

family

FALL 2009

MEDIATION

news

THE QUARTERLY NEWSLETTER OF THE FAMILY SECTION

A Publication of the Association for Conflict Resolution, a Professional Organization Dedicated to Enhancing the Practice and Public Understanding of Conflict Resolution

Feature Article

The Department of Marriage: A New Approach to Marriage and Divorce

By Andrea Schmitt

In 1970, divorce moved away from spousal fault-finding with the “no-fault” divorce act of California. Shortly after that development, divorce rates skyrocketed, reaching a high in the 1980s with about half of all first marriages ending in divorce. With such a large increase in the rate of divorce, professionals in the mental health and legal professions were left wondering, “What would divorce do to children?”

Over the past several decades, researchers have consistently found that when divorcing parties are high in conflict and use adversarial methods for conflict resolution, the effects on their children are



Andrea Schmitt is currently completing her undergraduate degree, with honors in psychology, at the University of California, Santa Cruz. She plans to gain experience in the field before attending graduate school in social work. In her free time, she enjoys playing beach volleyball and hiking in the Santa Cruz Mountains. She may be contacted at: andieschmitt@gmail.com

frequently very negative. As a result of the overly zealous advocacy of many divorce lawyers, who publicly embarrass and humiliate the opposing spouse, parties who engage in adversarial divorce are more likely to escalate and prolong their conflict. Moreover, the longer the adversarial divorce process takes,

the greater the opportunity for the children to be harmed by the process. Of course, too brief of a process could potentially overlook important needs of the children and result in harm, as well. This knowledge led to the development of mediation and collaborative law

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The views expressed in this newsletter are those of the various authors for the purpose of encouraging discussion. Unless expressly noted, they do not reflect the formal policy, nor necessarily the views, of the Association for Conflict Resolution or its editorial staff.

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Dear readers,

This momentous issue of *Family Mediation News* confronts us with lasts and firsts. The lasts include the last articles and sad departures of our long-time columnists Chip Rose and Clarence Cramer.

The firsts include a new columnist, Evan Ash, who is a current member of the Family Section Advisory Council, and who has graciously offered to summarize quarterly each of our monthly teleseminars for readers who are unable to participate directly in them. A second first is the initial issue of "From the Family Chair" by our new, well-seasoned and fearless leader, Steve Erickson, who is now chairing our Family Section. His first message is a stirring call for new action in the Family Section. As Obama came into the presidency to mobilize the citizens to action, so is the style of Steve, as he comes into his Chairmanship.

Within this issue, Chip notes that his article marks his 60th "Creative Solution" (We're pretty sure he's had way more than that!), spanning more than 15 years and two organizations. He first began writing for the Academy of Family Mediators' *Mediation News* for seven years and then continued, after the merger, writing for this publication for eight more years—that's a long stretch, with much creativity and many seminal contributions. Clarence's column, "Ethical Dilemmas," developed by him and written over the years after the merger, has been a stimulating and interactive intellectual vehicle, with



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reader responses published to each dilemma. Clarence has provoked us to think and re-think our daily practices and policies. Many mediators have been saved from the brink of unintentional, unconscious, unethical practices by reflecting on the discussions of the various dilemmas posed by Clarence. On behalf of our membership, I would like to thank Chip and Clarence for their many years of creative and diligent service to both this publication and our readership. I want to let them know that we all will greatly miss their quarterly contributions, and that they have definitely left important legacies to the field of mediation.

In this issue of *Family Mediation News*, yet another of my bright university students, Andrea Schmitt, offers us her innovative, conceptual development of a "Department of Marriage," a notion that she came up with after pondering the research on the effects of bad divorces on children. Her plan elucidates a fairly comprehensive program, from soup to nuts, for bringing the public management of marriage and divorce to a much healthier level for the future of the children subjected to them.

Evan Ash's first column presents succinct summaries of the last three

Family Section tele-seminars. They cover the topics of: 1) Mediating in Spanish for Gringos; 2) Military Families: How Are They Faring in This Time of Repeated Deployments?; and 3) What is Peace in the Family? – Looking at Negative and Positive Peace in Family Conflicts. These stimulating discussions definitely will give our readers broader perspectives on their work.

Lastly, we present a provocative article by Larry Gaughan called "Models." In this article, he asserts that we must develop more tolerance for the diverse ways in which we practice mediation, and not conclude that we can come up with a single-size-fits-all style of mediation. **FMN**

I leave you with this thought:

"A toast to the weapons of war, may they rust in peace."

—Robert Orben
(American magician and professional comedy writer)

Enjoy,

Don Saposnek

Editor

Family Mediation News

A New Approach to Marriage and Divorce

Continued from page 1

approaches, both of which aim to reduce or alleviate the conflict involved in divorce. Although mediation has become mandatory for custody disputes in many states in the U.S., higher conflict cases continue to use adversarial approaches, much to the detriment of the children involved.

While the great majority of divorces are settled outside the courthouse, parties that must deal with the court system have had complaints about the lack of adequate help in attempting to complete their own divorces. They also have complained about the lack of information about alternative dispute resolution options like mediation and collaborative law, the lack of creativity in the family code law, the lack of judicial expertise regarding children and family dynamics, persistent and overly zealous legal advocacy in court hearings and trials, and very minimal inclusion of children in the process. All of these concerns need to be addressed in order to help protect children from the potential adverse effects of conflicted divorces.

To deal more effectively with this reality, I propose that the divorce laws and proceedings be reformed to further diminish adversarial situations and adversarial approaches and greatly improve the lives of children of divorce. More specifically, I propose the creation of a “Department of Marriage” (DOM), an agency that would be separate from the overall court system and would result in a new philosophy focused on more effectively serving the clients’ needs and resolving disputes, rather than on winning and losing. This new federal agency (with each state

Although mediation has become mandatory for custody disputes in many states in the U.S., higher conflict cases continue to use adversarial approaches, much to the detriment of the children involved.

shaping the overall philosophy to suit its local needs) would help guide people through the divorce process, with the premise that the great majority of clients are fully capable of settling their own disputes when given the guidance of knowledgeable advisors. The DOM would provide the following: Marriage classes; effective parenting classes; personal finance advice and finance classes; individual, family, and group therapy; divorce education classes; “do it yourself” divorce classes; and training of lawyers, judges, mediators and arbitrators in the psychological development of children, family dynamics, and the emotional process of divorce. It also would provide training of lawyers, judges and arbitrators in mediation and collaborative law and in conducting private arbitration, private court trials and client-centered custody evaluations.

The DOM would fulfill its client-centered goal by assigning to each divorcing couple a divorce case manager who would be responsible

for informing parties of the dispute resolution options available to them for their current dispute and helping them find an appropriate dispute resolution method for future disputes. Parties that cannot decide on a dispute resolution method would be directed, by their case manager, through a predetermined path of dispute resolution. Through initial screening and assessments of both parties (taking into account substance abuse, spousal abuse, child abuse, intimidation and psychological disorders), the case manager would suggest divorce education classes or therapies deemed beneficial for the client(s) and would track the success of the program and recommend improvements.

Traditional mediation approaches would be recommended first, followed by collaborative practice approaches. If these options did not work, a private court trial would be arranged. If there is a history of spousal abuse, the disputants would be required to start with a collaborative law approach, since the presence of a collaborative attorney could offer a sense of personal support. Private court trials generally would be discouraged, although allowed for those clients who could not use the other dispute resolution options.

Private court trials also would be completely redesigned to reflect a less adversarial approach. First of all, simply having trials in private would eliminate public humiliation because there would be no audience. Although transcripts of trials could be made public, the trials themselves would be held in private. Second, lawyers would only be allowed to speak with their clients, not with the

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A New Approach to Marriage and Divorce

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judge, and would only be allowed to give legal advice. This would increase the clients' self-efficacy because they would be more directly involved in and in control of their case. Clients would speak directly to the judge, informally telling the judge their respective side of the story. Once both sides have been heard, the judge would make a decision ending the dispute. Finally, court trials would only be permitted to focus on those aspects of the divorce that could not be resolved through other resolution methods, thus eliminating the use of the court system as a primary dispute resolution method.

To support divorce-prevention efforts, the DOM would provide marriage classes that would be required to obtain a marriage license. These courses would be taught by a qualified, licensed mental health professional with a Master's or Doctoral degree. Participants would be asked to explore their own marital beliefs, expectations and goals. The instructor would cover topics such as predictable life changes after marriage, communication skills, dispute resolution skills, child development, family dynamics and strategies for coping with stress. The aim of these courses would be to lower the incidence of divorce due to preventable causes such as poor communication or poor dispute resolution skills.

Family law is unique and different from all other types of law because its cases often involve complex family dynamics and high levels of emotion. Further, in family law cases there often is no clear winner or loser, which can make traditional adversarial dispute resolution

Developing new approaches to divorce must be a ceaseless struggle toward improvement that protects the children of divorcing parties.

insufficient and inappropriate. Therefore, it is important that all involved are adequately trained to deal with these unique circumstances. In Penelope Bryan's (2006) book, *Constructive Divorce: Procedural Justice and Sociological Reform* (Washington D.C.: American Psychological Association), the mediator Lenard Marlow responds to this issue eloquently:

"A judge, after all, has to know what a child's best interests are before he can make a decision based upon those interests. But what qualifies a judge to know this? Surely there is nothing either in his training or in his experience that would give him those qualifications. Nor would the legal rules that he would turn to provide him with that guidance; for they are, at best, a very poor instrument by which to determine those best interests. That is why a judge's declaration, that his decision represents what is in the child's best interest, is not judicial wisdom, but judicial arrogance" (p. 58).

To address the lack of expertise,

the DOM would require that all lawyers, mediators, case managers, course instructors, therapists, arbitrators and judges take annual continuing education courses on family dynamics, the psychological development of children, the emotional process of divorce and current dispute resolution approaches and techniques.

Most services offered by the DOM would be paid for by the clients who are using them, except for the mandatory marriage course, which would be paid for with a slight increase in the marriage license fee. To allow access to needed resources for those who cannot afford to pay for them, all services would be offered on a sliding scale, and the payments required by each person would be determined based on their financial circumstances.

Developing new approaches to divorce must be a ceaseless struggle toward improvement that protects the children of divorcing parties. It is important that we always keep in mind the best interests of the child and continue to question whether our current systems are upholding that goal. If we find that they are not, we must change our approach, much as we have done in the past with the advent of "no-fault" divorce. The creation of the Department of Marriage would be yet another step in advancing toward our goal of effectively protecting children. FMN

“Personal and Professional Evolution”

By Steve Erickson

It was in 1977 when I first heard the words “divorce” and “mediation” strung together in the same sentence. Much has changed, but in a sense, very little has changed. I can still hear an incredulous judge ask me in those early years, “How can you possibly expect to help them settle their divorce? The emotions are just too great, and besides, they each need a strong advocate to protect them. I hope you have a lot of malpractice insurance.” I am now better able to answer the judge’s question with a simple response: “We do what we do because it is right, and we keep them so busy they don’t have time to fight. If you push them into an adversarial system, who is going to protect them, and especially their children, from the ravages of the intense competition?”

If you think about it, we family mediators have had a great impact on the system. I had the opportunity recently in my office to hear an attorney known for aggressive behavior in the court say to her client, “These custody labels aren’t that important any more, let’s just try to build a parenting plan.” Thank you to the mediators for encouraging couples to create their own standards of fairness instead of evaluating who is a better or worse parent when measured against the 13 best interests test. The impact of mediation is seen everywhere, yet, an important question remains: Do the members of the Family Section of ACR reap the benefits of our early and current efforts to provide



Stephen K. Erickson, J.D., currently co-chairs ACR’s Taskforce on Mediator Certification and was a co-founder and second president of the Academy of Family Mediators. He is well-known as a mediation trainer and speaker and has published numerous articles and books on the subject of mediation. In 1996, he and his partner, Marilyn McKnight, were awarded the Distinguished Mediator Award by the Academy for their outstanding contributions to the field of mediation. Steve finished his three-year term as board member of ACR in 2005 when he co-chaired the original Certification Taskforce with Marilyn McKnight.

couples with a better system? I sometimes think we are victims of our own success. By that I mean, we must answer the question of how we can make it more likely for ACR family mediators to create a viable living from their work.

If we are a membership organization dedicated to serving our members, then we must ask not only how we can help couples and families improve their lives, but also how our members can continually improve their practices and this profession. I think that this year we must join together to accomplish all of the following:

Finish our work on certification so the public and the profession will have a clear idea of what is good and what is bad mediation practice. I always thought that if psychologists figured out a way to license what they do, we, also, should be able to make progress on this issue. (Nancy Gardner, a Family Section Member is leading this effort).

Create a sample draft for all to discuss of new recommended standards of practice that, among

other things, distinguishes between adjudicative models of conflict resolution and cooperative models of mediation. (I am working with a worldwide group of mediators on this task and am amazed at what is going on around the world. In particular, we can learn a lot from the experiences of practitioners in New Zealand and Australia).

Have a Family Section conference. I miss seeing all of my old friends. I have asked Marilyn McKnight to head up the efforts to find a location that will allow us to get together and truly chart a course for the future. We are thinking about doing some things differently. I am going to personally invite all of the “pioneers in family mediation,” who have been mediating since the beginning, and we also need to have the next generation of mediators there. How about having a summit of all practitioners to chart our future and see if we can reach a consensus on certification, standards, marketing and other issues that help establish the profession as the preferred

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“Beginning and Endings”

By Chip Rose, J.D.

Given the theme of this column, it seems only appropriate to begin with the ending—this is my final *Creative Solution* column. It is also my 60th column, which measures 15 years at four columns a year. Where has the time gone? The idea for the column was hatched by my prodigious editor, Don Saposnek, over lunch at Chaminade restaurant, in the hills overlooking the Monterey Bay, on the central coast of California. The idea was to create a regular column that would produce creative process responses to tough problems from the readers. Sixty columns later, and no one ever did write in with a vexing problem. Those who did bother to write in typically did so to take issue with something I had written. So the column took on its own persona. To fill the 800-900 word limit and deadlines from Don every three months, I drew on my day-to-day experiences as a sole practitioner making a living as a mediator of family matters.

At the Academy of Family Mediators conference in San Francisco during the summer of 1998, Bernie Mayer and I presented a pre-conference institute he had proposed, titled “Beginning and Endings.” The two-part institute provided an examination of the manner in which the end of the process informs the mediator as to the importance of the process structure at the beginning; and, correspondingly, how the strategies at the beginning of the process



Chip Rose, J.D., has a private mediation practice in Santa Cruz, CA, and is currently providing training throughout the United States and Canada on the emerging practice of collaborative family law.

define what will be possible at its end. The simple pairing of these symbiotic process elements served to highlight the organic nature of interpersonal relationship conflicts and pointed to the need for process structures and strategies that respond effectively to the sources and quality of those conflicts. This concept is so engaging and critical to a successful process structure, that more than one of these columns has explored that topic. Now, I find it is the perfect theme for bringing this column to its denouement.

During the life of this column, we have seen mediation grow from its modern origins, as a response to Jim Coogler’s domestic travails, to its ever-expanding application to all manners of disputes. Like plants emerging from the cracks in cement, evolving theories and pragmatic practice models have refused to be contained by the limits of specific philosophical or theoretical orthodoxies. Controversies emerge, advocates and opponents square off, and new ideas are engaged. As time passes, the controversies lose their steam and the profession becomes more

nuanced in the range of accepted forms of practice.

My own private mediation practice has been the Petri dish in which I have been experimenting for the last 30 years with a wide variety of approaches and techniques, as I have continued to search for greater capacity and more sophisticated skills as a mediator. As I expanded my involvement in the field by presenting at conferences and giving workshops, I discovered how much one can learn by teaching. If the first phase of my professional career as a mediator was the education I got from doing it, then the second phase has been characterized by the education I received by teaching and writing about it. To that end, this column, on the one hand, has been a pipeline for communication, and on the other hand, a recurring exercise in reflective contemplation.

Looking back, these 60 columns represent a kind of archeological dig, as I take stock of the growth of my own practice and the evolution

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The Creative Solution

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of the field. Glancing over the first column from August of 1994, I am reminded of Bateson's learning circle: elements of conscious incompetence keeping company with examples of conscious competence. When I fast forward to columns in the later years, I am made mindful of strategies and interventions by which I have become unconsciously competent. Strategies of which I was gaining consciousness have become thoroughly ingrained in my practice approach, such that I do not even think about doing them.

This brings the learning process full circle. As I reflect back on the times when these columns were written, memories come flooding back: The AFM conference in Eugene, OR, where the seeds of the *Woodstock* video that Don and I created was born out of a walk through the Saturday market as we time-traveled back into the 1960s; the struggle to acclimatize in Breckenridge in 1996 while presenting our *When Mediation Ends in Murder* workshop; Arnie Scheinvold's playing Charlie McCarthy to my Edgar Bergen in order to give my report to the Board of Directors after I lost my voice; watching the rapture on Will Neville's face as he downed one butter-soaked stone crab after another in Miami, followed by his graciously picking up the tab for the whole table; and the idyllic setting of the summer conference on Cape Cod and the long walk on the beach with Nina Meierding, while talking about the art of training. These are just a few of the thanks-for-the-memories moments that these columns conjure up for me.

Finally, I'll mark the ending by

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going back to the beginning. I need to thank my colleague and partner in crime, Don Saposnek, as my co-director and co-actor in all our videos that we presented over the years at conferences. Moreover, this column would never have happened without his encouraging suggestion that I do it. Beyond this one column, the entire publication of the *Mediation News* of AFM and the *Family Mediation News* of ACR, are the product of his tireless, patient and creative efforts over this same time-span. Responding to his invitation to conspire on the first *Mediation Bloopers* video in 1991 became a life-changing professional moment for me, for which I will remain eternally grateful. If Bateson is correct, this brings me back to the beginning and the need to discover that for which I am currently unconscious and incompetent. While I ponder that challenge, I will close by saying that it has been a privilege and an honor to have had this space to play in for all these years, and I look forward to the beginning of the next chapter in life, as this one quietly comes to a conclusion. FMN

From the Family Chair

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choice, not just as an afterthought alternative?

- Continue to offer our teleseminars and better manage the Advanced Practitioner program.

- Share our practices through video/DVD productions showcasing various segments of a mediation process. I ran into someone who told me that they are still using some of those old mediation training tapes because they are the best. We should be sharing our talents and teaching others.

- Improve our Web site and methods of using the internet to connect with each other, to exchange ideas and stay vibrant.

As this field matures, more and more colleges and universities are developing conflict resolution centers and curricula. We mediators would be well advised to work more closely with them in research and in developing training materials. I think the days of the 40-hour training are numbered, but the mentoring and internships in mediators' offices are becoming a more important element of teaching and training.

I hope all of you will join with me to work this year in taking a giant leap forward. During the year, I will be attempting to talk to many of you by phone or communicate with you by e-mail on important subjects. Please do not hesitate to call me at any time with your ideas or an offer to help. My phone number is 952-835-3688 and my e-mail is steve@ericksonmediation.com.

FMN

Ethical Dilemmas: What Would You Do?

By Clarence Cramer

Note from the Columnist:

As this is my last column, I want to thank all of you for the encouragement you showed over the past six years. My stint on the ACR Family Section Ethics Committee is over. A new chair will be appointed. And, since I have retired from my position of 31 years with the courts in Arizona, I will be goofing off for some time. Perhaps I will rejoin you later. So, in the meantime, please keep up the great work you are doing, and let's keep the profession of mediation one where we "do no harm."

New Fall 2009 Dilemma

Prior to becoming a mediator, Chloe worked as a therapist at a family counseling office that also offered divorce mediation services. It was not uncommon for her, or others, to overhear parts of some mediation sessions, especially the argumentative discussions. One day, down the hall from her office, Chloe overheard an argument between a husband and wife. Chloe was familiar with the family, as they had been receiving mediation services for the previous two months. During this particular session, the woman was yelling so loudly and seemed so angry that Chloe considered intervening. Chloe reconsidered and thought that since she heard no sounds of violence, it would require no action on her part. Upon leaving, the



Clarence Cramer has been Chair of the Family Section Ethics Committee and former Director of Family Services of the Conciliation Court in Coolidge, Arizona. He can be reached at: mediator2@cox.net

Chloe was unsure if she should reveal what she overheard several years earlier while discussing prior contacts with this couple.

couple's four-year old daughter, who was in the room during the session, mentioned to Chloe, "Mommy was hitting my Daddy." The child was tearful but Chloe could only give a friendly smile at the child as she left with her parents.

A few years later, when Chloe was a mediator, the same mother called for a court-ordered mediation appointment to discuss changing the couple's parenting plan. Chloe remembered them. She spoke with each parent by telephone and scheduled individual screening

conferences. Chloe was unsure if she should reveal what she overheard several years earlier while discussing prior contacts with this couple. What would you do?

What would you do?

Please e-mail your response to the FMN Editor Don Saposnek, at dsaposnek@mediate.com.

Summer 2009 Dilemma – The Facts (reprinted here):

What would you do in the following situation?

While vacationing, Eve received a call from her office manager, Joe. Joe related to Eve that a complaint was filed with her licensing board concerning the Armstrong case. Eve was expected to file an initial response to the complaint within 20 days. With this information, Eve decided it best to end her vacation early to deal with the matter.

Upon reviewing the Armstrong file, Eve remembered that the

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Ethical Dilemmas

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husband, Lou Armstrong, became quite upset during the last and final mediation session, expressing a strong belief that Eve was siding with his wife, Grace, in reference to the spousal support issue. Eve believed that the issue was mutually resolved when each party agreed to an amount of spousal support that Lou would pay to Grace for a certain period of time following the divorce. Apparently Lou was not satisfied, and he filed the complaint against Eve.

Upon reviewing the complaint and discussing it with her lawyer Eve learned that due to the convoluted information provided during the mediation, it would be necessary to reveal confidential information pertaining to both parties in order to adequately respond to the complaint. Her lawyer advised her that it would be in her best interest to have the written consent of each party prior to releasing information to the licensing board.

As it turned out, Grace's lawyer advised Grace not to consent, as the lawyer believed it would weaken her divorce case should Lou later use the information in court. Grace refused to sign a release of information.

At the suggestion of her lawyer, Eve consulted with Jerry, faculty at the state college who taught mediation and negotiation classes. During the consultation, Jerry inquired as to the content of Eve's written agreement to mediate. After discussion, Jerry learned that although Eve's agreement contained the standard limits of confidentiality (i.e., mandatory reporting, threats, child and elder abuse and the like),

it did not contain a limit to confidentiality regarding the complaint process. Jerry stated he could not help her with this matter, but suggested that Eve include a statement that would cover this matter in future mediations. Jerry provided Eve with a sample statement that read:

Should any complaint against the mediator(s) arise as a result of the mediation subsequent to this contract, confidentiality is waived with respect to that information necessary to present or defend against such a complaint.

Eve was grateful and thanked Jerry but was now unsure about how to proceed with the complaint process. What would you do? **FMN**

READERS' RESPONSE TO Summer 2009 DILEMMA

Dear Clarence,

Kudos to you again for an excellent job.

Mediation is voluntary and, unlike arbitration, nothing is binding. Clients are entitled to change their minds and, if they do, they can make the modifications to and or annul the Memorandum of Understanding.

The function of successful dialogue is to permit clear communication. Finding neutrality within the plethora of emotions of parties involved in conflict will potentially bring a resolution. Perhaps, Eve could have better served her clients if she had been more astute and attentive to the dynamics within the last session and had not added more confusion to the process. Being in touch with the

clients' needs is imperative. No mediation should end with one party being angry - this is an indicator that more work is required and perhaps the mediation is incomplete.

While mediators utilize a range of "Mediation Contracts" and work in different jurisdictions, the work is the same. Mediation is a voluntary and a confidential process, one in which we do not dispense legal advice; that is the job for a client's attorney. While the process of mediation is adaptable to the needs of the client, there is a fixed criterion: mediation files are confidential. Furthermore, while clients may break confidentiality, may retain an attorney, and may file a complaint against the mediator, this does not necessarily obligate the mediator to give up the mediation file; confidentiality implies that mediation files are not to be shared. This responsibility then rests with the mediator. Breaking confidentiality is not easily justifiable but could become relevant in select cases. The rights of the mediator and the rights of the clients always need to be clarified. In this case, perhaps the mediator needed some clarity of the issues that unfolded in the last session, which would have allowed completion of the mediation without legal and ethical controversies and entanglements. We need to be careful not to be invested in our clients' outcome but to be invested in becoming effective with our "issue-spotting" tools.

Mary Damianakis
Quebec, Canada

Teleseminar “College”

Summaries by Evan Ash

The ACR Family Section provides monthly one-hour teleseminars on topics that expand and support the practice of its members. Each Family Mediation News edition will share a summary of recent seminars. These seminars provide continuing education opportunities for Advanced Practitioners and others. Recordings of these and other teleseminars are available for listening at <http://www.acrfamilysection.org/Teleseminars/TeleseminarRecordings/tabid/72/Default.aspx>.

Check the Family Section web site at <http://www.acrfamilysection.org> for news of future seminars.

Mediating in Spanish for Gringos

(Michael Hennecke Teleseminar presented August 5, 2009)

An increasing part of family mediation practice is with Spanish speaking families. Michael Hennecke is a Spanish interpreter and the Foreign Language Coordinator for the Kansas Tenth Judicial District. He provided information and suggestions to help mediators be more proficient with these families.

Michael explained that terms like *Hispanic*, *Latino*, and so forth, may be used to talk about persons with Spanish-speaking heritage. Since no one term has been broadly adopted by these persons themselves, however, it is best to ask them



Evan Ash is an ACR Advanced Practitioner who serves as the Program Chair of the Family Section’s Advisory Council, coordinating these teleseminars. He is a mediator in the Kansas Tenth Judicial District, in the larger Kansas City area, and also supervises its clinical training programs. Evan also teaches classes in mediation and parenting.

which they prefer as they come from diverse racial, ethnic and socio-economic backgrounds. In the United States, most Spanish-speaking immigrants and later generations came from Mexico, but past migrations from Puerto Rico, Cuba, and Central and South America also may shape the populations in different parts of the country, each bringing its own distinct culture.

Michael said the demographic shift has been most evident since 1970, as the Spanish-based population has grown to 15 percent of the U.S. population, with 65 percent originating from Mexico. In that nearly 40-year period, various public policies have affected that migration, especially those that have focused on workers, and more recently on families. And, the household configuration has shifted with second and third generations. Regional differences in the United States reflect local economic labor conditions, resulting in greater concentrations wherever work was

possible to obtain.

Michael pointed out that Spanish last names can be confusing. Typically children take their father’s family’s last name, then their mother’s family’s last name, with both combined as their last name, often hyphenated, in American usage. Parents may not have the same last names as their children. However, when the parents adopt U.S. norms, they may follow the conventional U.S. name format.

Besides some of the predictable cultural considerations of generation, gender, and socio-economic status, Michael said the role of the family over the individual, and distrust of the legal system based on different models and abuses in their homeland can frustrate the mediator fostering self-determination.

Michael said that working with interpreters requires teamwork and recognition of each practitioner’s role in the process. Both share

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ethics of confidentiality and impartiality. The mediator can help the interpreter by avoiding U.S. idioms that do not translate well into Spanish, managing the length of each part of the dialogue and sessions to ensure the interpreter is not exhausted, and expecting the interpreter to play a role beyond interpreting or translation (written documents). Computer translation tools can help generate written content, but they are not reliable for nuances of words and idioms. Caution should be used, and it is highly recommended to have an editing resource.

Military Families: How Are They Faring in This Time of Repeated Deployments?

(Lynn Malley Teleseminar presented September 2, 2009)

Lynn Malley shared her understanding of the needs of families in which a spouse has been deployed for military service overseas and faces the challenges of reintegration back into American culture from a war zone. She noted that such challenges have strained those families, especially for reservists or members of the National Guard.

Reserve/Guard (R/G) families are often isolated in larger communities and do not have the camaraderie of other families or the military culture available for ongoing support, Lynn said. Their access to services specifically designed to provide support is difficult. Whereas active duty personnel stationed on bases have these services readily available, reservists with the Guard do not.

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The expectations of military culture are more suited for war. The emphasis in this sub-culture is on loyalty to unit, handling weapons, controlling one’s emotions, and constant vigilance that requires shifts in attitude when returning to family civilian life. The R/G returnee returns to a world that is not as conducive to these expectations. Lynn said challenges from post-traumatic stress or economic challenges may produce more occasions of domestic violence and other maladaptive responses. She noted that one-third of U. S. returnees report emotional problems with family members. Twenty percent of these have ended in divorce. Each R/G returnee, on average, touches the lives of 12 family members and 40 co-workers, so the impact is greater than generally recognized. Thirty percent of service members who enter college after deployment drop out.

Likewise, R/G family members change as the remaining spouse takes on more independent

responsibilities and develops new competencies. But resiliency can be strained and overwhelmed under these circumstances. Economic challenges and emotional strain may result in child neglect.

Lynn said that “Yellow Ribbon” legislation has been created to address these challenges. This legislation fosters services at three levels: service member, family and community. Effective programs offer pre- and post-deployment counseling. However, the resources provided may be spotty at the local level, as they are developed at the state and community level. Local awareness of the problems determines what services will be available and the level of outreach to families.

Lynn provided some examples of current services including: *giveanhour.org*, which was developed for therapists who donate an hour a week to members in the Service; *lawyerservingwarriors.com*, which is for attorneys who volunteer to provide services for returnees, and *esgr.org* (Employers Supporting Reservists and Guard Members), which offers a mediation program and clinics using volunteers. Lynn pointed out that perhaps **the** most innovative service being offered relates to action taken by the Canadian military. Mediators are embedded in units to deal more directly with the challenges of both service members and their families, and training in interest-based communication skills for both service members and their families has reduced the number of returnees

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with emotional problems.

Lynn Malley's web site at www.mediate.com/malley provides more resources for mediators and their clients.

What Is Peace in the Family? – Looking at Negative and Positive Peace in Family Conflicts

(Douglas Noll Teleseminar presented October 14, 2009)

In a special edition of the teleseminar program for Conflict Resolution Day 2009, Douglas Noll helped us look the fundamental challenge of finding peace in the family. Using the work of Johan Galtung's book, Peace by Peaceful Means: Peace and Conflict, Development and Civilization (1996) as his backdrop, Doug laid out the differences between "negative peace" and "positive peace." Distinguishing between these two perspectives aids the mediator's ability to lead the parties to resolutions that bear fruit long after the current dispute.

Doug said that "negative peace" is the result of the use of power, force or coercion to create a moment when violence has ceased, i.e. using violence or overt conflict behavior to end conflict. But the condition does not bring lasting peace. Adversarial approaches aggravate. "Positive peace" is seeking a right relationship between people, resulting in respectful, collaborative, mutually beneficial outcomes for all concerned.

From childhood, when we were told to "sit down and be quiet," we

As mediators, we are the perfect people to teach the ways of "positive peace," especially in family settings.

have all been schooled in the use of "negative peace," so it becomes, without question, our typical response to the discomfort of dispute. Yet, as mediators, we are the perfect people to teach the ways of "positive peace," especially in family settings. Doug said that giving focus to future relationships and growth provides an avenue and purpose to perform the function of teaching the ways of positive peace.

Doug stressed several skill sets for this work. Because "negative peace" is driven by emotions, a focus on "injustice" and "identity" will surface the feelings generated in each person, whether it be the attacker or the attacked. This will get to the sources of energy in disputes and help parties identify the potential, often common, sources of solution, though expressed in different ways. Even the use of ground rules can emphasize "negative peace" or become "teaching moments" to foster more positive responses.

In the end, Doug said, a mediator will know how effective his or her approach will be by the quality of the outcome; was there only settlement...or was there also healing? FMN



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Models

By Larry Gaughan

The continuing discussion as to models of mediation seems to miss a very important point. Every mediator either practices exclusively in one model or uses different models, depending on the needs of the case. The testing point for any model of mediation is whether it leads to a fair and workable agreement within a reasonable time frame and does not do so through the use of inappropriate techniques.

Because we mediators come from different professional backgrounds, we are always tempted to prefer the models that most conform to our training and experience. No mediator who achieves effective results in an ethical manner should ever have to apologize for doing whatever he or she does best, if that fits the needs of the case.

Mediation had a rich history in other fields, such as international relations and commercial disputes, before it ever came to be used in the field of domestic relations. Anyone who has studied the history of mediation should recognize that there is a rich variety of successful approaches to mediation. The field of mediation has grown and prospered because it has recognized the importance of calibrating the kind of approach a mediator should take to the needs of the case and the goals of the clients, rather than limiting it to the particular background, skills and preferences of the mediator.

If I am an orthopedic surgeon,



Larry Gaughan was trained as a mediator with Jim Coogler from 1979 to 1980, is a co-founder of the Academy of Family Mediators, was a law professor from 1964 to 1987, and has been mediating since 1980.

my training and experience tell me to look toward either medication or surgery as the most likely solution. On the other hand, if I am a chiropractor, my background tells me to consider spinal adjustment as the more probable remedy. Orthopedic surgeons are not trained to do spinal adjustments, and chiropractors cannot do surgery or prescribe drugs. So, if you are the patient, you probably will not get anything fixed if you take your back problem to the wrong kind of practitioner. Similarly, mediators need to offer a range of service models that addresses the unique needs of their clients, rather than only offering a 'one size fits all' model of intervention.

The more different kinds of skills and knowledge a mediator has, the more likely it is that he or she can apply a model that will get the job done properly, i.e., get a signed agreement that is both fair and workable. Mediators who only have training and experience with one model of mediation should be cautious about using a different model, and they also should not be telling mediators who have used

other models successfully that they must limit the scope of their practice.

So, we should not be talking about models of mediation in the abstract, but rather which models work best with which cases. And we should define models more in terms of the needs and appropriate expectations of our clients, rather than the preferences we have as mediators based upon our own background and experience.

If mediation is really to be an interdisciplinary profession, anyone who enters the field needs to understand the immense differences among the kinds of domestic relations cases that present themselves in a mediator's office. After nearly 30 years of experience as a mediator, and having served perhaps 3,200 cases, I still see new reminders of this every week. Whatever the mediator's professional background may be, understanding the varieties of models of mediation, and the ethics of using one or another, is truly a lifetime project. So please, let us avoid "fundamentalist" approaches to models of mediation. **FMN**

Salem receives William T. Grant Foundation Fellowship

Peter Salem, executive director of the Association of Family and Conciliation Courts (AFCC), is one of three Distinguished Fellows selected this year by the William T. Grant Foundation. The Fellowship is designed for those who are in mid-career and influential in their roles to create connections between research, policy, and practice. Fellows use their experiences to return to their primary roles and work to increase the supply of, demand for, and use of high-quality research in the service of improved youth outcomes.

Salem has worked for AFCC since 1994 and was previously a director and mediator in a Wisconsin court-connected mediation program. He will use his Distinguished Fellows award to become a more effective consumer of research in order to systematically integrate social science research into the family law

community and facilitate partnerships between researchers, practitioners and policymakers. He will work with Irwin Sandler, Sharlene Wolchik and David

MacKinnon at the Arizona State University Prevention Research Center, which specializes in research on children of divorce. **FMN**

Call for Submissions to Family Mediation News!

You are invited to submit content (and accompanying graphics) to the newsletter in the form of unpublished articles, general interest columns, news updates, Section news, calendar information and letters to the editor.

Submission Procedures

Please submit unpublished articles that provide pertinent and engaging information, research results, practitioner tips, and/or examples of programmatic success in the area of family mediation. The editor will review submissions on a rolling basis and will recommend for publication those entries that provide fresh ideas and perspectives. The author will be asked to provide a photo to accompany the article, preferably via e-mail. Authors will also be asked to sign a Permission to Publish agreement.

News updates, Section information, calendar information, and letters to the editor are also welcome. All submissions should be emailed with complete contact information (name, address, phone, fax, e-mail, professional affiliations) to Don Saposnek at dsaposnek@mediate.com.

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