

## “Letting Go” Lets the Mediation Proceed

By David I. Karp<sup>1</sup>

Two individuals and their respective attorneys agree to participate in mediation. Each individual, having a long history with the other -- as family member or business associate or neighbor, it does not matter -- now has very strong negative feelings about the other. The situation is so emotionally charged that the attorneys express serious reservations about a joint mediation session where everyone is together and speaks. The lawyers and their clients even fret about a private caucus in which the emotional underpinnings of the conflict might be addressed by the mediator. If the emotions erupt, the lawyers and their clients fear the worst will come of the situation and the mediation will be a disaster.

As an observer of human behavior, this writer disagrees. In fact, “letting go” may promote resolution. But getting there can be difficult for the lawyers and/or their clients, and it may not happen.

If the reader will allow a generalization, attorneys, on the whole, may feel a need to control an otherwise uncontrolled situation. Thus, before a deposition, a lawyer may speak in confidence with his or her client to make sure he or she knows and understands what the client will say. In a deposition, an attorney or client may ask to have a private discussion before testimony resumes. At trial, an attorney generally will not ask a question to which the answer is not already known. Yet, the artifices of deposition and trial testimony, while controlled, do not always give the client a chance to tell what is important to him or her. Further, many attorneys, having been trained in law school to distill the facts and to apply the law, may not have the training or comfort level that allows them to deal with the client’s or others’ raw emotions, and may simply want to stay away from them. Mediation on the other hand is not deposition or trial and letting go of the control over what is said may not be harmful. What is said at the mediation is inadmissible. Moreover, it is perhaps the best place to let the clients “get it off their chest” ... if they will.

Yet clients may have trouble “getting it off their chest.” Like all of us, clients are individuals who may be inwardly embarrassed, remorseful, resentful, bitter, vindictive, whatever, which requires them, for their own “safety,” not to be completely honest with themselves or others about what happened. As do we all, clients may build up their own stories where they see themselves as victim and the other as perpetrator. Unless helped with introspection, they may not recognize or admit their own contribution to the conflict, or the feelings that perpetuate it, or they may not be able to see a way out of it without also recognizing their own faults or frailties. Helping the client to “let go” of these human safeties, with the help of a trained listener, ultimately may yield the surprising self-awareness that leads to a successful resolution.

The mediator too must be able to “let go.” The conflict belongs to the participants. Their decision to recognize and deal with, or avoid, the emotional components of the conflict must be honored, their choice in resolving or prolonging the dispute respected.

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