

By Louise Phipps Senft

The negotiating table

Turning problems into opportunities

Mediation Approaches Outside the Room

We know that in many cases, parties reach agreement in mediation where they had previously tried to do so without success, perhaps on a number of occasions. Something had to have changed during the mediation for this to have happened . . . how the parties related to each other, how they talked and listened, how they negotiated, and so forth. The mediator doesn't change anybody. It is what the mediator invites and encourages the parties themselves to do that helps this change happen. As a corollary, had the parties in their previous efforts tried to relate differently, or talked and listened differently, or negotiated differently, they well may have resolved the conflict without need of mediation. But for all of us in conflict, we are often unable to do this for ourselves, or at least as well as we might like to do in hindsight, and thus the mere presence of a mediator adds value to the interaction. Indeed, that presence and intervention at critical moments may be the primary value that a mediator can bring to difficult discussions or negotiations.

When faced with conflicts over contract terms or breaches or what someone else did or did not do, how might people in conflict implement, in their personal lives, some of the things the mediator invites or encourages the parties to do in a mediation? I'd like to explore this.

We can start by thinking about conflicts we have had that didn't get resolved. One commonly reported reason for why a conflict was not such a good experience and why it did not resolve or create a better situation is that those involved in the conflict were preoccupied with framing responses to what was being said that no one ever heard the other, really heard the other. And this experience lead to an overall breakdown in trust and communication. It also often increases suspicion and breeds hopelessness. What a mediator provides is the opportunity to slow down the conversation and to listen very carefully to understand before responding. So, for any of us, being aware and purposeful to take a deep breath before responding, and instead listening to fully hear what the other is saying is a good start to make a difference in our own conflicts.

Related to listening, really openly listening is also putting aside the urge to put forth our own position on the other person instead of giving them some time and space to say what was important to them. And this is hard. And this is why wise people seek out mediation so they can speak fully and can also be slowed down to hear what they might otherwise be missing to fully understand. From understanding springs a different quality of interaction. Many problems are easier to tackle and solve when such fuller understanding comes about. The shift in the experience is palpable. It can be felt

differently. For instance, instead of getting locked into the pros and cons of only one possibility, maybe one that wouldn't work, or maybe one that barely worked, listening fully and putting aside the urge to position opens up many other possibilities. Often all it takes is to ask, genuinely, "What else? What are additional ideas besides the ones under attack or discussion?" Try it and experience the difference.

Another reason for why disagreements often lead to unresolved conflicts is because one of the participants walks away or refuses to engage in the disagreement. While there can be many sound reasons for doing this, absent abuse, the checking out and avoiding conflict strategy usually breeds discontent in the business or personal relationship when it is a recurring pattern. It is these patterns that often lead to such frustration and anger that attorneys get called. So, what a mediator brings is a safe forum in which to have a difficult conversation and interaction, all the way to the end when more informed decisions can be made. So, what each of us might consider adopting is an attitude of "I can engage without being bullied or without capitulating" and find a neutral place with a scheduled meeting time to have that discussion. And, as importantly, make no agreement a perfectly acceptable outcome so that the real heart of the matter can be discussed. Mediation affords people this type of opportunity; try it for yourself and experience the results.

Still yet another reason that conflicts do not get resolved without some assistance is that strong emotions may have surfaced and someone tried to put a lid on them. Or perhaps someone tried to spur them on to mock them, rather than allowing and honoring the emotional responses. Ever consider viewing emotions as cues that something important matters and that there is energy to resolve something because someone cares. A mediator operating from a transformative approach is well versed in handling strong emotions, and the response is not to put a lid on them, but rather to respect them and to reflect their content immediately. This very often has a calming effect. When a strong emotion is received, it often loses some of its intensity and from there clearer thinking can emerge. But when a strong emotion is muzzled or ignored, it often festers or flares pushing aside clear thinking. Indeed it is a physiological impossibility for most people to think clearly in high emotions. So, in your own conflicts at work, in business and interpersonally, what if you attempted to receive another's strong emotion by genuinely reflecting it back and then inquiring about it to better understand? There are always requests and possibilities that will surface when you "get it" and then ask what would help ease the strong emotional experience. Again, you will be amazed at the responses and how refreshing and real they are. And, if you are lucky enough for someone to offer this to you when you are angry or upset or stone cold, you will experience one of the more powerful conflict resolution interventions. It is a gift. So, it is far from the truth that emotions or strong emotions are bad or have no place in negotiations or in important interactions, indeed it is our emotions that drive our capacity to be good, that trigger our best thinking, so long as they do not rule us and then cloud our best thinking. It is a fine line. So consider embracing emotions and viewing them as cues that there is something else underneath the display of strong emotion that is waiting to be invited to the table of discussion and understanding. Strong emotions do not have to become barriers. Indeed, emotions in general are a part of life and our everyday functioning. Strong emotions just alert us that something is out of kilter. We can adopt an attitude of genuine curiosity and care. This change in your attitude alone may resolve conflicts.

When these and other resolution or settlement obstacles and you are not able to attempt the above, or you have but realize that the value of having a third party neutral would optimize the possibilities for clearer thinking and fuller exploration of possibilities, then call upon a mediator, a good mediator. To be sure, certain things are more easily accomplished with the assistance and presence of a mediator. For one thing, the mediator is not embroiled in the conflict and for another thing, no one is yelling at the mediator or arguing with the mediator. Nonetheless, mediator procedures can be transferred into our personal lives with positive results.

Listening, mediator style, may be the most important thing of all, actually trying to grasp and understand what is being said, and nothing more. If the other person is talking with great emotion, what he or she is saying is important to him or her and deserves to be listened to and needs to be listened to. It is also very helpful to let the other person know that you are listening and have gotten what has been expressed. You can repeat what has been said in a non sarcastic manner or even use body language such as a nod, to let them know this. It is frustrating when we talk and nobody hears us.

Instead of spending time and energy pushing a position on each other, it can be helpful to suggest that each person express what their interests and needs and concerns are without then suggesting any solution. Just listing the interests, needs and concerns often produces possibilities. Only after possibilities have been identified can time then be productively spent exploring ways in which they may be addressed.

Some venting of emotions may be natural and even necessary when people feel strongly about an issue. Don't try to suppress this. That won't work. With proper listening, emotions can ease and cease being a barrier. This actually happens and people can get beyond their emotions.

When the problem has been identified, search for more than one possible solution before any debate begins. If you seem stuck over one proposal, suggest that you leave that temporarily and seek other proposals. Having different options on the table helps to have an open and productive discussion. It promotes freer talk in a more unguarded manner.

Finally, the first sentence used to raise or discuss an issue or problem can be critical. Using words that describe a problem or concern can invite a productive response or can close a door that is only cracked open to begin with. Using words that attack or criticize the other person can cause a very negative response. Spend time contemplating how you are going to bring the subject up in a way that will not start a battle.

Doing the above in a heated conflict is not easy, but it surely can be effective. In addition to being effective there can be the reward that how you treat the other person may end up being how you yourself will be treated. No one is happy with an argument where nothing gets resolved. The situation may even get worse. Try the above sometime in a dispute and see what happens. You might be surprised and so will the other person. Better process...Better outcome.

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