

Mediator Insights: Can You Hear Me?
Missed Opportunities in Mediation and Conflict Resolution

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Dr. Seuss' "One Fish, Two Fish, Red Fish, Blue Fish" offers a classic example of missed opportunities. Let me draw you a picture.

Visualize this: Two Dr. Seuss characters are standing back-to-back in a room. One is named Joe. We do not know the other's name. Each is holding a phone receiver up to their ear. The two receivers are connected by a cord, but a mouse has cut the cord.

Here's the dialog:

First character says: "Hello! Hello! Are you there? Hello! I called you up to say hello. I said hello. Can you hear me, Joe?"

Joe responds: "Oh no. I can not hear your call. I can not hear your call at all. This is not good and I know why. A mouse as cut the wire. Good-by!"

There are so many missed opportunities here that play out in everyday life, including:

- They are in a room together, but unable to look at or talk to one another.
- While they could technically hear each other, a third party – the mouse – interferes with their connection.
- They each get frustrated that the other is not listening to them, so they terminate the conversation.

How does this play out in mediation and conflict resolution? I will share a stark example.

I mediated a complex multiparty dispute in which one party had the data that the other parties needed in order to negotiate a settlement. Before I was involved, the party with the data (Party A) created electronic data rooms for each of the other parties (Party B, Party C, Party D). Party B and Party C accessed the data room, but Party D never did. Party D instead complained that they had not been given access to the data room. Party D was so insistent that they had not been given



access to the data room that they took Party A to court – more than once – asking the court to order Party A to grant access.

By the time the parties came to mediation, everyone was frustrated, there was a huge trust deficit, and a lot of animosity. Party D continued to insist that they were unable to engage in settlement talks without access to the data. Party A continued to insist that they had - multiple times - given Party D access to the data.

So, what did I do to bridge this divide? I asked that the people with technical knowledge from Party A and Party D sit in a room together, with me, and show me the data room for Party D. Guess what we discovered? Due a typographical error on the backend, Party A had been populating one data room for Party D, but the code that Party D was given to access the data room took them to an empty room.

A classic missed opportunity. In this case, due to simple human error. An error we discovered when we sat in a room together, sharing information, and eliminating the middle man so that we could hear (or in this case, see) what was really going on.

Once Party D had access to the data, we were able to move forward on the path to conflict resolution.

So how do you avoid missed opportunities? Stop, look, and listen.

Author's Note: As a mediator, I am a "forever student" always seeking new ways to help people find a path to resolution in mediation. As a parent, I have spent a gajillion hours reading books to my children. Oftentimes, these books teach me new ways to approach conflict resolution. In this case, Dr. Seuss' "One Fish, Two Fish, Red Fish, Blue Fish" inspired this post.