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Setting the anchor

A mediator can be an effective anchorman: offering security in a contentious negotiation

an·chor (ang′ kər) n.
1. *Nautical* A heavy object attached to a vessel by a cable or rope and cast overboard to keep the vessel in place either by its weight or by its flukes, which grip the bottom.
2. A source of security or stability.
3. *Sports* An athlete, usually the strongest member of a team, who performs the last stage of a relay race or other competition.
4. An anchorperson.

v. **an·chored**, **an·chor·ing**, **an·chors** *v.tr.*
1. To hold fast by or as if by an anchor; **2.** To narrate or coordinate (a newscast).



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By Jeffrey Krivis

The settlement gap in most contentious cases can be narrowed dramatically or even eliminated by viewing the role of the mediator as the anchorman (or *anchorperson* if you prefer) in the negotiation. Think of David Brinkley, Katie Couric or the great Walter Cronkite. When their newscast first begins, there is a sense of familiarity and comfort knowing that they would be telling the stories of what happened in the world that day. The fears that accumulated during the day before the newscast are set aside as an old friend talks to us in our living room. While we might not agree with some of the narration, or what some of the correspondents reported, we watch the entire broadcast and feel a sense of completion when it is over.

Anchorpersons have distinctive styles. Some tend toward a low key, soft sell approach, reading the news and talking gently to their audience. Others are more directive, driven and somewhat over the top in an aggressive style. Many are opinionated in their delivery of information with the hope of influencing the audience, while others are less opinionated but equally as hopeful of persuading the audience to see things a certain way. Some let the audience simply come to their own conclusions by presenting "just the facts."

When the mediator is allowed to play this role, it's easier to allow the story to unfold even if there are huge disagreements with the way the facts are presented. This is so for not just the reasons identified above, but for the license that is given the mediator to use his anchor to set the negotiation in place. Consider the following examples of how a tough negotiation might get anchored:

• ***Scale Down the Issues*** – Most cases begin with disputes over just about any issue that could come up in litigation. Yet, when push comes to shove, decision makers generally focus on the key issue when they do their risk analysis and price a case. The mediator is in the enviable position of identifying the key issue, such as "damages," and getting the parties to concentrate the discussion on how that issue might be quantified as opposed to getting distracted with peripheral discovery issues or liability issues.

• ***Narrow the Gap*** – Assuming the conventional back and forth negotiation of numbers fails quickly, it doesn't mean the dance is over. Nor does it mean it's time for the mediator's proposal, which seems to be the default mechanism for some people these days. Instead, the mediator can set out an anchor by privately discussing ranges that work for each side and then *recommending a financial range* that he knows through confidential discussions the parties will agree to. This forces the parties to get unstuck and resume conventional negotiations.

• ***Return to the Narration*** – After the gap has been narrowed and the parties are reengaged in the negotiation kabuki dance, it is likely that another minefield or impasse will occur. Take it in stride and permit the anchorperson/mediator present the newest impediment in a principled manner. Sometimes that is done by the mediator reading the news – telling the information to each side privately. Other times the mediator might move people around for the purpose of conducting strategic interviews in front of others.

This involves setting up separate meetings with key players for the sole purpose of exchanging information about the narrative so that someone might be persuaded to shift their position.

• ***Set the Stage for Closure*** – As the anchorperson retreats back to reading the news, the mediator moves back to a traditional Columbo-like role and tries to diagnose the impact of what occurred when the gap was narrowed and the news was read to the parties. In essence, the mediator is gearing each side up for a possible recommendation of a settlement number or proposed range that would be acceptable to all of the constituents who need to make a decision.

• ***The Proposal*** – Only after the mediator has fully evaluated the likelihood of success should he use the mediator's proposal to close the gap. Simply throwing out an anchor (a settlement number) without prequalifying the likelihood of success could impede future negotiations. On the other hand, some parties are looking for a specific recommendation that they can take back to the decision makers with real authority. A good anchorperson will discuss the value of a proposal and its impact on the negotiation before presenting it.

These are just some of the many ways a mediator might anchor a negotiation. The key is for the advocate in a negotiation to allow the mediator to play the role of anchorperson, and to proactively work with the mediator to use that role in creating settlement movement. Simply viewing the mediator as a messenger of information is a recipe for failure.

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