

# Mediation Advocacy “A Proverbial Approach”

Presented by:  
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## Show Up



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



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## Show Up

Most communication is non verbal.

Communication Realities:

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



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## Show Up

Ambush is not an option in mediation.

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

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## Pay Attention

Count the "F's"

TWO OF THE MOST POWERFUL AND EFFECTIVE OF ALL HUMAN FEARS ARE THE FEAR OF FAILURE AND THE FEAR OF SUCCESS.

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## Pay Attention

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## Pay Attention



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

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## Pay Attention



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

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## Pay Attention

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

Anchor - an imagined "loss" is still a loss.

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## Speak the Truth



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

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## Speak the Truth

Maintain credibility in negotiations by acknowledging strengths and weaknesses.

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## 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.

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## 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



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## Be Open To Outcome



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



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## Be Open To Outcome



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



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## 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.

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