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WHAT DO SALES AND CONFLICT ANALYSIS HAVE IN COMMON WITH PROCESS IMPROVEMENT AND BUSINESS TRANSFORMATION?

EVERYTHING.

A WHITE PAPER

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WHITE PAPER

What Do Conflict Analysis, Process Improvement & Sales Have In Common? Everything

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My favorite presentation icebreaker — some unkind soul might suggest with a considerable degree of accuracy that it is my only presentation icebreaker — is to ask the assembled audience a rhetorical, two-part question:

"How many of you, here, are in Sales?"

Assembled is a room full of IT professionals of one sort or another. People are looking all around, hoping to glean a clue from their neighbor's body language. "What is going on here? Am I attending the wrong presentation?"

I look slowly around the room. "Okay, how many of you, are professional Mediators?"

The crickets are chirping full-throttle now. Still, not a single hand is raised. For good measure, there is a significant number of questioning arched eyebrows, peppered with a well-distributed set of deer-in-the-headlight stares. Clearly, there is a crazy man standing before them.

I again survey the room.

"Okay, well, I have some bad news and some good news for everyone. The bad news is that you are all salespeople, and you are all professional mediators. The fact that you apparently do not know this to be the case is a serious problem. The good news is that now that you've been informed, fortunately for you, the basics are not rocket science."

I then launch into a short soliloquy, reminding all attending of the many times each of them has intervened or brought clarity to, an actual or potential office conflict. The many times a well-timed suggestion or comment has won the day. Are we not all salespeople? Are we not all professional mediators?

There are nods of the head and thoughtful looks.

As now, I then proceed with the presentation.

THE PROBLEM: You Don't Know What You Don't Know
A casual Google query for, "dispute resolution tools" pulled 73.8 million results in 0.62 seconds. Even if we were to discover that 90% of them were in fact duplicates, what would remain would be a sizeable number.

The top placing result was from a law firm that claimed that their attorneys, "frequently use alternative dispute resolution (ADR) techniques to help resolve conflicts". Only three were mentioned, mediation, arbitration, and an undescribed collaborative process "used mostly in domestic relations matters".

I sent an email inquiring whether these constituted, "the full extent of the dispute resolution tools your law firm uses?" I guess they smelled a rat, I received no reply.

The second-place result was from a mediator, with 7 years as the Director of a well-known university's mediation program, who touted 13 Tools for resolving conflict in the workplace, as follows:

1. Stay Calm
2. Listen to Understand
3. Accentuate the Positive
4. State Your Case Tactfully
5. Attack the Problem, Not the Person
6. Avoid the Blame Game
7. Focus on the Future, Not the Past
8. Ask the Right Kind of Questions
9. Pick Your Battles
10. Link Offers
11. Be Creative
12. Be Confident
13. Celebrate Agreement

I could not have picked two better examples to demonstrate just how far off-base even individuals who consider themselves to be "professionals in dispute resolution" are when it comes to speaking and writing about what constitutes a dispute resolution "tool"…and what does not.

Conflict research and theory had its heyday for about a 30-year period from the early 1950s to the late 1970s. The result was a long, rich list of serious conflict writers and thought leaders: Roger Fischer (1981), Stanley Milgram (1974), Muzafer Sherif (1967), Ralph K. White (1970), Irving Janus (1972), John Burton (1969), Lewis Coser (1956), Charles Osgood (1956), and Bryant Wedge (1971) and (1972), to name just a few in no particular order.

Part of the problem is — with the exception of, "Getting to Yes" (Fisher & Ury, 1981) — all of their books are out-of-print. It is difficult to read the writings of important authors if their books are no longer available. Difficult, but not entirely impossible; Lewis Coser managed to shed some important light on the theories of Georg Simmel, almost four decades after the German sociologist's death.

However, the major problem lies with the hijacking of the practice of conflict analysis and its resolution by the legal profession in the early 1980s. It was promptly rebranded, "Alternative Dispute Resolution". In some instances, local Bar Associations threatened non-attorneys with the unlicensed practice of the law when they attempted to apply non-jurisprudence dispute resolution techniques to business disputes. As the rebranded name implies, they believed they were already doing dispute resolution. Unfortunately, being lawyers, they did not bother acquainting themselves with anything that pointed to the possibility that they, in fact, were not. Principally, I supposed because they believed they had learned all they need to know about conflicts and disputes while attending law school. Or perhaps it was just that they were anxious to cut-off possible competition, much like the medical profession's general antipathy towards chiropractors.

In any event, let me present my objections, and my overall case, one point-at-a-time:

THE CHALLENGE: Defining Dispute Resolution, Correctly

First, let us be clear, arbitration is not a conflict resolution technique; it is a conflict management technique. This is by no means a trivial distinction. Managing conflicts masks the symptoms of the dispute; much like a band-aid covers an infection. The wound is covered but left unattended it can easily result in a serious infection, and in some extreme cases gangrene and death.

For example, going to court is a form of arbitration backed by government-sanctioned force. Someone — or some group — decides who is right, who is wrong, who pays, and for how much. Lawyers are very comfortable with arbitration. It allows them to advocate on behalf of someone who has hired them to represent them in some legal matter. That is what lawyers do. They give legal advice. They represent their client's legal interests in both formal and informal legal venues. However, does a court-enforced legal outcome solve the underlying issues that triggered the conflict in the first place? There are numerous examples of court decisions that have left individuals so bitter — so aggrieved at what they viewed as an unjust outcome, often as a result of some unfair advantage — that they simply cannot walk away from it. The result is that the conflict often erupts in some other place, at some other time, sometimes with dire consequences.

Let us now press on to the issue of mediation.

My definition of mediation is "the intervention by a neutral third-party to a dispute for the purposes of the cessation of conflictive behavior and ultimately the resolution of its *underlying conflict issues"*.

How the American Bar Association defines mediation (2019) varies is instructive, both in terms of what it leaves out and also what it includes, which I quote (emphasis mine) in whole:

> *"Mediation is a private process where a neutral third person called a mediator helps the parties discuss and try to resolve the dispute. The parties have the opportunity to describe the issues, discuss their interests, understandings, and feelings; provide each other with information and explore ideas for the resolution of the dispute. While courts can mandate that certain cases go to mediation, the process remains "voluntary" in that the parties are not required to come to agreement. The mediator does not have the power to make a decision for the parties, but can help the parties find a resolution that is mutually acceptable. The only people who can resolve the dispute in mediation are the parties themselves. There are a number of different ways that a mediation can proceed. Most mediations start with the parties together in a joint session. The mediator will describe how the process works, will explain the mediator's role and will help establish ground rules and an agenda for the session. Generally, parties then make opening statements. Some mediators conduct the entire process in a joint session. However, other mediators will move to separate sessions, shuttling back and forth between the parties. If the parties reach an agreement, the mediator may help reduce the agreement to a written contract, which may be enforceable in court".*

What is clear, here, is "mediation" for attorneys is just a matter of what they already do, talk and interpret the existing laws. Instead of a judge —that ultimately would result in an arbitrated outcome — the attorney is there to inform the parties what the likely outcome of any protracted litigation will be, should the disputants elect to not come to some mutual understanding. This is traditional negotiation, with an impartial attorney in the role of referee. Should the parties come to an agreement, the attorney is available to write a contract for the disputants to sign. The contract, in turn, can then be enforced in a court of competent jurisdiction, should the need arise.

Time and time again, disputants regularly demonstrate that they cannot even agree on what the dispute is all about. The chain-of-events that led to their current circumstances — and therefore the legal interpretation of those events — are often only a convenient hook upon which to hang a stipulated outcome. The law does not cover feelings of betrayal, mild to serious paranoia, social bias, or just plain pettiness and jealousy.

More to the point, the ABA's version of mediation has all the trappings of arbitration without any of the nuances indicating a true understanding of a dispute resolution framework or strategy. For starters, in mediation you do not bring disputants together for the purpose of exchanging positions. This is what lawyers do, not someone understands the dynamics of conflict. If the dispute has escalated to the point where a lawyer — even with a "neutral third party" lawyer — a formal recitation of grievances only detracts from the dispute resolution process. They have already done this. All bringing disputants together at this point accomplishes is to reinforce their original positions. Worse yet, it allows the parties to come up with new stipulations and new demands. What we need, instead, is clarity, clarity for the purposes of understanding the current situation, clarity for the purposes of understanding the conflict's genesis, its problems, and its implications. We need an initial strategy that moves the disputants away from their respective positions, toward something more substantive and realistic.

Mediation, when practiced by attorneys, as attorneys, is just a variation of their "legal work". It assumes that at the end of this process, there will be an agreement — a contract — and therefore the legal profession has the sole legal standing to define just what "alternative dispute resolution" is and what is not. This is an unassailable position that assumes any attorney can "reduce the agreement to a written contract" without some bias creeping into the process. Without even examining the specific resolution details, it is self-evident that just the wording of the jurisdiction clause, itself, has immense implications.

The solution, of course, is that each disputant brings their own attorney. Assuming that all of the disputants can afford to hire an attorney, now we have at least three lawyers involved in this arbitration process. It is a very good bet that the real winners are they, not their respective clients.

Last, collaboration is not a dispute resolution tool. Collaboration is a cooperative behavior based upon mutual trust, a possible outcome of dispute resolution. When a legal advantage is leveraged as a means to force a settlement, that might be called many things but collaboration is not among them. The legal community — because of its collective status within our society — has been allowed to incorrectly define dispute resolution in purely jurisprudence and management terms, without much understanding at all of the full breadth of dispute resolution tools except as it occasionally applies to their very small piece of the universe.

Be-that-as-it-may, most of the time accepting a managed dispute outcome is good enough. Even when we feel that we have been in some way unjustly injured, we often choose to walk away from a fight. It is just not worth the effort. More important, once costly lawyers get involved, people quite understandably tend to avoid further social or business contact. If there is no further contact, the hard feelings very likely remain, but the gap is too far apart to spark renewed conflict behavior.

There are many individuals in the dispute resolution field who are passing themselves as experts — some who are training others to become professional mediators — who plainly do not know very much about it, or if they do know something about it they have not bothered to write seriously about it. In my view, the mediator cited above appears to be a good candidate for such a distinction.

The 13 items listed earlier are not tools at all; rather, they are proffered advice without a framework to support it. As it turns out the list is pretty good advice, though the last two — "Be Confident" and "Celebrate Agreement" — are just plain silly.

How can you be confident if you do not know what you are doing? Why would you want to do a high-five after just resolving a business dispute? It might make more sense to make plans to strengthen the now patched-up relationship so that it does not slide back into conflict over something else in the future.

Not to put too fine a point on it by using an analogy, but no one builds a house using only advice. If you are going to give advice, it is how to solve a particular problem, using a particular tool or doing some specific set of actions. For example, it does no good to advise someone to "build a foundation" if the person you are talking to has no clue what a foundation is, or why you need to build one, or the tools and materials you might want to consider using to do it, or how to use those tools.

For advice to be meaningful, it must be presented within the context of a framework, preferably one that is straightforward and easy to understand.

THE SOLUTION: Change the Experiment

The maxim "let the buyer beware" is always good advice. However, even if I had the power to do it, I would not get rid of lawyers; nor would I get rid of professional mediators. Lawyers fill a real social need when they stick to what they know, and I am certain that not all professional mediators fit the profile I have dragged into the light for inspection.

My purpose is to point out that the King may not be as well clothed as many have supposed. Moreover, we are in serious risk of losing an important and hard-won area of knowledge. There are important concepts and tools that need to be discussed and codified into an understandable and useful framework. A truly alternative path for us to follow must be laid out for the public's consideration.

This is particularly important in the business world. Most of us spend the majority of our waking time working within business hierarchical organizations of one sort or another. Efforts to improve internal business processes and to transition companies and governmental agencies from one state of organizational maturity to another are occurring with increasing frequency throughout the business landscape.

The most stressful time for any business or organization is when it transitions from one maturity state to another. Often, even the smallest, most innocuous changes can cause unanticipated consternation and confusion.

Process improvement and business transition are impossible without a change in organizational culture.

The problem is, of course, that taken as a whole, every organization is unique. Each is populated with different individuals; each with their own motivations, their own hopes, and fears, as well as their own perceptions of reality and their own individual network of associations. Through their individual and collective efforts, a distinguishable organizational culture emerges, populated within by subgroups that compete for scarce resources, power, and individual and group recognition.

Conflict is unavoidable. In the business world, conflict tends to cause increased complexity, and ultimately money. This explains the business world's strong preference for conflict management outcomes.

Rather than focusing on <u>all</u> conflict and <u>all</u> disputes, let us instead focus our attention on disputes and conflicts — due to unique circumstance — that cannot be efficiently and effectively managed. Perhaps, upon reflection instances where attempting a quick and dirty management approach may likely result in significant losses by all parties.

All organizational conflicts come in two broad categories: disputes handled within the context of Human Resources, and those that are not.

A casual Google query for, "human resources training in conflict resolution" pulled 250.0 million results in 0.67 seconds. Even if we were to discover that that 90% of them were in fact duplicates, what would remain would be a sizeable number in relation to the "dispute resolution tools" query mentioned at the outset of this discussion. Aside from the legal professions' practice of ADR, this is where the bulk of interpersonal and group conflict resides, and it's where dispute resolution and conflict management resides. It is at our colleges and universities where the initial training of those wishing a professional career in Human Resources occurs.

Randomly selected from this pool of Google citations was the website of a major and well-respected university's "Resolving Conflict Situations" page. It lists some "tips" for resolving conflict in the workplace:

1. Acknowledge that a difficult situation exists.
2. Let individuals express their feelings.
3. Define the problem.
4. Determine underlying need.
5. Find common areas of agreement, no matter how small
6. Find solutions to satisfy needs.
7. Determine follow-up you will take to monitor actions.
8. Determine what you'll do if the conflict goes unresolved.

The author of the list gets kudos for noting that these are tips, rather than tools. It certainly follows the traditional good advice approach to conflict "resolution" as before. Not surprisingly, no concrete conflict analysis framework is offered for any consideration. However, what truly caught my attention was the last item in the list, "Determine what you'll do if the conflict goes unresolved" with a link to a section entitled, "Taking Disciplinary Action". Of course, this is where the conflict will end up being "resolved" by the Human Resources Department if there is no satisfying imposed solution to the conflict at the managerial level: a just cause dismissal, or some disciplinary alternative that will ultimately end up with someone being fired. It is a conflict management approach that is initiated under the auspices and general supervision of the organization's attorneys, based upon their understanding of the prevailing laws governing employment.

The point here is not that attorneys are involved in steering organizational and corporate approaches to the administration of human resources. Obviously, employment must adhere — if not the spirit — at least to the letter of the prevailing law, else the organization opens itself to expensive litigation, and perhaps ultimately to expensive civil penalties and fines. Rather, the point — as before — is that there is no satisfactory understanding of how actually to analyze disputes separate from a purely legal conflict management point-of-view.

There is no formal road map to using conflict resolution techniques because those who have taken up the torch of dispute resolution are not carrying a full tool kit, one surmises because they do not know it exists.

During a major organization transition, tensions run high. No amount of preparation or prior experience can prepare leadership, management, or workers working through the day-to-day details of change that invariably are in addition to their normal day-to-day role and responsibilities.

This makes the task of business transition difficult at best, and virtually impossible without the guidance of a framework to show us the way. No quality framework (TQM, PMBOK, Six Sigma, Agile, ISO, CMMI, to name just a few) has to-date been able to successfully crack the code because they have not truly taken into account the all-important human factor: projects and organizations succeed because of people, and people often find themselves - and habitually exacerbate - conflict situations, sometimes inadvertently and sometimes by design.

Because of my unique professional background — 15 years in the dispute resolution field and over 20 years of increasingly complex responsibilities in business analysis, project management, and business process improvement — I believe that I have a unique set of insights into this vexing human phenomenon, and I want to share it with others.

The key to organizational change is the ability to efficiently and effectively analyze interpersonal and group disputes, within the context of legitimate technical and operational business constraints, and then to appropriately apply a number of easy to understand conflict reduction and dispute resolution strategies. The purpose of using these conflict reduction and dispute resolution techniques is threefold:

1. To change how conflict is dealt with inside the organizational workspace, and thereby to substantively begin the cultural change process;
2. To give an easy to understand framework and the tools necessary to analyze internal business conflicts; and
3. To give a straightforward toolset that can be used to drive the resolution effort that is based upon reconciliation and collaboration, not by management fiat or attorney intervention.

These analytical strategies and tools are easily taught. They are substantive, based upon solid conflict research and the laws of human behavior. They are role and responsibility agnostic; they can be learned and used by any member of any sized organization, under any set of circumstances short of actual physical violence. They do not require any specialized area knowledge or for that matter any formal education at all. Once learned, anyone can apply them. They are extensible; depending on the circumstances, they can be implemented either comprehensively or just used as a generic guide.

The tools we need have been right there before us for some time, and yet we continue to react blindly with no true understanding of the strategy of dispute resolution. More than ever — as the world gets more complex, as change occurs with greater rapidity, as businesses and organizations struggle to keep pace — we need to use tools that can help resolve conflicts where we are able, rather than only manage them.

In business, it begins with all of us viewing disputes within a relevant and useful framework up to the challenges of the real world. We need to learn the skill sets of selling dispute resolution outcomes, when and where appropriate. We need to learn how to move a dispute, step-by-step, from it escalating out-of-control towards a mutually agreeable cessation or actual resolution. We need the discipline to improve our own, personal skill sets each and every day.

In the end — perhaps — we may need to manage conflict less than we once did.

CONCLUSION

So, here we— you (the reader) and I are in a personal or business dispute. No lawyers and no human resource personnel are involved…yet. Moreover, as a disputant, I do not want an attorney or human resource involved if I can help it. From my perspective, that takes the resolution of our dispute out of my hands. How can I proceed? More importantly, how should I proceed?

First, I need to find out if we can at least agree on that single assumption, that choosing the institutional approach to resolving our conflict is a lose-lose proposition for both of us. While one of us may "win" in the theoretical sense, when we take into consideration all the energy and resources necessary to do that, the cost of my winning is not such a rosy picture. That is to say, I attempt to negotiate with you in a principled way (Fisher & Ury).

However, what do I do if principled negotiation does not work? I have an answer.

The groundbreaking conflict theorists of the 1950s, the 1960s, and the early 1970s tell us how: verification of the facts, initiating and sustaining some sort of initial communication with the other party, and the time to continue doing that process until some level of mutual trust is achieved. Depending on how important the relationship is to me will determine how much time and effort I am willing to invest to reach a mutually-agreeable cessation of my conflict with you.

Though not from the conflict resolution field, Neil Rackham (1988) has hit the nail on the head: we need to thoroughly consider the Situation, the Problem, and their Implication, so that we may devise an acceptable Need-Payoff offering. Conflict resolution is nothing more than a sale. Often, it is a very high-end sale, when one looks back at what not making that sale costs us personally and professionally. The skill sets necessary to do that, and the framework to put it all into perspective are out there.

Collectively, we can do this by taking a little more responsibility for our own conflict resolution efforts. We need to take the time to analyze the conflicts and disputes that occur around us from a position of knowledge, rather than a position of ignorance, anger, and fear. There are ways available for any of us — all of us — to do that.

We need to change the experiment.

We may need lawyers. We may need mediators. We do not need them most of the time.

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