

COMMENTARY

ADR SPOTLIGHT PREMI

The neutral stranger and the untold story

By HARSHITHA RAM

The first thing that happens is that where two parties in a dispute agree to approach a non-aligned 'neutral stranger' and ask her to make a determination for them. There could be an entire range of attributes that might give the decision maker an ability to effectively manage the matter. The parties begin to trust the neutral as they know she has no stake in the matter. Why do they trust the neutral? Because of her 'no stake' in the situation, reputation as a wise decision maker, professional training and background. Once there is a third party intervention in the resolution process there is a thin line between mediation and umpiring which essentially is a boundary in analytical terms. The power of decision making is submitted to a third party, and here comes the aspect of facilitation on the one hand and determination on the other. When the parties agree to present their case to the neutral stranger, there is no issue of legitimation. The parties' very agreement confers legitimacy.



Harshitha Ram

We are alive to the possibility that, in essence, we have made the process seem more of a challenge and demanding than it really is. Dispute resolution has always embraced the concept of voluntary engagement which could mean encouraging engagement and continued engagement. In reality, it is disappointing to have to address the issue of formal duty. The bitter and costly affair of dispute settlement has required the parties to give serious consideration to putting in place a system designed to cope with disagreements and manage relationships; and to have a dispute system design in place. What amounts to success in mediation is the process which offers opportunities to restore open and direct communication between the parties themselves. The neutral gives the confidence that misunderstandings can be sorted out, the priority and the weight of each case made clear, risks appraised, and choices made over whether to shift or to stick positions. A neutral will take efforts to encourage frank communications possible within in a safe environment.

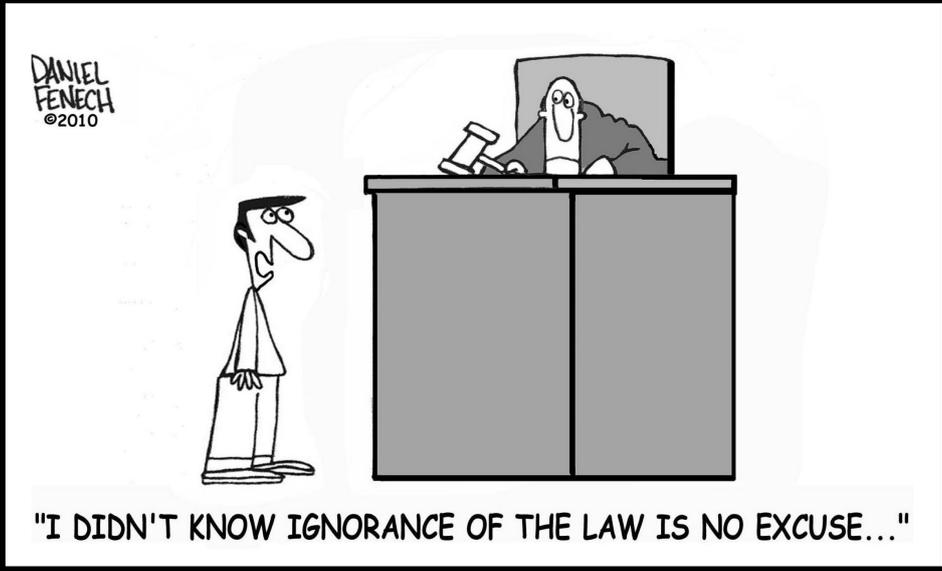
In clarifying the role of the neutral, it is indispensable to distinguish between the fundamental elements of process and outcome. The mediator is the core individual who is vested with the process. The parties are free to negotiate or not, make offers or not, settle or not, it is their dispute and their decision. This is what makes the process attractive. It is not for the mediators to ensure that the outcome is what they consider to be just. The parties are free to seek as much perspective from the mediator on what is fair as they wish. Exploring the interests and gaining the trust of all present during the mediation process is very important for what is likely to occur in the later stages of the process. It can be quite unsettling for those new to the process to engage in conversations with the neutral. Perhaps giving an indication of approachability, is a key to gaining trust with the parties. An experienced neutral will go that extra mile stimulating discussions, analyzing issues and offer solutions without crossing boundaries unless asked to do so.

In some instances, the mediator requires a thorough and imaginative preparation. Mediators exhibit different styles for different issues as the aim is to establish a cooperative working atmosphere creating a problem-solving

venue. The issues are discussed in an analytical and objective way to help the parties reach a better understanding of the strengths and weaknesses of their respective cases. There are careful choices to be made. For instance, in explaining convincingly and respectfully to a bereaved party about their claims, recognizing and respecting emotions and so on. In reality, it is very intuitive. It is less technical and more flexible and certainly not an unrealistic soft process. The ADR enthusiasts always talk of win-win and this might turn out at the end of a long day. The truth is that, what all most all users of mediation really aspire to is to avoid win-lose outcomes and possible predicament. As actuality falls short of expectation at times and neither party has achieved it all but each has given some and taken some.

In conclusion, the neutral stranger has a story to tell, which is more interesting than we imagine to be. Irrefutably, it is their experience with each session that is encountered with enormous communication between the parties themselves. The neutral gives the confidence that misunderstandings can be sorted out, the priority and the weight of each case made clear, risks appraised, and choices made over whether to shift or to stick positions. A neutral will take efforts to encourage frank communications possible within in a safe environment.

Harshitha Ram is an international disputes attorney and arbitrator. She is the founder of Lex Apoteke offering legal and dispute resolution services. Ram holds a masters in Dispute Resolution from the University of South Wales, UK. She has a global practice and handles issues in versatile domains. She serves as both Fellow and panelist in numerous national and international arbitration panels and is a globe-trotter. Besides being the Fellow of the Chartered Institute of Arbitrators (CIARB), she is on the panel of commercial arbitrators at the American Arbitration Association (AAA), chair, The Michigan Dispute Resolution Journal initiative of the Diversity & Inclusion Action Team (DIAT), Affiliate, ADR Section - State Bar of Michigan, panelist, and Professional Resolution Experts of Michigan (PREMI), http://premi-adr.com), an invitation-only group of Michigan's top ADR professionals. She represents clients in the capacity as both counsel and neutral. She is frequently invited as a guest speaker, lecturer, and ADR trainer by Universities and ADR service providers in the UK, USA, Europe and Asia. She is currently leading an international program on accreditation of ADR professionals worldwide.



Whatever you think of it, we're global

By LEE H. HAMILTON

No matter how hard we try, we really can't avoid one another. We live in a world where what takes place somewhere else on the globe has a very good chance of affecting us—along with many others.

The pandemic, of course, is a useful—if sobering—example. A virus that infected humans in one city in China spread with breathtaking speed around the world, beyond the power of governments—or anyone else—to stop it.

But then, it often seems like everything is interconnected these days: workers, tourists, ideas, commerce, communications, drugs, crime, migrants, refugees, weapons, climate impacts... and, of course, illnesses. The scale and speed with which they cross borders are hallmarks of our world, and though governments spend a lot of time trying to manage and control what they can, they're severely limited in what they can accomplish. It's one reason the distinction between "foreign" and "domestic" policy is, at heart, superficial. Globalization is a powerful force in the modern world, and you can see it on your block.

Not surprisingly, the forces of globalization generate benefits, challenges, and difficult problems, all of which must be confronted, often simultaneously. Take, for instance, nuclear proliferation. It's dropped out of the headlines but stopping the spread of weapons of mass destruction is an ongoing priority for any US administration and the world. Even with major international

agreements in place for the last half-century, nine countries have nuclear weapons (three since the Nuclear Non-Proliferation Treaty went into effect). It was once feared there would be many more, so U.S. and international efforts have been successful, still, a number of countries are on the cusp of developing nuclear weapons.

Similarly, global migration brings both opportunity and difficulty. It's estimated there were some 280 million migrants in 2020, 50 million of them in the U.S. alone. This can bring enormous benefits in the innovation, talent, and drive that many immigrant workers possess. But there's no denying that it also causes disruption, both social and economic, and it will remain a domestic political flashpoint for as long as the U.S. remains an attractive destination.

You can also see an example of our interconnectedness—and the issues it raises—whenever you go to a shopping mall. All countries need something from other places, whether it's food or cars or watches or clothing. Economic theory likes this: Countries specialize in making certain things more cheaply and efficiently, and they import the goods that others produce more efficiently. Open trade allows every country to do what it does best. But to factory workers thrown out of their jobs or farmers facing stiff competition from overseas, the details matter a lot. This is why trade talks go on constantly among nations and trade is always high on the list of domestic political issues.

Let's take one more example. Overall, global health is probably better now than it has been in the

history of the human race. We've seen much improvement in health and medical care, in prevention and diagnosis, in technology, medications, education, and nutrition. But there's a basic fact facing the globe: the world's population is exploding. The 8 billion people who live on the planet are twice the number of just 50 years ago. The UN expects growth to level out, but still projects a world of 11 billion people by century's end. As the Covid pandemic has taught us, health issues faced in any part of the globe can affect us at home at any moment.

None of this is to say that globalization won't see hiccups. There's intense political pressure to erect barriers, both in the US and in other countries, from segments of the population that haven't seen globalization's benefits—only job losses and cultural change. And the pandemic has induced a lot of countries not just to look inward at their health systems, but to recognize that a globalized supply chain leaves them vulnerable to shortages at critical moments and globalized travel demands greater scrutiny. Still, whether we like it or not, we're all inter-connected: the challenge is to make it work as well as possible for all of us.

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MY TURN

By TOM KIRVAN
Legal News

Longtime coach left indelible mark on legion of friends

I could go on and on about Mike Smith. Hours actually. But that would not be good.

Mike, a cherished friend who died last Friday after a relatively short but particularly painful battle with pancreatic cancer, wasn't one to belabor a point and had little tolerance for those who did. That was just one of his many virtues.



Mike Smith

One of his others was that he was whip-smart. I learned that early on in our friendship when someone challenged him on a point of history. Let's just say it did not go well for the other fellow. As the expression goes, it was like taking a knife to a gun fight.

Of course, it would have been even more of a bloodletting if the self-described know-it-all had taken on Mike over a point of English grammar.

Or how to build a cross country or track team, and how to make everyone—from the star runner to the slowest runner—feel at the heart of the squad's eventual success.

He was that kind of guy. A true prince of a fellow. A Hall of Fame coach and a Hall of Fame friend, husband, father, and grandfather.

He also was a man of few words—all well-chosen.

Particularly after one Michigan-Michigan State football game that we attended at the Big House several years ago. It had all the makings of a banner Maize and Blue day until something ghastly happened in the waning seconds—a botched punt, a lucky bounce, a green-and-white parade to the goal line right in front of our shell-shocked eyes.

All of a sudden, Mike and I were speechless—except for one word.

The F-bomb. It seemed like the only appropriate thing to say. And say it we did. Repeatedly, as we dragged ourselves out of Michigan Stadium.

Cursing, on occasion, can be good for the soul, even for a man of letters, who taught English and history for more than 30 years before retiring from the classroom.

We first crossed paths back in the early '80s when a young cross country coach and a fledgling newspaperman were starting journeys along their respective career paths.

I remember well going out to take the team pictures one of those early years in his coaching reign. It didn't take long to complete the photo assignment. There were just

a handful of girls on the squad that season. On the boys' side, a few more turned out. I could write their names in BIG PRINT on a 3 by 5 index card.

A few years later, it was a much different story. I needed a wide-angle lens to capture the images. I also needed a trusted assistant to write down all the names.

Wow, I thought. This "Mike Smith fellow" is a builder, a developer, an architect in every sense of the words.

Before long, we became good friends, sharing a love of running, U-M basketball, and downhill skiing. In fact, a decade or so ago, on a ski trip to Utah, we became especially close friends when we were stranded on a chair lift for more than an hour, clinging for our lives in 70 mph winds during a blinding snowstorm. That is when I discovered that this man had guts; this man had stamina; this man had a special something about him.

That strength, courage, and love of life were in full view over the past two weeks when he and his beloved wife Mary made a cross-country kick down the home stretch to pull out a victory over a particularly nasty foe called cancer.

Alas, it was not to be. But, in metaphorical terms, he had already run the ultimate "good race" in life, the kind to be treasured and long remembered.

HIGH BLOOD PRESSURE, DIABETES, PROCRASTINATION. THREE THINGS THAT CAN LEAD TO KIDNEY DISEASE.

If you have diabetes, high blood pressure or a family history of kidney disease, you're at risk for kidney disease. And the longer you put off getting screened, the bigger that risk becomes. So talk to your doctor about getting a kidney screening. Kidney health is essential to life. And early detection can mean saving yours.

The National Kidney Foundation offers free screenings all around the country. Just check our website to find one near you. The worst thing you can do for your kidneys is nothing.

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COMMENTARY PAGE

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