

By Louise Phipps Senft
LISTENING, MEDIATOR STYLE

Mediators understand that their most important role in mediation is listening, mediator style. But parties and counsel involved in mediation should understand that listening, mediator style, is also important for them as well.

Listening is a more important part of communicating than is speaking. Speaking with no one truly listening is no more productive than writing a book that no one reads. Many of us do not listen well, particularly in a conflict situation. It's human nature to not listen well when we are in a stressful situation or in conflict or having to negotiate. Think about the last time you were negotiating. We don't listen so much to understand as to prepare or craft a rebuttal or other response. Even evaluating what a person is saying dilutes the quality of our listening.

To be sure, there are necessary occasions in life when we need someone to evaluate what we are saying in order to give us the benefit of a response. When we consult a person such as a lawyer, doctor, engineer, religious adviser, etc., we want and need that person to consider carefully our situation and give us advice.

We believe, however, that a different role, or perhaps supplementary role, is most effective when trying to resolve a conflict, and this belief is based on what often makes a conflict difficult to resolve. It often is not the issue itself but rather the misunderstandings or misconceptions surrounding the issue that give rise to the hostility, the defensiveness, the resentment or other difficult emotions, followed by a desire either not to resolve the conflict or a desire to come out ahead of the other person. Both responses are often neither genuine nor thought through, but merely the expected manifestations of negative conflict emotions. This state of mind can make any negotiation, any conversation or any mediation difficult and unpleasant. But it doesn't have to be a sustained painful or difficult situation when a different kind of listening is modelled by just *one* of the participants, be it the mediator, one of the parties or one of the negotiators. It is through this type of listening that open questions can be asked and new information can be understood and considered. It is through this kind of listening where parties more likely come to a desire to reach a fair and workable result. It is easier to reach settlement with someone we see as a person with a complaint or a concern than with a person we see simply as "the enemy".

The world is not filled with evil people. Those who fall into a role as Plaintiff or Defendant are not necessarily evil but are usually decent people who feel injured or who made a mistake – misguided possibly – but not necessarily evil. We cannot appreciate that they may be decent people until we understand them, and we cannot understand them until we listen to them in an honest and open manner. Seeking first to understand and then to be understood. Remember Steven Covey's Habit #5? "Understand" does not mean that we have to agree with them or even like them, but parties can better work out a resolution or a fair settlement that they can be satisfied with when they at least understand where the other party is coming from and why. And if one party listens to the other party, that other party will probably be listened to in return.

Think about the possibilities of not entering your next negotiation trying only to prove your case or your point. That is reserved for court or other settlement processes. Imagine the immense possibilities in a mediation if counsel did not enter trying to prove their cases to a mediator, but instead attempting and preparing for a more productive approach of seeking both to understand and to be understood. This can happen and does happen *regularly* in mediation and does so quickly when parties and counsel temporarily put aside just trying to prove their case. Remember as I said before in this column, if mediation is not going to be significantly different from other settlement procedures, why have it?

Attorneys, give this approach a try in your next mediation and let me know what happens. Thanks.