

# EMPATHY: SOME OBSERVATIONS AND COMMENTS

By Michael C Tobriner

Empathy is a big subject. My purpose here is just to offer some brief observations and comments. In particular, I'd like to raise three questions. First, what do we mediators mean by empathy – how should we define it? Second, why is it important for us? And third, how can we as mediators create an empathetic connection with the people – parties – we're trying to help.

## Definitions of Empathy

Commentators have formulated various definitions of empathy. Most definitions are similar; some are more complex than others. In *Beyond Winning*, his book on negotiation, Robert Mnookin defines empathy as “the process of demonstrating an accurate, non-judgmental understanding of the other side’s needs, interests, and perspective.” The process, Mnookin says, is “value-neutral” and doesn’t require one side to “feel [the other side’s] pain”.<sup>1</sup> In their materials on mediation Nancy Foster and Jessica Notini describe empathy as “active reflection by the mediator of what [she or he] understand[s] parties to be communicating”.<sup>2</sup> In their classic work *Difficult Conversations* Douglas Stone, Bruce Patton, and Sheila Heen call empathy “the deepest form of understanding [of] another person”. These authors see empathy as involving “a shift from my observing how you seem on the outside, to my imagining what it feels like to be you on the inside, wrapped in your skin with your set of experiences and background”.<sup>3</sup>

Other commentators offer still other configurations. Community Boards, in its *Basics of Mediation Training Guide*, provides this concept of empathy: “The core of Empathy is being able to see the humanity in whatever another person is doing, saying, feeling, or hearing by guessing at their Needs.”<sup>4</sup> In a fascinating interchange between the Dalai Lama and the psychologist Paul Ekman, recounted in the book “Emotional Awareness”, Ekman proposes that empathy itself is too generalized a concept and should be replaced with four more precise concepts. The first of these, Ekman suggests, is “*emotion recognition*”, that is, simply to know how another person is feeling. The second concept is “*emotional resonance*”, that is, the ability actually to feel what the other person is feeling. You can’t have the second, Ekman says, until you have the first. The third concept is *compassion*, meaning that you want to relieve the suffering of the other person. The last concept is *altruism*, which goes a step further than compassion and involves some risk to your own welfare when you relieve the suffering of the other person.<sup>5</sup>



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Each of these definitions reflects a somewhat different – although the differences may be nuanced – approach. The approaches run the gamut from Professor Mnookin’s, which is straightforward and utilitarian, to Community Board’s and Mr. Ekman’s, which reveal a deeply psychological and humanistic view. As Mediators, each of us needs to consider which definition serves us best.

### **Importance of Empathy**

As we mediators know, an empathic connection between the mediator and the people she serves forms an indispensable component of a productive mediation. (By “people she serves” I refer to parties to a mediation, including parties represented by counsel.) If a mediator can demonstrate that empathy, that connection can open at least three pathways to a deeper level of communication. That deeper level in turn allows the mediator to understand and address the underlying emotional agenda that drives any conflict. First, an empathic connection shows the person served that she’s been *heard*. Of course, that pathway can run in reverse; the mediator’s showing the person served that she’s been heard can pave the way to an empathic connection. Whichever the direction of the pathway, unless the person served feels heard, the mediation will founder. Second, the empathic relationship promotes *trust* – the person served trusts the mediator. And third, the empathic connection demonstrates to the person served that the mediator is not *judgmental* – that the mediator is not judging the person’s character or past behavior. (Non-judgmental differs from “neutral”. “Neutral” means unbiased and objective on the substantive issues presented.)

At its most effective level, empathizing with the person served can empower the mediator to diffuse the surface emotionality that the person evidences and then to penetrate to and understand the underlying motives that produce those emotions. With that understanding the mediator can meet the person served where she or he is – colloquially, “where she or he is coming from” – and from that intersection help the individual move toward an acceptable outcome to the conflict at hand. While this exercise is not easy for the mediator and can’t always be carried out, it can be learned and can be done.

### **How to Achieve an Empathetic Connection**

How does a mediator establish an empathetic connection to a person served? As all mediators know, the first answer is that we engage in “active listening”. Community Boards Basic of Mediation Training Guide calls active listening “the mediator’s primary tool” and describes it as hearing and understanding the parties and letting them know that they’ve been heard and understood. And, as many experts have explained, the key to effective active listening is *listening for the sake of listening*. Listening for the sake of listening means that you, the mediator, listen with, and from, a genuine curiosity about the speaker and what she or he is saying. You listen, Ms. or Mr. Mediator, because you care about and are

interested in the speaker's story, and not for any other reason. You do not listen from a utilitarian place – not to formulate how you will respond, not to compose your next question, not to decide what you will do when the speaker stops speaking. If you listen from this standpoint, your responses, next questions, and next actions will come to you naturally, tempered of course by your mediator's skills – open questions, reframing, and so on.

Active listening, done properly, will allow you the mediator to achieve the first of the elements of empathy that Mr. Ekman describes – emotion recognition, the ability to know what the other person is feeling. It will also allow you to achieve the second of those elements – emotional resonance, the capacity to feel what the other person is feeling. With the achievement of these two elements, you will have laid the foundation for an empathetic connection to the person you are serving.

Finally, a few caveats. First, many commentators recommend “looping” or “mirroring” as a method of active listening. Looping means repeating back to the speaker the precise thoughts the speaker has expressed, often in the speaker's own words. While looping can help, it can also sound forced or mechanical, even awkward. Second, perhaps the highest barrier to achieving empathy arises from the mediator's own preferences and judgments. We all harbor them, and they pose a major challenge. (Gary Friedman has written a whole book on this subject, *Inside Out – How Conflict Professionals Can Use Self-Reflection to Help Their Clients*.) Last, dealing in mediation with the emotional content of conflict is not psychotherapy. The purpose of mediation is not, like psychotherapy, to effectuate change in a patient's characterological problems, but, rather, to assist parties in resolving concrete conflicts by understanding the emotional roots of those problems.

## **Afterword**

Working with these tools to try to achieve empathy is not easy or simple, but with perseverance, experience, and an open mind (and heart!) it can be accomplished.

## **Notes**

1. *Mookin, Robert; Beyond Winning; Belknap Press of Harvard University; 2000.*
2. *Northern California Mediation Center (Foster, Nancy, and Notini, Jessica); Essentials of Mediation; 2007*
3. *Stone, Douglas; Patton, Bruce; and Heen, Sheila; Difficult Conversations; Penguin; 1999*
4. *Community Boards of San Francisco; Basics of Mediation Training Guide; Community Boards; 2015*
5. *Ekman, Paul, ed.; Emotional Awareness; Holt; 2008*