

May 2016

## Turning Off the Legal Relevance Filter in Mediation

Clients need to tell their story. Part of the challenge for us as lawyers is translating what our clients tell us into legal language that can be used to assert their rights or defenses. We get so accustomed to translating a lay person's recitation of facts into legally significant words or jargon to make our case in pleadings or motions that we sometimes forget to turn off the filter in other situations. Mediation is one of those times when we need to turn off the filter. We probably do not always do a good enough job of listening to clients without the filter of legal "relevance."

Oftentimes, the client has something to say to the mediator about the origin of the problem or presents a "defense" that is not a legal defense, or they may offer some narrative about what happened that at first blush does not seem compelling or legally relevant in the lawsuit. We can, and should, take into consideration emotional stories, history, the course of dealing, and who said what to whom. This is the stuff that allows us to discover hidden agendas, interests, and previously unknown events or conduct of the parties that may give us insight into a "way out" of the problem.

Clients ramble and often discuss things that are not admissible. The long narrative might have a few kernels that explain how the parties got to where they are and a hidden reason or motivation for filing suit. Maybe the involvement of a third party who had not been known is revealed.

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As a mediator I have to guard against talking to the lawyers when I need to listen and ask questions directed to the clients. If your client or the other side is telling a tale that seems to be of dubious relevance, here is a good question to ask: “What is the significance of what you are telling me to this case?” Sometimes clients have facts they cannot clearly connect or link to a legal position, but we can help the client distill the narrative as it might reveal an interest that has to be addressed. When someone starts down what seems to be a strange or tangential path, ask if they can help you understand why this is important. What is it about the story you want me to know? Mediation is not restricted by rules of substantive law or procedure. Put away the relevance filter. Just let the client's narrative wash over you like the incoming tide at the beach – look down and you might find a couple of shells worth picking up.

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