



Quotable Quotes: Notes from Three Mediators

By Joe Epstein, Esq., Julie Williamson, Esq.
and Kenneth Plotz, Esq.

We have collected quotations that resonate with us as mediators because they provide insight into both life and mediation. Their beauty is they speak to all manner of mediation, ranging from business cases to employment cases, and from personal injury cases to family law cases. The beauty of these quotations is their general resonance for life and their specific resonance for mediation.

We hope you enjoy this philosophic journey with us.

Quotation to Mediate by Julie Williamson

When anger comes, wisdom goes.
- Hindi Proverb

As a young associate, a senior partner gave me an important piece of litigation and life advice. In one of my first hearings, I became enraged at the antics of opposing counsel. Taking me aside later, the senior partner cautioned that anger rarely is productive. As he told me, “When you get angry, you lose control. You never want to lose control as a lawyer.”

That advice is not only wise but also scientifically sound. As explained by Gerry Vassar in *How Does Anger Happen in the Brain?*,¹ anger lights up an area in the brain’s limbic system (the primitive, reactive portion) called the amygdala. If you are angry enough, the amygdala can override the cortex (the thinking part) of your brain. This happens when a flood of hormones is released that makes it nearly impossible to make logical decisions. It can take on average twenty minutes for the flood to subside and the thinking part of your brain to begin functioning again.

This is never truer than in mediation. Suppose that after you have waited for five hours for the other side to make up

its mind, the other side finally makes an offer—an absurdly low (or high) offer. You and your client may well be justified in becoming insulted and even livid at the unreasonable offer, particularly since it took so long. However, if anger is your only reaction, you are missing the opportunity to thoughtfully consider what the other side is saying and to see your way through to an appropriate counter-offer.

We all enter negotiations intending to remain calm. Sometimes, however, despite our best intentions, our buttons get pushed. What do you do then? Take a break. Go outside and walk around. Have a cold drink or a snack. Do whatever it takes to remove yourself from the volatile situation and give your brain the time it needs for the anger hormones to subside and the thinking part to regain control. Then return, ready to look at the situation afresh and plan your next move. Does this sound like the sound advice of bringing the mindfulness practice of mediation to the mediation? One of our authors, Joe Epstein, Esq., has suggested that in the context of another article, “Meditations for Mediations.”

Quotation to Mediate by Joe Epstein

Adopt the pace of nature; her secret is patience.
- Ralph Waldo Emerson

This quotation might conjure images of Henry David Thoreau sitting by Walden Pond. Not many mediation sessions take place outside or at a pond, but there is a way to set a tone of stillness, of patience, calm, mindfulness and peace. It starts with a framing that pulls the poison from declared positions and reflects mutual respect. It continues with eliminating the loud and obtrusive click of the clock and chiming of the mobile device. Good mediators and advocates can make you forget the distractions and feel

their focused listening. Softly stated positions often set a tone that you can hear above strident words of accusation.

It is our view that patience and storytelling go together. If you patiently listen to another's story, you will develop trust. After you have developed trust, you will then have the opportunity to tell your story. It is only then that you can have your story heard by the other side. You may also find that "patience and fortitude conquer all things," another favorite quotation of mine by Ralph Waldo Emerson.

Quotation to Mediate by Ken Plotz

The most important thing in communication is hearing what isn't said.
- Peter Drucker

When parties are mediating they are trying to get their point across, and a good mediator, of course, should be skilled in making sure those points are properly delivered. But how often do we really listen to the message from the other room? Most of the time we are busy preparing a response before the mediator finishes delivering the message instead of listening carefully.

If we really listen to what the other side is saying, we may hear what is left unsaid. For example, an injured party may indeed have a disability and economic losses that deserves compensation. But the reason the injured party wants an amount that appears excessive to the opposing side is the manner in which the other side originally handled the claim. Or sometimes it comes down to the other side not hearing the specifics of what someone has lost, such as the ability to run a beloved marathon without pain.

Realizing what is not said also applies to the mediation of business cases. Peo-

ple engaged in business together usually have a long history of trust. When the parties perceive that there is a breach of that trust, they can feel a great deal of pain but often say nothing. It is important to hear where the breach really occurred even though the details may be unspoken. An acknowledgement that a party heard this facet of the case goes a long way towards settlement.

Quotation to Mediate by Julie Williamson

Resolving conflict is rarely about who is right. It is about acknowledgement and appreciation of differences.
- Thomas Crum, *The Magic of Conflict*

Happily, successful mediation does not require the parties to agree who is right. Instead, a mediated settlement requires only that the two (or more) sides agree that the negotiated resolution is a preferred substitute for the costs and risks inherent in having a third party decide who is right.

Since you do not have to make the other side agree that you are right, quit fighting that losing battle. You may make more progress if you show respect for the other side by expressing appreciation for the thoughtfulness and quality of their legal work and recognizing the sincerity of their point of view. Obviously, you also will make it plain that your side has worked equally well and hard and has—in good faith—concluded the opposite. That approach may cut down on the posturing and enable the two sides to get down to finding common ground for resolving the dispute.

Keep in mind that mediation is all about building bridges and tearing down roadblocks. Acknowledgment, appreciation, respect and trust are just some of the building blocks skilled builders (advocates) will use.

Quotation to Mediate by Ken Plotz

Conflict is the primary engine of creativity and innovation.
- Ronald A. Heifetz

Often litigants and their attorneys enter the mediation process with the idea of obtaining a favorable settlement. This usually means obtaining a sum of money, a favorable determination of a real property boundary, an agreement to perform the terms of a contract, or favorable terms for parenting time in a dissolution of marriage proceeding. However, when we enter the mediation process with only these concepts in mind, we overlook the opportunity to use conflict to formulate solutions that exceed ordinary expectations.

Consider a dispute between parents for allocation of parental responsibility. The conflict can be used as an opportunity to be creative. What do the children need? How can geographic locations help define parenting time and responsibility? How can parents' strengths be exploited? Using creativity can result in a solution that especially serves the best interests of the children involved and far better than an overwhelming win or loss in a courtroom.

Or consider a property boundary dispute, with one property owner involved in a commercial operation on his property and the other a private residential owner. The commercial operator needs to conduct certain (loud) aspects of his business, while the landowner wants peace and quiet on his side of a boundary legally defined as the middle of a small creek. These parties could spend thousands on experts and a week in trial and still have an uncertain outcome. Why not create a remedy that gives the private owner privacy and the business owner the ability to run a successful business, such as spending what they would on

legal fees on the cost of a privacy fence and sound mitigation.

Letting conflict engineer, as Heifitz advised, creativity and innovation during mediation may not come easily, but it may be the optimal means for resolving some differences. It is a building block that all the parties can put into place as they work together.

Quotation to Mediate by Joe Epstein

The best preparation for good work tomorrow is to do good work today.
- Elbert Hubbard

There is nothing like committing to the hard work of preparation in order to achieve a successful outcome at mediation. Preparation means knowing your client, knowing the other side, and knowing the mediator. Preparation for mediation involves developing a trial theme, conducting thoughtful discovery, retaining good experts, filing appropriate motions and creating respect for your work.

It is important for advocates to realize the ship has sailed before the mediation session. Most of the good work is already done, with success at mediation the outcome of pre-mediation work artfully leveraged during the mediation itself.

A Final Note

The theme running throughout these quotes is that we should listen to the other side, anticipate their needs and seek mutually beneficial solutions. We **rarely** get everything we want, even when we go to trial. But at the mediation session, if we try sometimes, we just might find, we get what we need. ▲▲▲

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Joe Epstein, Esq. is an internationally recognized commercial mediator. Joe concentrates his practice in the Rocky Mountain/Southwest region of the United States. He focuses his mediation practice on emotionally intense cases, which include catastrophic injury, employment, medical malpractice, nursing home, probate and wrongful death cases. He has published numerous articles. A member of CRS, he can be reached at 303-355-2314 or joe@crs-adr.com.

The Honorable Ken Plotz is a former Chief Judge of the 11th Judicial District. He now sits as a senior judge throughout Colorado. For the past ten years, Ken has served as a mediator, arbiter and private judge. Ken handles personal injury, commercial, construction and domestic relations matters. He may be reached at Conflict Resolution Services, Inc. (CRS) at ken@crs-adr.com or phone number 303-355-2314.

Julie McCurdy Williamson, Esq. brings to her full-time mediation and arbitration practice with Conflict Resolution Services, Inc. more than 30 years' experience as a successful commercial litigator. She focuses her mediation and arbitration practice in bankruptcy/adversary proceedings, breach of contract claims, business and professional dissolutions, civil, class and collective actions, commercial, financial fraud, real estate and unfair business practices. Julie can be reached at 303-355-2314 or by e-mail at julie@crs-adr.com.

For a complete bio, visit www.crs-adr.com.

Endnote:

¹ <http://lakesideconnect.com/anger-and-violence/how-does-anger-happen-in-the-brain/>.

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