

High Conflict Mediation as a First Intervention with Intractable Couples



By Nan Waller Burnett, MA

“The definition of insanity is doing the same thing over and over again and expecting a different result.”

Albert Einstein

The court system has been mired in the conundrum of how to resolve co-parenting issues with couples entrenched in intractable conflict for decades. New categories of professionals are being ordered into the bi-nuclear family with common regularity. Child and Family Investigators, Parenting Coordinators, Decision Makers, and long term co-parenting education orders can leave in their wake a reactive, financially strapped family system and sometimes with no relief for the children. Iatrogenic damage from well-meaning professionals also leaves a mark on the family system for a long time. The systemic neuroses take on a whole new dimension. These families look like insanity and cause great concern for the courts, as children are affected for a lifetime due to intractable conflict.

As a first step in court orders, I propose an intermediate approach. High Conflict Mediators, brief interventionists, with experience with high conflict populations could be ordered into the case before the expense of a court appointed CFI, DM/PC professional. An afternoon with a specialist could potentially save the family thousands of dollars. Mediators with a psychotherapeutic background should be well versed in chaos and systems theory as well as be experienced in brief solution focused interventions to move parties off the mark and out of the negative trajectory of their conflicted system.

Therapeutic high conflict mediation is an approach to the engagement of conflict that aims to develop more effective and preventive skills with reactive couples. It is short term and goal directed. Therapeutic mediation should have preventive anger management and negotiation strategies that enhance collaboration and do not create a distributive bargaining process. The goal of this type of mediation is the same as

other models, an agreement that is durable and one that allows access for both parents; the difference is the population of co-parents is different than normal uncoupling divorced family systems. It is imperative that in the opening statements, the mediator make clear to these reactive couples that they aim to hold the best interests of the children in the forefront of all structured interventions which are intended to impact the process of mediation in the intractable system. There is no neutrality when unrepresented children become collateral damage for a hyper-conflicted duo.

I also believe that it is the duty of a high conflict mediator to educate, coach, and inform parents on the destruction that can surely arise from an uncoupling process that does not vow to keep conflict away from the children. Teaching the parents ways to mitigate anger and prepare before each interchange is paramount. Resources for parents such as collaborative negotiation skills should be made available to these co-parents and the mediator should attempt to model and/or have them practice such skills at some time during the process. Although it would be a very difficult order to fill, if the judiciary would make sure that co-parents who are repeat post-decree filers operate with professionals who practice within the ethical standards of the collaborative law movement, it would go a long way to mitigate the iatrogenic damage resulting from professionals who operate from an adversarial 'hired gun' system. Those of us who work in the field, know that well-meaning attorneys can do much more harm than good to children, not to mention thousands of dollars of mutual resources and days unending on the docket of the courts.

HALLMARKS OF THE HIGH CONFLICT COUPLE

Source: Janet R. Johnston, PhD.

High conflict families have certain characteristics that are prevalent in their behavior. Negative intimacy is the standard and hostility often continues after the formal relationship is over. As is often the case, the circle of uncoupling greets the parties at different stages of awareness. One party may perceive and have recurring triggers from a traumatic separation of the relationship. One of the parties may have been thinking about separation for more time than the other, so the shock of an affair, or a betrayal, or the sudden move of one party may cause activation of deep emotion in their lives. The other may have had no clue that the relationship was in danger and thus trauma is caused to one of them or in some cases both of them for different reasons. Parties can either have unclear, rigid or loose boundaries between them causing chaos and reactivity. Parties can attribute an unrealistic meaning to

communication and behaviors from the other person and perceive pain or injury by the other party. Thus the trigger causes escalating, interactional behavior toward a negative outcome. Parties can be entrenched in intra-psychic pain while in the midst of relational conflict. Solutions leading to resolution might immediately be rejected or can be initially agreed to with no intention to follow through. Disputes among high conflict parties are intractable and ongoing.

One or more of the parties may have unconscious or dramatic behavior. They may distort reality or be rigid “black and white” thinkers. They may exhibit an inability to look at another’s point of view or be unaware of how they occur to the other parent. They may be unstable in their mood or have poor impulse control. With the presence of these clusters of behavior they may be suspicious or paranoid of the others intentions. The judicial system may reinforce a strong sense of entitlement to one or both of the parties. Power dynamics and control are inflamed and constant. One or both of the parties may be overly enmeshed with the children or look to the children for support.

STRATEGIC INTERVENTION: TOOLS OF THE TRADE

The term “insanity” is a matter of perception, and different shades of real or presumed insanity show up daily in conflicted relationships. Often, our clients get hung up expecting the same response in a bad relationship or in the ‘trying to’ produce a different result. Some forms of insanity are worse than others. As a systemic thinker, I have observed that every relationship operates within a system. I guide the mediation process within that framework of circular causality and look for opportunities of empowerment to push the parents toward seeing another way forward. Conflict is the constant companion to change, and chaos is the result of a de-stabilized system. I frequently push the envelope and meet the clients in the ‘hell’ where they reside. From this vantage point it is often possible to guide them from the depths of that ‘hell’ through focused questioning.

The practitioner has the ability to bring the gift of clarity to the circle of intractable conflict. It is helpful not give any attention to measures by either party to prove their case, or discuss whether they are right or wrong. Rather, the aim to seek to understand the other’s position as inherently different than their own opinion and acknowledge the high probability that circumstances surrounding those past issues

are not likely to change. Starting from this vantage point of not needing to be “right”, the couple finds relief from pressures which take an inordinate amount of time in mediation. In my practice with high conflict clients, I am always searching for the treasure trove of reality hidden under the surface dialogue. Taking time to build rapport is essential with this group of parents. A question I commonly ask when interrupting their display of histrionic emotion is, “What is under the fear? ...the anger? ... the rage? ... the disconnection? Chaos is not to be controlled in these situations as herein lies the trove of rich information for the practitioner to use to change the spinning system and place it in a different orbit. Chaos is the friend of the high conflict practitioner. Clues to valuable information often surface during the venting and heated emotional interchange.

Asking the client to be very concrete with the other is a powerful way to bring clarity to a conflict. “What is she doing when she is trying to control you?” or “What does he look like to you when he is a jerk?” As the light returns to the eyes of the client, and the awareness of clarity rises, the lines of pain on a tortured face smooth with understanding. Those are the moments when you know the word fitly spoken has graced the table of resolution. The use of the miracle question from brief solution focused therapy is very helpful in raising awareness. “What would it look like if the behaviors that trigger the conflict suddenly stopped?” “What would you do then?”

One useful tool for resolution when working with a neurotic relationship is to educate the saner individual on ways to strengthen boundaries. This is often the only course of action when one of the parents has borderline type II axis issues. Sometimes, all you can do is to suggest that the less neurotic person, make another choice. This choice would be to bolster their skills through boundary setting and delivery of the message, a delivery that can be similar to how a hostage negotiator would interface with a perpetrator.

Another tool I use is a structured sharing of information that allows the person another perspective. Through this slow and measured process, questioning is tailored to the core issues of the relationship dynamics. I might ask of one parent, “How does it feel to you when you hear that nothing you ever do is right?” It is in the expectation of a different result that the question become the path of opportunity for disengagement.

Many mediators are not comfortable with high emotion and seek to quell the throes and fits of parents laden with terror and fear. These are not the mediators that can

effectively dealing with intractable couples. One must be unafraid to go to the center of the conflict with the parties while they are experiencing the high emotion. I think fearlessness is a necessary quality for approaching a conflict in a reactive system. Just as a psychotherapeutic mediator would never try to evaluate a multi-party anti-trust dispute in mediation, lawyers and former Judges are not trained, nor are they comfortable in these psychologically charged systems. This model of mediation would be more effective in a model of co-mediation with a mediator who has experience with this population of disputants.

Because the practitioner becomes part of the system when entering the circle of concern, the setting of boundaries is paramount. One strategy would be to move into the dance of conflict between the parties. Interrupt their unconscious, though well-rehearsed dance and ask questions that move them off their reactivity with each other and into reactivity with you. You can help them operate within the system in a way that can move them out of patterned response and into a slower interchange that can be more effectively managed by the practitioner. These modalities are derived from experiential psychotherapy and from inventions akin to psychodrama and the work of Jacob Moreno.

It only takes consistent change in the behavior of one of the parties to change the system. The strategy would be to teach them endurance. Because parties are reactive and trapped in systemic dysfunction, they can be taught that the consistency of setting boundaries will provide a powerful barrier to re-victimization within that system of reactive behavior. Once you explain that they can expect daily setbacks and they need to be consistent when setting boundaries, they are better equipped to maintain a boundary that will serve to change the choreography of the conflicted dance of conflict. They are then able to endure the repeated triggers that begin the angry dance, and a result they are empowered and pro-active in making another choice.

The practitioner can provide more clarity into the interdependency of the parties and the ability to operate independently within the confines of the system. Another strategy is to give them an understanding of power dynamics. Often showing the less reactive party, that by making one different step in the dance of relational conflict and by reinforcing endurance, they discover that they can de-escalate the conflict within the system.

As change always creates temporary chaos and instability in relationship systems, it will ignite the well-versed conflict. To help them remember these lessons, I ask them to remember to anticipate, to watch for, to work with, and to welcome conflict. To add the clarity of communication skills to set their boundary with the other person helps to change a conflicted system to one of a business relationship. It is also helpful to teach calming skills for use in the face of chaos, and centering skills, steps to anger management, visualization or relaxation techniques. By guiding the parties in future, solution-focused language, the focus of the negative interchange may be shifted and through the process of reframing, the dialogue may change their story.

Using personal centeredness and core energy, the practitioner can tap into source energy of a higher power to intervene with spiritual intelligence. Quantum mechanics and intelligence theory help us understand that we are all interconnected in a sea of energy and we can use that energy to learn to tap into collective information. Energy awareness comes through our own mindfulness, focused attention, and spirituality to assist in transformation of the system. If you choose to work with this body of disputants, these practices will also provide sustenance for the weary interventionist.

WORKING WITH A HIGH CONFLICT POPULATION OF DISPUTANTS

[Source Christine Coates, JD, MEd.]

Christine Coates is a pioneer in mediation from Boulder, CO and has extensive experience in high conflict mediation. She has presented locally and nationally on the high conflict client and has developed a detailed list of procedures for dealing with high conflict clients.

- In intake, gather a thorough history.
- Set clear limits and personal boundaries.
- Interrupt them often if the story begins to repeat.
- Develop, prepare and strategize your hypotheses.
- Never begin without a signed confidentiality and fee agreement contract.
- Expect to have to CLARIFY everything.

- Proceed slowly to de-escalate tensions.
 - Be ready to intervene quickly when chaos drives reactivity.
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- Carefully build rapport; they will try to bond with you.
 - Be mindful of saving face.
 - Be active and direct in controlling process.
 - Train and coach the parties while working with them.
 - Stay on task.
 - Set clear consequences when reality testing.
 - Push clients toward increased ownership of behaviors and responsibility.
 - Assist in leveling the extreme imbalances that exist; real or imagined.
 - Insure that both voices will be heard.

Opportunities arise in various ways and in this time of global transformation, all of our structures of interaction, including the ones in civil society must strive to seek the best alternatives for all citizens. Perhaps it is not always possible to turn the course of every well-grooved conflict system around but I propose that if the practitioner who specializes in high conflict disputes can be an early entrant into the system, it might be possible to save heartache for the parties, emotional damage to the children and thousands of dollars of the client resources. For the community, the communal cost we all bare in trying these difficult and repetitive cases is stark. Toward the effort of teaching and making peace one case at a time, I feel we owe this to the greater good.

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