



MV Mediation Center

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Mediation Musings: Free Speech

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It was a meeting of the second-, third- and fourth-grade teachers. About 1986. I, in my late 20s, and my colleagues more than two decades older, as was the principal who had called the unusual meeting. In those days we never had meetings—we came in, did our job, left at 3 pm.

The topic was student grouping for the next school year. As long as anyone could remember, the neighborhood public school had used the concept of “grouping by ability” into “top, middle and bottom” classes from 1st through 6th grades. There was no disagreement within the school about this structure; the change had been requested by the District Office.

The principal had been instructed to ask all the teachers to talk about the possible new structure to create classes that mix students by academic achievement and abilities. Then to report back to the District Office about how the school would be organized the next year. He made his points, ending with something like “Don’t change horses mid-stream, don’t change what works. There will be unintended consequences. Things are good as they are.” Among the 15 or so teachers, there were nods and murmurs of assent.

No one was going to say anything; some were gathering their belongings to leave. I raised my hand, saying something like. “I think it would be fairer. I would like to teach a more mixed class.” The reaction was universally negative, the teachers telling me that I was wrong and didn’t understand how hard it would be. I said some things defending my opinion. From the corner came the angry voice of the only other young teacher, Lisa, who was in her first year of teaching. “It’s not your place to say what you think! Stop making trouble!”



“Not your place”

For forty years I’ve pondered these words. It’s a helpful construction today as I take a look at the topic of free speech and its relationship with conflict resolution services. The conflict over “Here’s what I think” and “Not your place” is a familiar battle. While people go through their lives, conflicting statements such as mine and Lisa’s get sorted out on the ground. These interactions create the boundaries for how free speech operates in real life.

It’s a contentious idea that *all* people have the right, and maybe even the obligation, to say what they think, to share their opinion, to influence others and to be part of the larger discourse. Looking across the world and into history, we can see various restrictions and structures designating which individuals are invited to share their thoughts and ideas and which are not. The United Nations Universal Declaration of Human Rights, adopted in 1948, provides, in Article 19, that “Everyone has the right to freedom of opinion and expression.”^[1] Yet today, over 75 years later, free speech is not universal.

“Stop making trouble”

John Lewis’s heroic invitation to “make good trouble” aside, most humans are looking to keep their lives well-ordered and somewhat predictable, with unwelcome change being a pest to swat away. Changes in core structures, identities, world views and values are particularly difficult. Roles and responsibilities are sorted out within cultural moments and help to inform others about how individuals are expected to share or swallow their ideas.

For those of who might be saying here, “I say what I think when I have something to say,” I’d suggest it’s likely cultural expectations have allowed/encouraged your thoughts. For those who have been marginalized by economics, gender, race, ethnicity, language, etc., its likely there has been teaching, sometimes from birth, to think carefully before speaking, and to mostly keep one’s thoughts to oneself. Sayings such as “When you don’t have something good to say, say nothing,” “Silence is golden,” and “Zip it” are sometimes necessary survival mechanisms.



Self-censorship

What did happen, after that teacher meeting, was an internal battle inside myself as long as I worked in that school. Many of us, in various settings, self-censor. Often the self-silencing occurs in small nonpolitical corners like our teacher staff room from the distant past. Many learn, quite young, to stay quiet, and over time this habit becomes the norm. What I wonder is: What might we be losing by missing these voices? How do we do effective conflict resolution when working with those who have been silenced? How do we as conflict resolvers create the setting where even those who have not experienced speech as free can still advocate on their own behalf and work toward equitable outcomes?

Conflict resolution

Conflict resolution aims to address disputes constructively, transforming destructive interactions into opportunities for growth and understanding. If participants are hesitant to articulate their genuine grievances or interests, the mediator's ability to guide them toward a meaningful resolution is significantly hampered. Mediation, conflict coaching, restorative practices and other conflict resolutions processes are designed to create a safe space where free expression is not only tolerated but actively solicited, fostering understanding and collaboration.

Open communication, when everyone is empowered to articulate their perspectives, needs and concerns is the foundation upon which our work is centered. The principles of mediation are connected to this discussion of free speech in so many incalculable ways. Let's look at the intersection of these concepts.



Mediation is voluntary

Mediation is voluntary. For those of us who are accustomed to making choices in our lives, being asked to make a voluntary agreement to participate is not a stretch. But. What if we are working with someone who has learned to be silent, to “go along to get along” —how do we monitor their level of voluntariness? What about those who have not built their choice-making muscles, because they have habitually accommodated the choices of others?

When we detect this happening, we work hard to check in with the individual, usually privately, to provide them with the space and safety to decide, “Is this process really what I want to be doing?” It is an important component to ensure that mediation is based on each individual’s decision, freely made, to participate wholeheartedly.

Mediation requires informed consent

Mediation necessitates participants who are informed throughout the process about the possible outcomes, consequences and alternatives. Mediators work to keep track of possible junctures when this type of information needs to be shared with those in mediation. We welcome inquiries throughout and rely on participants to ask relevant questions and consider the effects of their decisions. But. What happens when we are working with those individuals who have absorbed a message that their role is to stay silent and “take what you get”? Particularly when negotiation tactics are needed, those folks who do not speak up on their own behalf are hampered in meeting their needs. And particularly, when one of the participants is a lawyer, this can create such an imbalance that no amount of informed consent can balance the playing field.



Mediation expects participant self-determination

In facilitative mediation, the type used most commonly by community mediation centers, self-determination is the element most important throughout. Self-determination, in this context, refers to the capacity of individuals to make autonomous choices and to shape their own outcomes in a conflict. “It’s up to you decide what you do. You are the expert in this situation,” we say. But. What happens when someone is working out a conflict and their internal censor is wired to keep them from making waves or offering a contrasting view, withholding their true feelings, concerns or desired outcomes?

When we say to mediation parties, “You are in the driver’s seat, you decide,” for some participants the idea of holding onto the steering wheel seems so far-fetched, the words just flow over and stack up in the corner with all the other high-minded promises they may have heard throughout life—promises that turned out to be just words and not reality. Mediators

have to work hard in this instance, creating a supportive structure and encouraging the participant to speak their mind and put forward their interests.

Conflict resolution = free speech

Ultimately, the relationship between free speech, conflict resolution, and mediation is symbiotic. Free speech provides the necessary foundation for open and honest dialogue, essential for effective conflict resolution. Conversely, successful mediation processes reinforce the value of free expression, demonstrating that even in the face of disagreement, respectful and open communication can lead to positive outcomes. It is the cornerstone of an equitable and balanced process, where each participant has an equal opportunity to speak and to be heard.

When I meet with conflict resolution service providers, I often say we are a small but mighty cadre. We invite people to speak their minds, to put forward their ideas and to listen to each other in a facilitated setting designed for dispute resolution. It would be helpful, too, if we were working with more individuals who have been encouraged and taught to practice free speech—both receiving messages that may be uncomfortable and sharing opinions in the service of resolving intractable issues. We would find our work a bit easier if, from childhood, everyone at all levels and circumstances received messages such as:

Your voice is important.

Your ideas are welcome.

Say what you think.

It is your place to speak up when you have something to say.

