

Stories that Mediators Tell – 11th ICC Mediation Competition 2016*

Saskia Jansen** / Larissa Kunze*** / Anastasia Molchanova**** / Fedorah Philippeaux*****

Some of you may wonder what the transparent trophy currently displayed in the library is all about. In this article, we, the ICC Mediation Competition Team for the University of Marburg, want to share with you our experience at the ICC Mediation Competition. It was at this event that we acquired this beautiful trophy: the Special Award for the Best Opening Statement.

Firstly, a little bit of background about the event: the ICC International Commercial Mediation Competition promotes alternative dispute resolution among the upcoming generation of young law practitioners. For five days, we competed in Paris as one of the 66 teams from universities around the world to prove our mediation skills in solving complex business disputes. The cases were fictitious but often highly realistic, inspired by actual disputes and were broad in scope, ranging from environmental-based disputes to employment disputes.

Our preparation began in October of 2015, after hearing that we were selected to be part of the team. This year's team, the 4th in Marburg's history, was composed of four students from four different countries. However, our different backgrounds soon turned out to be rather an advantage than a disadvantage in terms of our preparation. As a team, we were able to approach each problem with several unique perspectives and solutions. In the beginning, we often discussed our personal understandings of mediation and tried to learn more about the strategies behind a good mediation session. We would practice playing several cases against each other in alternating teams of two. This allowed us to get a better feel for both the cases themselves and for each other as partners. In this way, we became familiar with each member's mediation style and with different mediation cases.

In November 2015 the real work started: we received the general information and the confidential information for the cases we had to mediate in Paris. These are three to five page long documents received by each team that include the background information and important facts of the case. The general information is exactly the same per case, for each competing team. The confidential information in comparison is highly subjective and focuses specifically on the perspective of the respective party represented by each team and, hence, should remain undisclosed to anyone not on your team.

We had eight weeks to submit a mediation plan to Paris. The mediation plan served as the blueprint for our session. It specified our team's goals, the underlying interests of both our team and the opposing team, the roles and tactics of the counsel and the client, our strategies for achieving our goals and finally our best alternative in the event that the mediation session failed. This may sound like a simple enough task, but writing a mediation plan really requires intensive analytic and strategic thinking. You have to consider the legal, social, economic and political aspects of your position – and as a teamwork task, you may end up discussing until past midnight about how to best advance your interests in the mediation session.

But late night sessions at the law faculty were not the only thing we did to prepare: the exciting part of preparation was to meet other teams, online via Skype or offline at law firms in Frankfurt, and to practice some of the cases from previous years with them. We even did a speech workshop to improve our presentation skills, which turned out to be both very helpful and a lot of fun.

But enough about the preparation phase at this point, let's get to a specific case: the case we want to discuss in this article is an employment dispute between the NDA, the National Drug Agency, and the internationally well-known vaccine expert Dr. March in a fictitious country called Caladan. The dispute is about the termination of Dr. March, after she publically shared her concerns about the safety of the flu vaccine she reviewed. According to Dr. March, this vaccine would quite likely pose a significant health risk to young children, but the NDA dismissed her as being overly cautious. Therefore, Dr. March decided to share her concerns with the Caladan press. The following morning, Dr. March received a termination letter and is escorted out of the building in front of her colleagues. Dr. March's lawyer sent a demand letter to the NDA which requested, among other things, immediate reinstatement at the NDA and payment for the medical expenses and damages.

Our confidential information enumerated the specific aspects of Dr. March's considerations while attempting to settle the dispute. Her ultimate goal is to move her career from research to health policy. Therefore, she needs reinstatement at the NDA or a job with at least as much prestige and influence. Additionally, Dr. March wants to publish a paper based on independent research for the vaccine in the *Journal for Vaccines*, which is problematic at the moment due to the fact that without NDA's review of this paper, the paper will require a significant rewrite. Moreover, our confidential information emphasized that Dr. March is professionally and emotionally affected by her termination which she views as both discriminatory and illegal. She felt humiliated by the entire ordeal. Hence, we decided to play her as a very ambitious yet highly-emotional professional researcher with a very strong moral conviction: protecting and improving the health of children around the world. By emphasizing the damage done by the NDA, not only to Dr. March but also to the society as a whole, we aimed to strengthen Dr. March's position in the mediation session.

With this in mind, we prepared the opening statement. This statement sought to put the other team immediately on the defensive

* This article has been drafted after the Competition 2015/16 had been concluded in spring 2016.

** The author studied Peace and Conflict Studies at the Philipps-Universität Marburg.

*** The author studied Peace and Conflict Studies at the Philipps-Universität Marburg.

**** The author studies Law at the Philipps-Universität Marburg.

***** The author studied Peace and Conflict Studies at the Philipps-Universität Marburg.

by using an emotional argument focusing on Dr. March's research that improves children's health. Moreover, we emphasized the inhumane manner in which Dr. March was treated during her termination, having been escorted out of her office by police in the presence of all her colleagues. As we were the responding party in this case, we would most likely have to deliver our opening speech *after* the other team. Therefore, we had no way of anticipating what kind of opening statement the opposing team would deliver. So, as in every session, we had to improvise a little.

Once the actual session began, things did not go completely according to plan. Contrary to our expectations, the opposing team did not adopt as harsh a tone in their opening statement as we expected, but were rather open and willing to work with us to propose solutions. This meant a slight toning down of our opening statement while remaining firm about our innocence. Although we showed slightly more restraint in terms of blaming the other side, we maintained our humiliated and agitated tone. From the outset, the opposing team immediately tried to take control of the session through aggressive questioning, agenda-setting, and strong persuasion techniques. Their unexpected approach was to lay out a lengthy and confusing list of offers and creative solutions to the problem right from the beginning, leaving almost no room for Dr. March to propose any solutions of her own. This meant that we had to think on our feet and immediately adapt to the high-stress situation, while trying to remain calm and focused in session.

Dr. March, played by Fedorah, and her counsel, played by Anastasia, worked together to gather information as best as possible and to analyze each proposed solution, one-by-one. We even used a caucus session with the mediator to address important issues, such as financial compensation and the paper Dr. March wanted to publish. In the end, despite the opposing team's non-stop attempts to persuade Dr. March to give up her confidentiality and copyright over her work and to settle for a partnership with one of their sister organizations, our team managed to gather information and advance our interests. One such example of advancing our interests was that Dr. March secured new promising job opportunities, which was one of her main underlying interests. In terms of gathering information, we discovered during the mediation session that the NDA doubted Dr. March's professional integrity, which was a major part of the dispute. As a team, we managed to successfully deny this by providing lengthy explanations and detailed answers

to the opposing team's questions. As one judge phrased it, we remained "incredibly realistic" throughout.

Overall the judges' feedback was quite positive. One judge's exact words concerning our team's opening statement was that "[we] put blood on the table, thank you". Additionally, we were complimented on our teamwork, the advancement of our interests, the excellent mediation plans, and the strong use of logic in each argument. One negative critique was with regards to our use of the mediator – the opposing team did a better job overall in using the mediator to create comprehensive lists of offers and concessions and a guiding agenda.

To cut a long story short, the essence of what we learned during the session is:

- Set the tone at the beginning of the conversation. This applies both to mediation as more in general.
- Working on your acting and presentation skills is definitely fruitful.
- Always keep in mind what you definitely need to get out of the conversation, but remain flexible and open in how to get these things.
- Most of all: be creative and think outside the box!

"Sounds like a lot of work. Why should I join?" you may ask.

Here is why:

There are so many reasons why you should consider to join his event! It provides an inter-disciplinary approach to learning, featuring diverse cases and a mixture of law and non-law students. Moreover, the event is a way to meet a lot of very inspiring people, both students as well as professionals, from all over the world. During the preparation phase, you will visit law firms and meet lawyers who have taken an interest in alternative dispute resolution. There is no better way to network!

The competition and the preparation period in the months before are a unique experience and may have an enormous influence on both your personal as well as your professional life after the competition. Aside from the opportunity of maybe ending up with an internship or job, your teammates will definitely become three of your new lifetime friends!

Come on, let's mediate!