

# Working with Heat

## “From Conflict Avoidance to Constructive Conflict”

By David Levin

People come to mediation because they are stuck in a dispute that they cannot resolve. The heat of the conflict often is an impenetrable barrier. Unable to handle the heat, the disputants may be avoiding problem solving because interacting is too combustible, or because they may be locked in combat. Whatever the dynamic, and regardless of whether they understand what is happening, they are trapped with no exit in sight. However, for the disputants to go to a mediator, who is conflict avoidant or who is unable to handle conflict, is not helpful.

A challenge for mediators is to be comfortable sitting with heat of conflict. Being able to work with heat is imperative. To offer a meaningful service, a mediator should cultivate an understanding of heat and build an ever-growing box of tools for working with heat. Exploring these goals is the subject of this essay.

What is heat? Anger is an easy example. Anger can be expressed with name calling, abusive language, fighting words, physical and verbal hostility, or by obsessing with pain, perceived insult or wrong doing, and more. Heat can be loud and overt, or quiet and subtle.

Heat is often emotional. Heat is not always rational. Heat can consume and overwhelm other characteristics of a participant. Heat can seem silly and needless to another person, but it is always real to the person experiencing the heat. Heat is not the behavior of the “reasonable man” studied by students in law school.

Heat can be the heart of a conflict, which must be addressed to achieve resolution. Heat can destroy the capacity to be open, understanding, flexible, and creative - the traits needed to find mutually acceptable solutions.

An overstatement is to tell mediators, “do not be afraid of heat.” The power of heat must be respected. Just allowing the participant’s heat to rage unabated, or jumping to caucus to avoid the heat, can be equally futile. A more useful perspective is to understand the possibility of heat in a mediation – whether it is harmful or workable, and if workable, how to mediate in the presence of heat.

This essay will explore the cognitive framework for working with heat. The actual practice techniques will need a good training, mentoring, self-education, and/or other experiences to master.

### **SAFETY FIRST**

Heat can be harmful. Expressions of heat, verbal and non-verbal, by one participant can adversely impact the other participant and even the mediator. Expressing the heat can also adversely impact the participant who is the source of the heat.

A mediator must monitor everyone, including her/himself. When heat is, or appears to be harmful, the mediator must intervene. Monitoring is not just a single event. Monitoring is an ongoing process throughout the mediation. The key is knowing when and how to intervene.

## **A MEDIATOR PERSPECTIVE: Is the Heat Workable?**

Heat can be viewed from many perspectives. Some professionals, such as counselors and therapist, look to diagnose causation and to prescribe treatment. Other professions, such as trial attorneys and negotiators, may seek to comprehend the heat of a conflict for the purpose to gain an advantage for winning. Mediators are offering a dispute resolution process. The perspective of a mediator is based upon how heat can impact the mediation process.

The mission is to support the mediation process, to provide an opportunity for the participants to constructively exercise self-determination. A party must be capable of mediating. Heat can constrain or even eliminate the capacity to mediate. Heat residing within a participant can blind them. Heat directed at a party can blind that party as well.

The capacity and competency to safely mediate needs an open and flexible mind. Just as a critical lack of information may undermine the ability to mediate, heat may have the same affect. A paramount frame for a mediator is how heat impacts the mediation process and whether the process may safely go forward.

A trap for a mediator is a perceived need to diagnose and to fix the cause for heat. As will be seen, many roots may lie underneath. Some roots may need the assistance of other professionals, such as a mental health worker, a doctor, or an attorney. The mediator's province is the process. As will also be seen, some heat can help the process. The key diagnostic consideration is the impact of heat on supporting the mediation to go forward, safely and constructively.

The mediator's own comfort level with heat is important. Some types of conflict, as well as certain behaviors and personalities, can be difficult for an individual mediator. For example, a circumstance may trigger a feeling or a belief within the mediator, which may adversely impact the mediator's reaction to what is happening. A mediator may find he/she is having a strong like or dislike for a position or posture, which could adversely affect the mediator's ability to be fair, balanced, and supportive of all the participants.

Thus, in weighing whether heat is workable, the relevant considerations must include:

- (1) Whether the heat is personally disruptive to the mediator, and if so, whether the mediator is capable of mediating;
- (2) Whether the parties can work with the heat, and if so, how;
- (3) Whether working with the heat may further the mediation process;
- (4) Whether the mediator has the skills and experience to work with the heat, both for him/herself and for the parties.

## **UNDERNEATH THE HEAT**

Heat can have many sources. Participants in one advanced mediation training identified many heat sources and were certain that there were more. These factors may also be present for a mediator. The list inspired many insights for causation, including:

- Low blood sugar
- Lack of sleep
- Exhaustion, physical or emotion
- Pain

- Fear
- Anger
- Disappointment/a sense of loss
- Biological stress reactions
- Past trauma/core injuries
- Physical impairments
- Substance abuse
- Mental illness
- Unmet needs
- Unheard needs
- Misunderstanding
- Differing information or lack of information
- And more ...

The list illustrates that all heat sources are not the same. How to work with a heat may be different from other types of heat. For example, low blood sugar may need food. A participant angrily repeating a point may indicate a feeling of not being heard, and acknowledgement may help. A misunderstanding can cause anger, and clarifying what was said may dissolve an impasse. However, an obsession with a delusional sounding thought may suggest a pathology which is a true barrier to mediating, and may need to end the mediation process.

A full diagnosis is less important than a functional one. As a mediator begins to perceive heat emerging, by trying different approaches for responding to the heat, the mediator can learn whether the heat is workable. The exploration is essential. Simply to avoid the heat forfeits the possibility of dissipating or benefiting from the heat. Mediators have to get their toes wet to feel the water. The wide range of what is underneath the heat suggests that exploring the heat may be important. After all, there may be no conflict without heat; there may be no resolution without dealing with heat.

## **WORKING WITH HEAT**

There are many approaches for working with heat. Each approach can backfire or can open the way forward. When considering an approach to use, be purposeful. Sometimes a mediator grabs an approach out of desperation, hoping that a deteriorating dynamic may change for the better. This is a legitimate technique. However, when the mediator has time to be thoughtful, having a purpose in selecting approach can help guide the mediator.

For example, “I am observing this potentially harmful dynamic. I will try this approach to move the mediation forward.” These thoughts help the mediator have a sense of direction, to have an attitude of “I believe this technique may work. I will try it. If the technique does not work as well as I hope, then I will try another.”

This cycle is often referred to as the “Cycle of Resolution.” The dynamics of mediation can be highly fluid; the “stages” of mediation can be blurred. The mediation process can be viewed as an endless dance of energy, thought, emotion, and possibility. The progression can seem chaotic and non-linear. Repetition of the Cycle of Resolution is a critical part of the mediation process. A mediator should:

- Observe what is happening;

- Thoughtfully select a technique to try;
- Use the technique:
- Observe what happens;
- Assess what next technique may be beneficial; and
- Use that next technique...

## A SURVEY OF SELECTED TECHNIQUES

There are many techniques for working with heat. For a mediator, the goal is to acquire as many techniques as possible in his or her toolbox. The goal is to assess each moment during mediation for what technique may be helpful. The more choices, the better the possibilities for a beneficial result.

## ACKNOWLEDGEMENT

***Acknowledgement is a preferred technique.*** In a nutshell, if a participant experiences being heard, then the participant may move from the stance of aggressive defensiveness to a state of open-mindedness. Acknowledgement offers more than just saying, “I heard you.” Acknowledgement is a communication technique which affords the participant a fuller, almost physical, experience of being heard.

The basic technique is to repeat back (loop) to the participant what the participant has said. Then, to ask the participant, “did I get it, did I miss or misunderstand something?” The emotional, biological, and intellectual impact upon the participant has been shown to be substantial. Often the impact can lead to the participant having a more open, flexible, and creative mind - the essential characteristics needed for effective dispute resolution.

Acknowledgement can transform heat. A participant can become heated when, the participant feels unheard, not respected, devalued, ignored, or insulted. For the participant, the moment can feel threatening and dangerous. The environment can be perceived as “unsafe”. Feelings of apprehension and fear can rise. A need to attack, flee, or freeze can flood the participant.

When a mediator offers acknowledgement to the participant, the mediator is expressing empathy. The mediator is validating that the experience is real for the participant. The mediator is also demonstrating an interest to understand the participant. To respond to heat with acknowledgement creates “safety”. c. For the participant, the need to defend or attack may lessen, and a feeling of being respected, accepted, and understood may begin to dissipate the heat.

Viewed another way, when a participant feels threatened, the participant can feel as though survival depends upon holding tighter to a fixed position. When a participant begins to feel safe, the instinct to fight for survival can begin to relax. When safety is repeatedly experienced, the participant can begin to lower his or her guard. While remaining vigilant, the participant can feel safe to venture away from the fixed position and to begin to consider other possibilities. Then, the mediation can go forward.

For a more comprehensive discussion of acknowledgement, please see the companion materials: Levin, *Acknowledgement, A Dispute Resolution Basic Skill: “From Clenched Fists to an Open Mind,”* and Tanz & McClintock, “The Physiologic Stress Response during Mediation.”

## ATTRACTIVE TECHNIQUES THAT CAN BACKFIRE

**Venting** has long been viewed as a way for a participant to get something off his or her chest. The theory is that if the steam is let out, then the person will become calmer. However, contemporary neuroscience has discovered that venting more likely escalates heat. The participant who is venting can be ramping up her or his biological stress response. The other participant who is experiencing the heat of the venting can also be ramped up. The use of venting should be carefully considered. Dissipating heat through acknowledgement may be more beneficial.

**Enforcing a rule** can help, but can be problematic. At the beginning of mediation, rules such as “no name calling,” can be explained and can be agreed upon. Reminding a participant of an agreed upon guideline may be an effective way to redirect a conversation. Heat can be reined in. However, enforcement of a rule can also be accusing one participant of violating a rule and of wrong doing. Enforcing a rule can cause the participant to feel more defensive. Heat can escalate. Enforcement of a rule can be a tempting intervention. However, a mediator may need to tread carefully.

**Suppressing** the heat is another two-edged sword. A mediator may attempt to steer the process away from emotions to focus upon rational solutions. On one hand, by banishing the heat, the participants may be helped to drop escalating emotions and to turn towards a more reasonable discussion of the factual situation. By making the heat irrelevant, the resolution process may move forward. On the other hand, while heat may be suppressed, it may not go away. The undissipated heat may fester to explode later or to silently undermine the making of an agreement. This is a version of “pay me now, or pay me more later.” The mediator must use care whether to use suppression as a technique to deal with heat.

**Avoidance** is a technique which has the same risks as suppressing heat. However, sometimes participants are truly not ready to work through the heat. For example, the pain from what happened for two participants may be too fresh and too deep. In an actual case, the participants were not ready to work through the pain. Rather than to work through the situation, the two participants chose to agree upon the amount halfway between their two positions. For them, this approach offered a healthy way to move on without triggering more pain. They were not capable of participating in any other process. Thus, sometimes choosing not to engage the heat may be beneficial.

## HELPFUL TECHNIQUES

**“Name it, tame it”** is a form of acknowledgement. A belief, feeling, thought, need, interest, or other concern expressed by a participant is named. For example, a mediator might say, “From what you have explained, what happened causes you to experience being disrespected, and being respected is important to you.” The named interest is a need to be respected. If the troubling aspect of the situation is named, then it can be addressed. This technique offers the possibility of transitioning the cause of heat into a more concrete, workable piece of the dispute.

**Reframing** is a communication technique where the mediator acknowledges a concern and repositions the concern in a more constructive light. For example, a parent may be angry because he or she feels left out of the child’s life. A mediator might say, “You feel left out of your child’s life, and you believe it is important for your child to know both parents.” The re-frame is to introduce a positive value, the interest in having a child know both parents. The positive value may become a meaningful aspiration for working towards a resolution. This technique often may render heat more workable.

**Normalizing** a situation can help lower heat. For example, a participant may be angrily disappointed that a business partnership has failed. A mediator might say, “People often experience disappointment when a business partnership does not work out.” The mediator is offering that disappointment is to be expected and needs to be acknowledged. Instead of being a disruptive intrusion into the dispute resolution process, strong feelings of disappointment become a normal and expected part of the situation to address.

**A preempt** is a powerful tool for anticipating heat and for reducing its negative impact. A mediator may sense that something may become inflammatory or explosive. The mediator can elect to deal with the heat before it unexpectedly ruptures. By opening an exploration of a problematic area, such as “I understand how you might be feeling disrespected by this situation,” a mediator can be prepared to make the issue and the response workable. An anticipatory intervention may be more productive than a salvage operation after being ambushed. However, a preempt may just unnecessarily light the fuse. To use a preempt to anticipate heat needs to be thoughtful and purposeful. A mediator needs to be ready if the technique backfires.

**Caucus** is a major technique for working with heat. However, the technique is more than simply meeting with a participant and letting him or her rant. Caucus is a change of venue from a joint session, and what happens there is critical and should be carefully considered. For example, caucus may be a better environment to use acknowledgement with an overheated participant rather than in the combustion chamber of a joint session. An individual session can be a good place to explore what is underneath the heat and to learn how to work with the heat. However, when heat unexpectedly explodes and the mediator does not know what to do, caucus can save the day.

## **PHYSICAL TECHNIQUES**

When the participants sit too long with heat, the situation can meteorite. There is a temptation to power through the situation. The perceived need to “get it done now” may be seductive. Yes, there is a risk that if the participants leave the room, progress will be lost. However, the time to stretch, to eat, or to reflect may be precisely what is needed to make an informed agreement that will stick. Therefore, a mediator should keep in mind the option to:

- Take a break;
- Eat; or
- Adjourn and come back another day.

## **POTENTIAL BENEFITS FROM WORKING WITH HEAT**

The reasons for working with heat go beyond preventing harm. There are potential benefits from working with heat, which can enhance the mediation process, including:

- Discovery of what is really going on and what needs to be addressed;
- Discovery of underlying needs, interests, values, and critical information;
- Discovery of what could make mediation unsafe and what safeguards need to be used;
- Dissolving a major emotional or other barrier to resolution;
- Normalizing or otherwise redefining a situation so that the participants may work with it;
- Providing an opportunity for the physiological stress response to be reduced;
- Providing an opportunity for the parties to safely shift their mindset;

- Discovery of what might motivate the participants and what mutual options for resolution might be possible;
- Discovery of what are the dynamics of conflict and how they might be addressed;
- Discovery of whether the dispute can be mediated and if so, how;
- And more...

Working with heat can help a mediation be meaningful and productive. For the participants, to experience that heat can be safely and effectively worked through, can help make the hopeless become manageable. The benefits can be immense.

### **SUMMARY**

Heat lives within the heart of conflict. Heat can be a barrier to resolution. One reason participants may come to mediation can be their inability to work with heat. Mediation is based upon an exercise of self-determination by the participants to agree upon a mutually acceptable resolution. Heat within a participant or between the participants can undermine the ability to constructively participate in the mediation process. A mediator should come ready and able to deal with heat. A mediator should be committed to life-long learning on how to work with heat. This ability is fundamental to the art of mediation.