

“Slow Down, You Move Too Fast...” A Helpful Mediation Hint

by Jerome F. Weiss

I was actually playing some old vinyl the other day. I was in a melancholy mood and needed a Sixties fix, when my old friends Simon and Garfunkel connected with my mediator mind. You know the one. “Slow down, you move too fast. Got to make the morning last.....”. We lawyers move at breakneck speed and “. . . kickin’ down the cobblestones. . .” is not our usual velocity. In fact, we are moving even faster than we did a decade ago, if that is possible. More court appearances in venues that have ever increasing dockets, in courtrooms ill equipped to handle us efficiently. More time in court getting less done. In the meantime, the economic cushions that were once there to offset the professional stresses and load have moved in the wrong direction. To many they have seemingly evaporated. Yearly hourly requirements inch upward and clients, whether institutional or individual, who also feel the pinch, increasingly try to maximize our performance and output by demanding more for less. We feel an accelerating need to gulp for a big breath before the next intense foray into professional activity envelops us. So busy that sometimes we find ourselves going onto auto pilot. Progressing through the motions and mechanics without a true understanding of where we are or how we got there.

To make things worse, technology and the research and communication “improvements” it has brought with it has added a turbo charged element to our professional excursion. Those things that five years ago were touted as making our lives easier, have infringed in ways that we never imagined. That false image of sitting on the beach alone with our laptop. Fuggetaboutit. Enjoyment? Fun? Heaven forbid that these two words should ever again enter our professional lexicon.

Occasionally the random thought passes through your mind that something important is missing, besides the family you had to abandon because of this jealous profession that demands all of your time. Something that helped add that little “spark”. That inspiration that helped make you the great problem solver you once were. What’s missing is time. Time to absorb. Time to fully appreciate context. Time to analyze. To double check. To properly advise. To counsel. **TIME TO THINK!** One of the biggest obstacles that I encounter in many of the complicated, and even not-so-complicated cases that I mediate is being able to cut through the time demands unrelated to the mediation at hand, that prevent the participants - advocates and clients alike - from spending the time that is so essential to solving complex issues and problems posed by the dispute of the day. A concern so difficult to penetrate that, in many instances, unnecessary time is added to the process and solution. This, in turn, decreases the efficiency and economy that ought to be on the advantages side of the mediation ledger. This “Catch 22” is so prevalent that my standard scheduling letter now contains the following friendly reminder: “If any of you have other obligations on that date, I would appreciate your endeavor to reschedule so that we can focus entirely on this mediation”. My polite way of saying, “Come on guys. Give the mediator and this mediation a break. We’re here to solve the problems, so take advantage of this island of protected time”.

Of course I help myself by getting this message to you before you walk into the mediation. It’s an important message, since such a large part of what we as lawyers are supposed to be about is problem SOLVING, not problem development. I want you focused from the outset since you are a major participant. It’s not that the mediator doesn’t set the agenda or facilitate discussion; however, the mediator is not the focal point and traditionally does not “weigh in” unless there is no doubt that sponsorship of a position or idea will ultimately help the mediator’s client, Resolution. So it’s really up to the participants and it goes to follow that to meaningfully participate, you need devotion of resource - a major element of which is time. You know what I’m writing about. We see the evidence of the time crunch all around us in mediations and other meetings as

well. Sneaking a peek at the watch. Having to make the phone call that just might wait. Needing to be somewhere else or running late. Maybe even not being fully prepared on the facts or law of the dispute in question. Basically, not having quality time to listen or think; something that is so important in mediation because of clues or signals that may be given by the neutral, or even your opponent. Time to pick up on the subtleties or to understand your opponent's viewpoint.

By the time many disputants and their counsel get to my office, many of them have thrown themselves at the process and each other so ferociously that a lot of time is spent in mediation just getting people off of the emotional ledges and into a rational realm. I've seen it a lot and my experience tells me that more Time spent early on - the kind I'm writing about here - would have put the parties in a much better spot to resolve their differences. While at a given moment it may seem easier to continue conflict than to take the necessary time to create a strategy for resolution, it doesn't usually work out that way. The dispute and attendant problems get bigger, when our job from the outset was to make them smaller. Two of the greatest virtues of dispute resolution - of life, for that matter - are patience and understanding and both of them need time. Gerry Adams, the president of Sinn Fein stated the essence of this thought when he said, "Making peace, I have found, is much harder than making war".

So the next time you want to solve a problem for a client, whether in mediation or otherwise, slow down, don't move too fast, no matter what kind of contrary and ungovernable time demands you may be bucking. I don't know if you will feel any more "groovy", as in the song, but committing yourself to the process in this way will make you feel better about yourself and your job, and maybe will help resolve the dispute.

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