

Good Mediators Never Give Up

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One thing I have learned over and over again as a mediator is to never give up. Many is the case where both sides are convinced it is not going to settle. An effective mediator keeps scouring the landscape of facts, party positions and assumptions, positing what if scenarios, managing and (when necessary) massaging egos, hearts and frayed nerves and scrutinizing every detail that may move a position however imperceptibly.

When there is no apparent end in sight, a good mediator remains true to the immediacy of the process, the heart of, the here and now of the mediation.

Sometimes, it is that one last piece of documentation or twist on a piece of testimony that breaks the impasse after what felt like half a day of banging ones head against a wall. Then, like a mirage at first, the settlement slowly comes into view. When a deal finally emerges, it is unlikely there will be any happy litigants. Rather, it will be an agreement that everyone can live with. Satisfaction may come later as the case recedes into the distance taking with it the attachments and sense of solidity that dominated the parties consciousness for months or years.