
Kluwer Mediation Blog

Negotiating In “Blind” Faith

Jonathan Rodrigues (Peacekeeping and Conflict Resolution Team) · Tuesday, February 12th, 2019

(Written with Advocate Karleen De Mello, Goa, India)

I was recently witness to a mediation session during which two seasoned negotiators behaved disappointingly. Why? On the other side was a negotiator, who walked in with a cane, accompanied by her lawyer. From the outset, these two experienced negotiators behaved very awkwardly at the table, with one of them even waving at the visually-impaired individual, attempting to gather her attention while greeting her. Without meaning anything of what they said or did, their behaviour was rude and insensitive.

Many strange and embarrassing things happened at the table that day that motivated me to call up a lawyer friend based in Goa, Karleen De Mello. Blinded at birth, Karleen never took to life as a victim or survivor; her approach has always been positive and competitive. Having participated in a few mediation scenarios, Karleen has been kind to share some insights on how to avoid the type of awkward behaviour I recently witnessed at a mediation table with a blind party.

“You speak about trusting the person sitting opposite you? What about the person sitting besides you? I had a situation where the mediator called for a caucus with the opposing party and my lawyer walked out of the room without me. Deeply embarrassed, he then returned to fetch me. I didn’t know whether to curse him for his insensitivity or burst out laughing at the chaos we must have created in the room,” recalls Karleen.

Karleen and I suggest the following guidance for mediation situations where one person at the table is blind.

Familiarise Yourself With Names - this is effective as it gives the conversation direction and a personal touch. Karleen says, “For those of us with limitations, we can’t look the others in the eye; therefore, addressing them by their name makes an effective human connection. It helps draw their attention and ensures they are listening to you at all times. Taking time to learn names and to pronounce them right will make the others believe that you mean everything you say from then on. For everyone else, saying our name out loud and regularly while conversing similarly builds rapport with us and helps to make us feel involved and engaged.

Handshakes - greetings can be chaotic and awkward if not done well. Setting the right tone is essential to a mediation and therefore these preliminary gestures must be well thought out. Karleen says, "The person escorting the blind party will usually direct the hand of the person who is visually impaired across the table. If we choose to shake, we must make sure it's a confident one. So much can be deduced from our sense of touch. Having said that, for everyone else, please don't consider it rude if we forget to shake and keep you hanging. The best option is, with us, you go second. Reach out only if we do first so as to avoid any awkwardness".

Break the Ice - the first few moments are crucial to creating an amicable atmosphere. Addressing the disability early will allow the process of trust-building to begin. Karleen says, "This is important as not all of us may be holding a cane, wearing tinted glasses or carrying a 'Braille' and therefore our disability may not be apparent to others". This could work - "It's great to have finally come to the table to dialogue. I am here with you a 100% despite my visual limitations. Yes, I am legally blind, but what I can't see, I assure to make up with my listening ears. On a lighter note, my lawyer says you look like fine people, so I hope you don't go against my counsel's best judgment".

Connect via Empathy - eye-contact is key for effective communication. For a situation where one person cannot see, we must look towards another powerful tool - the sense of listening attentively - in order to connect empathically. Karleen says, "For us who rely a lot on our ears, we must try nodding, some mini-acknowledgements ("oh", "ok", "yes", "right", etc.). Don't be afraid to smile. Body language is our biggest tool to connect with the other person. I try and not cross my arms at the table and rather place them confidently in front of me. I pull the chair in close and sit deep so that I'm comfortable and do not need to keep shifting my posture". Karleen says it's perfectly alright for us (who can see) to look into a blind person's eyes while talking to them. "Please don't feel awkward about it and we will know that you are looking at us because the tone and volume of your voice will differ if you don't. Even if you have to speak to your client/counsel sitting besides you, kindly excuse yourself before you do so. I have faced this before and I think it's rude if I'm speaking to you, and I can hear you whisper something to someone else next to you".

Power of Words - we know the same words, said differently, can either kill or heal an existing situation. It is not only about saying the right things but understanding correctly, what the other person is saying. Summarising, reflecting, reframing are great tools for both ourselves and the other party, so that we are always on the same page.

Take control - One of the pillars of mediation is that it empowers and encourages the parties in a dispute to take charge of the decision-making and this self-determined nature of the little agreements or the final outcome should never be compromised. Karleen says, "Also, regular check-ups with your negotiating partner could help you understand the mood in the room as you don't want to be rambling non-stop while the other party is losing interest and turning hostile. When you want to pass on a question to your partner or take the lead in responding to a statement, call out to your partner and announce that you would be addressing the situation, or that you are passing it on. Your decisions, ideas and opinions are yours and should never be narrated through

another person, even if it is your negotiation partner. She / he may add to it or advise you privately against it, but that should never take away your independence and ability to apply your mind and creativity in handling arguments, claims or offers at the table. For everyone else, If I am the client / party to the dispute, I am the final authority on the settlement, therefore, do not look for repeated validation from my counsel if I have given my final word, having followed my counsel's advice".

As negotiators or mediation counsels, I believe it's very important we prepare ourselves for a situation where the other party may be facing physiological limitations. The key is to keep the focus on empathy and not shift to sympathy. Through my conversations with Karleen, while co-authoring this piece, I have learnt that people with physiological limitations like being respected and accepted as they are, and I believe, we, who enjoy all our physical senses, have the responsibility in keeping the negotiation or mediation environment inclusive to everyone in the room.

"These suggestions have worked for us in our experience, and this list is most definitely not exhaustive. Every person devises their own means that are unique to their experiences and circumstances. As someone who is sighted, you may need to do certain things differently to ensure you are reaching out to everyone at the table. When the end game is communicating effectively, there can be no hard and fast rule that will work in every situation, except of course, keeping calm and leaving the anxiety behind," concludes Karleen.

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