



KAPITEL 12

Passionate Goulash Concoction

By Robert Benjamin

When I was young, I was a picky eater. Not surprisingly, not only did I carefully separate my peas from my carrots to assure they never touched, but even established a set formula and method of eating. “Rule one: all peas must be finished before carrots can be approached.” This would be the first of many personality traits I would exhibit in the course of my life that would drive my parents---and not a few others---to distraction.

Growing older has changed not only my eating habits but also culinary proclivities---at least somewhat. Strict adherence to early adopted theories and methods have been eroded by varying realities; not the least is the pure pleasure of

mushing stuff together---both food and ideas. Nowadays, peas and carrots are intentionally mixed in with broccoli, rice, chicken or meatloaf, together with mashed potatoes and peas, topped with a mushroomed tomato sauce, populated by black olives and seasoned with a dash of garlic. In short, anything within reach is deemed available for this grand concoction.

So too, I have increasingly come to use a similar approach to manage complex issues and controversies as a mediator or negotiator. My once dedicated belief in presumably surefire models of practice has shifted to an eclectic approach more befitting the circumstantial realities and exigencies of the matters I have had to manage. Perhaps

more compelling was the dawning recognition of the need for a practice style that would be more admitting of my all too human inclination to be susceptible to cognitive illusions and allow for acknowledgement of my propensity for self-subversion. As the noted Nobel Laureate in Physics, Richard Feynman, observed, “The first principle of science is that you must not fool yourself--- and you are the easiest person to fool.” If the risk is a persistent one in science, it is even more so in the thinking and decision making a practicing mediator does in managing issues presented are by definition controversial and invariably steeped in emotion, confusion, ambiguity, and politics.

Carefully sidestepping any discussion of the psychodynamics involved, the parallels between what I like to eat and my mediation practice sensibilities approach appear to have converged. In both, as I grow older, there is an increasing awareness and appreciation that the composite taste and seasoning drawn from multiple ingredients --or perspectives---is often likely to be not only different than expected, but unique. And while this goes against the grain of my overconfident

and frequently misguided instinctive assumptions that I can predict the outcome in a given matter, or presume to know what the best solution should be if the participants were as “reasoned and rational” as I overconfidently believe myself to be, such results are more in keeping with the sometimes forgotten, but core principle of mediation which asserts that the responsibility for a matter rests with the participants. The notion that participants might make a “stupid” decision remains a disconcerting prospect, just as some of my goulash dishes sometimes go awry. The difference is that I can throw out and make the goulash disappear; I often have to accept a silly agreement--of which, not a few have turned out better than I could have ever predicted. It would appear that following conventional dictums and wisdoms about what foods go together, or with regard to the choice of an appropriate accompanying drink, be it red or white wine, an ale or lager beer, or flavor of soft drink in a particular meal are not dissimilar from the decisions in a mediation that commonly rely on “tried and true” habits of thought that, if not dictate, strongly press for specific outcomes.

Both my concoctions of passionate goulash entrees and my mediation practice style accept the fundamental dynamic tensions humans have had to endure throughout history between their fast running instincts, desires, and intuitions that lead to snap judgments and their slower, more disciplined, albeit tedious and effortful, deliberative and reasoned assessments. Both have uses and risks. Letting instinct be the primary source, can be dangerous, especially when there is the potential for serious consequences; conversely, being overly rational in method or choice can stifle the kind of lateral thinking that is often essential for concocting creative approaches to complex matters. Negotiative processes like mediation require analytical thinking and assessment; they need to be to some extent structured and organized for participants to trust them. But negotiation will never be a wholly rational enterprise and there is a limit to which strategies and techniques can be usefully subjected to scrutiny as valid and “evidence based” and thereupon labeled a “best practice.” At some point, in and around an analytical assessment of the costs and benefits of an approach to a matter or a meal, it is my literal and

figurative gut instinct that gives direction to the heuristic choice.

In addition to taste or function, a dish---or an agreement--- must smell, feel, and aesthetically look right. Goulash and agreements are also evaluated for color, texture, and presentation. An unappetizing one can be problematic and only grudgingly accepted if they appear ugly and contorted. A beautiful agreement, of course, is one where people feel they have obtained justice, if not a deserved apology for a perceived injustice done to them. Few obtain either the justice or the apology in mediation. What they receive instead is often less attractive, but tolerable and respectable if they do not feel they have been played for a fool. However, while few participants leave the mediation of a difficult matter unscathed or entirely satisfied, they have survived. The secret of both the goulash’s appeal and the efficacy of mediation is not a glorious experience but the interactions of the components that form a concoction that can be respected.

What brought me to mediation some 40 plus years ago was the early recognition that while rules and laws provide an important basic struc-

ture and steady diet for people to go about their lives, that diet is a bland and often tasteless one. And, over time being subjected to such a diet with little opportunity to directly question the logic of imposition is stultifying and unhealthy. Mediation allows for that questioning and discussion; it is a more nuanced and creative civic meal.

Especially in an increasingly complex society, mediation and other negotiative processes that allow for direct discussion, are less an extravagance than a necessity. Just as prefabricated fast foods are a threat to good eating and a quality diet, formulated algorithms, too many laws, rules and regulations that purport to facilely provide instruction about the best or right answer or approach to a given complex situation have no civic nutritional value. It does not need to be fancy but must be available.

My thinking about managing conflict began to shift as I observed how professionals---doctors, lawyers, counselors, and mediators---while claiming to be problem solvers, sought to frame the matters only in terms of their own particular expertise, not in terms of what the people they

were purporting to serve actually needed. Their linear focus hobbled them and constrained their perspective at the boundaries of their professional role. That would be like a chef preparing meals composed only of desserts because they had no training cooking entrees'; they simply ignored those parts of the matter about which they had no interest or understanding. A neurosurgeon or corporate tax lawyer, or a gourmet cook might be allowed that luxury, but it is not one afforded to a mediator or someone who must engage the realities of daily life. The expertise of a mediator or cook is the process not the result.

Goulashes often appear as a multi layered amalgam of some solid and clearly identifiable pieces of solid vegetable stock or a meat of some variety mixed in with less distinct substances that are not readily identifiable.

The texture of a mushroom or the bite of a pepper can sometimes surprise a diner. Similarly, a controversy is an amalgam of facts and alternative facts, some of which are clear and others less so.

However, just as a goulash has a taste that is different from the sum of its' ingredients, a con-

troversy is a conflict system where a variety of factors, some more obvious than others, interact to form a unique blend and dynamic chemistry. A business issue for example, can often be more about relationships than money, and a marital dissolution divorce can likewise be more about money than the relationship. In most, if not all matters, however, there are invariably personal and emotional issues in play, along with economic or financial considerations and resources, and legal implications that must be taken into account for a workable outcome to emerge. Those factors cannot be sliced, diced, and separated into piecemeal parts if a workable result is to be cooked up.

Mediators are more akin to those who serve up hearty and thoughtful meals, rather than the gourmands who are more concerned with the purity of their technique and exotic sauces. My goulash, like my mediation, is necessarily a hodgepodge mix of ingredients; some are taken from my mind—a proverbial refrigerated storehouse of experiences---and mixed together with what each of my guests---the participants --- bring to the table, knowingly or unwittingly. When mediation

is piecemealed and made overly specialized, the systemic thinking frame that undergirds the process can easily be undermined and sacrificed to solving the most obvious part of the issue. In the narrow confines of particular substantive contexts, mediators tend to rely on conventional, and formulaic notions or habits about how matters should be handled rather thinking laterally and creatively.

More problematically, the basic systemic premises of mediation can easily be undermined and lost. If a mediator views mediation as a legal enterprise there is a risk he or she might miss the personal issues that are present or take sufficient account of the practical and economic realities. Similarly, if a mediator is a counselor by training, he or she might be disposed to views the process as a therapeutic enterprise and prone to miss the financial or legal considerations that must be taken into account. And those who mediate from a business perspective can be susceptible to how the numbers add up without appreciating the legal or personal dynamics.

As might be expected of one partial to goulash, the ideology behind my creations is scarce.

The beginning of any culinary creation---or mediation---must be with what is in front of me and available rather than what I might have hoped for. Few people---including myself when directly involved in a difficult situation--- starts off as the trusting, rational person, and after hearing a mediator's logical, reasonable, and sensible opening, ready to calculate that their self interest necessitates compromise that many theorists have postulated and presumed to exist. In fact, few people like or think they should have, to negotiate. And who would eat my goulash if they thought they deserved a gourmet dinner? The mediator's goulash must be presented as sufficiently hearty so as to invite at least a tasting. This means dealing with the participants' fears that often border on paranoia; not uncommonly they feel they will be poisoned, or more precisely, played for a fool in negotiation, which has been viewed throughout history as a tainted and suspect and tainted activity not engaged in by honorable and principled people. And, not least of all, the mediator knows that the expectations of his diners are bound to be disappointed. Logic and reason will be useful tactics, but often insufficient by themselves. A

mediator will need to also be empathetic and patient, and engage forms of game-playing that allow participants to safely taste the mediation concoction. Such game playing, while often viewed suspiciously, is a form of seasoning. In the end, the mediator must use many strategies and tactics and cannot afford to be wed to a particular style or approach.

Cooking, politics and all negotiative practice---especially mediation is like goulash. The participants and mediator bring together a mélange of neuroscience---how the human brain works, people think and make decisions---the history of not only the matter at hand but the surrounding world, the psychology behind how people think and decide what is real and what is not, their philosophical and moral beliefs about justice and fairness, and of course, their politics, or how they believe resources should be allocated decisions should be made and controversies managed. Like all other human beings, the participants and mediators are disposed to cognitive illusions, biases and affects. In the end, however, how mediators practice is much like how chefs cook. As it has been since the beginning of time, some insist on

exacting adherence to a recipe while others work by instinct and intuition. The best cooks and mediators understand that no recipe or model is sufficient and being too slavishly adherent to one, no matter how well tested by time or otherwise, can be irrational; and conversely, overly relying on instinct without reflection is risky. Putting together my goulash dishes, not surprisingly, requires balancing reason and instinct.

After all, one is what one eats.

About the author

Robert D. Benjamin, M.S.W., J.D., has been a practicing mediator and negotiative practice consultant since 1974. He has works in most dispute contexts, including: civil, legal, business and commercial matters, family, children, youth and elderly matters, estate planning and guardianship, and public policy, family/divorce, employment, health care, estate planning, education, and public policy matters. A lawyer and social worker by training, he previously practiced law for over 25 years. He has presented negotiation, mediation, and conflict management seminars

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He is a past President of the Academy of Family Mediators, and a member of the Dispute Resolution Section of the American Bar Association, and a former Practitioner Member of the Association for Conflict Resolution, from which he was the 2009 Recipient of the John Haynes Distinguished Mediator Award. He is the author of numerous articles and book contributions, including, "The Mediator as Trickster," "The Guerrilla Mediator," "Negotiation and Evil," "Strategies For Managing Impasse," "The Natural History and Evolution of Negotiative Behavior," and "The Beauty of Conflict: Negotiation and the Arts, and is a regular contributor to Mediate.Com. More information is available on his website: www.rbenjamin.com. He can be contacted at rbenjamin@mediate.com.