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EDITOR'S NOTE

We are happy and thankful to all those who have responded to our last editor's note, where we had urged Mediators and Mediation practitioners to send us your work on mediation, which could provide a "hands on" experience on mediation. We have received a good number of articles.

In fact your valuable responses help us to march ahead. Giving advice is easy. Giving really good advice is harder. Providing an example is hardest, but is usually the most effective way of influencing both youth and adults. After all, adults are simply older youths who were influenced by someone's example early in life. Our walk or march through life is the greatest teacher that we will provide for others. Even Paul in the Bible said, "Follow my example, as I follow the example of Christ." (1 Cor 11:1 NIV).

This is the month of March. Perhaps we should also begin a new walk. A walk of direction and purpose. A walk worthy to follow. March first… Then advise.

Looking forward to your continued support and views….

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Anatomy of a Mediation:

What to Expect, How to Prepare & How to Win

: JEFF & HESHA ABRAMS, JD

Mediation is a tool designed to be used at strategic times and for specific purposes. It is a process designed to facilitate a negotiated solution to a dispute. Mediation allows the parties to retain control of the outcome rather than relinquishing the power of decision to a judge, jury, or panel of arbitrators. The following is a summary of a caucus based model of mediation.

PRE-MEDIATION

Selecting a mediator with the right process skills is an important step. There are as many different "styles" of mediation as there are mediators. Some mediators are more facilitative, viewing their role as a facilitator of negotiations.

Others more directive, preferring to direct the negotiations with a view toward evaluating the value of the claim for the parties. Find out about your mediator. What kind of experience does he/she have? What kind of training have they received? How will the mediation be conducted? Will the mediator use joint meetings, private caucuses, or a combination of both? Think about what you want in a mediator.

How much does the mediator know about securities matters? More importantly, is the neutral skilled in applying mediation techniques? Learn as much as you can about the environment and the mediator in advance of the mediation.

Have a private conversation with your mediator. Start to inform her about the case. Begin to work on your communication skills. Are you worried about having private conversations with the mediator? Unlike judicial or arbitration procedures where exparte contact is prohibited, the essence of mediation (what helps a mediator work his magic) is the ability to speak with one party outside the presence of the other. The mediator, as a shuttle diplomat, can help the parties barter both information and settlement offers. A conversation with the mediator before the formal session can be very valuable in setting the stage for a successful negotiating session. Always be sure to confirm confidentiality of your communications from the beginning of the first conversation.

Unlike judicial or arbitration procedures where exparte contact is prohibited, the essence of mediation (what helps a mediator work his magic) is the ability to speak with one party outside the presence of the other.

PREPARATION IS KEY

Spend time analyzing the case from different perspectives using the following suggested outline. A seasoned mediator will be exploring these areas during the mediation.

- Prepare a ten minute summary of your case:

  Facts—Undisputed and disputed
  Law—Undisputed and disputed
  Key witnesses and other proof
  Damages

- Summarize your opponent's case as noted above. A good advocate can argue both sides!

- Describe the strengths and weaknesses of your case. Do not pull any punches.

- Describe the strengths and weaknesses of your opponent's case.

- Identify your client's interests (expressed or, as more often the case, unexpressed)~ i.e., what does the client need~ what are motivating factors that underlie the dispute~ why settle the case at all?

- Identify the interests, expressed and unexpressed, of the other party.

- Review the alternatives to reaching an agreement (i.e., assuming there is no settlement and the matter must go to trial or arbitration).

Ask yourself:

What is the likely outcome (assess some numerical probability)?

What are the expected fees and costs (and the value of lost opportunity time)?

How long must they wait until final disposition?

Do some "reality testing" with your client.

Plan a negotiating strategy with your client. Think about appropriate parameters for settlement and the kind of information you need to influence your decisions.

- Are there any unresolved procedural matters that would be dispositive of the case? If so, how does this impact your desire or willingness to settle?

- What is the relationship between the parties? Has there been any past or current business dealing? Is there any desire for a future relationship? Can anything be done to improve or preserve the relationship?

- What is the relationship between the advocates? Can anything be done to improve that relationship? How effective is the line of communication between the parties and between the counsel?

- What is the history of settlement negotiations?

- What obstacles to settlement have you observed?

- Does your client have authority to settle the dispute? Does the opposing party representative have similar authority? Are there other factors affecting the negotiations, such as a spouse or supervisor "leaning" on the party, the precedential value of the case, the publicity factor, etc.?

- What are some creative options for settlement? Don't be concerned with whether the other party would find them acceptable.

Do some brainstorming. A resolution is not confined to the sort of "relief" available in court or arbitration. Be creative and expansive.

- What external standards could be applied to the options to frame them as fair and legitimate in the eyes of all concerned parties?

- If the settlement is objectively "fair," it is more likely to be acceptable.

- What proposals for settlement do you think your client would be willing to make? What proposals do you think the other side would be willing to make? How do you think the other will react to your negotiating strategy?

At this point, you have organized your thoughts and can now focus on your presentation and strategy.

- Prepare a confidential mediation booklet, (5 to 15 pages) similar to a settlement brochure. Make copies for you, your client, and the mediator, tabbed with sections to show:

  √ summary of the case
  √ liability analysis
  √ summary of damages
  √ operative live pleading, dispositive pending motions & most pertinent case law, if applicable (highlighted for ease of reference)
  √ representative sample of key documents (highlighted) or photographs
  √ excerpts of pivotal testimony, etc.

- You may want to send a separate settlement brochure (without confidential information) to the other party in advance of the mediation. If you do so, do not draw "lines in the sand" by making intractable and unyielding demands.

- Send materials for mediator to review at least ten (10) days before session.

- Be sure that your party or party representative will be present for the entire mediation (reserve the full day) and that the part has FULL authority to settle the case (not just a "bottom line"). Make certain that others who may influence the decision are available, even if by telephone, on the day of the mediation.

HOW WILL YOU NEGOTIATE?

Plan a negotiating strategy with your client. Think about appropriate parameters for settlement and the kind of information you need to influence your decisions. A mediation session may uncover new information and reveal different perspectives. Therefore, come with an open mind and a willingness to be flexible. At the same time, it is good practice to think about a negotiating strategy for your moves.

The mediator is condensing weeks or months of negotiation into a single day (mediation is sometimes called "Turbocharged Negotiation"). Do not set your negotiating plan in concrete. Avoid setting absolute "bottom lines" with your client or "saving face" later can be a real obstacle to settlement. Remain flexible with the process. Never let the mediator control your side of the negotiation. You and your client are in charge. However, it is always helpful to consider an integrative or collaborative approach to the negotiation.

A great deal of the mediation training curriculum is negotiation theory and practice. Utilizing the paradigm of mediator as a "guest" at a negotiation, mediators must know about the process of negotiation to aid the parties.

We use an acronym, CAIROS, to demonstrate essential principles of interest based negotiation.

"C" stands for "Communication." Good negotiators ask themselves "what do we want to learn from the other side" and "what messages do we want to send to the other side." Negotiators appreciate the importance of asking questions – both to obtain essential information as well as to persuade the other side to "come about" in their thinking.

"A" stands for "Alternatives." Good negotiators always focus on the alternative to reaching an agreement, or the consequences of a failed negotiation. What are the risks of the trial or arbitration? What might happen? Consider the whole array of possibilities and not just the "best case" scenario. What are the real and imagined costs?

"I" stands for "Interests." Good negotiators look at the interests and needs of all participants in a negotiation. Collaborative negotiators avoid the tendency to focus on positions, which are invariably at opposite ends of the spectrum. Most people erroneously assume that there are only opposing interests at stake. In fact, there is often a great deal of commonality between the interests of the parties, starting with a common interest to negotiate a settlement and avoid the alternative. Negotiators build on common ground. Interest analysis leads to creative problem solving.

Everyone acts to some degree out of a sense of self interest. How are the needs of the participants going to be satisfied? To the extent that an agreement addresses such interests, it is more likely to be acceptable and honored in the long run.

"R" stands for "Relationship." Good working relationships are the key to productive interactions in negotiations, business, family and personal life. Negotiators ask themselves what can be done to improve the relationship? How can we create a positive working environment?

"O" stands for "Options." Options generation is a creative process. True brainstorming involves a suspension of judgment. It requires abandonment of positional thinking, the "either or" dilemma. We assume the pie is expandable, that we can create value.

"S" stands for "Standards." Good negotiators look for objective external standards as a formula or rationale for their proposals. On what basis shall we decide? A search for standards is attempting to apply objectivity and fairness to a proposal, making it more palatable to the other side.

Of course not all elements of interest based negotiation are present in every engagement. Experience has shown that a successful integrative solution is more likely to be achieved when these six factors are present.

AT THE MEDIATION SESSION: JOINT SESSION

The mediator's opening statement is designed to set a specific tone and is likely to include the following:

- Introductions by the persons present

- A summary of the mediator's background and experience

- A discussion of the mediator's role as distinguished from a judge, arbitrator, neutral case evaluator, or fact finder

- A presentation on the voluntary and confidential nature of the process
- An outline of how the day is likely to proceed and a summary of the ground rules
- A solicitation of the participants to negotiate in good faith and the signing of the Mediation Agreement
- Opportunity for opening statements

GIVING YOUR OPENING STATEMENT

The target of persuasion is not the mediator. The one who must find your arguments convincing is the party who must compromise their claim (or defense). It makes sense to address your remarks, with due respect, to the other party. Politely demonstrate that you mean business, that you will take this "all the way" if you must, but let them know that you are here in good faith to negotiate a fair settlement. This is not the place for grandstanding but it is an opportunity to communicate. Keep your objective in mind – to negotiate in a manner that will ultimately lead to both parties agreeing upon a resolution. Be direct, concise, and clear.

When the opposing party or counsel has completed their presentation, ask open ended questions to clarify any matters. Communicate to the other side that you understand their interests. There is a difference between understanding and agreeing. If you can articulate their perspective (and do so in their presence), you are closer to achieving a meaningful settlement.

- Cover only key points do not be distracted by subsidiary issues that, in all likelihood, will never be resolved. The whole is greater than the sum of its parts.
- Be courteous, and persuasive
- Practice active listening skills (an excellent beginning is to restate what the other said to show you fully understand–although not necessarily agree—with the other's point of view).

Consider allowing your party to speak on his/her own behalf

- Showcase the ability of the party to tell their story.
- It is a cathartic experience to relate your story to the other side – without filters or interruptions.
- Involve the party in the mediation process and thereby create "ownership" of the dispute and ultimate resolution.

Opening presentations are rarely waived. In some cases, where the emotional well being of the client demands or where an incendiary comment may torpedo the resolution process, the mediation may begin in private sessions (called caucuses).

FIRST CAUCUS PRIVATE SESSION

This is primarily an "information gathering" session by the mediator and the parties will have the opportunity to "vent," if needed, in this private setting.

- Confirm that the mediator will maintain confidences.
- Be candid and honest with the mediator.
- Be prepared for a thorough analysis of case—from your perspective as well as the perspective of the other party.
- Be ready to analyze the alternative, the consequences of failing to reach agreement. Estimate cost and expenses, likelihood of recovery, range of probable outcomes, and other aspects associated with continued conflict.
- Brainstorm settlement options.
- Begin the negotiation process. It is helpful to start the negotiations with a meaningful proposal. (Note: Some mediators do not request demands/offers until the second caucus.)
- Opening demands/offers are just that—an opening, a beginning. A good proposal is supported by objective criteria or legitimate standards. It can be explained with reference to a rational basis or formula (not just a feeling). With every offer, it is helpful to consider what response you believe the proposal will elicit in the other party, and whether it will further the negotiation.
- OPTIONS – "Only Proposals That Include Others' Needs Succeed." Can you articulate a benefit to the other side?

SECOND (& LATER) CAUCUSES

The mediator will use these sessions to create momentum toward settlement by refocusing the parties on: previous areas of agreement, their underlying

interests, the underlying interests of the other party, option analysis, risk analysis and transmittal of reasonable proposals.

- Be willing to listen to different points of view.
- Consider the information transmitted from the other side.
- If appropriate, allow new information to influence your risk analysis/ settlement parameters.
- Use the mediator as a sounding board for "reality testing" and to "float" settlement proposals.
- Be willing to explore creative solutions to the problem.

The mediator may give you assignments to work on between caucuses. You may be asked to explore the risk analysis in further detail and generate additional options for settlement that have not yet been proposed to the other side. As the caucus sessions continue, the mediator will build the momentum and assist in clarifying the common ground. Sometimes, the mediator will recommend a joint session to hammer out details.

CLOSURE (POST AGREEMENT)

The mediator may recall the parties to the joint session format if they have been in caucus to summarize essential terms of the agreement. Each participant will be asked if the mediator's summary was accurate and whether they agree that the matter has been settled.

Ask yourself:

- Have all bases been covered—are there any loose ends? Do you have a binding and enforceable settlement?
- Who will prepare the final documents—when & how transmitted?
- What will happen if something breaks down in the post mediation phase?
- How and under what circumstances should the mediator be brought into the discussions?

In order to avoid unanticipated problems occasionally created by "settlement remorse," it is good mediator practice to have the attorneys / representatives and the parties sign a memorandum of essential terms if more detailed memorization is deferred because of the constraints of time or technology. While not always practical, it would be great if the final settlement documents can be executed at the conclusion of the mediation. Sometimes a memorandum of understanding is used to establish the framework for the final papers. Let the mediator stay involved until completion.

Mediation is here to stay. More and more negotiators and advocates recognize the special role that a mediator can play to bridge differences and bring about solutions. As confidante to both sides, the mediator stands in a unique position to assess the likelihood of settlement, and as facilitator of negotiations, the mediator can do more than the parties may be comfortable doing on their own. Mediation works! Effective advocates make the process their own.

(Authors: JEFF and HESHA ABRAMS are nationally recognized mediators and trainers. Mediators with Abrams Mediation and Negotiation, Inc., Dallas, Texas USA. http://www.abramsmediation.com, article copyright)

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Mediation is here to stay! - Part I

: ANIL XAVIER

Behind almost every human conflict someone feels dismissed, discounted, disenfranchised or disrespected. Unresolved tensions that may have simmered below the surface can resurface and make situations difficult.

CONFLICTS & DISPUTES:

Conflict is a part of life. Everyone has differing points of view and we all need to figure out how to live with each other. No matter how trivial the conflict, it causes serious stress for everyone involved. Many of us get into situations that are not as easy to get out of as they were to get into. These range from family clashes that seem simple to solve to full-blown legal issues.

No matter how we feel, think or believe, there is unity in our diversity. Finding that one thing we all have in common is the first step to solving any problem. No matter how far apart we are in our feelings, thinking or beliefs, finding that common ground would enable us to come together and find a solution that we all can live with.

People with problems, suffers from mental trauma and obviously yearns relief as quickly as possible preferably in an inexpensive way.

Most people imagine a dramatic courtroom battle when they think of resolving legal issues. What they may not realize is that court is not always the best place to settle a dispute between private parties. Former US Supreme Court Chief Justice Warren Burger has said, "*The notion that ordinary people want black-robed judges, well dressed lawyers and fine courtrooms as settings to resolve their disputes is incorrect. People with problems, like people with pain, want relief, and they want it as quickly and inexpensively as possible".* [1]

In the past, parties in dispute often felt they had no choice but to take the matter to court. Now, a growing number of people are choosing another option that allows them to avoid the aggravation and expense of a lawsuit. People have started to realize that court is not always the best place to settle their disputes. They are looking at an option to find workable solutions by sitting down and talking face to face. The option is MEDIATION!

BEHIND DISPUTE RESOLUTION:

Behind almost every human conflict someone feels dismissed, discounted, disenfranchised or disrespected. Unresolved tensions that may have simmered below the surface can resurface and make situations difficult. Even if angry words are not spoken, an appearance of "peace" may not be truly peaceful at all. Underneath the still waters, there may be a turbulent bed of emotions. Mediation seeks to help parties find an authentic peace.

(Footnotes)

[1] "We the Nation" – Nani Palkiwala

Case adjudication or dispute settlement through conventional litigation system focus on rights and remedies and resolve the case, but not the problem. Mediation focuses on needs, empowerment, restructures perspectives or relationships and seeks to resolve the underlying problem. Law is being utilized as a modality for healing and helping, not only for resolving problems.

In our experience, we have seen that "an open mind and an extended hand will always work".

Imagine sitting in a room in one of three chairs. A second chair is filled by someone with whom you are in conflict. The third, by a person whose intention is to provide an empathic structure for what is present in the room. That third person creates a neutral space of openness, listens attentively and open-heartedly to each person, acknowledges the universal feelings and needs they are expressing, supports the growing connection between the two as understanding emerges and develops, helps them open to new possibilities as they create solutions which take everyone's needs into consideration. That third person is the MEDIATOR!

"An open mind and an extended hand will always work".

THE MEDIATOR:

They are those who have been trained to work with people in these situations. Mediators, as the name implies, mediate between two people or groups of people and help them to reach a solution which works for everyone involved.

Through the confidential private meetings with the parties, the mediator is able to understand the needs of the party and the mediator assists the parties to arrive at a "win-win" situation with an agreement in which the solution to the dispute is favorable to both parties and thus not only resolves the problem but also strengthen the relationship among them by giving a more humane verdict.

"Blessed are the peacemakers: for they shall be called the children of God"[1], the words may not be the same, but a similar philosophy exists in all religions. Reconciliation, love and peace have enormous moral, spiritual and ethical value.

Mahatma Gandhi has said, *"My joy was boundless. I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men's hearts. I realized the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the 20 years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby – not even money, certainly not my soul"*[2].

WHAT IS MEDIATION?

Of all mankind's adventures in search of peace and justice, mediation is among the earliest. Long before law was established or courts were organized, or judges had formulated principles of law, man had resorted to mediation for resolving disputes.

Mediation is a process of dispute resolution in which one or more impartial third parties intervenes in a conflict or dispute with the consent of the participants and assists them in negotiating a consensual and informed agreement. It can also be said as a confidential process of negotiations and discussions in which a "neutral" third party or mediator assists in resolving a dispute between two or more parties.

Mediation presents the opportunity to express differences and improve relationships and mutual understanding, whether or not an agreement is reached. It is generally considered to be a non-adversarial approach to the resolution of conflicts or disputes. The general role of the mediator is to facilitate communication between the parties, assist them on focusing on the real issues of dispute and to generate options that meet the respective parties' interests or needs in an effort to resolve the dispute.

The most important feature of Mediation is that it provides a solution that both parties can live with, instead of a verdict imposed by a court. Both parties are involved in suggesting possible solutions to the conflict.

Mediation is based on the voluntary cooperation and good faith participation of all parties. The mediator cannot force the parties to resolve their differences. But the mediator can help the parties reach a solution agreeable to both of them. If the parties work out all or some of their differences, the resolution - or agreement - is put in writing and signed by both the parties. Mediation may be able to plow beneath the surface of frequently vexatious litigations by addressing the underlying conflicts. The mediator acts as a bridge to iron the wrinkles of differences affecting the parties.

(Footnotes)

[1] Matthew 5:9

[2] "The Story Of My Experiments With Truth" – Mahatma Gandhi (Part II, Chapter XIV)

Mediation differs from arbitration, in which the third party (arbitrator) acts much like a judge in an out-of-court, less formal setting but does not actively participate in the discussion. Unlike a judge or an arbitrator, a mediator does not decide what is right or wrong or make suggestions about ways to resolve a problem. A mediator seeks to help parties to develop a shared understanding of the conflict and to work toward building a practical and lasting resolution. Mediation serve to identify the disputed issues and to generate options that help disputants reach a mutually-satisfactory resolution. It offers relatively flexible processes; and any settlement reached should have the agreement of all parties. This contrasts with litigation, which normally settles the dispute in favour of the party with the strongest argument.

Mediation is different from counseling, therapy or advocacy. The mediator does not take sides or push for any one solution. Mediators maintain a neutral role. Mediation focuses on the future, not the past, and what will resolve the conflict. Mediation does not replace the need for legal advice or counseling if your "rights" in a situation are the concern.

WHY MEDIATION?

If you have given up on negotiating a settlement of your dispute directly with the other party, mediation may be the best way to solve it. Compared to a lawsuit, mediation is quick, private, fair, and inexpensive. And, if your dispute is with someone that you need to deal with in the future – such as an employer, landlord, neighbour, business partner, or co-parent – mediation will help you resolve your disagreement without destroying your relationship.

In a lawsuit, no matter whether you have won or lost, it is usually a loss. Litigation is public. People lose their sense of privacy. It is slow, it is overburdening. Mediation and other forms of conflict resolution empower people to take control of their own lives and find creative solutions that work for them. Further we avoid the economic disadvantage because we spend so much on litigation.

Abraham Lincoln has said, *"Discourage litigation. Persuade your neighbours to compromise whenever you can… the nominal winner is often the real loser in fees, in expenses and waste of time"*[1].

ADVANTAGES OF MEDIATION:

As mentioned earlier, in addition to the fact that it is voluntary, mediation is a much less formal process than arbitration or litigation. Sessions are usually scheduled at a time and location convenient to all parties. Because the parties are directly responsible for developing the terms of an agreement, they are more likely to keep the agreement. Participants in mediation reach agreements about 80% of the time and keep those agreements about 90% of the time. Even if a written agreement is not reached, parties may lay groundwork for future agreements by opening lines of communication.

Advocates of mediation say that mediation can address each of these issues:

- diverting cases from court,
- building bridges between communities, and
- transforming society into a more tolerant, understanding people.

Another benefit is that mediations remain under wraps, whereas court cases are usually in the public domain. The process is also far less intimidating than a courtroom. Most often, the parties feel empowered by the process as they have been directly involved in negotiating the outcomes.

The driving motivation behind mediation is to find a solution. Mediation need not be viewed as a process by which the mediator helps people come to a resolution. It could be viewed as a process by which the mediator helps people go to the next step; whether it is clarifying a thought process, communicating with another person, or simply organizing a person's thinking. The mediator can support and focus the party's thinking.

WHO CAN MAKE A GOOD MEDIATOR?

There is no simple answer to this question. There can be no one predictor of success as a mediator. Successful mediators come from many different backgrounds and have varied life experiences. A competent mediator is an effective conflict manager. Competence depends partly on the type of the dispute and the parties' expectations. It also depends on whether the mediator has the right mix of acquired skills, training, education, experience and natural abilities to help resolve the specific dispute.

A good mediator will probably have many of the following qualities:

- Overall "people" skills
- Good verbal and listening skills
- Thinks "out of the box"
- Helps people work together as a team

(Footnotes)

[1] "Collected Works of Abraham Lincoln" – John Nicolay and John Hay

- Impartial
- Respect for the parties
- The ability to gain the parties' confidence
- Knowledge of the mediation process
- Brings a balanced approach to control of the process
- Initiative and the confidence to use it
- Reflective
- Trustworthy
- Dependable
- Keeps information confidential
- Ability to remain calm under pressure.

I have often found that one of the core strengths of a mediator is to have a sense of humour and the ability to use humour appropriately to lighten the tone or refocus people away from a slide into some very unhelpful place. It is a skill that parties appreciate but it is not necessarily one that they think of when they look to appoint a mediator.

Apart from the above qualities, knowledge on mediation process, ethical standards and the code of conduct are some of the important norms that a mediator should possess.

Before we go further, I would like to give one discussion of mediation in history shortly before world-war II.

"Far East: Mediation: It's Wonderful[1]

The war between Thailand and French Indo-China ended last week. The victor was Japan. Nobody had asked Japan to mediate the quarrel, which had gone on intermittently in the swampy jungles along the Mekong River since October, but fortnight ago Tokyo offered its services. When the offer was not immediately accepted, Japan became insistent, threatening. Nipponese warlords insisted that, as "the most stabilizing power in the Far East," Japan alone had the right to settle Oriental differences. Under duress Vichy, then Thailand, accepted.

Last week the stage was set for mediation, Nipponese style. The Japanese cruiser Natori steamed into Saigon harbor. Off the southeast Indo-Chinese coast appeared two Japanese aircraft carriers, two cruisers and two torpedo boats. Planes from the carriers cruised low over the city. At an appointed hour six French and six Thai delegates were taken aboard the Natori, where seven white-uniformed Japanese officers headed by Chief of the Japanese Military Mission in Indo-China Major General Raishiro Sumita received them with bows and toothy smiles.

Tea was served; then the delegates prepared to mediate. Before either Thailand or Indo-China could present a claim or grievance, Japan handed both a bill for her services as mediator – to be paid in advance. She demanded: a virtual monopoly over Indo-China's production of rice, rubber and coal; a free hand to exploit Indo-China's natural resources; military garrisons along the Chinese frontier; Japanese inspectors at all Indo-Chinese customs houses; a naval base at strategic Camranh Bay and defense concessions at Saigon; air bases throughout Indo-China. From Thailand she demanded a naval base in the Gulf of Siam for a fleet of 15 battleships, cruisers and auxiliary craft. Unless the terms were accepted on the spot, it was intimated, naval units would go into action and invasion of both countries would follow. The delegates signed.

Smiles returned to Japanese faces, tea cups were refilled and an armistice creating a twelve-mile buffer zone between the Indo-Chinese and Thai forces was quickly arranged. Peace talks were postponed for a later meeting in Tokyo, when claims would be settled and peaceful collaboration in the New Asiatic Order discussed.

The bows were deeper and smiles toothier as Japan's mediators sent the delegates ashore."

Reading it now, many mediators may wonder, how this could ever happen. We should understand that people are not born into this world knowing how to solve conflicts. As we grew up we observed others: our parents, teachers, elders, leaders etc. as to how they resolved conflicts. We copied them, imitated them or tried to improve on them and we began to use different strategies out of the different problem-solving methods we saw and copied. But when we were faced with bigger issues, more complicated issues, we found nothing worked to resolve the dispute. But we continued doing the best we could, having no idea there could possibly be other methods that could have more peacefully and successfully resolved our disputes.

I firmly believe that to make mediation effective and professional, appropriate training on mediation techniques should be mandatory. If conflict resolution skills and mediation strategies are taught to all people, humanity would be able to live in peace with themselves, each other, and our environment.

(Footnotes)

[1] Time Magazine – February 10, 1941

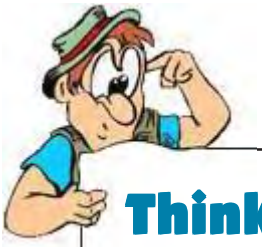
Michael McIlwrath, Chairman of the International Mediation Institute at the Hague has stated, *"To emerge as a profession, mediation must be globally understood and accepted; where competent mediators apply transparent high standards, and are instinctively regarded as professionals regardless of their background; where users see mediation as an opportunity and are more inclined to accept than reject a proposal to engage a mediator; where there are enough competent mediators from all cultures and technical fields that the most suitable mediator can easily be identified. The creation of IMI is an opportunity for mediation to leave behind its status quo as a local niche activity and become a truly global profession. But can the leading players drive the necessary changes to the current environment to make it happen?"*[1]

(To be continued...)

(Footnotes)

[1] IMI Annual Review 2009

(Authot: Anil Xavier is a lawyer and an IMI Certified Mediator. He is a Member of the Independent Standards Commission of the International Mediation Institute at The Hague. He is also a Charter Member and currently the President of the Indian Institute of Arbitration & Mediation. He can be reached at anilxavier@arbitrationindia.com. Article first published in the "Indian Yearbook of International Law and Policy 2010")



Think ... Trap!

A mouse looked through the crack in the wall to see the farmer and his wife open a package. What food might this contain? He was devastated to discover it was a mousetrap.

Retreating to the farmyard, the mouse proclaimed the warning, "There is a mousetrap in the house! There is a mousetrap in the house!"

The chicken clucked and scratched, raised her head and said, "Mr. Mouse, I can tell this is a grave concern to you, but it is of no consequence to me. I cannot be bothered by it."

The mouse turned to the pig and told him, "There is a mousetrap in the house." The pig sympathized but said, "I am so very sorry, Mr. Mouse, but there is nothing I can do about it but pray. Be assured you are in my prayers."

The mouse turned to the cow. She said, "Wow, Mr. Mouse. I'm sorry for you but it's no skin off my nose."

So, the mouse returned to the house, head down and dejected to face the farmer's mousetrap alone.

That very night a sound was heard throughout the house; like the sound of a mousetrap catching its prey. The farmer's wife rushed to see what was caught. In the darkness, she did not see it was a venomous snake whose tail the trap had caught. The snake bit the farmer's wife. The farmer rushed her to the hospital and she returned home with a fever.

Everyone knows you treat a fever with fresh chicken soup, so the farmer took his hatchet to the farmyard for the soup's main ingredient. But his wife's sickness continued, so friends and neighbors came to sit with her around the clock. To feed them, the farmer butchered the pig. The farmer's wife did not get well; she died. So many people came for her funeral that the farmer had the cow slaughtered to provide enough meat for all of them.

So, the next time you hear someone is facing a problem and think it doesn't concern you, remember when one of us is threatened, we are all at risk.

REMEMBER: EACH OF US IS A VITAL THREAD IN ANOTHER PERSON'S TAPESTRY; OUR LIVES ARE WOVEN TOGETHER FOR A REASON.

ICC International Commercial Mediation Competition

The 5th ICC International Commercial Mediation Competition was held in Paris from February 6 – 10, 2010. Nottingham Trent University in the United Kingdom won the first place, with the University of South Wales in Australia taking the second place and Osgoode Hall School of Law in Canada taking the third place.

The first prize won by Nottingham Trent University comes with a •1500 cheque, one year subscription to ICC International Court of Arbitration Bulletin, the ClArb "International journal of Arbitration, Mediation & Dispute Management", a copy of the book, "Settling Your Case Through Mediation: A Strategic Guide for Corporate Counsel" by Gary P. Poon and a copy of the book, "Mediation Representation – Advocating in a Problem-Solving Process" by Harold I. Abramson for each student. The prize also includes internships with ICC Dispute Resolution Department and with the Paris Offices of Lovells, Orrick and Clifford Chance.

With a view towards training the lawyers to better meet the dispute resolution needs of today's cross-cultural market, the competition gives students the opportunity to test their problem-solving skills in a moot international mediation. Professional mediators with a diverse range of expertise participate as volunteer mediators and judges. The ICC Commercial Mediation Competition is the only international commercial mediation moot. The competition is open to Universities from all over the world. The competition consists of two parts – written and oral advocacy. Competitors have to apply the ICC's Amicable Dispute Resolution (ADR) Rules to solve the problem devised by a special drafting committee of international mediation specialists during three days of preliminary rounds. Student teams are divided into requesting party and responding party in mock mediation sessions, where team members act out the role of counsel and client before a mediator and two judges.

The competition has expanded considerable since it was first held in 2006. In its initial year teams from 13 Universities and 28 professionals participated, while in 2010, 44 Law Schools from 18 countries and 100 professionals participated. Thirty five nationalities were represented in the contest.

Four teams from India had participated in this year's competition. They were, Tamil Nadu Dr. Ambedkar Law University, National Law School of India University – Bangalore, Gujarat National Law University, Gandhinagar Gujarat and National Law Institute University – Bhopal

The competition was followed by a one-day international conference on mediation for cross-border commercial disputes, which was co-hosted by ICC and American Bar Association. The next year's competition will be scheduled from 4 – 9, February 2011.

Richard Millen passed away

Richard Millen (89) was one of those whose inspiration created organizations that have become pillars of the southern California mediation universe. He was the motive power that helped to create the first court-annexed mediation program with the Los Angeles Superior Court (now the largest court and largest mediation program in the world). He was a trainer with the Neighborhood Justice Center, now Dispute Resolution Services (DRS) and a division of the Los Angeles County Bar (an adoption he never sanctioned). Richard was one of the first interdisciplinary-trained mediators. Richard is survived by his wife, Mary Alice, four adult children, several grandchildren, and a community of thousands of mediators scattered throughout southern California and well beyond.

Can retired Judge's become Arbitrators?

Opening a new front in the battle for judicial accountability, the High Court of Delhi has directed the government to take a stand under oath on whether retired Supreme Court judges could give advice to litigants and whether they could also take up arbitration work while they are holding official positions. A bench comprising acting Chief Justice Madan Lokur and Justice Mukta Gupta asked the Union law ministry on March 10 to file an affidavit on a PIL filed by Delhi-based NGO, Common Cause, alleging that former SC judges were violating the Constitution "in letter and spirit" by tendering legal opinions, which were being produced in various forums of adjudication to influence judgment.

The PIL has decried the widespread practice among retired judges, both from the SC and the other high courts, to take up arbitration assignments from litigants despite holding constitutional or statutory posts as chairpersons or members of various commissions or tribunals. Though arbitration is encouraged as an alternative dispute resolution (ADR) to expedite high-stake commercial cases, Common Cause pointed out the danger of allowing such private assignments to be given to judges who had already been entrusted with post-retirement tasks of public importance.

Certificate in Dispute Management (CDM)

CDM is a distance learning course of IIAM, valid for six months from the date of enrolment. You can enroll at any time of year and you study entirely at your own pace, submitting your assignments when you are ready. Your tutor will be available to mark your assignments and give feedback on your progress for a period of six months from the date of enrolment.

You will be sent four 'reading and study assignments' with your course materials, and these form an essential part of your distance learning course. They are designed to help you to work through the course manual and understand the concepts. The course will provide a good basic knowledge of ADR – Negotiation, Mediation & Arbitration – in theory and practice. On successfully completing the assignments included in the course a certificate will be awarded.

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If you want happiness for an hour ... take a nap.
If you want happiness for a day ... go fishing.
If you want happiness for a month ... get married.
If you want happiness for a year ... inherit a fortune.
If you want happiness for a lifetime ... help others.

~ Chinese Proverb ~