

# The Mediation Group

N E W S L E T T E R

MEDIATION • ARBITRATION  
ORGANIZATIONAL PRACTICE • TRAINING

## Dear Clients, Colleagues and Friends,

This issue allows us to show off the growth of TMG. With much fanfare, we introduce you to three stellar appointments to our senior ranks. Each will take on different roles at TMG and together we think they significantly add to our capabilities. **Ken Laurence**, highly regarded as jurist, counselor and author, will join our panel of arbitrators and neutral case evaluators. Recently retired from the Massachusetts Appeals Court, Ken has become “of counsel” to the Attorney General’s Office and co-authored *Professional Malpractice* with TMG colleague George Jacobs. **Joel Reck** has built an outstanding reputation as one of Boston’s leading transactional lawyers. Indeed, in one recent listing, he was ranked #1 of the nation’s top real estate lawyers. Recently retired from Brown Rudnick, Joel will apply his considerable skill and unbounded enthusiasm to the mediation and arbitration of all kinds of cases, but no doubt will be highly sought after to mediate complex business disputes. **Eben Weitzman**, a professor at UMass Boston as well as a practitioner of organizational dispute resolution, takes on a different kind of challenge. He will coordinate and direct TMG’s organizational practice. Over the years, we have mediated a good number of cases involving conflicts within a great variety of organizations. Too often, though, our intervention comes after litigation has significantly progressed. We want to develop an array of strategies, including those allowing earlier intervention into organizational conflict.

In order to provide you with a sense of our thinking as we launch our expanded organizational practice, we invited Eben to share some insights about approaches to organizational dispute resolution and some of the work he has done. In his piece, he weaves together an analysis of effective decision-making processes, an approach to building collaborative teams in an organization and a conceptual framework for harnessing conflict constructively. The approach brings theoretical insights to bear on the practical problems which, if not handled well, can throw an organization into destructive and costly conflict. — Brad

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### TMG NEUTRALS

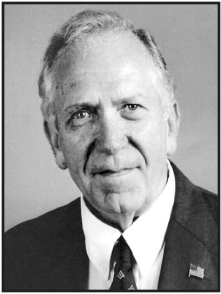
*Brad Honoroff*  
*Jane Honoroff*  
*David Matz*

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*Jeff Fraser*  
*Janet Grogan*  
*David Hoffman*  
*George Jacobs*  
*Susan Jampel*  
*Rudy Kass*  
*Ken Laurence*  
*Joel Reck*  
*Nicola Truppin*  
*Mary Jeanne Tufano*  
*Eben Weitzman*

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# A N N O U N C I N G . . .



**Ken Laurence** recently retired from the Massachusetts Appeals Court and joins his former colleagues George Jacobs and Rudy Kass as neutrals with us at TMG. Ken served on the Appeals Court from 1990 until 2007. Prior to his appointment to the bench he was a partner in the Boston law firm of Choate, Hall & Stewart with a practice concentrating in antitrust, banking, health care and environmental litigation and administrative proceedings. He also represented bondholders of independent public authorities in litigation and financings and served on the American Arbitration Association's commercial panel of arbitrators in Boston.

Ken is currently "of counsel" to the Massachusetts Attorney General's Government Bureau. He has been an adjunct professor at Northeastern University School of Law and has authored numerous articles and professional treatises, particularly in the areas of legal malpractice, the ethical practice of law, and the public trust doctrine. He was co-editor of and contributor to *Ethical Lawyering in Massachusetts* and most recently co-authored *Professional Malpractice*, Volume 51 in the Massachusetts Practice Series, with fellow TMG neutral George Jacobs.

Ken is a graduate of Harvard College and Harvard Law. He also holds degrees from the London School of Economics and Political Science (Fulbright Fellow) and Oxford University. He is admitted to the Federal and State bars in Maine and New York as well as Massachusetts. He is a member of the Boston Bar Association, where he served as chairman of the Committee on Professional Responsibility. He is also a member of the American Law Institute and the American Judicature Society.

As those of you who have appeared before him, read his opinions, know his reputation, or practiced with him probably know, Ken brings some extraordinary traits to his work as a neutral with us. He is well known for his ability to command vast and complex areas of law. His work shows his careful attention to detail as well as the ability to marshal large amounts of material into coherent arguments. His reputation and skills are such that upon his retirement from the bench the Attorney General's office quickly scooped him up to mentor its attorneys in the skills of appellate litigation. We think these same skills will serve him well as an arbitrator, special master and neutral case evaluator with TMG.

**Joel Reck** comes to TMG after a stellar career as a transactional lawyer, highly regarded for his skills representing clients in consummating deals of various kinds. He is recently retired as a partner at Brown Rudnick and is a former Chair of the firm's Real Estate Department.

In 2006, Joel earned the top spot on the list of the *Nation's Top 10 Real Estate Lawyers* published by the United States Lawyer Rankings Guide. Chambers USA: *America's Leading Lawyers for Business* recently named him a leading individual in real estate law in Massachusetts. Joel is also included in Woodward White's *Best Lawyers in America for Real Estate Law* in addition to having been named a *Massachusetts "Super Lawyer"* by the publishers of Law & Politics.



Joel received his J.D. from Harvard Law School in 1966. He is a past President of the Boston Bar Association and Boston Bar Foundation and a member of the American College of Real Estate Lawyers (ACREL), and the International Council of Shopping Centers (ICSC), among other real estate organizations. He is also an adjunct professor at Boston College Law School, where he co-teaches a course in transactional law with fellow TMG neutral Rudy Kass.

Those of you who know Joel know that he brings an extraordinary enthusiasm to all of his professional work. His accomplishments suggest that, and this enthusiasm comes through as he communicates to colleagues and students his daily excitement in the business of constructing commercial leases. Joel has now turned that enthusiasm to mediation. He has participated as a mediator in the MWI District Court Program and has acted as a neutral

in several complex cases, including a multi-party dispute involving ownership of a large shopping center. He also represented Mayor Menino and the city of Boston in a Washington, D.C. mediation regarding the expansion of Logan Airport.

Joel's considerable experience and talent in "deal-making" give him an important leg up in his relatively new role as a mediator. He is thoroughly engaged, both intellectually and professionally, in understanding how the neutral's role differs from that of the advocate's, while benefiting from the skills that are shared. We think his experience and learning are especially well suited to the mediation and arbitration of complex business cases, but we won't be surprised when he applies his craft to a wide variety of disputes.



We have asked **Eben Weitzman**, a colleague of many years at the University of Massachusetts at Boston, to direct our organizational practice. Eben is an Associate Professor in the Graduate Programs in Dispute Resolution as well as in the Public Policy Ph.D. Program. His work at the University focuses on conflict within and between groups, with concentrations on organizational and cross-cultural conflict. He also is recognized as an expert on research methodology, especially on the use of qualitative research techniques. He received his Ph.D. from Columbia and is the author of several articles on conflict resolution as well as the book, *Computer Programs for Qualitative Data Analysis*.

In addition to his work at the University, Eben has been practicing dispute resolution since 1989. His work has focused on organizational development and systems design and his clients have included organizations in health care, education, government, law enforcement, social services, business and the courts. Eben has taken on many roles, from mediator to systems architect to research methodologist. From 1989-2002 he was a trainer, consultant, and research associate at the International Center for Cooperation and Conflict Resolution. Since 2005, he has worked as a content area leader for the conflict resolution work of the SEIU's Institute For Change. And since 2000, Eben has been a senior technical consultant to TMG.

For many years we have handled organizational disputes that seemed to be a natural extension of our mediation practice. We have resolved disputes among partners of law firms and principals of medical practices. We have resolved disputes within small businesses, family businesses, educational institutions and non-profit organizations. Much of the time we are called in well after counsel has been hired and litigation has proceeded, causing serious economic and emotional dislocation. Sometimes, insightful counsel or other decision-makers have brought us in much earlier — saving considerable costs and organizational angst.

Almost all of you are associated with organizations and many of you are in influential positions in or consulting to those organizations. You may be a partner in a law firm or counsel to a small business or a non-profit organization. You may own a business or direct a private school. You may be a vice-president for human resources, a supervisor in a claims department or in-house counsel. You simply may be a member of a church or a community group. In any of these roles, you are often in a position to see conflict brewing and understand that an intervention early to resolve that conflict could prevent serious damage to the organization — whether in the form of litigation or other economic costs, heartache or key personnel leaving. TMG wants to be available to consult with you, design an intervention and hopefully resolve the dispute.

That is the practice we have asked Eben to build and expand. TMG will be able to respond with an array of interventions, including facilitation, training, systems design and mediation. Please free to contact Eben if only to get some ideas on the advisability of an intervention, especially at the early stages of a brewing organizational conflict.

# Collaboration, Decision Making, and Conflict in Organizations

by Eben Weitzman

Developing a highly effective, collaborative organization is not easy. Although it may seem counterintuitive, collaborative organizations are not devoid of conflict. On the contrary, they tend to be characterized by constructive approaches to conflict, recognizing and harnessing conflict as an opportunity for growth, innovation and change. Much of what gets labeled as “decision making” in organizational life is actually conflict management.

Collaboration, decision making, and approaches to conflict are deeply intertwined — in some ways, they’re different sides of the same 3-sided coin. Challenges may arise in different places in different organizations. Some organizations experience difficulties with reaching agreement on goals or methods of achieving them (i.e. decision making); some with sharing responsibility and delegating work; some with interpersonal conflict, damaged relationships and trust. Any of these, singly or in combination, can make it hard to work together collaboratively, building upon one another’s ideas, supporting one another’s efforts, helping one another to improve and driving toward joint success.

It is our experience that helping organizations develop effective, collaborative working relationships requires working at multiple levels, fine tuning the balance of those levels to the needs of the individual organization. These levels might include training in constructive conflict resolution techniques, helping to repair relationships and trust, resolving specific outstanding conflicts, and helping to develop the processes and structures that can support a collaborative team.

## Conflict

Recognizing and harnessing conflict as an opportunity for growth and change does not always come naturally, and requires a few conditions. Recently, two leaders in a large organization I was working with ran into a difficult situation.<sup>1</sup> They’d been working for months on repairing their relationship, when Dave issued a report to the board that undermined and embarrassed Rick. Instead, of counterattacking (their old pattern) Rick managed to cool down, and the next time we were all together, Rick raised the issue directly, but calmly. It turned out Dave was embarrassed as well — the report had been released by Dave’s department without his knowledge, and he was mortified. Several important things came out of the incident: Dave made important changes inside his department, both men had the new conflict skills they’d been working on reinforced, and they instituted a new “no surprises”

<sup>1</sup> As with all anecdotes I’ll use here, the facts are changed enough to disguise the organizations and individuals involved, without changing the essence of the story.

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***Many people need to overcome fear of conflict, tendencies toward conflict avoidance, or habitually aggressive responses to conflict.***

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policy and communication mechanisms for making it work. What had begun as an incident that threatened to undermine their relationship wound up strengthening not only their relationship, but the interface between their departments as well.

So what are some of the conditions for harnessing conflict for growth, innovation and change? First, people have to feel *able* to work through conflicts constructively; that is, they have to have skills that they feel confident in. Many people need to overcome fear of conflict, tendencies toward conflict avoidance, or habitually aggressive responses to conflict. And finally, people need to experience success at arriving at constructive, satisfying solutions. This is one of those places where success breeds success. The more members of an organization live through the experience of a conflict leading to positive change, the more they will be willing and able to engage in new conflicts productively.

## **Decision Making**

Many of us experience frustration or dissatisfaction with the decision making in our organizations. It may be that we don't get the answers right, but that's only one kind of problem. In one organization I worked with recently, the head of the division insisted on making whole classes of decisions herself. Her staff felt disempowered and not invested in the work. Critical information held by staff members was frequently overlooked, and decision quality suffered. In another organization, the top leadership was so committed to collaboration and consensus, that it was not unusual for the leadership team of 12 department heads to spend an hour debating and second-guessing something like the formatting on an interdepartmental flyer. Not surprisingly, everyone

was frustrated by the amount of time wasted on unimportant items. Perhaps surprisingly, instead of feeling empowered and involved, people felt disempowered to make even the smallest decisions on their own.

Destructive conflict arises around decision making when 1) the wrong decision making process is applied to a given decision, and/or 2) the group lacks adequate processes and "rules of engagement" for working through disagreements constructively when they arise.

To address the first point: using the *right* decision-making process for a given decision, it is important to think about what is important in that decision. A very helpful set of criteria for choosing a decision making process<sup>2</sup> suggests evaluating such issues as:

- Decision quality
- Who has the necessary information
- Time constraints
- Buy-in/commitment

It strikes many as counterintuitive that decision quality is not always important, but sometimes all that matters is making the decision quickly. Other times, what counts is getting buy-in, and there are lots of satisfactory alternatives as long as the one chosen is supported. When decision quality is important, then you need to figure out who has the information needed for a good decision, and involve them in the process. The key here is fitting the decision-process to the requirements of the decision. Choose the wrong one, and you're going to have trouble.

As to the second point, even when an organization is doing a good job of matching decision processes to decisions, there are still going to be times when people have different views, and sometimes those views will be strongly held. In keeping with the discussion of conflict, above,

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<sup>2</sup> Vroom, V. H., and Jago, A. G. (1988). *The New Leadership: Managing Participation in Organizations*. Prentice Hall.

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***If the organizational culture treats conflict as something destructive or something to be avoided, then that culture may need to change.***

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people in organizations need ways to work through conflicts when they occur. In addition to skills, it can be very helpful to have what some call “rules of engagement.” For example, some leadership teams I’ve worked with have adopted a rule that when they have a disagreement to work out, they’ll close the door, argue it out, and walk out of the room with a united front, leaving their disagreements behind. Others have rules about how they’ll talk to each other, about who has how much say, about what kinds of tactics, reasoning, or evidence are fair, and so on. The point is to create a safe space, that supports both finding and including all the important information and perspectives, on the one hand, and providing realistic boundaries for the protection of both the individuals involved and the organization.

## **Collaboration**

Collaborative teams often realize the benefits of the whole being greater than the sum of the parts. When people can pool diverse strengths, share and improve one another’s ideas, support one another’s efforts, and help one another improve, the organization may receive more from each than they could contribute alone. Many of the skills and orientations required for this kind of collaboration are the same as those required for effective decision making and conflict resolution. In addition, organizations and the teams within them require structures and systems which support collaboration and success. One particularly helpful approach to thinking about this at the level of teams puts forth a set of essential conditions for effective teams.<sup>3</sup> This framework emphasizes first that a team must be a *real team*, with interdependent members, not just a collection of people.

The team must have a *compelling direction*. There must, further, be an *enabling structure* to the team that facilitates its work. In addition to the structure of the team supporting teamwork, the team must have a *supportive organizational context*, one that rewards and enables teamwork and success. And finally, because none of this is easy, the team must have available *expert coaching* in doing teamwork. All too often, such conditions are lacking. Meetings are poorly designed, communication is inadequate even while information comes in a non-stop flood, decision-making mechanisms are inappropriate, resources are not explicitly directed at supporting collaboration, and rewards are directed at individual achievement rather than team success.

## **(Re)building Effective, Collaborative Organizations**

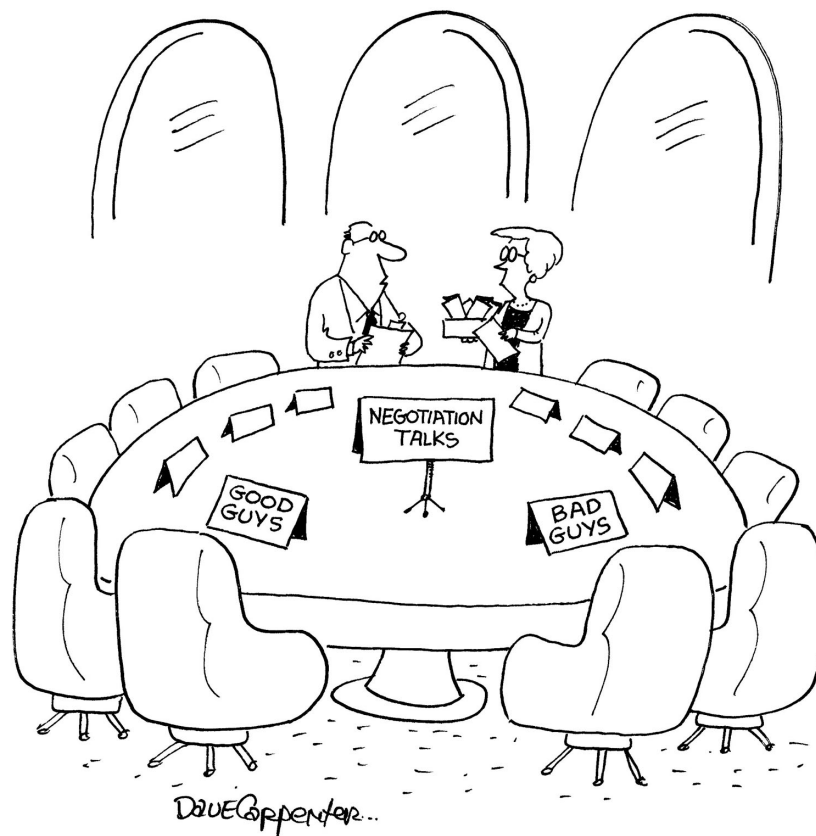
Creating highly effective, collaborative organizations, or transforming contentious groups into them, requires both a broad and an integrated approach. Success requires addressing all 3 sides of our coin (or all 3 legs of the stool, if you prefer). Teams within an organization must begin with the essential conditions for effectiveness, and the organization as a whole must be set up to support collaboration. Every organization is different, and every organization must have its structures and processes optimized to support its work, and the kinds of collaboration that it needs in order to thrive. It must have effective and appropriate decision-making processes, and strong sets of norms and skills for resolving conflict constructively and creatively.

When an organization or workgroup is suffering from lack of collaboration, or destructive and demoralizing patterns of conflict, change may require work at

<sup>3</sup> Hackman, R. J. (2002). *Leading teams: Setting the stage for great performances*. Harvard Business School Publishing Corp.

multiple levels. If organizational structures and practices, including decision-making practices, reporting lines, evaluation and feedback mechanisms, and reward systems fail to support collaboration, or generate conflict, they may need redesign and change. If the organizational culture treats conflict as something destructive or something to be avoided, rather than as a normal part of life and in fact an opportunity, then that culture may need to change. In Rick and Dave's experience, they both demonstrated to their departments a new kind of relationship and way of dealing with conflict, *and* created new mechanisms to support it. Often, it is necessary to resolve specific disputes through mediation

and facilitated discussions, and to learn new ways of dealing with conflicts as they arise through skills development and coaching. If conflict has escalated to the point where relationships and trust have been damaged, then those must be repaired through careful and systematic work. Because of the varied nature of organizations and life in them, every situation requires a somewhat different response. Yet an awareness of the interdependence among the three factors of collaboration, decision making, and conflict provides a solid foundation for formulating a customized approach to building and maintaining highly effective collaborative organizations. ■



"MAYBE YOU SHOULD RECONSIDER THOSE PLACE CARDS, MS. HARRIS?"

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NEWSLETTER

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*Announcing...  
Collaboration, Decision Making, and  
Conflict in Organizations*

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