

Mediation Advocacy “A Proverbial Approach”

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Show Up



Human Beings cannot not communicate.
All personal interaction involves
communication.



Show Up

Most communication is non verbal.

Communication Realities:

- _____ 55% _____ Body Language
- _____ 38% _____ Tone of Voice
- _____ 7% _____ Words Spoken



Show Up

Participants must believe their "message" has been received before they can effectively negotiate.



Show Up: "In Spirit"

- Cell Phones
- Laptops
- Text Messages
- Substitutes
- Absent Verifiers



Pay Attention



Even seasoned litigants are often surprised during trial at how good their opponent's case "sounds" during trial.



Pay Attention



Naive realism: we are prisoners of our own bell towers.



Pay Attention

Reactive Devaluation- the "devil" never speaks the truth.

Anchors you can die upon



Speak the Truth



Mark Twain said, "If you speak the truth, you never have to remember what you said."



Speak the Truth

Maintain credibility in negotiations by acknowledging strengths and weaknesses.



Speak the Truth

Being forthright evidences your ability to properly analyze a case for trial.

Never tell a mediator something you wouldn't tell a Judge or Magistrate.



Be Open To Outcome

"You don't always get what you want, but if you try sometimes you just might find that you get what you need."- Mick Jagger



Be Open To Outcome



All mediation participants have the same problem set: they face the risk, time, and money posed by a trial.



Be Open To Outcome



A judge or a jury may oftentimes craft an outcome none of the parties anticipated or wanted.



Be Open To Outcome

A mediated outcome may approximate the needs/interests of the litigants to settle and forego risk, time, and money posed by trial - nothing more and nothing less.


