

The Power of Apology in Mediation

By Hon. Stephanie H. Klein (Ret.)



Jane Brody, who writes a column for the Science Times on Tuesdays, recently wrote a wonderful piece about apologies and their impact on people's relationships as well as their health. <https://www.nytimes.com/2017/01/30/well/mind/the-right-way-to-say-im-sorry.html> She argues that while holding onto anger can be injurious to both parties, a poorly worded apology might cause more harm than good.

She goes on to state that that effective apologies should be sincere and one-sided-no quid pro quo should be required or requested. Merely apologizing for hurting another is not enough.

Brody illustrates her view by recounting an incident where she accidentally offended a neighbor. She wrote a note, apologizing for her behavior, specifically not asking for forgiveness, but hoping that somehow they could resume a civil relationship. To her surprise, her neighbor responded with warmth and friendship. The apology not only remediated the conflict, but also restored the friendship.

What does this have to do with mediation? A sincere apology without seeking forgiveness may be a good first step. But most parties are not willing to apologize without knowing the other party will apologize too- the infernal quid pro quo that Brody eschews. However, I have found that those mutual apologies, with great respect to Jane Brody, are often a first step towards communication. And even that small apology is often a fine start to mediation. Acknowledging the pain that we have caused can commence sufficient healing of a deep wound to allow listening to the other disputant. And that is the beginning of trying to work things out, or mediation.

Here are a few examples. I was mediating an employment case and eventually had to declare an impasse. The grieving party had complained of discrimination for seven years for being passed over for promotion. She felt that she had tried everything to resolve her problems through the company but hit her head against the wall repeatedly. The other side came to the mediation to renew a previous offer for a lateral move to a new position with a new supervisor and a different way of achieving her promotion. But there were too many uncertainties and the grieving party had no confidence in the other party's protestations of good faith and starting anew. She refused to take that leap of faith and take the offer. Would an apology have made any difference?

In this case no- the respondent had brought nothing new to the table. He could offer no assurance that the grieving party would be treated any differently in the future. But certainly if he had been able to offer some assurances, an apology and a recognition that **she felt that she had been ill used** without any admission of wrongdoing, might have gone a long way to healing her frustration and hurt. She might have remained at the table to work things out.

That recognition of hurt and anger was powerfully used in another mediation. These parties lived close by and tallied many years of dispute. They had mediated twice before and were coming back for what we had hoped, a tune-up. The accusations volleyed back and forth until one party said, "I would be upset too if that had happened to me. Why didn't you come and speak with me?" Immediately the tension diffused- you could see the parties visibly relaxing. That simple recognition of the other party's feelings commenced the conversation that resulted in an agreement.

So are apologies effective or are they even realistic in highly charged disputes? A "Jane Brody" heartfelt apology obviously is the most powerful and yet the most unrealistic in disputes. The epiphany that accompanies self-awareness of harm inflicted may occur in a Bette Davis drama, but seldom in a hard fought civil dispute. However, recognizing the suffering of the other disputant can diminish anger and bitterness enough to start talking pragmatically about ways to resolve a dispute and cutting short a court battle, a common interest everyone shares. •

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