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Strategies and Methods in Mediation and Communication with High Conflict People

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Strategies and Methods in Mediation and Communication with High Conflict People.

by Duncan McLean.[1]

Abstract.

The use of well-established psychological communication strategies is applied to interest-based negotiation to assist in communicating with disputants who have dysfunctional or abnormal personalities. The paper examines psychiatric classification of personality disorder and the use of effective communication to facilitate interest-based negotiation by the use of a method which appeals to the person's extreme self-interest.

Introduction.

The inception and introduction of interest based negotiation and facilitative mediation in Australia is now so commonly practised and well developed that it can be found in many areas of law, and is often a process requirement before disputants can proceed to adjudication in courts or tribunals. [2]

Supporters of facilitative mediation cite the usefulness of its ability to empower and assist clients to resolve their disputes in a collaborative way whilst avoiding the high cost of litigation. But the process requires a certain degree of cooperation or voluntariness, and a desire to deal with adverse circumstances in a way which encourages disputants to find a solution to their dispute.

The practical implications of mediating disputes with clients who are undertaking mediation is that it is necessary to understand the underlying reasons and motivations of the party's to the dispute. The types of disputes that are less amenable to mediation are typically cited as those which involve a history of violence, power imbalances or a lack of capacity, and which require mediators to have undergone training that assists them to recognise and take appropriate measures to manage the process.[3] So the shift, in more recent times, of populations of high conflict clients from the courts to community run organisations,[4] has consequently highlighted the need for increased resources in managing high conflict clients and behaviours.

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[2] For example, s 66 *Civil Procedure Act (Vic)* Courts have the express power to refer all or part of a civil dispute to an ADR process without parties consent.
[3] National Mediation Accreditation System Standards, s 4-Power Issues. Accessed via the Mediator Standards Board; http://msb.org.au/sites/default/files/documents/Practice%20Standards.pdf.
[4] Such as Family Dispute Resolution.

Mediation is a process which focuses on logical problem solving and rational approaches, which assume that the clients are capable of the process and ready and willing to do so. But for those people who are driven not by logic or a desire to compromise, but instead manifest a cluster of behaviours and motivations which increase conflict, it is necessary to utilise alternative methods and identify resources which manage those individuals in a more effective method.

This paper sets out to explain what is meant by the term 'high conflict personality' and why orthodox methods of mediation and conciliation may not work with this group of people. It then goes on to explain how to identify and assess those individuals who are likely to be problematic before discussing communication strategies and methods which the mediator can use to provide another 'layer' of skills on top of those normally used in mediation, where intractable conflict or hostility is a problem.

What Is Meant By The Term 'High Conflict Person'?

The term 'high conflict person' has been popularised relatively recently in legal texts and general discourse[5] [6] to describe those people with certain behavioural clusters who are often observed in legal disputes. This is not meant to suggest that it is a new phenomenon. On the contrary, vexatious individuals and difficult clients are not new to agencies of accountability, lawyers or mediators, especially those working in highly emotive legal dispute areas such as family law.

It is possible for the practitioner to identify certain high conflict behaviours and dysfunctional personality traits and also gain an understanding of the thinking styles demonstrated in people who are predisposed to hostile and conflictual behaviours. Mediators and lawyers, unless they are also trained in mental health disciplines, are not going to be in a position to diagnose a client, but being able to identify certain traits will assist the practitioner by making them aware that mental health problems may exist and that they may need to tailor their communication and mediation process accordingly. The practitioner may become aware that the thought processes of a disputant, and how they make decisions, may be markedly different so the mediation can then be managed more effectively by communicating with the disputant in ways which are more acceptable to them and which helps to expedite the process.

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[5] In referring to this term I am aware that it may connote stigma, however my goal is to be succinct so to this end I will use the term 'high conflict person' for the purposes of clarity. I refer consistently to the term 'high conflict person'. This is not a diagnosis, it is merely a descriptor for a cluster of behaviours which may, and usually does, derive from psychiatric pathology. The term assists in providing a working theory. See for example; Eddy, W 'High Conflict People in Legal Disputes' HCI Press, 4th Edition, (2009).

[6] Psychological treatment centres are also using the term as a generic descriptor, ie: http://www.pchtreatment.com/high-conflict-personality-treatment-center/- accessed 23/3/13.

How High Conflict Behaviour is Different.

A useful starting point is to think about the emotional responses that human beings normally experience, in which as a consequence of a provocation, they are made to feel angry and upset or disappointed and hurt. These are commonly experienced human experiences. High conflict behaviour however can be broadly described as behaviour which *escalates* rather than minimises conflict. The individual tends to escalate because they receive some kind of secondary gain from the dispute, but contrarily, they are inclined to blame others whilst perceiving themselves as the victim. The displayed emotion is often disproportionate to the dispute in question and often there is the presence of poorly regulated emotions in the form of anger, impulsivity and criticism of others, whilst it is not uncommon to observe controlling and manipulative behaviours. These features are almost always derived from the individual's personality structure.[7] It is manifested predominantly as a disorder of behaviour.[8]

It is the link with personality that provides a firmer method of categorising those individuals and provides a more organised method of understanding the problems just described. People with high conflict interpersonal communication styles frequently have an underlying personality disorder, that is; *'an enduring pattern of inner experience and behaviour' that demonstrates a pervasive and maladaptive pattern that deviates from cultural standards and leads to functional impairment.* [9]

Personality disorders are quite common in the general population, estimates vary but in Western countries anywhere between 2%-15% are reasonable estimates with maladaptive traits that do not qualify as a disorder making up part of that number.[10]

Personality disorders are grouped into clusters based on their predominant features and it is the *Cluster B disorders* which typically present with high expression of emotions, neuroticism, dramatisation and hostility.

Cluster B disorders are categorised into the following four sub-types:

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[7] Eddy, W. *High Conflict People in Legal Disputes* (HCI Press, 4th Edition, 2009), page 17.
[8] Mullen and Lester discuss behavioural manifestations in a fascinating paper on vexatious persons, see; Mullen, P and Lester, G *"Vexatious Litigants and Unusually Persistent Complainers: From Querulous Paranoia to Querulous Behaviour"*; Behavioural Sciences and the Law, 24, (2006).

[9] American Psychiatric Association: *Diagnostic and Statistical Manual IV-TR (2000)* Washington, DC, American Psychiatric Association, pages 685-689.
[10] Torgersen S, Kringlen E, Cramer V; *"The prevalence of personality disorders in a community sample"* Archives General Psychiatry (2001) 58 (6), p590–6; Grant BF, Hasin DS, Stinson FS, et al; *"Prevalence, correlates, and disability of personality disorders in the United States: results from the national epidemiologic survey on alcohol and related conditions"*. Journal Clinical Psychiatry (2004) 65 (7), p 948–58.

1. Borderline Personality – marked by instability of mood and intense anger; self-destructiveness, a poor sense of self, fears of abandonment and manipulative behaviour.[11]

2. Antisocial personality – a disregard for, and violation of, the rights of others and the rules of society; a lack of empathy and remorse; exploitative, reckless and irresponsible behaviour. [12]

3. Narcissistic Personality – a pattern of grandiosity, self -love and a need for admiration; a sense of entitlement and haughty, arrogant attitudes; preoccupation with success, power, brilliance.[13]

4. Histrionic Personality – pervasive and excessive emotionality and attention-seeking behaviour; shallow or insincere emotions; inappropriately seductive or provocative behaviour; impressionistic and flamboyant speech.[14]

The descriptions provided are not full diagnostic criteria but enable the practitioner to see the prominent characteristics of each type. It is not unusual to observe less severe maladaptive personality traits which do not amount to a personality disorder, or a mixture of personality traits from the different types or a dominant personality style with influences from other types. This is elucidated further later in this paper.

All of these personality types have enduring patterns of thinking which have one thing in common; the individual experiences inner discord and distress which affects the way they perceive other people and the world around them in such a biased or distorted way, that it causes them to misinterpret the inter-personal relations or situations they find themselves in.[15]

As a consequence people with cluster B personality disorders are more likely to escalate their disputes to satisfy their underlying need for dominance, blame, denial of responsibility and, sometimes, revenge. Satisfying these needs often becomes self-sabotaging by, for example, their profligate waste of assets on legal fees, to the detriment of themselves and other family members.

What to look for.

Cognitive distortions, thoughts that are based on a false premise, are a significant feature of high conflict personalities thinking style. Often as a consequence of disrupted attachment or a

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[11] Ibid, no 9 pages 725-729.
[12] Ibid, pages 720-725.
[13] Ibid, pages 733-737.
[14] Ibid, pages 730-733.
[15] Pretzer JL, Beck AT, "*A cognitive theory of personality disorders*", in Clarkin J, Lenzenweger M (eds), Major theories of personality disorder. New York, Guilford Press, (1996).

dysfunctional or abusive upbringing[16] sufferers will develop cognitive distortions and defence mechanisms in an attempt to make sense of the world and to make their experiences fit their own emotions.

Emotionally healthy people base their feelings on facts, whereas people with high conflict personalities tend to bend the facts to fit what they are feeling.[17] This is known as 'emotional reasoning'. The facts are not actually true but they feel true to the individual. The consequence of this is that they exhibit an enduring pattern of blaming others and a need to control and/or manipulate. The following examples will assist in understanding this concept:

Emotional Reasoning- When somebody feels that something is true so believes it as fact regardless of any evidence to the contrary, ie; because they feel that they are in the right, they are right and it is essential that they get what they want.

Dichotomous ('all or nothing') thinking - This is where the individual creates a false dilemma, by seeing things or people in black or white terms; good or bad. Those people who do not agree with them or support their cause are enemies.

Minimisation – Apportioning a lesser weight to a failure or a denial (or rationalisation where complete denial is not possible) in the belief that behaviour has not caused harm. Such as in cases of domestic violence where the victim is blamed.

Projection - The attribution of unacknowledged feelings and emotions toward others because the feeling is so strong that the individual cannot acknowledge it. A common example is claiming that somebody is lying when in fact it is the individual themselves who is lying. This can be an unconscious mechanism.

Denial – Avoiding the awareness of a painful aspect of reality by abolishing the external reality from conscious thought.

Distortion – reshaping external reality to suit inner needs to sustain feelings of entitlement. A lack of progress in in resolving conflict may be perceived as confirmation of malevolent interference.

These cognitive distortions[18] are not an exhaustive list but are likely to predominate in high conflict personalities and they assist in helping to recognise the true nature of the dispute.

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[16] Cohen, Patricia, Brown, Jocelyn, Smailes, Elizabeth. *"Child Abuse and Neglect and the Development of Mental Disorders in the General Population."* Development and Psychopathology, (2001) Vol 13, No 4, pp981-999.

[17] P. Mason & R. Kreger,*"Stop Walking on Eggshells''* New Harbinger Publications,(2010) page 58.

[18] *''Synopsis of Psychiatry''*, Kaplan H, & Sadock B, 8th Ed. Williams and Wilkins, USA, (1998), pages 220-221.

Because high conflict people tend to distort facts to suit their emotions they often put a lot of energy into blaming other people for their cognitive distortions.[19] The need to release internal distress results in reality distorting defence mechanisms, such as projection and denial, which results in them failing to recognise their part in conflict. These cognitive distortions, (also known as emotional facts) are frequently transferred to other people which in turn often enables and exacerbates the behaviour.[20]

The following case extract[21] from the Family Court illustrates some of the distortions described. It includes the submissions of a psychiatrist who examined the disputant, a man, with a personality described as having antisocial and narcissistic features. A pattern of grandiosity, disdain of others and a need to dominate are evident and are highlighted in bold;

Bell J at paras 14 to 19;

> … **[Dr H] found it quite concerning that the father had maintained a belief that his proposal is a reasonable one.** I will be touching briefly upon the particulars in relation to his proposal. He further goes on to say:
>
> ''It is difficult to view his failure to recognise the enormous impact his proposal would have on [the children] as anything other than an indication of his **self-serving, impulsive and emotionally insensitive character.''**
>
> **And may I say that the manner of his presenting evidence in this court reinforces Mr P's view. In passing, I refer to his grandiose views of his own ability,** the fact that he **refuses to give me any information** as to the place which he would intend to take the children to, other than to say it was a house that he shared with someone else, the fact that he would fail to give us any information as to the type of church that he attends, which he says he receives great support from, other than I did extract from him the fact it is of the Pentecostal faith. **He says he did this because he was afraid of the wife which, as far as I'm concerned, on the evidence before me, is rubbish.**
>
> **I also indicate, just briefly, the grandiosity of some of his statements indicates that he believes that he is famous in the local area because of something or other.** No evidence was brought before me to support that allegation.

[19] *"Theories of personality and personality disorders"* by Amy Heim, Ph.D. and Drew Westen, Ph.D.; Department of Psychiatry and Behavioural Sciences and Department of Psychology, Emory University, Georgia, USA. (2004).
[20] ' Transference' was first described by Sigmund Freud as *'a phenomenon characterized by unconscious redirection of feelings and desires from one person to another'* in *''Synopsis of Psychiatry''*, by Kaplan H, & Sadock B, 8th Ed. Williams and Wilkins, USA, (1998), page 206.
[21] *Strine v Rustic [2010]* FamCA 1254, Bell J, at paragraphs 14-19.

He is also of the belief that the B Association, which he was instrumental in forming, is — and recently has been registered — an association of great feeling and great support in the general populous, but he has, as pointed out by counsel for the applicant mother, **in no way brought any evidence to support either:**

- (a) what the B Association is; or

- (b) what it does; or

- (c) whether in fact it is supported tremendously in the local area.

Obviously, what he has told me is its principles are very salutary, and if in fact they are carried out will do very well, **but I have no evidence other than his rather grandiose statements to support that. I refer to his grandiosity because that has been commented upon, if my memory serves me correctly, by Dr H in his reports.**

How could he put before us that the children's welfare will be advanced by their having contact with him? **The whole of his evidence, as I see it, and in particular the evidence given by Mr P and Dr H, appears to be an endeavour to get back at the wife.** His complaints about her, I have found, are generally ill-founded, and I am concerned about **his general attitude of retribution,** if I may put it that way, which he has expressed not only to Mr P but to Dr H…

The following Family Court of Appeal case extract includes an analysis of the testimony of a woman diagnosed with Borderline Personality Disorder.[22] It demonstrates the use of cognitive distortions and fantasy to try to avoid her fear of abandonment. Denial, distortion and an absence of introspection predominate. There appears to be an enmeshed relationship between the appellant and her children in which the mother's distorted view of reality, and possibly her own experiences of sexual abuse as a child, have been projected onto her own children in the form of false sexual abuse allegations. Murphy J;

…[o]n 20 October 1999, final consent orders were made that the children live with the father and that future contact between the children and their mother was to be agreed upon. A further order was made by consent at that time that the mother [would] receive treatment from Dr X. **Within a month of those consent orders being made, the mother had ceased attending upon Dr X.**

In January 2000, it appears **the mother engaged a private investigator so as to allow her children Y and H to undergo lie detector tests**. **The mother also asserts that, early in 2001, the children E and Y were used as a "sting" on a television program** about the supply of pornographic videos to underage children. (The full details of this allegation were not explored at the interim hearing before me.)

… Reference to the Judge's reasons on 21 June 2002 makes it plain that reliance was placed by the Judge upon numerous opinions provided by Dr X. **As will be seen, Dr X and, indeed the Judge, are the subject of allegations subsequently made against each of them.**

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[22] *Prentice v Bellas* [2011] FamCA 584, paras 6-12 and 38-45.

It is of some significance to note that Dr X's opinion given at that time was consistent with psychiatric opinions given by Professor N and Dr L that the mother suffered from a borderline personality disorder. It was said, for example:

Whether **her belief that her children have been sexually abused by [the father] is part of a delusional disorder or a deeply held conviction is immaterial.** The statements by [[E]], now that he is living with his mother, **indicate that [the mother] is still firmly fixated on the idea that her children have been abused.** She has only seen her children on three occasions in the last two and a half years…

…. The mother appears to rely upon a number of allegations made by an adult child in respect of the Judge, Dr X, the Department of Families, the police and, indeed, a number of other public institutions. Some examples will suffice.

It is alleged that the father paid Dr X a bribe. It is secondly alleged that the Judge had sexual intercourse with Dr X. Not only is it alleged that the Judge had sexual intercourse with Dr X, but, apparently, the child making the allegation also alleges that he himself witnessed that sexual intercourse and described a second home of Dr X (which, it is said, exists unbeknown to Dr X's (alleged) spouse and children) at which that sexual intercourse took place.

It is also asserted that other Judges (described generally as such) are corrupt, that the police (described generally as such) are corrupt and that the Department of Families have not complied with their statutory responsibilities in an appropriate way.

It is also asserted as follows, and here I quote from the affidavit of the mother:

'It is clear from my prolonged and extensive experience that no court exercising jurisdiction in family law in Queensland will act to protect children from abuse of the most horrendous kinds. It is clear that the **Queensland Department of Child Safety will quite usually aid and abet child abusers and victimise honest, decent parents**. It is also clear that Queensland Police will not investigate these matters and will victimise informants. **The above evidence was given to them — the day before they shut the Morcombe inquiry down with a timing clearly designed to prevent this evidence from being heard in that inquiry** and with the clearly false assertion that in the last 39 years, only five children remain "missing" in Queensland. My children — still quite young adults **know of at least 10 children and others who have been murdered by [the father] and some of his associates'.. .**

…It will be seen, then, that the mother through, I gather, one or more of her children alleges that the father has, either himself or with others, been responsible for 10 child homicides in this State…

The last part of the extract is also interesting in that it demonstrates that her legal representatives have *enabled* her high conflict behaviour by submitting the affidavit despite its bizarre and illogical accusations. This helps to illustrate the kind of enabling behaviour which is sometimes taken up by family members or professionals who are close to the individual. This is where cognitive distortions are actually adopted by others (transference), sometimes to their detriment. It is a not uncommon

observation. A good example also perhaps, of being a zealous advocate without actually focusing on the clients true best interests? [23]

Both of these examples highlight the difficulties encountered in attempting to reason with people who are frequently unreasonable. It is for this reason that relying on a method in mediation that depends on the parties desires to reach mutual agreement is less likely to result in a successful mediation. People with high conflict personalities see things very differently; they are convinced of their rightness, they think that their needs are more important than anyone else's and any problems are the fault of other people. For these reasons it is necessary to utilise alternative skills which takes advantage of particular communication techniques which can assist in the mediation and conciliation process. This is predominantly based on focusing on the individual's *profound self-interest* which is based in their underlying egocentric desires and morality.

Personality Characteristic Severity and Specific Communication Techniques.

In the following passages a comparative descriptor has been utilised to identify the characteristics of each personality as spanning a continuum from healthy to pathological. This is intended to assist the practitioner to identify and understand the manifestations of the particular personality as *traits* (less pathological), or a *disorder* (extremely pathological). This spectrum can assist with the identification of cognitive distortions and potential communication problems and assess the individual's predisposition to mediation. Persons who fall closer to the less pathological end of a particular personality style can usually be expected to meaningfully take part in the mediation process.

Comparison of Borderline Personality Traits and Disorder.[24]

Traits.

- Tendency to experience passionate, focused attachments in all relationships.

- Emotionally active and reactive. Display their emotions openly.

- Uninhibited, spontaneous, undaunted by risk.

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[23] This raises numerous practise issues, for example*; Lawyers must faithfully exercise independent judgment in conducting and managing cases* – Professional Conduct and Practise Rules 13(1); The Victorian Bar Rule no 32 prohibits the inclusion of unsubstantiated allegations in affidavits or pleadings; Bar Rules 34, 38 and 42 prohibit the making of allegations of criminality, fraud or other serious misconduct without a proper evidentiary basis…etc

[24] Adapted from *Handbook of Diagnosis and Treatment of the DSMIV Personality Disorders*, by Len Sperry, PhD. Published by Brunner/Mazel Inc. (1995), Ch 4, page 54.

- Creative, lively, engaging. Open to experiencing other roles, cultures and values.

- Intense and focused romantic relationships with one person.

Disorder.

- Pattern of unstable and intense relationships noted by alternating between extremes of idealisation and devaluation.

- Impulsivity in areas that are self-damaging, ie; sex, overspending, substance abuse, parasuicidal behaviour, provoking fights.

- Marked instability and lability of mood.

- Inappropriate and intense anger. Feelings of emptiness or boredom.

- Identity disturbance and uncertainty regarding self-image, sexual orientation, values and morals.

- Frantic efforts to avoid real and imagined abandonment. Intolerance of being alone.

Communication Method.

Borderline personalities tend to view themselves, others and the world in the following ways. ''I don't know who I am", "He/she is great,…no they're not", "Life must go my way or I won't be able to tolerate it". The interpersonal characterisation of Borderline personality is their paradoxical inclination to fluctuate between idealisation and devaluation of other people. They hate criticism, rejection and quickly get dysthymic or depressed following the slightest of stressors. They are terrified of abandonment and relatively simple things such as other people forgetting to return phone calls can cause considerable anxiety.

Their thinking style tends to be inflexible which leads to rigid abstractions of other people. This in turn leads to particular problems in communication as they have a tendency toward ''splitting'' which is the inability to synthesise contradictory qualities in people, so that others are seen as good or bad but rarely in between. According to Beck[25] their dichotomous thinking and inclination to think and evaluate experiences in mutually exclusive categories is the basis of self-destructive behaviours and erratic emotions. The practitioner should look out for loyalty and scapegoating, inclusion and rejection, collusion and sabotage.

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[25] *Cognitive Therapy of the Personality Disorders,* By Beck, A., Freeman, A., Davis, D; New York, Guildford Press, (2004) 2nd Edition, Chapter 9.

Many people with Borderline personality have difficulties with problem solving and developing alternative strategies. This may require the assistance of the practitioner to establish workable and realistic strategies that do not set up the disputants for failure in the future. Utilising advocates opinions may be one way of achieving this.

It is important that they are assisted to feel that they are being heard and validated. Communication which enables them to make a choice will facilitate resolution. Give them your full attention and good eye contact, listen without interrupting initially. Be supportive of the person but not immediately supportive of their position or you may give the appearance that you are siding with them. If the individual feels as if there is a collaborative relationship in place they will be more amenable to the mediation process. Verification of claims is essential or the practitioner may become embroiled in a dispute based on fantasy.

An open and engaging manner is essential which is consistent and reliable and sets boundaries on what is acceptable but there is an important caveat to this, boundary setting should only address behaviour generally and not make critical character attributions. [26]

A calm and accepting manner will assist with the need to deal with the mediation in a practical way. Consequences for bad behaviour such as shouting or swearing should be preceded by a warning and if the infraction is repeated then the mediator should follow through with the limit setting.

Comparison of Anti-Social Personality Traits and Disorder.[27]

Traits.

- Prefer a non-committed, live well lifestyle and 'life is short, let's have fun' attitude.

- Tend to live by their own code and are only superficially compliant with society's rules or norms and lacking in guilt.

- Often hedonistic in behaviour.

- Often generous with money, believing that as it is spent more will turn up somehow.

- Often silver tongued and charming.

- Can only commit to short term plans and commitments. Inclined to get bored quickly.

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[26] Ibid, p 202.
[27] Adapted from *Handbook of Diagnosis and Treatment of the DSMIV Personality Disorders*, by Len Sperry, PhD. Published by Brunner/Mazel Inc. (1995), Ch 2, page 17.

- Often assertive and bold. Prepared to physically fight if they think it is necessary.

Disorder.

- Unable to sustain consistent work. Often make a living by illegal activity such as drug dealing.

- Consistently unlawful behaviour that is grounds for arrest.

- Hostile, aggressive and violent behaviour with no compassion for victims.

- Impulsivity, failure to connect their behaviour with the consequences.

- Need for immediate gratification.

- Repeated lying, deceit, lack of remorse or empathy for others.

- Use of charm, manipulation, intimidation and violence to control others.

Communication.

Psychologically their views of themselves, others and the world can be articulated as follows; "I am strong and cunning and will get whatever I want." "I will bend or break the rules to suit my needs". Typical defence mechanisms are blaming, minimisation and justification.

Generally speaking individuals with severe anti-social personality disorders are regarded with pessimism by psychiatrists, law makers, judiciary etc. The absence of remorse, the need to dominate and control, an inability to empathise with others and the risk of violence means that practitioners are unlikely to have to deal with severely pathological individuals (and would be wise not to) as they are unlikely to engage in the mediation process. [28]

Communicating with people who have less severe antisocial tendencies tends to be fairly straightforward until the practitioner ceases complying with what the individual wants to hear and resists manipulative behaviour. At this time they may get angry or refuse to cooperate but this can usually be ameliorated by asking them to talk about their concerns or worries. Showing empathy for their failures will help to perceive the practitioner as non-punitive, which is important to people who are otherwise dismissive of authority. Establishing rapport requires the practitioner to avoid power struggles and reiterate that compromise is not a sign of weakness but is in the individual's best interests.

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[28] See 'Clinical Taxonomy of Antisocial Personality Disorder' in *Cognitive Therapy of the Personality Disorders,* By Beck, A., Freeman, A., Davis, D; New York, Guildford Press, (2004) 2nd Edition, Ch 8, p 168.

Corroborating information is essential. Avoid agreeing with their claims, especially beware of feeling pity for their pleas for sympathy, they are adept at playing other people's heart-strings.

A practitioner who can cultivate a rapport by being self-assured, positive, and non-judgemental will be more successful as antisocial people tend to view people in authority with suspicion. [29] This will assist in prioritising the problems to be dealt with rather than being perceived as interfering.

It is wrong to say that all anti-social people completely lack sentiment or are unable to develop emotional attachments. For those with a personality structure which is less severe and those who are genuinely distressed (for example by family separation) they can be assisted by focussing on specific problem solving where they retain a degree of control over decision making and can be persuaded that agreeing to compromise is in their best interests. A defined purpose in the mediation process is essential, the goal or end point needs to be attainable. The potential loss of certain aspects of the conflict to the control of the other party may result in anger but can be redirected by persistent reminders of their own selfish needs.

Comparison of Narcissistic Personality Traits and Disorder. [30]

Traits.

- Some vulnerability to negative assessments and the opinions of others.

- Shrewd in dealing with others and utilizing their strengths to achieve their own goals.

- High regard for theirown talents and ability but do not usually demand special privileges.

- Expect others to treat them well at all times.

Disorder.

- React to criticism with rage, stress and humiliation.

- Interpersonally exploitative, taking advantage of others for their own needs. Lacking empathy for how others may feel.

- Grandiose, self-entitled, and demanding of especially favourable treatment.

- Preoccupied by fantasies of success, power, love, brilliance which may they act upon.

[29] *Cognitive Therapy of the Personality Disorders,* By Beck, A., Freeman, A., Davis, D; New York, Guildford Press, (2004) 2nd Edition, p 171.
[30] Adapted from *Handbook of Diagnosis and Treatment of the DSMIV Personality Disorders*, by Len Sperry, PhD; Published by Brunner/Mazel Inc. (1995), Ch 7, page 115.

- Require almost constant attention and admiration.

- A belief that they are unique and only understood by special people.

Communication.

The narcissist's view of themselves and the world can be characterised as follows; "I am special and unique and therefore I am entitled to privileges which others are not." "People owe me admiration and privilege."

Other people's needs, opinions and ideas are often treated with disdain or are irrelevant. Typical defence mechanisms are rationalisation and projection.

The illusion of specialness and sense of entitlement can sometimes give the impression that mediation or a discussion is solely being done to endorse their belief in their importance. As long as the practitioner plays along with the expected role they will be idealised but confronting their grandiosity will increase the likelihood of anger. Therefore, the use of open ended questions which permits them to explain or describe their needs, ideas and future plans is preferable. The mirroring and reflection stages are especially important. If this is done well then the individual's sense of entitlement will give way to the practitioner's expertise because in their mind "superior" people arbitrarily know what is right,[31] and they will be more inclined to take part in a mediation process.

Compromise is difficult for the narcissist and it is best not to confront them with their behaviour. It is important to try to avoid them looking bad in front of an audience so private conversations and the opportunity to ventilate at certain times is important for them, but do not support unverified claims.

Sometimes palliating the individual, so that the narcissistic personality is maintained, such as with sympathetic reflection, whilst intercepting and avoiding destructive sequelae, will improve the collaborative relationship. A helpful strategy is to agree with the superficial complaint but then direct attention to the matter of costs and that perhaps there is something to be gained by compromise. [32]

Appealing to the self-interest can be done by the use of an agenda which addresses their individual concerns and which on the face of it appears to be more focused on them. If this can be done in a way which demonstrates reciprocity from the other disputant it will appeal to their overinflated ego

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[31] *Cognitive Therapy of the Personality Disorders,* By Beck, A., Freeman, A., Davis, D; New York, Guildford Press, (2004) 2nd Edition, Ch 11, p251.
[32] *Ibid*, p 261.

and consequently they are less likely to be angry or engage in anti-social behaviour.[33] Sympathising with 'unfortunate circumstances' and the individual's sense of being victimised can then be followed by concentrating on solutions that will lead to resolution.

Comparison of Histrionic Personality Traits and Disorder.[34]

Traits.

- Enjoy compliments and praise.

- Enjoy being the centre of attention and play up to it.

- Charming, engaging and appropriately seductive in appearance and behaviour.

- Occasionally impulsive but can delay gratification.

- Emotional responses are mildly exaggerated or incongruent.

Disorder.

- Constantly seeking reassurance, praise or approval.

- Uncomfortable in situations when they cannot be the centre of attention.

- Emotional responses are made with inappropriate exaggeration or are rapidly shifting and shallow.

- Inappropriately sexually seductive and overly concerned with their appearance.

- Dramatic and impressionistic speech which lacks detail.

Communication.

The histrionic personality is one in which the individual tends to be exhibitionistic, attention seeking and flirtatious. The practitioner may slowly become aware that they appear to be watching a performance. Their thinking style is often impulsive, capricious, non-analytical and vague. They rely heavily on their intuition regardless of the circumstances and are suggestible and sensitive to

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[33] 'Lack of reciprocity, narcissism, anger, and instigated workplace incivility: A moderated mediation model' Laurenz L. Meier & Norbert K: *European Journal of Work and Organizational Psychology, Summer (2012).*
[34] *Handbook of Diagnosis and Treatment of the DSMIV Personality Disorders*, by Len Sperry, PhD. Published by Brunner/Mazel Inc. (1995), Ch 6, page 98.

rejection.[35] Beck describes their cognitive distortions based on the following; "I must be loved by everyone to be worthwhile" and "I am inadequate and need to be looked after."[36] Believing that they are unable to take care of themselves they actively seek the approval and attention of other people until they are ultimately rejected for being too demanding. This reinforces and worsens their rejection sensitivity.

They often spend a lot of energy seeking special care and consideration and are angered when ignored. This is different to the narcissist however, whereas the narcissist perceives threats to the integrity of self, the histrionic is more concerned about the threat to their dependency on others and can generally be easily reassured.

A diffuse thinking style means that they often find focusing on one thing at a time to be difficult. The practitioner would be wise to encourage identification of the predominant issues and provide structure that sticks to the issues with a list of advantages and disadvantages.[37]

 Utilizing questioning that goes to the heart of the problem and establishing meaningful goals to be achieved will avoid the tendency to set noble, vague or completely unachievable goals. Structured conversations and agendas which are proving to be difficult may best be managed in private sessions where reality testing and underlying needs and goals can be explored individually and meaningful conclusions made.

Exaggerated emotions and phoniness may be common initially. Histrionic women may be inclined to flirt with a male practitioner whereas they may engage in a power struggle with the female practitioner. Asking open ended questions may cause them to ramble and become side-tracked so it is usually better to overcome their propensity to be vague or exaggerate by concentrating on a specific theme in a conflict and try to elicit concrete information.

Confronting contradictions in their statements may result in loss of rapport. A typical response when they feel that empathy is being lost, which the practitioner can look out for, is a return to over-dramatisation.[38] Bringing the individual back to reality by de-catastrophising their opinions can assist but the underlying fears still need to be well understood and empathised with, so that the individual does not feel as if they are being ignored. It is important to support and sympathise with the individual's emotional needs and their sense of being threatened or wronged, not the position.

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[35] *Handbook of Diagnosis and Treatment of the DSMIV Personality Disorders,* by Len Sperry, PhD. Published by Brunner/Mazel Inc. (1995), ch 6.
[36] *Cognitive Therapy of the Personality Disorders,* By Beck, A., Freeman, A., New York, Guildford Press, (2004) Ch 10.
[37] *Ibid*, page 234
[38] Ibid, no 35, page 104.

General Methods for Communicating in the Mediation Process.

In formulating a different approach for high conflict people I have concentrated on the internal or psychodynamic forces that influence the individual's behaviour. The self-interest that predominates in many high conflict people is generally not amenable to the rational, mutual problem solving approach required to participate in facilitative mediation.

The reader may be wondering how high conflict people can be effectively assisted in what is meant to be a process which requires some cooperation. The simple answer is that an appeal can be made to the individual's *extreme self-interest* which enables them to take part in the process *in a way which is more acceptable to them*. Other commentators have referred to high conflict disputants vulnerabilities and advocated an approach in which the mediation process is less orientated to understanding the other party's position and more skewed towards identifying the individuals underlying needs. [39]

This predominantly pragmatic method can be adopted by dispute resolvers and used in facilitative, advisory and evaluative methods of mediation.[40] The individual's self-interest is used as a central focus point and is consistently referred to throughout the mediation. This is obviously not an innovation, the focus on interests and not positions is a well established part of alternative dispute resolution processes, but the focus on attending to the high conflict personality's ego provides a method which is more acceptable to the individuals emotional needs so that they *feel* as if they were heard, *feel* as if they have been validated and *feel* as if the outcome is acceptable to them. In this way dispute resolution is more likely.

High conflict disputes, or any dispute with high levels of emotion, require an empathic approach. Specifically; bonding, validation, avoiding criticism and enforcing boundaries whilst keeping open lines of communication. One writer has described the bonding process as very important and has described it as giving your "E.A.R", that is; your empathy, your attention and your respect.[41] This is extremely important. Many people with personality disorders are unable to think outside of their own self-interest and display atypical empathy in their interactions with others whilst being very sensitive to criticism, rejection and abandonment.[42]

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[39] *''Mediation, conciliation and high conflict families: Dialogue with a dead horse'* 'by Margot Rogers and Tony Gee, Alternative Dispute Resolution Journal, 266 (2003), p 266.

[40] See NADRAC glossary of *Dispute Resolution Terms* and definitions; http://www.nadrac.gov.au/publications/PublicationsByTopic/Pages/default.aspx accessed 8/4/13.

[41] *"Managing High Conflict People in Court"* by Bill Eddy, HCI Press, (2007), page 25.

[42] For example there is good evidence that individuals with Borderline personality are extremely sensitive to the emotions displayed by other people and recognising emotions in others faces, see; Wagner, A; Linehan, M. "Facial expression

An empathic approach which explores the individual's perspective of the history of the conflict assists with bonding. By showing empathy equally to disputant's, practitioners can remain neutral without giving the appearance of taking sides, and proper empathic engagement assists the individual to feel that they are bonded with the practitioner.

The self-interest method is predominantly achieved by utilising those parts of the mediation or conciliation process in which the disputant is seen alone. Where extremely high conflict scenarios or pathological personalities are suspected, the pre-mediation conference and private sessions within the mediation process provide the best opportunity. This assists in assessing the individual and thereafter priming them for what lies ahead.

The individual's self-interest is the focus for gathering information on the history of the dispute from their point of view and a narrative is developed as to how this made them feel, what they did in response and what they want to achieve in mediation. Narrative questioning enables the individual to shift the tendency to blame and assists with understanding the history of the events. Considerable time needs to be spent on engaging the individual in a non-judgemental way in this process and utilising reflection and clarification.

At this stage the practitioner will also need to clarify expectations and engage in sensitive feedback. The emotional issues which come to the fore will assist in identifying where the impasse lies and what cognitive distortions may exist. These are the main problems, the underlying factual dispute usually takes second place to the disputant's emotions and need to ventilate. Again, acknowledging these emotions is extremely important because when they feel heard they do not feel the need to continue raising the emotional level to get attention.

The clarification of expectations is ultimately followed by reality testing and the need to assess alternatives before their options are explored. Mediators are likely to find this stage difficult and time consuming because typically the individual has done little in the way of reality testing or introspection. This is where fantasies related to their need for supreme vindication or the need to blame others will confront reality. Ordinary reasoning will fail, it is essential to work on cognitive distortions. Ask questions such as "Is that correct?.." "Did (so and so) really think that or have you misunderstood him/her?.." "What will be consequences of pursuing this be?.." "How much will it cost you?.." "Why do you think the court will vindicate you?"

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recognition ability among women with borderline personality disorder: implications for emotion regulation?" *Journal of Personality Disorders, (no citation for edition), (1999).*

Where compromise is required try reframing the reason for compromising so that benefits to the client in reaching settlement are more apparent. This can be done by concentrating on the alternative scenarios that may occur if mediation is not successful (such as the expense of litigation) and that a court is unlikely to completely vindicate them.

 The process of working through alternatives and the need to make a wise decision with ''what if '' questions can catalyse anger or hostility and there is a possibility that blame will shift to the process or the mediator themselves. In these circumstances it may be useful for the practitioner to focus on the issues that could conceivably give an advantage to the other side, such as a failure on the disputant's part to keep to a previous agreement. For the high conflict personality the idea that their own behaviour could be used against them is something that is intolerable and assists in focussing on the real issues rather than the emotions or the need for revenge, vindication etc.

The redirecting of tasks and the making of lists, such as the batna/watna assists in providing the structure that is required whilst still focusing on the self-interest. An educative role rather than the adversarial is obviously preferred but practitioners should procede with caution as advice may be perceived as criticism.

Strategies for joint sessions and cooperative problem solving are usually inappropriate in high conflict situations. If the disputants can tolerate it then an agenda which is closely adhered to can assist, prior to which the practitioner has set very clear boundaries and expectations on what is required of the disputants. If consensus is reached it is essential that there is a recording of what is agreed to. Ideally this would also include a narrative of the actual content and the outcome of discussions in the mediation itself. This includes all the agenda items and lists of things in dispute, the stages of negotiation and how agreement was eventually reached. This can be recorded with the use of an electronic whiteboard.[43] This visual facility assists the disputants in remembering how the decisions were arrived at and also makes more formal agreements less likely to be challenged or manipulated later.

Dealing with Emotions.

Whilst attending to the disputants self-interest facilitates process, the underlying or overtly displayed emotions also give clues as to what disputants want. Much conflict is the product of unmet emotional needs and having these needs met is often what parties want most from

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[43] The variety that enable printing directly from the board or saving it to a USB. Also assists in drawing up more formal agreements, see; http://www.electronicwhiteboardsonline.com.au

mediation. The mediator's response to the highly emotive mediation is crucial to its success and the mediator needs to develop comfort and skill in the process by understanding their own emotional responses.

Research has demonstrated that disputant's response to anger varies depending on the appropriateness of the expressions of anger and the degree of power held by the parties,[44] so that the expression of anger has different consequences depending on the relative power of the opposing disputant. Those with more perceived power in a dispute are more likely to retaliate and exhibit hostile behaviour designed to achieve their aims when faced with an angry opponent than with a passive one.[45] This obviously has implications for mediators who need to be constantly aware of power imbalances and the effects of the disputant's anger on conflict escalation. It may also provide an incentive to disputants to keep their anger under control if they understand that it may make it more likely that they will not get what they want.

Managing emotional responses in a way that validates the underlying feelings whilst preventing it from being destructive to the process is a difficult juggling act but is part of the mediator's role. "The art of dealing with conflict often lies in finding the narrow path between useful expression of emotions and destructive polarization."[46] Thus mediators must tread a fine line between acknowledging and managing useful emotional expression and that which is detrimental and they must do so in a way that is not met with scepticism or derision.[47]

So how can mediators address high conflict scenarios and anger in an effective way? An important skill is recognising the effect that emotions in other people have on the mediator and the mediators own relationship with emotion. How emotion is dealt with is essential not only to the process but also the long term health and happiness of the mediator themselves. The notion of 'emotional intelligence' is founded in good self-awareness. In his book Emotional Intelligence[48] the author Daniel Goleman discusses the need for self-awareness as a cornerstone to insight and self-understanding; "An inability to notice our true feelings leaves us at their mercy".[49] Thus, to gain good emotional intelligence and ability as a mediator the practitioner must understand their own emotional responses.

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[44] 'Expressing Anger in Conflict: When It Helps and When It Hurts' Gerben A. Van Kleef and Stephane Cote; *Journal of Applied Psychology of the American Psychological Association (2007) Vol. 92, No. 6*.
[45] *Ibid,* pages 1567-1568.
[46] Mayer,B. *"The Dynamics of Conflict Resolution",* Jossey-Bass, (2000), p.10.
[47] "I'm not in bloody therapy!" may be a typical response.
[48] 'Emotional Intelligence – why it can matter more than IQ" by Daniel Goleman, Bloomsbury Press, (1995).
[49] *Ibid,* p 43.

Some useful questions for self-reflection are;

- Do you have any preconceived ideas about the expression of emotions and feelings?

- Are you aware of the emotional responses that other people raise in you?

- Do you cultivate awareness of your feelings moment to moment?

- What cultural and familial expressions of emotion did you experience growing up?

- What does the expression of emotion in others cause you to feel?

Some useful basic strategies;

- When dealing with high conflict people safety and trust are important. It would be prudent to plan ahead and implement strategies that help disputants (and their lawyers) feel safe.

- In supporting appropriate emotional expression the practitioner can assist the parties to let go of the conflict but should avoid the temptation to try to suppress or fix the expressed emotion.

- Distinguish between expressed emotions and behaviour. Inappropriate behaviour needs to be managed with ground rules and consequences.

- Give the parties plenty of opportunity to ventilate or talk privately.

When is Mediation Not Appropriate?

This paper must inevitably consider when mediation is not suitable. When does the disputant's behaviour render the process futile? When should the mediator say, 'this is not working' and cease any further attempts to mediate the conflict?

Mediation or negotiation, whilst appearing attractive in some disputes, may actually be counter-productive if people feel that they are being coerced or otherwise intimidated in the process. Significant power imbalances are likely to be re-enacted in mediation and the mediator may place themselves in an invidious position where they may be perceived as failing to act to redress the power imbalance unless they are aware of it.

Mediation is not appropriate to all disputes and there may also be a public interest in seeing conflict resolved by litigation because it not only resolves the conflict between the litigants but also

delineates behaviour and makes a statement on the law. This is not going to be achieved in mediation and may actually avoid developing the law in a particular area. [50]

Mediation is meant to be an empowering process that gives parties the ability to be heard, have their say and feel as if the outcome is just. There needs to be a desire to settle a dispute, some capacity to compromise and a degree of honesty. Disputants are satisfied when they have some control over the process and outcome.[51]

Factors which are often cited as being inappropriate for mediation are the disputant's individual identifying features, such as alcohol and drug use or mental incompetence, whilst the disputant's previous relationship dynamic may also be such that mediation will only exacerbate rather than resolve the problem. The latter includes instances such as physical and mental abuse, major power imbalances, workplace bullying or an intention by one of the parties to abuse the mediation process and use it for nefarious means. There is also a counter-argument which states that the mediation process can assist in helping to correct or equalise disputant's power imbalances such as where a disparity in wealth or resources exists so that mediation is a more affordable process than litigation.

Despite these tensions the introduction of mandatory or statutorily required ADR has been introduced into numerous areas of law, one of the most recent being the requirement for separating parents with children to attend mandatory mediation[52] and participate in good faith, making a 'genuine effort'[53] to resolve their dispute before they can access the family court. This has been criticised for numerous reasons[54] not least because it is very difficult to measure the notion of good faith, but also because parents may feel that they are being coerced into making agreements which they do not genuinely want.

NADRAC's wide definition of ADR processes does not discuss the issue of voluntariness in its descriptions of mediation, conciliation, family dispute resolution or arbitration. [55] It would appear that what was a traditionally voluntary process has quietly evolved into a process which is more motivated by parliaments preoccupied with saving money and lessening the burden on the courts. The conflict between justice and settlement has given way to institutional efficiency. [56]

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[50] Some commentators contend that it is not such a bad thing when mediation fails; Ingleby, R; 'Court sponsored mediation: The case against mandatory participation,' *The Modern Law Review, (1993) 56, p 445*.

[51] Green, Cameron, "ADR: Where did the 'alternative' go? Why mediation should not be a mandatory step in the litigation process," *ADR Bulletin: Vol. 12, (201), No. 3, p 54-60.*

[52] s 60I of the *Family Law Act 1975 (Cth)*

[53] S 60I (8)

[54] For a good introduction, see; ''Genuine Effort in Family Dispute Resolution'' by Hilary Astor, *Family Matters Australian Institute of Family Studies, No 84*, (2010) pages 62-63.

[55] http://www.nadrac.gov.au/what_is_adr/Pages/default.aspx

[56] See; 'The purpose of court-connected mediation from the legal perspective' by Rundle, O; *ADR Bulletin, (2007) 10(2) 28.*

Notwithstanding these contrary positions it would appear that court mandated mediation is here to stay and the need for more adaptable mediation processes is essential.

Conclusions.

The method advocated here augments the interest based negotiation method. It is intended to be a skill set which the mediator can acquire and utilise as they see fit. Whilst it is unlikely to be utilised in the corporate arena it may be useful in family relationship disputes, workplace scenarios and other areas where the impact of pathological personalities is problematic and a more adaptable response is required.

Mediation should not be deemed to be inappropriate or otherwise unavailable to people solely based on the fact that they may have psychiatric disorders. It is how they manifest in their behaviours and the processes that are put in place to effectively manage challenging behaviour that is the key. This will depend on the circumstances and the nature of the dispute. Whilst it is important to assist the disputants to develop a negotiated solution the practitioner must put boundaries in place which are intended to prevent abusive or controlling behaviour.

The assessment processes in the self-interest method also operate as a tool for the mediator. Where there is court mandated mediation the initial contacts with the disputants take place separately. This starts the beginning of individualised meetings in which the practitioner is intensively involved in an ongoing assessment process in which they are constantly finding out more about the people involved and which assists in formulating a strategy for mediation.

In the event that interest based negotiation is attempted in more detail, the latter stages of the process can also inform whilst providing an opportunity for the practitioner to educate, challenge, mollify and provide the necessary structure for the disputants. In this way it is possible to achieve a higher degree of cooperation than may otherwise occur, and, it is hoped, the resolution of conflict without resort to litigation.