

Communicating in Mediations

Courts are being called upon by the Law Council to set up mediation programs. Mediation is an art in itself. Neuro-linguistic programming techniques may help you master the art.

Lawyers and barristers are often called upon to conduct mediations, both officially and unofficially.

One of the primary obstacles to successful mediation is that clients often do not say what they mean, either about the problem, or about their desired outcomes.

Few books or courses on mediation deal explicitly with how to surmount these obstacles. Neuro Linguistic Programming is a model of communication derived from studies of verbal and non-verbal behaviour of successful therapists, mediators and other communicators whose job is to effect change.

Non-verbal behaviour comprises some 80% of our communication. A mediator needs to recognise the non-verbal signals that a verbal message is incomplete or inaccurate. The mediator's non-verbal behaviour, coupled with appropriate questions can then elicit the real needs and desired outcomes of both clients as well as any hidden agendas or conflicts of interest.

A second obstacle is misleading language. Do you or your clients:

- Hallucinate what is in the other's mind? ("He doesn't want me to have" How do you know that?)
- Make unspecified assumptions? ("There is no way it will work." What do you mean by "work"?)
- Leave important parts of the process unspecified? ("I want everything to be fair." "What's 'everything'; what's fair?")
- Over-generalise? ("All...are... ." "All?")
- Distort reality? ("It's vital!" "You'll die without it?")
- Delete relevant information? ("We never got along." "Not even in the beginning?")

NLP provides a metamodel of verbal communications to recognise and challenge these patterns.

A primary obstacle to implementation of the mediated agreement is that it is sometimes interpreted differently by the two parties. A mediator needs to elicit and include in the agreement, the criteria of both parties. For example, "sell the house" can mean different things to different people unless the questions "How, when, by whom, for how much, etc." have been adequately answered.

An overriding principle of NLP is accurate perception and behavioural flexibility. No fixed pattern of behaviour will work every time. You have a box of tools. What cues do you watch and listen for so you know which tool will undo the nut in a given situation? □

Michael Grinder, National Director for Neuro Linguistic Programming in Education (USA) and a member of the Oregon Mediation Association, will present a two day seminar on NLP in Mediation, September 20-21. For more information: phone Dr Lindsey Smith (042) 67 5366 or Andree Maddox on (02) 357 2245.

That night we were royally entertained in the library at the Supreme Court. The hospitality of the Ulster Bar was magnificent and to top it all off they presented us with a crystal fruit bowl, suitably inscribed to mark the occasion of our visit. That beautiful article will find its place in the common room shortly.

The evening finished at our hotel at about 4 a.m. No report of the last half of the evening is possible because no-one present had any, or any sufficiently sober, recollection of events.

We travelled from Belfast through County Armagh, past a permanent and very serious British Army checkpoint on the main road out of Ulster (tank traps, blast deflectors, machine guns and all) to Dublin. There we played the Dublin Bar at Woodbrook and the golfing party was entertained to dinner at the golf club by our Irish hosts. Another magnificent night was had but it is sad to report that again we were comprehensively beaten in the golf match.

Thereafter we toured the southwest of Ireland and played the magnificent links courses at Waterville, Bally Bunion and La Hinch.

We had the opportunity both on and off the links to appreciate the splendour of the region - it is indeed a most beautiful place.

On the last night that we were together, at Newcastle on Fergus we dined as a party at a castle where the food and surroundings were magnificent. The walk back to our hotel involved a hike through a golf course during which Hughes, Heron D.C.J. and their wives (all of whom joined for the Irish section of the tour), took a wrong turn and were found by some local wandering aimlessly along a country road, away from the hotel. All deny Irish ancestry; that matter has not yet been resolved. It has been suggested that Kenny QC determine the issue.

One disappointing feature of our 2 1/2 weeks away was that Francey was a late withdrawal from the touring party, after he had done so much work to arrange it. Our collective thanks to him.

An open invitation has been extended to the wonderful people we met in Britain and Ireland to come here to play golf and it is sincerely hoped that a contingent will be here in the foreseeable future. □



Peter McClellan QC on tour.