

WHY I MEDIATE

by Alec Wisner
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{the First in an occasional series of articles}

Since I began my mediation career just seven years ago, the question that I have heard, almost continuously, from professional friends and acquaintances, personal friends, and from relatives, has been: "Alec, why in the world are you mediating?" There's always a follow-up statement, although this varies with the questioner. Some of the follow ups include:

1. "But I thought you were so enthusiastic about your law practice."
2. "But everything else you ever did paid you so much more money."
3. "How can you stand the stress of being involved in other people's divorces?"
4. "How can you stand being in the middle of an argument between two cutthroat attorneys?"
5. "Why don't you just retire, since you can afford to?"
6. "If you just open your own office, I'll be your client!"
7. "Don't you have enough stress in your own life?"

And the list goes on and on, interminably. After all, after very successful careers in business and at the bar, they reason, why "lower myself" to getting paid far less than I'm used to earning for the privilege of assisting people who, in many cases, don't seem at all interested in the help I'm offering them.

Good questions, all. And my answers to those questions have been all over the ballpark, from the very incisive, to the "beats the s_____ out of me" variety. And part of the reason for that was that, at the start, I had a very limited and specific reason for turning to mediation.

In 1999, my father passed away. Although I had ceased working in the family business in 1996, I was still a major shareholder and derived income from those enterprises. Almost immediately, I was frozen out and my income cut off. I was told, in effect, "you may own 45% of the business, but we don't like you, so we won't buy you out or pay you a penny." And so began my personal adventures as a litigant. Including related lawsuits, the adventure didn't end until about five years later. In the process, although I was legally vindicated and was paid off, I was also emotionally destroyed by the process and came very close to losing everything that had any value to me. I enabled a number of people from those businesses to survive financially, but at a terrible physical and emotional cost to myself.

During this litigation, I attended a number of mediations as a party, rather than as an attorney. I experienced some outstanding mediators. But I also had some

horrendous experiences. On more than one occasion, the mediator caucused with the other side first, and then, in caucus with my wife and me, demanded that we dismiss our lawsuit or face a malicious prosecution lawsuit. Unbelievable! My wife was flabbergasted and wanted to go to the State Bar immediately, which, of course, was out of the question. That day, I made a mental note that other litigants needed to be spared this experience.

In late summer 2002, although the litigations were far from over, I took the L.A. County Bar/DRS basic mediation training. I already knew that I was leaving my firm at the end of that year, and thought that maybe, just maybe, I would like to mediate a bit.

So there you have it. My original reason for mediating. Now from here on, this article will take an intensely personal turn. If that offends you, I suggest that you stop here.

But there is another, and very important, sidebar that I wish to discuss. I'd like to take you back to my days as an intercollegiate debater for U.C.L.A. As some of you know, in competitive debate, each team has to take both sides of the same issue. Not surprisingly, given human nature, and ego being what it is, debaters typically think that they've won virtually every round that they've debated. For some reason, I was an exception. I was always able to leave a round and tell my coach, with great accuracy, two things. I told her whether the judge had voted for or against us. Then I told her whether I thought we had won or lost the debate. I tell you this now because it illustrates two things about how I think. Even as a teenager, I could analytically evaluate something that I was personally involved in detachedly. But, more importantly, I could also evaluate the judge, him or herself. I would watch the judge very carefully as I gave my speeches and would always have a sense of how the debate was going *in the head of the judge*. I didn't understand it then, but I had an intuitive ability to read body language and facial expressions that would serve me well for the remainder of my life.

One reason that knowledge of this intuitive ability eluded me for so many years was that I was completely retarded in my ability to interpret social clues in my everyday life. What I did in debate was an anomaly, although I couldn't see that for a long time.

There were other skills that I had that set me off from others. From the time I was a very little boy, I felt different than all the other kids. I had trouble making friends, and I was socially excluded from parties and other normal activities. But I was always the smartest kid in the class. I never had to study, to speak of, because I had a remarkably retentive memory and, to a significant degree, thought in pictures as well as spatially.

I went through life this way. I took marginal notes during law school, didn't study for the bar exam until it was a week or so away, then, after reviewing my Gilbert's Law Summaries, said "c'est la vie," and passed it. As an attorney, my partners

called me "the savant" and valued me most for my issue spotting and case writing. All very consistent with the talents I've outlined. And I was outstanding in drafting and arguing Law and Motion, again, not surprising. I again found myself quite skilled at reading the judge during my argument. But, and this is critical, my partners would NOT let me do mediations. That was because they felt that ***I was too conciliatory***. This was because, just as I did in debate, I was quite able to and willing to see both sides of an argument. To my partners, that was a fatal weakness.

My adult life was a roller coaster of twists and turns, many of them seemingly unconnected and, to me, rather bewildering. I was enjoying the ride, but never felt that I had a complete grip on the situation.

Soon after I began mediating, a therapist suggested that I check out something called "Asperger's Syndrome." She thought that it might apply to me. Here's a brief synopsis of what I found.

According to ConnectAbility, "Asperger's Syndrome is a neurological condition on the autistic spectrum which occurs in approximately 1:300 people. People with asperger's syndrome have very good communications skills but lack in social skills."

The differences between Asperger's Syndrome and Autism are profound and numerous. The Autism Society explains the important differences between Asperger's Syndrome and Autism here: http://www.autism-society.org/site/PageServer?pagename=life_aspergers.

According to the Mayo Clinic staff, Signs and symptoms of Asperger's syndrome include:

- Engaging in one-sided, long-winded conversations, without noticing if the listener is listening or trying to change the subject
- Displaying unusual nonverbal communication, such as lack of eye contact, few facial expressions, or awkward body postures and gestures
- Showing an intense obsession with one or two specific, narrow subjects, such as baseball statistics, train schedules, weather or snakes
- Appearing not to understand, empathize with or be sensitive to others' feelings
- Having a hard time "reading" other people or understanding humor
- Speaking in a voice that is monotonous, rigid or unusually fast
- Moving clumsily, with poor coordination
- Having an odd posture or a rigid gait

There's one other factor that's not often found in the literature, but which many therapists have agreed with me about. Most Aspies (an "Aspie" has Asperger's Syndrome) have far less ability than other people to dissemble. In other words,

they tend to be more blunt and straightforward. This is one of the problems that leads to their difficulties in social situations. Throughout my life, that's been one of my most obvious traits.

Well, that was a lot to swallow! Almost all of the symptoms seemed to apply to me, or to have applied to me in the past. In some cases, through very hard and persistent exercises, I learned certain skills that most of you take for granted. For example, I emphasize eye contact in my communication, but, for me, it was a learned skill. Similarly, I walked very oddly as a boy, but I worked long and hard to modify my gait with some success.

The "appearing not to understand, empathize with or be sensitive to others' feelings" symptom has been a personal nightmare. From my parents harping on that when I was a little boy up until the present, I've heard that millions of times.

It took me decades to realize that, during my adulthood, those comments were, increasingly, limited to my relatives . . . usually the ones who didn't know what made me tick. I've made it a lifetime task of learning this behavior, because, indeed, it is not inborn. But, oddly enough, I think that it enhances, rather than detracts from, my mediation ability.

The reason for this is that whereas many mediators take their interpersonal skills as a given and concentrate on the case before them, I do the opposite. With my memory and retentive skills, my note taking in a mediation is minimal, especially if the written briefs are done well. Instead, a great deal of my effort is put into being sensitive, understanding, empathetic, and, when appropriate, sympathetic to each party's legal position **as well as their feelings and motivations**. I retain my intuitive ability to read and understanding the individuals involved and, just as I did with debate judges, trying to figure out what's motivating them and what they're likely to do with a given set of facts.

So there you have my second reason for mediating. It's because I'm an Aspie that I'm able to bring a special skill set into the room when I mediate.

I have so much more to share about this subject, **but I'd really appreciate as much feedback from my reader's as possible**. It will greatly help me in determining what directions to go in as I continue along this line.