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STORIES MEDIATORS TELL: THE EDITORS' REFLECTIONS

Eric R. Galton & Lela P. Love†

In the end, the story survives, sometimes changed by the teller, passed down from person to person with a ragged and probably inaccurate attribution. Stories from the Bible or the Koran or the Tanakh, folk stories of Hans Christian Andersen, stories from the Trojan War, stories about leaders and healers and gods, legends of Creation Beings from the Australian Aborigines, stories about Alice in Wonderland or Winnie the Pooh. There is a core or a heart to the great stories that takes us to a place of emotional connection with people from different times and places and with important truths about human endeavors. Stories are, in some ways, “truer than truth”¹—if we take one meaning of truth to be factual accuracy and another to be understanding the nature of things at a deeper level.

Unlike the constant flow of information and shifting events in the real world, stories have a beginning, a middle, and an end. They capture a slice, they distill reality so that we can make sense of it.

Edna St. Vincent Benet proclaimed that music was “her rampart” and “her only one.”² For many, all over the world, the power and the magic of stories is what engages, teaches, and inspires. Stories are their rampart against the chaos of the world.

We have felt that mediation is an important human endeavor and that stories about it should be accessible. That mediation needed to be

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¹ *Isabel Allende: Tales of Passion*, TED (Jan. 9, 2008), http://www.ted.com/talks/isabel_allende_tells_tales_of_passion.html (“Question: What is truer than truth? Answer: The story.”).

² EDNA ST. VINCENT MILLAY, *On Hearing a Symphony of Beethoven*, in *THE BUCK IN THE SNOW & OTHER POEMS* 69 (1928).

understood, to be viewed from inside the mediation room so that the public and mediators could understand its power—and its pitfalls. That is why we collected these stories. And now, one year after publication of *Stories Mediators Tell*, that is why we are grateful to have the scholars represented in this symposium commenting on these stories in their thoughtful and delightful essays.

One of the things about stories is that human beings extract life-shaping, practice-shaping lessons from stories. We tell the truth because George Washington could not tell a lie after he chopped down the cherry tree. We go the second mile because Abe Lincoln did that to pay a debt. The symposium writers—Judge Wayne Brazil, Professors John Lande, Sharon Press, and Ellen Waldman, and author and mediator Woody Mosten—are veterans of the mediation world. They have seen it all, and yet they report that new stories are worthwhile, holding important lessons for them. These symposium writers take the time to share what they learn from the stories.

Wayne Brazil shares those lessons he gleans about the ability of people to rise up in conflict in noble ways and about lessons for mediators the stories hold. John Lande and Woody Mosten extract lessons about and for mediation educators from the stories. Sharon Press finds lessons about law and lawyers.

Professor Ellen Waldman importantly notes that the book is missing stories—stories about harms a powerful process can inflict. Thankfully, she fills that gap with the story she tells in her symposium piece.

Since the publication of *Stories Mediators Tell*, there have been conference events at which mediators tell stories.³ Another book has been published with stories,⁴ written by one of the authors in *Stories Mediators Tell*, and inspired in part by the creation of *Stories Mediators Tell*.⁵ And Rick Paszkiet, the Director of ABA Entity Book Content Publishing of the American Bar Association, reports that *Stories Mediators Tell* is one of the most popular books ever published by the ABA's Section of Dispute Resolution.⁶

³ For example, the American Bar Association Section of Dispute Resolution's annual conference has had two sessions on *Stories Mediators Tell*, one in 2012 and another 2013; the New York Peace Institute has hosted two story-telling events, one in 2012 and another in 2013.

⁴ JAN FRANKEL SCHAU, VIEW FROM THE MIDDLE OF THE ROAD: A MEDIATOR'S PERSPECTIVE ON LIFE, CONFLICT AND HUMAN INTERACTION (2013).

⁵ *Id.* at xv.

⁶ E-mail from Rick Paszkiet, Dir., Am. Bar Ass'n Entity Book Content Publ'g, to Lela Love (Apr. 10, 2013 11:11 AM) (on file with author) ("Since its publication in February 2012, *Stories Mediators Tell* has been the top best-selling book on mediation due to its appeal to both new and seasoned mediators.").

These events and this symposium underscore what may be particularly timely not only about the book but about the symposium as well. The present is perilous for the practice of “good” mediation—that is, mediation where there is potential to further human understanding and problem-solving, potential for the type of results that are reported in many of the stories in *Stories Mediators Tell*.

The marriage between mediation and the law has always been a curious one. In some ways, the marriage was one of convenience. The more bellicose law side needed its overcrowded dockets unburdened and the more humanistic mediation side needed a market of users. Many questioned who the offspring of this marriage would resemble, and now some are surprised that the children look so much like Father Law.

In the past five years, the general session has been abandoned in many venues in court-annexed mediation in the United States; mediation has focused narrowly on the legal cause of action and the demand and response filed in court, and the process has become lawyer, rather than client, centered.⁷ These phenomena are more than a retracing of the facilitative-evaluative debate.⁸ The abandonment of the general session is genetic tinkering with the core DNA of the mediation process. The fundamental humanistic aspirations of the mediation process have been suffocated by the more commercial needs of the legal system and a default to the most familiar adversarial framework. Mediation has become about numbers and magic tricks to arrive at numbers.

The International Institute for Conflict Prevention & Resolution (CPR) recognized an article entitled “Mediation—the New Arbitration,”⁹ as its winning scholarly article this year. The article laments that court-connected mediation has transformed into an adjudicative-like process and concludes that mediation is at an

⁷ Leonard L. Riskin & Nancy A. Welsh, *Is That All There Is?: “The Problem” in Court-Oriented Mediation*, 15 GEO. MASON L. REV. 863 (2008); Nancy A. Welsh, *The Thinning Vision of Self-Determination in Court-Connected Mediation: The Inevitable Price of Institutionalization?*, 6 HARV. NEGOT. L. REV. 1 (2001).

⁸ Kimberlee K. Kovach & Lela P. Love, *Mapping Mediation: The Risks of Riskin’s Grid*, 3 HARV. NEGOT. L. REV. 71 (1998) (arguing that mediators adopting an evaluative orientation do not fundamentally differ from nonbinding arbitrators); Murray S. Levin, *The Propriety of Evaluative Mediation: Concerns About the Nature and Quality of an Evaluative Opinion*, 16 OHIO ST. J. ON DISP. RESOL. 267 (2001) (summarizing arguments in the debate about evaluative mediation); Jeffrey W. Stemple, *Beyond Formalism and False Dichotomies: The Need for Institutionalizing a Flexible Concept of the Mediator’s Role*, 24 FLA. ST. U. L. REV. 949 (1997) (endorsing flexible mediation that permits a judicious use of evaluation).

⁹ Jacqueline Nolan-Haley, *Mediation: The “New Arbitration,”* 17 HARV. NEGOT. L. REV. 61, 63 (2012) (lamenting that mediation has become a “surrogate for arbitration” with lawyers controlling the process and adjudication by the neutral).

important crossroads and should be reined back into its formative conception as a collaborative, interested-based process celebrating party self-determination.

Stories Mediators Tell is a reminder of the essential spirit of the modern mediation movement. Stories had to be told about what happened to the disputants and not what the case settled for. Stories needed to remind future generations of mediators about the creative, transforming, and healing aspects of the process. For these stories to be picked up and moved, by the symposium authors, into important lessons for different audiences is an antidote to the creeping morphing of the process into “the new arbitration.”

In response to Ellen Waldman who worries that *Stories Mediators Tell* may neglect stories about harms caused by the mediation process, certainly the stories in the book are far more positive than negative. However, this tracks the experiences of working mediators in the field. We encounter or hear of a bad situation from time to time, but those instances do not occur often. When you talk with veteran mediators, you cannot help but be impressed with their passion and commitment to the process, decades and thousands of mediations later. Many have stories of the courage of the participants who appeared before them. Most veteran mediators appreciate that the story is always about the participants and not the mediator. Perhaps future collections of stories could feature those told by parties as well as neutrals.

Interestingly, most mediators also cherish their relationships with the lawyers they work with. As legal education has focused more on mediation, negotiation, and arbitration, the new generation of lawyers has a better understanding of dispute resolution and its different skill sets. However, since dispute resolution courses remain largely supplementary in most law schools, some students leave law school with no dispute resolution skills or understanding. We will need to have lessons from scholars and educators, like those represented in this symposium, trickle down into the law school curriculum so that the vision and passion of the mediation movement remains alive.

Is the abandonment of the general session a sign of a permanent mutation which will eliminate the essential humanistic goals of mediation? Will there be continuing dialogue between the law side and mediation side to explore the benefits and possibilities that the mediation process presents? Will there be new stories mediators tell twenty years in the future?

Hopefully, the rich stories in *Stories Mediators Tell* will be inspirational reminders of the power of the process and the passion that inspired the mediators that shared these stories. And the pieces in this symposium will stand as a challenge to educators, parties, lawyers, and

mediators of the importance of continually extracting lessons from the phenomena around us and passing on the lessons to future generations.