What I Learned from *Getting to Yes with Yourself*

By Judith R. Starr

On a regular basis, I reach for William Ury’s *Getting to Yes with Yourself* to reabsorb his techniques for staying calm, centered and focused on the parties in my mediations. The co-author of the seminal *Getting to Yes*, Ury realized more than three decades after its publication that he had not accounted for the most difficult people with whom we negotiate – ourselves. The insights in this book, while broadly applicable to parties in a negotiation, are particularly apt for neutrals. The six tools Ury provides are simple, yet powerful, and deserve a place in every mediator’s toolkit. This article shares two of my favorites and describes how I have applied them in my practice.

As neutrals, we need to keep our emotions in check, and to do that, we need to recognize and manage them as they arise. Ury advocates using a kind of self-empathy to “put yourself in your shoes.” The specific technique to do this he calls “going to the balcony.” When you have an emotional reaction, step back to gain perspective, as if you are viewing yourself on a stage from the balcony. Once above the action, you can reach a place of calm and perspective. Another way to describe this interaction, to borrow a page from another of my favorite authors, Daniel Kahneman, is to move from the gut reaction of our lizard brain into the rational and objective analytic mind.

While it may seem counterintuitive to use the expression of putting oneself in the shoes of another in the context of oneself, empirical research supports the technique. Studies show we have many negative thoughts about ourselves throughout the day, such as questioning our ability to succeed at a given task. To counter this tendency, Ury advocates granting yourself the same empathy you would a party. After all, as mediators how often do we deal with people who don’t know what they really want? We are no different. Attend closely to what your thoughts and emotions are telling you, advises Ury, to uncover your underlying needs.

How does this work in practice? In a mediation, if I experience an emotional reaction – impatience, annoyance, even disgust – I know I need to go to the balcony. To do so, I stop and look down, keeping a thoughtful expression on my face. While I look like I am deep in thought, I take a deep breath from my diaphragm, and quietly and slowly exhale. This relaxes me and enables me to step back from emotional involvement. Instead, I label the emotion and acknowledge it, understanding why I am feeling it. Then I am able to put it aside and bring my focus back to the parties. I have found it does not take long to do this so long as I stay focused. Think of it as mental yoga.

This technique proved useful to me earlier this year when I was conducting an employment mediation. I found myself having a negative reaction to the senior management official, who struck me as arrogant and condescending. After going to the balcony, I realized I was stereotyping him from his manner and superficial attributes. Therefore, I changed what I was doing in the mediation and instead asked him how he felt about the claimant’s accusations. In response, he talked about how hurt he had been, and how he had valued the rapport he and the claimant had in the past. This moment was an inflection point in the mediation; it allowed the parties to connect as people. By the end of the session, the parties had built up enough goodwill that we had generated several options for their lawyers to work with, and the case settled the following week. If I had not caught myself, I would never have brought up the issue of the
manager’s feelings, as I was viewing him as a cold fish, and we might never have found that inflection point.

Another illustration comes from my volunteer work at the general district court/small claims court in Virginia. These are the speed dating cases of mediation, because they need to be completed in the 90-minute period before the trial docket is called, and that time period includes drafting a simple agreement and at least 10 minutes of paperwork (handwritten). I had a contractor-homeowner dispute in which the parties clearly did not like each other. Neither wanted to move, they had no intention of dealing with one another again and conveyed that any movement would be exhibiting weakness. I noticed I was feeling antsy because I wanted the case to settle. I went to the balcony – why was I feeling antsy? If they didn’t want to settle, so be it – it did not make me a failure as a mediator. I could take another case. Therefore, I told the parties we were concluding and wished them luck at trial. At that point, looking a bit startled, they asked me to wait, and one of them made a new offer. It was not accepted, and I started to wrap up again. The other party interrupted me to make a counter, which was accepted. Both parties thanked me profusely. All I had done was give myself permission to “fail” and it moved the needle. If I had just kept saying reasonable things to them to urge more movement in the numbers, we might simply have run out the clock.

My other go-to technique from the book is reframing, which Ury defines as the capacity each of us has to give a different interpretation or meaning to the situation. To illustrate, he goes to a quote widely attributed to Albert Einstein: “Is the universe a friendly place?” If we see it as hostile, we will arm ourselves to the teeth and react at the first provocation, unleashing a destructive spiral. However, if we see it as friendly, we are more likely to treat others as potential partners and avert destruction.

In every challenging encounter we have a choice between these two views of the universe: an adversarial (unfriendly) one in which there is a winner and a loser; or a collaborative (friendly) one in which the parties problem-solve together in ways in which both sides can benefit. The former scenario, Ury posits, arises from a fear of scarcity and we have to reframe the encounter to be able to seek ways to overcome that fear to move from competition to a cooperative interchange. That is not easy to do.

Ury describes circumstances where, despite parties dead set in unfriendly-universe mode, a negotiator can reframe the matter. He reminisces about an acrimonious high stakes dispute that had cost the parties enormously both in terms of money (millions of dollars of attorney fees) and personal grief. Ury went for a walk before the negotiating session and passed an exhibit of giant smiling Buddhas. His joy in viewing the statues put the heated conflict in perspective and inspired him with a simple phrase to start the negotiation. When one representative asked him why he had called the meeting, Ury responded, “Because life is too short! Life is too short for these mutually destructive conflicts that consume people and their families with stress, tension, and a huge loss of resources.” He reports that this opening conjured up the bigger connected picture and set a constructive tone for the successful talks that followed.

In my work, I have found that modelling empathic listening for the parties can sometimes precipitate reframing even in prototypically adversarial situations. In my former job as general counsel of a federal agency, parties to a regulatory proceeding would sometimes ask me to intervene before the case went to federal court. They wanted the opportunity to tell me why agency staff was wrong and should not continue the action. Agency staff, of course, were
completely opposed to even having a meeting, but were ready to say “see you in court.” I decided to hold such a meeting in one case because, although I was clearly not a neutral, there was enough respect for my position that I had an opportunity to broker an agreement that would be mutually beneficial.

I convened a meeting of all the parties, listened carefully to them and then reflected back their positions, asked clarifying questions and then asked each one what the most important issue was for them in this matter. I asked each to listen to the other and ask their own questions. The agency needed to make a point to the regulated community about the proper interpretation of its requirements. It did not need to levy a large financial penalty but just enough to make the point. The regulated entities did not want to be labelled as bad actors or pay a large financial penalty. As each understood the other’s needs, the situation became less adversarial and it became clear this was not a zero-sum game, particularly as each party acknowledged that its position entailed substantial litigation risk. I invited the parties to continue negotiations without me, and the parties settled, with both sides comfortable with the ultimate resolution. Notably, the resolution was not one that could have been ordered by a court.

It is not easy to see the universe as a friendly place when you are facing an irked regulator, or, for that matter, when you are that irked regulator. But it can be done. It can’t be done all the time, and certainly there are situations where the problem is binary and the law limits the available tools to sticks and not carrots. I do not want to oversell reframing. It’s not going to do away with the adversary system. We will still need courts, judges, and juries – because sometimes scarcity is real. But reframing can be a wonderful tool in many cases where scarcity can be overcome.

Although Getting to Yes with Yourself describes four other tools that I use from time to time, going to the balcony and reframing are my favorites that I go to again and again. For me, using those techniques serves as a humbling reminder that even as professional neutrals, we are subject to the same emotional states that can cloud our judgment as are the disputants. I believe that acknowledging them to ourselves, even while we guard against them, enhances our understanding of what the parties are experiencing, and enables us to be more effective mediators.

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