

By Louise Phipps Senft

The negotiating table

Turning problems into opportunities

Mediation - Recognition is key

Transformative mediators believe empowerment and recognition are qualities parties must have or achieve in order to resolve conflicts meaningfully and satisfactorily, especially those conflicts that affected the parties on a personal level, such as business and partnership breaches and family disputes. Two powerfully positive experiences are possible in conflict. One is Empowerment; the other is Recognition. Empowerment is when the participants get clear and confident about their goals, how to interact effectively and how to spend their resources and make the best decisions. Recognition is when the participants are able to see more than their own view of the situation. With empowerment, parties are better able to negotiate with confidence and clarity. With recognition, on the other hand, parties will have a changed experience regarding their conflict, dispute or otherwise difficult interaction. This article will focus primarily on the recognition element, which is so often overlooked by negotiators and, unfortunately, by many mediators. Parties may become empowered during the course of mediation or may even enter the mediation room empowered, but may not make an effective effort to resolve the conflict. Why? The impasse or stalemate is probably related to a lack of recognition.

While empowerment makes a person able to negotiate and potentially able to recognize and understand the needs and concerns of the other party, recognition does not automatically happen. While empowerment creates the ability to resolve a conflict, it is recognition that may provide the incentive. I may have the ability and knowledge to perform a difficult task, in other words, I have the ability and capacity, but I might not choose to do so until I desire and want to, genuinely. Recognition can provide the “want to”.

A mediator who values the potential for authentic interaction can help recognition come about. For example, when parties get stuck and feel they are making little progress, the mediator may ask each party what they might want the other party to say to them or ask of them. This can be good. But a “build on” to this can aid recognition. Invite each party, if they feel comfortable doing so, what they believe the other party might want to hear from them. This can result in a quiet moment while each party contemplates, maybe for the first time, what the other party's needs or concerns might be. It's a moment of empathy and walking in the other person's shoes, or in that experience. What often follows is an insight or shift in how he or she might be more responsive or address in some way, these needs and concerns. What can I say to him or her that might be helpful? An awareness may come about. A party may then end up saying, “I suppose she would like me to say I'm sorry”. This might be followed by something like, “And in a way I

am sorry, not for what happened but for how it happened and for the difficulties it has caused her.”

Mediators talk about a shift happening during a mediation. A comment such as the above can cause a shift. The other party may then say, “It is really helpful for me to hear you say that. And I also am sorry for the way our relationship ended, or for the bitterness of how I acted, or for not giving you any information for so many months, or.....etc.” I have actually had all these scenarios happen. Comments such as these are powerful, when offered genuinely. Indeed, in this writer’s experience, responsive comments such as these have been key to breaking up impassioned and heated and locked disputes such as medical malpractice claims, discrimination claims, partnership dissolutions and divorce battles.

Responsiveness as a result of a recognition shift can be with any kind of relationship, marital, business, even a mere friendship or distant insurer-insured interaction. When hurt or offended or accused or blamed, people often concentrate on their own hurts and needs and then either close down to the one who offended, or strike back. If I am only aware of my own situation, why would I want to go to the effort of resolving anything with someone who has harmed or disappointed me? But when I come to realize that the other person has been adversely affected by me as well, or at the minimum by a situation in which I too was involved, it makes trying to resolve the matter easier. It gives incentive. It provides a moment of grace. It helps face-saving. It can result in the parties volunteering to do things that will be relevant, meaningful, helpful. Once this process starts, it can build on itself while the mediator then sits quietly and observes.

Bringing about such shifts is often a matter of the mediator reflecting back the true experience of each party, as they described it, from their own words. Simply inviting each party to put himself or herself in the other person's shoes is incomplete because it may not include awareness of how each contributed to the other's situation. To flat out ask a person to admit responsibility or blame doesn't work either, and is not something that a mediator would request. It is much easier to invite a person to think about what the other person would want to hear him or her say, do, or promise. In the example given, when one person says that the other person would like to hear an expression of regret or sorrow, it creates an opportunity to do just that, in a very natural way. Of course, there can be very many other necessary things the other person would like to hear other than an expression of sorrow or regret that can be helpful to the process, things that otherwise might not be mentioned. There is an expression: “If you knew you were going to die and could make only one call, whom would you call and what would you say?...And why are you putting that off?” People do put off phone calls and people do put off saying necessary and important things. Mediation is an opportunity for lots of good things to happen, including the opportunity to say something necessary or important.

I have said before that people usually, deep down, are wanting to resolve conflicts and get that difficult, perhaps painful, element out of their lives. It is not something anyone wants to wake up to every morning. Without recognition, however, that clarity and desire to resolve a conflict can be canceled out. One of the most satisfying things a mediator experiences is the satisfaction the parties experience when they become able finally to deal with a problem while the conflict is allowed to unfold. Mediation is often difficult but is something you can love to

do, especially when you witness moments of genuine recognition. This is what clients appreciate most. The settlements are just the icing on the cake. Afterall, better process...better outcome.

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