

The Master Mediator

The Contagious Emotion: Gratitude Is Us

BY ROBERT A. CREO

Gratitude is the most exquisite form of courtesy.
—Jacques Maritain

No one who achieves success does so without the help of others. The wise and confident acknowledge this help with gratitude.

—Alfred North Whitehead

* * *

What is gratitude? Positive psychology views gratitude as an emotion, and not just an action embodied in expressing thankfulness. It is also a pro-social internal emotion that acknowledges the things external to us which are healthy and beneficial to our physical and mental being.

Gratitude can be a deep appreciation for someone or something that has lasting effect, and may also help people connect to something larger than oneself. It can include the appreciation of what is personally valuable and meaningful.

Prominent social scientist Robert Emmons states:

Gratitude has been conceptualized as an emotion, a virtue, a moral sentiment, a motive, a coping response, a skill, and an

attitude. It is all of these and more. Minimally, gratitude is an emotional response to a gift. It is the appreciation felt after one has been the beneficiary of an altruistic act.



Gratitude is core to faith and spiritual beliefs, with the religions of the Book (Christianity, Islam, and Judaism) embracing gratitude as a necessary virtue for a good and just life.

Buddhism views gratitude as connecting people with their pasts, and in conjunction with karma, propelling philanthropic and altruistic service. Hindus honor Sarawswati, the Goddess of Gratitude, Grace and Growth. Prayer is a common form of expression of gratitude among religious practices.

Whether gratitude is approached from a spiritual, social, or psychological perspective, there is consensus that it is essential for individual satisfaction and well-being, as well as for strengthening interpersonal and communal relationships.

Some synonyms for gratitude are acknowledgement, appreciativeness, grace, gratefulness, praise, recognition and thankfulness. Some antonyms are censure, condemnation, reprobation, and thanklessness.

THE SCIENCE

Gratitude implicates a number of concepts, including selfless action, reciprocity and “paying it forward.”

Gratitude can be contagious, which is a huge benefit in the mediation room. It can serve as a catharsis that permits people to “let it go” and move onward. This is the proverbial “venting” touted in basic mediation training as a core element of alternatives to litigation—a procedure that suppresses feelings and other irrelevant evidence.

Gratitude may form a core element of a disputant’s identity, which drives major decisions.

MEDIATION ROLE

Acts of gratitude are integral to apology, making amends, forgiving, reconciliation, and closure. Therefore, expressions or actions of gratitude may spur reciprocity and create a pattern of proposals or concessions to move the substance of the dispute closer to resolution.

In addition, people may self-identify with gratitude as a character strength, virtue, or core faith-based belief that motivates and guides conduct.

When participants voice gratitude, mediators must empower them as part of the self-determination dynamics of holistic decision-making present in the process.

Gratitude is intertwined with hope and optimism, which are core platforms for successful mediation. See Robert A. Creo, “How
(continued on next page)

THE THEME

Master Mediator Columnist Bob Creo is in the midst of a long-running series on emotions in mediation. Emotions are present in all participants in a mediation session, including the mediator. The dynamics of the overwhelming majority of litigated cases and interpersonal claims involve negative emotions. Many of these columns have focused on the negatives. (You can read these columns with a subscription at <http://bit.ly/1BUALop>.) But in more than three decades of serving as a neutral, notes Creo, there have been bright and shining moments of joy, serenity, hope, gratitude, grace, humility, kindness, humor, and cheerfulness. The examination of positive emotions continues here with a focus on gratitude.

The author is a Pittsburgh attorney-neutral who has served since 1979 as an arbitrator and mediator in the United States and internationally handling thousands of cases. He conducts negotiation and decision behavior courses that focus on neuroscience and the study of decision-making. He is annually recognized by Best Lawyers in America and was named in both 2017 and 2014 as Pittsburgh Mediator of the Year. He is the author of numerous publications, including “Alternative Dispute Resolution: Law, Procedure and Commentary for the Pennsylvania Practitioner” (George T. Bisel Co. 2006). He is the principal of Happy! Effective Lawyer (www.happy.lawyer), an initiative focusing on lawyer contentment, soft skills, and peak performance. He is a long-time member of Alternatives’ editorial board and of the CPR Institute’s Panels of Distinguished Neutrals. His website is www.robertcreo.com.

The Master Mediator

(continued from previous page)

Hope Can Confront Even the Most Hellish of Problems,” 35 *Alternatives* 163 (December 20017)(available at <http://bit.ly/2Gs8OJg>).

Expressing gratitude can also be integral to apology, forgiveness, and reconciliation. For the apology to be complete and the building block of a future relationship or closure of past grievances, the receiver should extend acknowledgment and thanks to the apologizer. The giver should be grateful that the apology is accepted and that the relationship and interests are being furthered in a positive manner.

GRATITUDE IN ACTION

I witnessed one of the most effective expressions of gratitude in mediation in a medical malpractice case in the University of Pittsburgh Medical Center case resolution program developed a few decades ago by the center’s general counsel and risk managers.

My late colleague, former Pennsylvania state court judge and renowned mediator David Ward Murphy and I helped establish the program and mediated the first few dozen claims successfully to resolution. It was common practice for defense advocates to express appreciation and gratitude to the attorneys and claimants for participating in the mediation process.

Attorney Richard Kidwell was hired specifically to process claims via an expanded mediation initiative. Rick—who is UPMC’s senior associate counsel and vice president of risk management—has been extremely effective in resolving complex claims in mediation

using a humanistic approach.

One extraordinary exchange occurred in the initial joint session of a serious claim involving a young woman of color. After she provided her narrative of how she had been affected by the alleged acts of malpractice, Rick sat across from her, looked at her directly in a compas-

Giving Thanks

The positive emotion examined here: Gratitude.

The aspiration: Mediation processes, actions, results and outcomes recognize and promote appreciation, which in turn invokes empathy and better settlements.

The bottom line: Gratitude is central to effective decision making.

sionate rather than threatening manner.

He said something to the effect that he was grateful and appreciative of her courage in speaking in room full of older, professional people so unlike her, and how this must be frightening and stressful. He acknowledged how hard it is to put forth a narrative which may be judged by others who hold economic sway over your life.

This, Rick continued, places people in a vulnerable position and exposes them to potential rejection. He smiled and ended simply, saying, “You did great. Thank you.”

The plaintiff visibly relaxed and smiled

back and thanked him.

My day as mediator was easy from that point forward. All departed with sincere smiles on their faces, especially me.

At our best, mediators foster attitudes of forgiveness, gratitude, and grace that can lead to reconciliation, or settlement, that closes the case by the hands of the participants. Our job is their accomplishment

This is what we mediators do. This is us.

SUMMARY AND CHECKLIST

Here is a brief checklist for the practitioner.

1. Gratitude, even if expressed as a vulnerability, can be a strength.
2. Gratitude should be sincere and not be self-aggrandizing or a strategic tool.
3. Gratitude shows respect for the other participants.
4. Gratitude begets gratitude, and furthers a positive atmosphere for constructive dialogue.
5. Gratitude and apology go hand-in-hand. ■

SOURCES AND ADDITIONAL READING

- Robert A. Emmons and C.A. Crumpler, Gratitude as a Human Strength: Appraising the Evidence, 19 *J. Social and Clinical Psychology* No. 1, 56 (2000) (available at <http://bit.ly/2DGuaB1>).
- M.Y. Bartlett and D. DeSteno, Gratitude and Prosocial Behavior Helping When It Costs You. 17 *Psychological Science* No. 4, 319 (2006)(available at <http://bit.ly/2FrPoTP>). ■

Mediation

(continued from front page)

deal was that Defendant A would give to the Plaintiff certain evidence against Defendant B, my client, that had not come out in discovery.

Parenthetically, note that the Plaintiff and Defendant A do not trigger these ethical questions if they announce that they see no chance of an overall settlement and are going home—without disclosing that they intend to start separate negotiations.

Of course, that leaves open the question whether, if they later ask the mediator to broker a deal between the two of them, the mediator can take on that assignment without notifying Defendant B that he or she is doing so. More about that below.

QUESTION 1: APPLICABLE PRINCIPLES

Answering Question 1 depends upon resolving tension between Standards V.A (“Confidentiality”) and VI.A.4 (“Quality of the Process”) of

the Model Standards of Conduct for Mediators. Standard V.A provides:

A mediator shall maintain the confidentiality of all information obtained by the mediator in mediation, unless otherwise agreed to by the parties or required by applicable law.

If the Plaintiff and Defendant A instruct the mediator not to disclose to Defendant B that they have begun separate negotiations, the standard would appear to be a clear prohibition