Walking The Talk

During the past 25 years, the dispute resolution movement has begun to transform the way conflict is managed in our society. Roger Fisher and Bill Ury published the book *Getting to Yes* in 1981, and ever since, a generation of negotiators has learned to focus on interests instead of battling over entrenched positions, to identify shared principles and neutral standards and to "separate the people from the problem." As the dispute resolution movement has matured, how have we used these techniques with regard to conflict and tensions in our own field?

My view is that we have, for the most part, done fairly well. Professionals in the field generally treat each other with respect. Conferences in the dispute resolution field, such as the Section's annual spring conference, are markedly collegial events. The National Council of Dispute Resolution Organizations (NCDRO) helps organizations in the field—such as our Section, the Association for Conflict Resolution (ACR), the National Association for Community Mediation (NAFCM), and others—coordinate their efforts.

Conflicts within the ADR field. Tensions are simmering, however, in certain areas of the ADR field that need more pro-active engagement.

- With the development of collaborative law (a process in which lawyers agree to represent clients for negotiation purposes only and turn the case over to other counsel if it needs to be litigated), tensions have emerged between divorce mediators and collaborative lawyers who specialize in divorce practice. Some mediators criticize collaborative law as an "oxymoron," and some collaborative lawyers criticize divorce mediation as an inherently flawed process because lawyers are usually not present and therefore the parties cannot make fully informed decisions in their negotiations.

- With the emergence of "transformative mediation" (inspired by the book *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*, by Robert Baruch Bush and Joseph Folger), some mediators have begun to gather in camps in which those who practice differently are viewed askance. Some commercial mediators criticize transformative mediation as too "crunchy" to be of practical use in their arena, and some transformative mediators criticize the commercial mediators as "head bangers" whose evaluative techniques are inconsistent with the fundamental principles of mediation.

- With more lawyers becoming trained as mediators each year, mediators who come from backgrounds other than law have expressed the fear that lawyers will take over the ADR field and make it difficult for anyone but lawyers to earn a living there. Although the ABA Section of Dispute Resolution has taken a number of steps to keep the field open to all (see the Associates page of our web site for examples), some mediators and arbitrators see lawyers as a threat to their livelihood.

Beneath each of these tensions—and the list above is not exhaustive—lie both philosophical differences and, to some degree, conflicting economic interests.

Walking the talk. If we were mediating any of these disputes, we would try to bring the parties together for frank discussions in which each side's interests would be discussed openly. We would look for common ground and, absent agreement, try to help the parties better understand and manage their differences.

What is at stake if we, as a field, do not engage in such discussions? One casualty might be the interests of people who need our services—people who might be confused by the conflicting claims and harsh rhetoric used by some dispute resolvers to describe the practices of others in the field. Another casualty might be the dispute resolution movement itself, if our energies are diverted from collaboration to competition.

We each have our own views, of course, about how these disputes should be resolved. My own view, for example, is that collaborative law and divorce mediation are both vitally important methods of dispute resolution, and they sometimes work well together in the same case. Transformative, facilitative and evaluative/directive styles of mediation are not mutually exclusive and good mediators often use elements of each of these styles in their work. And lawyers can and should do more to help keep ADR open to all.

What is missing for us as a field is full engagement of these issues in the manner that we seek when we mediate—addressing the underlying interests, values, experiences and perspectives that are driving us apart.

I look forward, during my one-year tenure as Section chair, to fostering such engagement both in our Section and in the other arenas in which we work together on resolving conflict.

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