

THE POWER OF LETTING GO

Encouraging a party to let go when stuck and to consider workable solutions can be a challenge.

A book I was reading on holiday had quite an impact on me as a mediator. I thought it could be instructive for disputants and mediators. It related to a secret agent who was escaping from his lifestyle in the US and who found himself travelling in a jungle in South East Asia. He encountered a Buddhist monk and in conversation with him about shaking off his past the monk inquired whether he had heard how villagers caught monkeys.

The monk explained that villagers chain a vase with a narrow neck and a bulbous bottom to the base of a tree and fill the bottom with nuts and whatever else monkeys like to eat. In the night, a monkey climbs out of the trees and slips its hand down the long neck and grabs the nuts in the jar in its hand. The now expanded fist with the nuts is too big to get back up the narrow neck, and the monkey is trapped. In the morning the villagers then arrive to take the monkey. The point of the story, the monk observed, is that if you want to be free, all you have to do is let go. I liked the analogy.

A multitude of factors might impact upon "letting go". For example, as mediators, one of the hardest tasks is to encourage disputants to "separate the people from the problem" and focus on what the best overall outcome for all might be, rather than being fixated on pent up anger and personal grudges. Often it's just drawing out from a party not just what they want but what they really need.

Trying is often frustrated by face saving, inflexibility, fear or pure ego – so in your role as a mediator, the challenge is how, by creative thinking, an impasse can be broken and a party encouraged to let go when "stuck" and to consider workable solutions.

A party's fears can sometimes be allayed in a private session by specifically asking a party to articulate those fears. By reassuring a party there is generally little downside to negotiating and emphasising that walking away can make subsequent resolution much harder, the fear may just be allayed. I often think back to the inaugural speech of John F Kennedy in which he stated (admittedly in the context of the

potential of international conflict), "Let us never negotiate out of fear but let us never fear to negotiate".

In the sense that the bulk of commercial mediation revolves around someone paying (usually more than they want to pay) and someone receiving (usually less than they are willing to receive), the challenge is how to get the ball rolling. I have found some success by asking a party what the most is that they would be prepared to offer if they knew that the other party would accept that amount. However small, this provides the mediator with something to work with if an amount is disclosed. Usually, once money is on the table, a party is likely to evaluate that against the risks of success in a court or tribunal – and the associated stress, time and financial cost. In poker parlance, it's understanding when to hold and when to fold.

Of course for a mediator as a last resort there is always the option of threatening to terminate the mediation. This can be a good test of resolve of the parties.

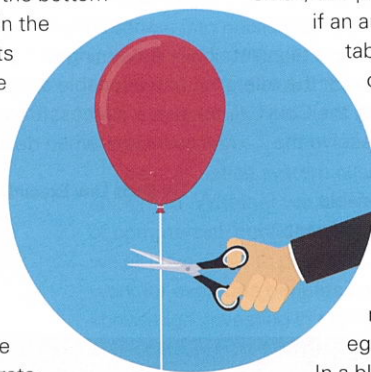
On another level, it's not always the parties who need to let go. Ultimately there is also the letting go of ego by mediators, often craving success to feel relevant.


In a blog titled "Letting Go?"¹ John Sturrock wrote: "Maybe we need to let that go too, in the ultimate acceptance of what our role really means. Acceptance that the whole point of being a mediator is that we fade away when the job is done. And recognition that the sense of personal gratitude for having an opportunity to contribute to others' needs, to the best of our ability, is all that should really matter to us".

Whether we can get our fist out of the neck of the proverbial vase, it seems, depends ultimately on the quantity of nuts we want in our hand. ■

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1. Kluwer Mediation Blog 1 October 2018.




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