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A Tribute to James B. Boskey

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From the Chair By Lela P. Love

This issue of the magazine is dedicated to exploring impasses. An impasse is a deadlock, a standstill, a dead end. The unstoppable force and the immovable object. The unwanted stalemate dreaded in anticipation and often dreadful upon arrival. Every dispute represents, at some point in the dispute's life, an impasse. Similarly, deals hit dead points where forward movement looks unlikely. It is the impasse situation that brings clients to lawyers and disputants to mediators and arbitrators. What does the world of dispute resolution offer as answer to impasse scenarios?

John Lennon, in the song "Watching the Wheels," said, "There's no problem, only solutions." The entire dispute resolution field can be characterized as many different paths leading to solutions to—or ways around or through—impasses. Some of those paths involve ways that parties to a dispute or a deal can find their own solutions despite a perceived impasse; other paths involve third-party decision makers finding a resolution for a dispute—in effect, a way around the parties' impasse.

How do people in their lives overcome impasse?

Picture Nelson Mandela as he left his last prison cell where he had been incarcerated for 17 years. Mandela says that as he walked away from that cell, he realized that his anger for what had been inflicted on him could keep him imprisoned for the rest of his life, so he "let it go." Mediators use various techniques to challenge parties to consider whether they want to "let it go"—reality testing, helping parties explore the costs of remaining deadlocked and the value of being released.

I recently witnessed a fight between two men on the subway in New York City. A large man sat down next to another rider, and, as he did so, he said, "Excuse me," but he bumped the other man. The bumped rider was irate: "You can't bump me and just get off the hook by saying 'Excuse me'." To illustrate what had happened, the bumped rider kept bumping the large man. Others on the train moved away, sensing a dangerous impasse. However, when the train stopped at 79th Street (my stop), the large man exited and said under his breath: "Maybe I'm the jerk. Could I be the jerk?" This ability to question oneself, to see the other side, is very rare in disputants. It is some-

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thing mediators sometimes attempt—calling for a role reversal, or party perspective taking. Sometimes parties make a powerful shift and jump right out of a standstill, thanks to a good mediator.

When I experience a deadlock, often the best move is to do something else. For example, go running or work on an unrelated project. When I return to the deadlock, I am different. Time has passed. Things shift. Similarly, mediators use breaks, agenda control, and the passage of time to generate ways out of impasse.

Have you ever given up on a dispute? Wanted someone else to decide? Or the flip of a coin to determine the outcome? Arbitrators render valuable service by conducting a process that takes the decision away from the deadlocked parties and doing so in a manner that is procedurally just. If the arbitrator can provide a fair and respectful forum, can listen thoughtfully to the evidence, can be even-handed and display impartiality, then the arbitrator's award is most likely to be perceived as a just closure of the dispute, and the parties can more gracefully step around their impasse.

The Section of Dispute Resolution is working to improve the practice of both branches of the dispute resolution world: facilitation of parties' decisions and decisional processes where third parties are requested to judge. Most recently, the Section hosted the first International Mediation Leadership Summit at the Peace Palace in The Hague. This event brought together 94 leaders in the mediation field from 28 countries around the world to share ideas and develop networks to improve the practice of mediation. From February 18 to 21 in San Francisco, the Section is hosting its Fourth Annual Arbitration Training Institute—a comprehensive training in commercial arbitration.

Please join the action! If you're not already active in one of our 32 committees, or if you haven't written for this magazine, or if you're hesitating about whether to join our annual conference in April in New York City to share ideas and innovations with colleagues, do it now! Make your mark on this important field by participating, and take it up a notch! Eckhart Tolle, the author and spiritual leader, said, "There are no problems, only situations." However, dealing effectively with situations—improving the practice of mediation, arbitration, and related processes—can either solidify or pierce the inevitable impasse that all disputing parties experience. ♦