

Negotiation and Conflict Resolution

Seventeen years ago, I asked a lawyer in a large firm I was working with to define Alternate Dispute Resolution and he said “lower billings”. Retired judges and eminent lawyers rendering verdicts quickly in a less formal and cheaper process than the courts was not good for the bottom line.

Fast forward to Bernard S. Mayer’s new book on ADR and this and many other problems linger. In *Beyond Neutrality* (Jossey-Bass, 2004), the author quotes a litigator as loving mediation. The lawyer has no intention of settling, but racks up the billable hours while getting a sneak preview of his opponent’s case.

In order to fully appreciate what’s wrong with ADR, it’s important to remember what the early writers and practitioners thought was so right about resolving disputes in a new way.

Although based on ancient practice, the modern field began evolving about 25 years ago. The practice area quickly filled with evangelists who were convinced that things called principled negotiation, mutual gains, impartiality, ethical processes, problem solving and being focused on clients could make the pie bigger and the world a better place.

The early writers dropped broad hints that they were involved in, or could have solved a range of problems from middle east tensions to the Exxon Valdez oil spill. If only the UN called on these facilitators instead of the blue helmets of peacekeepers, world court judges or top diplomats, issues would evaporate.

Finally one of the early deacons of the movement seems to have had second thoughts. Mayer’s subtitle is *Confronting the Crisis in Conflict Resolution*. He has written much over many years and traces his bona fides to the US civil rights movement and many celebrated cases since.

Dr. Mayer’s stated goal for this book is to encourage practitioners to help parties engage in disputes effectively. He still has a hint of prosthetizing, as when he suggests his field could have played a constructive role after 9/11 (but does not state how). But his main thrust is to question the value of ADR traditions by pointing out that many disputants don’t want resolution, practitioners are unclear about what they offer and clients are suspicious of neutrality and superficial services.

Worse, Mayer breaks with the ADR catechism and points out that many mediation services disempower the less powerful (especially women) and privatize disputes that should be aired in public. He calls many solutions superficial, fragile and even “incompatible with democratic ideals”. He worries that ADR personalizes conflicts that are actually societal or institutional and is too rooted in white, middle class cultural norms.

The author says that consensus building supports the status quo and that neutrals are not really neutral.

Like the lawyer he quotes, disreputable people can use mediation to delay, deny due process, sell an outcome, mask the real decision making process, intimidate, ram a dominant culture down disputants' throats and blame individuals for societal problems.

Mayer has a point. In family disputes, mediation may just be a cheaper and less painful way for the more powerful male to protect assets. In workplace disputes, there may be a resolution to an individual problem while the organization keeps its head in the sand on discrimination and harassment issues.

Some matters need a public ruling and precedent. But Mayer says mediation saps energy that could be used for serious social change.

It's probably unintended, but the funny part of this book involves the inability of the conflict resolution field to resolve conflict among its own practitioners. Mayer's company, CDR Associates has changed its name and what the initials stand for half a dozen times, in part reflecting indecision about just what they do. You may guess the letters stand for Conflict Dispute Resolution, but it's actually Can't Decide Really.

But Mayer says the real thorny issue in ADR involves whether to hold conferences in a pricey hotel, the local community hall or a school. These seem to be people with too much time on their hands.

In the end Mayer has two solutions to the more serious issues facing the field. He advocates a field called conflict engagement. He points out that conflict is a healthy adaptive method for complex organizational systems, and he wants in.

He has re-defined his role as "coach, trainer, advisor, decision maker, designer, organizer, case manager, evaluator, and advocate". In addition to confronting real issues in the ADR field, Mayer may have also carved out some new billable areas.

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