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PERSPECTIVE

The power of words

By Greg Derin

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Passover begins today, April 22. It is a holiday of many messages, but one that has resonated with me is its focus on the power and obligation to tell one's story. It is a holiday centered on the power of speech. Humans are unique among the creatures of the earth, endowed with the power of speech. Well ... unless you count characters in Disney movies. Passover is ultimately about human agency. The dominant figure in the Passover story would prove himself to be Israel's greatest prophet. But at that moment, he was a deeply flawed human being. When called to serve he stood in the wilderness, tending sheep in a foreign land, struggling with a speech impediment and to make himself heard.

As I prepared for Passover, I was reading a recent edition of *the marginalian* that included a review by Maria Popova of *"The Dictionary of Obscure Sorrows"* by John Koenig. Koenig seeks to redefine the world by constructing language, which connects our life experiences with reality. He has embarked on an excursion through popculture, science, contemporary and ancient languages, and folklore to devise a vocabulary that defines our experiences and feelings in a new way.

I found many of Koenig's listed constructs engaging and inventive. While those reported had meaningful resonance, few seemed destined for quotidian use even by a logophile like me. People simply do not communicate with one another through a vocabulary that is not easily understood. However, as tools which help us gain deeper insight



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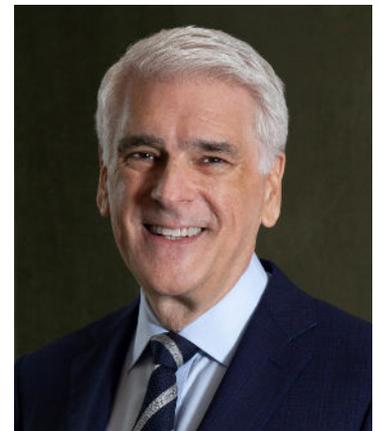
into our motivations and actions, they have value.

Words have power. They were the difficult tools of Moses in Egypt. We have all brandished them as we have made our way through the worlds of conflict in which we have lived. I have lived in the world of litigated conflict for nearly 45 years. For half of that time, I was a litigator handling complex commercial, entertainment, and intellectual property matters. For the last half, I have served as a mediator, assisting parties as they seek to resolve their disputes. I have learned important lessons regarding the power of words as the source of conflict and as a path to resolution.

More often than not, controversies arise from misunderstandings. As zealous advocates for their clients, it is difficult for litigators to take an early objective view and discern the "third story" which a trier of fact may find after long, expensive, and contentious proceedings. It is also more difficult for counsel to communicate that view to a client than an impartial third party, such as a mediator. Mediators can probe and motivate parties to engage in informal exchanges of information which facilitate an early objective assessment.

As reflected in Koenig's effort to address the many dimensions of human life, people are unique. We communicate differently. Some peo-

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ple are transparent; others more opaque in their reasoning and willingness to share thoughts and emotions. Some are blunt and direct to the point of risking offense; others are tactful and diplomatic to the point of obscuring their message.

The words used by participants during a mediation reveal much about the controversy, its origins, and potential paths to resolution. I have seen mediators who treat every mediation as if it were the same. If a major league pitcher facing a different lineup every day followed that formula, they would have a painfully short career. Every lawyer, every party, every advisor who participates in mediation is a different human being facing a different set of pressures, facts, and circumstances.

I have worked with some of the most aggressive litigators in the country who bring a “win at all cost” style into mediation, and others who leave their litigator hat at the courthouse and are among the smartest negotiators representing the interest of their clients. Parties come angry and emotional, or calm and focused on rational resolution. In each scenario, the language of the participants follows – hostile and antagonistic, reasoned, measured and precise. Each requires a different approach and understanding.

Often overlooked in the mediation process are the roles of mediator as coach and as filter. As a coach, the mediator works to understand the message and intent of a party and counsel and works with the parties to refine

their approach for success. Mediation presents a rare opportunity for those in conflict to communicate directly outside the confines of “yes,” “no” and “I do not recall” depositions. No one adheres to the view that opening joint sessions are productive, but I am always attentive to opportunities for parties or counsel to speak directly if breakthroughs can be achieved. Such sessions require each participant to be prepared with an agenda, having been coached with respect to expectations, language, and the manner in which their intended message may be received.

Similarly, when parties are insistent upon the mediator communicating certain positions, it remains the province of the mediator to frame the message and language

for a productive outcome. Without condescension, parties retain mediators for their ability to read the rooms and help advance their dialog. There is nothing manipulative or which interferes with the self-determination of parties when the mediator reframes potentially destructive language in a more constructive manner, as long as the message and position is not compromised.

Words have power and must be deployed with precision. As Mark Twain famously observed “[t]he difference between the right word and the almost right word is the difference between lightning and a lightning bug.” Consider how precisely and carefully you choose to communicate your values, your intent and your proposals.