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#BlackLivesMatter and conflict resolution

A trauma-informed approach to mediating claims of race discrimination

By Angela Reddock-Wright

A claim a manager used derogatory slurs against a Black employee. A claim that co-workers hung swastika symbols in the office and spoke favorably about the KKK and white nationalist organizations. An allegation that a manager spoke negatively about and compared Muslim employees to terrorists. A claim by a longstanding Black employee of unequal pay, micro-aggressive behavior by her boss, and being passed over for multiple promotions.

This discussion is particularly fraught in today's environment as companies and organizations are grappling with issues similar to these. These issues are ignited by the impassioned Black Lives Matter movement stemming initially from the death of Trayvon Martin, and now spurred by the recent deaths of George Floyd, Breonna Taylor, Ahmaud Arbery and others.

The discussion becomes even more critical set against a backdrop of the COVID-19 pandemic, unprecedented heat waves across the nation, the threat of Sahara dust storms, and the invasion of our cities and towns with murder hornets. For many this is an exciting time where transformational change regarding institutionalized racism looks possible. However, for others, the feeling is just the opposite. Among other things, they feel their civil liberties are being violated for being required to

wear masks at work and in public, along with anger over BLM, the protests, and a seeming loss of everything that they associate with being "a true American."

Recent incidents have brought light to the pain and fear many Black people have had for years, but have been afraid to express because it may make them look weak, it may cause others to look down on them, it may cause bosses and colleagues to depict them as angry and as having a chip on their shoulder, or just a feeling of "You need to get over it."

The current environment has given rise to new discussions about race in the workplace and has led to an increased number of both internal and civil complaints of race discrimination by Blacks and other employees of color. It has led Black and other employees of color to reflect on their experiences in the workplace and to question whether the job they were not hired for, the promotion they were passed over for, the salary increase they did not receive, the leave they were denied, the mocking of their culture by their co-workers, the lack of support they received from their boss, or their termination was the result of micro-aggressive and race-based discrimination in the workplace.

Rather than look pass or file previous experiences and feelings of race discrimination in the "Do Not Disturb" file, many Blacks and other employees have felt empowered to speak out and to seek justice for the

perceived wrongs against them.

As claims of racial discrimination and harassment continue to rise, the question becomes:

- How should employers seek to respond to these complaints in a way that brings about transformational change in the workplace?
- How can employers respond in a manner that shows their commitment to discrimination and harassment-free work environments that are built on principles of diversity, equity and inclusion?

Ultimately, many of these claims will make their way to mediation, either pre-litigation or during litigation. The question then becomes:

- What is the role of the mediator in such cases?
- How can the mediator help frame the discussion in a way that allows the parties to reach settlement, but that also gives credence to and shows empathy for any deep embedded feelings of marginalization and disenfranchisement the employee may have?

- What is the role of attorney advocates? Should attorneys care about transformation and reconciliation through the mediation process and encourage their clients to do the same?

I submit to you that we all should care — whether we are clients, advocates or mediators. One way to begin to think about mediating claims of race discrimination and the transformational process is to consider a "trauma-informed" approach

to mediation and conflict resolution.

What Is a Trauma-Informed Approach?

The idea of a "trauma-informed" approach is not new. In fact, it often is used in the treatment of patients in the medical and psychology fields. It also is a cornerstone of the training for workplace and Title IX investigators. In addition to my work as a mediator and arbitrator, I also conduct workplace and Title IX investigations. In this work, I am trained to be trauma-informed in my approach to interviewing claimants and witnesses, particularly those who allege to have been victims of sexual harassment, assault and misconduct.

I believe the medical and health services profession has one of the better definitions of a "trauma-informed approach": "When the care we provide is informed by a basic knowledge of how traumatic experiences and traumatic stress may impact the people we are serving, many things are likely to turn out better."

Referencing the July 30, 2018, blog titled "Trauma-Informed Interviewing in Workplace Investigations," from the well-regarded workplace and private investigations firm Public Interest Investigations, Inc., their expert psychology resources define the word "trauma" as: "the unique individual experience of an event or enduring condition, in which the individual's ability

to integrate his/ her emotional experience is overwhelmed, or the individual experiences (subjectively) a threat to life, bodily integrity, or sanity.”

How does this translate to the world of mediation and conflict resolution, particularly in the context of employment and workplace claims? To be trauma-informed in this context means to acknowledge that each individual claimant comes to the mediation table with a unique and individual set of experiences, often associated with a traumatic event or enduring condition from their lives, which often impacts their emotions and shapes how they see the world and what happens to them in their world, including in their workplace.

The mediator and advocate who is trauma-informed recognizes this and thus, approaches the mediation and negotiation process from a place of empathy and sensitivity to the underlying issues that influence how the claimant sees the world and the circumstances that brought them to the mediation.

Being trauma-informed means that while we may not have the same background or experiences as the claimant or person we are sitting across the table from, that we are sensitive to the person’s experiences and that we see getting to the heart of those experiences as a critical part of the mediation process. This includes historic experiences embedded in deep seeded feelings over the racial history of this country and the western world.

What are some key steps we all can take to become more trauma-informed? In our work

as workplace and Title IX investigators, as discussed in the Public Interest Investigations blog referenced above, we are trained in the Forensic Experiential Trauma Interview approach to being trauma-informed. The FETI method was developed by Russell Stand, formerly a senior special agent in the United States Army Criminal Investigations Command. FETI was designed especially for interviewing traumatized individuals.

The FETI approach recognizes that when a person is traumatized, his or her ability to recall information is changed. Typically, we approach people from their “cognitive brain — the thinking brain or prefrontal cortex.” But when a person has gone through a traumatic experience or set of traumatic experiences, their cognitive brain tends to shut down and the more “primitive brain” takes over — one based on stored-up emotion, feelings, and recollections.

Borrowing from the FETI method, a trauma-informed mediation and negotiations approach will focus more on process and less on hardcore, evaluative negotiations and settlement. Of course, settlement is the ultimate goal and this goal should never be lost in the process. However, a trauma-informed mediator and litigants, attorney advocates especially, understand that more often than not, that for the claimant in a race discrimination case, the mediation is not just about “dollars and cents.” It is also about creating the time, space, and opportunity for that person to tell his or her story and to seek acknowledgment and validation for what he

or she is feeling and the he or she has had.

Although not popular in today’s mediation processes, in some instances, achieving this transformative goal may include a return to the joint session, if not at the beginning of the day, at some point in the day. Depending on the nature of the mediation, there may be value in bringing the parties together in the same room at some point in the day and allowing the claimant to sit eye-to-eye and across the table from the CEO or another executive or leader in the company, sharing his or her story, and having that person acknowledge, without pretense or pride, the impact racial and other issues may have had on the claimant, along with a stated commitment to do better going forward. Such a process may include an earnest apology. It may include a settlement that involves a commitment to new policies, practices and training going forward. Beyond the dollar settlement itself, the trauma-informed mediation process will include the opportunity for both employer and employee to experience a moment of transparency and transformation that begins to edge away at some of the racial hostilities in this country and felt by the claimant, even if just for the moment.

Above all things, remember that effective mediation requires experience, ongoing education and an awareness of how personal experiences have shaped biases and beliefs. An open, facilitative approach to the mediation process will invite clarification of issues and expectations.

Violence, hatred, and racial tension are abhorrent, but an

unfortunately all-to-present factor in our society. While mediation should never be considered an easy solution for resolving racial or cultural disputes, it may be a useful option as long as it includes a trauma-informed and intracultural approach to conflict.

No matter who the parties are on both sides, we must convey a sense of understanding, empathy, and a willingness to understand. Granted, we cannot learn every culture at its deepest levels or fully engage in the culture of every single person that may come before us, but we can challenge ourselves to commit to seeing people as humans. We can commit to managing our own biases and micro-aggressive behavior. And most importantly, we can all commit to and engage in a collective understanding and embracing of the trauma that Blacks and others in this country have experienced and use that to help conduct successful mediations, negotiations, and other conflict resolution processes. ■

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