

# family

FALL 2006

# MEDIATION

# news

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

THE QUARTERLY NEWSLETTER OF THE FAMILY SECTION

Feature Article

## New Joint Physical Custody Research Confirms Pioneering Ideas of Meyer Elkin

By Chris Hahn, Ph.D. MBA

Thirty years ago, Meyer Elkin, a senior statesman of the conciliation courts movement, had already worked with many joint custody families. In 1976, he published six parental criteria that would “suggest success” in joint custody arrangements. Yet, until I finished my nationwide research into the characteristics of parents who had successfully maintained long-term joint physical custody arrangements, I had never heard of Meyer Elkin. After writing the study’s conclusion, I stumbled across a five-page article by Elkin in a 1991 book edited by Jay Folberg titled *Joint Custody and Shared Parenting (Second Edition)*. The article was an eye-opener.

In the years that followed Elkin’s original writings, several empirical



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studies and papers were written comparing the efficacy of joint custody arrangements to other types of custody arrangements and to intact nuclear families. Still, relatively little research had been conducted on the internal mechanisms that allow joint physical custody arrangements to succeed. My study was designed to provide an empirical view of the inner workings of dual-home

families. (Note: Because “joint physical custody” is now a contentious term, I coined and use the term “dual-home families”).

The participants in my study were dual-home parents who effectively maintained their parenting arrangement for at least five years. To make the results of the study as broadly generalizable as possible, participants were selected who

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Dear Readers:

As Election Day approached this year, I found myself swamped with those colorful cardboard-stock campaign notices promising this and that if you vote for their candidate. Once again I was struck with the promise that “our candidate has been a strong supporter and on the frontlines of “The War on (fill-in the blank here; sexual predators, drugs, violent career criminals, illegal gambling, firearms, abortion, prostitution etc.)”. This concept of “The war on...” continues to ruffle my sociological/political feathers. Increasingly it seems, we apply this term to any challenging social situation that we encounter as a nation. This rhetoric frames several things about our national response to unwanted circumstances; for one, it implies that there is a problem that we can solve; two, it implies that we must use force to overpower and eliminate it; three, it implies that we can win (after all, why would you enter a war that you didn't think you could win (Iraq notwithstanding, of course))?

Responding to challenging social situations by escalating conflict (i.e. war) is what we, as family mediators, see our clients do all the time. And, we regularly encourage them to not see divorce as a battle, but as a reality of their lives within which there are real problems to solve (i.e. dividing assets, setting support levels, developing a parenting plan), as well as real dilemmas (i.e. unsolvable problems). It is the latter type of circumstances—the dilemmas—that our politicians, in other social



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arenas, are promising to solve. This unfeasible promise, based on a faulty perspective, is what creates mistrusting cynics of our citizens. We simply cannot solve problems that are dilemmas (which, by definition, are unsolvable!).

A better way to look at feasible interventions for such dilemmas is the notion first posed by John Haynes (1981) and later by Jay Folberg and Alison Taylor (1984) – that after the solvable problems are solved, the remaining conflict needs to be managed. Certainly, the best of parenting plans, for example, cannot solve the basic problem for a child of divorce who, in the best of circumstances, regularly must shift between two homes and miss one of his or her parents 100% of the time for the rest of his or her life. Nonetheless, the mediator can help the parents come to terms with managing their on-going relationship so as to minimize conflict and miscommunication between them.

So, maybe we don't really need to create a war on sexual predators, violent career criminals, illegal gambling, firearms, abortion and prostitution. Maybe it's time to recognize that these social annoyances are not going away and cannot be “solved”. However, they could be managed, and for good management one needs effective,

creative, collaborative interventions—not WAR!

To continue our efforts at better conflict management, we lead off this issue of Family Mediation News with our feature article by Chris Hahn, a new and innovative mediator/researcher. His research on joint custody finds new validation for the old wisdom of the senior statesman of the conciliation courts movement, Meyer Elkin.

We also have a brief farewell message from our out-going Family Section Chair, Susan Edwards, and a welcome message in the first column from our newly elected Family Section Chair, Mary Ann Lawson. Chip Rose, inspired by the recent acts of heroic forgiveness by the Amish community, explores the challenge of helping mediation clients “let go” of unhelpful positions, feelings and pride.

Clarence Cramer presents an ethical dilemma involving a feisty adversarial lawyer who sits in on the mediation session with his client and snipes at the opposing client.

In the first of a two-part article, Woody Mosten and Diana Mercer offer us their experience and wisdom by introducing three advanced interventions, some which skilled mediators are practicing reflexively and some which will be new and

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## Challenge to the Family Section:

By Mary Ann Lawson

I am pleased to have been asked to serve as Chair for the Family Section of ACR, and I am excited about the challenges we can explore together in the year to come.

I have a passion for family mediation. The reasons for that passion are particularly clear at this moment as I sit in the hospital room of my 91-year old mother who has, in the past six weeks, suffered both a broken hip and a stroke. I simultaneously await the birth of my second grandchild and look forward to celebrating the holidays with three-year old Sam. Family is what it is all about! It is within the family system that we first experience conflict – it is within the dynamics of changes in family roles, crises of sickness, transition, new life and death that the potential for conflict is most challenging and the realization of healing most significant.

I have recently been working on several committees of ACR which are reviewing the standards of practice and considering the ethical implications of mediation.

I am struck by the parallels between what we define as the values which establish the foundations of good mediation practice and the qualities of good family life.

In particular, we talk about confidentiality, informed consent and self-determination as primary

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Her mediation practice is TalkWorks. Mary Ann was appointed by the Chief Justice of the Supreme Court of South Carolina to serve on the Commission on Alternative Dispute Resolution. She is the Past Chair of the South Carolina Council on Mediation and Alternative Dispute

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## Farewell Message

by Susan Edwards

### Out-going Family Section Chair

I want to offer a few words of farewell and thank everyone for the opportunity to lead the Family Section over this past year. I want to take this opportunity to reflect a bit as well. I feel compelled to mention again my admiration for those who successfully live their stated values, as I wrote about in an earlier column. As part of the ACR delegation to South Africa in which we learned about the extraordinary work of the Truth and Reconciliation Commission, I was reminded about the power of forgiveness. And who among us has not learned something about forgiveness from the Amish community recently. There is a lesson here for our lives and for our mediations. I leave this position with the personal challenge to use the knowledge of these tragedies to create change in our world.

And, I leave the Family Section in the able hands of our new Chair, Mary Ann Lawson and Chair-Elect, Russell Gerrard. They'll both do a great job. Don't miss this chance to help them out by getting involved. So, farewell and thank you. It's been quite a ride and a lot of fun! **FMN**



**Susan Edwards** has been a family law attorney in practice since 1979 and a family mediator since 1993. She is also a member of a local Collaborative Family Law Affiliate, does negotiation and mediation training, and is a conference presenter on ADR and family mediation.

## New Joint Physical Custody Research Confirms Pioneering Ideas of Meyer Elkin

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diversely spanned socio-economic, racial and educational boundaries and demonstrated varying degrees of inter-parental hostility. In-depth interviews were collected from 21 participants from 12 dual-home families in six states across the country. The transcripts were coded using qualitative techniques resulting in 520 initial codes that were reduced to 32 focused codes, 19 categories and six theoretical concepts.

Before I discovered and read Elkin's article, my conclusions consisted of the following:

1) Dual-home parents have a strong commitment to parenting which contributes to helping their children grow up in a dual-home environment. Many are very unhappy about their divorce but nevertheless believe that both parents are important. They support interaction with the extended family of their ex-spouse.

2) Dual-home parents try to do what is best for the children. In one form or another almost all parents mentioned "putting the children first." They have different styles of disciplining their children but spend time with their children and often give them a lot of decision-making power.

3) Dual-home parents keep their lifestyles in check, often foregoing dating in the presence of the children. They live near their ex-spouse, sacrifice for their children and enjoy the reward of knowing they are doing their best for them. Most enjoy their regular periods of personal time without the children, but, for some, the absence of their children during their "off" times is very painful.

Dual-home parents  
have a strong  
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environment.

4) Dual-home parents cooperate in spite of negative feelings towards each other. Virtually all participants developed mechanisms for handling negative emotions, for keeping disagreements from children and for establishing acceptable boundaries with their ex-spouses.

5) Dual-home parents adequately coordinate parental activities. Communication techniques varied widely, but effective communication takes place. They have accepted, sometimes grudgingly, a certain loss of control to their ex-spouses, as well as the give and take of support, respect and trust.

6) Dual-home parents overwhelmingly displayed flexibility in their scheduling of custodial time and holidays. Many also showed flexibility in dealing with financial matters as circumstances changed.

During the study's span of about 3.5 years, I kept abreast of new studies published. After I wrote the conclusion to my study, I decided to take another look at the literature. To my surprise, on my bookshelf, I

found something old that had me question whether I had actually found something new. Because Elkin's article did not appear to be research-based, I had overlooked his five page article titled, "Joint Custody: In the Best Interest of the Family" (Elkin, 1991). However, a quick glance at Elkin's six "Criteria for Successful Joint Custody" amazed me:

### **Meyer Elkin's Criteria for Successful Joint Custody:**

- Parents who are both committed to making joint custody work because of their love for their children and desire to be involved with their lives.

- Parents who have a good understanding of their respective roles in a joint custody plan and are willing and able to negotiate differences.

- Parents who are able to give priority to their children's needs and are willing to arrange their lifestyles to accommodate their children's needs.

- Parents who are able to separate the husband/wife roles (where the anger started) from their parental roles.

- Parents with a reasonable level of communication and willingness to cooperate.

- Parents who have the potential flexibility to make changes in the joint custody arrangement as the developmental needs of their children change.

After reading Elkin's article, I immediately tried to locate him. I wanted to know how he reached his conclusions. Sadly, I learned that he had passed away many years ago.

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# Advanced Mediator Moves

By Forrest S. Mosten and Diana Mercer

Once the 40-hour basic training is over, and newly minted mediators have practiced reflective listening and making agendas, it quickly becomes clear that beginners' interventions can only take a mediation so far. As the field of alternative dispute resolution in family law matures, reflective practitioners find that willingness to mediate or work collaboratively does not necessarily translate into cases that are easy to settle. Sophisticated approaches to complex cases are needed to address the special requirements of more complex and higher conflict cases.

This article introduces three advanced interventions, some which skilled mediators are practicing reflexively and some which will be new, requiring some practice.

## Advanced skills:

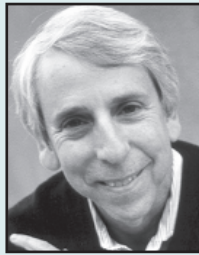
- De-positioning an entrenched party;
- Changing the perception of gap;
- Party presentation of offers.

## Mediator Intervention:

### De-Positioning

In caucus, you can work on de-positioning the most entrenched party by:

- Accurately restating the party's position;
- Asking the party: If a judge accepted your position; how would that benefit you?
- Squeezing those benefits dry—



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keep asking that question until the client is all out of ideas. Add a few of your own if the client runs out. The idea is to exhaust the concept of the benefits of the client's position;

- Restate and summarize all the benefits of the client's stated position, then ask "If an ultimate settlement dealt with each of these concerns, would you consider settling on that basis?"

The idea behind this intervention is that parties must feel heard before they're ready to change.

The keys for success in this intervention are:

- Be accurate in restating the party's position;
- Lean over backwards to accept

the party's stated goals, even if you don't agree with them;

- Go for the baby-step toward an agreement and don't rush the agreement itself. What you're doing here is creating a readiness for an agreement, not the agreement itself.

You can use this technique with just one goal or issue or the overall settlement. What you're doing is helping the party to create his or her priorities. You're also helping them to truly examine whether they really want to do what they say they want to do. It's a very gentle version of a reality test coupled with goal-setting and goal-prioritization. Let the party come to their own realization that they want to change—they don't want to hear

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## Challenge to the Family Section

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values guiding our work. Are these not somewhat analogous to the developmental needs for safety, competence and independence which are first experienced from birth to adolescence and then repeated throughout the family life cycle? For this reason, the process of mediation is particularly well-suited to the resolution of conflicts within the family system and our more intimate relationships.

ACR is stepping up to the plate to set the standards for the practice of mediation as a distinct and specialized profession. The Family Section, because of the unique and vital function of family in all our lives, has an especially important part in this process. Our areas of practice are expanding as we better understand family systems and seek to be responsive to the needs for conflict resolution at all stages of the family life cycle.

We now recognize the very appropriate contribution of the mediation process to pre-nuptial and habitation arrangements; issues of parenting with parent/teen concerns, working with schools and agencies and special needs children; guardianship, eldercare and estate planning issues; decisions in family-owned and closely-held businesses; separation, divorce and post-divorce agreements; and parenting with divorced couples, step-families, adoptive parents and adults with special needs.

We find ourselves considering issues of style and perspective in the practice of our profession as we define our standards and refine our skills. We face opposition from some. We are aware of the need to educate people about our services.

Our areas of practice are expanding as we better understand family systems and seek to be responsive to the needs for conflict resolution at all stages of the family life cycle.

These and other challenges face us in the year ahead.

I was captivated by the healing potential which family mediation offered when I was first introduced to it in the mid -1980s, and I remain today committed to making mediation available to all families as they seek to resolve the very complex and personal conflicts of intimate relationships and family life.

We have a long way to go to reach that goal. I invite each of you to join with me by actively participating in the work of the Family Section of ACR. We have active committees which need your help and an open forum for collaboration as we strive to provide family mediators with the resources they need to work towards resolution and reconciliation in this most important arena. Check the website often for updates and opportunities to get involved.

I look forward to hearing from you and to meet many of you as we pursue this worthy goal. **FMN**

## New Joint Physical Custody Research Confirms Pioneering Ideas of Meyer Elkin

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That did not lessen my curiosity about the man. Over lunch, Don Saposnek recalled some fond memories of Mr. Elkin, but he knew of no details relating to the article, so he contacted Jay Folberg, who responded as follows:

“Sometime it requires research to substantiate the obvious, or provide an academic basis for common sense, which is what Mike Elkin offered. I do not have the *Conciliation Courts Review* available for reference, but I believe Mike based his piece in the 1984 Joint Custody book (1st Edition) on his editorial “Reflections on Joint Custody and Family Law,” appearing in *Conciliation Courts Review*, 16 (13), Dec. 1976, at p. iii. I remember helping Mike refine the language after I asked him to expand on his editorial, which I considered ground-breaking.”

Jay Folberg is right on multiple fronts, and certainly the editorial was groundbreaking. It is great when experience-based common sense from 30 years ago supports, point by point, the labors of a contemporary research project. To those of you who knew Mr. Elkin, I hope this article brings fond memories. To those curious about the inner-workings of dual-home families, you now have convergent conclusions drawn from different generations and epistemological approaches. **FMN**

# Letting Go

by Chip Rose

I find myself musing, once again, on a topic about which I remain continually curious. It is posed in the question: What is it that is present in the circumstances at the end of a case that allows settlement to be reached that was missing at the beginning of the case? Clearly, many candidates qualify as the answer to that query, but one, in particular, keeps coming to mind—that is the act of letting go. Several weeks ago, as I was considering various aspects of this topic for this column, the news centered on the tragedy visited on the Amish community in Pennsylvania that ended in the killing of a number of their children in a one-room schoolhouse.

Every parent’s nightmare is suffering the loss of a child. What happened to this non-violent community defies comprehension. And then, in the context of this dangerous and violent world in which we live, the parents of those children, with the support of their community, demonstrated the ultimate act of letting go—they forgave the killer who took the lives of their children. In an age in which most of us have become conditioned cynics, hardened by all the rhetoric, the posing and posturing to which we are exposed in politics and the media, the Amish community came forward to pray for the soul of the killer at his burial – a powerful act bearing witness to their religious beliefs. The wife of the gunman released a statement thanking the Amish



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The grief that can accompany having to let go may be distinguished from the grief at the death of a loved one, only as a matter of degree.

community and other local people for their “forgiveness, grace and mercy”. She wrote, “Your love for our family has helped to provide the healing we so desperately need”. Forgiveness is the ultimate act of letting go.

Most all our problems pale, in contrast. However, in our professional work, many of our clients are experiencing a loss that may be comparable to a death, from a psychological and emotional perspective. In the process of ending the interpersonal relationship that is the cornerstone of a marriage, clients are challenged

to let go of many things: their hopes, their expectations, their dreams, their identity, their children and the familiar. The grief that can accompany having to let go may be distinguished from the grief at the death of a loved one, only as a matter of degree. Said another way, the act of letting can be described as an exchange of realities. The attachment to the reality of the way things were is replaced with the reality of the way things are or will be. So the challenge for the professional engaged in a process with clients struggling between the polarities of these changing realities is how to assist and respond to the clients’ needs.

We can assist them in becoming mindful of their circumstances by offering an assessment of their current situation, including noting the things to which they may be holding on. Examination of the consequences of letting go may help the client choose to loosen the death grip with which they cling to resistance. Clients may become more likely to consider and embrace choices that their collaborative

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## Advanced Mediator Moves

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from you or their spouse that they need to change. This is a realization they need to come to on their own—but you can nudge it along.

The next step is for the party to realize that in order to get an agreement, it must also be an agreement the other party will sign. Again, we're back to hanging the ham low enough that the dog can get it. The idea is to:

- Create an openness to the other's needs;
- Point out that there's a low cost and just a little time invested in exploring the other party's needs;
- Understand that listening to needs is not the same thing as obeying or doing what the other party asks.

And, just as it was necessary for the client to feel heard before he or she was ready to change, it will be necessary for the other client to feel heard before he or she will be ready to change. It all comes back to baby steps toward an agreement.

### Changing the Perception of Gap

Changing the perception of the gap between the parties' positions is a more sophisticated approach to the tried-and-true mediation intervention of pointing out the costs (monetary and otherwise) of continuing the conflict. A gap is either the amount of money between the two parties' last positions or other differences. For example, if Mom wants to stay in the house for 14 years and Dad wants the house sold now, the gap is 14 years. Another example: If Mom wishes to be able to relocate anywhere in the state and Dad wants to restrict a location to 10

miles from the child's school, the gap may be 300 miles. The most common gap is money: Dad offers \$500 in child support and Mom demands \$1200—the gap is \$700.

In changing the perception of gap, you'll start by using a flip chart to:

- Delineate the gap;
- Assess the probable outcome (get the lawyers to help with this step if they're available);
- Assess the soft costs and emotional costs;
- Talk about the financial benefits of settling;
- Examine the transaction costs of not settling;
- Do the math to delineate the remaining gap;
- Set strategies for closure.

When the client makes an estimate as to costs of litigation or other expenses, encourage them to over-estimate. Anyone who's been to a timeshare presentation will recognize this as a sales technique. Also over-assess the client's chances of success at trial—if the client sees it as 50/50, encourage him or her to assume 60% for the sake of this discussion. By being overly optimistic and encouraging in this part of the exercise, the math works such that the gap seems even smaller.

After you've done the steps above, then ask the client to:

- Assess the probability of winning his or her position in a percentage. For example, if the client says she has a 70% chance of winning her claim, then reduce the claim for the purposes of this calculation by 30%. If Dad is requesting \$100 in a

reimbursement claim and he has a 70% chance of winning, he might consider looking at a \$70 offer rather than holding on for \$100;

- Define the amount of money it would take to make the client feel better;
- Assume the cost of trial;
- Assess any financial benefit to keeping the relationship (e.g., not polarize friends, being able to stay on medical insurance, etc.);
- Agree that estimates have been conservative.

Remember, you're taking baby steps here:

- Be modest in your strategy goal;
- Stop before you push the client too much or too fast;
- Do this exercise in the light most favorable to the client;
- Do not hammer the client to accept any of this.

### Party Presentation of Offers

The key to the party presentation of offers is that once the offer is presented, there is no discussion except to ask clarifying questions before the presenter leaves the room.

The scenario: You are already in caucus and one party would like to make a settlement offer. If there's a lawyer helping the party, the lawyer will make the presentation. If there's no lawyer helping the party or the lawyer isn't at the mediation session, the party will present the offer.

Generally, the party will have formulated the proposal in caucus with the mediator and/or lawyer. When the offer is ready to be presented, the party will present the offer to the other side.

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# Safety is Risky Business

By Robert Benjamin

Where I live there is a trail that meanders for 23 miles through some quite stunning second growth forest, not surprisingly called Forest Park. I have never minded that there is some measure of trail maintenance—I don't like my walks with Bean, my canine companion, to be too disrupted by having to climb over fallen trees and huge ruts. But, lately, I've noticed a heightened level of botoxed manicurism that is disturbing. The edges of all the rocks and tree roots on and along the trail have been painted neon orange, and the playground equipment—the merry-go-round, teeter-totters and swings, in particular—have been removed.

What is more disturbing is that the "safely manicured" approach to life is not limited to the playground and the parks. We are constantly being reminded to be careful about what we say or do for fear of offending someone. The pressures to fit in, stay on the path and avoid any topics marked in neon orange paint are increasing. Especially in these post 9-11 and post-Columbine times, it is risky to express unpopular ideas. This mindset is not really all that new or surprising. In many ways, it is just an exaggerated version of the pursuit of security that most humans have sought throughout history; so much so in fact that many have been willing to "sell their souls" and give up their rights to make decisions for themselves for



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the illusion of peace, safety and fitting in. The pursuit of peace is important, but at what cost?

It seems that most people don't want to be responsible for their own lives. That is true for almost all of us sometimes (when I'm hurting, I just want the doctor to fix me, I don't want to think about it), and for many of us too much of the time ("just tell me what to do to make it better"). We want to believe that doctors, lawyers, counselors, ministers, rabbis and priests know better about what we should do than we do. By the way, I think this is the same reason that people hate to negotiate and do not easily mediate; being responsible for your own decisions appears to be a daunting responsibility.

It's a complex dynamic. Part of the problem lies with professionals and a government that, albeit well-meaning, have robbed us of our initiative. As stuff has become more

technical, they believe people can't easily figure things out and decide for themselves. But, the other part of the equation is just as problematic. Most people don't want the responsibility and want their lives to be risk-free, and if something bad happens, someone should be to blame. Professionals and politicians don't sell anything that most people don't want to buy—especially if it is sold at a discount. Safety, however, always has a real cost attached to it.

Ironically, it would appear that it is the people of those same generations, born in the 1930s through the 1960s, who now most desire, expect and demand a risk-free life and world. Maybe it is because they grew up with such fresh memories of the Depression, WWII, the Holocaust, the Korean War and the threat of nuclear war that they have gone overboard into

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## Letting Go

*Continued from page 8*

dialogue affords them, notwithstanding the fact that these are not necessarily the choices they would prefer.

Ultimately, clients will find their realities changing with or without their participation. For many, the struggle between the emotional (the way the world should be) and the cognitive (the way the world is) is a battle of titanic proportions. In choosing the latter over the former, clients choose empowerment over victimization, responsibility over blame, and, ultimately, control over capitulation. Clients will frequently need support in order to give themselves permission to let go. Needless to say, the chorus of support coming from friends and family often encourages the client to continue to hold on to realities that no longer work. As clients balance on the edge of the known, staring down into the great void of the unknown, it is easy to understand that letting go would prove to be a challenge. Practice has revealed again and again that the deeper the clients journey into the process of a safe and structured dialogue, the more willing they are to embrace the act of letting go.

To further complicate matters, mediations must deal with the letting go process of not one but two people. Sometimes, the process of letting go means releasing expectations that the mediation will proceed according to one's own preferred timetable. Impatience on the part of the second party, as the process responds to the pace of the first party, puts that second party at a fork in the road. He or she can either hold on to expectations that the process will finish sooner or let

Practice has revealed again and again that the deeper the clients journey into the process of a safe and structured dialogue, the more willing they are to embrace the act of letting go.

go of that expectation and embrace the reality that actually exists and ascertain what might be done to encourage the process to move faster. I have mediated many cases in which an impatient dad waited grudgingly while the mom tried to figure out a way to buy out his interest in the family residence. When she came to her own conclusion that it would not be possible, the extra amount of time she took to decide was negligible in the overall scheme of things. On the other hand, the family was deeply impacted by her choice to not let herself be forced but to go in a different direction.

As parties grieve the reality that can no longer be, we must help them let go of the past in order to help them move confidently into the future. **FMN**

## Advanced Mediator Moves

*Continued from page 9*

The mediator accompanies the party to present the offer in the other caucus room to the adverse party and lawyer (if a lawyer is involved). The recipient of the offer may ask clarifying questions but may not respond or otherwise react to the offer when it is made. When the presenting party is done, he or she returns to the original caucus room. The mediator stays with the party receiving the offer to discuss the pros and cons and perhaps formulate a counter-offer which will be presented by that party.

Why this move works: If lawyers are involved in the case, they typically love being able to make their own pitch of the offer. As the mediator, you facilitate the discussion but you remove the risk that you've interpreted the offer incorrectly as you move from room to room. By not allowing an immediate reaction, you give the recipient of the offer a chance to think about it before making a knee-jerk response. Since you'll stay in the room after the offer is made, you give the offer a chance by sorting it out with the recipient and giving him or her a chance to make a reasonable, thoughtful response.

### Conclusion

One of the tangible benefits of a career in mediation is the opportunity for lifelong learning. Adding to your mediation toolbox and expanding your thinking about what you're doing in the mediation room will help you move to the next level in your mediation practice. **FMN**

# Ethical Dilemmas: What Would You Do?

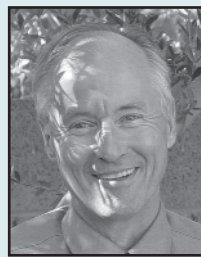
by Clarence Cramer

**W**e received only one response to the FMN Summer Ethical Dilemma in which a mediator had one client who disclosed pertinent information but instructed the mediator that the other spouse is not to learn about this information. The mediator is of the impression they are not complying with the philosophy of the mediation process. That dilemma and response are printed later in this column.

## What would you do in the following situation?

### New Fall 2006 Dilemma

Randy is an attorney-mediator in private practice. He is on the court referral list and receives numerous referrals from the court. Court policy allows attorneys to participate in the mediation process at their discretion. Most of the attorneys are supportive of the process but, unless requested by their clients, do not attend the mediation sessions. There are one or two attorneys who do not like the process and instruct their clients to participate minimally. One particular attorney, Jeff, can become quite assertive and, on occasion, a bit obnoxious during mediation. In a mediation session with Darby and Hilda, Randy observed that the negotiations were becoming a bit heated between the parents. They were discussing Hilda's requests that she receive full custody and she be allowed to move to another state with the children.



**Clarence Cramer** is Chair of the Family Section Ethics Committee, and Director of Family Services of the Conciliation Court in Coolidge, Arizona. He can be reached at: mediator@co.pinal.az.us

Darby was represented by Jeff; Hilda was represented by Kent.

At one point during the discussion, Jeff made a disparaging remark to Hilda questioning her ability to be a good mother. Darby jumped in and quickly agreed with Jeff. Randy intervened, commented on how the discussions needed to be as positive as possible, and then moved the discussion along. Shortly thereafter, Jeff belittled Hilda for "taking the children away from their father" stating again that only an unfit parent would do something like that. Again, Darby agreed and added that that is why the children would be much better off living with him. Randy believed that Jeff and Darby's interjections were not only counter-productive but were causing unnecessary emotional pain for the mother. Randy realized that he was beginning to dislike Jeff, as well as becoming biased in favor of the mother due to Darby's siding with Jeff. As the session continued, Randy knew that his dislike for the father and his attorney was intensifying. He wondered if he should declare an impasse and, if so, what reason would he provide?

## What would you do?

Before you forget, please email your response now to Clarence Cramer at: mediator@co.pinal.az.us or mail it to 119 W. Central Ave., Coolidge, AZ 85228. Please include your name and address.

### Summer 2006 Dilemma

Dennis and Mabel have been married for 24 years. They have two girls, an 18-year-old who just started college and a 16-year-old high school student. Mabel wants a divorce because, she contends, Dennis is very controlling and she is feeling emotionally suffocated. Dennis does not want the divorce at all and is resisting Mabel's every effort to proceed with the divorce. They attended mediation and signed the Agreement to Mediate, which states that the mediator may, with the clients' permission, meet with either party separately and that the separate meetings will be confidential unless the client gives the mediator permission to disclose the information. Dennis calls and tells the mediator that he intends to

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## Ethical Dilemmas: What Would You Do?

*Continued from page 12*

continue in the mediation process, but only for the purpose of delaying the divorce. He states he will not do anything to move the process forward and that he does not want this information revealed to his wife. Mabel calls the mediator a few days later to say she knows Dennis is stashing away large sums of cash in a box hidden in the basement. The younger daughter found the box and told her mother about it. Mabel does not want this information disclosed to the husband. What is a mediator to do when the Agreement to Mediate calls for full disclosure of all financial issues and when one (or maybe both) parties are using the mediation process as a chess board?

### READERS' RESPONSES

Dear Clarence,

**Re: Your Summer 2006 dilemma:**

Ah, there's the rub with keeping secrets/telling clients you'll keep secrets! Clients are told not to ask me to keep secrets. However, I often rephrase and reframe the things that I'm told. I believe agreeing to keep secrets is the mediator setting-up her/himself for a major problem. Perhaps court-connected mediators work under different constraints?

Joy B. Borum  
Scottsdale, Az 85251

### Agree or Disagree?

Do you agree or disagree with the responses to the Summer Ethical Dilemma? Please let me know by sending your comments to Clarence Cramer at: mediator@co.pinal.az.us or mail them to 119 W. Central Ave., Coolidge, AZ 85228. Please include your name and address. **FMN**

## Safety is Risky Business

*Continued from page 10*

believing that living should be risk-free.

The unintended consequences of the relentless pursuit of safety are more conflicts, greater threats and the attraction to greater risk-taking. Paradoxically, our very limited tolerance of risk creates more extreme and volatile forms of conflict. Fearing and suppressing risk makes things less safe. We have come to expect and rely upon others to mark the path that we have abdicated checking for ourselves. There is a lot more conflict, divisiveness and partisanship nowadays, not because people are less civil, but because engaging others directly in difficult discussions is not acceptable. In the vacuums of non-dialogue where it is not acceptable to say what you are thinking, many become all the more shrill and extreme in their positions.

All is not lost, however. There is hope. Have you noticed the increased popularity of extreme sports? There is snowboarding off cliffs and roofs, mountain-biking down three-inch wide paths with sheer drops on both sides, BMX bike trick competitions and skateboarding over torturous terrains that actively court serious injury. Established sports—football, baseball and even wrestling—have become so homogenized and filled with protocol that they have lost currency and the extreme sports have begun to fill the void. People of all ages, but especially children, need risk to test themselves; I believe that risk is part of our biological and psychological evolution.

At first, I thought the crazy stuff I saw kids do was just plain stupid. I know for certain they possess that

risk-taking gene that I never got. Frankly, I have been impressed by seeing kids learn and practice these stunts. They are willing to take the risks and dedicate themselves to a self-imposed discipline that no teacher can teach or law can compel. They have created their own world, one which offers the hope (even we nihilists have some hope) that despite all the rules, regulations and professional advice that abound, at least some people will persist in checking things out for themselves. **FMN**

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## Editor's Letter

*Continued from page 3*

require some practice. We are pleased to have a return literary visit from our past columnist, Robert Benjamin, who, characteristically, stimulates our creative social thinking once again with an article titled "Safety is Risky Business." He claims that our current trend of risk-aversiveness is actually generating more conflict and danger. On a more emotional note, Heidi Perryman, a California psychologist and evaluator, has blessed us with an original and poignant poem about the nature of visitation and time-sharing in co-parenting arrangements.

Enjoy,  
Don Saposnek  
Editor  
Family Mediation News

**FMN**

# The “My-Time” Virus

(An original poem with gratitude to Dr. Seuss)

By Heidi Perryman, Ph.D.

**S**o you bought your son new sneakers, and he left them with his dad,  
And they cost you 40 dollars, and you're feeling kinda mad,  
And you know you'll never get them back, no matter what you do,  
Better take a breath before the “My-Time” virus gets to you.

So your daughter has a playdate, with a new friend she adores,  
And the evening it is scheduled, is an evening that is yours,  
And you wonder why you have to share your nights the way you do,  
Better take a breath before the “My-Time” virus gets to you.

*“My-Time” virus feels righteous,  
But it makes your children sad,  
(Even though it is the best friend your attorney ever had),  
“My-Time” virus is contagious,  
Watch your friends and family too,  
'Cuz your child is an orphan when the virus gets to you.*

So your daughter gets a haircut, from her new Step-Mom to be,  
And you thought she'd trim an inch or two, instead she's taken three,  
And your child thinks its pretty, but your ears are turning blue,  
Better take a breath before the “My-Time” virus gets to you.  
And your Monday night is



**Heidi Perryman, Ph.D.**, is a child psychologist in Lafayette, CA where her practice includes treatment and assessment for children and families. She provides professional training and consultation and has been faculty for the California Administrative Offices of the Courts. Dr. Perryman's special interests are in the areas of serious mental illness, attachment and trauma. In her play therapy practice she is particularly familiar with how the dynamics of high conflict divorce affect the reality perception of children.

broken, by a new Karate class,  
And you didn't ask to have it, and you think you'd rather pass,  
And you tell your son his mother can enroll him when she's due,  
Better take a breath before the “My-Time” virus gets to you.  
*“My-Time” virus feels righteous,  
But it makes your children sad,  
(Even though it is the best friend your attorney ever had)  
“My-Time” virus is contagious,  
Watch your friends and family too,  
'Cuz your child is an orphan when the virus gets to you.*  
So your twins are saying “daddy”, to a man you've never met,  
And on Thursday at the curbside you and Mr. Daddy met,  
And the twins appear to like him, but you started feeling blue,  
Better take a breath before the “My-Time” virus gets to you.  
Or it's Wednesday evening pick-up, and your ex is late again,

And he acts like it's an accident, but you remember when,  
And your son is telling stories, of the fun things they would do,  
Better take a breath before the “My-Time” virus gets to you.  
*“My-Time” virus feels righteous,  
But it makes your children sad.  
(Even though it is the best friend your attorney ever had),  
“My-Time” virus is contagious,  
Watch your friends and family too,  
'Cuz your child is an orphan when the virus gets to you.*  
When they figure your percentage, there's a number they forget,  
Whether your time's every weekend, or on Thursday's you can bet,  
That the time is all your child's, and belongs to him or her,  
And thinking of your child is the “My-Time” virus cure.

(Written August 24th 2002) **FMN**

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  - Various styles of mediation.
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  - What if there is a decision to divorce?
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**Costs:** Family Section member: \$25 (plus shipping and handling) per pack of 50.

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If you are looking to increase your referrals from attorneys, therapists, teachers and physicians, consider the "Making Family Mediation Referrals" brochure.

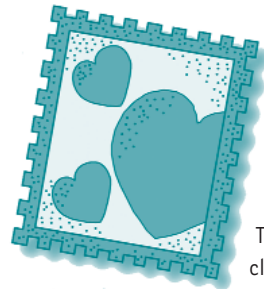
This pamphlet explains the differences between mediation and therapy, debunks the myth that mediation is the same as

practicing law, and lists numerous reasons for a variety of professionals to utilize the services of family mediators.

The "Making Family Mediation Referrals" brochure provides clear and concise information that will prove indispensable to any mediator looking to grow his or her referral network.

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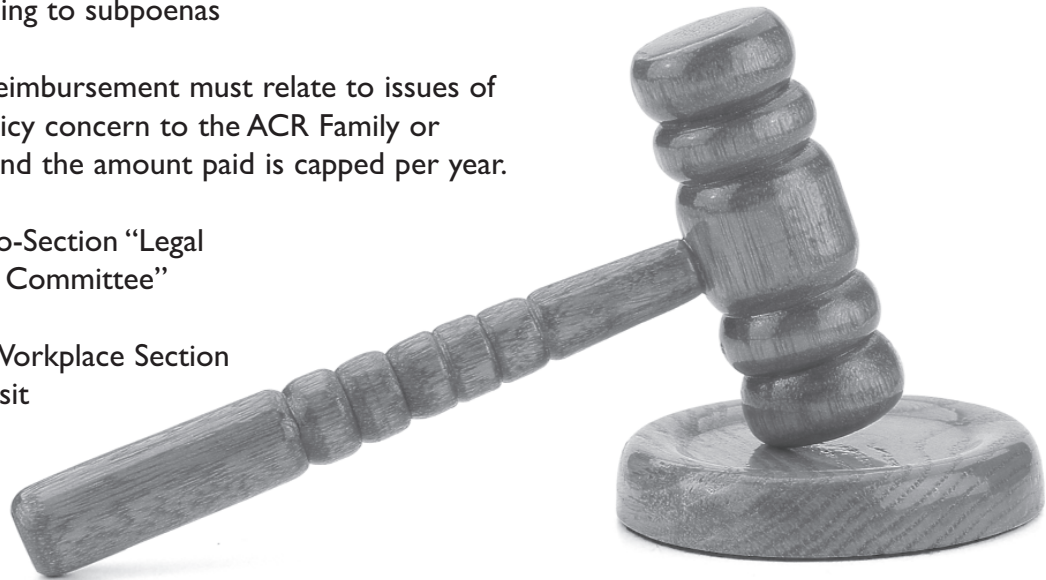
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