

family MEDIATION

FALL 2004

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

news

THE QUARTERLY NEWSLETTER OF THE FAMILY SECTION

A Mediation Program for Youth Charged with Domestic Violence Offenses

by Marya Kolman

Feature Article

The Franklin County, Ohio Juvenile Court Mediation Services offers a Juvenile Domestic Violence Mediation Program for alleged juvenile offenders charged with misdemeanor domestic violence offenses and their families. Participation in the program is limited to those alleged juvenile offenders who have had either no prior contact or only minimal prior contact with the criminal court. The mediation process allows family members to retain control of the decision making for their family while they address the issues surrounding the incident and develop a plan to prevent the recurrence of domestic violence. This is a relatively new implementation of mediation, and preliminary reviews suggest that participants find it beneficial.

A typical case referred to this program involves an alleged juvenile offender between the ages of 13 and



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16 with no prior criminal record, who has hit, shoved or thrown something at his or her mother during a verbal argument about curfews, chores or school. In most of the cases that are mediated, the victim is not seriously injured; the victim may have also hit, shoved or physically restrained the youth during the altercation. In 53 percent of the cases, the mother is the victim; the remaining 47 percent of the cases involve other household members, including a father, stepparent, grandparent, sibling or

parent's live-in significant other. Fifty-seven percent of the alleged juvenile offenders are boys and 43 percent are girls.

Most victims describe their alleged offender as a basically "good kid" who had experienced increased problems—including mental health troubles; substance abuse; school, social or family relations problems; and/or discipline problems—in the months prior to the arrest. Many

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Dear Readers,
Over the course of recent years, our government and the media have, not so subtly, induced us into an adversarial consciousness. I just returned from a one-day continuing education course on "Risk Management in Professional Psychological Practice," and by the end of the day I realized that the main message we were to learn was: "Protect yourself. In the privacy of your private practice, whatever you say, or don't say, can and will be used against you in a lawsuit waiting to happen as soon as you make an 'ethical' mistake." The now infamous rulings of HIPAA (the Health Insurance Portability and Accountability Act, a federal legislation signed into law in 1996) require each practitioner to arm him or herself with a stack of informed consent sheets that describe every imaginable harm that could be inflicted upon a client by a therapist, and the legal protections that the client and the therapist retain. (Watch out; the field of mediation is not far behind!) The entire legal infrastructure of HIPAA is a federal exercise in adversarial thought and paranoia. It is virtually a War on Words.

HIPAA is one thing, but how about our blind acceptance of the numerous omnipresent terms that our federal government has framed



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as "wars": The War on Drugs; the War on Poverty; The War on Crime; and the most insidious of all, The War on Terror. We have gone into an adversarial paradigm trance, accepting these words as signifying real and meaningful acts. Unbundled, these notions reduce to absurdity. A war on Drugs would suggest that we hunt down and shoot the pills right out of the illicit drug dealers' hands and the pharmaceutical representatives' briefcases; a war on Poverty would suggest that we hunt and destroy the measly welfare checks and shanty abodes of poor people; a war on Crime is redundant; a war on Terror means that we should destroy feelings of fear and panic (and, I suppose, leave the terrorists alone, or else it would be called "war on terrorists," wouldn't it?).

Aside from being grossly misstated, each of these terms implies an action that is negative, adversarial and violent. That is just not the message that any of us wants to hear. Being ostensibly a

peace-loving people, we should really be engaged in a War on War. That, paradoxically, might bring Peace. But then, wouldn't the adversaries amongst us suggest engaging in a War on Peace? However, at that point, we would just be back to where we began. Maybe the solution to all this nonsense is to just keep our editorial forces fully deployed and fully funded and try to defeat the War on Words!

With our highly combative presidential election now headed toward the healing stage, perhaps we can get on with our work of stopping the interpersonal wars with our words, healing the rifts between people and guiding them to effective resolution, or management of their disputes. Oh, would that we could do this for our nation!

Enjoy our copy within.

Don Saposnek

Editor, Family Mediation News

Creative Endeavors

by Becky Magruder

It's my favorite time of the year—when the air turns cool and crisp and the leaves blaze with warm, fiery colors against blue skies. This always feels like the start of a new year, perhaps because I have always looked forward to the beginning of each new school year, since I was a first grade student, through three graduate degrees, and now as a teacher myself. It seems fitting that I would begin my term as the Chair of the Advisory Council for the Family Section in the fall, a time of year when I feel most energized and creative.

I've been exploring the nature of creativity for quite some time now in an effort to understand how and why I work the way I do, and in an effort to be more effective in my work as a mediator and teacher. When I'm not mediating or teaching, I spend time in my textile studio where I sew one-of-a-kind pieces of wearable art. For a long time I did not think that I was really creative with fabrics. I was technically proficient, and I could copy a garment, but what I really longed to do was to start with a blank dress form and come up with new and innovative ways of combining fabrics. It took some time to learn that one of the keys to innovation was the willingness to look at the pile of fabric through a different set of lenses. A foundation of good sewing and drafting techniques combined with an understanding of color theory and the physical properties of textiles was critical. But in order to move to the next level, I had to let go—of



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my fear of making a mistake, of the need to have a certain outcome, of the desire for perfect order. When I finally learned to let go, the illumination came and the clothing moved from well-sewn garments to innovative and fun pieces of wearable art.

By the time I began to mediate, I had been sewing innovative clothing for a few years. It took some time for me to make the connection between my textile work and my work as a mediator. One day it dawned on me how many similarities there were. If I focused on product instead of process, the process was much harder and not as much fun. If I persisted in clinging to my preconceived notions, I often missed moments of sheer inspiration. If I forgot to ask the magic questions of “what if” and “why not,” I fell into a rut and could not seem to move forward.

The whole process of mediation can be a creative venture. The foundation of solid and ongoing training, consultations with colleagues, and continued study of conflict, coupled with the willingness to dismiss preconceived notions, to focus on process, and to ask the magic questions, can

produce a truly creative process, which often results in an equally creative product that may be more rewarding than anything I could have dreamed up in advance.

So, how does all this talk of creativity relate to the upcoming year? I have watched closely the work of those who have previously walked in my path and have learned what makes them effective, and so I have a good foundation. I realize that much of what I will do this year will be an on-going work in progress, so I'm not going to develop any expectations that things should be a certain way before I leave this post. By letting go of my desire to sometimes force solutions, by focusing on process instead of product, and by asking thoughtful, reflective questions, I hope to be able to see more clearly and recognize the moments of sheer inspiration which, in turn, will likely lead to great outcomes for our Section.

If you would like to be a part of the journey of creatively moving this Section into the future, please send me an e-mail with your ideas, or better yet, join a committee and put your ideas into action. I look forward to working with all of you.

A Mediation Program for Youth

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families also report recent significant life changes, such as a move, divorce or separation, death or illness, financial problems, parental substance abuse or mental health problems, change in a parent's work schedule, or a parent's new spouse or significant other moving into the household.

Background

The police in Franklin County follow Ohio's preferred arrest policy that requires them to arrest the alleged offender in domestic violence situations. The court also has a policy that juveniles accused of domestic violence against a parent are automatically held until the preliminary hearing, which occurs the morning of the first court day following the arrest. As a result of these policies, approximately 500 alleged juvenile offenders are brought to the Franklin County Juvenile Detention Center annually on domestic violence charges, and held in the detention center overnight.

Before the Juvenile Domestic Violence Mediation Program was instituted, many of these alleged juvenile offenders were released after the preliminary hearing and returned to the home where the incident occurred, without receiving any counseling or other support services. Retaining the alleged juvenile offenders in the detention center until trial, however, was neither appropriate for most cases, nor feasible for an already crowded detention center. This procedure raised many safety concerns, and potentially diminished the effectiveness of juvenile anger-management and domestic violence treatment programs. Counselors

The mediation process allows family members to retain control of the decision making for their family while they address the issues surrounding the incident and develop a plan to prevent the recurrence of domestic violence.

noted that the alleged juvenile offender and his or her family are most open to treatment and change in the weeks following the arrest and detention, and that the court was missing this window of opportunity by not offering treatment until the final hearing, which usually occurred several months after the incident.

As a result of these concerns, the court assembled a group consisting of magistrates, prosecutors, public defenders, detention center administrators, case managers, court administrators and court mediators to develop a new program that would improve the way these cases were handled. The group quickly determined that, if the program was to be successful, it would have to include a great deal of collaboration and coordination between the court, the detention center, the prosecutors, the juvenile public defenders and the court's mediation program, and that it would have to fit with the missions,

responsibilities and concerns of each of these entities. This group designed the pilot project for this program, which began in 2001, and has continued to review, refine and adjust the program to better meet the needs of the families and the other participants in the process.

Screening Cases for Suitability for Mediation

Pre-mediation screening is a critical component of the Juvenile Domestic Violence Mediation Program to determine suitability of mediation and willingness for the parties involved to participate; only about one-third of the cases are referred to mediation following the screening process. In most cases, juvenile domestic violence differs from partner domestic violence because the juvenile domestic violence perpetrator does not engage in a pattern of fear, intimidation or control over the victim. Mediation would not be appropriate in the rare cases in which the juvenile perpetrator does exert such intimidation and control over the victim, or if the juvenile is also a victim of domestic violence or child abuse.

The first screening involves the prosecutor considering the severity of the offense and the youth's prior record, if any, in deciding whether the case should be mediated or litigated. Approval from both the prosecutor and the defense attorney (which is often the public defender at the preliminary hearing) is necessary for the case to be referred to mediation. Since charges can be dismissed following a successful mediation, the defense attorney

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usually encourages mediation. However, the defense attorney will veto mediation if he or she has serious concerns for the youth's safety and well-being. If there are any serious concerns for the alleged juvenile offender's safety and well-being, the case will not be referred to mediation.

A staff mediator with the Juvenile Domestic Violence Mediation Program then screens the parent(s) and alleged juvenile offender in all cases approved by the prosecutor and defense attorney. First, the screener meets privately with the parent(s) to describe the mediation program and to understand the parental concerns, wishes regarding release, and any types of services and programs that the parent(s) believe would be useful for the alleged juvenile offender and family. During this meeting, the screener conducts an assessment to determine if mediation is appropriate and can be done safely. The case will only be referred to mediation if the parent(s) are willing to participate in mediation and have the alleged juvenile offender released from the detention center.

If the parent(s) agree, the same screener then meets privately with the alleged juvenile offender to determine if he or she is willing to participate in mediation. The screener also makes an independent determination regarding the safety and appropriateness of mediation for the alleged juvenile offender, keeping in mind that the juvenile may agree to almost anything that will result in his or her release from

Although formal studies of recidivism have not yet been done, the staff mediators who screen the cases review the court domestic violence dockets on a daily basis and report that very few alleged juvenile offenders who complete this program return to court on domestic violence charges.

the detention center.

If the prosecutor, defense attorney, parent(s), alleged juvenile offender and staff mediator all agree that the case is appropriate for mediation, the case is presented to the magistrate who refers the case to mediation and releases the alleged juvenile offender from the detention center.

The Mediation Process

A mediation appointment is scheduled before the parties leave the preliminary hearing. A critical component of this program is having the parties participate in the first mediation session within one or two days after the release from the detention center. To facilitate this,

the mediation department offers both daytime and evening appointments. Mediating these cases within a few days of the release appears to be an important element for the success of the mediation because the issues that led to the domestic violence incident and the juvenile's arrest are addressed and services are begun before the family can return to the previous atmosphere that fostered the violence.

During the mediation, the parties are asked to address the following four topics in addition to any concerns that they bring to the mediation.

Safety plan. The alleged juvenile offender and victim, and often other family or household members, develop a safety plan to keep all household members safe and free from physical violence. Mediation participants identify and agree upon acceptable and unacceptable behaviors. A typical plan states that household members will not hit, shove, kick, punch or throw things or have other negative physical contact with each other. If the parent(s) want to retain the option to use corporal punishment, this is specified in the safety plan.

Guidelines for future parent-child contact. In many cases, an argument about the alleged juvenile offender's behavior precipitated the violent incident. Many families find it helpful to discuss house rules and other behavioral guidelines during the mediation sessions and then include their agreements in a written document to which they can later refer in

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times of conflict.

Development of an anger-management plan for the alleged juvenile offender (and other family members, if appropriate). The alleged juvenile offender and family members negotiate strategies to use when a family member starts to get angry. They may decide in advance where the alleged juvenile offender may go to “cool down,” and often give each other permission to take a “time out” from heated discussions, with the goal being to defuse the anger before the alleged juvenile offender and other family members become violent.

Exploration of resources. The alleged juvenile offender and family members identify and discuss participation in counseling, anger-management and domestic violence programs, and/or other programs appropriate for the involved parties. The mediator gives the mediation participants an opportunity to explain their wishes, concerns and feelings about various treatment options, and their expectations regarding participation in the selected programs.

The mediator will raise these four topic areas during the mediation sessions, but it is up to the mediation participants to decide how they want to address those issues and what agreements, if any, they would like to make. The alleged juvenile offender, his or her parent(s) and the victim are free to terminate the mediation process and return to the court process at any time. During the mediation, the mediator caucuses with the alleged

juvenile offender and the victim separately to inquire if either is feeling coerced into any agreements. The mediator must be mindful that the alleged juvenile offender is particularly susceptible to coercion, since he or she is otherwise subject to pending charges, and the victim may also have underlying issues that could result in coercion.

Most cases require two or three mediation sessions. If the parties reach agreement in mediation, the mediator asks if they want to have the charges dismissed once the youth completes any programs or services that the parties have agreed upon in the mediation.

Program Evaluation

This program has been in existence for about three years and the number of cases mediated has increased each year. In 2003, 159 cases were referred to mediation and 125 cases were actually mediated. Ninety percent of the mediated cases reached full agreement. Although formal studies of recidivism have not yet been done, the staff mediators who screen the cases review the court domestic violence dockets on a daily basis and report that very few alleged juvenile offenders who complete this program return to court on domestic violence charges. However, alleged juvenile offenders who either did not participate in the program or did not complete the program show a greater tendency to return to court on violence charges. In general, those parents and alleged juvenile offenders who participated in the program report satisfaction, and we look forward to continuing this program.

AFCC/ACR Conference

The Family Section will offer a full-day pre-conference institute in conjunction with AFCC's 42nd Annual Conference to be held in Seattle, Washington, May 18–21, 2005. The theme for the pre-conference institute will be “Advanced Skill-Building for Family Mediators.” In addition, the AFCC conference will feature approximately six ninety-minute mediation workshops.

For more information, please visit the AFCC website, www.afccnet.org. Follow the links to Conferences, and then to 42nd Annual Conference. This is an exciting collaboration between ACR's Family Section and AFCC. We invite and encourage all of you to attend the conference.

For more information, contact Rebecca T. Magruder at RTMmediate@sbcglobal.net.

Dirty Little Secrets: The “Girly Man”

Non-Controversy

by r.d. benjamin

I wasn't excited about going to Sacramento, California for the Annual Conference of the Association for Conflict Resolution. The place seemed remote and not particularly “sexy”—certainly not compared to San Francisco or L. A. The truth be known, after 24 years of conferences, I find myself less and less excited by ACR conferences. I find myself spending a fair amount of time talking with people outside in the corridors, discussing the stuff that isn't or can't be said in the workshops or plenaries. Some of that is to be expected at a professional conference, but there are too many boring, talking-head panels where any controversy appears to be carefully sidestepped. Any differences of opinion are drowned out in a bath of generic superficiality that invariably ends with “we all agree people should be reasonable, cooperative and trusting.” There is an unwritten policy of obeisance to the appearance of civility—not a little ironic at conferences of professional conflict managers. It was a deadly combination: a boring place and standard conference fare. I thought that this conference desperately needed a double dose of Viagra.

So, one of my suggestions to some of the members on the Conference Committee (I have since discovered others had made similar suggestions), was that since we are going to be in Sacramento, why not invite the recently elected



r.d. benjamin practices mediation in all dispute contexts, including business, employment, family and divorce, and presents negotiation and mediation programs nationally and internationally. He is a former President of AFM.

Honorable Governor of the State of California, Arnold Schwarzenegger. Regardless of his politics, he has proven himself to be an effective negotiator who has thrived by putting together deals between stubborn Democrats and irascible Republicans, in the unruly State of California. That was a good piece of mediation work. (Ironically, I found out he resides in the Hyatt, the ACR conference hotel, when he is in Sacramento—what could be more convenient?) I figured that we, as professional dealmakers, might learn a thing or two from this character, even if he did not belong to ACR. An outsider, who does much the same kind of stuff we do, in a different context might spark some good energy and provocative discussion.

But this isn't just about Arnold. As a profession, if we want to make a difference in how conflict is managed in the world, we can't do it by endlessly talking to ourselves. As they say, “you can't hunt bear from the bar; you have to get out in the woods.” We need to deal with the real world and real conflicts, beginning with our own.

As I checked to find out what became of the Arnold suggestion, people's answers and reasons became “curiouser and curiouser.” I confirmed that the ACR Conference Committee did submit Arnold's name to the Board of Directors for its approval, only to have it rejected. More surprising, the details of the Board's deliberations were veiled in secrecy. Initially thwarted in finding out what happened, my prurient and voyeuristic nature was aroused. After some effort, I found four sources that were willing to talk on condition of anonymity, and they all corroborated this sordid tale of Board intrigue. I felt invigorated to be part of the “Watergate-Era journalistic tradition” and, at great personal peril and under the cloud of the Patriot Act, I pledged to maintain the confidentiality of my “deep throat” sources. It appears that the Board and/or staff of our professional organization are being influenced by the Bush-Cheney-Rove penchant for media control and disinformation.

I know, dear reader, you want to know the reason for the rejection. If you can't stand the suspense, jump to the paragraph below. For others,

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Dirty Little Secrets

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I feel compelled to preface my disclosure with the note that the dis-choice of Arnold should not in the slightest reflect on the quality and excellence of the chosen keynote speaker, John Paul Lederach, who is of the field. He has presented many times at our conferences, and his work is, without question, inspiring and valuable. At the same time, the question that goes begging for us as conflict management professionals is, "When do we reach out beyond ourselves to pull in people with points of view that may be less comforting and more difficult?"

From this perspective, the reason for the rejection of Schwarzenegger is especially troubling: it was because of his "girly man" remark, widely reported in the news media and repeated at the Republican National Convention. I have to assume that the Board viewed it as insensitive and so politically incorrect that it needed to take a stand on principle and act to protect the membership of the premier professional conflict resolution organization from a real or perceived controversy. No little bit of irony there.

Apparently, the Board of ACR believes that exposure to someone who would utter such a second-tier sexist comment, that elliptically associated women with weak and wimpish behavior, presents a real threat to us, and that we, the members, could not withstand the controversy his presence might stir. Seemingly, we are not sufficiently skilled to entertain the prospect that Arnold's aberrant attitudes could be constructively engaged and discussed in the open at our conference. The Board's action suggests to me a lack of faith in our

professional purposes and competency.

However, inviting such controversy into our conference planning might not only be a valuable experience for us personally and professionally, but also good for ACR in general. Beyond the focused dispute contexts of divorce, workplace, the environment, and a few other specific areas in which most of us operate, ACR is not on the map as a viable, engaged, and serious organization of professionals who are able to deal with the broader issues and conflicts that are loose in the world at large. If we were to practice what we teach, and model our skills in addressing those issues and conflicts, it might prove to be the best marketing and advertising we could ever hope to produce. We could demonstrate the critical importance of fostering and managing a constructive dialogue between people holding different views, opinions and values that are embedded in strong emotions.

To get to that place, however, we need to confront the dirty little secret that we keep to ourselves: we, who profess to manage other people's conflicts, don't deal particularly well with our own conflicts. It is not without considerable irony that many people drawn to the conflict management field appear to be those who are most anxious about, and who tend to avoid, deny and suppress conflict. While conflict avoidance is a natural human response, our reluctance as conflict management practitioners is an ominous sign. Left unacknowledged, our avoidance tendency will cripple us, and we as conflict management practitioners run a serious risk of marginalizing ourselves out of existence.

We should engage, not shy away from hard dialogues. The Conference Committee should be asked to design sessions that encourage active discussion of difficult issues for the field and the organization. Periodically, a plenary could showcase how emotional and controversial issues with antagonistic parties might be approached with a mediated dialogue. Thus, if Arnold's "sexist remarks" are so upsetting, we should directly engage the gender controversy at next year's conference moderated by two mediators of the Conference Committee's choice. We might even have a responding panel engage and probe Arnold about his offending remarks—that would make for good learning and even better press. The list of similarly difficult issues is endless: abortion, gay and lesbian marriage, or even the war in Iraq. Likewise, our publications should be encouraged to publish more controversial articles, interviews or dialogues between practitioners with opposing views and rigorous critiques of our work. If this field is to be successful, we need to profile what we claim as our unique ability to approach and manage conflict constructively.

Dealing with hard issues, especially our own, is difficult, sometimes unpleasant, and often a dirty business, but if we can show ourselves to be capable of effectively and creatively dealing with those conflicts, then our stock and credibility go up immeasurably. Then, and only then, will we have the potential to forge a place in the community of professions and bring our skills more directly to bear on the difficult issues we face as a society.

A Response to r. d. benjamin's "Dirty Little Secrets: The 'Girly Man' Non-Controversy"

by Larry S. Fong, ACR President

In his column, "Dirty Little Secrets," Robert Benjamin contributes his thoughts and ideas on ACR's Fourth Annual Conference. I wish to further the discussion by commenting on his perspective, yet honor his opinion. Robert and I have seen many issues arise throughout our years in this field about which we both agree and disagree.

The Sacramento conference was enjoyed by more than 1,000 ACR members and nonmembers from all over the world. Like the past sites of Toronto, San Diego and Orlando, conference locations are chosen to accommodate many needs, including the financial constraints of attendees and the Association itself. Conference sites suggested by Robert certainly provide cachet to the attendees, however such high-demand cities like San Francisco also involve additional costs for the conference facilities, hotels and restaurants.

Regarding Robert's thoughts of being "less and less excited... spending a fair amount of time talking with people outside in the corridors, discussing the stuff that isn't or can't be said in the workshops or plenaries," I am somewhat surprised, as I have always respected Robert for speaking up about his ideas, perspectives or beliefs in any setting. I am not sure why he would feel restricted in doing so at any time

during a conference. The overwhelmingly positive evaluation sheets by the participants do not bear witness to his comments about the workshops. However, his concerns should not be discounted, as ACR is always trying to find ways to make the conference amenable to everyone.

Robert speaks of the Governor of California, Arnold Schwarzenegger, not being invited to speak at the Sacramento Annual Conference. As conference organizers know, many decisions need to be made for any successful annual conference, including decisions about presenters, plenaries and speakers who open a conference. Names in addition to Schwarzenegger were provided to the Conference Committee and to the Board of ACR. In the end, we chose an outstanding orator, John Paul Lederach, who himself was a previous keynote speaker at an AFM conference.

The Honorable Governor of the State of California was not chosen by the Board of ACR to open the conference. Instead, the Board decided to read President Carter's letter to ACR. Of course, there are many honored guests who are not invited to speak at the ACR Conference; nonetheless they are respected in their field in their own right.

Robert finds the Board of ACR discussions as being "veiled in secrecy." This Board believes in

transparency and has a policy of allowing any ACR member to sit in Board meetings and conference calls, except when sensitive issues, such as personnel matters, are discussed. ACR Board discussions are usually animated, full discussions, leading to debate and dissent, with important decisions reached through consensus.

I agree that ACR should also be an organization that allows for full debate. Perhaps Robert would volunteer to help future Conference Committees. His wealth of knowledge would be most respected, and his ideas can help ACR reach its goal of making the Annual Conference a highlight for our members. I hope he has already forwarded his concrete ideas to the Conference Committee for the Annual 2005 Conference that will be held in Minneapolis, Minnesota.

I thank Robert for these highlights and concerns and welcome readers to continue this discussion at ACR's members website (see below).

Editor's note: Do you want to contribute to this discussion? Please join an online discussion, by logging into the ACR Member Center at www.ACRnet.org, and clicking on www.ACRnet.org/board. Author r.d. benjamin will periodically contribute to this discussion, beginning Dec. 10, for approximately 30 days.

Thinking Globally, Acting Locally

by Chip Rose

The September ACR Annual Conference in Sacramento, California afforded me a rare opportunity to present, to network and to learn without having to travel across the country. The three-hour drive from my home on the Pacific Coast to the central valley locale of our state capital was familiar enough to give the trip a local feel. Having a chance to hear the keynote speaker, John Paul Lederach, was reward enough for the journey. As it turned out, his plenary address was scheduled right before a workshop that I presented on mediating financial issues between the “Controlling and the Clueless.” My preoccupation with the opening of my workshop quickly yielded to the compelling vision of Lederach.

John Paul began his address with a rhetorical question: What are the essential components of successful peace building? Asked another way, what is it, that if it is absent, precludes the ability to build peace? In the context of his pioneering, global work in conflict transformation, this resonated as a big question filling a big room that was crowded with individuals committed to resolving conflict. He then brought to earth his global question by describing the application of peace-building strategies as responses to the plague of violence emanating from single individuals in disparate cultures.



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

By choosing to share these stories, John Paul allowed us to see what his eyes had seen, through lenses of humility and respect—specific examples of individual courage in the face of political and economic violence. Within minutes of the commencement of his address, he had transformed a previously boisterous conference hall into a cathedral-like environment. As his words transported us, first to East Africa, then to Central America, and finally, to the steppes of Central Asia, I was elevated by his poetic imagery and the profundity of his international experiences. At the same time, I was having a contrasting parallel experience of feeling diminished by the mundane subject matter of the workshop I was supposed to present at the conclusion of his address. Dealing with the conflict between divorcing spouses over their household budgets and divisions of things seemed to grow more pedestrian by the minute.

As though I had taken the proverbial “one pill (that) makes you smaller” from Looking Glass

fame, I continued to have this sinking sensation as the keynote reached its denouement. As I struggled to deal with my need to transition from the intrinsic spiritual power of his presentation to the rapidly approaching introduction to my workshop, the focus and clarity of John Paul’s closing words drew me out of my own Lilliputian world and back into his global experience with peace building.

He ended his talk by answering the rhetorical question with which he began the program. The critical elements, without which peace building will fail, are Personal Responsibility and Relational Mutuality. The words immediately ended my shrinking sense of self. These phrases echoed principles that I have been sharing with clients for years, as part of a constructive and effective framework for resolving conflict. Clients can embrace the personal responsibility for participation and outcome, or endure the consequences of defaulting that responsibility to someone else. So too, they have the

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NEWS FLASH!

The summer edition of *ACResolution* will focus on Family Mediation. If you would like to submit an article, please send a 2-3 paragraph proposal for consideration, no later than **March 10, 2005** to *ACResolution* Managing Editor Alison Talbott at atalbott@ACRnet.org or *ACResolution* Associate Editor Sharon Pickett at sharonp@igc.org.

All articles must be original, unpublished work.

For more information about proposal requirements, go to www.ACRnet.org/publications/acresolution.htm.

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By choosing to share these stories, John Paul allowed us to see what his eyes had seen, through lenses of humility and respect—specific examples of individual courage in the face of political and economic violence.

ability to create the most mutually beneficial outcome that is dependent on their willingness and capacity to work together. Only a thorough, collaborative development of the facts, the differing perspectives, and the options for resolution, conducted in a safe environment, will enable the parties to resolve their issues in the most satisfying outcome that can be obtained under any circumstance. Relational mutuality and personal responsibility are essential ingredients for the successful resolution of interpersonal conflict.

The impact of this connection between John Paul's compelling presentation on conflict resolution on the global level and the application of the same principles to a divorcing couple on the domestic level brought another thought to mind. When couples come into the office of a mediator to seek help resolving the compelling and complex issues that close the door to their marriage and open onto the

next stage in their lives, the space they ask that professional to occupy with them is their whole world. Such circumstances could hardly make them more vulnerable. Anyone who has facilitated disputes of groups or organizations knows that there is an inverse relationship between the number of participants involved and the feeling of power that the facilitator brings to the process. A mediator facilitating between two or more groups that represent diverse interests (e.g. cultural or religious) will only have as much power over the process as the different sides will yield. On the other hand, a mediator working in the intimacy of interpersonal negotiation, such as divorce, has enormous process power from the very outset. In part, this results from the mediator being a stranger to the parties and the issues. In part, this also results from the implicit or explicit consent the parties have given to the mediator to fashion the process.

I began my workshop by talking about the transition I was having to make and sharing my observation that there was a profound commonality between the role of the international peacemaker and the skills of those who mediate peace in the home setting. Far from feeling diminished, there was universal agreement from the participants that our ability to apply the lessons of John Paul's global experiences ennobled the domestic peace-building work we each perform locally in the intimate confines of our clients' worlds.

What Would You Do?

By Clarence Cramer

Editor's Note: *The following is in response to the dilemma (see FMN Spring 2004 Issue), and readers' responses (see FMN Summer 2004 issue) that involved Bob the mediator holding separate caucuses and having to deal with the issue of "keeping secrets."*

I agree with one respondent, Carl Hazen, that this is really not an ethical issue, except for the fact that the mediator created one for himself by first meeting with the wife separately and then agreeing to hold in confidence what transpired between them. But, I do think that it raises other issues that are more significant in terms of mediation practice. One correspondent suggested "the mediator may be limited in raising certain matters for discussion, relying on the parties to be aware of all of the issues." Why isn't it the job of the mediator to lay all of the issue on the table? After all, this is not a game. Thus, why shouldn't the material that a mediator hands out include the following question: "Where will your children live?" (In other words, will there be any restriction on where the custodial or residential parent shall have the right to live with your children?) I certainly consider that to be my responsibility to the couples with whom I work.

What disturbed me more than what we do not do is what we are apparently prepared to do to "persuade" the recalcitrant party "to adjust." After listing her choice of methods (really weapons), one



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correspondent went so far as to describe (really boast) one of her methods as "the biggest stick in my arsenal." And, of course, literally all of your correspondents seemed to feel that the answer to any problem in mediation was to send the parties off to separate lawyers. Nor did anyone seem to see any problem in suggesting that the parties seek "independent counsel" but then give them a list of "mediator-friendly" lawyers to choose from—in other words, attorneys who were not so independent that they would take issue with the mediator or undermine his efforts. What I found most difficult to understand, however, was the mediator who not only suspended the mediation (apparently without indicating to either of the parties why he was doing that), but then sent the other party off to an attorney "without mentioning nor inferring why," with the suggestion that their respective attorneys consult with one another, "hoping her attorney will mention her desire to leave the jurisdiction." Why would he do that?

I would respectfully suggest that the biggest problem in mediation today is not the ethical issue you raised (or others that you might

have raised). Nor is it even what passes for acceptable practice. It is that we do not see just how inappropriate so much of what we routinely do is. On the contrary, we boast about it.

Lenard Marlow
New York

Summer 2004 Dilemma— The Facts (reprinted here):

Lillian, the mediator, is mediating with Ralph and Betty. During the mediation session the subject of child support comes up. Ralph says he is willing to pay support; however he will need to do it on the side, directly to Betty. Ralph says he has no job and no reportable income. When questioned further by the mediator, Betty reveals that Ralph is a drug dealer, and he engages in other illicit activities to earn money. The couple agrees that the memorandum drawn up by Lillian should state that Ralph will not pay child support at this time, but that he will begin his search for employment. Ralph and Betty do not want to include in the written agreement the fact that Ralph will pay Betty \$600 a month from his "other income."

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What Would You Do?

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Readers' Responses:

It seems that most experienced mediators have encountered at least one mediation in which the client or clients had less than honorable intentions. That is bound to happen repeatedly when you've been mediating long enough. What I find interesting in my discussions with seasoned mediators is how differently they might handle a given dilemma. For example, there are several points of interest regarding the dilemma above. For one, you might conclude that the mediator is being asked to participate in a dishonest endeavor by falsifying the Memorandum. So the obvious answer would be to not write the Memorandum. Not so for all mediators. Some responders commented that they would write the agreement, and explain to the couple that there would be no legally enforceable remedy if Ralph refused to pay the \$600 a month that he was verbally agreeing to pay during the mediation session. How many of you would do this? And what, if any, are the liabilities of writing the Memorandum under these circumstances? And what about the mediator's knowledge of illegal activities, that is, Ralph being a drug dealer and participating in other illegal activities.

Most comments I received stated that mediation is confidential, and there is no duty to report illegal or other matters. But then, what if you are a mediator within the court system and an officer of the court? Then do you have a duty to report? The answer might depend on the jurisdiction, but several judges responded that there is a duty to report the illegal behavior to the court. Several court mediators

replied that this information was confidential. Other than the duty to report child or adult abuse, or neglect, and perhaps threats of imminent danger or harm (Tarasoff), are we as mediators legally or ethically bound to report anything else? And, if the mediator prepares the Memorandum, including the parenting plan, does she have an ethical obligation to request from the couple further clarification of the father's involvement in illegal activities, in

order to determine if his involvement might be detrimental to the children, or put them at risk? Additionally, should the mediator inquire as to whether or not the father keeps illicit drugs in the home where the children will reside? And if he does, should this have any bearing on whether or not the mediator writes the Memorandum? Apparently, right or wrong, there are many different answers to the question. **What would you do?**

Fall 2004 Dilemma—The Facts:

Carmen is mediating with a divorcing couple, Will and Doreen. Carmen is aware that Doreen really wants the divorce, and Will wants to remain married, but says he realizes he has no choice in the matter. The remaining issues center on the parenting plan. There are two sons and a daughter, who are 15, 8 and 3 years old. Will is requesting a 50-50 split of parenting time, suggesting that the children spend alternate weeks with each parent. Although Will and Doreen reside in the same school district, their residences are about a 40-minute drive from each other. Doreen works Monday through Friday, noon to 4 p.m. Will works Monday through Friday, 4 a.m. to 2 p.m. Will states that when the children are in his care on school days, he will get them up at 3 a.m. and drop them off at Doreen's house at 3:45 a.m. Will believes the children can handle that schedule, as they have been doing it for three weeks, and Doreen agrees. Carmen believes the schedule is not in the

children's best interests and explains this to the couple, citing child development information. Carmen also explores with the couple the option of employing a childcare worker at Will's house, or Doreen going over to Will's until the children wake up at their normal hour, and the like. In addition, they all explored different access schedules for the parents, based on their work schedules. In the end, the parents are convinced that their plan will work best and want the mediator to include it in their Memorandum of Understanding. The mediator feels strongly that the schedule would be detrimental to the physical and emotional well being of the children.

What would you do?

Before you forget to respond, please email your response now while reading this to Clarence Cramer at: mediator@co.pinal.az.us

Thank you for your contribution.

Family Section Diversity Committee Update

Christy Cumberlander Walker is the new Diversity and Equity Point Person for the ACR Family Section. Christy is the Coordinator of the Access/Visitation Mediation Programs for the Franklin County, Ohio Domestic Relations and Juvenile Courts. She is also a member of the ACR Family Section Advisory Council and the president of Ohio Minority Professionals in Dispute Resolution. Additionally, she is the Family Section's representative on the ACR Diversity and Equity Network, which is made up of the point persons from all the ACR Sections, Chapters and committees.

As the Family Section Point Person, Christy is responsible for providing the Section with guidance and resources on diversity and equity issues and ensuring that the Family Section actively advances ACR's Diversity and Equity Policy. The Family Section Diversity Committee, which she co-chairs,



Christy Cumberlander Walker

helps her with these monumental tasks. Some of the specific types of assistance that the Point Person and the Family Section Diversity Committee can provide to the Section and its members are as follows:

- Information about diversity issues confronting family mediators.

- Resources to help Family Section members address diversity issues and concerns that arise in their own practices.
- Educational materials and programs for training new and experienced practitioners about diversity issues that frequently arise in family mediation.
- Facilitation and help in resolving conflict around diversity and equity issues within the Family Section.
- Outreach to conflict resolution practitioners who are members of minorities and other groups who are not yet well represented in the Family Section.

If you would like resources or assistance with a diversity issue or you would like to become a member of the Family Section Diversity Committee, please contact Christy Walker at Christy_Walker@fccourts.org or (614) 462-6147.

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

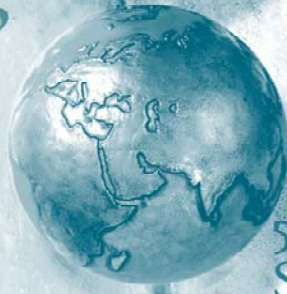
Please submit unpublished articles that provide pertinent and engaging information, research results, practitioner tips, and/or examples of programmatic success in the area of family mediation. The editor will review submissions on a rolling basis and will recommend for publication those entries that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

email. 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, email, professional affiliations) to Don Saposnek at dsaposnek@mediate.com.

Conflict Resolution in a Changing World

BUILDING THE
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