

Mediator's Corner



[John Koepfel](#)

How I (and possibly you) Wound Up Here

by [John Koepfel](#)

While learning to try a lawsuit, I was taught to imagine switching sides and presenting my opponent's case. Eventually, that approach came naturally when evaluating a case. I was fortunate to represent plaintiffs and defendants and learned many of the distinctions in the trenches. After a few years of practice, the patterns of how pieces of a case fit together became clearer. I developed what I considered a reliable view of the strengths in my case and in my opponent's case as well, and of course the weaknesses too. And during that time, I also watched and admired how skillful judges and mediators made me feel both good and insecure about my case during the same settlement conference or mediation. The question that always got me worried was: "How do you plan to prove that?"

Something else happened too. After handling cases for a while, I realize that litigation rarely ended a case efficiently. I observed the stress that litigation causes the parties and frankly, their counsel as well. Sitting around after the end of a deposition in a multi-party case that seemed to have lasted forever, I remember one of the lawyers observing: "If we wanted to design a system that took the most time and money to resolve disputes, we probably would leave things exactly how they are now." While I still enjoyed the advocacy of trying a case, I knew there had to be a better way. That's when the ability to get parties to common ground and end their dispute, to mediate such disputes, presented a new challenge.

The process uses virtually all my lawyering ability in a whole new way. Psychology remains a key issue, if not the most important. Listening well, knowing when to make a point and summarizing concisely all play into the equation. And when these pieces fall into place and I announce "We have a deal", I get the satisfaction of having accomplished something measurably good for the litigants, the court system and myself.

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