy, victimized),
it can send the listener into the Parent state (protective, codependent).

Ideally, both are in Adult
The mediator's goal is to keep all parties at the table in Adult state.
Adults are empowered, self-reliant, neutral and unattached.
In the Adult state, we deal with information rather than emotion.
In adult state, we cannot be manipulated to buy in to others' drama.
This helps to eliminate drama, theatrics and manipulation during the mediation process.