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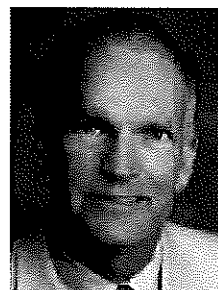
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by Douglas Noll

September 2005

Nancy had rented a small cottage on Tom and Tracy's ranch. The cottage was old and the previous tenants had left it a mess. Over the period of several months, Nancy became frustrated at Tom and Tracy's apparent unwillingness to fix the cottage.



One hot summer evening, after a difficult day at work, Nancy returned to her cottage to find that she

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had no water. She called over to Tom and Stacy's home and learned they were having dinner. Tired and completely frustrated, Nancy became angry. Tom, tired of Nancy's incessant requests, hung up on her.

Nancy withheld her rent (\$550) that month and placed it in a separate escrow account. She told Tom and Tracy they could have the rent when they completed repairs on the cottage.

Nancy's action led to an eviction, followed by her small claims action against Tom and Tracy, followed yet again by their lawsuit against her for defamation, trespass, and breach of contract.

By the time the matter reached court-ordered mediation, each side had spent over \$15,000 in attorneys' fees and costs. Tom and Tracy were demanding \$50,000 from Nancy. Nancy was demanding \$8,000 from Tom and Tracy.

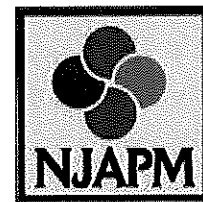
The mediator arrived at the mediation conference. The hostility and anger in the room was thick enough to cut with a knife. Clearly, the parties did not care to be sitting across the table from one another.

The mediation started with agreement to how it would be conducted. Everyone agreed that one person would speak at a time without interruptions from others. Each agreed to speak the truth from his or her heart and mind. Each agreed to be respectful of the others and to use respectful words, tone of voice, and body language. Finally, everyone agreed that the conference had to be fair at all times.

The mediator asked if each person would be willing to share his or her perspective on how the conflict started and what it was about. The mediator pointed out that three perspectives were usually in play: a personal perspective, a legal perspective, and a business and economic perspective. No perspective dominated, but each might provide valuable information for everyone to consider.

Everyone agreed to tell their story keeping those perspectives in mind. As the stories unfolded, the mediator could see that two very different realities had been created. From Nancy's perspective, Tom and Tracy were not interested in providing a habitable cottage and were intentionally ignoring Nancy's requests for repairs. From Tom and Nancy's perspective, Nancy was unreasonably demanding, wanting action instantly at her whim. Both sides agreed that the water had failed that one night and was the final straw for all.

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When one person finished, another would jump in to refute the story point by point. Both sides kept repeating that they had "evidence" to prove their case and the other side was lying. For awhile, the conference seemed to heat up rather than cool down. The mediator kept the conversation flowing, allowing everyone to speak without interruption.

This was a critical strategic decision. By letting the parties tell their stories and argue their respective cases, the mediator gave them an opportunity to be heard. Many people mistakenly believe that this "venting." Venting is actually a throwback to Sigmund Freud's early model of the human psyche as boiling with sexual energy. If not properly vented or displaced, this energy was said to cause neurosis or psychosis. Thus, talking things out was thought to be a way of relieving psychic pressure. Today, the concept persists despite the lack of any empirical evidence establishing venting as effective. The value in letting people speak is in listening to them in such a way that they know they have been heard.

By the fourth round, the emotions in the conference room finally began to cool off. The mediator led the parties through an identification of their interests. As is very common in heated conflicts, the parties had identical interests. Each wanted the lawsuits to end. Each wanted an apology and retractions from the other. Finally, each wanted to be made financially whole. The parties were shocked to see that they had the same interests and needs, and this was the second critical turning point in the mediation.

By now viewing the conflict as one of mutual injustice requiring mutual apology, the parties could step off of their positional demands for money. With another hour of work, the parties agreed to dismiss the lawsuit. Nancy agreed to pay \$450 for past rent. Everyone agreed to apologize and retract disparaging statements made about the other. All other demands for money were dropped and everyone agreed to pay their own attorney's fees and costs.

This mediation presented a classic class in conflict de-escalation. During the five hour mediation, four hours were devoted to de-escalating the parties and only one hour to actually negotiating a settlement that all were happy with. While the conflict seemed superficial and trivial from the outside, it could not have been resolved satisfactorily unless the parties had been de-escalated first. De-escalation moves parties from emotionality to rationality, allowing them to make sound choices. If parties are pushed too quickly to be

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rational, they will balk and impasse will result. De-escalation is therefore a key element of peacemaking.

Biography

Douglas E. Noll, Esq. is a full time peacemaker and mediator specializing in difficult and intractable conflicts. In addition to being a lawyer, Mr. Noll holds a Masters Degree in Peacemaking and Conflict Studies. He has mediated and arbitrated over 1,200 cases, including a large number of construction, construction defect, and real estate matters involving tens of millions of dollars. He is a nationally recognized author, speaker, and lecturer on advanced peacemaking and mediation theory and practice. Mr. Noll is a Fellow of the International Academy of Mediators, a Fellow of the American College of Civil Trial Mediators, and on numerous national arbitration panels.

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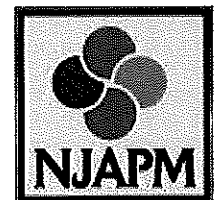
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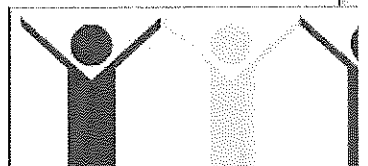
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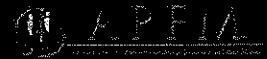
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