

# RGI

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## **MEDIATION: CONFLICT RESOLUTION THAT PRESERVES RELATIONSHIPS**

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### **A TRUE HORROR STORY:**

Several years ago I received a call from a partner (whom I will call "Bill") in a large, multi-state construction business. Bill and his partner ("Frank") were in major conflict. Bill's operation was highly successful at the time. Bill claimed that Frank's operation in another state was losing money, and he was forced to keep it afloat. He wanted to know if I was willing to mediate. I agreed, but they did not schedule a session.

I did not hear from Bill for several years. He and Frank were unable to agree on coming to see me. In fact, they were unable to agree on anything except having a business battle similar to the marital battle in the movie, "The War of the Roses".

They both engaged legal counsel, and Bill successfully obtained a temporary injunction dissolving the company, pending a trial. Bill struggled, however, without the support of Frank's operation. They finally exhausted their resources and came to see me out of desperation. They had spent over \$100,000 each in legal fees and were facing a trial that could easily double that expense. Their twenty-year friendship was ruined. They were in direct competition and had lost many of their customers, who had decided to take their business elsewhere rather than choose between them. Their major suppliers had raised prices because of the reduced volume from two separate businesses. The construction industry was in a major down-turn, and--without the broad base of support they had formerly provided each other--they were both in trouble.

### **AN UNUSUAL HORROR STORY?**

Unfortunately, the answer is no. It is an extreme case, but the same results generally ensue from any contested legal battle, especially when personal and business issues are mixed, which is always the case between business partners. Once war is declared and lawyers are hired, the parties lose all control of the outcome of their dispute. The conflict escalates dramatically, and the result is frequently bitter and dissatisfying. Litigants almost never get what they really want, and the expense of the litigation often far outweighs the result. The judicial process overcomes the human aspect of the conflict, and potential practical resolutions get lost in the fray.

### **THERE IS AN ALTERNATIVE:**

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There is an effective and time-efficient alternative. Mediation is a voluntary conflict resolution process guided by a mediator, a neutral person who helps parties in conflict to make intelligent, practical choices to resolve the issues that confront them. The mediator--unlike a judge or an arbitrator--is not a decision-maker. The mediator has no control over the content of the dispute, rather the mediator focuses on assisting the parties to create an efficient process to resolve their dispute.

Parties generally discover that they are empowered by mediation, that each individual gets what more of what he/she truly wants and that their relationship is completed and often resolved in a way that supports them in life, rather than being burdened by an unresolved dispute.

Just like children in a domestic dispute, customers, clients or suppliers can be forced to choose sides in a business dispute. Mediation allows disputing parties to resolve issues in private so that they can maintain and expand those crucial relationships.

### **THE BENEFITS OF MEDIATION:**

In mediation, the participants never lose control of their conflict. They sit down together with a mediator to discuss resolving their problem. The role of the mediator is essentially that of a facilitator and referee, ensuring that each party hears the other and that all the underlying issues are acknowledged. The mediator also facilitates the creation of imaginative solutions, which allow everyone to "win".

The mediator assists the parties to explore their difficulties from the perspective of their true needs and interests, rather than the needs and interests that arise from competition. Together they gather all necessary information on customer and supplier relationships, financial data, taxes, asset and liability evaluations and relevant laws.

Mediated resolutions also may last longer. They may stick. Nothing is worse than having some third party tell you what the outcome of your conflict will be. A judge, jury or arbitrator simply imposes a decision on the participants. In mediation, everyone has an interest in creating a resolution that will work and will last.

No matter what the outcome, in mediation the participants are always the winners. They save money, time and relationships. They resolve their conflicts quickly and inexpensively, getting back to their lives with a minimum of interruption.

### **WHAT'S AVAILABLE IN MEDIATION FOR YOU:**

In sum, while the main goal of mediation is to resolve a dispute, mediation also:

- ✍ enhances relationships by encouraging true communication and cooperation;
- ✍ allows the parties to maintain control over the dispute;
- ✍ costs far less than litigation;
- ✍ benefits other parties not directly involved in the dispute, such as customers, clients and suppliers, by reducing the conflict;
- ✍ is confidential (depending upon the laws of the appropriate

jurisdiction), thereby avoids public disclosure of personal problems; and takes far less time than litigation, allowing the parties to complete the dispute and get on with their lives.

### **WE'D RATHER BE "RIGHT" THAN IN RELATIONSHIP:**

Why don't more people choose this wonderful sounding alternative? In order to mediate effectively each party has to give up the possibility that he/she will win and the other party will lose.

This belief is the fundamental response of our minds to any dispute. Our culture is based on this mind game of striving to win or at all costs, in order to avoid losing. Our legal system perpetuates this myth. In truth, the only people who regularly win in the legal system are the masters of that system: the lawyers. Everyone else involved loses, and generally loses BIG. But the myth does not die.

Virtually everything in our culture is based around the myth of winning and avoiding losing. Our television shows are replete with the myth, especially children's cartoons. Our pervasive fascination with competitive sports is bottomed on the myth. Our industrial and professional competition for customers, for money, for expansion arose from the myth. Our national identity as the USA broadcasts the myth around the world.

New evolutionary theorists are discovering that a major evolutionary impulse is symbiosis--the ability of different organisms to live in close association with one another or actually inside one another. An example is the bacteria in our intestines, which are crucial to our digestion. <sup>1</sup>

The recognition of symbiosis as a major evolutionary force exemplifies the importance of mediation as an alternative to our current cultural fascination with lawsuits. If major evolutionary steps were *not* achieved solely because of competitive strength, but rather through cooperative relationships between evolving organisms, then we may need to re-think our focus on winning at all costs. When we make a choice to emphasize cooperation and effective communication in our business relationships, rather than paying a lawyer to prove that we are right, we are making a choice based on the way Life is evolving to succeed in new environments, under changing conditions. We are making a choice for the 21<sup>st</sup> Century.

Wanting to win destroys relationships. We are convinced we can relate to others solely through our minds, rather than through our entire being, including our hearts and souls. When we leave out our hearts and souls, our deepest values as human beings, then our personal disputes revolve around being right rather than being in relationship. We have forgotten the larger context of true relationship and effective communication.

### **MEDIATION EMPOWERS RELATIONSHIPS:**

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<sup>1</sup> Capra, Fritjof, *The Web of Life* (Anchor Books, 1996)

Mediation is a return to true relationship as the place of settling disputes. Mediation brings the deep, intuitive wisdom of our entire being into the process. By focusing on the underlying issues of the relationship, mediation allows people to come to resolution of their disputes in a way that honors and completes the original relationship, while empowering the parties to move on to their next relationships without dragging the old one along.

When Bill and Frank finally came to see me, we spent several hours focusing on their relationship before we could begin to examine the difficult legal, financial and business issues confronting them. One particularly dramatic session was punctuated by Frank taking my beautiful Seville Row umbrella, a present from my in-laws, and bashing Bill over the head. After I saved Bill from my battered umbrella, I managed to ease his head out of his silk foulard tie as Frank fought to strangle him with it. I held Frank long enough, while he lashed at me with the tie, for Bill to stumble out of my office. It was not a typical mediation session, but a shift occurred for them.

After this major blow-up, they managed to resolve their problems and settle their lawsuit, avoiding the major expense of the trial. They created a temporary, cooperative agreement that allowed them to work together to reclaim their lost customers and obtain more favorable prices from their suppliers. This temporary agreement carried them through the industry down-turn.

What more could we ask? We are faced with disputes and communication break-downs in all aspects of our lives—unless we sweep them under the rug by denying their existence. No matter how wise we are our business partnerships may break-up. No matter how careful we are in our hiring practices, we will have difficulties with some employees.

Given that we must continue to work in spite of failed relationships, mediation is a truly, sensible way to approach the difficult task of dispute resolution. If the new theory of symbiosis is true, then perhaps the “survival of the fittest” really means the “survival of the cooperative”. Perhaps mediation is the natural evolutionary process for the 21<sup>st</sup> Century. The businesses that succeed and thrive in the next Century will be those who master these crucial conflict resolution and communication skills.