

## Using Neuroscience to Understand Stress and Improve Mediation

By Jill S. Tanz

People involved in conflict generally, and in mediation specifically, encounter many events that initiate the physiologic stress response. What is this response and what triggers it? How does the stress response impact judgment, decision-making, and memory? What can mediators do to minimize the deleterious effects of the stress response? Learning the answers to these questions can help to make a more effective mediator.

### What is the physiologic stress response?

The physiologic stress response is a complex and nuanced response that affects all parts of the body and brain and is driven by various hormones.<sup>1</sup> Two stress hormones triggered by conflict are adrenaline and cortisol. We are aware of the adrenaline response because we can feel the increase in our heart rate and the sweaty palms that accompany the response. Cortisol is subtler, and we are usually unaware of it and its impact on our judgment.

Adrenaline ramps up very quickly and diminishes quickly, but cortisol uses a different, slower pathway in the body -- through the blood stream rather than through the nervous system. That means that even when cortisol begins to drop after a stress trigger, it can linger for two hours or more. When individuals are subject to multiple stress triggers in a short time, the cortisol level builds on itself, getting higher and higher.

The stress response evolved 600 million years ago in fish to help organisms deal with threats. It prepares the body to fight, take flight, or freeze. Moderate levels of cortisol help people focus and sharpen physical and mental abilities. But when the cortisol level builds up beyond this positive (eustress) stage, and begins to have negative impacts on mind and body (distress), problems arise.

### What are stress triggers in conflict situations?

The stress response is triggered by threats of physical danger, from seeing the proverbial saber-toothed tiger, to seeing a fast-moving car approaching as you cross the street. In addition, social threats trigger the response, such as feeling insecure in an unfamiliar setting, feeling subordinate to more experienced opponents, fearing a loss of status, and feeling disrespected. High emotions also trigger the stress response.

Mediation creates many stress triggers. Participants may feel unprepared or less competent than their opponent, and this will trigger stress. Just seeing a person with whom there is a history of conflict can be a trigger. Thinking about a previous dispute, confrontation, or compromise is also a trigger. Simply being in an unfamiliar setting can trigger stress, as does uncertainty about an unfamiliar process such as mediation.

## How do high levels of cortisol interfere with mediation?

One's sensitivity to subtly angry faces and their perceived threat increases when the stress response is triggered repeatedly, causing cortisol levels to rise. People with elevated cortisol evaluate their opponents as being angrier and more threatening than they appear to a less stressed individual. Men with high cortisol levels often become more fixed in their positions and less likely to be able to see things from someone else's perspective. These changes occur basically without awareness that they are happening.

In mediation, a stressed party or attorney will be more likely to misinterpret the intentions of the other party and perceive more hostility than is actually present. They may find it difficult to clearly see the interests of the other party. A more stressed party may overreact to an offer that she perceives is too low (or a demand perceived as too high) and this will interfere with effective negotiation.

Stressed parties may have biased memories about events that started the conflict. High cortisol levels at the start of a mediation may alter the memories of information, emotions, and attitudes experienced during the mediation when they are recalled later in the day.

## What can mediators do to decrease the impact of the stress response?<sup>2</sup>

1. *Start mediations with a short caucus session with each party immediately before joint session.* Starting with "Early Caucus" helps minimize stress on the parties and maximize understanding by the mediator of the parties' current emotional states. Short 10 to 15-minute meetings with each party and their counsel immediately before joint session gives the mediator an opportunity to assess the emotional state of the parties and start to deal with or prepare for strong emotional outbursts. Early Caucus also gives parties the opportunity to become familiar with their surroundings and the mediator. Parties can ask questions about the mediation process giving them a stronger sense of control. It also gives the mediator an opportunity to start to build trust and rapport with the parties and establish an atmosphere of security and calm. Each of these measures can reduce the stress experienced by parties.
2. *Acknowledge and normalize stress as well as emotions.* Mediators have traditionally been taught to acknowledge emotions, but it is equally important to acknowledge stress. Mediation parties are in a situation where many stress triggers will be present, from coming to an unfamiliar location, to meeting the mediator for the first time, to anticipating an encounter with their adversary. Mediators can suggest methods to cope with stress like taking a few deep breaths, calling for a break, or journaling during caucuses with the other party.
3. *Encourage parties to name their own emotions rather than labeling them.* Mediation training often suggests mediators acknowledge emotions as a way to reduce high emotions. Studies show that strong emotions are most effectively diminished when the party names the emotion rather than when a third party labels them. Instead of saying, "it sounds like this is making you angry," ask, "What emotion are you feeling right now?"

4. *Make sure parties have sufficient time to recover from strong emotions before engaging in decision-making activities.* When parties have been subject to repeated stressors, they will need time for stress hormones to diminish before they can effectively make decisions. Moderate stress levels help parties focus their attention, but too much stress makes it difficult to effectively hear various viewpoints, reassess options, and make decisions. Mediators should use time in caucus and breaks to make sure stressed parties have at least 30 minutes to recover before moving into decision-making activities.
5. *Minimize venting as it serves to increase stress.* Some mediation literature suggests that allowing parties to vent can release pent up emotion and allow parties to focus on solutions. This is not true. Venting strong emotions is a powerful trigger of the stress response and can lead to high cortisol levels, making settlement less likely. Although venting can sometimes reveal underlying interests, it is more likely to provoke a defensive response in the opposing side and lead to higher stress levels for all parties involved. Mediators should not encourage venting, but when a party displays strong emotions and is determined to speak their mind it is best that it be done in a caucus with the mediator before joint session. This will give the mediator insight into the emotional level of the party, provide an opportunity for the mediator to counteract the emotion, and give the party time to recover from high stress hormone levels before getting to the decision-making portion of the process.
6. *Summarize to help improve the accuracy of memories.* Mediator instructions, as well as statements made by other parties or attorneys in early stages of mediation, may be recalled inaccurately later in the process by parties with high stress levels. Mediators should be prepared to summarize what was said earlier in the day to help stressed parties understand where the opposing party stands and to make sure parties have accurate information when weighing alternatives in the decision-making phase of the mediation.



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<sup>1</sup> See Jill S. Tanz and Martha K. McClintock, *The Physiologic Stress Response During Mediation*, 32 OHIO ST. J. DISP. RESOL. 29 (2017).

<sup>2</sup> See further discussion in Jill S. Tanz, (2018) *Mediation Myth Busters*. Available at <https://chicagomediationservices.com/blog/> [Accessed 21 Sept. 2018]