

Mediation Blue Zones

Tom Williams

Have you heard of “blue zones?” A blue zone is a place where a higher number of people live to be 100 years old. People in these places, it is argued, live healthier lives. Costa Rica and Okinawa, Japan have been identified as generative blue zones.

The underlying concept of blue zones—that people are different because of the place they reside—is intuitive. Name something where context doesn’t matter. Mediations are no different. A mediation, as you know, is a negotiation facilitated by an independent third party neutral.

Based upon my years of mediation experience, the context of a mediation may, in some circumstances, matter almost as much as logical arguments in resolving disputes. I am not suggesting that the facts and the law and power dynamics are not foundational to mediation results. What I am suggesting is that mediation context should be considered and is often ignored to the detriments of the participants.

Before addressing the importance of mediation context, however, I will address the importance of negotiation context. Because what is a mediation other than a facilitated negotiation?

Negotiations Context

There are only a few experiences that I still remember from law school. My negotiations class is one. The class was set up as a competition. Each member of the class was given a partner, and each two-person team of negotiators were given a scenario to negotiate. The teams were graded on the results of the negotiation. The better the negotiation results, the better the grade. There were eight teams of negotiators paired up each week against a different opponent.

In the first negotiation, my team negotiated against a confident and out-spoken team. Consistent with our training, we established goals and an approach before the negotiation. The negotiation seemed to go smoothly as we reached toward an agreement within our objectives. Our opponents, however, exuded a disturbing sense of triumph as the negotiation moved to a conclusion. In a final caucus, my team revised our calculations assuming, because of our opponent’s confidence, that we must have been mistaken. We came back, hat in hand, to the other team humbly expressing our mistake. The other team agreed and allowed us what was a better result.

At the next class, before announcing the results, our professor asked the teams to assess their performance. Our team assumed that we performed poorly. Our opponents, however, expressed their confidence, anticipating a great outcome.

When the results of the negotiations were finally revealed, my team learned that we, in fact, obtained the best results, earning an A for the negotiation. Our professor, thankfully, didn’t allow us to miss the teaching moment here. He explained that, while our team performed objectively well under the artificial environment of a law school class, our opponents may have performed subjectively better. He underscored the fiction of the assignment pointing

out that no one ever negotiates a scenario against three other teams. Instead, every negotiation is a “one-off” situation where the negotiator seeks both objective and subjective results. Under this evaluation of the negotiation, while we won the objective test of the negotiation, we may have lost in the real world of the subject needs of clients who want confidence in their advocates and reassurance by those advocates in the outcome.

This was an important lesson that I take with me to this day; specifically, that a negotiation is not a race timed with a stopwatch. Instead, it is also a subjective relational process where context matters. And the context is one of human beings with a wide range of emotions and expectations that are based upon their background and experiences. How, then, a negotiator maintains relationships and client confidence is as important as “objectively” good results.

Now back to the original question of this article: how a mediator creates a context where disputes are more easily resolved—what I am calling a mediation blue zone.

Emotional Temperature

Marriage therapists warn that it takes an hour to reset after becoming emotionally flooded. For someone who is emotionally flooded, therapists recommend a walk or some other reset before having any serious discussions.



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For most of us, that hour of being flooded is precisely when the most serious discussions are raised to the detriment of all involved.

In the same way, mediators should take steps to ensure none of the mediation parties become emotionally flooded. One way this is accomplished, for example, is by avoiding opening statements that might do nothing more than trigger the other side.

But this begs the question: how does a mediator monitor and maintain the emotional temperature in a mediation? In a follow up to the seminal book, “Getting to Yes,” leaders of the Harvard negotiation project wrote, “Beyond Reason, Using Emotions as You Negotiate.” This book identifies what they have identified as the five core concerns of participants in a negotiation. These core concerns are both a lever and a lens. The concerns are a lever in the sense that consciously addressing the core concerns will positively increase the emotional temperature and they are a lens in the sense that they help diagnose when the emotional temperature has taken a turn for the worse.

I won’t go into all of the five core concerns here, but I will point out one—our need for autonomy. No one likes to be told what to do, even if it is good for him or her. Thus, a wise mediator always respects the autonomy of the participants in a mediation never telling them what they “will do” or that they must resolve the matter. The parties will chafe at this approach. (I would be remiss if I didn’t mention that the other core concerns are appreciation, affiliation, status and role. I would recommend this book to anyone.)

Welcoming Emotions

While it is important to maintain the emotional temperature of a mediation, it is equally important to create a welcoming place for the participants to feel and appropriately express emotions. Law school teaches us to set aside emotions, but reality shows that emotions are real and a part of often what are emotionally charged situations.

In her book, “The Language of Emotions: What Your Feelings are Trying to Tell You,” author Karla McLaren asserts that emotions are not good or bad—they are simply information. According to McLaren, each emotion contains a question. For example, when one feels anger it is often because some boundary has been violated. McLaren posits that while an emotion may be dishonorable, expressed by, for example, dumping rage on another, the emotion itself is not wrong. Thus, creating a

“safe” space for the expression of emotions will often soften the position of the mediation participant and allow that participant access to higher-level decision-making capacities. The role of the mediator here is to receive the emotion being expressed while avoiding conditions where the emotion is dishonorably expressed, thus triggering retaliation. This mediation skill is simple but not easy.

In my experience, creating a “safe” space where every emotion is welcomed creates a container where something different can happen and frozen beliefs can thaw. What do I mean by frozen beliefs? Peace negotiators in war zones have learned that pure logical argument without a preliminary effort to affirm the position of the other is actually counterproductive. When one’s position is perceived to be attacked with argument or “logic,” the natural response is to defend the position with the consequence that the position becomes “frozen.” These peace negotiators have learned that if one can affirm what one is able to affirm in the other, it creates the conditions where a frozen belief will thaw, and new beliefs may emerge. A mediator attempting to create a context where a dispute may be resolved should, therefore, affirm the anger of a participant and acknowledge the feeling that the participant’s boundary has been violated. Affirming this emotion is potentially a step in thawing a frozen belief that is in the way of a potential resolution. Quite simply, it is sometimes important for a person to be heard on an emotional level so that person can access the rational level.

Re-contextualizing

A mediation blue zone sometimes requires suggesting a bigger context within which the participants may evaluate success. If we take a step back, our legal system provides a narrow context where typically a result is monetized, and the roles of victim and perpetrator and winner and loser, are paramount. For example, I have noticed that some parties to a mediation will feel like a winner if they obtain \$100,000 but feel like a loser if they only recover \$90,000. Offering a bigger context where the individual’s worth is not dependent on the result of the mediation often softens the frozen belief that a resolution is possible only if a certain result is obtained. The bigger picture shows us that new possibilities arise for every party to a negotiation when a dispute is resolved. As we know, litigation itself is no blue zone.

Tom Williams is a member of Stoll Keenon Ogden. An advocate for restorative justice, Williams was featured on the Passionist Earth & Spirit Center’s podcast in an episode entitled “Big Love: Attorney Tom Williams on Contemplative Practice, Compassionate Justice and the Lawyer as a Healer.” Williams and his wife, Sarah, live in Louisville, Kentucky, and have three children — Lilly, Lincoln and Nelson. ■



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