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Tina Dean-Editor

Mediation in the Movies

By Christa Metzger

I love movies. Movies of all kinds—no matter the year, the cast, or the plot. I am especially thrilled when I can be taught by watching movies rather than listening to a lecture or paging through an on-line class. There is an attorney/professor in Columbus, Ohio who teaches ethics using long clips of great movies with legal themes, from *Twelve Angry Men* and *To Kill a Mockingbird* to *My Cousin Vinnie*. His class is always full and has a long waiting list. While putting together an ADR Awareness class recently, I decided to find movies that feature aspects of ADR to include in the presentation. I discovered very few. Surprised and determined to find out why, I dug into the Web.

One family mediator who addressed the question stated what should have been obvious to me. Open conflict is exciting. Think about it. Out of conflict come the military battles, the car chases, the lovers' quarrels, and other "edge of your seat" moments that draw us to the theaters or drive us to wait impatiently for our Netflix delivery. Watching a group of people quietly work out their disagreements can't possibly

compete. Discouraged, I searched on.

Ultimately, I found an article called "*Reel Negotiation: The Good, The Bad, and the Ugly, Reflections of Negotiation and Mediation in Film.*" The authors are long-time professional mediators and trainers in all aspects of conflict resolution. Together, they have compiled a lengthy list of movies that present many facets of negotiation, mediation, and conflict management. I have listed a portion of them below along with the authors' annotations about how they may be useful as teaching tools. (If you would like to see the entire article and complete list, click on the link on page 3.) They regularly use these films, or pertinent clips, in their presentations and training sessions, stating that:

"The visual experience of watching movie scenes is, needless to say, a great learning tool that helps to illustrate, clarify or frame the discussion not only about negotiation and mediation, strategies, techniques and skills, but approaches to problem solving and leadership as well."

Despite their large library of movies to the contrary, the authors agree with our family mediator that ADR is not often a theme in popular culture. They differ, however, on the reason. Asserting that peaceful conflict resolution is not generally seen as a positive, they think that it is perceived as weak at best and deceptive at its worst. "Strong" individuals stand up forcefully in support of their beliefs. Anyone who negotiates has a hidden agenda. It is their opinion that this idea is reflected in modern movies which portray ADR inaccurately or make fun of it (*The Wedding Crashers*), causing distorted, inaccurate impressions that lead to ADR avoidance in real-life conflicts.

The authors point out that mediators can learn from these same movies and be prepared to meet participant reluctance when it occurs. In addition, a good mediator may use a movie as a common frame of reference or to provide insight into a party's perspective.

In conclusion, the article states that movies help people see things differently; that "...activities like watching a movie or a play, access (es) different parts of the brain and can spark a whole different perspective."

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DEALING WITH CONFLICT

By Judy Tobe

There are four common approaches for handling conflict. Because most people aren't taught to constructively express messages or to constructively listen, many people find it difficult to handle conflict in positive ways. If you are using some of the less than positive approaches, rest assured, new tools and problem-solving skills can always be learned.

The Aggressive Approach

This approach is often interpreted as hostile in manner, in which you come across as seeking to control or dominate. If you use this approach you are likely to do several of the following:

1. Blame
2. Interrupt and talk over the other person
3. Push to get your way
4. Demand and order

The aggressive approach does not focus on solutions and it does not seek to build agreements both parties can feel good about. Instead, it invites defensiveness and resistance - not a formula for resolving conflicts.

The Non-Assertive Approach

People who approach conflict in this manner are passive and do not express their rights or views. They let others dominate or control the situation even if the outcome is not positive. They tend to not deal directly with the issue at hand. The following are behaviors common to the non-assertive approach to conflict:

1. Avoidance of conflict
2. Appease the other person
3. Hesitant and apologetic
4. Ramble and beat around the bush

Those who use the non-assertive approach do not take the initiative to address an issue directly.

The Passive-Aggressive Approach

With the passive-aggressive approach, what appears quiet and subtle on the outside has actions that others perceive as hurtful and deceitful. The following actions are common for those who use this approach to dealing with conflict:

1. Telling others, not the source
2. Withholding information
3. Making subtle, critical remarks
4. After holding concerns in for a while you unload/explode

Those that use the passive-aggressive approach to deal with conflict do not address issues directly or constructively.

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The Assertive Approach

Being assertive in conflict situations is about expressing your rights and views in a positive and confident manner and enabling others to do the same, with the intent of coming to a resolution. The following are common behaviors of those using the assertive approach to conflict:

1. Going to the source
2. Being direct and constructive in language and tone
3. Problem solving collaboratively
4. Staying firm yet willing to compromise

Those who use the assertive approach are willing to deal with conflict regardless of their comfort level. Emphasis is placed on working out solutions while treating others with respect. The assertive approach is the most effecting way to handle conflicts.

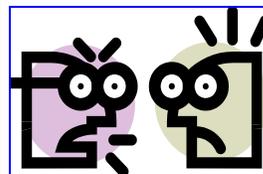
How do you approach conflict? How has that method been working for you? Can you see the behaviors that might result in a more favorable outcome?



Quarterly Quote:

~Once a word has been allowed to escape, it cannot be recalled.

Horace



Mediation in the Movies CONTINUED from pg. 1

As mediators, that is what we are after.

Articles—

Adler, Peter and Robert D. Benjamin, “Reel Negotiation: The Good, The Bad, and the Ugly Reflections of Negotiation and Mediation in Film”

www.mediate.com/pfriendly.cfm, 2006

Lawhon, Paula M., “Why isn’t Mediation More Common on TV and Movies” www.sfmediation.blogspot.com/2009/01/why-isnt-mediation-more-common-on-tv.html, 2009

Films-

Changing Lanes (2002)

Samuel Jackson is the stressed out working class stiff who is involved in a car collision with Ben Affleck, a slick NYC lawyer, who slights Jackson and records how conflict quickly spins out of control from a seemingly innocuous event. A worthwhile study for conflict managers.

Dead Man Walking (1995)

Setting aside the religious stuff, this is a powerful film that compels viewers to feel the pressure of the validity of both sides of the capital punishment issue. Particularly useful for conflict mediators training. Sean Penn plays the convicted murderer on death row, Susan Sarandon, plays the Nun

who connects with him and the family of the young girl he brutally killed.

High Noon, (1952) In this classic American Western, Gary Cooper plays the quintessential reluctant hero who has provided the model for many American Presidents. Juxtaposes the hero and the mediator, the town leader who counsels appeasement, wants “Coop” to disappear and avoid the showdown.

Hotel Rwanda (2004), In this docudrama, Don Cheadle plays Paul Rusesabagina, a hotel manager caught in the middle of the Rwandan genocide in 1994, and saves the lives of some 1200 people through his negotiation prowess with all sides, the UN, the Rebels, the Hutus, the Tutsis and the White corporate owners of the Hotel. This is one of the only films where a negotiator is the hero and not backed up by blazing guns that save the day. *(The authors identify this movie as one of the best modern examples of conflict management through negotiation.)*

The Hurricane (1999), Denzel Washington plays Rubin “Hurricane” Carter, the great prizefighter wrongly convicted and imprisoned for murder. Great scene showing prison guard negotiating with him as moral extremist to survive.

The Milagro Beanfield War (1988) Reuben Blades plays a small town sheriff who stumbles into the role of a mediator to settle a dispute between local Hispanic farmers, the US Forest Service and Corporate

Developers who want the land for a golf course and resort. It is a half way serious comedy of difficult dispute with a humorous bent.

The Negotiator (1998)

Even though it deteriorates into a standard Hollywood action thriller, and not a bad one, Samuel Jackson and Kevin Spacey play sparring police hostage negotiators and offer up some useful scenes on the nature of authenticity and negotiation technique.

Schindler’s List (1993)

Steven Spielberg’s compelling film on the Holocaust provides a powerful backdrop for the study of negotiation as a means of survival and the nature of authenticity. Liam Neeson, as Oskar Schindler, a real life war profiteer/scoundrel who appears to become a hero, negotiates with the Jews to allow for their survival and in a brilliant scene, with a German soldier for the life of a little girl being placed on the train for the concentration camp.

State and Main (2000)

A great, but not well known film about the adventures of a Hollywood film crew in a small New England town, the resulting clash of cultures and negotiations within the crew and with the townsfolk. Illustrates a variety of styles of negotiation from ‘hard ball’ to empathetic. William Macy, Phillip Seymour Hoffman, Alec Baldwin, and Sarah Jessica Parker.

Wit (2001) This is an absolute must see for anyone who works in or around healthcare. Emma Thomp-

son is brilliant as a literature professor come ovarian cancer patient who must engage and endure doctors, and the hospital system in the last days of her life. Directed by Mike Nichols, this film is perhaps the most poignant depiction of doctor/patient communication---or miscommunication around.

For additional information visit the Workplace ADR Program website at <http://www.va.gov/adr>.



Dear Mediator

Dear Mediator-

Why have settlement agreements become so complicated? Regional Counsel review is required and there is so much emphasis on the details needed. What's up?

Answer-If you look at decisions that the Equal Employment Opportunity Commission (EEOC) issues in the *Digest of EEO Law* (<http://www.eeoc.gov/federal/digest/index.cfm>) you will find that a lot of cases that are decided are over breach of settlement agreements, not over the merit of the discrimination complaint. When an Agency enters into a Settlement Agreement it is a contract between the Agency and the Complainant in an EEO complaint.

Making sure that the details of the Settlement Agreement are clear to all parties is one role of the mediator. Asking the when, where, what, how, etc. to make sure the meaning is clear can be time consuming but is necessary. Parties who have reached agreement sometimes become frustrated at this stage of the mediation because they feel they are done with the process.

The EEOC found that a Settlement Agreement was breached when the Agency could not release the Complainant to attend training that was agreed to in the Settlement Agreement, due to staffing shortages. The Agreement specified that once the Complainant completed certain course she could attend the advanced training. Since she had met the requirement specified in the agreement and there was no provision that allowed the Agency to delay her attendance due to staffing the Agency was found to have violated the Settlement Agreement. The EEOC ordered the Agency to send the Complainant to the training.

In another case the Settlement Agreement included a provision that disciplinary actions would be removed from the Complainant's Personnel Folder. The Complainant received a Letter of Counseling citing one of the actions that was supposed to have been removed by her new manager. Although the Agency asserted it had removed the documents, because the Complainant was able to produce the letter that showed the prior discipline was cited the EEOC found the Agency violated the Agreement. The Letter of Counseling was ordered to

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be rescinded.

The VA's Office of General Counsel instituted the requirement for Regional Counsel review of Settlement Agreements in an effort to prevent allegations of breach based on vague terminology. Regional Counsel attorneys review agreements to ensure they 1) comply with the law and 2) are clear to prevent future misunderstanding.

Also, the VA's Office of Policy and Compliance, a branch of the Office of Resolution Management, follows up by requesting documentation to show that provisions in Settlement Agreements have been met. To show compliance, the Agency may have to produce a SF-50 or a letter documenting what was removed from an employee's Official Personnel Folder.

When the Agency is found to have breached a Settlement Agreement the Complainant normally has two options. The Complainant can request specific enforcement, meaning that the Agency be required to take the actions that were agreed to in the Settlement Agreement. The other choice is to reinstate the complaint at the point it was closed based on the Settlement Agreement, which may require the Complainant to return anything received from the settlement and return to the status quo, prior to the Settlement.

All of these post Settlement issues can be minimized if the mediators spend sufficient time with the parties making sure that all details are addressed. If the parties agree to rescind a termination and allow the party to resign instead, important details such as the effective date of the resignation, whether the Complainant needs to provide a written resignation, how reference checks will be handled and when all paperwork will be complete and final should be in the Agreement.



Upcoming Trainings

Jan. 30-Feb. 3-Basic Mediation Skills-Fayetteville, NC
POC-Otha Kimbrough

Feb. 6-10-Basic Mediation Skills, Harlingen, TX
POC-Rodney Brown

Feb. 13-17-Basic Mediation Skills, Cheyenne, WY
POC-Frank Trejo

Mar 19-23-Basic Mediation Skills, Reno, NV
POC- Melvin Smith

Please check the ADR Training Calendar at <http://vaww1.va.gov/adr/ADRCalendar.asp> for other trainings as they are added.



Dorn VA Medical Center Conflict Resolution Day

Ms. Rebecca Stackhouse, Acting Medical Center, recognized the mediators for their years of service to the ADR Program. Left to right: Cyrus Hart, Roslyn Bird, Gwendolyn Green, Ms. Stackhouse, Acting Medical Center Director, Carolyn West Kelly, Cathy Cook and Eric Arroyo. Mediators Not Pictured: Karen Agee, Rebecca Barnette, Evetta Gregg, Beverly Hanna, Ray Nelson.



Basic Mediation Skills Class, Danville, IL-8/2011



Workplace ADR Program

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The Workplace ADR Program solicits articles for VA's quarterly ADR newsletter. The purposes of the newsletter are to communicate information relating to the use of ADR in workplace disputes, and to serve as a resource for those interested in learning more about ADR and its application within VA. We invite you to submit ideas and articles for the newsletter through your respective administrations: VHA to Sherron McHellon (10A2E), VBA to Johnny Logan (20M42), NCA to Nicole Maldon (40A), VACO staff offices to your VACO ADR Liaison, and labor organizations to your ADR Council Representative. We are looking for ideas and articles on ADR-related topics, noteworthy activities, initiatives, accomplishments, best practices, or other items designed to educate and inform VA employees and managers on ADR and its benefits in addressing workplace disputes. We hope the VA community will find the newsletters a useful resource for obtaining interesting and helpful information representing ADR activity throughout VA. For more information, visit our website.

UPCOMING ADR TRAINING—Mediating with Parties who have Psychiatric Disabilities—Thursday, January 19, 2012 1:00 PM – 2:30 PM EST

The presenters will 1) explore relevant ethical issues, particularly the obligation to accommodate parties facing obstacles to their full participation; 2) teach a collaborative accommodation design model that can also be used with people who have not disclosed having a psychiatric disability; 3) present basic information about the common psychiatric and relevant disabilities; and 4) introduce participants to tools that they can use when mediating with parties who have – or who may have – psychiatric disabilities, where the parties' feelings or behaviors make it difficult for them to participate fully in mediation.

Judy Cohen is Executive Director of Access Resources, a conflict management and training firm. A national leader in Americans with Disabilities Act (ADA) mediation, Ms. Cohen has expertise in mediating issues involving people with disabilities, particularly in the workplace. Formerly Ms. Cohen was an Alternative Dispute Resolution (ADR) Program Manager for the Federal Aviation Administration. She has taught ADR as an adjunct professor at the School of Management, Center for Labor and Industrial Relations, New York Institute of Technology, and at John Jay College of Criminal Justice, City University of New York.

As an appointed member of the New York City Bar Association Committee on ADR, Ms. Cohen acted as liaison to the Committee on Legal Issues Affecting People with Disabilities. She was also appointed to the American Bar Association Commission on Mental and Physical Disability Law, where she chaired the Committee on Mediation and Dispute Resolution. Judy is Project Coordinator of the ADA Mediation Guidelines at Cardozo School of Law, which produced the first set of standards for practitioners in the effective management of disputes involving people with disabilities. Judy has mediated many cases for the Department of Veterans Affairs in New York.

Pattie Porter, LCSW is the President of Conflict Connections, a conflict resolution and training business. Mrs. Porter is a Credentialed Distinguished Mediator with the Texas Mediator Credentialing Association and an Advanced Workplace Practitioner with the Association for Conflict Resolution. Mrs. Porter served as a clinician with an Employee Assistance Program (EAP) providing counseling to employees experiencing psychiatric disabilities. Mrs. Porter developed and led the conflict resolution program through the EAP providing conflict coaching and mediation to employees and management. She partnered with the ADA office to offer mediation for reasonable accommodation cases and consulting on psychiatric disabilities.

Mrs. Porter's experience includes mediating cases with adults with disabilities seeking training and employment through the Delaware Division of Vocational Rehabilitation. Mrs. Porter mediates employment cases involving disabilities through a number of federal agencies, including the VA. She provides ADA Mediation training to mediators and authored "*Maximizing Effective Participation*" published in *Alternatives to the High Cost of Litigation*, CPR Institute for Dispute Resolution.