Mediating with a Powerful/Competitive Couple: Michael and Debbie

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The behavior of the mediator is situational. That is, s/he not only uses specific strategies that are appropriate to each situation during the mediation, s/he also behaves differently depending on the overall dynamics of the parties. If both parties are equally powerful and competitive, the mediator tends to be more controlling and engage in direct control activities that are not explained to the parties. If the parties appear to be fragile and/or depressed, the mediator will be less controlling, seek to gain their permission for strategies to empower them, and move more slowly through the process.

II. CONTROLLING COMPETITIVE COUPLES

With a powerful/competitive couple, the mediator controls the dialogue by simply interjecting when one party complains about the other or digresses.
from the task. S/he uses a direct fact question, cutting off the digression, so as to force a change in the behavior of the client. No explanation of the strategy is offered and the mediator does not obtain permission for these interjections. Powerful people do not seem to mind this strategy. The relationship and interaction of most powerful/competitive couples is chaotic and a firm structure appears to be appreciated by both parties. This approach is in contrast to the strategy used while handling fragile couples.

When working with a fragile couple, the mediator changes the direction of the dialogue when it is non-productive by allowing the couple in on the decision to make the change or shifting responsibility for the digression to the mediator. When one party digresses or attacks the other the mediator might apologize to the client—"I'm sorry I was not clear in my question"—as s/he directs the client back on task. Or the mediator might ask the client to "only speak for yourself because I am really interested in what you want."

The case discussed in this article demonstrates how the mediator used a direct, and at times confronting, approach. Michael and Debbie are professionals, with an ability to engage in a high-conflict power struggle. Therefore, the mediator chose a highly controlling approach dealing directly with each fight as it broke out, so as to contain the conflict before it could fully develop.

Michael and Debbie have been married for 12 years and have two children—Daniel, age 8 and Susan, age 6. The parents have been drifting apart in recent years, each engaged in their own career. Debbie is an M.D. in a group practice with two other women doctors. The practice specializes in treating adolescent girls and provides services for Planned Parenthood. Michael is an ophthalmologist with a well established practice; he has few outside interests.

One month ago, Michael moved out of the marital home and purchased a condominium apartment nearby. He has a girl friend and Debbie has resisted letting the children spend time with Michael because of the other woman. The couple were referred to mediation by their attorneys with the hope that the access issue could be worked out, while counsel negotiated the property settlement. In making the referral, counsel shared some opinions with the mediator about the level and nature of the couple's conflict. Based on this information, the mediator determined a strategy to contain the conflict within reasonable bounds.

A. Setting The Agenda

The mediator sets an agenda for her/himself that is reasonable, in that it can be achieved in the time allotted to the session, and responsible, in that the couple can deal with it given their emotional stage in the separation/divorce process. When the couple first enters mediation, the mediator makes
an assessment of their readiness to divorce and acts accordingly. In this case, the mediator set a very limited goal of achieving a structured access schedule in the immediate future, gaining time to work the wider issue of parenting at a slower pace and not under the gun of “no visitation.”

B. Directing The Questions

In line with his agenda, the mediator chose to ask questions in a way appropriate for this couple. Normally, the mediator asks the initial questions so that either partner can answer. The order and way in which the questions are answered often informs the mediator of the power balance and the couple’s perceptions about the marriage. There is an element of risk in the open question in that it also provides space for the marital conflict to emerge easily and quickly. However, if the mediator has no prior information regarding the couple’s conflict level and style, then the open question is a useful diagnostic tool.

Who answers first, the checking they do with the other as they answer, and the speed with which they are interrupted, are key indicators of the conflict level and style. In this case, the mediator chose to exert additional control over both the couple’s dynamics, and the process itself, by directing the questions to a specific party in the belief that direct questions to one person were more likely to generate fact answers. This strategy of staying with the facts also helps the mediator contain the conflict until s/he is ready to permit it as part of the process.

The first question was directed to the wife: “Tell me what is happening right now regarding the children.” This question has two purposes: (1) it elicits specific information, and (2) it keeps the clients in the timeframe of the present. The mediator cannot change the past. Asking past-focused questions enmeshes both the mediator and the clients in the old arguments and the problem. By focusing on the future, the mediator concentrates on the solution.

C. Determining Where The Initial Movement Will Come From

The wife gave the basic information that, “I’ve let him see the children a couple of times,” but indicated that the children did not like to visit with their father. This is a tough opening position, designed to shift the responsibility to the children and thus make it unresolvable in mediation. Therefore, the mediator notes that it is an “add on” but does not acknowledge the

position or give it any credence. As such, the mediator ignores it because s/he knows that the wife will have to move off that tough opening position. By ignoring it now, the mediator makes it easier for her to make the move. If the mediator dealt with it at this point in the negotiations, s/he would give it additional credence and make it more difficult for the wife to discard it later. The mediator began to see the first strategic problem in the mediation: the wife did not want the children visiting with the husband while "the other woman" was present, which made it very difficult for him to spend time with them.

When one party to a dispute has an extreme or unreasonable position, the mediator has a difficult task for s/he must seek the initial movement from that party before moving to the other party for a reciprocal concession. In this case, it would be inappropriate to seek a concession from the husband until he knew he was going to be able to see his children. Thus a great deal of the focus of the session had to be on the wife, as the mediator tried to determine Debbie's reasons for the extreme position and, at the same time, seek indications of where some movement might be possible.

Most courts currently do not consider disallowing the children their right to their father. Accordingly, the mediator worked to keep the couple in the mediation process, while seeking enough movement from the wife so as to bring her into a negotiating framework, because the husband is unlikely to stay in mediation if the issue to negotiate is whether he sees his children rather than when he sees them.

D. Balancing By Allowing Ventilation

When the mediator concentrates on one spouse it is difficult for the other, since that spouse has feelings and wants to be heard. In this case study the mediator appears to violate the rules of balance by focusing on tasks with the wife, and then allowing the husband to ventilate his concerns and get off task. The ventilation must be about his feelings. If the ventilation becomes an attack on the other spouse then the mediator should cut it off. For example, after gathering the basic data from Debbie, the mediator turned to Michael and asked him for his view of what was happening. Michael began by describing the current situation but soon wandered off the issue and opened an attack on Debbie's behavior. The mediator cut this off by interjecting a fact question. Michael complained: "She has no sense of reality, she is off the wall," and the mediator interjected: "How old are the children?" As Michael answers the fact question he is prevented from getting too far into the spousal conflict. If he had ventilated about his feelings, then the mediator would have permitted him to continue.

Once the basic data has been gathered, if the mediator finds it necessary to continue concentrating on the wife, the mediator can permit Michael to
ventilating about Debbie in order to keep him in the process. The mediator concentrates on getting the initial movement, or an indication of a concession from the wife, which he will then use to gain a concession or movement from the husband. The husband’s ventilation, while permitted by the mediator, is kept within bounds by the way the mediator prevents the ventilation from building into overt conflict between the couple. That is, when the ventilation of the husband begins to repeat itself, the mediator cuts it off in a way that obviates the need for the wife to respond.

When a couple are in high conflict they often talk for each other. That is, when a mediator asks a direct question, the response is often not about what the answerer wants or feels, but rather what s/he perceives the other party as not wanting. In this case the mediator refocused the couple by asking: “I think I understand what Debbie wants, Michael, but what do you want?” This helped Michael state his needs (which is future-focused on the solution) rather than what he perceived Debbie wanted (which is past-focused on the problem).

E. Using Summarization

People in conflict often do not listen to each other. Rather, they are waiting, silently preparing an attack on the speaker. Since the mediator is not a party to the history of the dispute, both parties tend to listen to her/him. Because of this fact, the mediator uses the process of summarization to:

1) show the parties the mediator has heard them;
2) check the veracity of her/his perception from their feedback;
3) clarify the issues; and
4) help one client hear what the other has said.

Therefore, when the mediator summarizes, for example, the husband’s position, the wife hears it clearly, perhaps for the first time.

Another aspect of the summary process is the mediator’s ability to reframe one party’s statement in a way that makes it clear to the other party what is positive about the proposal. For example, at one point Michael said: “I want the children living with me half the time, and if they are having a hard time moving between us as she says, perhaps I should go for full custody.” In summarizing that statement the mediator said: “So, you would like the children half of the time with the other half of the time being with Debbie.” This summary lets the wife hear that the husband wants the children half of the time but it also reminds her that his proposal provides for them to be with her for one-half of the time.

People in conflict hear selectively and usually focus on the worst aspects of the other’s statements rather than the positive. Hence, in this summary
the mediator ignored the husband's threat about having full custody, thereby sending him a signal that the threat was not taken seriously. At the same time, the mediator added to the husband's statement the condition of half-time for the wife, which reinforced for her that the husband's total custody claim was not too serious while telling her that she would have one-half of the time under Michael's proposal.

III. MANAGING THE NEGOTIATIONS

The dynamics of the marital power struggle make it difficult for the couple to make direct and reasonable concessions or offers to each other. Ideally, the parties to a dispute are able to develop options to solve the problem defined by the data. However, this particular couple had too low a level of trust to be able to make direct concessions to each other. This is because of:

1. the short time since the separation;
2. the issue of displacement by the other woman;
3. their marital power dynamics; and
4. their inexperience in fair negotiations.

Therefore, the mediator tries to use concrete questions to bring people from global complaints to specific ideas.

In addition, the mediator tries to quantify issues whenever possible because people can handle quantity issues more easily. For example, the wife is complaining in a global way about Michael leaving her and how hard the children are taking the separation. The mediator might then ask: "Debbie, if you were going to organize the parenting for the next week, how would you organize it?" This is an attempt to find out what she is willing to do in specific quantity terms (i.e., how often will they see him) rather than continue the global and non-specific complaints. It also focuses on the parenting role and the amount of time the children will spend with their father in an attempt to separate it from their spousal disputes.

When Debbie responded with another unfocused attack on Michael and his girlfriend, the mediator asked: "How much time, if the children were living with you, would they spend with their dad?" This more specific question has four components:

1. it moves from the general to the specific by asking about quantity;
2. it requires the wife to think about the husband's needs and to begin to let go of the blanket prohibition against the children being at the father's home;
3. it helps the wife separate her spousal and parenting roles by using the word "dad"; and
4. It recognizes that she has defined the situation as her having the power. By acknowledging this, the mediator reduces her need to claim even more power.

A. Partializing

The wife responded to this question in two parts and shifted the terms: “They need a home and I don’t think he’s prepared to give them the proper kind of home.” The mediator chose to partialize the response on the theory that the need for a home would meet with common agreement while the issue of what was proper would only lead to more disagreement. The mediator then asked the wife: “Let’s separate this out. Assume for a moment that the kind of home has been agreed upon. (This put the disagreement aside for a moment and allowed the mediator to move from the global to the specific.) How much time will they spend with their dad?”

Under this questioning, the wife made her first significant movement. She responded: “The children love their father and I don’t want to keep them away from him.” The mediator made no comment about the movement since he did not want to remind her of the tough opening position she took. He simply acknowledged the statement as she continued, “and I suppose if we can sort out the other problems I would want him to see the children as much as he could and as much as their schedules would allow.”

Debbie signalled that the real issue for her was “the other problems,” i.e., the husband’s girlfriend. The statement is a conditional one—“if we can sort out the other problems.” The mediator notes the wife’s indication of movement from her earlier position but does nothing about the conditional nature of her statement. Obviously, the condition is added to the statement to protect her basic position. Therefore the mediator needs to check with the husband to see whether he has heard the offer of movement. Later, when the wife is moving to a new position and uses a “maybe,” the mediator does intervene to assure the movement is made.

While the mediator in this case concentrated most of his attention on the wife, occasional glances at the husband indicated that he (the husband) was not listening to her. Rather, he was planning his next counter-attack. The mediator noted that the husband’s body was almost at right angles away from the wife and he was looking off into the distance. At a break in the dialogue between mediator and wife, and before the mediator could check with him, Michael said: “Do you know what she told the kids? She told them I’ve set up a house for tax purposes.” As Michael continued the mediator made no effort to cut him off, so as to compensate him for all the time spent with the wife. The ventilation re-engaged Michael in the process. The mediator then asked another fact question to the husband and in summarizing his response recaptured the wife’s attention.
Returning to the wife's earlier statement about sorting out the other problems the mediator asked her: "What things do you want to work on?" This question was designed to sharpen and clarify the conflict between Michael and Debbie and obtain a clearer understanding of Debbie's goals while seeing whether there were areas for movement.

The wife listed her objections. The first was a cover; it related to Michael's apartment. She was not sure whether it was suitable. The mediator clarified and asked: "Are there other issues?" and Debbie replied with a second cover response—"I don't see how the children can live one week here and one week there. It will be too hard on them." The mediator summarized and used language to make Debbie's concerns positive: "So it is the apartment, and your concern is as to whether or not the children can handle going back and forth." In doing this, the mediator articulated the wife's concern as being the impact on the children themselves, and not a shared parenting concern.

When one party sees or defines a problem that is not seen as a problem by the other party, the mediator must determine whether the problem is mutual and therefore take steps to gain acknowledgement of it from the other party so as to mutualize the problem. If it is one party's problem that will need to be resolved by that party, the mediator emphasizes the point to the client. When the mediator does this s/he prevents a one-sided definition of the problem and avoids imposing a unilateral definition on the other party.

The mediator was still not sure that all of the issues were on the table so he continued to probe by asking: "Are there any other problems?" The wife then responded: "I don't think they should be exposed to this woman." Now the real issue was out in the open. The mediator made the decision to focus on that issue rather than the two earlier problems defined by Debbie.

The mediator turned to the husband and asked for more information about the apartment—its location and size, etc.—and learned that the couple employed a nanny who was willing to move back and forth between the two households with the children. Michael also said he had no plans to have Jocelyn (the girlfriend) move in with him and that she had stayed over only once. But, having shared that information, Michael needed to ventilate again and this time the mediator cut him off by reminding him of the positive things Debbie had said about him. It was important for him to hear that Debbie had said: "The children love their father and I don't want to keep them away from their father."

Having validated Michael as a father through the wife's words, the mediator then turned back to the wife and asked her how she knew about the other woman. As she talked it became clear that she had learned about Jocelyn from the children. The mediator pursued another series of questions to determine exactly how she had found out (in reality Debbie was cross-examining them when they returned from their father's). As the questioning
revealed this point, the mediator redirected his comments and said: "Is that fair to you to be learning these things from the children? When they tell you about Jocelyn it would be more useful if you could tell them to ask their father about her."

The mediator has a choice in this type of situation. S/he can suggest the wife not question the children for their sake or s/he can ask her not to do it for her own sake. In general, self-interest is the dominant determinant in people’s behavior. Therefore, the mediator tries to get people to do something for themselves rather than a third party, even the children.

**B. Orchestrating The Concessions**

Given the time constraints and low level of trust, the mediator more actively orchestrated these particular negotiations—especially the reciprocal concession steps—than in less tense and power conflicted situations. Thus, when he gained movement from the wife, he immediately asked the husband for reciprocity. He also educated the couple on how to negotiate so as to facilitate the process.

The mediator developed a hypothesis to guide him in the process. He felt that it was the other woman that bothered the wife and that she feared displacement not only as a spouse but also as a parent. To be sure, he needed to test the hypothesis by asking questions to determine whether concessions could be achieved if Debbie saw some movement by Michael on the issue of Jocelyn that would relieve these fears. Therefore, the mediator asked Debbie: "If Jocelyn does not sleep over will you be more comfortable about the children spending time with their father?" It should be noted that the choice of the word comfortable is deliberate. It does not ask the parties to commit themselves to that proposal, it gives them space to think about it, possibly amend it, but not get locked into it. The wife used the space given by the mediator to add additional requirements. She did not want Jocelyn around at any time the children were there.

The mediator noted the husband was becoming increasingly restless as Debbie added her new demands and tried to channel Michael’s anger by saying to him: "I suppose you would like to make your own decisions about whether Jocelyn is around." This statement legitimated his growing anger and channeled it into a positive statement. Michael responded with a plea that attempted to triangulate the mediator. He said: "Can’t you tell her what is going on? Can’t you tell her where I’m coming from?" The mediator reframed the plea by stating: "I would rather you tell me where you want to go from here." This statement prevented the mediator from responding to Michael’s request that he act as spokesperson for him and also moved Michael into the future, not the past.
C. Separating Spousal and Parenting Roles

People often think that bad relations as spouses means that they must have bad relations as parents and they have trouble separating out the two roles. The mediator in a child case spends a lot of time trying to legitimate and clarify the spouses' anger at each other as husband and wife while defining their shared interests as parents. Often the mediator will say: "You can hate each other as wife and husband but you can't hate your children's mother or your children's father," as a way of getting people into touch with their different roles.

In this case the mediator told Michael and Debbie this, and added the comment that each were good parents to give them both some validation. He then moved to another point and said to Debbie: "I suppose it is not a question of whether the children move back and forth (that is, the global issue) but how to schedule the movement," (that is, a practical, micro issue).

This statement also deals with the husband's worst fear—that he won't see his children. Once his worst fear has been dealt with he can afford to focus on his next-level fear, which is often more realistic. He feared becoming a stranger to his children. He also feared "becoming an interrupter" in their schedule with the mother.

At this point the mediator returned to orchestrating the negotiations. Staying with Michael, he asked: "If Debbie stops bad mouthing Jocelyn and your relationship with her, what could you then do?" This question indicated to Michael what to consider from Debbie's perspective and also alerted Debbie to the possibility of what she might reasonably ask of Michael.

Michael responded by assuring Debbie that he did not want to take the children from her, he just wanted to share the parenting. Using this softening statement, the mediator moved a little further and made a suggestion: "Michael, in the short run, could you agree that Jocelyn will not sleep over when the kids are with you?" Michael asked for a definition of "short run" and the mediator suggested two months, "to give everyone a chance to settle in with the new arrangements." Michael responded by asking what he could get if he agreed to that, and the mediator asked Debbie: "If, for the next two months when the children are with Michael, Jocelyn does not sleep over, but recognizing that she will be around for she is now a part of Michael's life, how would you then feel about sharing the parenting?"

When making a proposal to a stuck couple, the mediator must explain the limitations of the proposal so that each is clear exactly what they will get from it. Thus, in this case the mediator made it clear that the limit on Jocelyn was only from sleeping over when the children were there and nothing else.

Debbie responded by stating she did not want Jocelyn around at all and the mediator gently reminded her that, "that might be more than you can
reasonably ask," which provided her with enough face-saving to finally agree to work out an arrangement, subject to modification along the way, for the children to spend time with Michael. He then accomplished the next stage of the orchestration, asking Michael: "Can you agree to Debbie's conditions if you get the children half of the time?" Michael agreed, whereupon Debbie noted that she had not agreed to share the children half of the time. The mediator asked her for a specific proposal and she suggested that the children spend the weekdays with her and the weekends with Michael. Since the mediator anticipated that Michael would reject this proposal he said: "I don't think Michael would accept that."

The purpose of speaking for Michael was to obviate the need for Michael to respond since his answer would probably not add to the forward momentum. The mediator chose a different tack and said: "Let me see, your proposal is that the children spend all the weekdays with you and the weekends, which are the fun time, with Michael." This reframing was designed to remind Debbie that her proposal might not be in her best interest and to also remind Michael that there were some real benefits to him. Noting their facial responses to this statement, the mediator then asked Debbie: "How do you define the weekend?" She responded: "Friday night to Sunday evening." The mediator then asked: "What would happen if you made it from Friday after school to Monday after school?" Debbie thought about it and replied: "That would be okay because they don't have homework on Sunday nights." The mediator asked Michael whether he could agree, and Michael also accepted the suggestion.

The mediator, in turn, noted that there were a number of other serious parenting issues that needed dealing with, and agreed to meet with them again to work on the more permanent arrangements.

IV. CONCLUSION

In this case study the mediator was more active in suggesting ideas and orchestrating the reciprocal concessions than in most situations. His active involvement was determined by two factors. First, this was a temporary agreement that provided the time and space to work on the permanent arrangement. If the mediator made any serious errors, there was time for the couple to realize them and modify the arrangement. Second, the mediator had formulated a pre-meeting assessment that the couple were too recently separated and too angry at each other—with a too low level of trust—to be able to make the appropriate overtures to each other and suggest compromises. By orchestrating, summarizing and reframing, the mediator was able to extract the content of the dispute from the context and provide Michael
and Debbie with a framework for a temporary solution to their problem that gave them time to make reasonable and realistic, permanent arrangements. 1

3. A video tape of this session is available from the author together with an annotated transcript.