

Listening in at the mediation table: books that teach readers how to talk like a mediator

by Diane Levin on February 15, 2010

in Books for Mediators and Negotiators, Mediation Training

Challenging Conflict: Mediation Through Understanding, by Gary Friedman and Jack Himmelstein of the Center for Mediation in Law, is a mediator's playbook, with detailed descriptions – and, amazingly, transcripts – of each stage of the mediation process, from contracting to agreement. This book presents the “understanding-based approach of mediation”, a model of practice which controversially rejects the use of the caucus. It seeks to help parties understand their own interests and other perspectives more completely through direct dialogue, and stresses the importance of parties in conflict working together to make decisions and address the issues they face. It recognizes their joint responsibility for determining whether and how the dispute will be resolved, supporting parties in crafting solutions that are the product of fully informed deliberation. This model of mediation presents a radical departure from the mediation that lawyers and jurists are most familiar with, and will prove challenging, as the authors caution, to the disputants and to the many lawyers who are used to mediation as a kind of non-binding arbitration.

Across 10 case studies that involve a wide variety of disputes – from the San Francisco Symphony to a family-run ranch in South America – the authors walk the reader through the stages of mediation. Through the transcripts of dialogue that Friedman and Himmelstein provide, we hear the voices of parties and listen as the mediators, with patience, gentle persistence, and an abiding respect, help parties face emotionally charged conflict to find a sane, humane way out of the wilderness of their dispute. Friedman and Himmelstein illuminate their approach to the mediator's stock in trade, active listening – a technique they call “the loop of understanding”, and throughout the book demonstrate it repeatedly and masterfully, using it to propel parties and discussions forward. How they handle strong emotion in the mediation room may come as a shock to mediators used to caucusing; Friedman and Himmelstein never seek to contain or cut off emotional expression; instead they see it as an opportunity to take the dispute to a deeper level, locating and untangling its roots. One addition would make this book an even better resource than it is: an index, so that finding information is easier for readers who return to the book to revisit techniques or concepts.

One caveat: published jointly by the American Bar Association and Harvard Law School, this book is about mediating sophisticated cases involving legal issues and lawyers. The authors strive to “make the law people size”, ensuring that the law doesn't eclipse other issues, and enabling parties to use the law to inform not control their choices. Nonetheless, discussion of the law plays an integral part in this model of practice. Mediators uncomfortable about discussions about law and legal risk analysis may find the emphasis on the importance of having the “legal conversation” off-putting. The authors prefer to have that conversation first, ahead of discussion of other issues – although in one case the reader listens in as parties refuse, pushing the authors to reluctantly postpone the discussion of legal issues until later.

If such emphasis leaves you uneasy, be assured that *Challenging Conflict* is more than a text on mediating legal disputes. And whether you agree with the authors' approach to the caucus or not,

their emphasis on the human dimension to conflict makes this a book worth reading. The numerous transcripts throughout the book demonstrate the complexity and nuance of conflict and the artistry of the mediator's craft.

Although the case studies involve disputes over complex interpersonal and business issues, potentially intimidating for beginners, this is still a book with something to offer mediators at all skill levels, from the new mediator to the experienced trainer looking for resources for his or her students. The transcripts throughout allow readers to listen in to not just phrases or snatches of conversation, but to entire conversations between mediator and parties, so that readers hear how the mediator responds to what is unfolding in the moment, which gives a realistic sense of the ebb and flow of dialogue at the table. They offer numerous examples of "mediator speak" as the authors demonstrate their skills in helping people find solutions to the seemingly intractable problems they face. These detailed transcripts serve as the next best thing to being a fly on the wall in a real mediation.