

When Storytelling Hurts Conflict Resolution

Tips for Dispute Resolvers



By Bill Eddy, LCSW, Esq.

One of the most common aspects of dispute resolution methods is hearing each party's story of the case at the start of the process. In court, in mediation, in arbitration and in other settlement negotiations, this "opening statement" gives us a background on the nature of the case and how each party sees the problem(s). Then, most dispute resolvers (judges, mediators, arbitrators, negotiating lawyers and others) immediately start thinking to themselves of solutions for resolving this particular dispute.

With the majority of parties to a dispute, this process is constructive and efficient. However, after three decades of experience as a mediator, therapist and family lawyer, I would suggest that we need to re-think this storytelling process when it involves one or more parties with high-conflict personalities.

Preoccupation with the Past

People with high-conflict personalities (HCPs) tend to be preoccupied with the past – defending their own past behavior (which is often a significant part of the problem) and intensely blaming others involved in the dispute (who may or may not have contributed to the problem at all – since some high conflict cases involve only one HCP and others have two or more HCPs). Ironically, giving them an uninterrupted opportunity to tell their stories reinforces staying in the past and avoiding responsibility for the future – whether the story is about what happened yesterday, last month or years ago.

Many HCPs get intensely emotional when telling their stories, which reinforces staying stuck in crisis emotions which make it harder for the brain to engage in logical, future-focused problem-solving. Their emotions can also be self-stimulating, such that some HCPs seem to get a "high" from telling their stories, just as addicts get a "high" from telling stories of their past experiences using drugs.

Not Healing and Moving Forward

Of course, most dispute resolvers have learned that allowing people to "get it off their chest" by telling their stories makes it easier for them to move on to resolving their dispute and I believe that this is an important step in dispute resolution for ordinary people. Court research shows that parties to a legal dispute feel better if they feel that the judge (and jury, when there is one) respectfully listened to their story and gave them time to say everything they felt was important.

With so many people representing themselves in legal disputes these days, it is important to recognize the importance of this listening process – especially for the average person who actually benefits from stating their case in a problem-solving manner.

Sadly, however, this “getting it off their chest” process does not work for HCPs, as they do not seem to grieve and heal the past, but rather stay stuck in their stories and repeat them over and over again to whomever will listen – especially people they perceive as being in positions of authority who may become advocates for their viewpoint. Such “negative advocates” are usually hooked by their emotions, rather than their information, and most HCPs have experienced the success of this emotional storytelling – at least in the short-term until their negative advocates abandon them after becoming more informed.

Avoiding Responsibility for Problem-Solving

In addition to trying to persuade dispute resolvers to become negative advocates with their storytelling, HCPs also reinforce their own chronic sense of helplessness, powerless and feeling like a total victim by telling their stories. This is usually the outcome of their stories: “Now you see why I feel like such a helpless victim – there’s nothing that I can do.” This theme of helplessness appears to relieve them of all responsibility for problem-solving.

The stories also tend to place 100% of the responsibility on others – especially the other party or parties to the dispute – including prior dispute resolvers, including their complaints about prior lawyers, mediators, judges, etc. By the end of the story, they hope that you will be persuaded:

- A. That they are totally not responsible for the problem or the solution.
- B. That the other party is totally the source of the problem.
- C. That you are the only one who can help them.

The result of hearing this intense storytelling process is that you, as the dispute resolver, feel stressed, angry and/or helpless, and eager to get the case over with to relieve your frustration.

What We Can Do

I don’t want to suggest that storytelling be forbidden in dispute resolution processes with HCPs. Instead, I have four suggestions for shifting the emphasis of the process onto future problem-solving.

1. Structure the Process for Problem-Solving

From the start of the dispute resolution process, tell the parties that the emphasis will be on future problem-solving. While you might want to hear some background about the situation, you are especially interested in hearing their goals and requests. This is true, whether you are a judicial officer in court: “Before you tell me about your case, I want to know what orders you’re requesting.” Or, if you are a mediator: “I’m interested in knowing what topics you want to address and what you hope to accomplish today.” This gets them focused on the goal of the dispute resolution process, rather than on storytelling.

If you don't do this from the start, you risk having the parties become focused on reacting to each other's story and getting hooked into an "attack-defend" cycle, as each party is offended by the words the other used, by how much time they took, by how you seemed to acknowledge what the other said, etc. By making the process focus on future problem-solving, you can minimize the initial storytelling – or even eliminate it all together! (See suggestion #3.)

2. Avoid Getting Emotionally Hooked

Make a strong effort to not get emotionally hooked by their storytelling. For example, when one person says that the other has acted badly in the past, don't turn to look at the other person (this tends to give the appearance that you have adopted the speaker's concerns). Instead, keep looking at the speaker with interest.

By showing frustration, anger, exasperation and so forth, you join in the crisis emotions which block logical problem-solving in our brains. Instead, respond with interest. It helps to give them an EAR StatementSM, which shows empathy, attention and respect – without joining in their emotions or point of view.

It also helps to shift their storytelling to problem-solving with gentle statements, like:

- You don't need to respond to that.
- There's nothing to defend here – I focus on what to do now.
- How I can help you today is to focus on ...
- I suggest we move on to ...; is that okay with you?
- I hear how frustrated you have been. Let's see what we can do.

3. Ask for Proposals

One of the easiest methods of shifting the focus away from storytelling and onto future problem-solving is to ask the speaker: "Then, what do you propose?" As I suggested in #1, you can eliminate storytelling altogether by saying that the dispute resolution process is structured around their proposals and decisions about what to do now to solve the problem(s). For example, in our method *New Ways for Mediation*SM we structure the process around making proposals in four steps:

1. Committing to being responsible for proposal-making in the process.
2. Proposing topics for discussion and information-gathering.
3. Making proposals, asking questions about them and responding.
4. Making decisions and writing up the decisions in sufficient detail.

Now, you might say that I have skipped over gathering the facts of the case from the parties in this approach. Yet HCPs rarely agree on the facts of the case and easily get stuck arguing the facts of the case. It's better to focus them on making proposals, because they will use their knowledge and perceptions of the case in their proposals anyway – and it reinforces being responsible rather than being helpless about the past.

Or, you might say that a finding needs to be made about past behavior. If that's true, such as in court or arbitration, you can still make the future the emphasis while acknowledging or making decisions about how to phrase the finding about the past behavior.

Or, you might say that I have skipped over identifying "interests" in this process. However, HCPs have too much difficulty seeing their own viewpoint as merely "interests" and seeing the other person as having any valid "interests." It's easier to get them to make proposals and then you can ask them questions to help them understand their own proposals and each other's proposals – especially telling them what's important to the other person in making their proposals (which is actually their interests, but put in simpler terms of being what's important).

4. Consider Coaching Before Decision-Making

Since shifting potential HCPs away from storytelling about their case can be very difficult, it often helps to meet with each party individually beforehand to help them prepare for focusing on the future and away from their stories. It can also be a time when you can hear their story and provide Empathy, Attention and Respect (EAR Statements), without the other party present to feel that you have taken sides. Then, you can teach the party about how the dispute resolution process will go and their role in focusing on the future. That way you have heard enough storytelling to bond with them and focus forward.

Conclusion

Whether you are a judge, an arbitrator, a mediator, a lawyer, therapist or even a family member, you will find that shifting the focus to future problem-solving and away from storytelling about past horrible behavior by others will help you in helping parties in conflict to resolve their own dispute. While this might seem obvious, I have been a trainer for many dispute resolution professionals and students, and this is a huge problem that I have observed when there is one or more high conflict people (HCPs) involved. It's easy for dispute resolvers to become openly frustrated, to become overly directive toward a specific resolution (the professional's, so the parties' have no ownership in it) or to become helplessly passive (while watching the parties stay stuck).

Instead, gently, but firmly, shift the emphasis away from storytelling about the horrible past and onto future problem solving, making proposals and making decisions. This can apply, even in cases of abuse and clearly bad behavior by one person. Both parties have experienced the behavior problem, they both own the dispute and they will have more success in planning for the future (individually or jointly) than staying stuck in the past – even if it involves restraining orders, financial penalties and so forth.

HCPs always feel like victims (and many have been at one time), but we don't help them to allow them to hear their own stories over and over again. Let's teach problem-solving in a respectful way by guiding them to learn that they can move forward in their lives – and helping them do it with a sense of success that they can own.

Bill Eddy, LCSW, Esq. is a lawyer, therapist, mediator, and the co-founder and Chief Innovation Officer of the High Conflict Institute, a training and consulting company focused on helping professionals and individuals learn better ways of handling high conflict disputes. For more, www.HighConflictInstitute.com.