

COGNITIVE-SYSTEMIC MEDIATION

Demonstration

The reader is encouraged to review the video cuts illustrating examples of cognitive-systemic mediation on the website. Further on, the mediator is also encouraged to go over the cognitive-systemic mediation transcription on page ...

Development of the cognitive-systemic mediation begins with a cognitive dialogue with the parties. Cognitive is to be seen as different than affective – that is, intellectual instead of emotional. The cognitive style of mediation was later influenced by the Milan School's systemic theory, which is the reason why the author has named the style cognitive-systemic mediation. Its pioneers were John Haynes and Larry Fong⁶⁰, who named the system the Haynes or the Milan model. The cognitive-systemic mediators, while making room for the parties to express emotions to a large or small degree and realising that only few conflicts are without strong feelings involved, regard emotional data within mediation as not useful.⁶¹ Haynes and Fong found that there was too high of a risk that the parties would be kept in their wrecked pasts if the mediator actively dealt with the emotional data. Consequently, they developed a cognitive process with a cognitive empathy that starts with the present and then shifts the focus to the future.

Structure

The structure of cognitive-systemic mediation may look something like this:

1. Problems are presented.
2. The mediator gathers information.
3. While gathering information, the mediator slows down the pace whenever a problem fit for negotiation surfaces.
4. The mediator gathers further information in order to obtain a common context.

⁶⁰ The last work from Haynes and Fong is: *Mediation – Positive Conflict Management*, State University of New York Press, 2004.

⁶¹ Not useful or helpful data.

5. Options are identified.
6. Negotiation about the identified problem takes place within the context that the parties have agreed upon.
7. After this cycle, the mediator continues to the next problem that is fit for negotiation, and a new cycle (as above) is repeated.
8. The parties' proposals are summarised, and on the basis of the summarising, the parties enter into agreement.

THE CONFLICT STORY

Each of the parties arrives at mediation with their own conflict story. The narratives contain components and functions, all of which serve the purpose of justifying their own behaviour, attitudes and decisions, and also to throw suspicion, minimising or devaluing on the other's intentions, behaviour, attitudes and decisions. From his systemic background, the mediator knows that it is without merit or purpose to try to make one party accept the other's conflict view and conflict narrative. This would be the same as trying to make an autopoietic system move in a particular direction.

The mediator attempts to get the parties to base the future on a third platform. From this new platform, the task looks different. The mediator tries, throughout the dialogue, to make the parties see the future as tasks that can and must be solved. Negotiations about tasks generally run more smoothly than negotiations about problems. For the parties, a future with tasks is often a future with a relationship where, to a certain degree, one party depends on the other to solve his tasks as agreed upon. (If X does this, then Y does that.) We see the kinship here to the narrative mediation's attempt to replace a dominating discourse with an alternative discourse. (See below page ...)

SELF-CONCEPT

The cognitive-systemic mediator listens first and foremost to the parties' narratives for issues that might be subject to negotiation. When such an issue surfaces, the mediator slows down the pace and tries to get the parties to

agree in which context the issue should be treated. At that point, with the assistance of reflecting circular questions, the mediator gathers data from each part so that the material subject to negotiation is better highlighted and the amount of data increases.

The mediator regards his main task through circular questions to get the parties to reflect and separate issues that do not belong together, or to group issues together that do. The artistry of the cognitive mediator is that he makes the parties think their thoughts out loud so that while the mediator and the other party are listening, they can re-edit a thought process that is not logical so that it either becomes logical or else disappears altogether. There may be more contexts. The important thing is to identify overriding frames that, during the negotiations, can be referred to as main roads. The mediator not only makes the parties think, but also makes them think about what they are thinking and why they are thinking that – that is, thinking about their thinking, which is another of the systemic realisations.

Cognitive-systemic mediation is an on-the-job training in advanced techniques of negotiation. Being a model for how to negotiate and by small pieces of advice in negotiation, the mediator brings the parties to understand why some steps of negotiation should be preferred over others.

CONTEXT

Before the parties really start dealing with the negotiations, the mediator tries to get the parties' original wishes and goals to surface in a logical overriding frame (context). Being logical means that there are no self-contradictions. Reflective clarification is important. In a conflict about access or visitation rights concerning children, the mediator tries to clarify whether the custodial parent is inclined to give the other parent access to the children. If that is the case, which it often is, the mediator takes it further by clarifying how many hours they will be together with the individual, and whether there will be overnight stays. In this way, the mediator assists the individual party in getting his wants and goals so that they appear in a logical and understandable mindset.

If, for example, objections from the mother surface that the father must not hold his girlfriend's hand while the children can see it, or that the father must not have his girlfriend stay overnight or even visit while the children are present, the mediator kindly tries to refer back to the context and to the logical thought process that the parties were in the midst of. Does the question about the father's new girlfriend tie in with the number of hours that the children can spend with their father? Maybe, and maybe not. If so, it is probably necessary to see if a further context is required for dealing with these two issues at the same time.

Contexts are not fixed. They are created and re-created in a current dynamic where, at any time, frame markers (for instance, rules), content (compensation), time (rehabilitation lasted two months), place (workplace) and relations (the foreman and the safety representative) can be raised.

SYSTEMIC INFLUENCE

In the universe of systemic theory, the relation and therefore the interaction between the individual components of the system are far more interesting than the individual components themselves. Many foresters will approve this view, for who among them could determine a tree's health or growth potential without incorporating the tree's relations to other trees, the soil, the water, the air or the sun. Professionals dealing with nature know what systemic theorists have expressed – that anything depends on everything, and that anything must be seen in context⁶². In the social scientific and in the humanistic edition of the systemic theory, no words or action have meaning outside of its context.

For the cognitive-systemic mediator, it therefore becomes particularly interesting to activate the individual parties' experiences from other relations and other contexts through reflecting questions. This applies both to time ("Have you been in a similar situation before? How did that go?") and in space ("If you were to advise a friend about this same situation, what would you say?").

⁶² Gregory Bateson.