

BOOK REVIEW: The Honourable George W. Adams,
Mediating Justice: Legal Dispute Negotiations 2d Ed.
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By Jan Frankel Schau

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It is a rare and welcome find where a retired Judge transforms himself into such an intuitive, committed student and teacher of all things related to the art of alternative dispute resolution. Hon. George Adams has written a Second edition of "Mediating Justice" which is at once thought provoking and practical.

Judge Adams is one of Canada's most experienced mediators, a former law professor, agency head and superior court judge. For that reason, it is particularly interesting to learn that entire areas of the law, such as motor vehicle accidents have been removed from the courts and are now the exclusive province of ADR.

Perhaps it takes a true bird's eye view to make observations about the differences between, for example, dispute settlement negotiations, which are backward looking and distributive in nature and deal-making negotiation, which look optimistically toward the creation of wealth out of a future relationship or transaction. Astutely, Judge Adams notes that a settlement does not require a passing of judgment upon the parties and their conduct by some superior moral authority. Mediation, he points out, stresses the mutual interests underlying the legal claims and rational problem-solving; whereas the needs and wishes of the parties are not even relevant to a judge's decision.

Still, Judge Adams acknowledges that trials and settlements cannot exist without each other. What ultimately propels legal dispute negotiation is the possibility of a trial occurring. Though trials are imperfect and carry inherent uncertainties, it is these realities that make bargaining a sensible way to resolve legal disputes.

I enjoyed Judge Adams ability to rise above the fray to dissect the nature of conflict and it's resolution in a chapter called "Negotiation". There, he points out that the raw exercise of power or domination will seldom resolve conflict in the long run. Paradoxically, he goes on to observe, control is a function of cooperation of others. That is, in order to control a particular outcome, the only real means is to listen to the other stakeholders and integrate their ideas into the solution. Once you get their "buy in" or cooperation, you will no longer need to heavily invest in enforcement to achieve control. You will own the

outcome through cooperation. Imagine the implications of this theoretical construct in our international relations and diplomatic efforts worldwide.

The Chapter on Negotiation also recognizes the complexity of conflict, noting that it is often fast-paced, requiring immediate and sometimes irrevocable decisions, unlike trial, which is typically conducted under a recognized set of rules and customs. Still, he sees that the pressure of time produces urgency which tends to compress the settlement range towards a finite solution.

As a scientist might theorize, Judge Adams sees conflict as a succession of stages, beginning in latent form, becoming manifest, escalating and only then de-escalating. The sequence, he posits, leads to a kind of enlightenment within the parties, as they appreciate their mutual need to bring the conflict to an end. It is only after this insight that the malevolent cycle of escalating conflict can be broken.

Judge Adams discusses "positional bargaining" in the context of a model which is characterized by a lack of candor, encouraging bluff and even misrepresentation. To a California lawyer, who is consistently aware of the slippery slope of ethical negotiations, this acknowledgement was at once reassuring and alarming. He also points out that the ultimatum in a negotiation, a more coercive tactic than the misrepresentation, is an oft-misused and misunderstood move. That is, although many parties believe that firmness in negotiation will achieve larger outcomes, the opposite is more often true: firmness will lengthen the negotiation and increase the risk that the parties fail to reach an agreement.

The book is written as a text book, and indeed could be the subject of a full semester at a fine University in a Masters degree class. Yet, it is highly readable and even enlightening to the practitioner as well as to anyone who seeks to negotiate.

Not content to rely upon anecdotes, practice or other academic's research, Judge Adams has brought together his own wisdom, theories, experience and heart in looking at the complicated relationship between "mediating" and "justice" in ways that are highly readable, understandable and profound.



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