

# VITAL SPEECHES

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THE BEST THOUGHTS OF THE BEST MINDS ON CURRENT INTERNATIONAL QUESTIONS

IMPARTIAL · CONSTRUCTIVE · AUTHENTIC

# The Promise of Mediation

## MITIGATING THE CONFLICTS THAT DISRUPT OUR LIVES

Address by DAN DANA, Founder, Mediation Training Institute

*Delivered at a mediation conference at Swarthmore University, Nairobi, Kenya, July 25, 2018*

**J**ambo!

Sisi ni watoto wote wa Afrika.

We are all children of Africa. I live in America, but I am a son of Africa. My ancestors left this continent 65,000 years ago. It's good to be back.

Chief Justice Maraga, Judge Muthoga, Reverend Njenga, associates and friends of DCRI and other sponsors of this conference: I thank you for your gracious hospitality, and for this opportunity to share some thoughts about the promise of mediation generally, and more specifically perhaps to make some small contribution to the advancement of mediation in Kenya.

*Out beyond ideas of wrong-doing and right-doing there is a field.*

*I will meet you there.*

Those words are from Rumi, a poet and philosopher who lived 800 years ago in Persia, in what is now Afghanistan.

I intend, in our few minutes together today, to unpack the profound wisdom and practical guidance that is imbedded in Rumi's statement, especially for those of us who strive to mediate conflict in human relations. Let me repeat it:

*Out beyond ideas of wrong-doing and right-doing there is a field.*

*I will meet you there.*

Rumi's deep insight into the essence of human conflict, and how we might manage it, is as relevant today as it was in his time 800 years ago, and will surely remain relevant for another 800 years. Indeed, I believe his truth applied when humans first developed language some 100,000 years in the past, and that truth will still pertain to the daily lives of our own descendants 100,000 years into the future. Human nature changes slowly.

So, my message here today pertains not only to today, nor even just to our current generation, but to the entire span of human existence on this planet. Conflict, and our struggle to manage it, is as inherent to our humanity as wet is to water. We must deal with it. To ignore it is to fail—to fail ourselves and to fail our fellow-travelers along this perilous road of life.

The word “conflict” means different things to different people. Even mediators define it differently. Some mediators are lawyers, who are trained in the adversarial arts. Many mediators come from other fields of endeavor. I happen to

be a psychologist. My training was in behavioral science. From a psychological perspective, conflict has structural, emotional, cognitive, and behavioral components:

First, structurally, it is a condition BETWEEN people. Conflict does not occur within a person. It is a product of human relationships. It is a social condition in every marriage, family, workplace, community, business enterprise, government agency, and nation. And, as newspaper headlines report daily, conflict flourishes between countries, cultures, and every other category of people on our planet. Wherever there is a distinction between “self” and “other,” between “me” and “you,” between “us” and “them,” conflict rears its vexatious head—it intrudes, it disrupts, and, if poorly managed, it destroys.

Second, people in conflict are INTERDEPENDENT. We need each other. At the very least, “I need YOU to get out of MY way so I can have what I want.” Often, the needs for which we depend on others are financial, practical, and tangible. But, the most important needs we have of others are intangible: “I need your attention, your creative ideas, your support, your honest labor, and from certain others, of course, your love.” Life without the benefits we receive from other people would be unsustainable, and perhaps even not worth living. It may be true, theoretically, that people who are not interdependent have no conflict. But no one is an island in the social sea that surrounds us.

The third element is: People in conflict are ANGRY. Anger is, of course, an emotion. Indeed, it is the defining emotion of conflict. That is, when anger is not present, people are simply in rational disagreement. Simple, unemotional disagreements can be resolved by reasonable compromise, or by simply ignoring our differences. True, anger can be suppressed and may not be outwardly expressed. Sometimes it is unconscious and denied, even hidden from ourselves. But, anger is present in every conflict. Anger functions as the fuel that supplies the energy that drives conflict. Subjects about which we may disagree, but that do not evoke anger, can be discussed rationally and answers can be easily found. We can even amicably agree to disagree. I may believe blue is the most beautiful color, where you may prefer green. Mox nix—there is no necessity that we agree about that. But anger, whether overtly expressed or unconsciously suppressed, makes conversation difficult on subjects about which we need to find a common path forward that we must walk together.

Next, the fourth element of our definition: People FIND FAULT with their partners in the dance of conflict—that is,

with their opponents. It may seem to me that “our conflict is entirely due to your stupidity, your selfishness, your stubbornness, or other faults in YOU that I perceive as the cause of our impasse.” “I believe that if only you would change those things about you, our conflict would be easily and quickly resolved.” Simple! Of course, this perception of fault is nearly always reciprocal—you believe it is my stupidity, my selfishness, my stubbornness that is the obstacle to agreement. We both perceive the other to be the one at fault. This is the cognitive component of conflict.

Fifth, and finally, we BEHAVE in ways that make our disagreement a problem. Without behavior, that is, without acting out our anger in ways that splash our bile on others, conflict would not be a concern. There would be no demand for a solution.

So, why are we this way? Where did these psychological elements of conflict come from?

We owe to our prehistoric ancestors the two natural behaviors that we commonly use to cope with conflict. In my contributions to the literature of our field, I call these behaviors walk-aways and power-plays, also known as the “flight or fight” reflex. We may seek to avoid the troublesome opponent, or, if forced to interact, we seek to overpower him or her with our superior logic, morals, or muscles, or, more tragically, our weapons. We may at first imagine that we can handle the situation by distancing ourselves from the other, that is, by avoiding direct interaction altogether. If distancing fails, and we are compelled to engage, we imagine that we can WIN by coercing the other, forcing him or her to comply with our demands. I can flee, or I can fight. These are my instinctive reactions when threats to my safety arise. In my primitive brain, the brain that has been evolving and adapting for millions—actually, hundreds of millions—of years, these are my only two options. My primitive mind believes that my very survival depends on making the correct choice—and making it immediately.

The AMYGDALA is the primitive organ buried deep within our brains that evolution has constructed to help us survive in emergency situations, especially life-or-death situations. Should I escape from that predator, or should I fight back? “Do I eat it, or does it eat me?”

Our ancient ancestors’ lives depended on their answer. Every one of us in this room today is the descendent of an unbroken chain of millions of generations of successful ancestors who made good-enough choices in dangerous circumstances, at least good-enough long enough to procreate and thereby pass along their genetic code to the next generation. So, here we are in the year 2018, carrying the genetic baggage that our ancestors left for us.

In modern times, of course, we rarely encounter a dangerous predator to whom we look like food. But, our primitive amygdalas don’t know that anything has changed since our pre-human mammalian ancestors—who were small rodents at the time—shared the earth with dinosaurs, and even earlier. Our amygdalas continue to prompt us to react quickly

and defensively to any perceived threat to our well-being. Our inner animal prepares us to react with either evasion or aggression, flight or fight, walk-aways or power-plays. These are the two forms of behavioral acting out that remain within us to this very day.

Acting out by means of aggression, which we have defined here as “power-play,” perpetuates a retaliatory cycle, in which “I get you back for the last time you got me back for the last time I got you back for the last time you got me back,” ad infinitum—a vicious cycle of blame and retribution, attack and counter-attack, that continues until either (1) one of us is defeated by the other’s successful power-play, which forces compliance with the will of the victor, or (2) until we terminate our relationship by a final walk-away—a divorce, a resignation, a firing, or by just giving up.

The alternative way of acting out—that is, by evasion, or “walk-aways”—is no less harmful in our highly interdependent modern daily lives—at work and at home. By refusing to communicate, that is, by withdrawing from constructive participation in daily affairs, we also risk triggering a retaliatory cycle with others, just as we do by using power-plays. It is as if we say, “Well, if you’re going to avoid me, then I’ll avoid you, too.” We both retreat into our seemingly safe corners, which has the effect of draining our relationship of its value, of the very benefits that led us to join together in the first place. The terms “loveless marriage” and, in the workplace, “dead wood” have been invented to denote these sterile relationships.

What can mediators do when retaliatory cycles of power-plays and walk-aways have led to dysfunctional relationships, whether in open, obvious conflict, or in silent sterile stand-offs? What kinds of interventions by neutral third parties offer hope of resolution?

So far, I have painted a rather bleak picture of human nature. We seem doomed by our animal instincts to an awful dilemma, a bilateral choice between two stark options. But our reflex to either walk-away or power-play when faced with a threat is only part of the picture—only part of who we are. Fortunately, another instinct, a more hopeful one, lies awaiting our discovery. This peacemaking reflex is a powerful tool available to the observant mediator. We can leverage this conciliatory instinct to produce voluntary concessions toward reasonable compromise.

But first, let’s recognize that mediators operate in a wide range of settings, from the courts of justice to the factory floor to the family home. Some disputes, including civil cases in litigation, are settled by judges and juries.

This method of resolution is called adjudication—a method of achieving justice in which someone wins and someone loses. Judiciaries have devised alternatives to adjudication—called “alternative dispute resolution,” or ADR—which are less expensive and less time-consuming than courtroom procedures. Mediation and arbitration are among the forms of ADR that have become widely used in many countries in recent decades for reaching resolution of

civil disputes. Generally, civil cases are settled by financial payments, which constitute the final gasp of the dying relationship between the disputing parties.

My career in the practice and teaching of mediation has involved disputes that are not amenable to settlement with money. That is, the parties will remain in an on-going interdependent relationship. They need to be able to interact cooperatively tomorrow, and the next day, and the next. How can the ability to behave cooperatively in the future be achieved? How can we become voluntarily willing to work together in a spirit of teamwork? How can a domestic couple in a troubled marriage recapture mutual affection and resume living together in a happy home? Clearly, not by financial settlement. As we all know well, money can't buy happiness. Nor can it buy creative teamwork. Nor can it buy loyalty. Nor can it buy trust. What promise does mediation hold for people who are experiencing conflict in on-going interdependent relationships?

Let's step back a moment and reflect on Harvard University professor William Ury's observation that there are three, and only three, ways to approach any conflict: We can view it as a power contest, or as a rights contest, or as an interest-based effort to uncover overlapping self-interests, also called the common ground of the disputing parties, on which we may find reasonable and acceptable compromise, and sometimes even discover creative win-win solutions.

Before our ancestors invented laws, conflicts were normally handled as power contests—the individuals with the biggest muscles, the biggest clubs, or the most intimidating threats, were the winners. There was no recourse for weaker individuals beyond submitting to subjugation, or being banished from the tribe, or being left to die.

A great leap forward toward modern civilization occurred about 5,000 years ago—a mere blink of an eye in human history—when ancient Egyptians invented the first civil code, a set of rules containing the concepts of impartiality and social equality. Sumerians, Babylonians, and Assyrians further developed what we today consider “the law” in European tradition. Early societies in China, India, Africa, and the Americas also developed legal theories and practices for resolving conflicts nonviolently.

In modern judicial settings, where civil disputes are adjudicated by judges and juries, officers of the court rely on the rule of law to settle cases. Attorneys representing plaintiffs and defendants argue that the rights of their client prevail over the rights of their opponent in litigation. Each side builds its argument on legislation, on settled law, and on past precedent in adversarial procedures such as trials and hearings. Judges and juries decide which side of the case is more supported by the body of law, thereby determining the winner. The application of law in this manner constitutes a rights contest, and produces what we call “justice.” Every citizen who wishes to live in a fair and just society would surely agree that rights contests are superior to unrestrained power contests and lawlessness.

In recent decades, several forms of mediation and arbitration have been devised to address concerns about excessive reliance on the courts to administer justice. Certain kinds of routine commercial disputes can be more quickly resolved by arbitration than by time-consuming and expensive court procedures. Divorcing couples, especially those who have dependent children, are better served by mediation of child custody and property distribution questions, which can preserve their ability to remain cooperative parents for the good of their children.

I am sure that members of this audience are well aware of ADR practices in Kenya.

Arbitration is a non-judicial procedure involving an impartial third-party whose task is to assess the relative merits of the disputing parties. Arbitrators are not necessarily judges, nor even attorneys, and their conclusions are not necessarily based strictly on the law. Their decisions may be advisory or binding, depending on pre-agreed terms. Despite being informal, arbitration remains a rights-based approach to dispute resolution.

MEDIATION, on the other hand, and by its nature, is a non-adversarial, interest-based approach. It is here that Rumi reminds us that determining which party is the “wrong-doer” and which is the “right-doer” is not the task before us. He urges us to recognize that there is a “field” where common ground may be found. If our shared need is to live together in peace, or to work together cooperatively, the judgement of right or wrong, innocent or guilty, good or bad, does not advance our movement toward that common goal. To repeat:

*Out beyond ideas of wrong-doing and right-doing there is a field.*

*I will meet you there.*

We mediators attempt to help disputing parties reach agreement based on their own, self-defined, underlying self-interests. We are neutral, which means we have no personal stake in the content of those agreements. And, we are impartial, meaning that we are unaligned with either party. We are in the service of agreement itself. I believe that all practicing mediators, whether in legal or in non-legal settings, would agree that these principles of neutrality and impartiality, applied in a mutual search for common ground bridging the self-interests of all disputants, define the very nature of our trade.

A few minutes ago, I hinted at the existence of an instinct that we modern humans have inherited from our ancient ancestors that can help us make peace instead of war, that can help us find reasonable compromise in contentious ongoing interdependent relationships. We can harness this instinct to help us find agreement, even where the disputing parties themselves have not thought it possible.

That instinct is the “conciliatory gesture.” Let me illustrate:

Imagine two animals, adult members of the same species, on a typical, lazy afternoon in the Serengeti. Their species

is social, meaning that they live together in groups with an internal hierarchy. Their species is also predatory and territorial, meaning that they kill other animals for food, and protect invisible boundaries around their home turf, or hunting ground, from intrusion by others. That is, in the abstract, they make a distinction between “mine” and “not mine.”

Now, let’s imagine that one of the animals, let’s call him the “home-owner,” is peacefully lounging within the boundaries of his self-defined territory, enjoying his food, the companionship of trusted friends, his mates, his safety, and other resources.

Suddenly, the home-owner notices a stranger approaching. Once the stranger crosses that invisible line separating “mine” from “not mine,” a pattern of instinctive reactions is set in motion. The home-owner is compelled by instinct to challenge the intruding stranger—the survival of his species over eons of time has depended on fierce protection of owned or claimed resources.

He rushes to encounter the intruder, displaying aggressive behaviors intended to demonstrate his superior strength and fierce defense of what belongs to him. Usually, the intruder, who is venturing into a foreign land, is intimidated by the home-owner’s aggressive display and promptly withdraws beyond the boundary of the home-owner’s territory. Sometimes, however, the stranger feels he may be capable of successfully repelling and overcoming the home-owner’s defensive actions and, by doing so, acquire some of those coveted resources. A fight ensues. The two animals join in a battle for dominance. A territorial dispute is underway.

But, their battle is typically not a fight to the death. Adult members of the same species rarely actually kill each other. As predators, they kill animals not of their species for food, but they don’t kill their own kind. What prevents fatal outcomes of turf battles? How does their territorial dispute come to an end short of death? Of course, the “flight” reflex provides one avenue of escape. But sometimes all escape routes are blocked. What then? What can the defeated animal do to survive this encounter?

Another instinct, actually a pair of instincts acting in tandem, now comes into play. A hidden behavioral tool, designed over eons of evolution precisely for this situation, comes to the rescue. The first of this pair of instinctive tools is the “conciliatory gesture.” Members of species that are social and territorial are able to recognize the symbolic meaning of certain observable behaviors that are characteristic of their species. In some species, that behavior is rolling over to reveal their soft underbelly. In others, it is presenting the unprotected side of the neck. In others, it is averting their gaze from the victor’s eyes. Every species has its mutually recognized behavioral “language” to signal submission. But a feature that is common to ALL conciliatory gestures is voluntary vulnerability. It is as if the defeated animal is saying, “Here, I will not resist if you choose to kill me.”

But animals are not suicidal. The invitation offered by the “loser” to the “winner” to strike the fatal blow is made with

the instinctive understanding that the winner will not accept the invitation. The submissive individual “knows” in his primitive animal brain that his conciliatory gesture will stimulate the second in our pair of instincts, which will enable him to survive this encounter with his life, if not his dignity and social status, intact. That second instinct is the “inhibitory reflex,” or the “inhibition of aggression.” He knows that the winner of this skirmish, whose sharp fangs are hovering over his vulnerable tummy ready to bite, will be muzzled by instinct from doing so. As long as his conciliatory gesture is convincingly authentic, the winner will not, in fact, exploit that vulnerability. A few tense moments may ensue, but the winner will reliably suspend hostilities, allowing the loser to slowly slink away from the humiliating scene, tail between his legs, in abject defeat. But as he leaves, he carries with him his genetic information, preserved by having survived this life-threatening encounter, ready to mate and pass along those genes to the next generation, and the next, and the next. We today are the descendants of those survivors. Obviously, we are not descendants of those who did not survive. This is evolution by natural selection in action.

This paired mechanism of the conciliatory gesture and the inhibitory reflex succeeds in preventing murder in nearly every social, territorial species of animal on earth ... except one. That exception is us. *Homo sapiens*. We like to think we are “special”—yes, we are especially prone to violence among ourselves.

The dynamics of human conflict, compared with non-human species, are complicated by at least two characteristics that are unique to us: We have developed symbolic language. And, we have developed weapons technology.

Most modern-day conflict, in our families, our workplaces, and our communities, takes place by means of language, both written and spoken. Although language is vital to modern civilization, it also enables us to conceal our true intentions, or to partially reveal them through that uniquely human hybrid, “passive-aggression.” The trickery of blending both friendly and hostile messages into a mixed narrative, a word-stew of muddled ingredients, leads to misunderstanding of others’ true intentions and other communication pitfalls. The pages of social psychology textbooks are illustrated with the myriad ways that we simultaneously inform and deceive each other.

Before we developed weapons technology, our ancestors were limited mostly to the use of bare hands and feet to threaten or inflict harm on competitors and intruders. Our species lacks “natural” weapons—that is, fang teeth, sharp claws, and other body parts that serve as equipment for hunting and killing prey for food. Our present-day fingernails, our toenails, and our cuspids, or canine teeth, are vestigial body parts, shrunken remnants of once-useful tools that equipped our pre-human predecessors for hunting and for territorial battle. Only a few non-human species today employ tools that are not body parts—that is, “unnatural” weapons—for attacking others.

Notable among those species is our closest modern relative, our cousin the chimpanzee, with whom we share 96% of our DNA, and we share a common ancestor who lived about seven million years ago. Even today's chimps are mostly limited to simple sticks and stones as tools for doing battle.

In periods of remarkable innovation since our evolutionary path parted ways from that of our modern chimp cousins, we humans have invented spears, sharpened stones, metal blades, explosives, guns, and even nuclear bombs to carry out our aggressive intentions. With each new level of advancing weapons technology, the aggressor is ever more distantly removed from direct observation of the victim. The victim's conciliatory gestures may never be witnessed by the aggressor, thereby disabling the inhibitory reflex. The instinctual "inhibition of aggression" impulse is disarmed, removed from our inherited conflict management toolbox.

Thankfully, most conflicts with which mediators become involved are carried out with language, not with weapons. So, the presence of conciliatory gestures and the inhibitory reflex, which remain submerged within our psyches, is still discernable in our speech, and is accessible for strategic deployment by the perceptive mediator.

As I stated a few minutes ago, my career in mediation was devoted to interpersonal conflicts between people in ongoing interdependent relationships that had not escalated into the toxic realm of litigation. My focus has been on nettlesome conflicts in families, workplaces, and communities in which people desired to remain in relationship, but who were having difficulty making those relationships work to their satisfaction. As a non-attorney, I am reluctant to offer advice to mediators who work in judicial settings, although I am quite confident that we do not leave our human nature, and our social instincts, on the courthouse steps. I look forward to discussions at this conference about ways to apply our understanding of psychological dynamics to cases in litigation and in ADR methods of settlement.

Let's now turn our attention from mediation as a field of professional practice, to the more commonplace matter of how everyday conflicts in our homes and workplaces may be effectively mediated, even by the parties themselves without the assistance of a trained professional.

Managerial Mediation may be the simplest possible form of neutral third-party intervention. As the term implies, it is most commonly used in organizations, where managers, team leaders, and human resource personnel, convene conversations between disputing employees to address workplace issues that are impeding performance, productivity, profitability, and quality of work life.

Happily, this procedure can also be used, with minor adjustments, in non-organizational settings, even in families. I recall a heartwarming case in which my middle-aged student reported mediating between her adult sister and their aging mother, who had been estranged for over twenty years. One conversation of only a couple of hours transformed their lives, restored their family bond, and brought

immense emotional relief. So, managerial mediation is not just for managers.

But what can be done when a conflict involves oneself and another person with whom you personally have an ongoing interdependent relationship that matters to you—at work or at home, even with your spouse? Is there no recourse when there is no neutral third party available to mediate? I'm pleased to say that yes, you can do it yourself, with Self Mediation—that is, mediation without a mediator.

Thousands of my students over the years have reported using self-mediation to restore damaged friendships, to repair business partnerships, and even to rescue failing marriages from the slippery slope of growing alienation. I suspect some of you in this room may be thinking at this very moment of current or past relationships that have caused you concern, and that might have benefited from the healing dialog of self-mediation. Maybe it's not too late!

I recognize that some professional mediators may object to my use of the term "mediation" for this process, since mediation is normally defined as the role of a third-party. In response, I argue that the functions of a mediator are, in fact, being performed—they are just not embodied in a separate, third party. Rather, they are embodied in the person who initiates the self-mediation process, the one who bravely, and skillfully, invites the other to have a conversation about a shared problem. Regardless of nomenclature, this procedure is a good way to talk constructively about troublesome differences and is certainly preferable to relying on walk-aways and power-plays—those inborn, instinctive, familiar tools that our ancient ancestors left in our genetic toolboxes.

You may believe that I have now reduced mediation to its simplest possible form. But bear with me one more step along this reductionist path. Let's call this next, and final, step Preventive Mediation. If Managerial Mediation is mediation without a professional mediator, and Self Mediation is mediation without a third-party at all, Preventive Mediation is mediation without even holding a distinct "mediation event." It stops conflict before it starts. It is mediation in real-time that does not require stopping work or other ongoing activity to perform it. Regular, habitual use of Preventive Mediation can help keep conflicts from arising at all. It takes place while life is going on. Others may not even realize that you are doing it. Let me explain, using concepts that we have already defined here today.

What if we were to integrate what we have learned these past few minutes about walk-aways, power-plays, conciliatory gestures, and the inhibitory reflex to create a simple formula for how we might conduct ourselves routinely, in everyday life? Consider adopting these four rules of engagement with your important people:

First, never WALK AWAY. Stay engaged. Initiate dialogue about the troublesome topic, and certainly never refuse your partner's request to communicate. Once engaged, don't yield to your impulse to quit in frustration. Your amygdala wants you to either fight to win or to leave the scene. Do neither.

Act how you deliberately and rationally choose to act, not how your million-year-old instincts impel you to act.

Second, never **POWER PLAY**. That is, don't use threat, intimidation, ultimatums, or even your authority as the other's boss to win this battle. ... Curb ... your ... amygdala!

Third, take the risk of offering **CONCILIATORY GESTURES**, even small ones, when you can do so sincerely. Consider the power of apology, which I call the "mother of all conciliatory gestures." Make a modest concession. Offer a compliment. Express sympathy. To quote Beatle and songwriter John Lennon, "give peace a chance." That is, dangle a conciliatory gesture in view of the other person. His or her inhibitory reflex may be triggered. If not this time, then perhaps the next. The breakthrough to peace often arrives on the wings of patience.

Fourth and finally, never exploit the other's conciliatory gestures to score a point. Don't interpret his cautious apology as admission of fault. Instead, express appreciation. Acknowledge his courage. Say "thank you." Paradoxically, it takes strength to appear weak.

To state what should be obvious: If I will need you tomorrow—if I need your trustworthiness as my friend, your loyalty as my employee, your respect as my boss, your love as my spouse—the most self-destructive thing I can do is to win today's fight with you. In the long game, I will not win if I cause you to lose. Using Preventive Mediation places the power tools of the expert mediator into the hands of every person to build a non-adversarial win-win normative climate in which our most important relationships can thrive. It is like giving water to a thirsty plant. A well-watered plant produces flowers that add beauty to our home.

You will notice that Managerial Mediation, Self Mediation, and Preventive Mediation—indeed all forms of mediation that attempt to repair broken relationships, or to sustain good ones—contain in their methods certain core principles that are so deeply imbedded in human nature, so logical, so obvious as to seem unnecessary to even mention—except that they are so often violated in the normal course of human affairs.

The first core principle is "Without communication, there can be no solution." Its corollary is equally obvious: "Refusal to communicate ensures continuation of the conflict." So, the mediator's most fundamental task is to convene a conversation between the parties. As in all negotiations, the most important seat is the seat at the table.

The second core principle is "We can't change the past; we can only change the future." So, as eager as we may be to establish that our opponent is to blame for our predicament, doing so does not solve our joint problem. Indeed, insistence on assigning blame to the other, or declaring one's own innocence, only serves as an obstacle to progress toward finding a workable solution. We must accept the other's, and our own, past conduct—the good, the bad, and the ugly—as historical fact, as permanent records stored in our memory banks. We can't un-ring a bell. We can't un-say

a past remark. We can't un-do a past deed. We can only agree to prevent their recurrence.

The third core principle is that durable solutions require "voice and choice." Whether a marriage of two, a work-team of ten, or a nation of millions, if we are to act in concert, in cooperation, and in peace, we must ensure that every person who will be affected by a decision must be given voice—that is, an opportunity to speak and be heard, whether face-to-face or in the voting booth. And, each person must feel that his or her voice has meaningful impact on the eventual outcome, on the decision being made, on the plan being written. It is human nature to say, "If I thought of it, then it must be a good idea." "If I helped create it, then it must be a good thing." By ensuring voice-and-choice for each party in the decision-making and problem-solving process, we foster a sense of personal ownership of that solution, and commitment to its implementation. If we fail to do so, we produce, at best, grudging compliance with the winner's demands. At worst, we sow the seeds of defiant rebellion and sabotage. This principle of voice-and-choice applies to happy marriages and to peaceful societies, and to all forms of human relationships in-between, across the full spectrum. This is democracy, from the smallest to the largest scale of human affairs.

Effective mediation in all ongoing interdependent relationships employs all three core principles. Effective mediators know this truth in their bones.

In our few minutes together today, we have traversed a broad landscape. We began our journey by examining instincts buried deep in our nature that arose millions of years ago in our far pre-human ancestors. We then proceeded through the development of law and other rights-based alternatives to violence, beginning several thousand years ago when civilization as we know it today began to emerge from pre-history. Finally, we have arrived at this date, today, where we discover that we can use our **MINDS**—that is, our magnificent cerebral cortex—that most human of body parts—to harness our primitive impulses and to construct tools—that is, behavioral technology—that enable us to elevate ourselves above ancient instinctual reflexes so that we may live and work together in peace, harmony, and productivity.

I have no doubt that my fellow mediators here today, whether you are an attorney or a non-attorney, share my belief in the promise of mediation, however that word may be defined, for resolving disputes to mutual satisfaction. Our experience demonstrates its power to benefit our clients, ourselves, our communities, and broader society. Like me, you believe our way is preferable to rights-based adjudication of civil disputes, especially in family courts where the well-being of vulnerable children is often at stake. You may even agree with me that the essence of mediation can be distilled to its core simplicity and applied in our everyday lives. If you are a practitioner of mediation, I'm sure you share my sense of satisfaction in contributing to the betterment of society, to

building a wall of peace, one brick at a time, one conversation at a time, as a defense against the assault that conflict relentlessly wages against our daily pursuit of happiness.

My purpose here today has not been to venture into the dense forest of mediation techniques or theories of mediation practice—you can find a rich and flourishing body of knowledge in the published literature about our field of endeavor. I simply hope that I have made a sensible case for the promise of mediation as a process for improving human

relationships, especially those ongoing, interdependent relationships that lie at the core of our own, very personal, reasons for living.

I'll leave you with one final reminder from Rumi:

*Out BEYOND ideas of wrong-doing and right-doing there is a FIELD.*

*I will meet you there.*

Asante sana

Thank you