



Fall 2010 • Issue No. 25

The Mediation Group

N E W S L E T T E R

MEDIATION • ARBITRATION
ORGANIZATIONAL PRACTICE • TRAINING

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Dear Clients, Colleagues and Friends,

More results to report of TMG on the move. Our last newsletter, celebrating our 25th anniversary, told you of our planned ventures in China. In June, David, Jane, Amy and I traveled to Beijing. The principal reason for the trip was to participate as judges of the 2nd Annual English Language Negotiation Competition for Chinese law students, an event TMG also co-sponsored. The competition was most impressive – the students from across China were bright and amazingly quick studies, their command of English striking. Our fellow judges – Chinese law professors, arbitrators and some international lawyers and business types – were enthusiastic colleagues. While in Beijing, we also demonstrated American-style mediation to a gathering of law school students and teachers at the Beijing University Law School – Amy and David stole the show as quarreling disputants in a family business case.

Our Chinese connection continues. David stayed on for 3 weeks as he taught a Negotiation course at Jilin University, and a Human Rights course at the Northeast University. While there, he sent dispatches home – we have included a few morsels from his observations to give you a taste of the experience. As part of our sponsorship of the competition we had offered the winning team a two-week trip to the U.S. That trip takes place in late March/early April and will give the students opportunities to see Boston- area legal institutions, universities and ADR in action. The winners are a delightful pair; the painfully close, second place finishers, another delightful pair, were so disappointed that they worked to put together their own funding for the trip over. We responded by expanding our hosting offer to include them as well. It should be an exciting time for these students, our colleagues here who already have offered to open their doors, and us.

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Other pieces in the newsletter show our expanding horizons. The first carries our happy announcement that the Hon. Isaac Borenstein (ret.) joins our panel of neutrals. He adds one more impressive career and set of skills to our team. In a second piece, Jane describes an example of interesting work, for which we are seeing significantly more cases — adult sibling disputes. She describes some of the difficulties in one such case, and how our approach at TMG opened the doors to a resolution. Katie, whom we have persuaded to be a

regular contributor, reminds us to keep our work in proper perspective while giving us a slightly different spin on the important connection between food and dispute resolution.

Finally, Eben Weitzman, the head of our organizational unit, gives a substantive outline of a comprehensive approach to conflict within organizations. The goal of that work, for which he gives a few illustrations, is to transform contentious groups into collaborative teams. — *Brad*

ANNOUNCING...

We are delighted to welcome The Hon. Isaac Borenstein (Ret.), who has recently joined TMG to conduct mediations, arbitrations, and case evaluations. Judge Borenstein was an Associate Justice of the Superior Court from 1992 until 2008 and on the Lawrence District Court from 1986 until 1992. He is currently Of Counsel at Rubin Weisman Colasanti Kajko & Stein, LLP in Lexington, MA, a general practice law firm where he handles civil, criminal, family law and probate matters.

During his sixteen years on the Superior Court, Judge Borenstein was known as a skilled and respected mediator, able to resolve hundreds of civil and criminal cases. His areas of expertise include complex business disputes, wrongful death actions, employment law issues, personal injury cases, medical malpractice, trust and estate matters, probate and family issues and civil rights claims. He is also interested in the potential of expanding mediation to criminal cases. We are looking forward to working together on a bridge between ADR and restorative justice.

In addition to his private law practice and time on the bench, Judge Borenstein has many years of law school teaching experience. He has been a Lecturer in Law at Northeastern University School of Law since 1985 and an Adjunct Professor at Suffolk University Law School for almost 10 years. He has taught full-time at Northeastern University School of Law, The New England School of Law and in the Clinical Program of Harvard Law School.

Judge Borenstein has served on a variety of boards

and committees, including on the Board of Suffolk Lawyers for Justice and the Council of the Boston Bar Association. He was a founder and the first President of the Massachusetts Association of Hispanic Attorneys. He has participated in many continuing legal education programs for lawyers and judges. Judge Borenstein has also led several missions to Cuba for educational and religious purposes.



Judge Borenstein has been presented with the highly regarded Haskell Cohn Award for Distinguished Judicial Service from the Boston Bar Association (2001), the Lifetime Achievement Award from the Hispanic National Bar Association and the Massachusetts Association of Hispanic Attorneys (2008), a Leadership Award for work as Chair of the Trial Court Committee on Interpreter Services from the National Center for State Courts in Williamsburg, VA (2003), and the Cornelius J. Moynihan award for Excellence in Teaching (2007), among many other honors and awards.

Judge Borenstein is a native of Havana, Cuba, and fluent in Spanish. We are pleased to be able to offer his services to our Spanish-speaking clients who can benefit from direct communication with their mediator, without having to rely on an interpreter.

TMG looks forward to enhancing its panel of neutrals with Judge Borenstein's skills, experience and reputation as a judge, law professor and trial and appellate attorney. ■

Conflicts Between Adult Siblings

by Jane Honoroff



It wouldn't surprise me if you or someone you know has been through a difficult conflict with an adult sibling. The conflict may involve the need for shared caretaking of an aging parent. It may involve shared usage of a family vacation home while the parents are still alive. Or it could even involve stress and disagreement around planning for a parent's 80th birthday. Often we see these conflicts after a parent has died either without a will or with a very general will stating that all assets are to be divided equally between the children.

Only problem is, how each adult sibling views "equal" is often not the same. Are we talking about liquid assets, property, time spent on handling all the aspects of elder parent care before the death, or subsequent details handling the estate after death? Do different siblings have different attachments to particular belongings, or to real estate? Did the parents financially support one of the siblings while alive and if so, how do the other siblings account for those distributions of assets prior to the death of the parent, especially when the parents assured the other family members that these were in fact loans against future inheritance, but neglected to tell that to the sibling who was in need of cash? And perhaps most contentious of all are all the issues that get stirred up when there is a beloved vacation home that is to be "shared".

Mary and Paul came to us after their mother's death 6 months before. They had very different financial realities. Mary and her husband were well off, had two children ages 10 and 12 and lived in a Massachusetts community on the South Shore. Paul, who was four years younger than Mary, lived in Vermont with his partner Tom and Tom's 8-year-old daughter, Eva. Paul and Tom did not have a regular income. They both worked as waiters or handymen, whatever work they could get. Although Paul had enjoyed the Cape house their parents bought when he and Mary were children, he no longer enjoyed spending time there. He said the house was located in a homophobic community and he and Tom did not feel welcome. At first glance there appeared to be a simple solution. Mary and her husband could buy out Paul's half and all would be well.

But not only could Mary and Paul not come close to a buyout cost, but in fact Paul was refusing to sell (unless the price was right), wanting to make a statement to the neighbors about what he felt was their blatant discrimination. He and Tom also felt disapproval from Mary and her husband with regard to their lifestyle, especially in their attitude about Eva, whom Paul considered his own child. Paul wanted to get an equal share of Mom's jewelry for Eva, which Mary refused to go along with, stating that she wasn't a "real" granddaughter.

The sessions were very tense. Mary and Paul could not stand being in the same room together. When alone, Mary and her husband admitted that they did not like Tom, but insisted it had nothing to do with homosexuality. Mary said she knew about Paul's homosexuality since he was a little boy and in fact had tried to advocate on his behalf to their parents. Their father was enraged about it and their mother was in avoidance mode forever. But they felt Tom was a bad influence on Paul, making him even more irresponsible

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than he already was. They also did not like Eva who they felt was overly sexualized and exhibited out of control behavior whenever she was around their two children.

Paul and Tom knew they could make good use of the extra money they could get if they sold Paul's interest in the house, but they were unwilling to let go of the plan they had to make the neighbors deal with their lifestyle choices. They also imagined a large income from weekly rentals during their allotted time. When at the Cape they threw big, noisy parties, partly because that was what they liked and partly to annoy the neighbors.

The present system of splitting the summer, each having one month of high season access, was not working at all. Nor was the splitting of responsibilities or costs or decisions about improvements. They also all knew the costs of going to court were prohibitive and feared the judge would probably force a sale which no one wanted.

In the end the breakthrough happened on the emotional front. Our decision to have Mary and Paul speak to

each other alone worked well. In the context of the safety and support provided by the mediation, Mary was able to tell Paul clearly how hard she had worked with their parents to accept his sexual orientation. This was news to Paul and made a huge difference in his being able to let go of his "neighbor antidiscrimination campaign". Once some of the hot emotional issues got talked out the logistics were

much easier. Paul agreed to a buyout and Mary agreed to let Paul have the house for two weeks a year rent-free. They also looked into helping Paul and Tom fund a time-share in Provincetown which was where they truly wanted to be.

Many families get through childhood with

unexpressed conflicts that then simmer for years, get displaced in other arenas and ultimately explode after the death of the parents who, for better or worse, kept the old system afloat. Mediation, especially a co-mediation model in which there is a combination of an attorney and a therapist mediator, can be enormously helpful in sorting out some of these old issues. ■

Many families get through childhood with unexpressed conflicts that then simmer for years, get displaced in other arenas and ultimately explode after the death of the parent.

KATIE'S CORNER

Coffee and Donuts

By Katie Cotugno

Last year at this time, I told you all I wasn't interested in the law. While that continues, happily, to be the case, I must confess that recently I've begun to think more about my long-term career goals, and the skills I might have that will get me where I want to go. I've been at TMG since the summer after college, and I suspect I've picked up more in my time here than a 3PM hankering for cheese and crackers so predictable you could use it to set your watch.

In fact, the days I've spent at 3 Harvard Ave. have led

me to a pair of incontrovertible truths: 1) that I, too, am a gifted resolver of cantankerous disputes, and 2) that by hiding the phosphorescent light of my problem-solving abilities under a bushel, I'm doing a considerable disservice to the population at large. Why deny the world the spoils of my genius? How in good conscience can I allow others to wallow in the darkness of unresolved conflict while I mainline reruns of *Keeping Up With the Kardashians* and compulsively refresh the news feed on my Facebook page, basking in the cozy glow of my general brilliance?

No more. Ladies and gentlemen, I'm proud and excited to share with you my newest venture, guaranteed to bring speedy resolution to even the thorniest disputes facing the good people of the Commonwealth today.

I give you: *Coffee and Donuts Consulting, LLC*.

We here at Coffee and Donuts Consulting (CDC) are proud to be at the forefront of the Alternative-Alternative Dispute Resolution field. Founded in 2010, we're the first AADR provider to render decisions subject entirely to the whims of a neutral whose illustrious qualifications include a BFA in Writing, Literature, and Publishing and an unshakeable confidence in her own rightness.

The process is simple. Clients step into my office, pay a flat fee of fifty bucks, and describe their conflict in the time it takes me to drink one cup of coffee – at which point I declare a winner, hand each party a donut, and say, “You're welcome.”

Amazing, no?

The decision is made based on a number of factors, including but certainly not limited to the temperature-humidity index, whether or not I'm wearing comfortable shoes, and the relative physical attractiveness of the parties involved. We are easily swayed by flattery and fruit baskets. We do not like people who are rude to receptionists. Other than that, you never can tell which way the wind will blow.

Verdicts at Coffee and Donuts Consulting are swift and absolute; we don't let annoying things like people's feelings get in the way of providing helpful and effective solutions to their problems. We cannot abide crybabies.

Win or lose, everybody gets a delicious donut, and if that's not enough to make you happy in this life then we probably don't want you as a repeat client anyway. There's a reason we require pre-payment.

“You know,” my boyfriend said at the conclusion of CDC's first investors' meeting, where he was presented with both a comprehensive business plan and half a dozen bear claws, “this actually isn't the worst idea I've ever heard. You do have a certain enthusiasm for judgment –”

“It's practically my middle name!”

“– and really we're talking about a low-risk initial investment.”

“Mostly just the donuts,” I agreed.

“There would need to be some kind of insurance or something,” he continued thoughtfully. “Like how if you go bungee-jumping you have to sign a waiver saying you understand you're taking your life in your hands and promising not to sue if you splat on the pavement.”

I sat up very straight. “Are you comparing the services offered by Coffee and Donuts Consulting to splatting on the pavement in a bungee-jumping accident?” I demanded. “What *exactly* are you trying to say?”

“Uh,” he replied. “Nothing? I'm just suggesting—”

“You should watch how you speak to me in the future,” I advised. “I'm founder and president of the Commonwealth's premier AADR organization. I'm very powerful, and very good at what I do.”

Boyfriend nodded. “I'll keep that in mind, thanks.”

“You're welcome,” I told him. “Here, have a donut.” ■

China Diary

by David Matz

Following are a few excerpts from David's observations while in China. Let us know if you'd like to read more. We'll be happy to forward additional excerpts. — Amy (agordon@themediationgroup.org)



IN BEIJING: The major event of our stay so far has been the Negotiation Competition for law students. We ran one a year ago and this one doubled the number of law schools involved. The project is the brainchild of Andrew Lee of the Beijing Law Faculty. The Mediation

Group is a sponsor this year (along with UMass, USAID, the Peking Law School, and the Mass Council of Judges), offering a first prize of a trip to the States. Brad, Jane and Amy are here as are several Chinese law professors and a few ex-pats, serving as judges in the competition.

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Again it was a great success as measured by the amazing quality of student performance, student enthusiasm, and the zeal of the Chinese law professors to encourage their law schools to teach negotiation (the real goal of the competition). There is a small body of writing that talks about the difference between American and Chinese negotiating. The literature sees substantial differences, but in this competition almost none of that appears. The only example of a negotiating move that would not have occurred in the States was the great importance given in one role play to Traditional Chinese Values. It was negotiable in the sense that implementation of such values might be fiddled with, but there was an assumed centrality and an agreed on meaning to this idea for which I could not find an American equivalent.

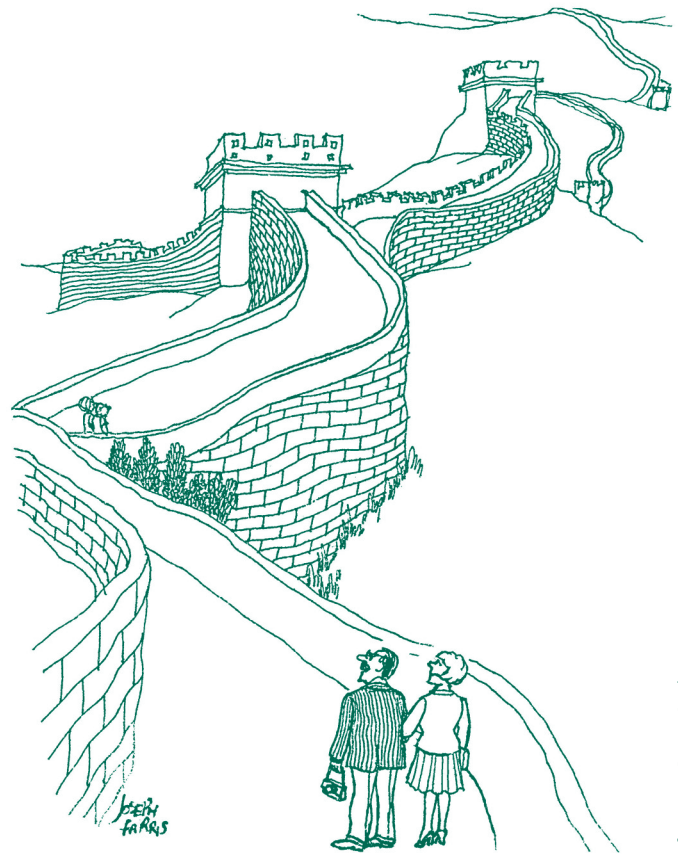


TEACHING LAW STUDENTS: The students we have met (law students mostly; and law school comes right after high school, so they are around 20) have been striking in several ways. They have been amazingly eager to learn, and quite direct about it. They seem to exude an innocence which may be all illusion but is still quite direct. They are very career oriented, no surprise, and quite focused. When I have asked what novels they have read or what novelists they can recommend, I have gotten blank stares. They don't know or care about fiction, though one said he had read Jane Austen and Jane Eyre.



IN JILIN: *Guanxi* is translated literally as relationships, but means something between connections and pull. In the wild-west atmosphere of the new commercial world, *guanxi* is constructed daily from scratch. The traditional use of the term, however, connotes long-term family ties, networks from childhood, and strong class affiliations. For my students, primarily from smaller communities and now considering where to seek jobs, *guanxi* is primarily seen as the mechanism by which insiders both keep their own status and keep the outsiders (these students) out. There is room to advance for even the peasant boy from the farm, but for the

academic elite the expectation of that advancement is limited. Some students, therefore, when asked for the most pressing problem in China say that it is the uncertainty of not knowing what they will do after graduation. Rising to the top in China “is not like the American dream” and is not even part of their hope. For many people, earning lots of money is the goal; for the academically gifted, at least for now, money feels like an inadequate goad to do lots of work. They are not ambitious for money, adventure, or challenge. They want stability: in one class of 22, four want to be lawyers; the others want to be government officials and judges, career lines that are valued as predictable, respectable, stable, and just a bit dull. (They are career lines that one must choose right after graduation.) When asked why so few want to be lawyers they say that it is too “unreliable.” ■

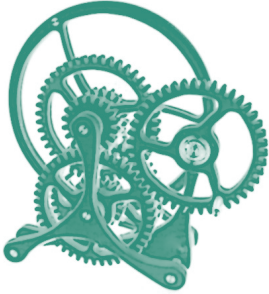


“We need something like this back home between us and the Mittlebeelers!”

With permission from www.CartoonStock.com

Pathways to Collaboration: A Comprehensive Approach to Organizational Conflict

by Eben Weitzman



The Goal: Transforming contentious groups into collaborative teams.

Conflict within workgroups and organizations is rarely simple. Organizations provide structures and processes within which work takes place, and within which the relationships among the people who do the work exist. Often those structures and processes, as much as the individuals who live and work in the organizations, contribute to the existence or persistence of conflict. Many conflict interventions fail because they fail to address these key factors. As a result, you may see either that each conflict resolved is replaced by another, or that a conflict which was thought to be resolved continues to resurface. If you settle a dispute between two department heads, but you leave in place an incentive structure that pits them and their staffs against each other, you can be sure that new disputes will arise. If you introduce new incentives to encourage departments to support each other, but you do nothing about long-simmering animosity or an organizational culture in which the use of threats is more common than principled negotiation, chances of rapprochement are slim.

Our approach to conflict in organizations takes all of these factors into account. We have organized them into three major areas: 1) structure, 2) processes, and 3) the personal and interpersonal. Of course, not every organization experiencing conflict needs change in each of these three components, and the key to successful intervention lies in identifying the appropriate combination and balance. Throughout, our focus is not just on alleviating destructive conflict, but on building collaborative teams, with the structure, processes, and skills to succeed.

1) Structure: Some of the organizational structure issues which can either help generate conflict, interfere with its resolution, or contribute to positive change, include *definition of roles, division of responsibility, allocation of authority, reporting lines, and composition and tasking of working groups (committees, teams, divisions)*. Misalignments among these factors are frequent contributors to organizational conflict.

2) Processes: Within the structure provided in an organization are a set of processes, or practices, through which work is carried out. These include *decision making, communication, conflict resolution mechanisms and information gathering practices*. Poorly designed or inappropriately chosen practices can easily lead to strife as members try to get their work done.

3) Personal and Interpersonal: Much of conflict takes place at the personal and interpersonal level. Often, there are specific conflicts to be resolved, relationships to be repaired, trust to be rebuilt. In addition, there are sets of skills that can be developed, including *management, supervision, leadership, communication, and negotiation*. Many groups need not just help resolving one conflict, but also value developing the tools to constructively manage conflict in the future.

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Each of these areas represents not just a potential source of trouble. Each also represents powerful tools for improving the ability of group members to collaborate. For example, the leadership team at one client organization was finding itself in frequent conflict over many different issues. As I talked with members of the team, and observed their leadership team meetings, it became clear both to me and to them that a key part of their trouble was with decision-making processes. So we set about developing clearer decision-making processes, funneling some issues to the full group for a vote or consensus process, others to the CEO, and still others to one of the department heads. Then we worked on skills for the group decision-making processes they had identified. As the group put these processes and skills into play, a great deal of the tension and conflict that had been characterizing their meetings faded away. In addition, they began to collaborate more effectively – they began to build upon one another's ideas rather than cutting them down, seek out each others' input, and even offer support for each others' initiatives.

In another organization we worked with recently, the different departments were completely at loggerheads. The goals of each were inconsistent with the others, they were constantly competing for resources, communication was limited and destructive, people lacked the authority to carry out the tasks they were given, and the managers and employees within each department were highly stressed. In this case, it became clear that it was necessary to begin by crafting a common, concrete vision for the organization, one that spelled out the specific goals that the organization as a whole was working toward. Special care was taken to ensure that this vision was not only acceptable, but highly motivating to people throughout the organization. Once this common vision was accepted, it made sense to the members of all the departments to set to work at realigning the structure of the organization to facilitate the new direction, and developing the new processes they would need to carry out their work.

Changes to structures, improvements in processes and practices, and the development of individual skill sets can all be vital supports to the *lasting transformation of contentious groups into collaborative teams.* ■



The Mediation Group NEWSLETTER

Fall 2010 • Issue No. 25

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TMG BIOS



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