



OCTOBER 2009

# The Third Side

What exactly is the third side? The third side is people – *from the community* – using a certain kind of power – *the power of peers* – from a certain perspective – *of common ground* – supporting a certain process – *of dialogue and non-violence* – and aiming for a certain product – *a “triple win”*.

In our societies, conflict is conventionally thought of as two-sided: husband vs wife, union vs employer, Arabs vs Israelis. The introduction of a third party comes almost as an exception, an aberration, someone meddling in someone else’s business. We tend to forget what the simplest societies on earth have long known: namely, that every conflict is actually three –sided. No dispute takes place in a vacuum. There are always others around – relatives, neighbours, allies, neutrals, friends, or onlookers. Every conflict occurs within a community that constitutes the “third side” of any dispute.

*Extracted from Getting to Peace – Transforming Conflict at Home, at Work, and in the World By William L. Ury*

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**Healthy, Wealthy and Wise**



## *From the desk of the Director...*

Hello Everyone,

In June I attended a five day mediation skills training course conducted by the Queensland Department of Justice and Attorney-General (DJAG). FRC Queensland (Mike and Wendy) told me that it was an excellent course and my high expectations of the course were met. My reasons for attending the course were threefold: to assess the course and its content; to refresh my practical mediation skills; and to meet the requirements for accreditation under the National Mediation Accreditation Scheme.

In August I attended the National Mediator Accreditation assessment day conducted by DJAG and I hope you will all be pleased to learn that the assessors found that I competently demonstrated very high level process management abilities and proficiency in the appropriate use of micro-skills, and was recommended for National Mediator Accreditation. I mention this to you so that you know I now have renewed respect for those of you who are working as dispute resolution practitioners and for the many challenges you face in the work that you do.

In September I completed the DJAG three day facilitating effective groups training course and found this to be a very well constructed, practical and professional course. Sharon Lawrence DD L&C has just prepared and submitted a funding request for two people from each region to complete this course between now and end of June 2010.

The new Defence Enterprise Collective Agreement 2009 (DECA) now imposes 'Mutual Responsibilities' on members of a team. Members of a team must "address issues, problems and conflict constructively". I am anticipating that with the 'facilitating effective groups training' FRC staff will be better able to respond to requests from managers and supervisors for group facilitation of workplace conflict and other issues. As they say, we will "Be Prepared".

In October WOFF Lainie Thorn and I attended the two day Suicide ASIST course. It was very valuable and I learned a great deal. I expect all FRC staff to complete the course over the next 12 months if they have not already done so.

The most valuable learning experience for me this quarter was the FRC Conference. I have to thank Chris Harrison for all his work in preparing for the Conference and for everyone participating in such a generous and professional manner. I hope that you all learnt as much as I did, and the best part is that we all learnt so much from each other and from our experiences over the last twelve months

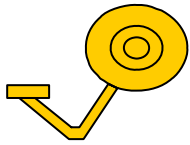
It was a very pleasant experience for me to have Chris Harrison relieve Gordon Saunders DD OPS. Chris's constructive and professional performance was outstanding. I intend to invite others from the regions to undertake such opportunities in the future. Welcome back to Gordon – refreshed from long leave.

Sharon Lawrence leaves the Directorate on Friday after a very valuable and productive time as DD L&C. Sharon is to remain in the Branch working with us in Rights and Responsibilities. We wish her well in her new role. Sharon is to be replaced by Cecile Whatman, whom many of you met at the FRC Conference.

Finally I would like to congratulate and welcome a 'new' member of the FRC team. Keith Evans has been selected as the new Fairness and Resolution Practitioner SA and NT. He will work alongside Mark Livingstone in SA and Darroch Robinson in NT/K. MAJ James Sproles is moving to Townsville and will be part of the expanded FRC QLD team.

*Helen Marks*

*Follow the three R's - Respect for Self, Respect for others and Responsibility for all your actions - Dalai Lama*



## Under the spotlight...

### Fairness and Resolution Centre, VIC/TAS

The Fairness and Resolution Centre VIC/TAS is located on Level 1, Defence Plaza, 661 Bourke Street, Melbourne. The two Fairness and Resolution Practitioners at the Centre are Mr Peter Coster and Ms Robyn Roberson.

Robyn Roberson is a nationally accredited mediator with LEADR and Defence, as well as being a very experienced conflict coach and trainer. She has had a passion for alternative dispute resolution for many years. Prior to joining Defence in early 2007, Robyn was the Principal Mediator with Win-Win Mediation Consultants in Melbourne and she spent many years working with the Department of Veterans Affairs as a Community Adviser.

Robyn and her partner Sam share their quiet suburban home with a couple of kids and a small menagerie. They love good food, good wine and good company.



Peter Coster first started his Defence career in Army, working as an armoured crewman in Townsville. During this time Pete was fortunate enough to be deployed to East Timor twice. He also enjoyed postings at 1<sup>st</sup> Recruit Training Battalion as a Recruit Instructor and at Puckapunyal.

Pete has been working at the FRC VIC/TAS for the last two years and enjoys being able to take a 'real person' approach to conflict in the workplace. Pete is a trained mediator and conflict coach but yet to complete the accreditation process for Defence. Pete is an avid Saints (AFL) fan.



## Effective Solutions for Team Conflict

*The following is an extract from an article written by Renee Evenson and published in the July 2009 edition of Toastmaster.*

If you are uncomfortable facing conflict, you are not alone. Most people feel uncomfortable when dealing with any conflict, especially when it occurs in the workplace. We often ignore these situations, hoping the problem will go away. The bad news is that ignoring conflict will only allow it to grow, often becoming unmanageable. If left unresolved, conflict causes employees to become disgruntled and bitter, it causes relationships to break down, and customers to quit doing business with you. When you arm yourself with the skills to meet conflict head on and work quickly and effectively to resolve problems, you will gain respect as an involved leader who is committed to being part of the solution rather than part of the problem.

In order to maintain strong, cohesive and productive relationships with others:

- View every conflict as an opportunity.
- Anticipate problems and deal with them immediately.
- Communication is key to resolving conflict: Listen and Question; Decide and Plan; Respond and Resolve.
- Always remain calm and in control.

**View conflict as an opportunity** Conflict is a natural component in all relationships and should be welcomed. Richard Selznick, a psychologist and author of *The Shut-Down Learner*, says, “Without resolution, resentments stay below the surface and magnify. When conflict resolution allows for good discussion, those involved can begin to move ahead.” Good discussion clears up confusion, channels positive energy, boosts confidence, improves the cohesiveness of the employees and opens the door to resolution. In high-producing teams, conflict often comes about when people are creative, productive and passionate about their work. Tom Sebok, director of the Ombuds Office at the University of Colorado at Boulder, says, “Almost any team is likely to view a situation from different perspectives, which can lead to conflict. Recognising this and encouraging discussion of different points of view can help groups make more thoughtful and informed decisions.”

Think about this: Without disputes, people might become bored, complacent or stagnant. When you view conflict as an opportunity, you will look for resolutions that allow for growth and development. Effective resolution gets people back on track, opens the door to creative thought process, and paves the way to open, honest communication.

**Anticipate problems and deal with them immediately** In any conflict, someone must take ownership of the issue and work to resolve it positively. If you are the one taking ownership, there is another element of conflict resolution: the time factor. Once you become aware of a conflict, you do not have the luxury of time to wait and see what will happen. Learn to be on the lookout for problems, and resolve issues when they are still manageable. Become an active observer and communicator; stay involved and watch for things that are not right. Ask your team members and co-workers to tell you when a problem is brewing and be aware of co-workers who suddenly become negative, quiet, agitated or upset, as this is often a sign of conflict.



**Communication is key to resolving conflict** Miscommunication is often at the root of arguments, so it makes sense that good communication is the key to resolving them. Before attempting to draw conclusions or make decisions, listen carefully to all sides. Allow everyone, individually, to tell their version of the story. An effective way to approach this is to stay away from ‘you statements’ and focus on ‘I statements’. Seek information by using non-judgmental words and phrases such as “I noticed...; I feel that...; or I need to talk to you about something that concerns me”. Follow up by asking questions to enhance your understanding. Pay attention to the non-verbal messages you send and those you receive. People are going to be emotional when talking about the conflict; observe the message behind the words.

When you are confident you have enough details to work toward resolution, take time to think through the situation before deciding how to respond. When you have drawn your conclusion, plan what you will say when meeting with the person or the group. Think about how those involved are going to respond to you. Who will be confrontational? Who will refuse to take responsibility? Who will be passive and give in? Plan how you are going to answer these responses. Include in your planning who needs to be at the resolution meeting and where the meeting will be held. If the conflict is between two people, you most likely do not need to involve your entire team to resolve the issue. Find a private location for your meeting.

The most effective way to resolve conflict is to allow those involved to jointly reach consensus. There will be times, though, when you must make the final decision for your team. In either situation, resolution occurs when you can find a win-win solution where all involved feel valued and can accept the solution. If your role is to facilitate the discussion and guide your co-workers to reach consensus, make sure all members are present when you meet to resolve the issue. Describe the problem and ask for ideas to resolve it. Sebok makes two important ground rules: no interruptions or button pushing through insults or personal attacks; and focus on the solution rather than the problem. When you encourage everyone to offer their suggestions and analyse the consequences of each, you will be able to stay focused on the issue at hand and find the best resolution. Work toward consensus and a solution that everyone can buy into.

When complete agreement is not possible, make sure everyone accepts the outcome before ending the meeting. When tempers flare, or if you cannot reach agreement, give everyone time to calm down by adjourning and meeting later. If after meeting again, it is still impossible to reach group consensus, you may have to make the final call to move forward. In the event that you are the decision maker, Selznick stresses, “It will help to begin by saying something like, “I’ve taken all of your opinions into consideration, but ultimately someone has to decide. It’s not an easy decision but I’m going with X.” The important point is to let everyone know you listened to their view.” After saying that you listened to everyone’s view, gain consensus that each person understands your reasoning. This step is crucial to resolution: Even though some might not agree with your decision, helping them understand where you are coming from and why you came to that conclusion should help them buy into the solution.

**Always remain calm and in control** If the issue does not directly involve you, it should be easy to stay composed. What happens, though, when you are involved in the conflict and have trouble controlling your emotions? Learning not to be reactive will help slow your racing heart and racing thoughts. Make it a rule to always take time to think through a situation. If you have to, walk away rather than lose control of your emotions.



Sebok puts into practice three calming strategies: physical, self-talk and visual. Physical techniques include deep breathing, drinking water or tensing and relaxing your muscles. Self-talk techniques involve recognising your own negative self-talk that makes you upset and substituting those messages with more rational thoughts. Visualisation techniques involve things like imagining that the other person's comments are flying past you and hitting the wall. The point of these techniques is to reduce the intensity of emotions you are feeling so you can regain control and use your best conflict management skills.

Even if you are not involved in the conflict, you may still get caught up in the emotions. When dealing with an angry or upset person, your reaction may be to emulate the person's emotions, become defensive or downplay the event. Before reacting, allow the person to vent. Sebok notes "One of the best strategies if others become angry or defensive is to listen. The natural temptation is to interrupt. Listening respectfully in this situation can help an angry person calm down." When it is your turn to respond, remain patient, calm and in control of your emotions. If the person speaks or acts inappropriately, focus on the behaviour. Stress why it is inappropriate and assure them that you will help. "I'm going to help you resolve this but I need you to stop yelling. Customers might hear you and that's unacceptable."

If you find yourself in a situation where someone intimidates or threatens you, ask for help or get away from the person. Never remain in a situation in which you feel threatened.

In conclusion, handling conflict – whether it involves an unhappy customer, a problem performer on your team or a disagreeable co-worker – is not an easy skill to master. Sebok offers the following advice: "When you recognise your new strategies and skills begin to result in positive outcomes, your confidence grows. Anyone who has tried to learn a new skill will tell you that you have to allow yourself to feel uncomfortable and make mistakes. Learning to manage conflict well is no exception. Getting good at it takes both patience and practice." As your confidence grows, others will see you are a person of action and will respect your forthrightness and leadership. Whenever you can, allow others to become part of the solution and when you can't discuss the reasons behind your decision. That is the key to maintaining strong relationships, and strong relationships can weather any conflict.

Renee Evenson is a writer specialising in organisational psychology. Her latest books, *Customer Service Training 101* and *Award-Winning Customer Service* are available in bookstores, online sites or at [www.reneeevenson.com](http://www.reneeevenson.com).

*The power to change depends not on what you hope or wish or think or feel or even believe; it depends on what you do. Doing can be tough, and life can be difficult. It's supposed to be, at least some of the time, because life develops in us only what it demands of us. Daily life is a form of spiritual weight lifting, and you are here to strengthen your spirit.*

*Dan Millman author of Everyday Enlightenment The Twelve Gateways to Personal Growth*



**LEADR NSW Chapter Event 23 Jun 09**  
**TIMING – YOU KNOW WHAT TO DO , BUT WHEN DO YOU DO IT?**  
**By Carol Bowen, FRP NSW**

*I attended the LEADR NSW Chapter event in Sydney on 23 June this year and herewith provide a brief summary.*

**The Facilitators:**

**Nick Twose:** Nick is an experienced social worker and psychoanalyst. Nick has undertaken mediation training with LEADR. Nick works in private practice on the northern beaches of Sydney and with Toby Green, media relationship expert as a clinical associate.

**Hugh Wyndham:** Hugh is the NSW Chapter Chair trained in mediation in 2001 with LEADR, Relationships Australia and ACDC and has practiced since 2002.

**Purpose:**

The purpose of the one hour session is to help experienced mediators develop the capacity to understand and work with the underlying psycho-emotional process at play in every mediation whatever the scale.

**You know what to do, but when do you do it?**

The same might be said for many a mediation. Knowing what to do, knowing the process is an important part of the skill set of a mediator. Knowing when and how to act and when not to act is a necessary complement to those skills. The network event brought together two experts to discuss the signs which mediators should look for when considering:

- When to bring general exploration of issues to a close;
- When and how to intervene;
- When to adjourn the exploration phase and move into private sessions;
- When to move straight into generation of options for solution;
- When parties are ready to define solutions;
- When to accept what a party says and when to question it (and how); and
- When to do nothing.

After this opening commentary, teams were asked to participate in an activity that asked groups to consider the following question and craft responses on butchers paper as follows:

*“What can you say about signs and inflections (change in direction) that have been significant for you in mediation?”*

At my table, the responses to this question were:

**Moment**

**Sign**

Disengagement	Parties looking away
Reflection	Party/ies needing a break
Engaging	Shift in body language ie being open or leaning forward
Acknowledgment	Nodding by one party while another party is speaking (sign of common ground or agreement)
Cultural differences	Shift in body language from open to closed
Loss of confidence	Reduction in the tone of voice
Power imbalance	Party closes down



The facilitators stated that when you notice an inflection during mediation, the question you must ask yourself is: “*Do I do something about it and if so, what?*” The facilitators said that it is important to understand what options are open to you. Also, you need to be aware of how to intervene. General discussion was had around peoples’ experiences in this regard and some good ideas flowed. Generally, the options are:

- Do nothing (mentally note and allow discussion to continue)
- Allow silence/logjam to persist
- To the party who said something important you might ask “*can you elaborate on the point you were just making?*”
- To the other party you might ask “*how do you feel about that/what do you think about that idea?*”
- To both – ‘*it seems to me that you have made some progress,*’ then summarise/rephrase. (You may also want to explore some things in private session).

When she’s not working or out and about, Carol likes to relax and enjoy a good cup of coffee and a slice of banana bread. Here’s her recipe which was taken from *Women's Health & Fitness* (1 loaf makes about 20 slices):

Ingredients

60 g reduced-fat margarine

2 eggs

1 cup mashed banana (very ripe)

1/4 cup soft brown sugar

1/2 cup low-fat milk

2 cups whole meal SR flour (or white if you prefer)

1 tsp bicarb soda

Serving suggestion: tsp of light Philadelphia cream cheese and tsp of honey over each slice

Method

1. Heat oven to 180 c. Place sugar and margarine into bowl and beat until creamy. Add eggs, banana and milk and mix until blended.

2. Sift the flour and bicarb of soda together, add to banana mix and mix lightly.

3. Place mix into a paper-lined non-stick 14 x 21 cm loaf tine and bake for 50 mins or until a skewer inserted into the loaf comes out clean

4. Remove from the oven and turn out onto a cooling rack. Place a small amount of light Philadelphia cream cheese and honey over each slice of bread and enjoy!.

**Low GI**

E = 455 kJ P= 2.9 g C = 19.4 g U = 1.6 g S = 0.4g T = 2.0g S = 155.6 mg FI = 1.1 g

Perhaps the largest avoidable cost in every organization is the loss of energy that comes every time someone abuses his or her power.

Taken from *Crucial Confrontations*, Petterson, Grenny, McMillan, Switzler Hill-McGraw, 2005



## MEDIATION: IS IT A MATTER OF STYLE OR CONTEXT?

This is the first of two parts of a paper delivered by Robert Turner at the LEADR Mediation Conference in New Zealand earlier this year. Robert has been a Registered Defence Mediator since early 2003.

*A common language does not denote a common meaning or understanding. A definition of mediation, articulated in the new Australian National Mediation Standards, provides for a common language. However the common meaning of the mediation process is an entirely different issue. Is there a definitive model of mediation? A review of the literature notes: facilitative mediation, transformative mediation, narrative mediation, evaluative mediation, to name but a few. If, as the Standards definition infers, mediation is a process to assist the parties resolve their dispute, does it really matter whether the practitioner uses a very structured approach or a more informal conversational style? It is a truism that no two disputes are the same; similarly no two parties are the same. If one party is very process oriented and the other party just wants to tell their story, is the mediator doing one party a disservice and behaving ethically by adopting one particular style/model in preference to another? Is the mediator exhibiting bias and creating a potential power imbalance by not being flexible in their approach to each client? If mediation is a service provided to consumers, should the service have a customer focus? Do practitioners who rigidly adhere to a particular style/model overlook the customer focus aspect of their service? Does the consumer appreciate the subtle differences between evaluative, facilitative, narrative or transformative mediation? What is important: style or context?*

### Introduction

Conflict resolution is such a simple process, anyone can do it; in fact people have been engaged in resolving conflict for as long as conflict has existed! While it can be argued that this statement is fundamentally true, it is also an exaggeration. It is an axiom that we all deal with conflict on a daily basis. However our perception of conflict will greatly influence our outlook and method of dealing with it. The crucial aspect is how we cope with conflict. Poorly handled conflict is often the root cause of much emotional distress, and it is for this reason people seek external assistance with managing or resolving their conflict situations. Mediation is one such external option.

In the Australian National Mediation Standards mediation is described as follows:

*Mediation is a process in which the participants, with the support of a mediator, identify issues, develop options, consider alternatives and make decisions about future actions and outcomes. The mediator acts as a third party to assist the participants to reach their decision. The mediation process may:*

- *assist the participants to define and clarify the issues under consideration;*
- *assist participants to communicate and exchange relevant information;*
- *invite the clarification of issues and disputes to increase the range of options;*
- *provide opportunities for understanding;*
- *facilitate an awareness of mutual and individual interests;*
- *help the participants generate and evaluate various options; and*
- *promote a focus on the interests and needs of those who may be subject to, or affected by, the situation and proposed options.<sup>1</sup>*

What could be simpler? Or is this in reality an over simplification of something far more complex?<sup>2</sup>

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<sup>1</sup> Australian National Mediation Standards, Practice Standards, September 2007, p. 5.

<sup>2</sup> These questions are not intended to demean the extensive work been undertaken to get the Australian National Mediator Practice Standards and Approval Standards to where they are today. It is heartening to note that these Standards are non-prescriptive as to a particular model of mediation that should be undertaken to assist participants.



What is important in mediation? Is it the process used by the practitioner or the outcome the participants hope to achieve? In suggesting it is the latter, does this presuppose that the participants know or are aware of what outcome it is they are seeking? The outcome may not necessarily be a settlement or resolution. While the presenting issue at the outset of the mediation may be concerned with something tangible, such as money, the real issue may be something more intangible, such as an ongoing relationship – be that work related or personal. Who then defines what constitutes a settlement or resolution?

For these reasons a prescriptive style, or model, of mediation has the potential to limit the flexibility and resourcefulness of the practitioner, whose sole function is to assist the parties in dispute to understand and appreciate each others differences: the context in which mediation occurs. The inference that one style or model of mediation should have hegemony over other styles or models merely encourage advocacy and competition amongst practitioners at the expense of dialogue and collaborative inquiry: the limitation of merely doing mediation rather than being a mediator.

In considering this proposition four aspects will be considered: the interrelationship of conflict and dispute, what constitutes a style or model of mediation together with a synopsis of three different models or perspectives of mediation, and finally the implications of being a mediator, as opposed to merely doing mediation: the context of mediation.

### **Conflict and dispute**

It could be argued that mediation is a reactive process, since the parties are already in conflict or have a dispute when they arrive. Why then should the mediator need a knowledge of the sources of conflict? Mayer<sup>3</sup> opines: *(U)nderstanding conflict is basic to its resolution*. He sees conflict as complex and multidirectional, existing on different levels: being actual or merely having the potential to exist. He<sup>4</sup> posits conflict from a three dimensional perspective: cognitive (perception), emotional (feeling), and behavioural (action). The perceptual basis relating to situations where a person believes their needs, wants, interests or values are incompatible with those of another. Feelings on the other hand relate to situations where a person may experience fear, sadness, bitterness or anger towards another and as a consequence feel in conflict with them. While the actions a person takes – through speech, acts of violence or even the written word - to achieve their own agenda may be the source of conflict. These dimensions are not static and each can vary independently of the other.

Costantino and Merchant<sup>5</sup> define conflict as a *process* that is frequently *ongoing, amorphous, and intangible*. Also that it is a means of *expressing dissatisfaction, disagreement, or unmet expectations with any organisational interchange*. They opine that conflict is usually referred to by its characteristics or how it makes people feel. It results from differing expectations, competing goals, conflicting interests or unsatisfactory interpersonal relationships. Just because no action is taken to resolve a conflict does not mean the conflict ceases to exist: conflict can escalate into a dispute.

To understand conflict one must also be aware of how individuals approach conflict. Mayer<sup>6</sup> notes four significant factors: *values and beliefs about conflict, approaches to avoiding and engaging in conflict, styles of conflict, and the roles people play in conflict*. Tillet<sup>7</sup> is of a similar opinion and comments that conflict relates to the values, needs or beliefs of two or more parties being incompatible, for which no immediate or long term action is necessarily being considered. It is based on perceptions and feelings rather than reality and facts.

While all these opinions regarding the nature of conflict contain valid elements, possibly the most succinct definition of conflict is provided by Folger and Jones<sup>8</sup>: *(C)onflict is a socially created and communicatively*

<sup>3</sup> Mayer, B. *The Dynamics of Conflict Resolution*. 2000, Jossey-Bass, San Francisco, p. ix

<sup>4</sup> Mayer, B. *The Dynamics of Conflict Resolution*. 2000, Jossey-Bass, San Francisco, p. ix

<sup>5</sup> Costantino, C.A. and Merchant, C.S. *Designing conflict management systems*. 1996, Jossey-Bass, San Francisco at pp 5-6

<sup>6</sup> Mayer, B. *The Dynamics of Conflict Resolution*. 2000, Jossey-Bass, San Francisco, p. 26.

<sup>7</sup> Tillet, G. *Resolving Conflict A Practical Approach*. 1999, Oxford University Press, South Melbourne at pp 7-8 and 16.

<sup>8</sup> Folger, J.P., and Jones, T.S., (eds). *New directions in mediation: communication, research and perspectives*. 1994, Thousand Oaks, Sage Publications, p. ix.



*managed reality recurring within a socio-historical context that both affects meaning and behaviour and is affected by it.*

As noted at the outset of this paper we deal with conflict on a daily basis, however conflict of itself is neither good nor bad; it can be constructive or destructive. When considering the negative aspects of conflict another term frequently used is dispute. Is there a difference between conflict and dispute? While the terms are frequently used inter-changeably, a review of the literature posits they are not synonymous.

Lynch<sup>9</sup> opines that conflict not only includes disputes but also includes *relationship strains and workplace stresses that have not surfaced as a dispute*. She<sup>10</sup> cites an example of conflict that has the potential to develop into a dispute: an employee feeling that their supervisor is exhibiting bias towards another, but not saying anything.

Disputes are one of several manifestations of unresolved conflict, which as Costantino and Merchant<sup>11</sup> observe have issues, positions and expectations for relief. They are also a product, which is tangible and concrete. Tillett<sup>12</sup> refers to disputes as incompatible interests, needs or goals for which fulfillment is sought usually through compromise: disputes can be settled.

Tillett<sup>13</sup> makes an interesting observation regarding disputes and conflicts: *disputes are usually settled whereas conflict resolution is essentially a process of changing relationships*.

However it could be argued that parties in conflict may not be that sophisticated and have rationalized or compartmentalized their situation into needs, wants, values or interests: they just feel that a *relationship has become complicated, not as easy and smooth as it was and we find it harder to really hear what others are saying*<sup>14</sup>.

If merely differentiating between conflict and dispute is not so simple and clear cut, why then would it be reasonable to assume that one model or style of mediation could address all the complexities involved?

If the role of the mediator is to support individuals to manage, settle or resolve disputes<sup>15</sup>, is it unreasonable to presuppose that the mediator has at least a basic understanding of what conflict is: that part of the training for aspiring mediators would include some basic training or understanding of what constitutes conflict or a dispute? A review of several training programs highlights an emphasis on skills development, but little, if any, theoretical underpinning: what Benjamin<sup>16</sup> refers to as *teaching pro forma models of mediation without asking people to think about what they are doing and why*.

### **Model of mediation/theory of practice**

Within the mediation lexicon the term *model* is often used interchangeably with *style*, *approach* and *orientation*. Is there a significant difference between these terms or merely a matter of semantics? Della Noce<sup>17</sup> suggests the term *model* signifies something more extensive *than a practitioners' preference or idiosyncratic style*. Model suggests something definitive and worthy of replication, that a practitioner could refer to for direction and

<sup>9</sup> Lynch, J. Beyond ADR: A Systems Approach to Conflict Management. *Negotiation Journal*, 2001, Vol 17, No 3, at p208

<sup>10</sup> Lynch, J. *Are Your Organisation's Conflict Management Practices an Integrated Conflict Management System?*, 2003, end note 3 - <http://www.mediate.com/articles/systemsedit3.cfm>

<sup>11</sup> Costantino, C.A. and Merchant, C.S. *Designing conflict management systems*. 1996, Jossey-Bass, San Francisco at pp 5-6.

<sup>12</sup> Tillett, G. *Resolving Conflict A Practical Approach*. 1999, Oxford University Press, South Melbourne at p 7.

<sup>13</sup> Tillett, G. *Resolving Conflict A Practical Approach*. 1999, Oxford University Press, South Melbourne, pp 7 and 213.

<sup>14</sup> Lederach, J.P., *The Little Book of Conflict Transformation*. 2003. Good Books, Intercourse, PA, p. 7.

<sup>15</sup> Australian National Mediation Standards, Practice Standards, September 2007, Practice standards 1 1)

<sup>16</sup> Benjamin, R. *On American Arrogance: Styles of Mediation* December 2007. <http://www.mediate.com/articles/benjamin35.cfm>

<sup>17</sup> Della Noce, D. J. *What Is a Model for Mediation Practice? A Critical Review of Family Mediation: Contemporary Issues*. *Mediation Quarterly*, vol 15, no. 2, Winter 1997 pp. 136 – 140.



assistance. She outlines eight criteria that should be taken into account when developing a model:

- a mediation model should be situated within the relevant research in the field;
- mediation models must be grounded in social conflict theory;
- a mediation model should have sufficiently visible boundaries to enable practitioners and clients to distinguish it from other processes;
- if a model is constructed in phases, all phases should be thoroughly explicated;
- explicit contracts and comparisons to other models should be presented as an aid to understanding;
- a mediation model should have a clear definition of success;
- a coherent model must identify and provide guidance for the ethical dilemmas that its practitioners will encounter; and
- 'how to' is not sufficient ..... but it is necessary.

Does this then explain the rationale for the Facilitative, Transformative, Narrative models? Gergen, McNamee and Barrett<sup>18</sup> posit that while we use language to articulate our realities, language is also a differentiating medium whereby every word separates what is named from what is contrary, so that *when we state what is the case, we use words that privilege certain existents* while marginalising the contrary: a focus on our problems diverts our attention from what is working. Does the use of additional words to modify the role of the third party divert our attention from their primary role? How does the term facilitative mediation or transformative mediation clarify the fundamental outcomes of mediation?

In accepting the inevitability of models of mediation, what then constitutes a model of mediation or more succinctly a model of practice? A review of the literature provides a plethora of ways in which to define and describe mediation. It can be considered from an aspirational, procedural or occupational perspective. There is the standard model of mediation, referred to by some as classical or facilitative mediation, as well as transformative<sup>19</sup> and narrative mediation<sup>20</sup>, to name but a few. The *monolith* called mediation is in reality a plurality of models and practices, undertaken by a diverse range of practitioners, for an equally diverse range of clients whose needs and expectations are similarly diverse.

Are all mediation models merely variations on a common theme? Is there a need for a variety of models or is there one fundamental process that is flexible and adaptive to the specific situation? Gill-Austern<sup>21</sup> posits that mediation is about specifics, specific people (the participants and the mediator), specific issues, and this specificity negates the need for a variety of mediation models. *The process is flexible and adapts to the situation (to the specifics) but there is no change to the fundamentals of the process.*

When the participants in a mediation are communicating and the process is flowing, the underpinning theory of mediation is normally the last thing on the mediators mind. However within the space of one word, inflection or look, the participants can be at an impasse and the mediator is faced with a challenge: to intervene or not. The basis on which an intervention is chosen, and how it is utilised, will be based essentially on the theory that underscores each model of mediation. The theory may be implied or explicit, sophisticated or naïve. In essence it is the 'why' in the 'how, what, when, and why' of the mediation process.<sup>22</sup>

As noted earlier, a review of the mediation training literature provides considerable detail regarding skills and strategies for practitioners to learn, however specific reference to a theory of practice supporting the individual skills in most cases is conspicuous by its absence. This skills focus is what Bowling and Hoffman<sup>23</sup> refer to as the first stage of mediator development, which will be discussed later in this paper. What constitutes appropriate mediator training is outside the scope of this paper. Suffice to say there is a need for training in a basic set of

<sup>18</sup> Gergen, K.J., McNamee, S., and Barrett, F.J., *Toward Transformative Dialogue*. International Journal of Public Administration. Publication Year: 2001. Page Number: 679. <http://www.questia.com/PM.qst?a=o&d=5000856571>

<sup>19</sup> Bush, R.A.B and Folger, J.P. *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*. 1994, Jossey-Bass, San Francisco

<sup>20</sup> Winslade, J. and Monk, G. *Narrative Mediation: A New Approach to Conflict Resolution*. 2000, Jossey-Bass, San Francisco.

<sup>21</sup> Gill-Austern, G. *Faithful*. Journal of Dispute Resolution, 2000, 343.

<sup>22</sup> Della Noce, D. J. *Seeing Theory in Practice: an Analysis of Empathy in Mediation*. Negotiation Journal, Jul 1999, 15, 3.p.p. 271-301.

<sup>23</sup> Bowling, D. and Hoffman, D.A. *Bringing Peace into the Room: The Personal Qualities of the Mediator and Their Impact on the Mediation*, in Bowling, D. and Hoffman, D.A.,(eds), *Bringing Peace Into the Room*. Jossey-Bass, San Francisco, 2003, p. 15



mediation skills; additional skills, techniques and the theoretical underpinning can then be developed through appropriate professional development training.

### **Interest based, facilitative perspective**

What is commonly referred to as interest based or problem solving mediation had its genesis in the work of Fisher and Ury<sup>24</sup> regarding principled negotiation and its focus on interests and needs. The reference to facilitative mediation derives from the work of Riskin<sup>25</sup> and the grid he developed to articulate both the orientation of the mediator (from facilitative to evaluative) and how narrowly or broadly the problem would be defined. Notwithstanding Riskin's view that the orientation of a mediator is fluid, discussion of the evaluative orientation is outside the scope of this paper.

The interest based, facilitative model is process focused, whereby points of agreement or disagreement are isolated, interests are explored, options developed and a mutually agreed resolution reached: conflict is a problem that needs to be solved. The process is facilitated by a neutral and impartial third party who neither provides advice nor makes recommendations as to outcomes or resolution, notwithstanding the mediator may engage in some reality testing before the parties reach a final agreement. The focus is on *the problem* presented and it is this problem that needs resolution.

The mediator explains the process, designs the approach to be taken, sets ground rules; takes the lead in encouraging discussion and emphasises that the goal of the process is to achieve settlement. In setting the agenda the mediator frames and categorises the issues for further discussion. In the exploration session the mediator may direct the discussion, dropping non-negotiable issues and focusing only on those where agreement is possible. Participants are discouraged from focusing too much on the past as it is considered this can lead to blaming. Similarly emotions are considered inappropriate to the issues. The focus instead is on the present and future. Success is defined as a mutually acceptable settlement.

The model may be described as a five, seven or ten step process and while most practitioners do not advocate rigid adherence to the steps as mandatory, its linear, sequential nature is nevertheless a limitation and a means to an end. While such an individualist perspective may assist in obtaining an agreement, such a rational sequential logic is of limited efficacy with a complex issue. What benefit is there in identifying the interests of one party if such interests are beyond the ability of the other party to comprehend: the intangible interests?

### **Transformative perspective**

The transformative approach to mediation is normally associated with the work of Bush and Folger<sup>26</sup> and the adoption of this particular style by the United States Postal Service.

The Transformative Model is defined as a process whereby *a third party works with parties in conflict to help them change the quality of their conflict interaction from negative and destructive to positive and constructive, as they explore and discuss issues and possibilities for resolution*<sup>27</sup>. As noted by Nabatchi and Bingham<sup>28</sup> the potential of Transformative Mediation *lies in its power to give people control over resolving their own conflict*. Conflict is seen as a long term process and an opportunity for moral growth. The participants are considered the *experts*, with the mediator being responsive to them.

<sup>24</sup> Fisher, R. and Ury, W. *Getting to Yes*, 1981, Houghton Mifflin, Boston

<sup>25</sup> Riskin, L., *Understanding Mediators' Orientation, Strategies and Techniques: A Grid for the Perplexed*. Harvard Negotiation Law Review, 1996, 1, 7-51.

<sup>26</sup> Bush, R.A.B and Folger, J.P. *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*. 1994, Jossey-Bass, San Francisco. Bush, R.A.B., and Folger, J.P., *The Promise of Mediation*, 2005, Jossey-Bass Publishers, San Francisco.

<sup>27</sup> Bush, R.A.B., and Folger, J.P., *The Promise of Mediation*, 2005, Jossey-Bass Publishers, San Francisco, pp. 65-66

<sup>28</sup> Nabatchi, T. and Bingham, L.B. *Transformative Mediation in the USPS REDRESS (TM) Program: Observations of ADR Specialists*. 2001, Hofstra Labor & Employment Law Journal Vol 18



In this process the role of the mediator is to support the parties move from a state of weakness and self absorption to one of strength and responsiveness, and assist *the parties transform their conflict interaction from destructive and demonizing to positive and humanizing*<sup>29</sup>. However this perspective is difficult to maintain when the *prevailing* expectation is one of agreement or settlement.

*Transformative mediators concentrate on empowering parties to define issues and decide settlement terms for themselves and on helping parties to better understand one another's perspective – which will enable them to learn how to live in a world where difference is inevitable*:<sup>30</sup>. The mediator encourages mutual recognition of relationship issues as well as needs and interests. There is also encouragement to focus on the past as a way of building recognition of each other. Furthermore expressing emotions is encouraged as they are considered central to the conflict process and are a key to mutual understanding.

While there are no pre-set stages for the process, at the commencement of a session the mediator explains the approach then invites participants to set goals, agree on ground rules, etc. They are also advised that a settlement is only one of a variety of outcomes.

### **Narrative perspective**

Mediation from a narrative perspective seems almost a tautology. In the vast majority of cases the reason parties find it necessary to participate in mediation is because of a breakdown in, or misunderstanding of, the narrative process. Why then should it be necessary to consider mediation from a narrative perspective? The work of Strong and Lock<sup>31</sup> regarding discursive therapy provides useful analogies for mediation: *talk or discourse has usually been seen as secondary to the actual business of therapy – a necessary conduit for exchanging information ... but seldom more*. Moreover they comment that far from being a neutral tool for getting the real work done, talk is where the real work takes place.

A number of authors<sup>32</sup> have written on the topic of mediation from a narrative perspective. Narrative mediation, as a particular style or model, has its origins in the work of White and Epston with Narrative Family Therapy, which derived from their interest in postmodernism and social constructionism, where meaning is assigned to events and experiences through our subjective experiences and interpretations. Language is the medium used to construct meaning. Discourses are embedded in the stories people tell to establish meanings for them around events, experiences and people. These stories are related to other stories created by individuals, their families, social networks, cultural and ethnic histories, etc.

In narrative mediation there is no distinction between content and process; both contribute to the creation of meaning. Narrative mediation focuses on the stories that assign meaning to the events that have occurred. These stories are added to, modified, argued against and further developed during the mediation interaction. Because people assign responsibility for actions and events that occur (and thus for the conflicts in which they are situated), narrative mediation attempts to destabilize those theories of responsibility which simultaneously serve to legitimize one's point of view and de-legitimize the point of view of the other.

Narrative mediators listen for the discourses that affect the thoughts and actions of the participants. They challenge the taken-for-granted assumptions that each participant is presenting, assumptions about the conflict, themselves and the other. From a narrative perspective participants are encouraged to re-name events and experiences and to consider building different meanings around those events and experiences

<sup>29</sup> Bush, R.A.B., and Folger, J.P., *The Promise of Mediation*, 2005, Jossey-Bass Publishers, San Francisco, p. 70.

<sup>30</sup> Bush, R.A.B., and Folger, J.P., *The Promise of Mediation*, 2005, Jossey-Bass Publishers, San Francisco, p. 35.

<sup>31</sup> Strong, T., and Lock, A. *Discursive therapy?* Janus Head, 8, (2) 585-593, Copyright © 2005 by Trivium Publications, Amherst, NY.  
<http://www.janushead.org/8-2/StrongLock.pdf>

<sup>32</sup> Cobb, S. *A Narrative Perspective on Mediation*. In Folger, J.P., and Jones, T.S., (eds). *New directions in mediation: communication, research and perspectives*. 1994, Thousand Oaks CA, Sage Publications.

Rifkin, J., Millen, J., and Cobb, S. *Towards a new discourse for mediation: A critique of neutrality*. Conflict Resolution Quarterly, Jan 2007, vol 9, iss 2, pp. 151-164.



The Narrative Mediation process comprises three distinct phases: engagement; deconstruction of the conflict-saturated story, and construction of an alternative story. These are not discrete phases and the mediator can move back and forth between these stages. The engagement phase centres on the mediator developing a relationship with the parties, noting in particular the non-verbal behaviours of the parties. During the deconstruction phase the mediator encourages the externalization of the problem: objectifying the problem as if it were a separate entity - *the problem*, as distinct from *your problem*. This serves to undermine the certainties of the conflict. The final stage involves the development of an alternative story. While reaching an agreement or resolution is a goal, the development of a cooperative attitude between the parties is seen as more important.

To be continued.

### DEFENCE ATTITUDE SURVEY

The following is extracted from page 115 of the report from the Defence Attitude Survey undertaken in early 2009.

- Since 2007, there have been increases of between five and 14 percent in the proportion of respondents who believed *they knew how to access Alternative Dispute Resolution services*, to approximately 64 percent of ADF and Defence Civilian respondents.
- In 2008, Defence Civilians were less likely to agree that they *knew how to lodge a review of action (redress of grievance)* in the ADF) with 46 percent agreement compared with approximately 66 percent for Navy and Army, and 58 percent of Air Force respondents.
- ADF respondents, when compared with their Defence Civilian counterparts, were more likely to believe that *incidents of unacceptable behaviour were managed well in their workplace/section* (approximately 65% compared with 51%), and *if they reported an incident of unacceptable behaviour that appropriate action would be taken*, (approximately 68% compared with 60%).

For more information on the Survey please refer to:

[http://www.defence.gov.au/dpe/dpe\\_site/publications/2008\\_Defence\\_Attitude\\_Survey\\_Summary\\_of\\_Results.pdf](http://www.defence.gov.au/dpe/dpe_site/publications/2008_Defence_Attitude_Survey_Summary_of_Results.pdf)



## Healthy, Wealthy and Wise

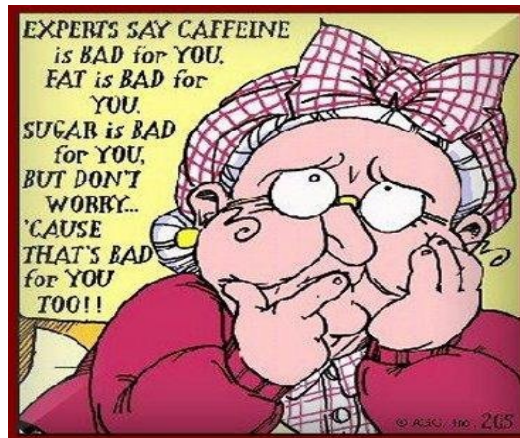
You only need two tools in life - WD-40 and duct tape. If it doesn't move and should, use the WD-40. If it shouldn't move and does, use the duct tape.

**It is hard to understand how a cemetery raised its burial rates and blamed it on the cost of living.**

No matter what happens to us in life, feelings of despair and defeat can be minimised and offset by the power of hope.

**Emotions fuel conflict, but they are also a key to de-escalating it. Many emotions can prevent, moderate or control conflict. A genuine expression of sadness, remorse or concern can be a key to addressing conflict effectively.**

Sydney Graduate School of Management, *Negotiation for Managers Study Guide*, 2004



### Harry's 'Nice and Easy' Chili Mussel Recipe

*This recipe works great on those warm summer days with a nice glass of white wine and some good company. It is also easy to adjust to suit your own tastes. Harry Harrison*

#### Ingredients:

- 2 scoops of fresh mussels from the supermarket (approx. 500 grams) *Not the green NZ ones*
- 3 cloves of garlic
- 6 spring onions finely chopped
- 3 chilies finely chopped
- 1 cup of white wine (drink the rest) or chicken stock
- 1 jar of provincial spaghetti tomato sauce (or make our own)

#### Method:

Clean and de-beard mussels as appropriate. Discard any that are open and won't close. Set aside. Heat a large saucepan that has a lid and add a touch of oil. Add chilies, spring onions and garlic and fry until soft. Add mussels and white wine and immediately cover with lid. Fry for two or three minutes, constantly shaking, or until mussels start to open. Stir through tomato sauce until warm. Throw out any mussels that didn't open. Serve with crusty bread and the rest of the white wine. Yum.



## FAIRNESS AND RESOLUTION CENTRES

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FRC-ACT/SNSW	WOFF Lainie Thorn	(02) 6266 4506 0439 115 010

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### WA

FRC-WA	Mr Chris Harrison	(08) 9311 2401 0418 671 155
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For general information on the services available at your Fairness and Resolution Centre see:

Intranet: <http://intranet.defence.gov.au/fr>

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