

Dicta

"Doing the Math: Alleged Murder Adds Up Numbers and Comes Out Ahead"

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Nothing in my mediation training prepared me for being left alone in a soundproof room to caucus with an alleged murderer. It was a court-assigned false-imprisonment civil action brought by a former prisoner against the city that incarcerated him. The parties had been ordered to mediate through the court's mediation program, and the case was assigned to me by chance.

The mediation took place in a jury room in an urban courthouse. Ten minutes into it, I broke the cardinal rule of mediation. I prematurely concluded that the plaintiff had been wronged, and it was just a matter of how much the city would have to pay to settle the claim. I was at the beginning of my mediation career, and still in the process of "retooling" from the litigator's mindset (the client is always right) to the mediator's mindset (right and wrong are irrelevant and the mediator acts as a neutral facilitator of settlement).

The plaintiff was a poor minority youth who had been charged with the robbery and murder of three people at an automatic teller machine near his home. His brief indicated that he was upset at being incarcerated for nine months pending trial, unable to make bail for a case ultimately without merit. The brief also indicated that he was acquitted easily; the prosecution had not produced a single witness against him. I was immediately sympathetic with his side, and was not surprised that he was now seeking \$1 million in compensatory damages.

The city's brief, however, told a different story. According to the defense, both the plaintiff and his father were gang members. The father was also involved in the crime and the prosecution's witnesses didn't appear at trial because they had all been threatened and intimidated by the plaintiff's gang. The city was appalled that the plaintiff had the temerity to demand compensation, and adamantly refused to offer him even a dollar.

In caucus in the jury deliberation room, the plaintiff's lawyer took a hard-nosed position. He argued that his client had been deprived of nine months of his youth at the hands of a callous, blundering, racist bureaucracy. The plaintiff mutely listened. Suddenly, his attorney looked at his watch and bounded out of the room, explaining that he had to make an important phone call. He urged his client and me to continue our efforts to settle.

Suddenly, I found myself alone in a presumably soundproof jury room with the plaintiff. Unaccustomed as I was to conversing one-on-one with alleged murderers and gang members, and wanting to make sure the plaintiff's hands were visible to me at all times, I handed him half of a tuna sandwich I had tucked away in my purse and plunged in.

"You have asked for a million dollars to settle this case. I'm sure the time you spent in prison was very difficult. The city is outraged that they had to go to the trouble and expense of taking you to trial, only to be thwarted by gang intimidation of all of the

witnesses. The city refuses to pay you anything. They say you've already gotten away with murder."

Being a "businessman," he carefully considered what I said and asked whether I could get the city to pay him anything at all to drop his million-dollar claim.

In My caucus with the city, I related the plaintiff's offer to drop his case for a token sum. The city's attorney was amazed and, due to the expense that would have been incurred defending the suit, agreed to offer a nuisance-value settlement of \$1,000.

I relayed the offer to plaintiff, wondering how many ATM robberies one would have to participate in to net \$1,000. He had obviously done the math too. He accepted the \$1,000 without hesitation.

by: Deborah Rothman

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