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Can a "take no prisoners" mediator help you maximize your recovery?

This story is for you if . . .

- You want a strong mediator who will grind the other side into accepting your position;
- Your approach to litigation is to take no prisoners;
- You hate to negotiate.



Krivis

The myth

A hard-as-nails mediator who is pushy and aggressive is more effective than a soft-sell approach.

Why it's misleading

A mediator who only has one tool in his box — and that is to push the other side into submission — will likely push the other side out of the room by expressing an early evaluation that is not well-received. Timing is the key in negotiations and coming to the right solution at the wrong time could be disastrous.

The mediator should be in a position to use various styles including a more nurturant approach as described by George Lakoff in "Don't Think of an Elephant." That approach encourages an understanding and thoughtful consideration of even the most extreme positions. An intelligent mediator will start with that approach but will be prepared to move into an approach that Lakoff describes as "strict father," which is more directive and confrontational at the right time.

The style employed by the mediator is crucial to success as it is incumbent on the mediator to enroll the other side in the process of negotiation early on or you will never see their numbers. By doing so, the mediator can transform your adversary into your advocate by seeking their advice in order to improve the quality of their decisions and allow them to feel invested in your success. Once this occurs, a more collaborative problem-solving process will take place and the mediator will be in a position to reveal to you what the realistic opportunities are for settlement.

Various tactics are available to the mediator once the other side is enrolled in the negotiation process, including the classic "good cop/bad cop" situation between you and your client. You can also make the mediator look like the hero by creating an impression in the other room that he was able to hammer you down to a more reasonable number.

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