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Margaret Shaw

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# Reflections on a Mindful Giant: A Tribute to Len Riskin

Margaret Shaw\*

Len Riskin is a man who is usually associated with raisins. This is because he is known for getting you to close your eyes and picture grapes growing on a vine somewhere in South America and after a really, really long time and a really, really long trip for those grapes, you get to take a miniscule bite out of the raisin you have been holding that gradually has become the focus of all of your attention.

I know Len much better as a chocolate chip cookie guy. I recall the early 1990s when Len and I were comparing notes by telephone on things we were thinking and writing about at the time. Len confessed to me that he had just consumed perhaps his twenty-third chocolate chip cookie. (This may, of course, have been after I confessed that I was on my fourteenth Diet Coke to get my through whatever it was that I was then writing.) What sparked this particular chocolate chip cookie binge of Len's was his first treatise on what has now become known as the "Riskin Grid." So while the spiritualists and meditators among us may celebrate the raisin, I would like to suggest that the practitioners and trainers among us celebrate the chocolate chip cookie.

Len's groundbreaking article, *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed*,<sup>1</sup> published a decade ago, has become both one of the classic writings in ADR and the writing that has sparked some of the liveliest debates the field has ever seen. This debate, of course, has greatly enriched the thinking and practice of countless numbers of us.

Len's original grid was both simple and profound. I conducted a small survey of some of my colleagues to get their views on Len's contributions. One colleague said,

The greatest tribute to Len's grid is that it is so sensible and right-on that I can't remember not incorporating it in my teaching, writing and practice. It is part of how we now see mediation. Len didn't create the grid, he discovered it and delivered it to us—something like Moses and the Ten Commandments.

But now that ten years has passed it may be difficult to remember back to the initial impact of Len's publication. Do not forget that the term, "Alternative Dispute Resolution," or ADR, had only been coined some ten years before that, and we really did not possess a sophisticated vocabulary for discussing what it was that we were doing as mediators, the different approaches we were using, and how

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\*. Margaret Shaw has been a mediator for more than 25 years, and has been working with Judicial Affairs and Mediation Services (JAMS) since 2004. Ms. Shaw was recently named a "Best Lawyer" in the specialty of ADR in the forthcoming edition of *The Best Lawyers in America, 2007*.

1. Leonard L. Riskin, *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed*, 1 HARV. NEGOT. L. REV. 7 (1996).

clients could choose what would be best for their individual cases. As Len wrote at the beginning of this first article,

We lack a comprehensive system for describing the disparate visions we have of what mediation is or should be, causing confusion when people choose between mediation and another process or grapple with how to train, evaluate, regulate or select mediators.

Len provided us with some ways that we simply did not have at the time to communicate, both among ourselves and with others, about a very complex process.

Many hues and cries greeted the publication of Len's article and in particular his facilitative-evaluative distinction. These hues and cries are truly a testament to Len. Unlike many of our own families of origin, the ADR field really *does* "do conflict." Len helped us all to do conflict *well* by articulating concepts we could all bounce off of, communicate about, test the limits of, and use to further refine our theories and become more thoughtful and sophisticated in our practice.

Even now, new clients will ask if I am evaluative as a mediator. While for me it's a question not of *whether*, but rather of *when* and *how*, this gives us a way to have the conversation. Many of us also continue to use Len's grid as an organizing device in both beginning and advanced training programs, showing clips of actual mediations and asking the trainees to classify the mediator's approach. Particularly because trainees' responses tend usually to span the entire grid, this never fails to stimulate really interesting discussions and allow us to drill down to a level of sophistication we would not be able to achieve otherwise.

I myself, on occasion, joined the hue and cry that greeted Len's first grid, and wrote about some of the risks inherent in this kind of classification system—that disputants requesting or expecting a particular mediator style may be resistant to different and perhaps more productive approaches, for example; that the term "evaluative" can mean very different things in various kinds of cases, and at various stages of the mediation process; and that classifications may simply be too broad to cover the intuitive aspects of a mediator's behavior that emerge spontaneously out of the moment. Len, of course, in his own quiet way, was already thinking about these kinds of issues. Naturally, we should have known! This thinking resulted in another major work about grids published in 2003.

The title of Len's next major work was *Decisionmaking in Mediation: The New Old Grid and the New New Grid System*.<sup>2</sup> Luckily, he did not subtitle this one as a guide for the perplexed, but it reflects what I both admire and find so refreshing about Len: his transparent and ebullient spirit of inquiry, and his dogged determination to "get it right."

Around the time Len was thinking about the "new old grid" and the "new new" grid, he had made the transition from cookies to raisins. He invited me to do an advanced mediation training program with him in Salzburg, Austria, for mediators who had been previously trained by Jack Himmelstein and Gary Friedman. Jack and Gary had succeeded in making everyone in that part of the world firm

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2. Leonard L. Riskin, *Decisionmaking in Mediation: The New Old Grid and the New New Grid System*, 79 NOTRE DAME L. REV. 1 (2003).

believers in the no-caucus model. Our training program was supposed to add a mindfulness component and an exposure to caucusing.

My epiphany about the direction in which Len's thinking was then taking him happened, as most epiphanies do, by accident in a way. At one point in the training Len asked me to demonstrate what I have come to do routinely in every mediation: a pre-mediation conference call to discuss with the parties issues such as who should attend the mediation, what kind of information I should have in advance, and other procedural issues. It was not until a later conversation with Len about that demonstration, which proved to be somewhat controversial among the trainees, that I came to understand what he was thinking about at that point. His analysis was that what the parties and I were actually involved in was meta-procedural decision making, and that there were various ways that I might be (for better or worse) exercising influence over the parties' procedural choices. That opened my eyes to a different level of what had become for me a fairly routine part of my practice—another example of being inspired to think more deeply due to Len's consistent efforts over the course of his career to understand and label more and more of the subtleties of the mediation process. I am a better practitioner because of this.

I could not conclude without also discussing who Len is as a person. This, of course, is not only the genesis of his contributions to the ADR field but also what draws so many of us to him as a friend. Len is what we WASPS call a real mensch: earnest, funny, self-deprecating, and, as mentioned earlier, profound in his simplicity. Thank you, Len, for all that you have contributed—to this field, and to me personally—over these many, many years.

