The Power of Apology and Forgiveness in Dispute Resolution

Jory Canfield and Vik Kapoor interview Kenneth Cloke

Introduction: In October 2015, Ken Cloke presented a webinar on apology and forgiveness in dispute resolution that was available to members of the ABA Section of Dispute Resolution. Here, we set out to further explore some of the points raised in the webinar, by way of a Q&A with Ken. Because this article is appearing in the issue of the newsletter devoted to ombuds’ issues, we focus on that function where appropriate.

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Jory & Vik: Ken, many of our ABA Section members practice ADR in a variety of contexts, from ombuds to commercial mediation to restorative justice. Do apology and forgiveness always have a place in our work? Why or why not?

Ken: Thank you both for the opportunity to expand on the issues raised by apology and forgiveness, which are deep and complex.

To address your first question, if our role as mediators and ombuds is to reduce, settle, resolve and prevent conflicts, and if one of the elements in conflict, whether in commercial disputes or restorative justice, is our experience of pain, anger and fear at the way we were treated by our opponents then the answer is yes, apology and forgiveness always have a place in our work. If by “apology” we mean any statement that honestly acknowledges what someone has suffered, or that says, “I value our relationship more than I value being right,” and if, by “forgiveness” we mean releasing ourselves from the burden of our own false expectations, or “giving up all hope of having a better past,” then apology and forgiveness are techniques or tactics that can be effective if used at the right time, in the right way, with the right issues and the right people.

Apology and forgiveness can be gigantic, and they can be microscopic, or anywhere in between. Sometimes it is the little apologies and forgivingnesses that have the greatest impact. Apologies are rituals designed to cure arrogance through humility, obeisance, respect, and appreciation for the suffering of others, thereby rebalancing power in the relationship. They allow people to shift from power- and rights-based assumptions to interest-based ones that are not oriented toward gaining power or preserving rights in relationships but on improving them without deciding who was right or wrong. An apology is a test to see if you get it, and can recognize the pain or harm that someone else experienced your hands. It is the first step in returning to collaboration and problem solving, letting go of false expectations, and forgiving oneself and others.
Jory & Vik: Part of apologizing is admitting fault or at least contribution to the conflict. How do you get people to admit they have some fault when they believe the fault lies entirely with the other party?

Ken: Actually, it isn’t necessary to admit one’s fault or contribution to conflict in order to apologize. What people who seek an apology actually want, at a deeper, subconscious level, isn’t really a confession, or groveling, or an acceptance of blame and its consequences, although these play a powerful role on a more superficial level. Instead, in my experience, people want authenticity, integrity, genuine humility, recognition, and some guarantee that it won’t happen again. They want their suffering not to be meaningless, for others not to suffer as they have, and for the problem to be fixed and prevented from reoccurring or becoming chronic.

The desire to blame the other person begins in childhood with our effort to avoid being punished, or to be perceived as virtuous or deserving rather than culpable and evil. Blame is a kind of teeter-totter: if you were bad, you should be punished, and I should be regarded as good, and rewarded. But everyone in conflict is virtuous and culpable at the same time, so our efforts should instead be directed at a “no-fault” approach that simply seeks to solve the problem. Apology is merely a way of overcoming the emotional pain and suffering that prevents us from collaboratively solving our problems.

Jory & Vik: In the webinar you discussed the novel idea that a mediator/facilitator might consider asking the parties at the outset (and in joint session) whether anyone wants to apologize for anything that happened. Several participants in the webinar expressed questions and concerns about this, mainly because of the uncertainty and potential blowback of this exchange. After all, silence or a poor word choice could be very damaging in this situation. Can you say a little more about why you think this is an effective strategy, and as a follow-up question, do you have some suggestions on how a mediator/facilitator might set this up for success?

Ken: I would say that asking this question at the outset is a tactic rather than a strategy. I have used this tactic in cases where I knew from interviews, conflict coaching, or prior sessions that something did happen in the past that one of the parties would like an opportunity to apologize for, and also as a way of generalizing the process and applying it to everyone. Or in cases where I felt its shock value would be worth the risk that it could backfire and might help break a logjam, or in family mediations where people haven’t spoken to each other for decades. I have also asked it in a milder form, for example, by asking, “If you each had 20/20 hindsight, what would you have done differently?” No technique works always or everywhere or with everyone, and with some people and in some cultures this would be completely inappropriate. I mention it, however, because
every time I have used it there has been a powerful, positive shift in the conversation and people were able to apologize, and to accept each other’s apologies, in ways that had been impossible for them beforehand. It is a “dangerous” technique, as described in my book *Meditating Dangerously*, which requires a high level of skill and should not be done thoughtlessly.

**Jory & Vik:** At times, parties are particularly vulnerable or otherwise unable to communicate with each other directly, such as in the instances of hostility, bullying or abuse. What are some ways a mediator/facilitator can create space for apology and forgiveness?

**Ken:** I start with the assumption that *everyone* is vulnerable in conflict, unable to communicate effectively with the other side, and as capable of hostility, bullying and abuse as they are of feeling frightened, intimidated or abused. Creating a space for apology and forgiveness when people feel that way is an *art* that requires skill and sensitivity to what is happening moment by moment in the conversations they are having that aren’t working.

My first step in doing so is to locate the places where people feel hurt and vulnerable, which can often be found *precisely* at the moment when hostility, bullying or abuse takes place. Next, I try to feel within myself whether it might be useful to elicit an apology, using empathy to consider what I would want the other person to say in that moment, and an equal empathy with the other party to consider how I would respond if the other party said that to me. Then I quickly consider the different forms my request could take, what might go wrong with them, and how I could present my question in a *heartfelt* way that invites both sides into an “apology space” that is sincere, authentic and not grounded in blame or fault.

For example, by asking the person who feels bullied, “How did it feel to you to hear him say that just now?” Or, “Did you feel hurt/upset/intimidated when he raised his voice in talking to you?” Or, “What is one thing you each (or the other person) could do to improve your communication?” Or, “Is this conversation working? If not, would you like it to work? Why would you like it to work?” Or, “On a scale of one to ten, ten being the highest, how would you rank the conversation you were just having/the apology you just gave/heard? How would you rank this conversation? What would it take to make it a ten?”

What is most important for mediators is to recognize that not only is conflict a *relationship* that has two sides, so is most hostility, bullying and abuse, which also have two sides and histories that are hard to unravel, and aren’t improved by taking sides or judging or blaming people, but instead by altering their communication and relationship patterns and
solving problems without becoming punishing. This is the real meaning of restorative justice.

Jory & Vik: Should the mediator/facilitator ever be the one making the apology on behalf of a party?

Ken: Yes, it is possible for the mediator to offer what I call a “surrogate apology,” in the absence of anything better. For example, a mediator might say, possibly in a caucus, “Perhaps what the other party might have said to you was how deeply sorry they are for what you have suffered. How would you have felt if they had said that?” Or, “What would you have liked for them to have said right after this happened?” The subconscious mind cannot distinguish between what is real and what is vividly imagined, and this effort often has an impact, even though it hasn’t come from the one they wanted to hear it from. Also, a mediator or ombuds might offer his or her own apology, especially where a particular approach has not worked, and say to yourself, “Great! Now is my chance to model a perfect apology, one that is a ten and holds nothing back.”

Jory & Vik: You mentioned in the webinar that you recently trained ombuds on apology and forgiveness at Kaiser Permanente. Can you tell us a little bit more about the substance of that training and any practical tips you might have highlighted there? What is unique about the role of apology in the healthcare setting?

Ken: The Kaiser Permanente ombuds employees routinely handle medical malpractice and wrongful death allegations, among others, and have found it highly effective in resolving disputes for the physicians or nurses involved to apologize sincerely and deeply for the suffering that was experienced, bypassing the issue of legal liability and instead addressing the underlying emotional desire for recognition of their pain and suffering.

There are a number of elements in a sincere and effective apology, which should:

• Contain an acknowledgment or recognition of the harm that was done,
• Include a sincere expression of regret, and
• Not offer or include (in that moment) any defenses or rationalizations for what was done.

A more complete list of the elements of a genuine apology appears in the materials for the webinar, and includes these aspects or components:

• Humility
• Authenticity
• Honesty
• Acceptance of personal responsibility
• Vulnerability and openness
• Not passing the buck or blaming others
• Not justifying or excusing what was done
• Acknowledgement of the pain and suffering of the other
• Recognition of the role you played in causing it
• Expression of empathy or understanding
• Statement of regret or shame or guilt
• No requirement of reciprocity or apology in return
• Lack of requirement of acceptance
• Openness to problem solving
• Commitment to restitution, fixing the problem, or reparations
• Realization of commitments and intentions through action

What is most important is that the apology be authentic, and not legally hedged or cautious or circumspect. It should be grounded in cultural expectations and recognize the past or history of what happened, in order to prevent it from continuing into the future. Careful, defensive apologies are generally worse than no apology at all. In the mediations I have done that involved medical malpractice and wrongful death, I have seen apology turn into the single most powerful element in producing not just settlement, but resolution, transformation, and healing.

Jory & Vik: How should we think about the role of apology and forgiveness in the workplace?

Ken: Whenever relationships are on-going, apology is a useful way of communicating that we wish things had happened differently and would like to return to a more satisfying relationship; or simply, that we want to act with integrity, give up defensiveness, and own the consequences of our actions. There are many ways of doing this in the workplace, and a number are included in my book with Joan Goldsmith, Resolving Conflicts at Work: 10 Strategies for Everyone on the Job, especially the chapter on “Learning from Difficult Behaviors.” In labor-management and employee-supervisor disputes, apologies can be made that do not mean you were unilaterally wrong or incompetent or undeserving, but allow people to become more human and vulnerable to each other and stop pretending they are perfect or have never made a mistake, which helps restore trust and collaborative relationships.

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Conclusion: Apology and forgiveness are crucial to the durable resolution of conflicts. The difficulty of incorporating them into legal or workplace settings, however, means they are too often brushed aside. Neutrals are in a unique position to create opportunities for apology and forgiveness for those in conflict. Exploring these tools in all the ways Ken Cloke suggests gives neutrals a powerful new avenue for facilitating reconciliation.
Ken Cloke is a mediator, arbitrator, facilitator, and trainer. He has written ten books on dispute resolution, founded Mediators Beyond Borders, and is an expert on apology, forgiveness, and other topics in conflict resolution. Jory Canfield is a current Fellow with the ABA Section of Dispute Resolution and a former Mediator in the High Court of Uganda. Vik Kapoor is an ADR Attorney for the federal government and a member of the governing council of the ABA Section of Dispute Resolution.