Equipoise: A touchstone for how Mediators and Judges can maintain neutrality in difficult cases

By Mark Baumann and Rachel Hardies

One of the greatest dangers for mediators (and judges) in dealing with high conflict cases is becoming hooked into a distorted or dysfunctional view of the world. One way to keep from being hooked is to maintain equipoise. Equipoise is the art of staying neutral, balanced and detached from the outcome, particularly in the face of intense emotions and seductive persuasions.

Maintaining equipoise involves four things. First, stay true to your morals and ethics. You may feel a pull to breach your ethics. Second, hold your personal biases in check to keep them from potentially interfering with the outcome. You may not agree with a party, however, it's not about you. Third, be aware of your "triggers." When you are feeling *upset with* or *insulted by* the party, acknowledge and address your feelings to yourself. Fourth, notice if you feel *upset for* the party. You may feel a sense of urgency and a pull to rescue, defend, or punish. Take time to have a second look at the facts and your feelings.

Three examples demonstrate how easy –and devastating– a failure of equipoise can be.

1. Egil Krogh may have experienced this. He was a Deputy White House Counsel to President Nixon and had a reputation for scrupulously obeying the law. He was appointed as one of the co-directors of the "Special Investigation Unit," commonly known as the "Plumbers," and in this context went on to commit crimes in the name of national security. Krogh went to prison and his conduct is often cited as a lead cause to Nixon's downfall. Decades later, explaining why he and others made such bad choices he said it was a collapse of integrity, and that "[w]e made our decisions in an emergency context." *Integrity: good people, bad choices, and life lessons from the White House*, Egil Krogh, Matthew D. Krogh, Public Affairs Press, 2007, at 2. A sense of urgency and need to defend resulted in Krogh setting aside his integrity and behaving in a way he would not normally behave.

2. The Judge in a custody case punished the father after becoming hooked. A friend of the mother made a written declaration saying the father would drive around with the kids in the car and call the mother on his cell phone, yelling at the mother and saying she was a "whore and a slut." However, by the witness' own testimony, the witness had never been in the car with the father nor had she overheard the calls. Despite the obvious lack of factual basis for the claim, the judge was triggered by his moral sensibilities, became enraged and failed to acknowledge or see the problem with this "fact." The judge got upset, needed to defend, and allowed his own feelings to interfere with the case. The result was a dramatically changed custodial arrangement.

3. In one case, a mental health counselor broke confidentiality because a party's intense emotional persuasion convinced her of some "emergency" when in reality there was no emergency. This counselor had become emotionally hooked by the person's "story" and felt compelled to violate their ethical duties to save an apparent victim.

Can you relate to any of the previous scenarios? Have you ever felt a need to rescue a client and went the extra mile, only to find out later that you had been misled or were operating without the full fact?

What is going on in all of these cases is a demonstration of the failure of equipoise. Emotional pressures and triggers are part of being human, and they can easily blind us. We have all succumbed. Miller & Rollnick, *Motivational Interviewing*, 2d Ed., 2002, at 91-92, describe equipoise in a counseling environment:

> "There are other times when counseling is not directed toward any particular change outcome. There are still goals for the counseling, of course. A common one is to help the person get unstuck, resolve ambivalence, and move on with life. What we mean here is that the counselor is not interested in directing the resolution of ambivalence toward any particular kind of change.
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> The goal is to help people explore the options and their possible consequences in relation to their own values and goals. The counselor may provide requested information but has no directional advice to give, being truly indifferent to the direction chosen. Medical ethicists term this "equipoise," when the physician has no clear attachment to or recommendation for one resolution more than another."

Equipoise is a word to help conflict resolvers cultivate and more firmly stake our neutrality, balance and detachment which help guide us when emotions get intense. Some tools for maintaining equipoise are:

- Letting go of an attachment to an outcome (professional distance)
- Establishing and maintaining boundaries
- Sticking to the facts
- Listening compassionately, curiously, and without judgment
- Remaining highly skeptical of all unsubstantiated claims
- Remaining skeptical of outlandish but apparently substantiated claims
- Focusing on the sequence of events
- Creating proposals with a focus on the future
- Taking a second look at the facts and your feelings
- Being aware of what triggers you and knowing how to handle the feelings

High conflict cases involve people who are adept at using emotions and emotional arguments to persuade people about the necessity and rightness of their positions. You can help yourself resist these pressures by using the word and concept of equipoise as a touchstone. Perhaps you could even designate an object in your office that you feel embodies the principles of neutrality, balance and professional detachment. When you start to feel yourself losing your way, look at it, touch it, or turn towards it and let it help you find your balance – your equipoise.

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