

CURRENT LITERATURE IN ADR

By Sherman D. Fogel

Whether you are a new mediator, or a conflict professional with many years of experience and hundreds of mediations under your belt, you probably view the development and refinement of your mediation skills as a continuous work in progress. In the early years, every ADR program you attend and every book or article you read seems filled with useful information you can incorporate into your practice. As the years go by, though, most of the programs and literature just reinforce what you already know, and, if you're lucky, you occasionally pick up a new tidbit. Every once in a while, however, if you keep an open mind and don't get too comfortable and complacent about what you do, something you read or hear gives you a really fresh insight. *Inside Out: How Conflict Professionals Can Use Self Reflection to Help Their Clients* by Gary J. Friedman may be just such a book.

During the last 40 years, Gary Friedman has conducted over 2000 mediations. For more than 25 years he has been training lawyers, judges and others in conflict resolution throughout the United States and abroad, through The Center for Understanding in Conflict (formerly The Center for Mediation in Law), which he co-founded. He has taught mediation and negotiation at Stanford University Law School, and teaches at Harvard Law School's Program on Negotiation and at the World Intellectual Property Organization in Geneva. Prior to his work as a mediator and mediation teacher, Friedman was a trial lawyer in Connecticut.

In 2008 Gary Friedman and Jack Himmelstein presented their "understanding-based model" of mediation in *Challenging Conflict: Mediation Through Understanding* (reviewed in the Spring, 2009 issue of this newsletter). They observed that parties and their lawyers traditionally viewed conflict through a legal lens, focusing on the parties' positions, who was right or wrong, and winning or losing, without regard for the feelings and perceptions existing below the surface. From that prospective, the parties and their lawyers looked to mediators to "simply to broker a deal", which often was done by resorting to coercion, persuasion and even manipulation to pressure the parties into a compromise. The understanding-based model relies on uncovering what is bubbling beneath the surface and helping the parties, through understanding rather than coercion and persuasion, to take responsibility, work together and fashion a satisfying solution.

Inside Out picks up where *Challenging Conflict* left off:

The conflict was never really only about what the parties thought it was about. It was rooted in all those feelings and perceptions below the surface.

But, while the understanding-based model debuted in 2008 focused on what is really going on with the parties beneath the surface, their feelings, perceptions and what they really care about, *Inside Out* zeros in on a wholly new idea: what is going on beneath the surface with the mediator. As mediators, we tend to think of ourselves as neutral, non-judgmental and above the fray, not a party to of. But this view of ourselves may be not only unrealistic, but naïve. Friedman summarizes conversations with his longtime colleague and co-author Jack Himmelstein:

As Jack and I talked about the emotional side of my cases, I realized how powerfully I was being affected by my clients' stories. They reminded me of my own life, sometimes in an unpleasant way, and I might like clients or dislike them or be upset with them depending on which buttons they pushed in my own memories and experiences.

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It became clear as I talked to Jack that all of these feelings and reactions, whether negative or positive, weren't just a personal concern. They played an enormous role in my effectiveness with clients.

Friedman's great insight, almost an epiphany, is that once the mediator enters the picture, the dynamics of the conflict are changed, and the feelings and perceptions of the mediator may have a profound effect on the process and the outcome. How the mediator feels about the parties and their problems will not only affect how the mediator treats the parties, but the parties will sense those feelings, and they will affect how the parties interact with the mediator and even with each other. It is reminiscent of the butterfly effect in chaos theory – the idea that the path of a tornado in the Midwest may be influenced by the flapping of the wings of a butterfly on the west coast several weeks earlier. In *Inside Out* Friedman explores the importance of the mediator being sensitized to his or her own feelings and reactions, and through self-reflection going deeply beneath the surface to understand those feelings and perceptions and the underlying causes of them in the mediator's own life. Then using that understanding the mediator can empathize with the parties and help them to better understand their own perceptions and feelings, and build on their new and deeper understanding to reach a meaningful and satisfying resolution of the conflict.

In our effort to be, and to be seen as, objective professionals in control of the process, we may be unintentionally distancing ourselves from the parties we are trying to help. By closing off our emotions and pretending our feelings and

perceptions are not involved, we may be preventing ourselves from connecting with the parties on the truly human level that can create the kind of working partnership with the parties needed to help them take responsibility and fashion a lasting resolution.

Friedman observes that a person in a life crises wants and needs to be understood. As mediators, we need “to be open to the clients’ experience and to deeply sense what they are going through.” We can best do that not by remaining detached, but by using “our own lives as a point of connection to allow ourselves to enter into an empathetic relationship.” He comments:

Our essential job in all this is simply to be there, entering the clients’ situation and experiencing it not as an “outside expert” or arbitrator of good/bad, right/wrong but as an equal. In understanding-based conflict resolution, clients and conflict professionals are in the room – and in the soup – together.

Bill Clinton was really on to something when he said “I feel your pain.” The connection to the voters that resulted from that simple expression of understanding and empathy was remarkable.

Building self-reflection into the understanding-based model put forward in 2008, in *Inside Out* Friedman offers five central premises for his approach to conflict resolution:

1. You don’t have to take sides to help clients through a conflict.
2. The solutions to conflict lie in the feelings and perceptions hidden below the surface.
3. There’s no such thing as an objectively neutral mediator.
4. The fundamental goal of conflict work is to help the parties better understand themselves, each other, and the realities they face.
5. Learning to listen to the self makes it possible to listen usefully to others – and help them.

Toward the end, Friedman devotes an entire chapter to the fascinating question of “why we ever wanted to spend our days being pulled into people’s crises, fears, and ugliest behavior.” He suggests that understanding why we do this work will keep us centered “when we’re exhausted and filled with doubts, fear, or confusion . . . [and] give us the courage to reach out to others in an open, vulnerable way and bring the best of ourselves to serve them.” Although it may be very difficult for some of us to unearth our deeply felt emotions and share some of that with the parties to better connect and empathize with them, if

Friedman is right, when we better understand why we do conflict work, we may be more willing and able to open up with the parties.

Friedman spends considerable time discussing a methodology for engaging in self-reflection that borders on Freudian analysis, and which I suspect will be a little too much for most of us. Do not be turned off, however, by that aspect of Friedman's work. The idea that our perceptions and feelings impact the process, and that we should be more introspective and better understand them and bring them to bear for the benefit of the parties, is a really important concept, and should be examined and considered by everyone who engages in conflict management and dispute resolution work. The stories and illustrations from Friedman's practice and teaching are not only thought provoking, but at times deeply moving. Whether a beginner or a highly experienced mediator, you will benefit from reading *Inside Out: How Conflict Professionals Can Use Self Reflection to Help Their Clients*.

© 2015, Sherman D. Fogel. After 40 years as a trial lawyer, Sherman Fogel is now a full time mediator and arbitrator, and is a former Chair of the Alternative Dispute Resolution Section of the State Bar of Arizona. He frequently speaks on arbitration and mediation at programs sponsored by the American Arbitration Association, the American Bar Association, the College of Commercial Arbitrators and the State Bar of Arizona. He has been selected for inclusion in the 2008 - 2015 lists of *The Best Lawyers in America* in Alternative Dispute Resolution, and was named *Best Lawyer's* 2016 Phoenix Arbitration "Lawyer of the Year". Mr. Fogel can be reached at 602-264-3330, mede8@msn.com or through www.shermanfogel.com.