



## Dispute Resolution Strategies and Mediation Services



**CritelliLaw, PC**  
*Iowa/New York/London*

**“Avoid lawsuits beyond all things; they pervert your conscience, impair your health, and dissipate your property.” Jean de la Bruyere.**

The poet Bruyere was commenting on the condition of litigation in France in 1680. Not much has changed today. Since *Cain vs Able* disputes have been a fact of life on the planet and nowhere is this more true than in the Middle East. But on September 17, 1978 something magic happened. The Camp David Accords were signed by Egyptian President Anwar El Sadat and Israeli Prime Minister Menachem Begin following twelve days of secret negotiations at Camp David mediated by US President Jimmy Carter.

The magic was this: Mediation works! If it can forge a peaceful detante between Egypt and Israel chances are high that it can resolve your client’s litigation.

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## **Mediation is a process and Process is King.**

Unlike traditional negotiation, mediation is a process. It is unrealistic to believe that two opposing and entrenched parties will suddenly lay aside emotion and arms and engage in a dispassionate objective decision-making process ...and compromise. While learned and objective counsel have a great influence on their clients decisions they too are hampered by the dynamics of the representation. In some situations it is asking too much of counsel to shed the role of warrior and don the laurels of peacemaker to negotiate only to re-arm if the negotiation fails. Clients often become easily confused with the role change resulting in lack of confidence.

As a process, Mediation avoids the dynamic and allows everyone to do what they do best. It allows the client to have a forum in which to express their views and vent their emotions. It allows counsel to develop resolution strategy and engage tactics designed to get the best resolution for their client. Process is king!



## Chose the “right” mediator

“Horses for courses.” This is a favorite phrase of or London clerk Alan Austin. Those who are familiar with barrister’s clerks will know that they have a unique (and sometimes earthy) way of summing up complex situations. “Horses for courses” simply means that all barristers are not alike and a client must chose the right one for a particular case. Nowhere is this more true that in choosing a mediator.

The foundation is always the same: Mediators study and take specialized training. But that’s where the similarity ends. It’s the “other” attributes of the mediator that facilitates the compromise. Those attributes are the mediator’s reputation at the Bar, experience in the courtroom, ability to read and know the minds of people, the mediator’s patience and personality and most importantly how that personality will mix with the parties and counsel.



## Skin in the Game

For mediation to work everyone must have some “skin in the game.” Obviously clients own the dispute and are fully vested. Likewise counsel are vested by virtue of their advice and representation. But what about the mediator. If the mediator views the assignment as “just another case” or his or her role as “shuttling offers up and down the hall” chances are low that the case will get settled especially in a complex commercial case. It took President Carter twelve days to mediate the Camp David Accords and Carter was fully vested in the peace process.

The secret is this: In mediation, the chances of success are in direct proportion to the degree of dedication of the mediator. Simply put, the mediator must never give up and must encourage the parties not to do so.

What’s the mediator’s “skin in the game.” It’s simple: It’s our win/loss record.



## Types of Mediators

Generally mediators come from three classes: Non-lawyers, the Bar and retired judges. All three bring value depending upon the nature and dynamics of the case. Remember: Chose the right horse for the course.

Non-lawyer mediators, who have subject matter experience, can be very successful in non-litigation disputes. The key to their success is their subject matter expertise and personal credibility.

While retired judges may lack the necessary present day practice experience they can be successful when a party is recalcitrant or the dispute is tightly focused on particular legal issue.

Lawyer mediators bring the wealth of their professional reputation, personal credibility and practice experience to the dispute often resulting in a much broader resolution philosophy. They are especially successful when opposing counsel is seen as being recalcitrant.



## Dispute Resolution Strategies

A good mediator makes an excellent mediation lawyer. Mediation advocacy (the representation of a client in the mediation process) is a complex matter. It requires a great deal of experience as a mediator and in mediation practice and skill in developing a viable dispute resolution strategy. The lyrics of the Kenny Rogers song "*The Gambler*" says it all: "You've got to know when to hold'em, know when to fold'em, know when to walk away and know when to run."

Resolution strategic planning starts with knowing what type of case should be mediated, when, how and by who the concept of mediation should be raised, the choice of the mediator, type of mediation (transactional or caucus), venue of the mediation (yours, mine or neutral), mediation opening tactics (high, low or flat), gambits and response and most importantly: timing.



## Our Mediation Credentials

The lawyers at CritelliLaw, P.C. have all received training as mediators:

*Nick Critelli* received his basic mediator training by United States Arbitration and Mediation by famed mediator Alan Alhadeff. He received additional training in London at the Centre for Dispute Resolution. He was a founding member and past president of the American Association of ADR Attorneys and a frequent faculty member training lawyers in how to be an effective advocate in mediation.

*Tre Critelli* received his basic mediator training by the National Association of Stock Dealers Resolution and advanced training as a certified mediator by the American Association of ADR Attorneys.

*Lylea Critelli* received her basic mediator training by United States Arbitration and Mediation by famed mediator Alan Alhadeff.



## Credentials

**Nick Critelli** is admitted to the Bar of Iowa and New York and a barrister at the bar of England and Wales. He is a fellow of the International Society of Barristers, the American College of Trial Lawyers, and an advocate of the American Board of Trial Advocates. He is the Past President of the American Association of ADR Attorneys, the Iowa State Bar Association and the Iowa Academy of Trial lawyers. He is the current chair of the Iowa State Bar Association Ethics and Practice Guidelines Committee.

**Tre Critelli** is admitted to the Bar of Iowa and a barrister at bar of England and Wales. Additionally he holds credentials as a certified fraud examiner by the American Certified Fraud Examiners. He is the immediate past chair of the Iowa Supreme Court Attorney Disciplinary Board.

**Lylea Critelli** is admitted to the Bar of Iowa and a past president of the Iowa State Bar Association Young Lawyers Division and the American Bar Associations YLD Executive Committee. Further, she has chaired far too many Iowa Bar Association committees to list.



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of the Middle Temple, London, our Inn of Court