

Simeon Baum: Confessions of a Mediator



I was pleased to have met Mr. Baum, and have had the opportunity to listen to a bit of his history in law. What I think is interesting is hearing about each person's story as to how they have arrived at their current point in the legal career. What I have noticed when speaking with individuals who are interested in mediation is that almost everyone has expressed how much power mediation brings to the parties involved. Mediators and advocates of mediation acknowledge that there is something interesting and satisfying about the human connection that naturally occurs during mediation, as opposed to filing a 5-year-long civil suit which requires six months of pouring over filing boxes.

Mr. Baum expressed these thoughts during his introduction, and I am always interested in hearing a new mediator's take on that aspect of mediation. Mr. Baum said, "Isn't there a better way to do this? To not pour over half-a-million documents and ignore the people in the litigation? Can't we look at the people and be more humanistic with the law?" I appreciated the questions that Mr. Baum was asking. Even in my limited legal experiences, I have heard time and time again from clients about how frustrating the law is. They complain that it is slow, too formal, insensitive, and frustrating. What is the point of hiring a lawyer to wait several years to fix a problem that plagues them today? Mr. Baum spoke to that human aspect as well. "There's thoughts, values, emotions, and needs. We need to recognize this to bring about a resolution that meets the people's need in a more meaningful way." For Mr. Baum, the more "meaningful way" to meet the needs of others was through mediation.

Another interesting thought that Mr. Baum brought up is the idea of the mediator as a background player. Mr. Baum discussed several mediations where parties that had been feuding

for years, and had spent thousands of dollars on litigation, were able to resolve their own issues in mediation. What is interesting about mediation is that when one thinks about mediation, he may think that the mediator runs the show. Mr. Baum spoke to this notion, and disagreed with it. In his view, the mediator contributes only as much as necessary to facilitate the mediation. If he can sit back and let the parties hand their own issues with their own autonomy, all the better. In doing so, the parties take pride in the decision reached and will be more likely to be satisfied with the result of the mediation because they chose it.

I like the idea of letting parties reach their own decisions, because they are more familiar with the issues at hand than the mediator or lawyers will ever be. If the issue at hand requires an apology or exchange of information regarding interests, those outcomes may not be realistic in litigation. In mediation, meeting those interests becomes possible. When parties have autonomy, and the mediation is quietly guided by the mediator, the room for creative solutions and honest dialogue between the parties grows. As said by Mr. Baum, "Mediation is beautiful. It's whole people encountering each other. It's not just a case. It's humanity." What a spectacular statement!

Of course, there may be situations where mediation is inappropriate. For example, if there is a divorce where the couple has experienced issues with power struggling or domestic violence, mediation would be inappropriate. To engage in mediation in that kind of circumstance could potentially harm the abused individual, because she may agree to a result that she is unhappy with out of fear. That is not the kind of result that mediation is attempting to reach.

The last interesting thought that Mr. Baum mentioned was about justice. "Justice," Mr. Baum says, "is something that we think of as being uniform. In reality, justice is varied. If you have four different courts assess the same case, you could very well end up with four different results." This thought is intriguing.

In mediation, the idea is to give the parties the autonomy to reach a result that all parties can live with – a result that is just given the circumstances, the interests, and the law. In some ways, decisions made by the parties themselves are almost always more just than the decisions made by some arbitrary fact-finder. I would argue that this is because the parties, as stated earlier, are more intimate with the facts of the case. They have lived – or are still living – with the issue that sparked the legal dispute. A “just” result might be a salvaged relationship, an apology, or a creative assessment and distribution of property. When you add the interests of the parties to the autonomous nature of mediation, you have a level of justice that cannot be matched by the court. In mediation, the parties express themselves and have the opportunity to be heard. They assess the situation based on the newly collected information discovered in the mediation that is facilitated by the mediator. These assessments weigh the law, but they also take into account the personal and emotional factors in the dispute. Potentially, A “live-able” agreement is created, and parties may leave the table saying “hey – we did that!”

In a courtroom, the parties are adversarial. The nature of a trial is harsh. Attorneys leave no stone unturned when litigating, which may expose facts about the parties that are emotionally or financially harmful. The parties have no autonomy over the decision issued by the court, and regardless of whether the litigants agree with or like the decision, it cannot be altered unless they choose to repeat the costly, time-consuming, draining process upon appeal. Even then, there is no guarantee of a “live-able” outcome. For one or both parties, the decisions may feel just. Or, they may not. For these reasons, I agree with Mr. Baum that “justice” can come in many forms. Mediation opens the door for creative and personalized forms of justice that are unavailable in the courtroom, and that is a remarkable shift in the legal culture.