

Solomon and the Baby: Lessons in Mediation

by

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The story of Solomon, the two women, and the baby is part of our learned lore. In legal culture it is expressed via the maxim, “splitting the baby.” There *are* a number of lessons for mediators in this story, however, chief among them is *not* “splitting the baby.”

The first lesson is preparation of one’s attitude and state of mind.

The Biblical story does not begin with the two women coming to Solomon. It begins with Solomon offering a great sacrifice. Soon after, God appears to Solomon in a dream, promising Solomon whatever he asks. Solomon first responds by describing his father David’s greatness, then expresses his gratitude for being placed on David’s throne, and admits that he is a mere child in comparison to David. After putting his own life in perspective, Solomon is then ready to ask for his gift.

Solomon beseeches God for what he calls a “listening heart,” *i.e.*, what we call wisdom. Solomon says that if he is given wisdom he can properly govern the people placed in his trust because he will have true discernment. God is pleased that Solomon seeks the wisdom to discern what is right, rather than seeking long life or riches for himself, or seeking the deaths of his enemies; and the wisdom is bestowed.

It is only after this experience that the Solomon’s first test comes with the two women and the baby.

Thus, the first step in preparing ourselves to mediate is a sound humility. The role we play is the role of one who serves; it is not for self-aggrandizement. However high our position, the station in itself does not make us right or wise. Solomon was a king before he had wisdom, but wisdom was not the result of his being king; it was something he needed to become a genuine king.

Recognizing our own limitations and strengths, a willingness to learn, and expanding our understanding are prerequisites to a mediator’s wisdom. Having qualities like patience, empathy and the ability to listen and understand (the “listening heart”), as opposed to an imperious attitude, impatient toward those who will not simply follow what we think is best and just do it, are the signs of an effective mediator. As we lack Solomon’s divine wisdom, our preparation will further require a full review of the materials that the parties’ submit; and ideally a well-grounded understanding of the applicable law and relevant subject matter.

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These “humble” qualities should not be taken for passivity, weakness, or indecisiveness. They are the groundwork for good judgment. The discipline required to be patient is something that must be cultivated and applied; and the ability to listen to others without the constant overriding chatter of our own mind is even more difficult and requires greater effort to achieve. These qualities allow a tactical flexibility to the mediator who recognizes that different approaches may be required at different times with different people.

Then come the lessons found in Solomon’s actual handling of the dispute. Two women claim the same baby as their own. After hearing their claims, Solomon pronounces that the baby should be cut in half, with each woman to receive her share of the severed child. The real mother, in her love, refuses the order and is willing to let the other woman keep the child. The false mother agrees with Solomon’s solution and says to the other, “It shall be neither mine nor yours; divide it.” Solomon, recognizing the sacrifice of the true mother for the sake of her child, gives the baby to the woman willing to surrender the child rather than see it die.

They have come to Solomon to judge their dispute, but there are mediation lessons in his conduct. His express judgment is not an actual judgment. He proposes an inhuman solution, which he knows is not going to occur, but living in a world when a king may rule by whim the two women do not know that. In effect, he is giving them an opportunity to propose their own solutions in lieu of his “splitting the baby.”

In mediation, where the parties are at loggerheads over an apparently intractable problem, the wise mediator can take the parties’ out of the moment in which they may be trapped through history, anger, and unmeasured commitment to their own positions. That mediator can work with the parties to throw light on their future, and what life or business may be like if they continue on their present course. This mediator creates an opportunity for the parties’ release from their cognitive confines by bringing them into an open space that expands their ability to make sound decisions, using all of their faculties exercised on a larger factual landscape.

In many mediations, the parties are there because they want to be there and want to find a way to compromise and end litigation. They will appreciate the mediator who assists them in avoiding an inexorable path leading to pernicious ends for all concerned, even if that mediator’s technique may include showing the parties that the inevitable consequences of their own unchanged course may be as irrational as “splitting the baby.”