

5-1-2016

Foreword

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Recommended Citation

Thomas J. Stipanowich and Alexander Insam, *Foreword*, 16 Pepp. Disp. Resol. L.J. 133 (2016)

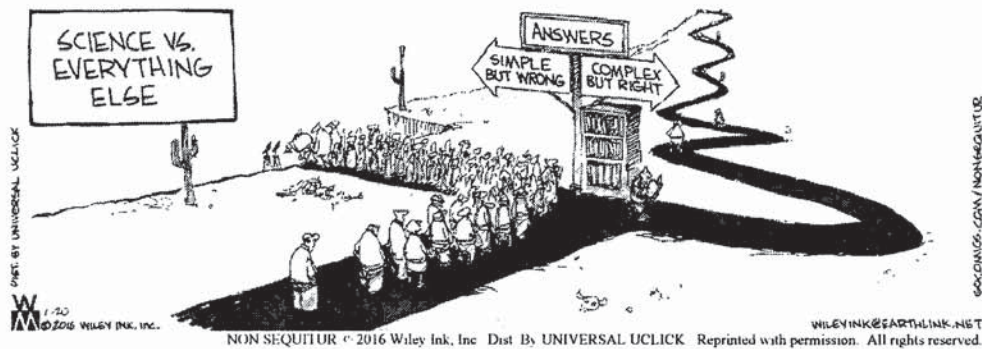
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FOREWORD

Abraham Lincoln said: “Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser - in fees, expenses, and waste of time.”

Lincoln wrote these words around 1850, but today his observations seem more apt than ever. On average, conflict management occupies more than 20% of the working time of every business executive—the equivalent of more than one workday every week. Companies must decide whether they want to put this lost working time, and the many millions of dollars they spend on litigation, to better, more productive use. The economic solution calls for deliberate and innovative thinking about conflict management—a complex challenge.



Conflicts arise every day in every organization. They are a fact of life—especially at a time when for many companies, change is the new normal. Although conflicts are routinely misperceived as unhealthy and inimical to business, it is actually a normal and natural element of any relational setting, and only becomes disruptive and dangerous if it cannot be properly managed and channeled. Indeed, if their functional power can be harnessed, conflicts can be the innovative driving force for organizations to survive and prosper in a dynamic and complex environment.

When in November, 2015, we stood together on a high terrace at Pepperdine University looking down on the waves crashing against the shore, we were reminded of the immense power of conflict and the vast opportunities as well as challenges that it presents. It was then and there that we were joined by more than 175 corporate executives, HR experts, general

counsels, lawyers, ombudsman, mediators, judges and students from over twenty countries (including the USA, Canada, the UK, Germany, France, Brazil, China, Saudi Arabia and Russia) for a two-day conference—Managing Conflict 4.0—devoted to cutting-edge approaches to effectively managing conflict within and between organizations.

Managing Conflict 4.0 had its genesis in early 2014, in a conversation between Pepperdine LL.M. candidate Martin Freres and German Consul General Dr. Bernd Fischer. Dr. Fischer’s subsequent efforts brought together our two organizations—KPMG Law and the Straus Institute—and engendered exhaustive efforts to assemble many creative thinkers and doers to talk about innovative and promising approaches to preventing, managing and resolving conflict.

The title of the conference, Managing Conflict 4.0—reflects the “upstream” journey of many conflict managers in the U.S., Germany and countries all over the world from litigation (which we might call version “1.0”) to binding arbitration (“2.0”) to mediated negotiation (“3.0”) and, at last, to systems for dealing proactively and appropriately with many different kinds of conflict at a time when more traditional methods of dispute resolution are inadequate to deal with the fast-paced and complex realities of business. Managing Conflict 4.0 is about system thinking and conflict management systems for the workplace and business-to-business issues.

Conflicts cannot be outsourced; neither can effective conflict management. The main pillar of a good conflict management system is the people, and it is critical to educate the people that work together—either within an organization or in relationships between companies—to accept that they are the most vital part of this system. Managing Conflict 4.0 was organized with the intent of exploring several important facets of our current evolution, divided into four main categories of discussion.

In “Bridging Across Cultures,” former German Consul General Dr. Bernd Fischer; Helmut Buss, Chief Ombudsman, International Committee of the Red Cross; and Rene Insam, Culture Specialist, U.S. Loyalty, American Express, explored the sometimes surprising cultural challenges associated with national and organizational conflict, and proactive efforts to discover and overcome related barriers, seek opportunities for alignment, and cultivate cultures of inclusion and trust.

“Navigating, Building and Strengthening Relationships,” moderated by Nancy Vanderlip, examined the revolutionary relationship platforms that permitted Scott Partridge’s Monsanto not only to move away from litigation with its foremost competitors, but also to explore collaborative opportunities for mutual gain. Jeremy Lack spoke of our exploration of brain chemistry and our growing awareness of the role of the brain’s emotional, rational and social “centers” in conflict and its resolution. Debra Gerardi drew on her

unique experience as a leading executive coach and consultant to the healthcare sector in discussion the importance of relational intelligence.

Mary Beth Cantrell, Senior Associate General Counsel of AMGEN, moderated “Harnessing the Power of Information and Insight to Improve Decision Making and Choice,” highlighting a variety of ways in which extant data may be used to better understand the nature and impact of conflict and the decisions we make in negotiating and resolving conflict. Randall Kiser, Principal Analyst of DecisionSet, summarized the body of research into decision errors by attorneys and underlying cognitive processes. Don Philbin, Attorney-Mediator and CEO of Picture it Settled®, explained how algorithms may help negotiators anticipate opponent’s moves and likely ranges of settlement. Dr. Alexander Insam described how research in the number lab at KPMG measured the costs of unresolved conflict in the workplace.

Dr. Insam was moderator for “Promoting Conflict-Competent Leadership and Holistic Conflict Management. Noah Hanft, President & CEO, International Institute for Conflict Prevention & Resolution (CPR) and former General Counsel and Chief Franchise Officer of MasterCard spoke about the importance of having committed and engaged conflict managers in the legal and c-suites. Jüergen Briem, Head of Conflict Management System of SAP, explained how his company developed a holistic approach to addressing conflict. David Huebner, a Partner at Arnold & Porter, offered insights from the realm of diplomacy drawn from his experiences as U.S. Ambassador to New Zealand and Samoa. Drawing on his experience as a facilitator of construction project partnering as well as a project mediator, Tom Stipanowich reflected on the potential opportunities for applying the skills and insights of the mediator “upstream” in relational settings.

Through the efforts of the excellent editorial staff of the Dispute Resolution Law Journal, many of these presentations have been transcribed for this symposium issue. In addition, there is a summary by Straus Research Fellow Karinya Verghese of the capstone “Community of Thinkers Workshop” which immediately followed the main conference. We hope that you find these ideas and insights both beneficial and challenging, as we did!

*From Malibu and Frankfurt,
Tom Stipanowich & Alexander Insam
January 2016*

