

**A Justice Guide  
for  
Resolving Disputes and Repairing Harm<sup>SM</sup>**  
•  
**(Justice Lecture Outline)**



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## Pre-Lecture Exercises

### A Justice Guide for Resolving Disputes and Repairing Harm<sup>SM</sup>

by Chuck Boles, M.A.

#### 1. A Conflict Resolution Challenge

##### A Conflict Resolution Challenge

A long-time and valued employee asked her recently promoted department manager for help in responding to a complicated inquiry from an important client. The newly promoted manager refused, citing a tight deadline from their Division Vice President and referring to the client's inquiry as a "nickel-dime" matter. This led to tension between the valued employee and the recently promoted manager.

Two weeks later, the recently promoted manager asked the valued employee for help on a project. The entire office staff overheard the manager and employee loudly exchanging heated words. The following day, the long-time, valued employee called in sick.

A week later, the Division Vice President urgently asks you (The Employee Conflict Resolution Manager) to resolve the problem.

**Briefly explain the first action you would take to resolve this conflict.**

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#### 2. In your opinion, what is the relevance of the following quotes in the context of helping parties resolve a dispute?

"Strong minds discuss Ideas,  
Average minds discuss Events,  
Weak minds discuss People."     - **Socrates**, Greek Philosopher

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"Without Forgiveness, there can be No Reconciliation."  
- **Desmond Tutu**, Arch-Bishop of Cape Town South Africa and  
Nobel Peace Prize Recipient

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"When men (humans) are friends, justice is unnecessary" (The History of Philosophy)  
- **Will Durant**, American Historian and Philosopher

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# A Justice Guide for Resolving Disputes and Repairing Harm<sup>SM</sup>

By  
Mediator Chuck Boles, M.A




**Indicates an Important Point to Remember**

Welcome to A Justice Guide for Resolving Disputes and Repairing Harm<sup>SM</sup>.

Before embarking on our overview of dispute resolution approaches, let's briefly examine the historical foundation of our legal system and the potential impact of delaying resolving a dispute or addressing harm.

Following the Revolutionary War, the United States, in its infancy, used English Common Law as the bedrock of its legal system. However, due to disparities in English Common Law, the early American legal system began to forge its own laws rooted in the American principles of democracy and equality. Over time, these American legal principles intertwined with English Common Law, creating the groundwork for our present justice system and approaches society uses to resolve disputes and address "issues of harm."

 It's better to act quickly to minimize the potential damages caused by delaying the resolution of a dispute or addressing harm. Delay can cause a dispute's impact to spread and worsen until the disputing parties become victims of The 7-R Virus<sup>SM</sup>.



## The 7-R Virus<sup>SM</sup>

**Can lead disputing parties to:**

- **Recall** the incident emotionally! (with negative impact)
- **Repeat** the Recall stage (emergence of worrisome days and sleepless nights)
- **Regret** ever dealing with or associating with the other party(s)
- **Recruit** supporters and their opinions (the virus begins to spread ... "If I were you, I'd...")
- **Resent** the entire experience (replace rational thinking with emotions)
- **Revenge** by attacking the person, not the problem! ("I want my pound of flesh!" etc.)
- **Recycle The 7-R Virus<sup>SM</sup>** (until it achieves a divisive, critical mass within the community!)

 While there are multiple approaches to resolving disputes, this writing offers you a brief overview of four commonly used approaches:

1. **Litigation**: One party requests a court judgment to settle a dispute with another party. A judge and/or jury of peers renders a judgment based on presented evidence and/or legal precedent.
  - **Alternate Dispute Resolution**: If disputing parties choose to resolve their dispute out of court, they may select alternate approaches such as **Arbitration** or **Mediation**.
2. **Arbitration**: In the event of a future dispute, parties contractually agree in advance to petition an independent arbitrator or arbitration panel for a binding decision.
3. **Mediation**: Parties engaged in a dispute voluntarily agree to meet in a confidential session conducted by an unbiased mediator in an attempt to resolve their dispute.
4. **Restorative Justice**: To address "issues of harm," the victim(s) meets face-to-face with the offender(s) who created the harm. A trained mediator facilitates the session to help the parties repair the damage, reduce distress, and prevent future harm.

Let's briefly review each method.




**1. Litigation:** Forms of this legal practice have existed for centuries, modern litigation practices emerged in the U.S. during the Industrial Revolution to resolve business and labor disputes.

Litigation is often used when one party seeks damages from another (e.g., in business, commercial, family law, landlord-tenant, property disputes, etc.). The party seeking damages (the plaintiff) asks the court to resolve a dispute and, if needed, award the plaintiff damages against the other party (the defendant).

A decision is rendered by a Judge (and/or Jury of peers) based on legal precedence and/or the evidence presented by the parties. Either party can appeal the court's decision.

While litigation can be costly, lengthy, open to public knowledge, and damaging to relationships, one advantage is that either party can appeal the court's decision.

-  **Alternate Dispute Resolution (ADR):** To avoid litigation costs, delays, and public attention, parties may choose to use **Alternative Dispute Resolution (ADR)** approaches, such as **Arbitration** and **Mediation** to resolve their disputes outside of a court setting.



**2. Arbitration (ADR option):** Historical research shows that, in the 1600s, the Commonwealth of Massachusetts passed laws supporting arbitration to resolve disputes. In the early 19<sup>th</sup> Century, the effects on business relationships during the Industrial Revolution led to the enactment of the United States Arbitration Act of 1925 (now known as the Federal Arbitration Act—FAA). The Act made arbitration legal and enforceable in the United States.

Arbitration clauses are common in business, commercial, labor, and securities contracts. They bind the parties to arbitration in case of a contract dispute.

Arbitration allows disputing parties to present their evidence and arguments to an impartial third party (an arbitrator or an arbitration panel). After carefully reviewing and weighing the evidence and arguments, the arbitrator or panel makes a final, binding decision/award that either party cannot appeal.

Any award granted must be “confirmed” in a court of law. Once confirmed, the award is defined in an enforceable judgment, which the winning party may enforce in court.

The advantages of arbitration, such as confidentiality, cost-effectiveness, and efficiency, should be balanced against the fact that the arbitration judgment and awards are final, enforceable, and cannot be appealed.



**3. Mediation (ADR option):** Although mediation originated in ancient Greece and was founded on the belief that conflict could build stronger individuals, create more satisfying relationships, and foster better communities, its modern revival is often attributed to the 1960s Civil Rights Movement.

Mediation involves an unbiased third party (mediator) facilitating a process during which disputing parties (disputants) voluntarily meet to mutually resolve their dispute and, hopefully, restore their relationship.

While mediation offers no guarantee of a positive or productive outcome, the disputing parties can continue the conflict or pursue an alternative process (i.e., litigation, arbitration, etc.).

Mediation:

- Is adaptable and effective in resolving many types of disputes, such as those in personal, marital, business, governmental, and commercial environments.
- Can take many forms, including **Court-Mandated Mediation** (the court refers cases to mediation in hopes of a speedy and cost-efficient settlement), **Transformative Mediation** (a session that empowers parties to resolve their conflict), and **Facilitative (or Traditional) Mediation** (a mediator facilitates negotiations between parties).
- Can be cost-effective, swiftly conducted, and effective in restoring relationships. However, the participation of the disputing parties is voluntary, and there is no guarantee that the dispute will be resolved.



**4. Restorative Justice (RJ):** In the 1970s, the prison system developed the restorative justice approach to find effective alternatives to traditional judicial methods for punishing offenders.

Aimed at rehabilitating offenders and addressing the harm caused by crime or conflict, Restorative Justice has since expanded beyond the prison system and is now embraced in various community settings, such as neighborhoods and schools.

Howard Zehr, known as the grandfather of Restorative Justice, formulated its three pillars, which prioritize:

1. Addressing the harm and the impact on the victim(s), the community, and the offender(s).
2. Holding the offender(s) responsible for repairing the harm as much as possible
3. Ensuring the engagement and participation of all stakeholders in the justice process.

Restorative Justice sessions include a trained facilitator (usually a mediator) who facilitates a discussion between the offender(s) who caused harm and the victim(s). The goal is to define the *impact* of the harm and determine how to *repair* the damage to *prevent* future harm.

Restorative justice is cost-effective and can be swiftly conducted. Encouraging open dialogue between victim(s) and offender(s) can satisfactorily reduce victim/offender stress while preventing a repeat of the crime or injustice.

The advantages, however, may be minimized by the *lack of post-session accountability* and the *potential trauma* experienced when a victim/offender revisits the incident.

### ***In Conclusion:***

**Thank You** for reading this summary of **“A Justice Guide to Resolving Disputes and Repairing Harm<sup>SM</sup>.”**



This Justice Guide provides a generalized overview of four commonly used approaches to resolving disputes and repairing harm.

Exploring other methods, such as the minitrial, the rent-a-judge program, and the summary jury trial (SJT), will “open your eyes” to the many other approaches to resolving disputes and repairing harm.

**So, don’t stop learning!** Studying the “world of justice” provides an exciting learning adventure and helps you understand how the “wheels of justice work in motion.”

As you pursue a deeper understanding of current and new judicial and non-judicial approaches, pay close attention to how they evolve in response to changing legislative and societal needs, demands, and challenges.

In closing, I leave you with three things:



### **1. “Chuck’s Five Lessons to Ponder!”**

**As you navigate your justice journey, I encourage you to stay *FOCUSED* on the following:**

1. **Do Not become Paralyzed by the Unknown!**
  - Don’t be afraid to “step out of the boat!”
2. **Do Not become a Prisoner of the Past!**
  - Savor Your Happy Memories as you Embrace the Future!
3. **Do Not Lose Sight of Your Purpose!**
  - Know your Mission and Pursue It!
4. **Do Not become Pressured by Popular Demands!**
  - Stay True to Your Convictions and Your Own Voice!
5. **Do Not Lose Faith!**
  - In Yourself, Your Purpose, Your Vision, and Your Future!

## 2. Mediator Chuck's Bonus Justice Guide!<sup>SM</sup>



### Mediator Chuck's Justice Guide at a Glance<sup>SM</sup>

identifies some *generalized* contrasts and similarities between the four approaches.

Some Contrasts & Similarities ↓ ↓	LITIGATION In Court) ↓ ↓	Alternate ↓ Dispute Resolution ↓		RESTORATIVE JUSTICE ↓ ↓
		ARBITRATION ↓ ↓ (Conducted Out of Court)	MEDIATION ↓ ↓	
Purpose →	Resolve Disputes between Parties			Acknowledgment of Harm & Repair of Harm
Designed to Address →	Domestic & International Individual, Family, Contract, Commercial & Private Disputes			Prison, School, Family, Workplace, Community
Focus on →	Law	Contract	Relationships	Impact of an Offense
Participants can include →	Judge, Plaintiff & Defendant	Arbitrator & Contract Parties	Mediator & Disputants	Facilitator, Offenders, Victim(s), Community
Is the Session Open to Public Exposure? →	-Yes-	-No- Confidential	-No- Confidential	Possible Community Awareness
Confidentiality? →	-No- Open to Public	-Yes*- *(i.e., Collective Bargain	-Yes- (Unless...)	-Yes- (Exception: Possible Community Awareness)
Who "Controls" the: - Session Process? → - Session Outcome? →	<u>Controlled by:</u> Court Judge Judge - (Jury)	<u>Controlled by:</u> Arbitrator Arbitrator	<u>Controlled by:</u> Mediator Disputing Parties	<u>Controlled by:</u> Facilitator To Be Determined
Is there a Concern for the Relationships? →	The Court may or may not	The Arbitrator may or may not	Mediator - Yes Parties? - TBD	Facilitator Parties? - TBD
Cost & Resources →	High	High	Low to Moderate	Low
Timing of Outcome →	Lengthy	Lengthy	Quick	Quick
Guaranteed Outcome? →	Eventually	-Yes-	-No-	-No-
"Final" Ruling, Decision or Agreement →	Can be Appealed	Is Binding (Court Review?)	Parties Mutually Agree (or Not!)	Possibly (Accountability Issues?)
Potential for Stress? →	Medium->High	Medium->High	Low->Medium	Medium->High
Degree of "BURN" →	3 <sup>rd</sup> to 4 <sup>th</sup>	3 <sup>rd</sup> to 4 <sup>th</sup>	2 <sup>nd</sup>	2 <sup>nd</sup> to 4 <sup>th</sup>



**NOTES:** \_\_\_\_\_

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### 3. A Poem of Encouragement



#### Justice Practitioners and St. Peter

*Saint Peter sat at the Heavenly Gate to welcome Justice Practitioners, both Early and Late; to All, he put questions so he might know*

*Whether to send them Above or Below.*

*“Whilst Come Thou Practitioners”, Saint Peter said; and the Man & Lady, thus addressed, proudly raised up their heads.*

*“Sir! We are Justice Practitioners”, they made reply.*

*“Ah, Justice Practitioners you say”, and a twinkle irked in Saint Peter’s eye and he made answer in tones that were terse.*

*‘Welcome my Justice Practitioner Friends to the Whole Universe!’*

*“Your place will be 10 Golden Avenue, up near the Dome; enter and make yourself fully at home; and, should you choose to go slumming in Hell; or anywhere else, you could go there as well; for you will not be disturbed by the temperatures there.*

*For Justice Practitioners can go Anywhere!”*

Again, thank you for your interest in [A Justice Guide to Resolving Disputes and Repairing Harm<sup>SM</sup>](#).

Until our paths cross again, I remain...

**Chuck Boles, M.A.**

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**Any Questions? Contact me!**

**Visiting Professor and Justice Practitioner  
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Relationship Repair Facilitator**

**I Am Dedicated To  
Helping Others make their lives *BETTER*  
than they can do for Themselves!<sup>SM</sup>**

