

Mediation to Raise the Spirit

It was one of the funniest “typos” I had ever read, and one of the most *apropos*. I saw it a few months ago when we were out of town at a family gathering. My cousin Jay’s daughter, Sarah, was having her Bat Mitzvah, the Jewish rite of passage from childhood to young womanhood for 13-year old girls.

These are important events in my very large extended family and the whole gang, no matter where they are located, makes it a point to attend. Mine is a very close family and people always travel from far away to get to every important—and sometimes not so important—occasion. It not only gives us a chance to honor the celebrant or occasion, it provides a weekend to catch up, share what’s going on with loved ones from around the country and world and plan for the next time together.

The “main event” for Sarah took place at Saturday morning services. Not wanting to miss any of the action, we sat in the front row, which was only a short step up to the pulpit. Having met me the evening before, the rabbi came over to shake my hand. She whispered in my ear, “I trust you know you have a reading this morning?” I had no idea and my surprise must have been evident. “Look at the program,” she said. I looked down at the one page handout, describing the order of the morning and the readings. There it was. I did a double-take, and then another and then I laughed to myself. “What’s so funny?” the rabbi asked, seeing the smile on my face. “Did you see how they spelled Meditation?” I replied. She looked down and also smiled, once she recognized the typographical error.

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Of course it should have read “*Meditation*.” What a humorous coincidence for me, the mediator from Cleveland! Anybody who knows me knows I could have gotten up and talked endlessly about what I do every day.

When my turn came after Thelma and Stanley, the grandparents, I realized how very profound the meditation at page 103 of the prayer book was. It had such appeal to my sensibilities as a human being and relevance to my work as a professional neutral that it lingered in my mind long afterwards. The meditation tells us how we each enter the sanctuary with different needs. Some come with gratitude and joy, eager to face the day and share their happiness and love, and so we rejoice with these congregants. Some bring grieving, sorrow and despair. They have suffered loss, illness and pain of one form or another. With these people we share our sympathy and try to bring comfort. There are those who are embittered or angry, who can’t find the answers they need or whose ideals are betrayed. For these people, the spiritual community tries to ease the burden and restore the hope so they can see the light and brightness. Some are suspicious and cynical. For them we try to extend a trustworthy hand and encourage optimism. The reading goes on to tell about those who “long for friendship; crave understanding; yearn for warmth.” It ends with, “May we in our common need and striving gain strength from one another, as we share our joys, lighten each other’s burdens, and pray for the welfare of our community.”

Each of the world’s major religions has some form of community prayer that addresses the multitude of diverse needs and emotions of the congregation. Christian religions share *Communion*, which in its most Ecclesiastical sense applies to the elements of the Eucharist; however, generally it constitutes the sharing of prayers as a congregation. In Judaism, any gathering of 10 people for prayer and meditation constitutes a *Minyan*. Some forms of Islam have community prayer called *Jamaa*. Hindu religions have *Bhagwad KATHA* and *Ram KATHA*; and in Buddhism it is called, among other things, *Nam Mioho Renge Kyo*. Whatever it is called, the idea of sharing diverse experience and sensibility and seeking common spiritual support and resolution is ancient and not limited to the theological experience.

In many ways mediations, as they may unintentionally play out in reality, parallel the method and purpose of the congregational assembly. Many mediations I have conducted have reflected the range of values

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and needs mentioned above. In its most profound context, mediation, like spiritual communion, can be both transforming and redemptive. Understanding of and accommodation for the differences in the spectrum of emotions, needs, values and interests presented by the participants are necessary elements for either process to be meaningful. In both, requisite dedication and commitment include reaching beyond one's own interests, needs or state of mind. In my mediation experience the most successful participants have great vision of human and personal needs—they can see beyond the factors controlling their own individual sector of the dispute and take into consideration those of other participants. If more parties and representatives would recognize this—what I like to call a “continuum of diverse needs and interests,” the common thread connecting them all—negotiation may not have to be a battle or the adverse encounter that it is for so many. Many neutrals, myself included, regrettably still have difficulty getting feuding parties to shake hands at the end of the day, even when there is success. However, as *ministers* of the proceeding, we persist nevertheless, recognizing that much like the spiritual leader, we are responsible for shepherding the flock in the direction of loftier attitudes and goals.

I often tell mediation participants—many being very capable, but hard-edged litigators and warriors—that the mediation is their opportunity to listen to and talk *with* the other side, a rarity in the legal dispute context where we usually talk *at* each other. I tell the participants that I, for one, do not believe in the lawyer's adage that the sign of a good settlement is where everybody walks away unhappily and bloodied, but walks away nevertheless. Rather, the sign of a good settlement is where, although we may sometimes feel a bit bruised by the process, we should all walk away feeling proud of what we have accomplished: to draw on our common strengths and interests and proudly share the experience and outcome.

In an article written for the *American Journal for Trial Advocacy*, my friend and colleague from Birmingham, Ala., Michelle Obradovic, quotes mediator Bernie Mayer, who speaks eloquently about the worst and best perceptions of the mediation process. He echoes my sentiments.

I have had the opportunity to work on some incredibly challenging conflicts and with some amazing people, many of whom have appreciated my assistance. I have also encountered people who have won-

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dered what difference the effort made, questioned the resources it took, or thought my intervention made things worse. I used to joke that...the way to feel successful is to take credit for everything that goes well and blame all the failures on circumstances or people beyond our control. In fact, I think we should appreciate that almost all of our successes are due to fortunate circumstances and to the underlying wisdom and courage of the disputants with whom we are working.

As is the case with the best mediators I know and have worked with, Mayer recognizes his success is limited by the resources and participation of the disputants and their representatives. The most successful resolutions are those where the parties recognize the rare opportunity they are faced with: to be open, proud, transparent and authentic about the multitude of values, emotions, risks, benefits, differences and similarities that are present in the dispute and in the parties to the dispute, so that they can courageously try to build with optimism instead of continue the acrimony that only tears down.

And so, in many respects the mediation is not unlike the spiritual congregation. We should be able to share openly and honestly, without fear of risk or subversion. We should take advantage of, and build on, the diversity of people and their needs and emotions and recognize the “continuum of diverse needs and interests” that passes through all of us. With a creative session we may even be able to craft an outcome that is consistent with, or even supportive of, not only our own needs and interests but those of our opponents as well. Now there's a refreshing thought. But it's a realistic one, I think.

Much like the spiritual gathering, the mediation process enjoys privacy and solemnity so that people can be open and candid in their expressions, an element so necessary if we are going to peel away at the underlying core truths of the dispute. The statutes and laws of most jurisdictions encourage this in that they attach privilege to the communications of the mediation. They do so for good reason: so we can reach out and really understand, in the very best sense, the diverse ideas and elements driving the dispute, and just as importantly, the people behind them. So we can better understand that in a very profound sense, the disputants at the table are a community of interests that may very well, with the help of the neutral, best serve the individuals in that community by finding some way to serve each other. This is a goal we would never be able to accomplish in the adversarial context. ☞

