

## **“Empathy” at the Mediation Table---- Understanding another Person’s Point of View:**

### **A Fundamental Tool of Communication.**

**Judge William J Caprathe ( Retired)**

“Empathy,” when used appropriately is truly amazing. It strengthens and enriches our understanding of others, and enhances our ability to motivate them. Though there is no scientific way to measure the power of empathy, you can feel it when you use it, especially during mediation-type proceedings, when the opposing parties are frozen in their positions on opposite sides of the dispute.

A good analogy that has been used to describe an alternative-dispute-resolution proceeding is that the opposing sides are like two disagreeing people who have knives and forks tied to their arms, sitting on the opposite ends of a long dining table. The food they want and need is in the middle of the table. The only way for them to get any of the food is to use their knives and forks to feed each other. But they see each other as adversaries, and, especially when feelings and emotions are deeply involved, aren’t willing to make the first move. They need something to break the ice that is keeping them bound to their individual points of view.

“Empathy” is an excellent tool for moving the process forward, and for creating the best possibility of reasonably resolving a dispute. An empathetic neutral can step in, and by accurately understanding each sides’ perspectives, often break the stalemate. When the parties feel that they have been understood rather than judged, their positions become less exaggerated and defensive.

One of the definitions of “empathy” in *The American Heritage Dictionary of the English Language* is: “Understanding so intimate that feelings, thoughts, and motives of one are readily comprehended by another.” This certainly is a worthy goal when communicating with another person. Empathy is the result of the process the perceiver uses to accurately understand the point of view of the communicator. The three-step process discussed below, involves the perceiver trying to understand the other person’s point of view by putting themselves in the other’s shoes to view a situation or idea through their filter.

Using this process not only lets the communicator know they are understood, but also results in the perceiver developing a powerful and valuable tool for interpersonal relations, improving communication skills, and enhancing the ability to get things done through others.

Empathy is something we all practice to some degree. But if we are not aware of how we are using it, we may not get the best results. For example, when we listen to what a person is saying, we may agree or disagree in our own mind. If we disagree, we may be tempted to challenge their point in a judgmental manner. This reaction rarely loosens polarization of the parties, but rather amplifies it. To avoid this effect, we need to practice seeking empathy more conscientiously.

What follows is a three-step approach to building empathy. Like any skill, as we practice, it should become a more automatic habit that flows in a smooth, fluid sequence.

## Step 1

Start by **recognizing** that every person has their own personal, unique, individual filter through which they perceive reality. It is made up of their education, childhood training, attitudes, prejudices, and all their life experiences.

## Step 2

Next, **accept** the fact that everyone has their own unique filter and that this is an appropriate and good system. Allow other people the right to be themselves and see reality in their own way. You don't have to agree with or like the other person's point of view, but don't insist that they think exactly as you do. If you don't agree with what they are saying, hold your own reaction in abeyance. Don't make an adversarial response. You will then be ready to find out if you accurately understand what they are trying to communicate.

Steps 1 and 2 set the stage for moving past another's filter to get an idea of how their world looks.

## Step 3

There is a natural tendency to judge, evaluate, approve, or disapprove the statements of others. Even before they finish their statement, we may stop listening, and start forming in our minds our response. Resist this tendency, and after **intensely listening to everything** the person has said, **paraphrase** to them in your own words what you think they mean. It is crucial that you share your understanding, **nonjudgmentally**. That is, not agreeing nor disagreeing. This must be done carefully, not only avoiding judgmental words, but also being aware of your tone and voice inflection, and your entire demeanor. For example, don't use a tone of voice or posture that implies that their point is wrong or ridiculous.

Also, begin by showing that you have been listening carefully, and are non-judgmentally checking your own understanding for error. For example, "So what you are saying is ---," "It sounds like ---," "Correct me if I am wrong---," "What I am hearing is---," "So from your perspective ---," or "So you feel ---." Then, ask for acknowledgement. If they say you are wrong, ask them to please restate, and then paraphrase again, until they acknowledge that you have correctly understood them.

If the statement you need to paraphrase is highly confrontational, you may need to reframe it to alter its' connotation. For example, change a derogatory statement into something less confrontational: "You cannot trust a slimy pig like him," to "Sounds like you cannot depend on what he says."

But it is crucial not to change the statement's meaning, because your objective is to convey that you accurately understood the person. An accurate paraphrase allows the mediator to control the process and move the mediation forward without the parties having to make any concessions at that point. This will help the parties feel that someone has impartially heard and understood them, which reduces defensiveness. The reduction of defensiveness by one party can lead to the further reduction of defensiveness by the other party. Hearing the neutral accurately paraphrase both sides, could also help the parties better understand their own as well as the other side's perspective, and begin considering each other's interests instead of just positions.

Paraphrasing can be like an orchestra conductor's baton. If used correctly it can keep the flow moving forward. Use it on important points, emotional outbursts, and comments that may have various interpretations. When it appears that the trust of the mediator is low, more paraphrasing, with greater accuracy, is necessary. The same is true with statements of greater impact.

By conscientiously employing empathy as a tool, we will learn when and to what extent we need to paraphrase. This will strengthen and enrich the degree to which we understand the people with whom we are communicating.

We should practice empathy with our clients, employees, friends, spouses, children, etc. It does not matter what their religious or political persuasions are. We can use empathy in our relationships at home and away at the office, in court-rooms, in boardrooms, etc. The more we use it, the more our professional and personal endeavors will improve. Dale Carnegie, in his book *How to Win Friends and Influence People*, quoted Henry Ford, who said: "If there is any one secret of success, it lies in the ability to get the other person's point of view and see things from that person's angle as well as your own."

As empathy becomes a habit, our ability to relate to and motivate others will multiply tremendously.

William J Caprathe spent 15 years as a successful trial attorney before being elected to the Bay County Circuit Court in 1980. He served as a Circuit Court Judge for 30 years and was the Chief Judge from 1984 through 1997. In 1998 he was elected President of the Michigan Judges Association, and thereafter chaired the State Bar of Michigan's Judicial Conference.

Since his retirement at the end of 2010, he continues to sit on assignment, and conducts arbitrations and mediations. He has completed basic and advanced mediation training at both the National Judicial College and locally in Michigan. He is a FINRA arbitrator and a Community Resolution Center Board member and mediator.

He was appointed by the Governor to serve on the Michigan Appellate Defender Commission, and is Chair of the Criminal Law Section of the State Bar. He also serves on the Bar's Dispute Resolution Section's Council and the Bar's Access to Justice Committee. Nationally he is active in the American Bar Association's Judicial Division, National Conference of State Trial Judges, Senior Lawyers Division, and Dispute Resolution Section.

Judge Caprathe conducts private mediation and arbitration services through Michigan Judicial Alternative Dispute Resolution [MI-JADR PC], at offices in Bay City and Livonia. He is also an active member of the Professional Resolution Experts of Michigan [PREMi].