



You are receiving this communication as a result of your interest in alternative dispute resolution. I thought you would like to see my article below, "The Connection between Mediation and Military Strategy," which appeared in the Los Angeles Daily Journal about my experience at the U.S. Army War College.



By Joan B. Kessler, Esq

The Connection Between Mediation and Military Strategy

Earlier this year I was selected to be a guest of the U.S. Army War College at their National Security Seminar (NSS), held from June 5-10 at the War College in Carlisle, Pa. I was asked to speak to my fellow seminar participants about my mediation practice and how that might be related to discussions at the War College. The insights I gained from this experience were life enhancing.

The NSS is the final week of a 10-month program for U.S. military senior officers and high-ranking foreign officers. It focuses on "strategic aspects of national security." NSS supports a key War College goal of helping senior military officers "develop professional competencies and personal attributes they will need to understand and deal with the complex issues that affect our national security."

My colleagues were leaders in government including Utah Lt. Gov. Greg Bell, religious leaders such as the head of Billy Graham's Church, business executives, journalists such as the editor of *The New York Times*, an *Associated Press* reporter who covers the United Nations and even a film producer and director from Disney.

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Former graduates of the War College have included: President Dwight Eisenhower, Gen. Alexander Haig and Gen. John Shalikashvili.

Here are some insights I gained at the NSS, and thoughts on how they apply to mediation:

Critical thinking - As part of the week's educational activities, I attended a seminar on critical thinking. The War College professor explored the subject of analyzing issues and resolving conflicts. In my mediation practice, I find that resolving conflict only occurs when the parties are prepared to try to put emotions aside, and analyze the facts and legal issues, which may be contrary to their position.

Similarly, in my mediation practice, I always demand that the decision makers, "the money person" out of whose pocket settlement funds would come, the risk manager, insurance adjusters and the parties themselves be in attendance so we can get to a resolution. With everyone present, I can most effectively assess their credibility and indicate how a jury might respond to them.

Open-mindedness and self-awareness - One of the key missions of the War College is to educate the highest level of our military in strategic thinking and leadership skills. I was overwhelmed at the impressive credentials and professionalism of the military personnel. Clearly these senior military members were taught to stay open-minded, explore all alternatives and delve into their own beliefs, values and attitudes to develop self-awareness in becoming even better leaders, whether on the battlefield or in domestic base assignments.

Likewise, in my mediations, I ask litigants and counsel to "think outside the box" and be open-minded. Many times I find that helping the parties to be self-aware is helpful as emotional issues and deep-seated anger may cloud their ability to process information and work on settling the case at hand. Mastering intercultural communication issues and treating people as they want to be treated are essential skills. Avoid being ethnocentric and don't be fooled into thinking that everyone shares the same beliefs, attitudes and values as you do - this all comes into play in mediations and in military strategic planning.

Risk of loss - One thing that struck me was the support that these senior military leaders gave each other in class. There was also a close-knit group of military families that seemed to provide support. One night, the wives of these officers made a potluck for the seminar group, which was amazing in food and hospitality. Given that many of these wives were sending their husbands off to be in harm's way and all of them were packing and moving the next day or so, it was a Herculean effort.

The support system I observed is critical and the risk of loss was repeatedly mentioned throughout the seminar and NSS generally. In assessing strategy for military action, clearly this is a key element.

Not that any of the people I see are facing death, but risk of loss is a key factor that I stress in every mediation. This "downside risk" is something I always raise with both sides.

Ending the conflict; how to access a win - We also explored issues related to the end of war, obviously a topic of giant concern given the multiple wars currently raging around the world. In order to end a war, consideration is given to planning how it will end at the beginning of the conflict and what political issues will emerge as a result.

So too in a mediation, litigators have their "end game" strategy. It is critical to consider the political ramifications of a settlement, from a defendant's perspective and from the plaintiff's side. There may be political issues related to who the true decision makers are and there may even be political issues between client and counsel. I try to look at these non-legal and non-evidentiary issues and be sensitive to them in helping the sides frame a settlement.

This experience at the War College was one of the most memorable of my life. The eight-hour tour of Gettysburg almost killed me, as it was very hot and hilly, but the lessons from those battles still ring true today. Sometimes we charge on even if we know our ranks are smaller than the opponent's to get a strategic advantage.



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