

Who Wins When a Child Dies?

Published in Santa Monica Business Journal in April 1996

By Lee Jay Berman

Once upon a time there was a young man, an eighteen-year-old high school senior, who was killed in a car accident by an uninsured drunk driver. His young, promising life was snatched from the arms of adoring parents. He was an excellent student, an awarded athlete and very popular with his classmates. He was.

The parents hired an attorney to represent them in the pursuit of justice, which they defined as \$2.1 million. The drunk driver had no assets. After investigation, it was determined that the stop sign the other driver ran was placed where it was not plainly visible, and that the city had liability. The city's insurance policy had a limit of \$800,000. The case went to mediation.

Sitting around the large conference table were the grieving parents, representatives from the city and the insurance company and a battery of attorneys. This is about the only commonality that real mediation shares with Michael Crichton's movie Disclosure. Unlike Hollywood's depiction, mediation is an informal, collaborative process where everyone can work together to come up with win-win solutions.

The mediator listened as the sobbing mother explained that this was not just some child who was killed, this was her son. He was exceptional, on his way to Stanford in the fall. He had a brilliant future ahead of him. He was not just missed, he was mourned. Nobody seemed to understand what a tragedy it was for the city to "sweep his life under the carpet."

The mediator listened as the city described their budget dilemma. They simply did not have the money to pay the difference between their insurance coverage and the parents' demand.

The mediator started everyone brainstorming. What other assets might the city possess or control that might satisfy the parents? The answer came from a private meeting with the city officials. The city owned six parks which were unnamed. What if they dedicated a park in a nearby neighborhood to the deceased teen? They could have a big ribbon cutting dedication ceremony. Surely that would meet the parents emotional need to have their son recognized as the hero he was.

The idea so appealed to the parents that they agreed to the insurance policy proceeds and the park dedication as full settlement. A beautiful ribbon cutting ceremony was planned with the Mayor, City Counsel members, County Supervisors, school principal and other dignitaries. The monument was unveiled. The media showed footage on the news and photos in the paper. That night, the students from the high school held a candlelight vigil, sang songs, told stories, laughed and cried.

They all got what they wanted. These things do not happen in our courts of law. Only in mediation is anything possible!

Lee Jay Berman is the President of THE MEDIATION ALLIANCE, INC., a full-service mediation firm dedicated to utilizing the talents of field-specific, professionally certified mediators. Mr. Berman and his firm also teach mediation skills and consult to businesses teaching conflict resolution skills in the workplace. Contact Mr. Berman at (800) 395-6495.