

## **CONFLICT: CAN'T LIVE WITHOUT IT SO LEARN TO DEAL WITH IT.**

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*What one decides to do in crisis depends on one's philosophy of life, and that philosophy cannot be changed by an incident. If one hasn't any philosophy in crisis, others make the decision.* Jeannette Rankin, suffragette and first woman elect to the US Congress as quoted in ACResolution Winter 2004, p. 8.

Conflict is natural and is all around us. In nature it can be summed up with the phrase *survival of the fittest*. As human beings we pride ourselves on being superior to the animal kingdom, but in reality, a lot of conflict is resolved by violence. We as a species do not encourage individual violence as a dispute resolution mechanism and, in fact, have made most of those actions crimes. We do sometimes rely upon group violence to solve conflicts, only some of which are sanctioned such as war declared by one government against another; some of which are not such as the terrorists attacks so frequent in today's society. In the middle ages, trial by combat where champions were engaged to represent those in a dispute was common. That concept evolved over the years in at least two different and distinct venues; the sports arena and the courtroom. Sports such as football, hockey and boxing can be seen as nothing more than organized violent representational dispute resolution. Rather than Joe and Duane "duking it out" over a dispute, they chose opposing teams and "bet" on the game to decide.

The courts and trial lawyers can be seen as the ultimate civilized representational combatants. In the 1980's and 1990's, fierce competitive male trial lawyers were referred to as Rambo litigators. Unfortunately female competitive trial lawyers were referred to in a derogatory manner for acting the same way—I know as I was one of them. As the trials and what came before (discovery wars) turned more drawn out, hence

more expensive, many people turned to alternatives to the traditional trial mode to solve their problems and the ADR or Alternative (appropriate) Dispute Resolution movement came to the fore. Negotiation, conciliation, mediation, and arbitration were starting to take hold in business, interpersonal, and community disputes; even in the courts.

Arbitration came to the front first. People were comfortable presenting evidence to a neutral panel of experts and having them make the decision for the parties to the dispute as it was close to adjudication. As time passed, arbitration became bogged down with procedure as trial without the traditional protections thought of in trial of it being public, appealable decisions (except for limited arbitrator abuse grounds), and non-coerced such as forced arbitration clauses in adhesion contracts. Arbitration, though still used, is not currently as favored as some of the other methods of conflict resolution.

Negotiation either directly or with a representative never really went out of style—what did change was the way negotiate was approached. As a result of books such as *Getting to Yes* by Fisher and Ury, (fn. 1) the concepts of interest based negotiation, win-win and enlarging the pie were being discussed. The idea is if parties to a dispute can get their needs met (have a car involved in an accident with an uninsured motorist fixed by his brother-in-law's business doing the repairs) rather than their positions (having the uninsured motorist pay \$1000 when he did not have enough money to pay for insurance in the first place), disputes can be easier resolved. Some lawyers have taken this concept into their practice and the collaborative law proposal started. Lawyers sign agreements with clients that the lawyer will represent the client during negotiations but if the client decides to take the matter to court, new counsel will have to be hired. This works especially well in the domestic relations area to keep the clients

focused on collaboration rather than litigation as it has been shown that even the most amenable divorce has an immense impact upon the children.

Taking the concept of interest based negotiation one step further, there are professionals who will assist parties in dispute to negotiate either by having them in the same building (mediation) or by shuttling back and forth with the parties in different locations (conciliation). The hallmarks of these processes are that the parties exercise self-determination, it is a voluntary process in which the mediator/conciliator does not have an impact on or make the decisions as to resolution, and the confidentiality of the process assists in open and honest discussions during the negotiations. Mediation seems to be the mechanism currently in favor and the proposal of the Uniform Mediation Act on a national scale (HB 303 in Ohio passed by the House and assigned to Senate committee as of the date of this article) is an attempt to codify and unify the states with privilege and confidentiality specifically set forth as determined by the parties, with certain exceptions.

Conflict is still resolved by all forms of dispute resolution techniques including one not discussed but often used by many in conflict—avoidance. The varying methods of conflict resolution discussed constitute a few of those available to those with an interest in using something other than traditional litigation to solve a problem. Helpful websites for further information and providers of these services include the Ohio Commission on Dispute Resolution [www.disputeresolution.ohio.gov](http://www.disputeresolution.ohio.gov), Ohio State Bar Association [www.ohiobar.org](http://www.ohiobar.org), Supreme Court of Ohio Office of Dispute Resolution Services [www.sconet.state.oh.us/dispute\\_resolution](http://www.sconet.state.oh.us/dispute_resolution), and Ohio Mediation Association [www.mediate.com/Ohio](http://www.mediate.com/Ohio).

fn1 *Getting to Yes: Learning to Negotiate Without Giving In*. Roger Fisher and William Ury with Bruce Patton, 2<sup>nd</sup> Edition, Boston: Houghton Mifflin, 1991.