

Reflections for Mediation

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Introduction

The world is in the grips of conflict. It is with us in the form of international disputes that result in warfare or the threat of warfare; tribal or ethnic disputes that have resulted in genocide in Africa and Europe. Political disputes in our own country stymie our government. Commercial disputes, personal injury disputes and family conflict occur daily. We have identified a number of factors which can be used by parties involved in conflict. We refer to these parties as “partners in conflict” and suggest that partners in conflict reflect upon these factors as they engage in conflict resolution. These are points to ponder, mull over and consider when in the midst of conflict. This article will be one of a series on such reflections.

I. Accountability

To be accountable is much easier than to accept blame. Blame implies a loss of ‘face.’ Accountability actually restores our sense of integrity. As a result, if accountability is established without the additional burden of moralism, we are often relieved to have the opportunity to come to terms with our own mistakes.¹

One of the most brilliant negotiators we have watched and worked with was a seasoned risk manager for a large national trucking company. His *modus operandi* was to open a mediation and by quickly acknowledging “accountability” on behalf of his carrier. He would do so in an open and candid manner that was as disarming as it was refreshing. His style was to walk the talk of accountability. His style of acceptance of accountability is disarming and effective and often results in resolution.

II. Acknowledgment

...only when you acknowledge the honorable aspects of the other side, do you have a snowball’s chance of influencing them.²

Often, negotiators and principals come to a mediation programmed to rebut the other party’s points and to forcibly assert their own views. Too often they come to the mediation table with ears effectively stuffed with cotton. But, as Annette Simmons points out, influence comes in the first instance, not from the asserting of your cause but respecting the “other” and the “other’s” point of view. Only then do parties have a real chance to resolve their conflict. This delightful quotation by Annette Simmons is one to remember in

all conflict situations. Her comment reflects in a pithy way our need to “acknowledge” the “honorable” or legitimate perspective of our partner(s) in conflict. By pausing, listening and appreciating your “partner’s” legitimate claims you have an opportunity to influence them, to get them to understand and appreciate your perspective. Thus, if you have the gift of giving honor, dignity and respect, you then have a chance of receiving it in return.

III. Active Listening

What you do after you ask a question can reveal even more about you than the question you ask. You reveal your true level of interest in the way you listen.³

Do you ask a question and then immediately express a judgment? Do you ask a question and then tell a story about yourself? Or, do you calmly and gently follow-up your question with another question which is based upon the answer you have just heard? Such active listening enables a discerning listener to effectively change shoes with a partner in conflict while learning to appreciate the others perspective on the facts and the law. Just by making this effort a party may well find someone willing to listen to him and become a partner to conflict resolution.

IV. Anger

Anyone can become angry – that is easy. But to be angry with the right person, to the right degree, at the right time, for the right purpose and in the right way – that is not easy.⁴

Noah benShea points out:

When our hand is made into a fist, we cannot receive the gifts of life from ourselves, our friends, or our God.

When our hand is closed in a fist, we cannot hold anything but our bitterness. When we do this, we starve our stomachs and souls. Our anger brings a famine on ourselves.⁵

Sages like Aristotle, Noah benShea and countless others have focused on the potential pitfalls of anger. Their words are noteworthy and deserve particular consideration in the context of conflict resolution.

Anger is like a black diamond that embitters rather than shines with its many facets. Anger may reflect distorted feelings of fear, guilt, shame, humiliation, or loss.⁶

A wise man captured by anger may find that his wisdom deserts him.⁷ After all, how can one in a “blinding rage” see another’s position? How can a person consumed by anger listen to another and forge a connection with a partner in conflict? If that is not enough, words expressed when a person is captured by anger frequently escalate conflict.⁸

It is a delightful task to combine Aristotle’s observation about anger with that of Noah benShea’s. Aristotle suggests that it is easy to become angry but harder to do so in a measured way that is properly directed, for the right purpose and in the appropriate manner. Their suggestions about being in control of your anger are sage suggestions when in the midst of a conflict requiring resolution. Noah benShea takes Aristotle’s admonition a step further stating that

anger can blind us from the goodness of others. Anger can so embitter us that we are unable to act and reason wisely thereby starving ourselves and our souls. Thus, the leaning from both is that while anger may be warranted, one should control it rather than be controlled by it.

V. Anxiety

...anxiety is the reaction you feel in your body when the danger or threat comes from within and is more vague.⁹

Anxiety is a prospective emotion in that it motivates us to deal with traumatic events in advance of their occurrence.¹⁰

Anxiety is the fuel that causes advocates to take every deposition possible and propound all the interrogatories, requests for production and request for admissions possible. The need for advocates is to have control quiet the rumblings of their anxiety. It is like taking Pepto Bismol to quiet an angry stomach. Some litigators in an anticipation of their anxiety postpone mediation so they can discover all that is possible. That may be great case preparation, great for soothing physical and emotional unease, but, it does little to save relationships and to save transactional costs.

Anxiety also exists for risk managers, in house counsel and national counsel who have to report back to others evaluating their performance. Anxiety also rests with partners in conflict looking for security, resolution and sustaining relationships. The biggest issue is whether anxiety can be relieved. At mediation anxiety can be relieved by reflecting on objectives, focusing on an objective risk assessment and accepting an outsider’s reality check. Anxiety may also be reduced at mediation with patience, calmness, active listening, walking in the other’s moccasins while searching for closure.

VI. Apology

An apology, no matter how sincere or effective, does not and

cannot undo what has been done. And, yet, in a mysterious way according to its own logic, this is precisely what apology manages to do (Augsburger 1902).¹¹

In a case recently mediated the CEO of the quasi-governmental agency met alone with the mediator and parents of a young woman who died in a city facility. The meeting was a vivid example of a CEO who had the personal courage to accept accountability, to provide acknowledgment, to apologize and to show appreciation for another’s loss.

Faced with anger, sorrow, grief and sadness, this CEO came to listen, to share a profound loss, to back up her words of acceptance of responsibility with substantial systematic changes, as well as monetary compensation.

VII. Appreciation

To appreciate another person, your first task is to understand how things look and feel from their point of view. Your main tools are your ability to listen and to ask good questions.¹²

Appreciation was the hallmark of the energy that was conveyed when the CEO of a quasi-governmental organization met with the parents of deceased child without the filter of counsel. She accepted their anger and was the first of the three to shed tears. Her actions validated the stature that she brought to the negotiation table and her willingness to make systemic changes changed the atmosphere of this emotionally intense mediation. Finally, feeling that someone in authority had some appreciation for their loss and pain enabled the parents to take steps forward in the resolution of their lawsuit.

VIII. Autonomy

A misstep on autonomy can derail an entire negotiation. If the other side’s autonomy feels infringed upon, they are more likely to reduce their trust in us, to reject our ideas whether useful or not,

and to invest little effort to implement 'our' agreement.¹³

Autonomy is a powerful process. Granting or should we say according another autonomy to make his/her own decisions at the peace (mediation) table instead of insisting that a person has no voice, the wise negotiator helps another party to "see the way." This accords another self respect and face. During mediation we try to help parties analyze rational facts, address emotional factors and explore needs, underlying interests and motivations. As mediators, we often state our opinions, but generally take care not to force feed a party. Successful mediators make sure the parties have the information they need and the space and respect necessary to make their own decisions. This generally results in wise decisions comfortably arrived at.

IX. Balance

Balance is the key to my serenity. I attain balance by listening to my inner wisdom and to the wisdom of others. There is no situation in which I cannot find inner harmony. In any event, I seek the balance point of God's actions through me.¹⁴

This concept is one that is often overlooked in discussions about negotiations and mediations. Balance is the "zone" of quiet wisdom and inner confidence. It is comparable to a runner finding his pace and rhythm. It is a zone that allows negotiators and mediators to listen to their inner voice and the voice of others. Mediators are in "balance" when they can accept another's anger, explore it and work with it. They are in balance when they can lead without leading. The partners in conflict can feel the peace, serenity and quiet wisdom emanating from a mediator who has "balance." His/her calmness will set a model that is comforting and reassuring. It encourages trust, risk taking, creativity and positive behavior by parties hoping to end their conflict.

X. Beliefs

We decide what we will believe, then create a system of beliefs to support what we believe, answered Jacob.¹⁵

This delicious quotation from *Jacob the Baker* reflects something we all see at the mediation table. People come to mediation with an encrusted system of beliefs that serve a short hand way to deal with others and their claims, grievances, or proposals. This can be characterized as: (1) stereotyping, (2) partisan perception and (3) prejudice. The use of these short hand means of analysis dehumanizes and demonizes an opponent. It allows us to be cynical in our dealings with others. If we are willing to suspend our beliefs and listen at mediation, there's a better opportunity for resolution.

Conclusion

We hope that when parties are in the maelstrom of conflict they can go to this toolbox of reflections and calmly mull over the lessons that wise men and women have left, like stepping stones on a path to resolution, to enable them to safely cross the turbulent waters of conflict. Go in peace.

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