

# The Mediation Group

N E W S L E T T E R

MEDIATION • ARBITRATION  
ORGANIZATIONAL PRACTICE • TRAINING

## Dear Clients, Colleagues and Friends,

For those of you looking for our clever cartoon, or our choice of wise sayings, we are sorry to disappoint. We just didn't have the room. This issue is chock full of innovative content, each article providing, from a different perspective, some insight into the ways we at TMG approach difficult problems.

Jane's article reflects on the learning that results from working across disciplines. She begins with the observation that each of us is limited by the tools we bring to the table, both in how we define a problem and in the kinds of solutions we imagine might be helpful. She compares her perspective to that of a creative lawyer in a custody dispute, and then relates how combining the insights from their two disciplines resulted in a team approach that capitalized on the strengths of both.

In what may appear a change of pace, Katie, whom many of you know as our case scheduler, gives a delightful perspective on her experience at TMG. From her very helpful seat in the bustle of our office, often doing many things to make the day successful, she also captures something essential about why mediation works for clients.

In describing an innovative organizational intervention, Eben's article picks up one of the themes explored in Jane's piece. He recognizes early on that the many participants designated as stakeholders will have many different definitions of "the problem." He applies a clever approach to treat all perspectives equally and build consensus from the beginning. He also relates how the extra effort devoted to the first stages of the intervention allowed the remainder to proceed quickly and successfully. Keeping the focus on concrete solutions to a joint problem also seemed to defuse what could otherwise be heated and divisive issues among the participants.

— Brad

---

### TABLE OF CONTENTS

*Dear Clients, Colleagues and Friends*..... 1  
*Maslow's Hammer*..... 2 - 3  
*Down the Hall at TMG* ..... 3 - 4  
*Resolving Heated, Many-Sided Conflict*..... 5 - 7

---

### TMG NEUTRALS

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

---

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

---

### Maslow's Hammer\*

by Jane Honoroff



Since our inception, we at TMG have been committed to an interdisciplinary approach to conflict resolution. To begin with, working with others is simply more fun, especially when they can bring a different perspective to thinking about conflict. But what I have just recently come to appreciate is this — we all tend to solve problems in ways in which we know how to deal. From defining the problem, to deciding who should be present, to testing and then employing solutions, we operate from a familiar but limited repertoire of past tactics and successes.

This is perhaps best illustrated by a consult I did at Greater Boston Legal Services a number of years ago. The consulting attorney worked in the Family Unit and had a rather unusual case. She was representing the maternal grandmother of a six-year-old girl. Her client had been the primary caretaker of this child since the age of two, when the child's mother, who was addicted to drugs, disappeared, and the child's father was sent to prison. The client, who was legally blind, lived in the city where she made great use of public transportation and took good care of her granddaughter.

When the child turned six, her father was released from prison and went to live with his mother in a suburb of Boston which was over an hour's drive away. He decided to take back physical custody of his daughter, with the help of his mother.

Fortunately neither the father nor his mother tried to legally stop the maternal grandmother from having contact with the child. But because of her disability (couldn't drive), her poverty (no money for taxi fare) and because of the lack of public transportation, she was not able, in fact, to get to her grandchild.

As the attorney described her thinking about this case, she began to focus on the Americans With Disabilities Act, from which she could make a legal case for custody based on the need to make appropriate accommodations for this grandmother. Of course a custody battle would probably destroy any good will that did exist between these two in-law families. On the other hand, it was clearly not in the child's best interest to lose all contact with the grandmother who had been, for the previous four years, her primary caretaker.

Coming from my social work background, my first thought was to contact the Commission for the Blind and check out what transportation services they could provide. I also wondered if a member of the grandmother's church would be able to volunteer driving services. I further wondered if the father could drive the child back to Boston on occasion — this had been explored and rejected by the father.

None of my ideas were particularly brilliant — all were less creative than making a legal disability accommodation case. But what struck me as profound was how differently we thought about a solution. In my wildest dreams I never would have considered this

\* *"When the only tool you have is a hammer, every problem begins to resemble a nail."*— Abraham Maslow, American psychologist, 1908–1970

situation in terms of disability rights. Clearly I have never tried and won a case about disability rights so I didn't define the problem in this way. But I have put together community resources for clients who needed help. So my mind immediately went to problem solving in ways with which I was familiar.

As a mediator looking at this case I considered it from various other angles. Having worked with hundreds of families as they struggled to sort out custody issues after divorce, I knew that the initial good will between these two families could quickly evaporate if the parties headed toward a lawsuit. Yet I also knew that to suddenly lose all contact with her grandmother and begin a new life with her father and his mother could be a huge adjustment for this six-year-old. The problem could be defined as "how to get a blind grandmother to a difficult-to-reach suburb," or it could be defined in the larger context in which it truly resided: "how to give this child the best of both families in an ongoing way." As we discussed this perspective, the attorney realized that no one had yet suggested a family meeting which would approach her client's dilemma as a dilemma for the

whole system (and especially a dilemma for the child). Perhaps if the father could be seen as a potential ally in the push to maintain contact between the child and her maternal grandmother, new solutions would emerge.

I'm happy to report that this is exactly what happened. At the suggestion of the attorney, the child's therapist called a family meeting, which included both grandmothers and the father. The meeting gave them an opportunity to express not only some very painful feelings about the mother's abandonment but also a clear appreciation of the maternal grandmother's role in caring for the child. They were also able to discuss some realistic concerns about the child's recent acting out. Together, they created a visitation plan, which acknowledged the importance of continued contact between the child and her maternal grandmother, including extended visits and regular phone contact. Once people opened their minds to the underlying interests of the child's wellbeing, and stopped fearing the threatened lawsuit, everyone came out winning. And we professionals also learned once again how useful it can be to collaborate from our different perspectives. ■

## Down the Hall at TMG

*By Katie Cotugno*

Let me tell you a secret: I have no interest in the law.

Well, that's not entirely accurate. I'm extremely interested in the law insofar as it keeps me from getting held up or ripped off or mowed down by a driver on a cell phone on my way to get a frozen yogurt. I think the law is just great. But in terms of study and practice, 93A and subrogation and ERISA claims? Beyond the occasional crack about attractive nuisances, I'd rather spend my time on something a little more interesting, like color-coding my sock drawer or going for a nice long jog.

I was up front about my lack of legal curiosity when I got hired two years ago as an admin at TMG: "I have absolutely no desire to go to law school," I assured the principals at my interview, a couple of months out of

undergrad and sitting up straight in the one suit I owned. "I promise I won't try to steal anyone's job." (Brad was understandably relieved.)

TMG might seem like an unusual landing pad, then, for somebody who remains stolidly unintrigued by the legal profession. Here's what I am interested in, though: people. I'm a writer-type, an observer by nature, and one of my favorite things about working at TMG has been the opportunity to meet all kinds of folks I never would have encountered otherwise (also I have started saying "folks"). On any given day I might come face to face with a businesswoman embroiled in a fierce contract dispute, a kid who was bitten by a dog and would like to know if I have any crayons in my desk (I do), or a man my age who ate lead paint as a little boy and now

*continued on next page*

can't hold a job. I never know quite how my office — or my day — is going to look.

I was a theater geek in high school, and before each performance my director would always remind us that “for everyone in the audience, tonight is opening night.” I try to keep that in mind as I fight my way through the crowd on the T each morning, juggling my purse and lunchbag and iPod and trying not to wind up sprawled across the lap of the person to my left. For me it's just a random day at work, but for the parties climbing the steps of our big orange house in Brookline, it's a much more significant occasion. Today is the culmination of a conflict that's been mucking up their lives for months or sometimes years, a chance to make their case or face their accuser or say, finally, whatever it is they've been waiting all this time to say.

My role at TMG is small, comparatively. I negotiate no complex legal conundrums; I compose no binding agreements securing the transfer of thousands of dollars from one party to another. That's fine. I'd make a terrible mediator: I have too many opinions about the way things should be, and we've already discussed my aversion to pesky things like laws. Instead I'm content to linger on the fringes, to track down a tissue or an Advil or directions to a hotel near the airport, to make sure everyone is where they need to be and try to keep the tertiary drama to a minimum. If I can make today

a little easier on the folks (I told you I say that now) who've come to our office with problems for solving, then at five o'clock I feel like I've done my job. I walk out the door feeling satisfied, another small (or not) conflict clicking quietly into resolution — or at least well on its way to getting there.

For me, that's been the most pleasing thing to discover about the ADR process: *it makes it so people can move on*. Coming to mediation enables both sides to cut the emotional and economic costs of resolution while giving them permission to proceed with their lives — to drop, as my dad is fond of saying, the proverbial rock. Mediation brings the story to a close in a way that is incredibly gratifying to my English major's brain, which thinks in three acts and chafes at Sturm und Drang that drags on longer than it reasonably ought to. It provides an ending that, if not quite a happily ever after for all involved, is certainly something everyone can get behind.

I'd be hard-pressed to tell you where I'll wind up once my time at TMG is through (uh, not that I don't intend to stay here forever). Whenever the moment comes, though, I can tell you that I'll be leaving with — if not exactly a passionate love for the complicated minutiae of our legal system — then certainly an appreciation for the rather excellent mechanisms it provides for getting things done. ■



## News • Honors • Announcements

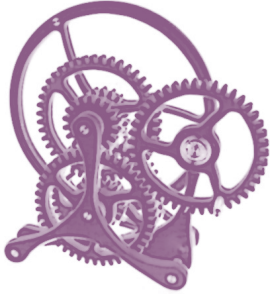
Congratulations to **Rudy Kass**, who will be honored for his “continuing commitment to ADR and the ADR community” at MCLE's first annual ADR & the Law conference later this month. He will also be the recipient of the Ford Hall Forum's inaugural **George W. Coleman Service Award**, in recognition of his “extraordinary contribution to the Forum, to free speech, and to the Greater Boston community.”

**Brad Honoroff, Joel Reck** and **David Hoffman** were recently selected for inclusion in the 2010 edition of *The Best Lawyers in America* as well as in the most recent listing of *Massachusetts Super Lawyers*.

Congratulations to all!

## No One Speaks First: Resolving Heated, Many-Sided Conflict

by Eben Weitzman



A recent invitation to help resolve a conflict at a high school highlighted two common problems in organizational mediation. The result was an approach to that contentious situation that may have application in other settings, particularly in organizations experiencing heated controversy with a wide diversity of viewpoints.

### A Tough Request

I was asked to mediate a dispute at an inner-city public high school in a nearby state. It concerned a tardiness policy requiring parental involvement before a tardy student could re-join his/her class. The policy presented significant hardships for various students. For example, there were no allowances for students who were parents themselves and depended on unreliable childcare. The policy also stymied tardy students whose parents were unavailable because they worked inflexible shifts spanning the start of the school day. The policy had generated a heated and contentious controversy, with racial and class overtones.

The Principal who invited me explained that the school was run by a site-based management team: a group of 20-30 administrators, teachers, students, parents, and community members. I was to mediate the dispute at a two-hour evening meeting of that group. The scope of the team's authority and the lines of authority between the Principal and the team were ill-defined. Nevertheless, according to the Principal, that team would ultimately decide the policy dispute.

### Defining the Playing Field

I concluded two things before my visit to the school. First, there would likely be at least as many "sides" to the dispute as participants. With the number of parties involved, a normal mediation model that assumes fewer participants simply would not work.

Second, from the description I'd been given, I knew each participant might define the dispute quite differently. Those who supported the current tardiness policy might define the problem in terms of such issues as education, discipline, and the running of the school. Those who opposed it, on the other hand, might see it in terms of individual student needs, problems of teen parenthood, or broader issues of social justice, race, or class. As it turned out, the range of problem definitions proved even wider. I needed a way to acknowledge and include a wide variety of interpretations without derailing the discussion from the start.

In a typical mediation, the first party to speak often frames the conflict, defining the playing field to a significant extent. This pushes the next speaker to respond to the original frame. If the second party sees the situation — or defines the problem — differently, s/he must change a definition already established, a more difficult task than simply presenting a view where none is yet on the table.

In the emotional and value-laden situation I faced, I was concerned even more about  
*continued on next page*

that possibility. Whoever spoke first might define “the problem” in a way that significantly affected the outcome. An opening description of educational and disciplinary needs would provoke a conversation quite different from one framed by a description of the lives of some of the students. Keeping the playing field broad would be critical.

### **An Alternative Approach**

I tried to imagine a process in which no one got to speak first. I needed a manageable way to allow everyone to speak at once; brainstorming, I realized, might get us close to this. Brainstorming is typical in the later stages of mediation. The parties voice possible solutions to their problem — preferably in rapid-fire succession — with no evaluation, until they have created a full list. I considered using brainstorming in a more unorthodox way: inviting the group to brainstorm the definition of the problem. This might help resolve the policy dispute in several ways.

First, no one individual would get the first-speaker advantage of defining the problem. If all the parties had the chance to call out their definitions more or less at once, we might create a space in which to consider a wide range of perspectives at once. Brainstorming rules would confine each speaker to a brief statement of the issue rather than the often extensive opening statement seen in mediation. This, I hoped, would also help keep the participants a bit more flexible, encouraging open-mindedness instead of defensiveness.

Second, starting with an open brainstorm would allow both the group and me to find out quickly how many different perspectives were actually present. I also hoped this process might accommodate the wide range of problem definitions I anticipated, and help people avoid some of the polarizing effects of the taking of sides.

Further, if we proceeded from brainstorming (step one) to integrating the various definitions into a single, mutually-acceptable definition (step two), I hoped to arrive naturally at the point where mediators transition from exploring issues to helping to find solutions. That is, we would have established a mutually-acceptable definition of a problem everyone had a stake in solving.

Coming to a mutually-acceptable definition is considered key to many constructive conflict resolution approaches. If the parties can agree on a shared definition of the problem, and commit to solving it, they are then more likely to work collaboratively towards a mutually satisfying solution.<sup>1</sup>

Finally, by using a brainstorming approach to defining the problem, we might avoid much of the contentious argument that can take place in the earlier stages of a mediation. Such argument can often be useful; but in this case — with limited time and so many parties — it would be difficult to manage productively.

### **The Process**

I arrived at the school and found the classroom packed with clusters of students, parents, administrators, and community members, and bubbling with energy. There were friends talking and laughing, quieter but intense groups already talking about the topic of the evening — a couple of students in the latter groups were already in tears — and the principal and other leaders were circulating around the room greeting various groups. The principal called the meeting to order, and people settled into their chairs with anxious glances around them, and at me.

After being introduced and spending a few minutes carefully explaining my role, I proceeded by inviting the group to brainstorm definitions of “the problem” they were facing. For the first hour and a half, we covered the blackboards with definitions. As I anticipated, there were at least as many different offerings as there were people in the room. At times, there were exchanges of views — I was not absolutely strict about brainstorming rules. In fact, after a while, much of the kind of discussion that usually happens in the later stages of a successful mediation took place here. People began looking, much earlier than I had expected, to understand each other. Instead of challenging or trying to beat down a definition, they began to ask one another for clarification or elaboration of a statement. As I had hoped, beginning with all-views-at-once succeeded: no one view or presentation of reality dominated.

There were also interesting effects on the nature of

<sup>1</sup>This concept is given importance in Deutsch’s (1973, 2006) work on transforming competitive conflicts into mutual problems; in problem solving approaches to conflict resolution (Weitzman & Weitzman, 2006); and in Fisher & Ury’s (1991) single text procedure.

boundaries between expected “sides.” There were none. The participants did not choose sides on the basis of their roles as teachers, administrators, students, or parents. On the contrary, as proposed definitions emerged, people seemed to configure and reconfigure themselves around common concerns. Firm and entrenched camps never did seem to form.

When we had exhausted the ideas in the room about different definitions, I asked if the group could see a way to combine them into one that encompassed everyone’s views. This happened in two stages. First, participants consolidated the definitions into a smaller set by suggesting groups of definitions that seemed to be similar, and offering common phrasings for these. They then began offering attempts at unifying this narrowed set of definitions into a single one.

After about 15 minutes, the group had completed both steps and arrived at a single definition of the problem. It represented the range of interests in fairly simple form. It emphasized the needs of the students and of the school, of education and of complex lives. In one or two sentences, it posed the problem as: how best to provide for the education and development of the students, teaching and ensuring punctuality, while recognizing the individual realities of the students’ lives outside of school. Everyone agreed to it.

Once this happened, the general form of the solution space was clear. Several solutions were quickly proposed, and within a few minutes one solution was accepted, with near universal support. The solution retained much of the original tardiness policy, but added a workable mechanism for students with genuine extenuating circumstances. People from the various sides of the issue agreed that the result was tough but fair.

## Conclusion

The process described here emphasized brainstorming definitions of the problem, consolidating these into a single consensual definition, then generating proposals for solutions and agreeing to one. One and a half of the two hours were spent in the initial brainstorming session. The process was successful at avoiding the problem of first-speaker framing, and allowed the conflict to be worked through without people having to choose defined sides — they largely remained one group trying to work its way

through a contentious issue. This helped reduce some of the polarization that can happen in group conflict.

The participants addressed the potential race and class implications of the conflict — the particular difficulties faced by the mostly poor and minority students at this school, and who was or was not being sensitive to them — by discussing specific challenges, and exploring in concrete terms how best to understand and meet them. Though these issues did become heated at times, race and class per se never became volatile issues. I believe that by staying focused on concretely defining and then solving the challenges faced, the group was able to de-escalate such heated issues as they addressed them.

The process encouraged reaching consensus early on a definition of “the problem.” Brainstorming norms helped discourage evaluation and criticism of differing perspectives. Ideas, once on the blackboard, were separated from the status of the people who proposed them. Several participants actively joined me to support including the full range of perspectives as we moved toward integration. By focusing firmly on creating an inclusive definition of the problem, and by establishing a strong norm of respect for all perspectives, there was less room for the escalatory dynamics of conflict: argument and counter-argument, accusations and defensiveness, fights over conflicting narratives. For two hours, participants at this high school never seemed to be looking for hurtful words or ways to undermine one another. They kept focus on a search for constructive resolution. And, with a bit of careful help, they found it. ■

## References

- Deutsch, M. (1973). *The resolution of conflict: constructive and destructive processes*. New Haven: Yale University Press.
- Deutsch, M. (2006). Cooperation and competition. In M. Deutsch, P. Coleman & E. Marcus (Eds.) *Handbook of conflict resolution: Theory and practice, 2nd Edition*. San Francisco: Jossey-Bass.
- Fisher, R., Ury, W., & Patton, B. (1991). *Getting to yes: Negotiating agreement without giving in*. Penguin.
- Weitzman, E. A. & Weitzman, P. F. (2006) The PSDM model: Integrating problem solving and decision making in conflict resolution. In M. Deutsch, P. Coleman & E. Marcus (Eds.) *Handbook of conflict resolution: Theory and practice, 2nd Edition*. San Francisco: Jossey-Bass.

---

**The Mediation Group**  
NEWSLETTER

Issue No. 23

EDITOR  
*Amy Gordon*  
LAYOUT  
*ES Design*



3 Harvard Avenue  
Brookline, MA 02446  
617-277-9232  
[info@themediationgroup.org](mailto:info@themediationgroup.org)  
[www.themediationgroup.org](http://www.themediationgroup.org)

---



**BRAD HONOROFF, J.D.**  
Harvard. Founding Principal of TMG. Serves on the Mass. Superior Courts ADR panel, MODR Environmental panel, National Roster of the US Institute for Environmental Conflict Resolution, and other National panels. Has many years of teaching experience as a tenured professor at the University of Massachusetts, Boston Graduate Program in Dispute Resolution and the Law Center and as an instructor and frequent guest lecturer at Northeastern Law School.



**JANE HONOROFF, LICSW, MSW, Simmons.** Founding Principal of TMG. Conducts private psychotherapy practice. Serves as Adjunct Faculty at Boston University School of Social Work. Has served on Critical Incident Stress Debriefing teams since 1986. Provides ongoing consultation services to Greater Boston Legal Services and to the Community Dispute Settlement Center. Serves as a regular guest lecturer at Northeastern Law School.



**DAVID E. MATZ, J.D. Harvard.** Founding Principal of TMG. Professor at University of Massachusetts, Boston with the Law Center, and Director of the University's Graduate Program in Dispute Resolution. Serves on the Mass. Superior Courts ADR panel, MODR Environmental panel, and American Arbitration Association employment disputes panel. Fulbright Professor of Law at the University of Tel Aviv Law School 1989-1990. Consultant with Ministry of Justice and the High Court of Israel on mediation and the courts.

**IN THIS ISSUE:**  
*Maslow's Hammer  
Down the Hall at TMG  
Resolving Heated, Many-Sided Conflict*

**The Mediation Group**  
3 Harvard Avenue  
Brookline, MA 02446



NON-PROFIT ORG  
U.S. POSTAGE PAID  
BOSTON MA  
PERMIT NO.  
51200