



MediationNews

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President's Letter

Eileen Dethridge, VADR President

Welcome to the final edition of *Mediation News* for the Year 2000.

The VADR Annual General Meeting was held in October. This was at a time of year when the pleasures and anxieties which accompany the President of a modestly sized and financed voluntary association are finely balanced. Members came, the invited speaker was excellent, and new volunteers came forward to join the committee of management.

In the past year we had had our vicissitudes, and this year, with a committee of only six, decided to do what was possible, so there were fewer activities for members.

Positive achievements for VADR this year:

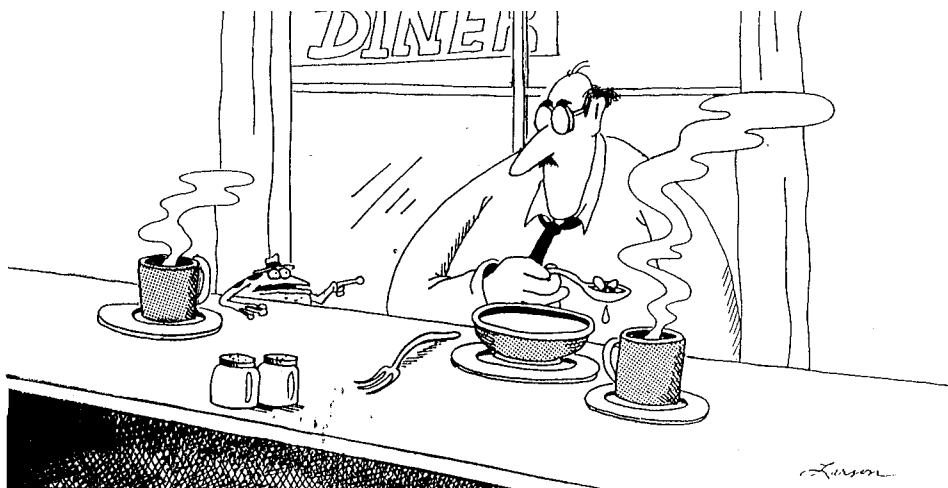
- We have achieved an orderly records management system, thanks to hiring Ms Sian Anderson for this task. We will have the option of E-mail correspondence with members in the future.
- A special working group met five times to develop a response to the NADRAC Discussion paper on The Development of Standards for ADR, and the VADR response was circulated to all members for comment.
- We have joined the Australian Dispute Resolution Website (www.ausdispute.unisa.edu.au), which has a very useful LINKS section. We look forward to the expansion of this development.
- The Mediation in Education sub-committee has produced a brochure encouraging school communities to consider mediation as a strategy worth developing. At present the sub-committee is having discussions with the Department of Education, Employment and Training, prior to further work to circulate the brochure.

For the coming year, when we will build on these achievements, there are reasons for optimism. Five new people have joined the committee, and bring energy and vision, together with a range of ADR experience. We will follow up the work on Standards, in line with the next NADRAC paper, and will look to organising more events for members, trying different meeting formats and venues. We look forward to close co-operation with our sister associations in other states and to other ADR groups in Victoria. Members of VADR will be informed as to further specific goals adopted by the new committee, and invited to contribute as they are able.

It remains for me to thank Sandy Cahir for her work in producing and editing this newsletter and to extend season's greetings to its readers. 

A Joint Project of...

Australian Dispute Resolution Association Inc. (ADRA)
South Australian Dispute Resolution Association (SADRA)
Victoria Association for Dispute Resolution (VADR)



"I beg your pardon, but you're not planning just to throw that fly away, are you?"



The Wendouree Cluster of Schools Promotes a Safe and Positive Cluster Community Through the Introduction of a Peer Mediation Program

Seven clusters of Department of Education, Employment and Training schools service Ballarat, Daylesford and Bacchus Marsh young people. One Ballarat cluster is the Wendouree Cluster. This cluster is made up of eight primary schools with 1,700 students, and a junior and senior secondary college campus with 800 students.

The Wendouree Cluster of schools shares a commitment to promoting a safe and positive cluster community, providing opportunities for students to build resilience and optimise student well-being. Many significant preventative and interventionist programs and initiatives are evident in the schools, which all help in achieving these goals. One priority, which reflects the cluster's vision, is the implementation of a Peer Mediation program by all the cluster schools as one positive method for dispute resolution. Peer Mediation is an effective method for students to assist their peers in resolving conflicts.

The value the cluster has for implementing the Framework for Student Support Services in Victorian Government Schools document initiatives in all the cluster schools is demonstrated through the commitment to the Peer Mediation Program. All Year 5 and 6 students participated in a 2-day Peer Mediation skills training program as a prelude to the implementation of the Peer Mediation Program into the schools. The training program was facilitated and presented by Student Services personnel, who are trained in mediation. Fred Stern's 'Mediation in Schools' was the resource used throughout the training. Admirably assisting in the training, were experienced student

peer mediators from the junior secondary college campus.

After the completion of the training, volunteer mediators take on the role of Peer Mediators, and are totally supported by each school community. Each school has a staff member delegated to be responsible for the Peer Mediation Program, and the cluster Student Services personnel provide continual additional support. Whilst the primary school students do not mediate incidents of high-level bullying, violence or theft, the conflict-positive culture and early detection of incidents, which may lead to anti-social behaviour, is likely to reduce incidents from occurring. The secondary college continues to provide opportunities for students to develop these skills to a higher level.

To create a whole school approach, Student Services personnel provided a professional development program to cluster teaching staff focusing on the skills of mediation. The demonstrations by primary and secondary school students gave participating staff an opportunity to gain an understanding of the peer mediation process prior to its implementation into the schools. At the conclusion, those staff members attending, were advised of mediation training opportunities available to them.

Later this year, it is planned to offer parents a similar opportunity to experience the importance the cluster places on developing a conflict positive community. Demonstrations by student peer mediators, as well as a focus on the appropriate techniques of positive conflict resolution will be presented. It will also be timely to

celebrate the success of introducing Peer Mediation into all Wendouree Cluster schools in the Year 2000.

Early next year, a professionally produced video, featuring primary and secondary aged school students demonstrating mediation skills, will provide a training and promotional resource within the cluster.

At this stage, no formal evaluation has been completed. However, the regular enthusiastic qualitative verbal responses/feedback from cluster principals, teaching staff, parents and students indicates the cluster's vision to introduce, or continue to develop, peer mediation in all the schools has been successful. A formal evaluation is planned for later in the year.

You can find additional information about the Wendouree Cluster Peer Mediation Program in the Department of Education, Employment and Training resource "Addressing Bullying Behaviour: It's Our Responsibility" as a cluster 'Best Practice' on the web site at: www.sofweb.vic.edu.au/bullying

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South Australian Dispute Resolution Association (SADRA) 2000 Annual General Meeting

- Date: Monday 11 December 2000
Location: Worldsend Hotel, 208 Hindley Street, Adelaide SA 5000
Time: AGM will commence at 6pm sharp followed by the guest speaker.
Business: 1. Reports from Chairperson, Secretary and Treasurer.
2. Election of Office Bearers and Executive Committee. Members are encouraged to pay fees that are due and are reminded that only financial members may vote at the AGM. Fees may be paid at the meeting.
3. Guest Speaker: The South African Truth & Reconciliation Commission and Conflict Resolution.

Invitation: Members are encouraged to remain after the meeting to talk further and to meet other people interested in similar issues. Many of us will stay for a meal. There are fine meals and wines available for purchase at very reasonable prices at the Hotel.

Note: The SADRA Constitution and other membership details are available for perusal on our webpage at <http://www.ausdispute.unisa.edu.au/SADRA.htm>

RSVP: by 6th December 2000 please (to assist with catering) to:

Shaun Ewan will draw on his experience in South Africa and his Masters and PhD research to discuss the role of the South African Truth and Reconciliation Commission as a tool of conflict resolution at a national level. He will address the notions of restorative justice in the South African context, and how the issue of "ending the cycle of intergenerational vengeance" may be addressed.

Chairperson: David Baker on 0418 891 807 or david.baker@unisa.edu.au

Secretary: John Connell on 82234566 or bigjack@picknowl.com.au

COST: Gold coin donation from non-members.



An Innovative Approach To Child Protection Involving Schools And Young People In Early Intervention Work With Families.

AUTHORS: Bruce Argyle
Janette Brown

ORGANIZATIONS: Regional Extended Family Services (REFS),

Department of Community Services,
New England

There is recognition that current services are focused on intervention and to some degree post intervention support. There is a gap in both preventive and early intervention programs and services prior to child abuse and irretrievable family breakdown. This may lead to youth homelessness, youth suicide and self-harm, incarceration due to youth offending behaviours, exclusion from the education system, and drug and alcohol associated problems.

"A problem has emerged where general concerns about family functioning, parental discipline and child rearing practices are being classified as allegation of child maltreatment. The impact of labelling a more generic concern about the welfare of a family or child as maltreatment is that the resources of the State are now utilised primarily in investigating or processing rather than in providing supportive services to families." (Cant R. & Downie R.)

The responsibility for the provision of adolescent services lies across government departments, non-government organizations and the community. These services need to include a range of prevention and early intervention strategies for adolescents and families with the view to more effective use of resources in the service system and early action to keep many young people and families from experiencing a greater level of intervention.

"An integrated approach to child welfare within which the protection of children must be a key outcome should target positive outcomes for individuals, families and communities in both the short and the long term. Therefore, there is a need for a continuum of services which are both individually and population based (Tuck. 1995) and delivered on an inter-agency basis. This can only be done if there is political commitment supported by the provision of services and resources. (Morrison, p.134)

Given that adolescence is generally a time of increasing autonomy and independence, in most families a degree of conflict and disagreement between parents and adolescents is inevitable in the short-term. Although many families are able to deal with problems as they arise, in some families the pressure of negotiating disagreements be-

comes... "too difficult emotionally and practically, causing intolerable levels of conflict and family dysfunction which lead to the young person leaving home prematurely without adequate skills for independent living." (Woolcott & Weston, 1994 p.208).

The individuals who make up a family are required to be flexible in adapting to change, as the age and composition of family members change. Therefore, within the family life cycle the process of parenting changes as children grow and develop. When children are very young, the nurturing aspect is of primary importance. As children mature, especially during adolescence, the demands made by parents begin to conflict with children's demands for age-appropriate autonomy. It is during this period that the adolescent and parent sometimes experience serious difficulties as the family negotiates the transition of the young person from childhood to adolescence.

"If we parents have 'community' around us then we can trust that other adults, singly or as an organized group, can support our teenagers into a sense of worth and belonging. Without community - networks of committed adults consciously caring for each other's children - then adolescence can actually fail at a stage." (Biddulph 1997, p 167)

Van Slyck, Newland and Stern (1992) proposed that family members place more value and importance on their relationships, and subsequently as perceived conflict increases, so too will the desire to resolve the conflict that is placing the relationship at risk.

The theme for the United Nations' International Year of the Family in 1994 was 'Family: Resources, and Responsibilities in

a Changing World'. Two main aims were identified: strengthening the functions of care and nurturing which all families hold in common (private responsibilities); and strengthening the resolve of national institutions to develop, implement, and monitor policies which will support families (social responsibilities).

One of the areas prioritized for discussion and policy development was 'To strengthen the partnerships between families and governments, education and community services, business, unions, religious organizations and community groups'.

Strengthened partnerships between families and governments, community and religious organizations, will help to integrate private and social responsibilities for fami-

lies. This in turn will produce emotionally, socially and educationally enriched children, and strong, resilient families (Cass 1994).

This challenge still exists for us as a society today. A Report to the Prime Ministerial Youth Homelessness Taskforce 1996, cited family conflict as being one of the most common reasons for young people leaving home early. That young people and parents have different perspectives on their relationships is well-documented. This report states that "many young people would often prefer to stay in or return home if there were changes to the circumstances, attitudes or behaviours which precipitated their leaving".

Of particular importance in helping young people and families during this family life stage are the existence of broad and ongoing family connections and support. These connections include fam-

ily and extended family, school, employment, peer relationships and community involvement.

MacKenzie and Chamberlain (1995) maintain that young people go through various transitions before developing an identity as a homeless person. They assert that the first key transition is the permanent break from family and home. The second transition is the shift to chronic homelessness, which refers to the young person accepting homelessness as a way of life. They maintain that the first transition can occur as quickly as 2-3 weeks after leaving home, if the young person leaves school and home at the same time.

Most homeless students are at an early stage in the experience of homelessness and it is much easier and less costly to help them at this point. Early intervention means giving assistance to young people at the earliest possible opportunity after they have actually become homeless. If young people remain at school and located in their local community, the detachment from home and community ties is more drawn out and they are not likely to become deeply involved in the homeless sub-culture. It is only when homeless students drop out of school, and leave behind their local ties, that they are likely to make the transition to chronic homelessness. At this stage, there is no longer an institutional setting where young people can be easily reached, and the opportunity for early intervention has passed. Policies directed towards early intervention must focus on schools as sites for intervention. (Chamberlain & MacKenzie 1996)

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Peer Mediation – A research project on implementation into primary and secondary schools in Victoria

Authors: F. Stern & P. Taylor

The project examined how peer mediation programs were implemented within 15 primary and 15 secondary schools in both country and metropolitan Melbourne. Respondents were gathered from high profile agencies and/or trainers in the mediation field as it was difficult to obtain any form of central list.

The study assessed qualitative information gathered from verbal and written responses to questionnaires. The bulk of interviews were conducted face to face, however a small number completed written questionnaires.

In each participating school, interviews were conducted with;

- The person in charge of the program, i.e. a student welfare coordinator
- A second person at the school involved in the program, but not in a direct capacity i.e. a principal, coordinator, etc
- Two students who had conducted peer mediations for the school

Questionnaire responses covered thirty one areas and included questions on issues such as:

- how the program was first thought about;
- school culture before and after peer mediation was introduced;
- resource allocation and difficulties in having a peer mediation program;
- selection processes;
- publicity of the program;
- support of mediators;
- evaluation of mediations;

- satisfaction levels of both mediators and mediations completed.

Overall what the study highlighted was that whilst peer mediation may be becoming established throughout Victoria, it is still primarily communicated through word of mouth and is driven by individual efforts of particular schools and teachers.

Quotes included:

"I think it came from a welfare coordinator in the past who went to a conference and heard a speaker and we decided to go from there."

"We were aware of other schools within the district who had tried the program."

"The program first got thought of about after a member of the welfare committee brought a newspaper article about it to a welfare meeting."

Once peer mediation was completed, the program was often incorporated into the school's welfare and discipline policy. As such, the study suggests that it is slowly becoming an important part in the culture for many of the schools surveyed.

Peer mediation appears to have been used for what has been described as less serious issues and incidents. However they account for a high number of on-going disputes within school communities.

Secondary Quotes:

"Your passive harassment and your passive bullying is so much harder to detect and work with..."

"Yes, squabbles. Squabbles over boyfriends, squabbles over who slighted whom at the party

on Saturday night or who didn't speak to whom on the way home from school and so and so stole my friend or my friend's not talking to me any more or she's got my socks from P.E., that sort of stuff."

"It was inclusive of concepts such as, non talk by males around issues of relationship and sexuality, 'big boys don't cry', them and us, solutions resolved through physical or stand-over tactics."

Primary Quotes:

"The usual niggling things, like dobbing and the little incidents like he took the ball off her, or he changed the rules of the game."

"We had some concerns with regard to the smaller children not being able to solve their own problems and felt that the teachers seemed to solve all their problems for them. We wanted to encourage the children to solve their own problems."

Like many other school based programs, peer mediation suffers from a lack of allocated time and money. Constraints include time in running and organising mediation sessions and financial limitations in bringing in outside trainers and/or teacher release time.

The lack of resources has clearly resulted in disappointment with the number of cases referred to mediation. There is however a strong commitment from students to participate, and they report along with staff that they believe that peer mediation is effective within schools. Anecdotal evidence also suggested that students referred to mediation have a higher satisfaction rate than having conflicts dealt with by teachers.

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ACT leads the Way!

The ACT was the first jurisdiction in Australia to introduce specific legislation for mediators.

From the early 1990s, representatives of mediation in Canberra came together to develop standards of competency for ACT mediators under the framework of the Australian National Training Authority. These standards were published by the ACT Government in December 1995. In 1997 they were given legal recognition in the Mediation Act 1997 (ACT).

All agencies which were approved by the Attorney General as having the authority to register compliance standards for mediators then came together as the *Council of Approved Mediation Agencies*.

About four months ago we learned that the ACT Attorney General had signed terms of reference for a proposed review of the Act. These terms have not yet been released. We understand that the government has also been preparing a discussion paper on aspects of the review which arise under the National Competition Policy guidelines. After these papers have been made available and submissions made, it is possible, according to the Attorney General, that an options paper or other discussion paper may be circulated.

We will keep interstate organisations informed of local developments.

Tim Johnstone
Chair, ACT Council of Approved Mediation Agencies



Peer Mediation – A research project on implementation into primary and secondary schools in Victoria Cont...

When we asked students for their opinion about the effectiveness of peer mediation they responded:

Secondary Quotes:

"It did. I think they had a really good attitude towards it in knowing that they want to get their problems solved and to have someone more their age that isn't an adult, might make them feel a bit more comfortable and they'll make steps to getting it over and done with a lot quicker."

"I think it did. I remember the first one I did was about a kid being called names about his weight and stuff and it did help him, it was all sorted out and I see them in the yard and they are friends."

"They know that we're students there to help them, we're not there to muck around and everything we say and do is always in confidence."

"Usually when someo

ne is being a bully, the Continued on Page 5 teacher will say why are you bullying this person, you know it's wrong etc but with mediation they can actually hear how they made the other person feel and they can understand it."

Primary Quotes:

"I think it did because a lot of the kids come in and they'd be crying because they weren't friends and then they would go off hugging each other like they were best friends again."

"The students think it's better because they can't get in trouble, otherwise if they went to a teacher they could get into trouble, so they choose mediation."

"Yes it helped the students and they haven't been in any more trouble, I don't think."

In writing up the results of the research

carried out, we have not attempted to compare or contrast these results against other studies carried out. To our knowledge there have been no other large scale studies carried out in Australia on peer mediation implementation.

It is hoped that this research report provides a rich source of information and a snapshot of peer mediation as it currently exists. In years to come it may well serve as a useful benchmark for measuring how far peer mediation has either progressed or regressed.

Copies of this report are available at a cost of \$31.90 (GST inclusive) from:

Anglicare Victoria–Glenroy Youth Services

Tel: (03) 9306 0000

Fax: (03) 9306 6307

Email: glenroy@anglicarevic.org.au

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An Innovative Approach To Child Protection Involving Schools And Young People In Early Intervention Work With Families.

A range of agencies are often 'first to know' that a young person, and /or a family, is experiencing difficulties which could result in the young person leaving home prematurely, being at risk of suicide, abuse or re-abuse, self-harm or mental health problems, or at risk of exclusion from the education system. Agencies in this position include schools, youth services, child protection agencies, education, health and housing services, Centrelink, and the police. Early intervention made possible through these 'first to know' agencies was identified as being crucial to engagement and achieving successful outcomes for young people and families.

A significant aim of service intervention in the lives of young people at risk of homelessness should be ensuring that families can maintain supportive links with their children. As a general principle, services should aim not to contribute to the severing of these links because of specific family problems. However, there may be some circumstances, such as when family problems impact on the young person's safety and well-being, where it would be considered in the best interests of the young person to be assisted to independence. (Prime Ministerial Youth Homeless Taskforce).

In line with emerging philosophies in child protection, Anthony Maluccio outlines key guidelines for family preservation practice in general:

- focusing on the family as the unit of help or attention;
- respecting each family's and family

member's strengths, potential, natural strivings toward growth, and capacity for change;

- emphasizing staff members' roles in teaching or helping family members to develop coping and mastery skills, rather than "treating them";
- shifting from an illness or deficit orientation to a health/growth orientation in understanding and working with the family;
- instilling hope and enhancing motivation in family members;
- regarding clients as colleagues or partners in the helping process;
- empowering families to "do" for themselves;
- valuing cultural diversity;
- supporting staff members in their efforts to help families.

Regional Extended Family Services (REFS) now operates programs in eight locations in Victoria, New South Wales and Queensland and was formed by local church and community groups in 1989 in response to the A.B.C. documentary 'Nobody's Children'. In the same year the Burdekin Inquiry

(Anthony Maluccio, 1990)

These family preservation concepts together with understanding of adolescents' needs and effective strategies in engaging adolescents provide the core ingredients to the REFS model of service which has developed as a community response to family breakdown and youth homelessness.

REFS – MODEL OF SERVICE

found that there was a wide range of difficulties experienced by young people and members of their families associated with early home leaving – i.e. young people leaving home "prematurely" and "without adequate alternative long-term accommodation. (Our Homeless Children, 1989).

The principle aim of REFS is to facilitate family reconciliation for young people who are either homeless or at risk of homelessness. REFS also seeks to involve the community in responding to needs of the young homeless or those at risk of homelessness through:

- a) intensive family mediation and reconciliation work;
- b) the provision of alternative short and medium term accommodation; and
- c) development of reconciliation and conflict resolution skills within the community.

REFS seeks to provide:

- a) an environment that facilitates family reconciliation;
- b) links to other professionals and agencies as appropriate;

Continued from page 6



An Innovative Approach To Child Protection Involving Schools And Young People In Early Intervention Work With Families. Cont...

- c) resources that will assist the continuation of the young person's education;
- d) support for young people and families in crisis/conflict.

Reconciliation between young people and their families is a priority of the agency with the intention to reconnect nuclear or extended families wherever possible. As an outcome of intensive work with young people and families, issues causing conflict are addressed resulting in mutually acceptable agreements which are monitored and reviewed by REFS.

REFS has developed and uses a range of flexible program options which focus on early intervention and prevention of youth homelessness using strategies which build on family strengths and competencies. These include:

1. Parent/adolescent mediation and reconciliation.
2. Solution-focused family therapy.
3. 1-1 individual support and outreach to individuals and families.
4. Referral to more appropriate service(s).

REFS staff (currently 10) are a competent multi-disciplinary team. More than one staff member is routinely involved in a particular case and all staff are flexible in both their roles and their availability including after hours work. REFS aims to work alongside families in an environment of mutual respect and trust which promotes cooperation and a willingness to address issues affecting family relationships.

Weakland and Jordan, writing about child protection work, suggest that '...the only avenue toward lasting protection of children - except the extreme measure of permanently removing them from the home - depends on establishing and then maintaining a cooperative relationship between parent(s) and case worker' (1992, p 53). In their publication 'Beyond Child Rescue' (foreword), Dorothy Scott and Di O'Neil state that we must begin from an idea of valuing families with whom we work and working with family strength. No matter how much we try to be different, practice which begins from ideas about families' deficits will inevitably become adversarial and counterproductive.

An additional component of REFS services is the option of a short-term Community Placement for the young person. Sometimes family conflict becomes so intense that it makes positive work difficult and time-out can be used as a 'circuit breaker',

to allow time for emotions to settle and family members to reflect on their situation and on the need to work on the issues affecting them. REFS has a number of caring families in the community who share their homes with a young person for up to six weeks, during which time the young person and his/her family are involved with a REFS program. Due to limited resource availability, school attendance is a prerequisite.

REFS is flexible in terms of service delivery point to suit the needs of the young person and family. REFS operates a 24 hour, 7 days per week, personalized pager service, with a staff member on duty available to families and volunteers for emergency support.

KEY STRATEGIES

1. Client Case Management

At all times exemplary practice and highest standards of confidential service delivery are provided to clients by both staff and volunteers.

Services are delivered within a case management framework, with a service plan developed for each family, identifying family strengths, clarifying the family and individual family members' goals and desired outcomes, key players and their respective responsibilities, strategies for achieving goals and outcomes, the role and responsibility of the case manager, together with timelines.

A family-centered approach to service provision is adopted and work is done in partnership with families. Multi-service provision within and between other agencies is co-ordinated. At all times client participation is voluntary and clients are informed of their rights and responsibilities with respect to the agency together with grievance procedures.

In summary, Michael Little's research overview of child protection in the United Kingdom, highlights five themes for good practice

1. Sensitive and informed professional/client relationships
2. Right balance of power between professional, parents and children
3. Wider perspective on child protection
4. Effective supervision and training of social workers and other professionals
5. Enhance children's quality of life. (Little, p.20-21).

These themes are incorporated into client case management in the REFS model of service.

2. Intake and Assessment

A skilled Intake/response worker is central to effective early intervention and immediacy of response to clients. This worker often spends considerable time talking with family members by telephone, at school and also via home visits when appropriate, ensuring that the needs of all family members are considered and that support is available during the initial engagement process. Age, gender, culture and family composition are considered in the subsequent allocation of staff and/or volunteers. (Argyle & Williamson 1998)

Partnerships are formed between staff, adolescents and their families. Adcock (1991) states partnership is not an open-ended arrangement or an end in itself. It should be based on an assessment of the child's needs and the shared duty of both the State and parents/caregivers to promote the healthy development of children. Within that framework partnership can then be seen as a continuum of relationships between agencies and families, which range from the voluntary to the statutory.

This framework is reflected in how the agency engages adolescents and their families to try and bring about resolution to conflict in the family.

Involving family members in the assessment process occurs to ensure that all feel empowered and positive about a selected program option that meets their particular needs and situation. Agency experience strongly underscores the benefits of a prompt response to referrals (typically 1-2 days) which ensures increased levels of engagement, because willingness to be assisted is considerably greater during a time of crisis and the possibility of positive change enhanced.

Barth (1987) in relation to particular crisis intervention, underscores the potential for change when human beings in crisis are offered quick, timely, and focused help.

3. Young Peer Mediators

Often the initial engagement of the adolescent can be difficult, particularly when there has been a long history of family conflict and/or previous interventions. During pre-mediation with the young person, informing them that one of the REFS mediators will be approximately the same age as themselves has often been the catalyst for them agreeing to give family mediation a 'try'. Most parents are also very supportive of and encouraged by this aspect of the REFS model. Another advantage of using both a 'younger' and an 'older' mediator is that they provide a positive role model of

Australian Dispute Resolution Website (ausdispute):

A progress report

- The website's address is www.ausdispute.unisa.edu.au
- There are now in excess of 500 recipients of the website's FREE monthly update, called ADR Update. You can register to receive the update on the website.
- The major education providers of ADR in Australia are listed on the site and providers of training courses are being contacted to review/register their details.
- The National Mediation Conference 2000 agenda, abstracts, and papers or presenters' contact details are listed on the site.
- There are approximately 200 registrants in the Australian Dispute Resolution Directory Database on the site and extra services are being provided in 2001. We need more registrants on the site to sustain the website's ongoing activities. This is a not-for-profit site and we need registrations to pay for site maintenance. Please assist in our efforts to boost registrations.
- World Mediation Forum (WMF) biannual conference papers will be available from the website. The Conference was in Italy this year and is in Buenos Aires, Argentina in late 2002. In the near future, this website will be the vehicle for distribution of WMF information, for global contact between WMF members and for facilitating the establishment of a South East Asian Chapter of the World Mediation Forum. Your registrations will therefore have significant global exposure.
- Back copies of Mediation News, the newsletter of Australian Dispute Resolution associations, are posted on the website. Current copies will be available to members of the Associations by password from early 2001.
- Efforts to establish a National Association in Australia are being facilitated by the provision of facilities on the website.
- A paper-based and on-line survey has been conducted this year about the usage of IT by ADR professionals and how IT can be used to address issues facing mediation and to enable the establishment of a national association. While running behind time (to attract a wider sample), preliminary results will now be provided on the website in January 2001.

Further information from
david.baker@unisa.edu.au or
 tel: 0418 891 807
dale.bagshaw@unisa.edu.au or
 tel: 08 83024375



Have **you** visited the website yet?. It is only a mouse click away at www.ausdispute.unisa.edu.au.

It is really cool. Or maybe, more like, air-conditioned.

It's very young, sort of needing to be supported, coaxed along, you know, appreciated, made welcome.

You can see

- a Directory of DR associations, organisations and individual practitioners in Australia;
- dispute resolution employment opportunities;
- education and training opportunities;
- important diary dates including national and international conference information;
- relevant articles, newsletters, conference papers;
- discussion pages for academics, students and practitioners to discuss current issues;
- new developments in the field at a national and international level;
- network opportunities for special interest groups;
- important links between DR associations and organisations within Australia and overseas;
- links to other relevant web sites.

Have a look at the Directory where you can see the dispute resolution webpages of colleagues from around Australia. They are very impressive. And soooooo inexpensive. Your own web page that you can edit any time you want. What a steal!!!

And check out the pages for SADRA and ADRQ and maybe ADRA, VADR and Let's Talk if they are up by the time you read this. They are in the Useful Links page.

If you want some assistance or advice or want to make suggestions (or nice compliments??) contact the Web Administrator, David Baker at david.baker@unisa.edu.au or 0418 891807.

Brought to you by the happy people from the Conflict Management Research Group of the University of South Australia.

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communication and cooperation. (Argyle & Williamson, 1998)

The involvement of a young mediator has also been a significant factor in situations where the young person in the family has difficulty expressing how they are feeling about the issues causing conflict with their parents. If not managed carefully this situation can become deadlocked or service delivery may break down completely, with the young person sometimes being labelled as "the problem" and/or the un-cooperative party.

In such situations an effective strategy used has involved the separation of the parties so that the me-

An essential requirement of any program working successfully with adolescents in the context of family is the voluntary engagement and subsequent participation of the young person. In REFS' experience this is significantly enhanced through the involvement of competent young people with whom they relate and connect. A large team of trained and experienced young mediators (ages 13 to 18 years) is selectively "matched" with young clients and works alongside staff and adult volunteers. Research shows that they do make a significant positive difference in outcomes when working to reconcile families. (V. Calvert & D. McPherson, 1996).

diators can have a private session with some or all family members. In REFS experience, it has often been the ability of the young trained mediator to gain the trust of the young person by talking with them and listening to their concerns, that encourages the young person to return to mediation, facilitating further communication, problem-solving and resulting in agreements being reached.

The care that is taken in allocating particular mediators is often a crucial factor for a successful outcome. For example, the involvement of a 16 year old male mediator in a family with a young male person of a similar age not

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only encourages the young person to feel at ease and willing to participate, but can also be useful from the parents' perspective, in normalizing their adolescent's developmental and life crises and the sometimes difficult nature of relationships during this stage of family life.

Parents:

"Initially I thought this person is too young to contribute, but my daughter really identified with her".

An evaluation of the REFS mediation program by Calvert & McPherson (1996) found that the vast majority of parents (76%) and young people (94%) indicated that the young mediator's presence was important or very important. Comments from this report are as follows:

"The young mediator really helped because my son didn't feel so isolated."

Young Persons:-

"I was scared initially, but she (young mediator) really helped - she could relate to my situation."

"Having a young mediator present evened things out - it wasn't just all adults."

REFS young mediators are a diverse group from a variety of family types e.g. single parent families, step or blended families and extended families. Young mediators include high achievers, students who find school a struggle, school leaders and young people who have been through difficult times themselves. In common they share good communication and mediation skills, common sense, empathy and a desire to further their own personal development. (Argyle & Williamson, 1998)

4. Strong Links With Schools

In addition to accepting referrals from numerous other sources, REFS services have developed significant linkages with local secondary colleges. Student Welfare Coordinators/School Counsellors are frequently the first professionals who become aware of family difficulties and impending or recent homelessness. Their knowledge of the services provided and the links with the agency ensure immediate action and interestingly, an extremely high level (approximately 90%) of appropriate referrals, which are actioned promptly.

REFS has worked very closely with local

secondary schools for the last nine years, which has been a significant factor in the ability to intervene early and to increase the likelihood of positive outcomes. Young people and families are also made aware of REFS programs through presentations and meetings with school staff including Student Welfare and year level coordinators.

REFS convenes regular regional network meetings for Student Welfare Coordinators/ School Counsellors aimed at strengthening relationships with this primary referral source and providing an opportunity for mutual feed-back in relation to referral processes. In addition REFS provides training courses in peer mediation, staff professional development, student leadership and conflict resolution in the schools. The latter has resulted in both teachers and students becoming more familiar and comfortable with this model of service delivery.

5. REFS Family Mediation Model

REFS provides a voluntary mediation framework which allows all family members the opportunity to talk about how they feel about difficulties in a safe, neutral environment. Hills (1996), stated that, "where family members attend mediation voluntarily, it speaks of mutual agreement about the need for help, and also for the mutual motivation of family members to seek solu-

Parents and adolescents commonly experience disagreements and conflict. Although most families have the ability to deal with the problems they experience, Wolcott and Weston (1994) mention that for some "...the pressure of negotiating disagreements becomes too difficult emotionally and practically, causing intolerable levels of conflict and family dysfunction" (p.208). Mediation has been shown to be an effective means of helping parents and adolescents in crisis (Shaw, 1984; Whiting, 1994; Wolcott & Weston, 1994). Mediation involves the parents and adolescents coming together with an impartial third person or persons, in order to isolate the issues of the dispute and generate options that will help them reach mutual agreements about future behaviour.

tions." It is often in this phase, in obtaining a commitment from the family and in particular the young person to work at resolving differences, that the involvement of a young peer mediator is an important factor. In addition the family acquires skills during the sessions which will enable them to resolve any future conflicts in a respectful and positive manner.

REFS utilizes a structured co-mediation model, in which mediators are selectively matched to the particular family. An 'older' mediator generally works alongside a 'younger' (ages 13 and above) trained volunteer peer mediator, assisting to address any power imbalance between family members and helping more to ensure that all feel accepted, supported and comfortable in the mediation process. Gender, age and personality types are considered in matching mediators with families.

The same mediators remain involved for the duration of their participation in the program. Typically, a family participates in two to four sessions over a four to ten week period. The duration of each session is approximately two hours.

A review is generally held four weeks after the last session to assist the family in handling any ongoing areas of conflict and to provide encouragement and positive feedback. If necessary, the review also provides an opportunity to clarify any outstanding issues and to renegotiate any agreements that are not working. Further reviews are arranged if needed, however a primary goal is to provide the family with the skills and resources to be able to resolve any future conflict independently.

In REFS' experience, families with adolescents experiencing difficulties are initially often willing to 'try' mediation, as opposed to more formal interventions such as family and individual counselling or family therapy. For adolescents in particular, the word 'mediation' certainly does not seem to carry the stigma they may associate with 'counselling' or 'therapy', even though in many cases the latter may also be appropriate and/or the subsequent result after a family has been positively engaged.

6. Alternative Options

Brief Solution Focused Family Therapy and 1-1 Individual Support

Solution-focused family therapy is assessed as appropriate for a family when a much broader and more flexible approach is necessary. For example, when families present with multiple problems and where some chronicity is evident.

In addition often 1-1 individual support is offered either at the same time that family support work is being undertaken, or after other work with the family as a unit has concluded. In these situations any changes in service delivery are negotiated with clients and different roles are taken by different staff members to avoid confusion for clients.

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The agency also operates on-going support groups for parents and young people as well as anger management groups, which provide a mechanism for people in similar situations to meet and benefit from mutual support and sharing.

Referrals

7. Refs Training And Consultancy Services

As a registered provider of Vocational and Educational Training, REFS has been pro-

In those situations where clients would benefit from assistance elsewhere they are promptly referred to other more appropriate agencies. In situations where there are issues of child abuse or neglect reporting to the appropriate State Authority occurs, informing the family of this. This does not preclude later agency involvement following resolution of protective issues and assists in maintaining a positive relationship with the family.

viding training courses and workshops for nine years in such areas as mediation and conflict resolution, communication and negotiation, parent education, anger management and professional development.

As a result of networking with other agencies, a wide range of professionals and others in the community have accessed our

training programs. This has facilitated the wider development of these skills and has ensured that there is a wide cross section of professionals who are aware of our services and are therefore more comfortable about referring to the service. The training courses in schools enables REFS to develop and maintain a pool of volunteer adolescent mediators.

Strategies around the provision of training include:

- Providing young people who undertake mediation training with significant skills in conflict resolution.
- Providing adults with significant life skills in conflict resolution, particularly as it relates to dealing with conflict between or involving adolescents.
- Providing adults and adolescents with significant exposure to each other and a safe environment in which to explore conflict resolution strategies.
- Allowing adults and adolescents to develop significant networks across the
- community, education and health sectors.
- Once qualified, participants may choose to become mediators within the REFS network and other organizations thereby increasing the number of people in the community qualified and experienced in mediation.

INTERAGENCY PARTNERSHIPS

One of the key features of the REFS model involves the relative ease with which clients are assisted to move promptly along comfortable pathways within the wider service system. (Argyle & Williamson, 1998)

“A collaborative approach from professionals and support programs for parents is crucial in breaking the cyclical approach of child abuse and neglect. Non-professionals and professionals agree that prevention is the answer to this widespread and complex problem that confronts all of society. It costs less to prevent the problem than to try to fix it afterwards.” (Joy Byers 1995)

“What lessons have we learned from the past? And what have we learned from the progress that has been made? Although it took a long time and a great deal of persistence, professionals and non-professionals alike now agree that prevention is indeed the answer to this widespread problem that we all face. Programs are shifting attention away from treating child abuse after the fact and instead are focusing on preventing child abuse before it ever occurs.

It should be easy to conclude that we **must** focus on prevention. There are three (3) very good reasons why prevention makes sense:

- (1) It is the humane and the right thing to do
- (2) It costs much less to prevent child abuse than to fix it after the fact

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Australian Family Mediation Association

R o s s H o u s e 2 4 7 F l i n d e r s L a n e M e l b o u r n e V i c 3 0 0 0

The Australian Family Mediation Association was launched in Melbourne in February 1999. Our goal is to support, promote and develop the use of family mediation in Australia. Anyone interested in joining or finding out information about AFMA, please contact Dawn Rees –

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(3) It works.”

(Joy Byers, National Director of Public Awareness for the US National Committee to Prevent Child Abuse 1995)

INNOVATIVE COMMUNITY APPROACH

An innovative pilot project currently being undertaken in conjunction with the Department of Community Services in New England incorporates all the ingredients of the REFS model. The project is designed to offer a new early intervention program to adolescents and their family “at risk” of, or where family breakdown has occurred. The program features family mediation utilizing an interagency service model. This new early intervention program is supported by existing programs and services for adolescents and their families thereby providing a seamless service system to clients. Close links with local high schools and an integrated intake system ensure accurate assessment and intervention.

It was identified that there is a gap in adolescent services through the Armidale District Integrated Community Service Planning process conducted in July 1997. Strategies to assist in addressing this gap have included liaison with youth services and government departments to clarify roles and responsibilities in accordance with youth policy and needs for services; working with other agencies to meet common needs; developing partnerships; co-operation with other services and developing innovative strategies to attract resources into our community to provide preventative services. (June Shine, 1997)

This twelve month Pilot Project is being jointly managed by representatives from:

- NSW Department of Community Services
- NSW Premier’s Department
- Department of Education & Training
- Department of Health
- Armidale Family Support Service
- Armidale Youth refuge.

This group forms the basis of the project coordination team. Other services such as NSW Police, Centrelink and other service providers were involved in the initial service planning meetings.

The Pilot Project has community support including the involvement of adolescents and adults in the community becoming volunteer mediators and receiving profes-

sional training in REFS mediation and conflict resolution. Further the business sector and service clubs have become involved through an adopt-a-mediator strategy to assist in training costs and an initiative under the “Building the Future” forum of the local councils.

The Project will provide family mediation to 25 adolescents and their families to address conflict in a way that makes all family members feel respected and supported. The mediation team provides the mediation service to the adolescent and their family, assisting the family in working towards positive changes which will help bring about resolution of conflict, to prevent family breakdown.

The target group comprises adolescents between 12 and 18 years of age and their families. These families are either “at risk of” or are in the situation where family breakdown has recently occurred, and specifically where the young person has been out of home for a short period.

The project specifically seeks to provide resources to minimize the possibility of abuse or re-abuse, to prevent irretrievable family breakdown and to minimize youth homelessness, youth suicide and self harm, exclusion of young people from the education system, and incarceration due to offending behaviours.

The integrated Intake service is provided by the project co-ordination team, with an identified Intake Officer located in each of the participating agencies. The Project Team is responsible for the assessment and intake, following which an adolescent and adult mediator will be matched to meet the adolescent’s and family’s needs

The Project Co-ordination team retains case management responsibility for the families accessing the service, making referrals where appropriate, and notifying statutory authorities, if required. They will also be responsible for briefing and debriefing members of the mediation team.

Adolescents and their families are also provided with a range of other cross agency services including one-on-one family support, family therapy and counselling, together with accommodation options where required.

The community response has been overwhelming with over 100 young people and adults having already been trained as mediators in the Armidale community, including students, community volunteers, staff

from key agencies and other professionals.

The project benefits will include resourcing the local community with conflict resolution skills and ownership for and participation in addressing family breakdown hence becoming part of the solution. It is intended that upon completion of the Pilot Project an evaluation occur including assessment of outcomes for adolescents and their families, level of collaboration between agencies and the contribution to the existing service system. The establishment of a permanent service would be considered as a possible option.

The short-term and long-term benefits for young people and their families include the resolution of conflict within the family, providing assistance in maintaining family relationships and minimizing the likelihood of other associated issues such as youth homelessness, youth suicide, abuse and re-abuse.

In conclusion, the REFS model of early intervention provides a framework for assisting young people and families early in the service system continuum. Close links with schools and collaboration between agencies ensures early and appropriate referrals. The involvement of young mediators greatly enhances the effective engagement of young people and their families.

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In the course of a penetrating demystification of the notion of “legal advice,” Australian family law specialist and mediator John Wade offers the following succinct distinctions of related interventions. *Advice* consists of a “recommendation to act in a certain way,” whereas *information* denotes an “attempt to convey some truth or data”; both differ from *opinion*, which constitutes a “recommendation reflecting the speaker’s point of view while acknowledging the listener’s might be different” (Wade 1998, pp. 256-7). Despite their heuristic value, however, such neat concepts fail to capture what often happens in actual practice. In fact, just as Wade prefers to avoid the use of dichotomies in discussing what mediators actually (see below), mediators (I cannot comment on lawyers) themselves often practise forms of advice giving that do not fit Wade’s definition. They may intervene in disputes in ways that fall short of a bald recommendation, but nevertheless have very similar intentions. Such interventions include reframing, creating doubt, questioning, and pressuring clients to respond to a mediator’s specific concerns.

Within the context of family law mediation pursued in a “facilitative” mode,¹ this article thus will explore the issue of giving advice and performing related interventions that mask similar intentions. It will do so by examining some codes of conduct and professional standards and also by drawing on recent literature concerning mediator interventions, particularly on the subjects of impartiality and neutrality, reframing, mediator pressure, and the concept of the mediator as “folkloric trickster.”²

Tension between Giving Advice and Promoting Client Autonomy

Wade also briefly turns his attention from the actions of lawyers to those of mediators. He points specifically to the “well documented tension in both practice and in ethical codes between listening and giving advice, between encouraging the client to make decisions, and taking over the decision making process” (p. 282). To help clarify the question, he departs from the usual dichotomous way of thinking (in other words, *either* one imparts advice *or* does not) and provides instead an “abacus”. This tool shows a continuum on eleven issues, such as the distinction between “process” and “substance” or the extent to which outside experts may be included in mediation sessions (p. 285). Wade maintains that “all mediators give some advice” (p. 287) and therefore can be placed somewhere along the abacus in any category.

Bush (1992) identifies nine major ethical

dilemmas for mediators. Interestingly, the one most commonly reported by his informants, who were practising mediators in the state of Florida, was that of managing the tension between “preserving [party] self-determination” and “maintaining [mediator] nondirectiveness.” He breaks this dilemma into two “temptations.” The first is to “give” the parties a solution either because they request it or because the “mediator thinks she sees a good or ideal solution that the parties haven’t seen but will find acceptable.” The second temptation is “to oppose a solution formulated by the parties.” Grounds for opposition include that it is illegal, “unfair due to imbalance of power,” “unfair or unwise in [the] mediator’s judgement, even though [there is] no imbalance of power,” or “adverse to the interest of an absent third party (especially children)” (Bush 1992, pp. 17-19).

Both Wade’s anecdotal and theoretical research and Bush’s empirical study raise questions about the extent to which mediators, when faced with situations in which they perceive the fairness of the process or its outcome to be under threat, should intervene by giving advice in one form or another. Though beyond the scope of this study, the tensions identified above become particularly acute when mediation for unrepresented litigants takes place under mandatory court-annexed programs. Clearly the interests of equity may be jeopardized if an erstwhile litigant lacks relevant analytical legal understanding and a strategic yardstick of some sort by which to evaluate alternate outcomes (Nolan-Haley 1996).

Neutrality and Impartiality

In the recent literature there has been a fairly strong interest in the related—if not generally clearly delineated—concepts of neutrality and impartiality.

Traditionally, it may be said that neutrality refers to lack of real or perceived bias and impartiality to an “an obligation to do equal process” (Taylor 1997, p. 218). Attributes of such neutrality are said to include not taking sides, having “no personal stake in the outcome” and no conflict of interest, and “being independent, nonpartisan, open-minded, and unbiased” (Gadlin and Pino 1997, p. 18). Such concerns relate to what Taylor (1997) refers to as “strict neutrality.” Professional codes, she argues, often illustrate this approach by their injunctions to pay “scrupulous attention to doing exactly equal to and for each disputant” (p. 218).

However, by applying a discourse approach to the articulated ideal of neutrality and the observation of actual mediator practice,

other analysts have identified two dimensions that stand in logical tension to each other. Neutrality as “impartiality,” they maintain, values *lack of bias*, while neutrality as “equidistance” implies a *bias towards* the empowerment of less articulate or assertive disputants and the interests of unrepresented parties (Cobb and Rifkin 1991, pp. 41-45).

One way of reconciling the two is through the notion of “expanded neutrality.” It addresses the specific needs of individual clients in differential ways in the name of a higher principle, such as “to do no harm.” It is reflected in mediation models that are more therapeutic and normative-evaluative than educative or rational-analytic (Taylor 1997). Differential attention to clients and the need for a flexible process may be useful—even necessary—for people in a “highly troubled psychological state” that may accompany separation-related disputes, for at stake is their own future welfare and that of their children (Cohen, Dattner and Luxenburg 1999).

The approach known as Symmetrical Prescriptive Advice goes even farther, for it “implies that the process of mediation ... provides optimal advice to both parties in the dispute.” In this way, the authors claim, without defining their key terms, it “means that the mediator will remain impartial but may no longer claim to be neutral.” (Gibson, Thompson and Bazerman 1996, p. 70)

Contradictions about Advice, Information and Opinion: Some Codes and Standards

Common Assumptions

The Australian community of family law mediators working for federally-subsidised organizations generally would find itself on the left (the less interventionist) end of Wade’s “Abacus of Practice and Ethics in Relation to Advice-Giving” (p. 285). For example, I think it is fair to say they would commonly draw a distinction between providing information, which is acceptable practice, and offering advice, which is not. They would also distinguish between “process” and “substance,” providing guidance to the parties with respect to the former but not the latter. However, a sampling of professional ethical codes and standards of practice regarding mediation paints a rather less clear picture.

Advice and Information

Some formulations specifically proscribe the provision of substantive advice. In Australia, the *Regulations* governing the *Family Law Act 1975* (Cth) state that clients must be

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informed that the “mediator’s role is to facilitate discussion ... and is not: (i) to advise them what to do in relation to each other; or (ii) to provide them with legal advice” (reg 63(c)).³ The Alternative Dispute Resolution Section of the Canadian Bar Association’s (CBA) “Model Code of Conduct” uses similar wording (art III.3). However, others set boundaries only on the type of advice mediators can give. Family Mediation Canada’s (FMC) “Code of Professional Conduct” merely cautions that “a family mediator must refrain from rendering advice *outside the limits* of his or her qualification or competence” (art 5.3) (italics supplied in this subsequent and quotations). The “Standards of Practice” of the Academy of Family Mediators (AFM) even enjoins mediators from giving information, except “in those areas where qualified by training or experience” (art VIII.B—there is no specific mention of advice in this context).

Suggestions

The American Bar Association’s (ABA), “Standards of Practice for Lawyer Mediators in Family Disputes,” illustrating Wade’s definition of “opinion,” gives mediators much more latitude, allowing mediators to “*make suggestions* for the participants to consider.” However, it emphasises that “all decisions are to be made voluntarily by the participants themselves, and the mediator’s views are to be given no independent weight or credence” (art 1.A). Bush also proposes that mediators “*may make suggestions* for ... consideration” but *not provide information* about or offer therapeutic or legal advice, even if qualified in those fields. Nevertheless, he would obligate mediators to “*raise questions*” regarding proposed options or information offered by parties (Bush 1992, pp. 35-36).

Suggestions and Information in Practice

Despite the above considerations, it is arguable whether, given the power of a mediator, her suggestions or recommendations may not carry considerable authority and therefore run counter to disputant self-determination. For example, in a residence dispute a mediator might suggest shared residence. How might this intervention affect the parties, particularly if they know that the mediator is also a psychologist?

At first glance, it may appear that simply providing information is less directive and more impartial. So the mediator might say that recent studies have shown that in general the interests of children of separated parents are best served by frequent contact with their father. Again, how might these words affect party self-determination? In both cases,

how impartial might the interventions seem to the mother who has just suggested full residence with herself? Similarly what effect might it have on a father who has proposed that he retain a large share of the joint assets to hear a short lecture on the empirically demonstrated fact of the feminization of poverty?

More insidiously, mediators may often be unaware of their own biases, or “unexamined psyches” (Kelly 1997, p. 385). Their own experiences or professional education can influence not only what suggestions they make but also the type of research on which they draw and the way in which they interpret it. For instance, it has been argued that a family systems approach carries with it a presumption toward the significant involvement of both parents rather than “focusing on the best parent” (Fineman 1988, p. 750).

Mediator Power, Client Empowerment and Fairness: Codes and Standards

Impartiality and Fairness

It may be helpful to contrast the imperative for impartiality with the imperative to conduct a process that is fair through empowering a disadvantaged party by reference to a sample of relevant professional codes of conduct and standards of practice. Both the AFM “Standards” and the “Model Standards of Practice for Family and Divorce Mediation” of the Association of Family and Conciliation Courts (AFCC) (art II.A and art IV.A respectively), for example, state that impartiality “*implies a commitment to aid* all participants, as opposed to a single individual, in reaching a mutually satisfactory agreement.” Furthermore, the former adds, “The mediator has a duty to *ensure balanced negotiation* and should *not permit* manipulative or intimidating negotiation techniques” (art IX.B), and almost the same wording appears in the Family Mediation Canada’s “Code” (art 9.4).

The American Bar Association recognises that the task of the mediator “is to *facilitate* the ability of the participants to negotiate their own agreement, while *raising questions* as to the fairness, equity, and feasibility of proposed options for settlement (ABA: art III.C). And similar wording appears in art 2.A of the AFCC “Model Standards.” FMC’s “Code” recognises that “*impartiality does not imply neutrality* on the issue of procedural fairness (art 9.4), which mediators have “a duty to ensure” (art 9.2).

Unrepresented Parties

A number of codes and standards address the issue of how a proposed agreement might affect those not present. Family

Mediation Canada’s “Code” describes the role of the mediator as “that of a *facilitator*” and accords him or her a “responsibility to *promote the participants’ awareness* of the interests of others affected by the dispute and by the proposed agreement and to assist the participants to consider the separate and individual needs of such other persons” (FMC: art 3.4; also see art 8.2). Such awareness is particularly crucial where children are concerned. The American Bar Association’s “Standards” state that the “mediator has a *duty to ensure* that the participants consider fully the best interests of the children.” If she or he believes the parties have not done so sufficiently, “the mediator has the *duty to inform* them of this belief and its basis” (ABA: art III.D). Similar wording appears in other codes, such as those of the Association of Family and Conciliation Courts (AFCC: sVI.B), and the ethical standard of the Society of Professionals in Dispute Resolution (as cited in Moore 1996, p. 381).

Broader Procedural Concerns

Broader procedural concerns appear prominently in a number of codes and standards. The Association of Family and Conciliation Courts specifies that mediators should “*assure* that each participant has had an opportunity to understand the implications and ramifications of available options,” should “*assure* balanced negotiations and should *not permit* manipulative or intimidating negotiation techniques” (AFCC: arts VIII and VIII.A). The Canadian Bar Association’s “Model Code” states, “Mediators have a duty to ensure that they conduct a process which *provides parties with the opportunity* to participate in the mediation and which *encourages respect among the parties*” (CBA: s VII.2).

This interventionist role of the mediator is given wider scope in other codes and standards. The “Ethical Standards” of the Society of Professionals in Dispute Resolution recommend that if “the neutral is concerned about the possible consequences of a proposed agreement, and the needs of the parties dictate, the neutral *must inform* the parties of that concern.” One option to deal with the situation is then “to *educate* the parties” (as cited in Moore p. 381).

The “Code of Professional Conduct” of the Colorado Council of Mediators & Mediation Organizations (drafted by Christopher Moore) describes the mediator as “an *active resource person* whom the parties may draw on.” His or her “responsibility” is to help the parties reach a “settlement that is seen as fair and equitable by all parties”

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(II.L). Furthermore, it sanctions, “when appropriate,” mediator interventions “to provide both procedural and substantive *suggestions and alternatives*” (art II.C). If the parties reach an agreement that the mediator believes to be illegal, “grossly inequitable,” “the result of false information” or negotiating in bad faith, “impossible to enforce” or likely not to be durable, then the mediator has a range of options. These include informing the parties of the perceived difficulties, making suggestions, and withdrawing (with or without disclosing the reasons) (II.L).

Summary

Summing up this disparate sample, it appears that mediators are encouraged to intervene to prevent abuses of the mediation process and sanctioning unfair outcomes. To do so, they have available to them a range of interventions that may include giving advice

Mediator Interventions that Mask Advice

Notwithstanding the above, in more common circumstances than those mentioned in the codes and standards above, mediators, especially those specifically trained in the community or family fields often are loathe to give direct advice, even to clients who indicate they are desperate for it. However, they do commonly intervene in ways designed to accomplish similar ends.

Creating Doubt

For example, among the many uses of advice Wade proposes is that of “creating doubt,” a stratagem that may be used to help disputing parties to focus on the strengths and weaknesses of their understandings of facts, evidence, rules, weight of arguments, strategies, and solutions (pp. 271-272).

The mediation literature also refers to creating doubt or “destablizing” a disputant’s narrative as a fundamental mediator intervention. Some practitioners prefer to avoid the negative connotations of such terms and refer instead to such actions as “expanding the story,” “recognizing multiple realities,” or “reality checking” in the interests of developing “an enduring agreement.” Generally these do not occur in the context of anything as blatant as “giving advice.” Rather, they take place through the use of mediator interventions like posing questions and reframing. Although at first glance these techniques seem to differ from giving advice in that they may not focus on a specific course of action, they often proceed from the same mediator intention and may be directed towards the same end. In

other words, through them, mediators seek to introduce other possibilities and options.

Mediator as Trickster

In fact, giving advice, it can be argued, is an ethically more honest way of conveying something that mediators do in a less straightforward manner, as they take on the role of the “folkloric trickster figure.” Like the trickster, argues Benjamin, a mediator uses techniques of “deception and manipulation” “to help people in conflict view and understand the world around them differently and to help release disputing parties from their self-imposed constraints of limited options” (Benjamin 1995, p. 16). One such intervention is reframing.

Reframing

Framing, according to Bateson, is a “psychological concept that delimits a class or set of messages” that operates by filtering and interpreting messages. In the context of mediation *reframing* may be a more useful concept, for it captures the “continuous, circular movement” of the interaction between mediators and disputants in which understandings are created and explored (Bodtker and Jameson 1997, pp. 238, 239). For Benjamin, reframing “takes the communication of a party and, without abrogating his or her meaning entirely, alters and redirects that meaning to allow for its more constructive use” (Benjamin 1995, p. 9). Asking questions, including those designed to create doubt or dissonance in the minds of a disputant, can be seen in a similar light. Indeed, Mayer (1987, p. 283) refers specifically to “asking the right questions and reframing statements” as an appropriate use of that power. Empirical studies, in fact, have demonstrated that there is a positive correlation between the use of “formulations,” or “communication acts that function to comment on talk and provide interpretations of the sense of the conversation-so-far,” and resolution of mediated disputes (Wall and Dewhurst 1991).

Hypothetical Examples

To be more concrete, let’s look at some examples of typical mediator interventions. For example, one party might say something like, “I’d rather roast in hell than let that bastard see the kids!” A lawyer advising a client may give direct advice that, according to the *Family Law Act*, children have the right to see both of their parents.⁴ A mediator, on the other hand, might seek to create doubt in the party’s mind by asking whether the party is familiar with the relevant section of the Act. Or, the mediator might first reframe the comment to manage the emotional content of the mes-

sage and then attempt to redirect its substantive focus in a more constructive direction. She might say something like “I can see you’re furious with him for what he’s done to you. But what effect would that have on the parenting needs of the children?” In both cases, however, the force of the intervention is something akin to a lawyer’s saying, “I’m advising you that such action is contrary to the interests of the children and the relevant legal principles.”

Similarly, in dealing with parties clinging to entrenched positions, a lawyer might tell his client that if the dispute cannot be settled through negotiation and goes to a hearing, the client will lose control over the outcome, incur greater costs, and endure a significant delay. A mediator, trying to direct a party to consider the non-negotiation alternatives or the relevant BATNA, might say, “What do you think will happen if you can’t reach agreement?” or “What kind of legal advice have you had about pursuing such a course?” Really, both types of interventions amount to *advising* disputants to consider the consequences of their action and that their underlying interests may not be well served by pursuing it.

Mediator Pressure

Matz (1994), looking at the related issue of mediator pressure, remarks that “parties come to a mediator to reach an agreement they can’t reach by themselves.” Such a setting, he writes, then justifies the use of mediator “pressure,” provided party autonomy is still respected. Pressure is “legitimate” when used to “get a party to see some things differently, to consider different choices” (p. 360). A family mediation illustration parallel to the one he offers in a different context might be as follows: one partner has been objecting vehemently for 15 minutes during a separate session to face-to-face contact with her ex-partner, including during contact transfers of their children. In passing, she mentions that she still really likes her former partner’s mother. After a long period of active listening to allow for emotional venting, the mediator intervenes more forcefully by asking directly whether the mother-in-law might be able to play a role in the contact transfers. Such a tactic, argues Matz, amounts to “pressuring” the party “to shift focus to comply with [the mediator’s] request” (pp. 361-62). Once again, the force of the intervention is not far removed from advising the party to use the mother-in-law to reduce destructive conflict in the hand over of the children.

Selective Facilitation

Using a simulated client model research

Continued page 14



technique, Kruk (1998) has demonstrated something similar by showing the use of what Greatbatch and Dingwell have named "selective facilitation." This term refers to the use of mediator pressure to produce specific outcomes favoured by the mediator. It is "largely managed by differentially creating opportunities to talk through the favoured option" rather than evaluating the range of options proposed by the parties (Greatbatch and Dingwell 1989, p. 636). In analysing a case study, Kruk notes that mediator strategies "were ostensibly reflecting the wife's feelings [about unresolved marital attachment] and validating them." However, he observes, "In fact [they] served to ensure that the process would not get bogged down in such emotional content, and move the parties towards negotiation in as quick a manner as possible" (p. 330). Bush and Folger (1994), in their critique of "problem-solving" mediation, state: "Mediators have been found to reframe issues, reformulate parties' concerns, or use directive questioning to shape arguments or justify overt opposition to parties' desired solutions" (p. 66).

Some Other Considerations

Communication Dynamics

Communication between human beings, as we know, is far from a process of one-to-one correspondence between speaker intention and listener understanding. Speech act theorists maintain that when someone speaks, three things happen: "An utterance is made. An act of discursive power [ie. going from one person to another] and intended influence over others occurs. And an effect on the listener is generated (Mulholland 1991, 88, following Austin 1962). Clearly the effect on the listener may not be congruent with the intended influence. For example, there is a story about a well-intentioned mediator intending to provide impartial information to a client by suggesting at one session that she read the well-known (and highly regarded) *Mom's House, Dad's House* by Isolina Ricci. At the subsequent session, the client, perhaps reacting to the suggestion as unwelcome advice, tore up the book in front of the mediator. There must be great variations of mediator interventions along the continua of Wade's abacus of ethics and advice giving. Nevertheless, it must be reassuring that client surveys, as measured by the Client Assessment of Mediation Services instrument (Kelly and Gigy 1988) and adaptations of it, consistently point to high levels of satisfaction with the mediation process and perceived mediator impartiality (for example, Kelly and Gigy 1989; Moloney, Fisher, Love, and Ferguson 1996).

A focus solely on the actions of speech, however, is itself limiting, for the social context in which speech occurs is also important to the exchange of meaning. In a segment about mediation on Australian television, a satisfied client described the mediator in a multi-million dispute between his contracting firm and the federal government as "the only man in the country" who had sufficient respect from the parties to conduct the mediation. We can only speculate about how the disputants received "information," particularly about likely hearing outcomes, provided by this retired Supreme Court Justice.

As mentioned above in the context of considering "suggestions," it is worth thinking about how clients react to "information" on parenting offered by someone they know to be a child psychologist or about the inclusion of certain assets to be taken into account for division presented by a legal practitioner.

Cultural Contexts

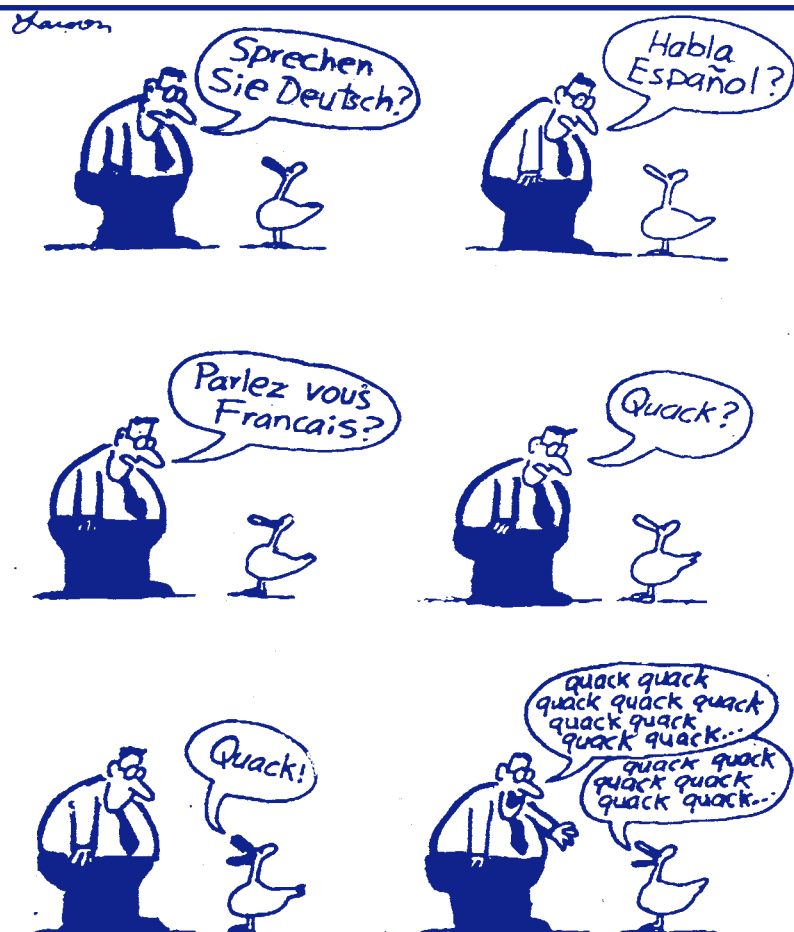
In addition cultural dimensions may impact significantly on what is considered information and what is considered advice. Increasing research points to cultural differences in the way conflict is perceived and handled in different cultural contexts. Some researchers, for example, divide cultures

into those that are low context (for example, individualistic) or high context (for example, collectivistic) (Augsberger 1992, pp. 28-33, Jandt and Pedersen 1996, pp. 9-13). Thus even defining a separation-related dispute as being between two individuals and providing "information" about what is appropriate for each and for their children might seem extremely value-laden to family members within a more collectivistic cultural group. Such perceptions may be compounded by the perception of the mediator as an authority by members of some cultures for whom traditional third-party dispute resolution is carried out by high status people in the name of social stability (Merry 1989). More generally, even research on a given issue is itself an artefact of a cultural context. Faure points out that "practical and theoretical thinking on conflict are [themselves] ... culturally rooted" and that North American authors dominate the academic literature in the field (Faure 1995, p. 38).

Conclusion

These ways of reframing, questioning, and applying pressure to respond to the mediator's concern obviously do not fit Wade's definition of giving advice in the narrow sense by recommending a specific course

Continued page 15





This poem examines conflict from the perspective, or belief that the structures, systems and processes do not necessarily create the conflict; rather it is the individual's response to the environment in which they find themselves.

It examines the inherent 'freedom of choice' that we have to break free from the victim mentality.

THE CONFLICT ZONE

A way of the inside
Often expressed on the outside.

Is it the pride
Or a need to hide?

The work of fate
Or merely a place to feel safe?

I grapple with family, friends
And those who are foes
Take issue with those in the know.

I plead to be heard
My terms preferred
Or the outcome's deferred.

Is there a chance
It may be me
Merely failing to perceive
What I cannot see.

TO MEDITATE OR MEDIATE

I go within to find the din
It creates a trait
To fulfil my fate.

Do I hide
Or enjoy the ride?

To release the pride
I confide,
In those on whom I relied.

I make my choice
Through my voice
To unravel my own babble.

Must I listen out
To hear what is unclear?
That which I most fear.

It is a chance which I must take
If I am to placate
And accept the grace
That is in my face.

Poems by David Brenan
Copyright David Brenan August 2000

Vale, Beverley Vaughan

Beverley Vaughan, a foundation member of SADRA and latterly the principal solicitor of the Spencer Gulf Community Legal Service in South Australia has died suddenly in England.

Beverley, 61, had a stroke while visiting his sick mother, and died in Eastbourne Hospital on Friday 3rd November.

Beverly will be remembered for his strong advocacy within SADRA where he occupied the role as Publicity Officer. He was also noted for his work as a barrister in Victoria and London and as a lecturer in law at the University of South Australia.

A genial and colourful character, Beverley was noted for his sartorial elegance with bow-tie and Panama hat. This visually complemented his involvement in theatre having appeared as the Rabbi in the film *Shine* and more recently was Professor Higgins in the Port Pirie Theatre Guild's production of *My Fair Lady*.

Beverley is mourned by his friends and colleagues of SADRA and the University of South Australia and at the Spencer Gulf Community Legal Service and the Port Pirie Central Mission.

Continued from page 14

of action. However, nor are they simply process interventions (rather than content ones), for they redirect a party's attention to hitherto unthought of substantive possibilities. Furthermore, they remind us that mediation is a socio-linguistic sub-culture, just like legal discourse, with its own norms and sanctions (Grillo 1991). They also force us to confront Silbey's critique of the central "myth" perpetuated by mainstream guidelines to mediation practice that the mediator is a "passive and neutral facilitator" (Silbey 1993, p. 350).

Bryson (1990) has claimed the role of an equal opportunity conciliator is to be an advocate for the legislation under which he or she is operating while conducting a fair and empowering process. Similarly, the mediator may be seen as an advocate for the process of mediation while promoting party self-determination and, to forward

this aim, will use interventions that have the effect of imparting advice while respecting party autonomy.

Our understanding of mediation has become sophisticated enough to acknowledge a variety of models and styles, for example, settlement, facilitative, therapeutic, evaluative, etc (Boulle 1996, pp. 28-30)⁵. One way of handling mediator interventions, whether they constitute information, advice or opinion, thus is for the mediator to make them transparent rather than camouflaging them. In other words, the mediator may explain his or her motivation behind the intervention ("process transparency") and its desired effect ("impact transparency") (Moffit 1997). This approach at least confronts the ethical dilemma in an open and honest manner.

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¹ I use the term "facilitative" to refer to a mediative practice that is interest-based and party-centred and in which the mediator possesses process expertise, rather than substantive one, and intervenes only with respect to the process rather than the outcome (to the extent the two can be differentiated). It can be transformative or problem-solving or combine the two. Facilitative mediation may be distinguished from "therapeutic," "evaluative," and XXX (Boulle 1996, pp. XX)

² I owe the inspiration for this article to a talk given by Professor Paul Thomas of Dalhousie University to the Victorian Dispute Resolution Association on 21 July 1999. I am also grateful to a lively and insightful discussion of issues raised in this article by senior mediators at Relationships Australian (Victoria) in a professional development meeting held on 11 November 1999.

³ Reg 64(d), however, explicitly permits "advice about procedural matters."

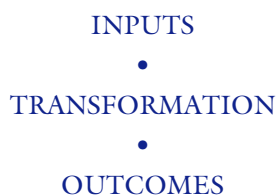
⁴ S 60B points in the direction of shared responsibility by specifying the children's "right to know and be cared for by both their parents" and the "right of contact, on a regular basis, with both their parents," as well as stating that "parents share duties and responsibilities concerning the care, welfare, and development of their children."

⁵ There are other approaches, of course. For a brief summary, see Moffit (1997):3-4.



The current debate on the purpose and role of mediation is reminiscent of the development of management theory over the last thirty to forty years. In management, that debate has focused on what makes for effectiveness—a task centred (or transactional), or people centred (or transformational) approach. This duality developed into a contingent approach—one that is dependent on the situation making the transactional and transformational not mutually exclusive but interdependent (Blake & Mouton, 1978 and Luthans & Steward, 1977)

In this paper, I argue for such a contingent approach to mediation, and also use another management model to explore what is happening for us as mediators and how we make judgements on strategies, but—even more importantly—what is happening for parties in a mediation. To help us do this, I propose using a well established ‘open systems’ model (Emery, 1965) to give us a framework for thinking through what we do in mediation:



The mediation context, as we all know, is changing. The reality of mandated mediation is well known; less well known is the situation of workplace mediation where mediation has replaced arbitration as the method of resolving disputes. On the one hand, of course, it is pleasing that the efficacy of mediation has been recognised in both legislation and in enterprise agreements; on the other, we ask how this affects the **voluntary** nature of mediation.

Similarly, in schools, increasing use is made of mediation in both student and staff disputes where the implicit option to mediation is an adjudicated settlement.

So a founding principle of mediation—voluntariness—has been shaken, and the emphasis has shifted from, ‘I want to talk about this.’ to ‘You have to talk about this.’

Another founding principle has been the **confidentiality** of the content explored and outcome reached in the process. Logically it follows that those who direct parties to mediation have a vested interest in the outcome, and even if they don’t need to know the content of what is discussed, they certainly want to know the outcome.

Yet another principle has been **power balance**—the almost mystic addressing of the

unaddressable, given that the sources of power are so varied, and the manifestations of power so constantly dynamic and fluid. For example, in a situation between a manager and a subordinate, the sources of power are not confined to positional power, but may be found in expert, referent or, indeed, coercive power (French and Raven, 1959). One frequently sees in mediation a shift in the balance as parties reveal knowledge of an incident, or of an error, that the other believes was known only to themselves.

A fourth founding principle has been the **neutrality** of the mediator, about which much has been written and which is the subject of papers at this conference. It is therefore sufficient to say at this stage that neutrality in the sense of complete lack of bias is a pipe dream, and neutrality in the sense of lack of vested interest in the outcome is impossible for an internal mediator in the workplace, and questionable for an external mediator whose expertise is being rewarded.

If these founding principles are being shaken, what is left? I would argue that nothing indeed has been lost. Voluntariness, confidentiality, power balance and neutrality were only ever **inputs** to achieve certain outcomes, yet they have assumed in our thinking a sacredness that exceeds their importance. There is nothing intrinsically significant about any of these; their value lies only in the outcomes we believe they achieve.

So, I begin at the end of the process—what outcomes were implicit in setting these inputs as not only desirable, but necessary? And how valuable are the outcomes in the current times? And, if valuable, may they be achieved through other inputs?

Voluntary participation was thought to produce greater commitment to the process and to the keeping of any agreement reached, because it foreshadowed that parties would have **control** over their own destinies. But is control what parties are seeking? Augsburg (1992:92) argues that for the individualist in low context cultures like ours ‘the greatest threat to face comes from an attack on the need for autonomy and the loss of control over self and others’. However, in my experience in workplace, neighbourhood and interfamilial disputes, security or safety needs in the form of clarity about expectations, and esteem or respect needs loom much larger than do control needs. Indeed, in how many situations are any of us able to be really self determining; our choices are circumscribed by either events or relationships.

Confidentiality, power balance and mediator neutrality were all intended to produce the outcome of a fair and equitable process, where parties were not impeded by laws of admissible evidence or precedent. But may fairness and equity be achieved through other inputs?

So it is timely to ask what outcomes does each of us seek when we embark on a mediation. As both a practitioner and an educator in the field I ask myself this question constantly. I believe I am acting well when:

- parties feel more secure in their situations than they did before the mediation and this security may take the form of greater clarity about their options, or it may lie in the achievement of an agreement. (A transaction is completed.)
- parties are able to anticipate greater respect after the mediation—the same respect they experienced during it—and are able to offer this to the other. (A transformational experience in the Bush-Folger, and Augsburg, sense.)
- parties know that they need others in order to accomplish their goals. (The essence of negotiation.)
- parties have a greater sense of optimism, an optimism which flows from competence, or from the lessening of the ‘knot in the stomach’ that unresolved conflict produces. Without being rhapsodic, I aim for parties to experience the integrity, security and freedom Macbeth alludes to when he wishes to be ‘whole as the marble, founded as the rock, as broad and general as the casing air’ rather than being ‘cabin’d, cribb’d, confin’d’ (III iv 20ff) in the internal conflict he is experiencing.

The achievement of these outcomes is dependent, of course, on the **transformation** that occurs during a mediation. The term here is used not in the way Bush and Folger use it, but to denote the way inputs are converted or processed, thus producing the outcomes sought. Of course, the achievement of outcomes is not predictable when one is dealing with the volatility and pain of parties in conflict. Obviously people are not manufacturing products. But I believe we can use this model to remind us of the enormous challenges mediation presents to parties. Mediation is offered as a user friendly service, and I still have faith that it is that, but what we ask of parties is pretty mind blowing. We may ask any combination of the following:



- that they collapse a history of months (or years) into a single 2-3 hour session;
- that they cease to nurse or care for their conflict, and give it up;
- that they move from, at best, resentment, and, at worst, hatred to not just self control, which would be demanding enough, but to magnanimity, or generosity of spirit;
- that they cease to focus on the person(s) as the source of their pain and focus instead on nebulous things called 'issues';
- that they move from their fear of great loss with all the emotions attached to that, to a rational understanding that they must give in order to avoid loss.

Attached to all of this is the often unspoken but always present aspect of **forgiveness**, because 'when someone cannot be forgiven there is no future' (Tutu, 1999:117).

So now we come to what inputs we can provide as mediators to bring about this processing which will have a greater chance of resulting in the outcomes we are seeking. If changing circumstances mean that some of the inputs we once thought important are either no longer possible, or may be replaced with others to achieve the same outcomes, what are the inputs that we cannot compromise on, particularly as we realise what is involved for parties?

Possibly one of the best ways a mediator can check their own priorities is to ask, 'What would I hate parties to say to me at the end of a mediation?' In my case it would be having a party say, 'I didn't have the opportunity to say what I wanted to say'.

For this reason, I concentrate both as a practitioner and as a trainer on **listening in order to encourage parties to keep talking**. So I concentrate far more on **tracking** what has been said than I do on, for example, reframing. For the same reason, I no longer curtail those opening statements, even if they involve rebuttal. Parties' ability to say whatever they want to, is, I believe, what distinguishes mediation from other forms of ADR. Courts do not allow this, and in face to face negotiation parties are hamstrung by the strength of the conflict and the discomfort of fronting 'the other'.

Language is important. There are certain words that I avoid using. 'Compromise' is a very dirty word as far as parties are concerned. They will frequently begin a mediation by saying, 'I will not compromise.'

I have even become a bit toey about referring at the start to the possibility of an agreement. And I never refer to the possibility of their understanding the perspective of the other (cf Bush and Folger: 141). I talk about the possibility of the meeting clarifying their own situation and options. I am not suggesting that other approaches are wrong; I am arguing that if I am working towards the outcomes I seek, I have to be aware of the pain of the feelings of insecurity caused by the conflict and provide inputs that will not threaten the shaky security that exists.

However, to strengthen security, I am very clear at the start about the parameters of our meeting. In most of the work I do as a practitioner, managers ask me to conduct a mediation to 'sort out the problem'. I tell them that I can promise nothing, because I believe in the desirability of parties working out a solution that they can accede to, not something that is imposed, and the mediation may result only in their clarifying their own options. So, even with these provisos, I cannot promise neutrality to the parties because I have told the manager that my aim is at least to have parties achieve clarification. So I am upfront with parties about what I have said to their manager. The honesty of 'never promis(ing) more than (you) can Produce' (Kolb:232) is important in establishing the confidence that is so important to security and to respect.

I think the way we set groundrules or guidelines is vital in creating a climate of respect. And perhaps some of us have become so used to this aspect of process setting that its purpose has become lost. This is another reason why I am advocating the input – transformation – outcomes approach. If I believe in the importance of people saying whatever is on their minds, then instead of demanding non-interruptions, I can say to parties, 'For you to achieve any satisfaction from this mediation you will need to be able to say whatever you want to say uninterrupted. There will be every opportunity for you to address what the other is saying in the course of the mediation.' We are dealing with fine lines between providing security and treating adults with the respect they deserve and rightly demand. Clarity in what we are on about helps us find the language which walks the tightropes.

The inputs I referred to earlier of voluntariness, confidentiality and power balance can also be addressed in other ways, such as:

- 'How willing are you to talk about this?' addresses the question of choice (voluntariness).


- 'What will help you to feel free to talk honestly?' frees ourselves from the sacredness of promising confidentiality which we might not be able to deliver.

- 'What will help in achieving what you're looking for?' goes some way to ensuring a party is not being overwhelmed by another, thus addressing power balance.

I find such questions helpful in achieving the outcomes of competence, respect and awareness of interdependence.

Finally, my experience of the pain conflict causes for people holds me back from forcing interchange between them. Mediators have differing views on this; some ask parties to turn and face each other at a certain point in the mediation, others direct the talk to occur between them rather than through the mediator. I find that parties will do what is comfortable for them quite naturally and without the need for too much direction.

I am arguing that for whatever we do, there should be a reason, not simply that that is the way we were taught and therefore it is the best way.

In summary, I believe that every mediation that is conducted has both a transactional (or problem solving) and transformational (or people changing) opportunity. The two are not mutually exclusive, because giving in order to avoid loss (transaction) is often dependent on the spiritual notions of forgiveness, magnanimity, and sometimes even contrition that Augsburgers refers to (281). What we are in the process of developing is a contingent model which adapts to the reality of the context. I offer the open 'systems' model from management theory to help us align what we hope to achieve with what we put into the process, bearing in mind all the time what the mediation process demands of parties. 

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CPNN is a global website established in partnership with the International Conflict Resolution Centre at The University of Melbourne and UNESCO for the year of Culture and Peace: <http://www.peacekeys.com.au>

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Positive Solutions formerly trading as Community Mediation Service Tasmania
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Bachelor of Legal Studies

University of Western Sydney

Graduate Certificate in Commercial Dispute Resolution

University Of Technology

Faculty of Law, Post Graduate Studies
Graduate Certificate in Dispute Resolution
Master of Dispute Resolution

Macquarie University

Graduate School of Management
Post Graduate Diploma in Conflict Management
Macquarie University School of Law also offers various courses

Charles Sturt University

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SOUTH AUSTRALIA

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Division of Education, Arts and Social Sciences
Graduate Certificate in Mediation (Family)
Graduate Diploma in Conflict Management
Master of Conflict Management

VICTORIA

La Trobe University

School of Law and Legal Studies
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Graduate Diploma in Conflict Resolution
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The University of Queensland

(T C Beirne School of Law)
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OR Email: bigjack@picknowl.com.au

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