

By Louise Phipps Senft

The negotiating table

Turning problems into opportunities

MEDIATION AS AN OPPORTUNITY

Mediation is frequently described as an opportunity for people to resolve conflicts. That is an apt description because in many ways it is an opportunity, in some ways a unique opportunity. Why so?

The answer lies in the innate desire of people to find a way to resolve whatever conflict they find themselves in. Being in conflict is no picnic. It saps energy, attention, emotions and productivity. Even conflicts that do not have that effect can have the unwanted specter of expending money on the conflict that may not be readily affordable and the nagging uncertainty of what the other person may do, or the prospect of what a judge or jury may ultimately do with the conflict takes its toll on even the most sturdy of personalities.

But if people want to resolve conflicts, why don't they? There are a number of reasons for this. One reason is that things get in the way such as anger, resentment, misunderstanding, and suspicion. These can be or feel like insurmountable barriers in and of themselves. Another reason is that resolving a conflict requires a certain quality of interacting or ability to negotiate and many people don't know or feel that they don't have the quality or know how to effectively negotiate. It is a common perception that the "negotiating" most people do is limited to haggling over the cost of an item or service or trying to get the better of another person in a deal. While this is certainly not the full specter of what quality negotiating represents, this particular variety of negotiating takes its toll short term and long term. For one thing, it often breeds exaggeration, untruths and bluffing. For another, it often leaves the recipient of such tactics with a bitter aftertaste for having been taken advantage of or made the fool.

For reasons I will discuss, this kind of "negotiating" may also not be helpful when two persons are locked in any serious conflict or situation with important consequences. Bluffs can be counterproductive, especially when the parties know each other, and while haggling might result in some kind of meet in the middle settlement, it is almost always a method that falls short from addressing that which matters most to the conflicting parties or those with the serious problem or dispute to solve.

Another reason conflicts do not get resolved is that people do not like to settle a conflict in a way that implies that they are at fault or where it appears they have lost the

battle to the other person, whom they view as the opponent. The “other” in serious conflicts often becomes viewed as the “opponent” or the “bad guy”. And this goes for both “sides” such that they are often viewing each other in this way, which causes alienation and activates the suspicion radar. Ironically yet predictably, such human events are a set up for failure since neither party wants to approach in any meaningful way the other, and both ask themselves, Why negotiate with a bad guy? The good news is that there are much better ways for persons caught up in a conflict to view each other, other than as “opponents” and “bad guys”. Bad situations can, and often do, present us with opportunities to do things differently and better.

One such opportunity is mediation and facilitated dialogue with a neutral third party. A skilled mediator, operating from a relational point of view to people, conflict and business, will know how to work with these obstacles and barriers and will honor the complexity and reality of the situation as experienced by all those involved. For example, so long as emotions remain rebuffed or ignored, they and their influence remain at full strength. But when these emotions are invited to have a place in the conversation or negotiation and are listened to and understood, even if not agreed to, their negative strength often diminishes, while the positive strength informs quality decision making. A person can get the sense of getting something off their chest which is usually followed by some sense of relief and clearer thinking. Do expressions of feelings and emotions have a valid place in a mediation setting? Absolutely if they stand in the way of understanding a situation and working through a conflict which is why the parties come to mediation in the first place. When any human being is offered the chance to shift a negative experience of being embroiled in conflict and emotions and worst case thinking to something that is more positive and clearer, calmer thinking is then possible. The parties are then able to explore and consider more things and to weigh more appropriately what is important and what is not. In mediation, from a relational transformative approach, parties often experience a sense of relief and clarity. Perhaps this will be the first relief the person has felt for a while. In this type of mediation, clearer thinking parties then have a much greater chance to experience quality interaction and dialogue which naturally leads to authentic problem solving.

Whether a business dispute, a civil lawsuit, an elder care conflict, a partner separation, or a marriage breakup, mediation *from a relational perspective* offers a better process for a better outcome. Consider mediation the next time you or your business friend has a problem. Mediation from the transformative relational approach has the highest rate of settlement and resolution than other forms of settlement or mediation.

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