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The Future of Mediation: A Sociological Perspective

Dr. Brian Jarrett*

*"Blessed are the peacemakers"*¹

I. INTRODUCTION

During the period 2005 through 2007, I interviewed forty renowned mediation teacher-practitioners in the United States and Canada, each of whom has published several major works on mediation. While these experts were concerned with best practices and promoting particular approaches to mediation, it became increasingly evident that each also wanted to identify sociological factors which appear to be shaping the mediation field. In fact, during the course of these interviews, it became evident that these experts appeared to share a common set of concerns about the future of mediation and its continuing promise as a form of dispute resolution.

In general, these teacher-practitioners were concerned with certain trends, including emerging divisions within the field and their related effects. They showed interest, somewhat paradoxically, in a movement toward conformity now materializing in the contemporary mediation field. In sociological terms, both centripetal (center-seeking) social forces and centrifugal (center-fleeing) social forces are shaping mediation's future. Interviewees pointed out that both forces were significant in the field. On one hand, centripetal forces are pushing mediation toward a more homogenous practice compatible with the legal process. On the other hand, centrifugal forces are causing mediation to splinter into particularized practices aimed at unique disputing environments, cultures, and philosophies.

Arguably, these sociological pressures are central to the future direction of the mediation field and, in the aggregate, provide a useful building block in the development of an emerging *sociology of mediation*—a development that could fill the theory-to-practice gap which currently bedevils the mediation field. Understanding sociological forces reminds us of the constraints within which mediators, as social actors, must work. More importantly, an awareness of these pressures is, conceivably, essential to the development of an autonomous and discernible profession that remains capable of welcoming a diversity of practitioners and

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1. *Matthew 5:9.*

their respective approaches. I summarize each of these pressures below in five distinct sociological themes.

II. FIVE EMERGENT SOCIOLOGICAL THEMES

A. *Competition in an Uncertain, Unstable, and Competitive Mediation Market*

Interviewees universally emphasized uncertainty, instability, and heightened competition in the contemporary mediation field. They reported many instances of practitioners struggling for market share in the current business environment. Interviewees also reported that the general public is still quite unaware of exactly what mediation is, despite the proliferation of community, university, and neighborhood justice center programs. Interviewees reported that mediator perceptions of market uncertainty and instability often motivate practitioners to seek advantage over potential competitors under the guise of philosophical and ideological differences. Accordingly, mediators, albeit well-intentioned, often tout a particular approach to mediation to gain work in this competitive market.

It is well accepted in sociological literature that heightened competition in the marketplace increases pressure on individuals and organizations to seek greater distinction from potential competitors.² Pierre Bourdieu argues convincingly that, in such markets, competing service providers must seek a *profit of distinction* in the eyes of potential clients, to enter into, and, subsequently, to succeed in that market. He further contends that these seemingly isolated struggles, viewed collectively, reveal a sociological pattern he calls *distinction*.³ Accordingly, mediators who make the claim that their approach is unique are often seeking to profit from *distinction*. The pressure to make such claims rises commensurately with the degree of competition in the marketplace. Interviewees acknowledged the competitive nature of the mediation market and its influence on emerging claims of *mediator distinction*, consistent with Bourdieu's analysis.

Paradoxically, while mediators struggle to distinguish themselves along ideological lines, their corresponding practices often reveal evidence of conformity to the demands of the nitty-gritty, multifaceted realities of practice. Evidently, mediators conform in a variety of practices based on a host of factors including political expediency, personal preference, and client need, knowledge, and expectations. Interviewees reported many instances of such behavior. Ironically, mediators often find themselves publically promoting one approach while they privately beg, borrow, and steal from any number of competing alternatives that prove useful in the mediation room. For example, mediators may publically deny making substantive evaluations during mediation but sometimes find it necessary to be the *agent of reality* when parties reach an impasse, thereby introducing independent judgment into the process.

2. PIERRE BOURDIEU, *DISTINCTION: A SOCIAL CRITIQUE OF THE JUDGEMENT OF TASTE* 260 (Richard Nice trans., Harvard Univ. Press 1984) [hereinafter *DISTINCTION*].

3. *Id.*

The seemingly paradoxical impetus both toward distinction and conformity is consistent with sociological research.⁴ Sociologists point to socioeconomic status of the service provider as a significant intervening factor.⁵ Bourdieu and others have demonstrated that conformity tends to emerge among similarly situated actors who can collectively profit by distinguishing themselves from the less socially and professionally privileged.⁶ Moreover, the less privileged profit by mimicking the shared dispositions and attitudes of the more privileged, in circumstances where such mimicry proves credible in the eyes of potential clients. Collectively, Bourdieu calls these shared and conforming social dispositions, and related attitudes, *habitus*.⁷ Accordingly, *habitus* is evident even in the most subtle of the mediator's gestures and in both style and level of diction. For example, at least two-thirds of the interviewees agreed that lawyer-mediators, on average, tend to share a more formal delivery in mediation than non-lawyers, as a function of values and attitudes shaped in legal training. Interviewees revealed instances of non-lawyer-mediators infusing lawyer-like jargon into mediation-speak in order to elevate the mediator's perceived legitimacy.

For Bourdieu, *habitus* is closely linked to social and professional status.⁸ Accordingly, *mediator habitus* should reflect the degree and nature of one's professional status in the mediation field. The primary value of *habitus* is that it supports and maintains the mediator's social capital within the field. It does this by symbolically communicating one's level of social and professional capital to potential clients. Accordingly, one would expect practitioners, through the adoption of particular *mediation habitus*, to mimic those who share similar or greater social and professional capital and to distinguish themselves from those who do not. The process is self-perpetuating in that the elite must continue to strive to distinguish themselves to maintain an ongoing economic advantage.

Indeed, three-quarters of the interviewees emphasized that professional status did appear to significantly influence the mediator's perceived social capital, shared dispositions, and attitudes in the mediation field. Interviewees reported that those of like professional status did tend to adopt comparable espoused approaches to mediation and distinguish themselves from those of lesser-perceived professional status. For example, judge-mediators often adopt a more evaluative approach, which is likely a combined function of client expectations and prior professional training. Evaluation is part and parcel of the professional capital that a retired judge can bring to the mediation marketplace and provides a mark of *distinction*. Similarly, interviewees reported that lawyers, as a group, while not

4. *Id.* at 260, 331, 381-382. See also PIERRE BOURDIEU & LOÏC J.D. WACQUANT, AN INVITATION TO REFLEXIVE SOCIOLOGY 5 (Univ. of Chi. Press 1992).

5. See BOURDIEU, *DISTINCTION*, *supra* note 2, at 163. See also PIERRE BOURDIEU, IN OTHER WORDS: ESSAYS TOWARDS A REFLEXIVE SOCIOLOGY 123-56. (Matthew Adamson trans., Stanford Univ. Press 1990); PIERRE BOURDIEU, LANGUAGE AND SYMBOLIC POWER 244 (J.B. Thompson ed., Gino Raymond & Matthew Adamson trans., Harvard Univ. Press 1991). PIERRE BOURDIEU, PRACTICAL REASON: ON THE THEORY OF ACTION 100 (Randall Johnson trans., Stanford Univ. Press 1998).

6. See BOURDIEU, *DISTINCTION*, *supra* note 2, at 331, 381-82.

7. See *id.* at 101-02.

8. See *id.* at 109, 114, 142, 170, 260.

unanimously evaluative, did tend to adopt similar espoused approaches to mediation, including an emphasis on values associated with the legal field.⁹

Interviewees also reported similar instances of distinction and conformity between mediator organizations. This pattern accords with organizational research in social science. There is evidence that social organizations tend to conform to other similarly-situated organizations and distinguish themselves from those dissimilarly situated.¹⁰ Paul J. DiMaggio and Walter W. Powell have suggested practical reasons why, over time, similarly situated organizations come to resemble each other, adopting self-similar forms and structures.¹¹ DiMaggio and Powell characterized this process as *isomorphism* which, in organizational science, has come to refer to an emergent property of organizations.¹² It literally means “equal form.”

Specifically, they argue that three separate processes, namely coercive, mimetic, and normative *isomorphism* collectively explain how social organizations come to resemble each other over time.¹³ These processes account for why organizations become more alike than different as the population-ecology model would predict, where continuing differentiation is thought to ensure survival.¹⁴ These processes also explain why, over time, bureaucratic organizations do not necessarily become more efficient as Max Weber would suggest, because inefficient forms may be reproduced through *isomorphism*.¹⁵

It is useful to explore each of these three distinct processes and their influence in the mediation field. First, according to *coercive isomorphism*, both formal and informal structures within the field exert pressures on organizations.¹⁶ DiMaggio and Powell argue that organizations often operate in close proximity to other organizations within the same field of institutional activity. By doing this, organizations exert substantial pressure on neighbors.¹⁷ For example, in making referrals to a neighboring mediator organization, referring organizations tend to seek compliance from the recipient on a host of dimensions, including customer service, fee structures, ethics, training, advertising, and organizational culture.

Second, according to *mimetic isomorphism*, neighboring organizations tend to mimic each other.¹⁸ Those that are less successful tend to mimic those that are more successful in order to improve their own fitness in the field.¹⁹ DiMaggio and Powell argue that when organizational goals are ambiguous, the degree of mimetic isomorphism increases.²⁰ They also argue that mimetic isomorphism increases when technological innovations and changes in the marketplace create uncertainty

9. This finding is consistent with Bourdieu's views on the pervasive influence of the juridical field. See generally Pierre Bourdieu & Richard Terdiman, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 HASTINGS L. J. 805, 806 (1987) [hereinafter *Force of Law*].

10. See Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOC. REV. 147, 147 (1983).

11. *Id.* at 150.

12. *Id.* at 149.

13. *Id.* at 150.

14. See *id.* at 157.

15. *Id.* at 147.

16. *Id.* at 150.

17. *Id.* at 150-51.

18. *Id.* at 152.

19. *Id.* at 155.

20. *Id.* at 151, 155.

in the value of existing services—including, conceivably, those services that mediator organizations offer.

Third, normative pressures arise largely from inside professional networks.²¹ For instance, networks extending into higher education exert a powerful normative influence over private and public sector organizations. Organizations gain prestige by aligning themselves with the approaches and values cultivated in university professional training programs. The Harvard Program on Negotiation is a primary example of a mediation program in higher education that has had a great deal of influence among mediator organizations.²²

Sociologically, organizations at the center of a given field can serve as models engendering a variety of norms, for those who want to move from the periphery toward the center.²³ In mediator organizations, active norms are provided by, for example, ethics codes that impose a duty of *impartiality* upon their mediators. Passive norms, on the other hand, are those that influence mediator behavior more subtly, despite the absence of any expressed organizational mandate. The observance of mediator impartiality may be a passive norm; while there is no expressed sanction for its breach, the consequence of violating the impartiality norm may be a reduction in future employment or even expulsion from the mediator organization. Homo-social reproduction, an aspect of centralization within mediator organizations, occurs where those in management tend to hire those who resemble them in skills and professional orientation.²⁴ For those who survive the filtering process, on-the-job socialization tends to act as the final isomorphic force.²⁵

Interestingly, some mediator programs and institutes are now demanding that members follow one mediation approach to the exclusion of all other potential alternatives. Consider, for example, the United States Postal Service (“USPS”) Redress Program which requires its mediators to adopt an exclusively *transformative* approach—a method based on the philosophy of humanism and its commitment to personal autonomy.²⁶ Consider further the Transportation Safety Association (“TSA”) which also requires its mediators to adopt a *transformative* approach as part of its Integrated Conflict Management System.²⁷ Some interviewees who worked as mediators for USPS reported that they felt disingenuous in publically

21. *Id.* at 152.

22. See Roger Fisher et al., *Getting To Yes: Negotiating Agreement Without Giving In* 199 (Bruce Patton ed., Houghton Mifflin Co. 2d ed. 1991).

23. See DiMaggio & Powell, *supra* note 10, at 151-52.

24. See *id.* at 152-53.

25. See *id.* at 153.

26. See generally Lisa B. Bingham, *Mediating Employment Disputes: Perceptions of REDRESS at the United States Postal Service*, 17 REV. OF PUB. PERSONNEL ADMIN 20 (January 1997); Lisa B. Bingham & Mikaela Cristina Novac, *Mediation's Impact on Formal Complaint Filing: Before and After the REDRESS Program at the United States Postal Service*, 21 REV. OF PUB. PERSONNEL ADMIN. 308 (Winter 2001); Lisa B. Bingham, *Addressing the 'Redress': A Discussion of the Status of the United States Postal Service's Transformative Mediation Program*, 2 CARDOZO J. CONFLICT RESOL. 8 (2001); Lisa B. Bingham & David W. Pitts, *Research Report: Highlights of Mediation at Work: Studies of the National REDRESS Evaluation Project*, 18 NEGOT. J. 135 (2002); Geoffrey A. Drucker, *The Postal Service's Decision to Use Transformative Mediation*, in RESOURCE BOOK FOR MANAGING EMPLOYMENT DISPUTES (2004).

27. See Michael Rawlings, *Peer Conflict Coaching at the Transportation Security Administration* (January 2006), available at <http://www.mediate.com/articles/rawlingsM1.cfm> (last visited Apr. 7, 2009).

agreeing to use only *transformative* practices in these organizations, when, in reality, they found themselves relying on a host of alternative mediation strategies. When any organization, be it service provider or consumer, declares its unbridled commitment to one approach to the exclusion of others, mediators should be skeptical because these declarations appear to be more a reflection of the struggle for professional identity than a justifiable exclusion of alternatives.

B. Struggle for Professional Identity

Almost all interviewees reported that mediators find themselves in a struggle for professional identity. Interviewees indicated that this struggle is due to the uncertainty of the market and the fact that the public is still relatively unaware of mediation practices, despite a plethora of emerging training programs and new mediation texts. Interviewees reported that this uncertainty produces an impetus toward labeling and branding of approaches, as a manifestation of *mediator distinction*. In order to reach potential clients, mediators have to convince them of the unique value they offer. It is likely that branding helps in this regard, providing a badge of professional identity.²⁸

Interviewees reported that espousing mediation approaches as unique brands appeals to distinct philosophical bases. Four such espoused approaches have emerged with varying degrees of prominence in the contemporary mediation marketplace.²⁹ Each can be summarized briefly as follows. The first, *evaluative mediation*, is based on the notion that conflict arises when a particular set of identifiable rules, laws, standards, and/or policies are breached.³⁰ Accordingly, the effective solution lies in offering the parties an evaluation of the nature and degree of the breach and the appropriate compensation required to resolve the matter.³¹ This method is most effective when the parties can readily identify objective standards or law that have been breached and the appropriate agreed-upon compensation within a *settlement zone*.³² Mediator knowledge in substantive aspects of the dispute is essential for this approach so that the mediator can provide the parties with an authoritative evaluation.³³ The second approach, *facilitative mediation* (also known as *problem-solving*, *interest-based*, or *Harvard-method mediation*), originating at the Harvard Program on Negotiation, asserts that conflict results from the frustration of essential human interests.³⁴ Acknowledging these interests and

28. See Brian Jarrett, *Mediators as "Neutrals" in Dispute Resolution: A Case of Contested Identity* 1-6 (May 25, 2006) (unpublished Ph.D. dissertation, University of Hawai'i at Manoa) (on file with author) [hereinafter *Mediators as "Neutrals"*].

29. See *id.* See also STEPHEN J. WARE, *PRINCIPLES OF ALTERNATIVE DISPUTE RESOLUTION* 264-71 (Thomson West 2d ed. 2007) (2001).

30. James H. Stark, *The Ethics of Mediation Evaluation: Some Troublesome Questions and Tentative Proposals, from an Evaluative Lawyer Mediator*, 38 S. TEX. L. REV. 769, 774 (1997). See also Joseph B. Stulberg, *Facilitative Versus Evaluative Mediator Orientations: Piercing the "Grid" Lock*, 24 FLA. ST. U. L. REV. 985 (1997); WARE, *supra* note 29, at 292.

31. See WARE, *supra* note 29, at 290-92.

32. See generally *id.* at 291.

33. See *id.* at 292.

34. FISHER ET AL., *supra* note 22, at 40. See also KIMBERLEE K. KOVACH, *MEDIATION: PRINCIPLES AND PRACTICE* 6 (West 3d ed. 2004) (1994); Lela P. Love & Kimberlee K. Kovach, "Evaluative" Mediation Is an Oxymoron, 14 ALTERNATIVES TO THE HIGH COST OF LITIGATION 31 (1996), available at

finding solutions that meet them is the most effective way to resolve social conflict.³⁵ This method is most effective when the parties' respective interests are identifiable.³⁶

The third approach, *transformative mediation*, in the humanist tradition, asserts that social conflict is natural to the human condition and that mediators should encourage disputants to recognize and empower each other in their responses to conflict.³⁷ Accordingly, the mediator's function is to encourage disputants, in those moments of authentic recognition and empowerment, to transform their respective perceptions of and responses to social conflict.³⁸ This method is most effective when parties recognize the intrinsic value of strengthening ongoing relationships and engaging in personal moral growth.³⁹

The fourth approach, *narrative mediation*, emerged from narrative therapy to promote a post-structural philosophical perspective.⁴⁰ Accordingly, conflict is essentially a social construction manifesting itself in the parties' respective narratives.⁴¹ Narrative mediators work to assist parties to deconstruct their respective conflict narratives and direct these parties to construct more workable shared narratives.⁴² This approach is most effective when the issues in dispute involve threats to social values, shared beliefs, social identity, and cultural meaning.⁴³

Professor Leonard Riskin, in his seminal 1996 and 2003 articles, offered the mediation community a way to move beyond the restrictive labeling and branding of approaches that results from this struggle for professional identity.⁴⁴ He invited the community to look at what the mediator actually does, rather than what the mediator claims to do.⁴⁵ He also demonstrated that mediation can countenance a plurality of approaches when we focus on mediator intention and behavior rather than self-serving but oft-restrictive labels.⁴⁶ Riskin also challenged the mediation community to become more self-aware of its practices—to develop reflexive practices in which practitioners remain aware of their moment-to-moment intentions throughout mediation.⁴⁷

http://www.cardozo.yu.edu/cms/uploadedFiles/FACULTY/Lela_Love/mediation_is_an_oxymoron.pdf (last visited Apr. 7, 2009); Lela P. Love *The Top Ten Reasons Why Mediators Should Not Evaluate*, 24 FLA. ST. U. L. REV. 937 (1997); Lela P. Love & James Boskey, *Should Mediators Evaluate?: A Debate Between Lela P. Love and James B. Boskey*, 1 CARDOZO ONLINE J. OF CONFLICT RESOL. 1 (1999), available at <http://www.cojcr.org/vol1no1/article01.html> (last visited Apr. 7, 2009).

35. FISHER ET AL., *supra* note 22, at 40.

36. *Id.* at 41.

37. ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: RESPONDING TO CONFLICT THROUGH EMPOWERMENT AND RECOGNITION* 95-99 (Jossey-Bass 1994).

38. *Id.* at 141-45.

39. *Id.* at 4.

40. See generally JOHN WINSLADE & GERALD MONK, *NARRATIVE MEDIATION: A NEW APPROACH TO CONFLICT RESOLUTION* 37-47 (Jossey-Bass 2000).

41. *Id.* at 41.

42. *Id.* at 72, 85.

43. See generally *id.* at 94-106.

44. See Leonard L. Riskin, *Decisionmaking in Mediation: The New Old Grid and the New New Grid System*, 79 NOTRE DAME L. REV. 1 (2003) [hereinafter *Decisionmaking in Mediation*]; Leonard L. Riskin, *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed*, 1 HARV. NEGOT. L. REV. 7 (1996) [hereinafter *Understanding Mediators' Orientations*].

45. See generally Riskin, *Decisionmaking in Mediation*, *supra* note 44, at 9-19.

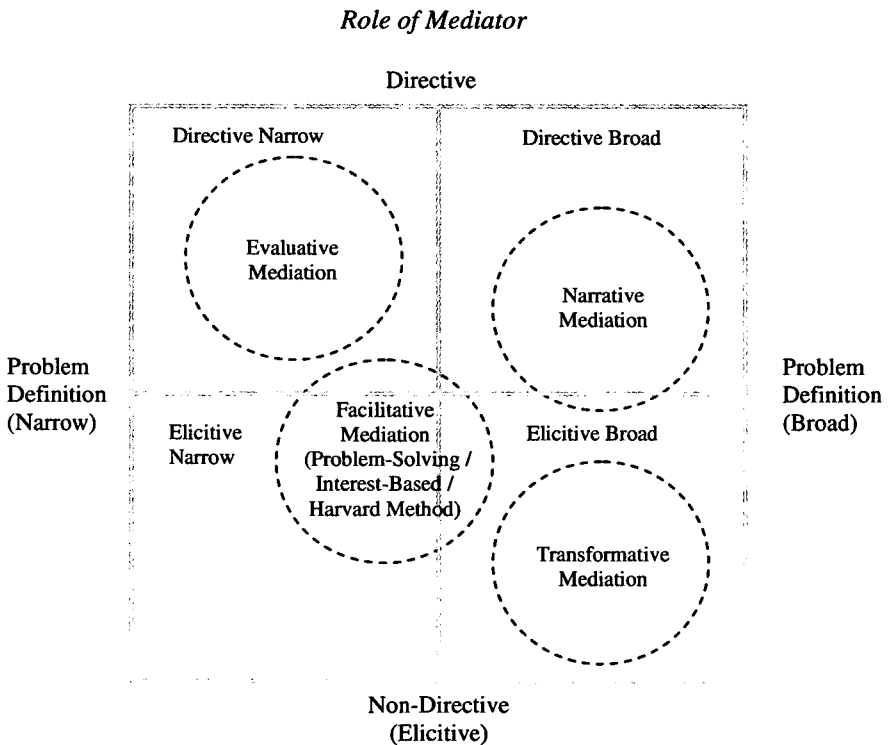
46. See generally Riskin, *Understanding Mediators' Orientations*, *supra* note 44, at 7-9.

47. See Riskin, *Decisionmaking in Mediation*, *supra* note 44, at 50-51.

He accomplished the above by introducing a heuristic device—a grid upon which mediators can map their respective approaches.⁴⁸ In 2003, after some reflection, Riskin modified his principle grid and introduced a grid system.⁴⁹ The new modified grid (“the Grid”) allows one to locate each approach in relation to the others.

In his most recent article on the Grid, Riskin created two dimensions along which mediators might differ in approach: first, in how narrowly or broadly they define the issue to be resolved, and, second, in how directive or non-directive they are willing to be during the mediation.⁵⁰ See Figure 1.

**Figure 1: Riskin’s “New Old Grid”
 with Mediation Models Superimposed**



The “New Old Grid.” Copyright 2003 by Leonard L. Riskin. Reproduced with permission of the author and the Notre Dame Law Review.

Interestingly, almost all interviewees were aware of the Grid and were readily able to identify their espoused approach and locate its proximate location on the Grid. In Figure 1, I have located each of the four approaches to mediation on the

48. Riskin, *Understanding Mediators’ Orientation*, *supra* note 44, at 17.

49. Riskin, *Decisionmaking in Mediation*, *supra* note 44, at 34.

50. *Id.* at 30-31.

Grid following the advice and direction of the interviewees. While practitioners from each approach appear to differ within that approach as to narrowness of problem definition and degree of direction, there does appear to be a relative consistency in recognition as to its approximate location on the Grid.

I also asked interviewees to name the functional differences between approaches. A useful analogy emerged in the responses. Just as social science researchers gather social data, mediators must engage in a data-gathering exercise. The kind of data researchers collect depends on their chosen unit of analysis. As no person is omniscient, mediators must also look at certain data—to the exclusion of others—by some chosen unit of analysis or reference point. The unit of analysis should therefore tend to govern the relative location on the Grid. *Evaluative mediation* adopts as its unit of analysis the facts of a particular dispute as measured against legal precedent or other sources of comparative authority that yield an objective *settlement zone*.⁵¹ *Facilitative mediation* adopts essential human interests as its unit of analysis.⁵² *Transformative mediation* identifies opportunities for and instances of empowerment and recognition as its unit of analysis.⁵³ *Narrative mediation* adopts conflict-saturated social scripts as its unit of analysis.⁵⁴ Indeed, interviewees acknowledged the chosen unit of analysis and the relative location on the Grid of their respective approaches.

It is important to remember that the Grid is simply a heuristic device that demonstrates relative differences between approaches and their relative tendencies. Riskin warns of the Grid's potential misuses.⁵⁵ For example, claiming a particular fixed location on the Grid can give the mistaken impression that the mediator and the parties remain fixed in that particular location throughout the mediation process. From experience, mediators immediately recognize this rigid classification as illusory.⁵⁶ Indeed, interviewees acknowledged that despite general tendencies, mediation is a fluid and evolving process in which the parties and the mediator, as a practical matter, tend to adopt practices that correspond to a host of locations throughout the entire Grid. Therefore, theory development must avoid creating a mistaken one-shot image of mediation, analogous to a photographer attempting to pass off a snapshot photograph as a faithful representation of a moving image.

The Grid is particularly instructive as to the dangers of branding or labeling for this very reason. Mediators and mediator organizations touting a particular approach may produce the mistaken impression that they are committed to that approach throughout the mediation session. This impression may be very useful for marketing purposes as it provides *mediator distinction* and a badge of professional identity allowing the mediator to self-promote, as discussed above. The problem is, however, that the characterization is grossly inaccurate of mediation in

51. See generally WARE, *supra* note 29, at 291.

52. See generally KOVACH, *MEDIATION: PRINCIPLES AND PRACTICE*, *supra* note 34, at 15.

53. See BARUCH BUSH & FOLGER, *supra* note 37, at 84.

54. See WINSLADE & MONK, *supra* note 40, at 72.

55. Riskin, *Decisionmaking in Mediation*, *supra* note 44, at 22-23.

56. Brian Jarrett, *Resolving Discrimination Disputes in Higher Education: Qualitative Field Research at the University of Hawaii*, 6 APPALACHIAN J. OF L. 219, 239 (2007) [hereinafter *Resolving Discrimination Disputes*] (reporting that mediators at the University of Hawaii reported the need to maintain flexibility during mediation).

practice. If one accepts that mediation is a dynamic process, then the mediator will likely find him or herself moving to several locations corresponding to points all over the grid, no matter which approach he or she espouses to the public or sponsoring agency.

Some interviewees also reported a kind of *language game*⁵⁷ in which mediators espouse a certain approach to the exclusion of others. This language game creates a situation in which one form of mediation becomes deliberately incompatible and incomprehensible to another, so that the practitioner can dismiss the competing approaches out of hand, without need to intellectually justify the dismissal. For example, a facilitative mediator can dismiss evaluative mediation simply because the latter involves some form of assessment and judgment of the substantive aspects of the dispute, and therefore abridges a purported philosophical commitment to party autonomy. Yet it is inconceivable that a facilitative mediator would not, on occasion, rationally navigate a dispute through some form of judgment, albeit unstated. Conversely, the evaluative mediator can dismiss facilitative mediation for not providing honest evaluations and directions to the parties. Yet it is inconceivable that an experienced evaluative mediator would not, on occasion, allow the parties to frame the dispute as they determine it, despite his or her better judgment. Thus, philosophical and ideological commitments can blind one to the realities of actual practice in the mediation room. The result is that espoused theory in the mediation field may not accurately reflect actual practice.

Another related problem is that mediators often unwittingly use the same terms for different things. In a hypothetical room full of mediators, one would find that while mediators readily use the same terms with each other, those terms refer to very different behaviors. For example, an interviewee recalled a situation in which the mentor-mediator identified himself to his protégé as very “non-directive;” yet during a subsequent mediation, the mentor-mediator directed the parties very closely to the issues as he saw them. When the protégé later asked about the apparent contradiction, the mentor continued to insist in earnest that he practiced a non-directive approach. Arguably, unreflective discourse creates confusion among mediation practitioners and continues to hinder the development of a coherent, reliable, and unified professional field. One interviewee argued forcefully that this behavior often undermines training and mentorship work in the field because mentors use terms that lack any consistent meaning. It is therefore essential that the mediation community consider ways in which to develop a more reliable and consistent discourse, if it aims to encourage professional development within the field.

To encourage professionalism, it is also of paramount importance for the mediation community to encourage development of a reflexive practice, in which mediators remain aware of their moment-to-moment interactions and build theory

57. See generally LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* 156, 196 (G.E.M. Anscombe trans., Prentice Hall 1953). See also ERVING GOFFMAN, *ENCOUNTERS: TWO STUDIES IN THE SOCIOLOGY OF INTERACTION* 66-81 (Macmillan Publishing Co. 1961); See generally BOURDIEU, *DISTINCTION* *supra* note 2, at 176-177, 250-251, and 330-331. The works of Wittgenstein (1953), Erving Goffman (1961), Bourdieu & Wacquant (1992) are useful in understanding the “language game” metaphor to explore the oft-subtle social functions of language. What is common to all three approaches is that the game metaphor implies that players or social actors agree to rules and boundaries as they engage with each other.

directly from carefully documented experiences. Theory-building in mediation needs to start from the ground up. Experienced mediators need to document what they are actually doing in the mediation room and not what they think they should be doing. Mentors need to share this information in plain terms, without embellishment, with their protégés and those in the mediation community who are interested in developing a consistent and accurate professional discourse. Professor Cheryl Picard recently introduced *insight mediation* at Carlton University based on the *insight philosophy* of Bernard Lonergan.⁵⁸ Picard's proposed method provides a promising ground-up approach which builds on the reflexivity of the mediator. Insight mediation relies on *direct, inverse, and reflective insights*.⁵⁹ Direct insights are those curiosities that prove to be accurate as the disputants reveal deeper concerns and cares underlying the dispute.⁶⁰ Inverse insights occur in those moments where the mediator changes the line of reasoning because it no longer makes sense. Reflective insights involve judgments that validate the other forms of insight.⁶¹ Insight mediation requires continuing vigilance and adjustment. In a similar vein, I have introduced *integral mediation* at several recent conferences in which I argue for a reflexive method which countenances traditionally different and incompatible approaches.⁶² In short, commitments (or lack thereof) to reflexivity in practice will largely determine how successful mediation will become as a professional activity.⁶³

When one understands the value and importance of reflexive practice, it is hard to imagine why mediators would do otherwise. For example, why would mediators insist on restrictive brand names and distinctions, despite the reality of mediation as a flexible, evolving process? Interviewees, for the most part, did not ascribe nefarious motives to such behavior. Instead, they acknowledged the need for mediators to create a marketing advantage in their stated ideological commitments. Interviewees also spoke of the need to create and maintain a particular professional identity linked to existing professions and practice philosophies. They revealed that a very real struggle for professional identity is taking place in the contemporary mediation field. Accordingly, mediators are tempted to cling to fixed labels and brands as an expression of that professional identity. Moreover, espousing commitments to a fixed approach is a way of producing meaning and coherence in a young and burgeoning mediation marketplace.

58. Cheryl A. Picard & Kenneth R. Melchin, *Insight Mediation: A Learning Centered Mediation Model*, 23 NEGOT. J. 35, 38 (2007).

59. *Id.* at 42.

60. *Id.*

61. *Id.* at 42-43.

62. I presented and demonstrated the practice of Integral Mediation at two conferences in 2008. See Brian Jarrett, *Reflexivity in Practice: Integral Mediation* (unpublished manuscript, presented at the Pacific Sociological Association Annual Conference in Portland, Oregon, Apr. 10, 2008) (on file with author); Brian Jarrett, *Toward Integral Mediation* (unpublished manuscript presented at the Annual Joint U.S.-Canadian Law and Society Conference in Montreal, Quebec, Canada June 2, 2008) (on file with author).

63. See Jarrett, *Toward Integral Mediation*, *supra* note 62.

C. Increasing Legalism and Formalism

Almost all interviewees indicated that the field of mediation is moving toward greater formalism and legalism. Moreover, interviewees, regardless of their particular approach, indicated that the mediation field will continue to become increasingly legalistic and formalized as it continues to develop. They speculated that the trend was due, in substantial part, to the habitual practices, dispositions, and interests of the neighboring legal profession.

Interviewees reported that those in the legal profession are perceived to bring the most social capital to the mediation field. They also reported that lawyers and the legal profession exert the most influence over mediator norms, including, for example, formal opening and closing statements. The perception of lawyer dominance in the mediation field appears to have some connection to perceived additional skill sets that lawyers bring and expectations associated with dispute resolution in a traditionally adversarial society.

As discussed above, certain established professions are associated with relatively greater levels of social capital than others in the field of mediation.⁶⁴ Social workers, counselors, psychologists, physicians, engineers, accountants, and lawyers all have levels of social capital commensurate with their perceived professional status. This social capital is associated with the perception of skill, expertise, and social standing that each profession brings to the mediation process.⁶⁵ Inevitably, when a mediator seeks clients, she must present a credible claim of skills and knowledge to those clients. The mediator must present a face that convinces his or her clients of the value she can provide. Interviewees reported that lawyers appear to have the greatest claim to elite distinction in the contemporary mediation market. Interviewees also reported that, in the eyes of the public, lawyers can credibly claim greater knowledge and skill over the substantive, procedural, and evaluative aspects of a dispute, whereas counselors and the other helping professions can credibly claim greater knowledge and skill over the emotional and psychological aspects of a dispute.

Interestingly, interviewees also asserted that even though particularized approaches to mediation continue to develop, the influence of the legal field will continue to grow because clients, wrongly or rightly, trust lawyers with the task of dispute resolution over other professionals, given the adversarial nature of modern society. Interviewees reported that in an adversarial system, legal ethics provide a substitute for the trust and interconnection that are often lacking in the modern world. Accordingly, legal norms provide convenient and oft-comforting reference points for both mediators and their clients. Further, interviewees reported that the legal model necessitates a faith in legal norms such as *neutrality* and *impartiality* for their symbolic value, even where their actual value remains dubious. When one selects a mediator from a roster or panel, some degree of protection against abuse is necessary because one often does not know the mediator directly, but instead relies on the stated qualifications and experience of that chosen mediator.

64. See generally BOURDIEU, *DISTINCTION*, *supra* note 2, at 102-03, 114, 122, 264, 296 (general discussion of professionals and their influence on society). See also Bourdieu & Terdiman, *Force of Law*, *supra* note 9, at 823 (Bourdieu's discussion on the influence associated with juridical capital).

65. See BOURDIEU, *DISTINCTION*, *supra* note 2, at 114-16. (general discussion of social capital)..

Much of the work mediators do arises from these semi-anonymous beginnings, where they are unknown to their potential clients. In these circumstances, it follows that clients want and need some kind of guarantee that this stranger will not favor the interests of their co-disputants. Client trust in lawyers is contingent on and made possible by these professional legal ethics.⁶⁶ The basis of this oft-grudging placement of trust lies in the very nature and history of the adversarial system itself.⁶⁷

Social scientists have long attempted to draw the connection between social capital and consequent trust in lawyers. Some argue that trust is both a requirement for and product of social capital in any social interaction.⁶⁸ Sociologist Francis Fukuyama defines such capital as “an instantiated informal norm that promotes cooperation between two or more individuals.”⁶⁹ From this perspective, social capital that once existed in small, non-bureaucratized communities functioned to engender trust among its members.⁷⁰ Community members could count on each other, confident their favors and contributions would be reciprocated, continuing a cycle of exchange. In this intimate, traditional context, reciprocal altruism is the most successful strategy to bolster trust because cheaters can be easily identified by their misdeeds and punished to discourage future misbehavior.

In traditional, intimate social contexts, mediators were often respected community members, including village elders, who were known to the parties through kinship or close social networks.⁷¹ In fact, in these communities, parties would deliberately choose a mediator precisely because they were intimately acquainted with that person.⁷² The socially connected mediator commands the respect and trust of the parties through his interrelations with other members of his community.⁷³ Because people in these villages were related both socially and/or genetically, cooperating with the direction of the elders provided significant gains for all. In this environment, mediator *impartiality* or *neutrality* would actually be inimical to effective dispute resolution because the more distant the mediator was from the parties, the less social capital and consequent influence he could command.

Once again, contrast this traditional, intimate context with modern social realities where individuals live and work in relatively anonymous environments. In such environments, mediators often come to the parties as unknown third-party interveners. Relationships may develop thereafter, but to gain initial entrée, mediators must have a marketable substitute for the *connectedness* that they otherwise lack. Practice ethics of the legal field emerge to fill the void, providing an alternative, albeit professional, source of authority.⁷⁴ In the modern context,

66. See Bourdieu & Terdiman, *Force of Law*, *supra* note 9, at 820.

67. See *id.* at 821-22.

68. See generally ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 19-27, 134-47 (Simon & Schuster 2000).

69. See generally Francis Fukuyama, *Social Capital and Civil Society*, Address at the International Monetary Fund Conference on Second-Generation Reforms (Oct. 1, 1999), available at <http://www.imf.org/external/pubs/ft/seminar/1999/reforms/fukuyama.htm> (last visited Apr. 7, 2009).

70. See PUTNAM, *supra* note 68, at 21-24.

71. Christopher Honeyman et al., *Skill Is Not Enough: Seeking Connectedness and Authority in Mediation*, 20 NEGOTIATION J. 489, 499 (2004).

72. *Id.* at 496.

73. *Id.* at 499.

74. See Bourdieu & Terdiman, *Force of Law*, *supra* note 9, at 810, 844-46.

clients have come to rely on legal norms, such as the prohibition on *partiality* and *bias*, to solve their disputes. Moreover, clients expect their mediators to respect and adopt these same norms. In other words, in the disputing context, espoused legal norms have become preferred substitutes for social capital traditionally engendered by social interconnection. *Impartiality*, as a legal ethic, has become a proxy for fairness in the modern dispute resolution environment.

Three-quarters of my interviewees lamented the increasing fusion between the legal and the mediation fields. Robert Ratner and Andrew Woolford argue that the mediation field is increasingly diverging from its counterculture roots of the late sixties and early seventies as it marches ever closer to the legal world.⁷⁵ They tie this development to increasing neoliberal economic activity associated with increasing globalization.⁷⁶ Corporations increasingly bedeviled by the high cost of litigation in the U.S. and elsewhere, are exploring lower-cost alternatives. Mediators who serve these corporations declare espoused commitments to *impartiality* and other ethics as a way of legitimating the mediation process in the eyes of judges, academics, lawyers, policymakers, and other gatekeepers of the legal field, who are familiar with these ethics. These espoused commitments become institutionalized, in turn producing mediation that is more legalistic and formal.

The pull toward the legal field is powerful and pervasive. In fact, on its current trajectory, it is conceivable that legalism and formalism may not only come to dominate mediation in the western world, but also mediation within societies that have traditionally attempted to avoid its influence. It is indeed ironic that the modern mediation movement, inspired, in part, by traditional, non-legalistic practices is now beginning to reproduce the very formalism and legalism it initially sought to avoid. Interestingly, interviewees reported several examples of North American mediators currently providing formal and legalistic mediation training to traditional communities in Southeast Asia and other developing regions.

In sum, interviewees concluded, for good or bad, increasing formalism and legalism appear to be developing such importance that they are beginning to represent badges of espoused professional mediator identity. Most interviewees lamented that the mediation community is unwittingly and uncritically adopting norms of the legal world, rather than developing practice ethics that would most improve the mediation process, as a distinct activity, in and of itself. This theme signals the importance of reflexive practices that emerge organically in the mediation room, as opposed to norms developed and shaped externally in the adversarial world.

D. Increasing Institutionalization of the Neutrality and Impartiality Ethics

There is evidence that mediator *impartiality* and *neutrality* arose as judicial ethics, appropriate for the role of the decision maker in the western legal tradi-

75. See generally Andrew Woolford & R.S. Ratner, *Mediation Frames/Justice Game*, in A HANDBOOK OF CONFLICT ANALYSIS AND RESOLUTION 315 (Sean Byrne et al. eds., Routledge 2009).

76. Andrew Woolford & R.S. Ratner, *Selling Mediation: Mimetic, Distancing, and Appellating Practices in the Marketing of an Emerging Profession* 11 (2004), available at http://www.law.ubc.ca/pdr/pdf/general_MEDIATION-2.pdf (last visited Apr. 7, 2009). See also Woolford & Ratner, *supra* note 75.

tion.⁷⁷ A large majority of the interviewees used these terms interchangeably, while some associated *impartiality* with the absence of prior connection with the disputants and *neutrality* with the predisposition and attitude of the mediator. In the adversarial context, the appearance of *neutrality* and *impartiality* became necessary as a means of legitimating the role of the decision maker.⁷⁸ As discussed above, in the modern era where people are increasingly disconnected from one another, society requires some substitute for trust and social capital once facilitated by close connection to wise elders.⁷⁹ The grounds for *appearance of bias* and tests for *recusal* provide that substitute in the form of legal precedent and are now part of nearly every judicial code of conduct. Interviewees reported that judges, who were largely unfamiliar with mediation—which arose, in large part, as a movement external to the courts—proceeded to define the role of the mediator as one that also requires *neutrality* and *impartiality*. This leap from *judge neutrality* and *impartiality* to *mediator neutrality* and *impartiality* is a logical fit, in the legal context, but, arguably, does not flow organically from mediator practice. Over three-quarters of the interviewees reported that the mediation community has unwittingly privileged and institutionalized these ethics even in situations where they run counter to basic notions of fairness. For example, in a recent study at the University of Hawaii, mediators discovered this the hard way when they were directed to maintain an impartial stance between younger faculty who were bringing workplace discrimination complaints in earnest against belligerent senior faculty who refused to take mediation seriously. The mediators reported that maintaining the guise of impartiality hamstringing them in their efforts to tackle the belligerence in a direct and forthright manner.⁸⁰

To explore the connection between the *impartiality* and *neutrality* ethics and the legal world, I reviewed the rules of court in each of the fifty U.S. states and U.S. territories.⁸¹ The rules of court in a significant majority appear to define mediation as a practice conducted by a *neutral* and/or *impartial* third party.⁸² This result is not surprising given the strong historical connection between these ethics and the legal world, and the fact that much contemporary mediation is taking place within court-annexed programs. What is quite remarkable, however, is the fervor with which mediator organizations outside the court-annexed context have unreflectively adopted these legal ethics.

A review of a sample of thirty mediator ethics codes from prominent mediator organizations revealed that these codes have almost all reproduced the *neutrality* and/or *impartiality* ethics in their definition of mediation.⁸³ It is curious why and how relatively autonomous and independent organizations have come to adopt these same mediator ethics. Returning to the insightful work of DiMaggio and Powell, discussed above, three contributing influences seem likely.⁸⁴

77. See generally Jarrett, *Mediators as "Neutrals,"* *supra* note 28, at 31-41.

78. *Id.* at 31-36.

79. *Id.* at 32-33.

80. See Jarrett, *Resolving Discrimination Disputes,* *supra* note 56, at 236.

81. See Jarrett, *Mediators as "Neutrals,"* *supra* note 28, at 237-38.

82. See *id.* at 118.

83. *Id.* at 120.

84. See generally DiMaggio & Powell, *supra* note 10, at 150-54.

First, many mediator organizations take referrals from courts.⁸⁵ Because courts have adopted *neutrality* and/or *impartiality* in their self-similar definitions of mediation, those organizations that accept referrals are likely to feel compelled to follow suit in order to continue to receive the work. This illustrates the coercive aspect in organizational isomorphism, discussed above.⁸⁶ When it comes to ethics codes, it would appear these organizations are mimicking each other's chosen forms. Interviewees identified several instances of this coercive social force. For example, a local Neighborhood Justice Center agreed to adopt a mediator ethics code that included mediator impartiality in order to continue receiving court-referred mediations, which was the majority source of its business.

Second, contemporary mediation, as an alternative to traditional litigation, is still a relatively undefined process and its goals and status as an emerging profession are still uncertain. Many courts are still experimenting with mediation as an aspect of the relatively recent case management philosophy, emphasizing multiple-option dispute resolution.⁸⁷ As DiMaggio and Powell would predict, in this environment of relative instability and uncertainty, mediation organizations are keen to mimic norms that appear to have gained success in the field.⁸⁸ Interviewees reported that the related ethics of *impartiality* and *neutrality*, as badges of professionalism, are gaining wide acceptance in non-court-annexed organizations precisely because they have met with success in court-annexed programs.

Third, many mediators are *pracademics*—academics having one foot in the academy and the other in community practice.⁸⁹ Through these *pracademics*, the social connections between the university and mediator organizations likely provide a conduit of norms that migrate into mediator organizations from the academy. Interviewees reported that these *pracademics* are often working in law school ADR programs, and are the very same people who have the interest in and proclivity for drafting ethics codes. Interviewees reported that these *pracademics* often have an influential role in shaping mediator ethics codes.⁹⁰

The Uniform Mediation Act (“UMA”)⁹¹ is a laudable attempt to find a compromise between those who favor and those who oppose the adoption of the *impartiality* ethic for mediation. The UMA purports to cover a wide variety of mediations occurring within the adopting state, excluding mediation in the context of collective bargaining, schools, youth correctional facilities, and those mediations conducted by judges in their role as judge.⁹²

85. See Jarrett, *Mediators as “Neutrals,”* *supra* note 28, at 42–43.

86. See DiMaggio & Powell, *supra* note 10, at 150–51.

87. Frank Sander originally introduced the notion of the *Multi-Door Courthouse* at the Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (a.k.a. the Pound Conference) in 1976.

88. See DiMaggio & Powell, *supra* note 10, at 152.

89. Maria R. Volpe & David Chandler, *Resolving and Managing Conflicts in Academic Communities: The Emerging Role of the “Pracademic,”* 1 CONFLICT RESOL. Q. 245, 247 (2001).

90. See generally DiMaggio & Powell, *supra* note 10, at 148–50.

91. See generally UNIF. MEDIATION ACT, 7A U.L.A. 95 (2004) [hereinafter *UMA*].

92. Section 3: Scope states:

(a) Except as otherwise provided in subsection (b) or (c), this [Act] applies to a mediation in which:

(1) the mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;

While the UMA is entirely silent on the issue of *neutrality*, it does impose a positive duty on the part of the mediator to disclose any facts that might reasonably affect mediator *impartiality*.⁹³

Each state that chooses to adopt the UMA must then decide whether it will include a further opt-in provision on mediator *impartiality*. Most states have chosen to include this opt-in provision.⁹⁴

Section 9(g) of the UMA, however, does allow parties to waive this requirement of *impartiality*.⁹⁵ Therein lies the compromise between those favoring impartiality and those opposing it.

In sum, it is likely the related ethics of *neutrality* and *impartiality* will continue to become institutionalized not only in court-annexed mediation programs but also in mediation organizations. Interviewees pointed to institutional pressures fueling this trend. Further, they predict even greater institutionalization of these ethics in the future as the legal world continues to exert even greater influence in the mediation field. A review of state rules of court, mediator ethics codes in

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- (2) the mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or
 - (3) the mediation parties use as a mediator an individual who holds himself or herself out as a mediator, or the mediation is provided by a person that holds itself out as providing mediation.

(b) The [Act] does not apply to a mediation:

- (1) relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship;
- (2) relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the [Act] applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;
- (3) conducted by a judge who might make a ruling on the case; or
- (4) conducted under the auspices of:

(A) a primary or secondary school if all the parties are students or

(B) a correctional institution for youths if all the parties are residents that institution.

(c) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under Sections 4 through 6 do not apply to the mediation or part agreed upon. However, Sections 4 through 6 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

UMA § 3.

93. Section 9 states:

- (a) Before accepting a mediation, an individual who is requested to serve as a mediator shall:
 - (1) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and
 - (2) disclose any such known fact to the mediation parties as *soon as is practical before accepting a mediation*.

UMA § 9 (emphasis added).

94. See Jarrett, *Mediators as "Neutrals," supra* note 28, at 129. The Association for Conflict Resolution maintains a list of adopting States and links to each legislature's mediation statute, see <http://www.acmet.org/uma/index.htm> (last visited Apr. 7, 2009). Illinois, Iowa, Nebraska, New Jersey, Ohio, South Dakota, Utah, Vermont, Washington, and the District of Columbia have all adopted the Uniform Mediation Act. *Id.*

95. See UMA, *supra* note 91. Section 9(g) states:

- A mediator must be impartial, unless after disclosure of the facts required in subsections (a) and (b) to be disclosed, the parties agree otherwise.

UMA § 9(g). See also Jarrett, *Mediators as "Neutrals," supra* note 28.

private organizations, and the UMA reveals that almost all have adopted some form of these related legal ethics.⁹⁶

E. Increasing Specialization Within the Mediation Field

Despite the increasing influence of legal norms in the mediation market, interviewees reported, somewhat paradoxically, evidence of increasing divergence from these norms in the form of emerging specializations. Interviewees reported that increasing specialization is likely the result of at least three distinct social forces. First, a renaissance of certain indigenous, cultural, and historical traditions has given rise to the development of approaches that naturally accord with them. Second, certain kinds of disputes, by their nature and quality, require unique approaches. A kind of *situation ethics* has shaped such practices. Third, the perception that the world of lawyers has begun to dominate some forms of mediation has given rise to certain practices as an expression of resistance. Unlike the four themes discussed in the preceding sections, sociologists frame these social pressures as primarily centrifugal or center-fleeing, and as such, these pressures tend to shape practice into specialized activities that potentially defy the development of a unified field. It is important to understand each of these sources of specialization if the mediation community is to achieve a pluralistic, yet coherent professional identity.

1. Cultural Specialization

Interviewees reported that certain alternative forms of mediation are beginning to flourish in some indigenous communities. Several such communities have sought approaches to mediation that resonate more closely with their own espoused cultural values. Interviewees revealed that the narrative approach is often compatible with these values as it promotes cultural shared meaning over abstract notions of *neutrality* and *impartiality*. Moreover, because *connectedness* is important in these traditional communities, mediator *impartiality* is often antithetical to the role of the indigenous mediator and gives way to other norms that privilege *connectedness*.⁹⁷ This raises a serious question about the value of including an *impartiality* opt-in provision in the UMA, where that very provision could effectively impair such mediation. Further, as a practical matter, mediators might be quite reluctant to ask their clients up-front to waive mediator *impartiality*, where the legislature has underscored its importance by expressly including it in the UMA.

In exploring both Aboriginal-Australian and Chinese-Malaysian cases, Christopher Honeyman et al. found that *connectedness* is the paramount value in selecting one's mediator.⁹⁸ Accordingly, Honeyman et al. argue that professional train-

96. See Jarrett, *Mediators as "Neutrals," supra* note 28, at 118-22.

97. See Honeyman et al., *supra* note 71. See also Diana Lowe & Jonathan H. Davidson, *What's Old is New Again: Aboriginal Dispute Resolution and the Civil Justice System*, 280-97, in *INTERCULTURAL DISPUTE RESOLUTION IN ABORIGINAL CONTEXTS* (Catherine Bell & David Kahane eds., Univ. of British Columbia Press 2005).

98. See Honeyman et al., *supra* note 71, at 498-99.

ing and objectivity actually run counter to this value.⁹⁹ If one is an esteemed elder, then one is by definition biased toward both the substantive issues in dispute and to the parties through prior connections. These authors further argue that people in these communities prefer the socially connected, often esteemed elder over the professionally trained mediator.¹⁰⁰ By analogy, Honeyman et al. argue that disputants in North America appear to be choosing retired judges and other legal practitioners over classically trained mediators because the former are viewed as a source of authority in North American society.¹⁰¹ This is why widespread pan-professional training in mediation may not have been as successful in creating employable graduates, as once hoped.¹⁰²

A wide variety of indigenous groups in the United States, Canada, Hawaii, Australia, and New Zealand have all expressed interest and skill in using narrative approaches in dispute resolution.¹⁰³ Interviewees discussed this trend, noting a number of instances of indigenous groups claiming unique approaches. Perhaps the *narrative* approach is so successful among indigenous groups because its practices comport with traditional views of indigenous peacemaking wherein parties air their respective stories to a wise and respected elder. The latter assists the parties in unpacking the elements of conflict and helps the parties reframe their interaction in a more mutually respectful way. Indeed, this is the hallmark of the narrative approach, discussed above.

For example, in Hawaii, *ho'oponopono*, which relies on a narrative approach, is becoming increasingly popular, despite some critics' arguments that it goes beyond the scope of contemporary mediation and becomes a form of therapy.¹⁰⁴ Victoria Shook, who conducted research for social work applications in Hawaii, describes *ho'oponopono* as a process in which the parties seek long-term healing rather than a solution to the immediate dispute.¹⁰⁵ Hence, the focus is on healing relationships rather than dispute resolution. The esteemed elders in these cases are often drawn from the pool of available grandparents and other elder relatives in the community. *Ho'oponopono* is directive, and, in some cases, can even appear coercive from the mainstream viewpoint, as elders often impose a solution on the parties to maintain the peace, when no agreement can be reached.¹⁰⁶ Parties follow the direction out of a sense of duty and respect for the elder and as a response to potential community approbation. Undoubtedly, *ho'oponopono* will continue to develop in its own idiosyncratic forms and provide significant value, because it meets particular cultural needs.

99. See *id.* at 500-04.

100. See *id.* at 499.

101. See *id.* at 501.

102. See *id.* at 501-05.

103. See WINSLADE & MONK, *supra* note 40, at 65. In fact, Winslade and Monk developed their narrative practice helping Maori communities. See *generally id.*

104. See E. VICTORIA SHOOK, HO'OPONOPONO: CONTEMPORARY USES OF A HAWAIIAN PROBLEM-SOLVING PROCESS (Univ. of Haw. Press 1986). See also E. Victoria Shook & Leonard Ke'ala Kwan, *Straightening Relationships and Settling Disputes in Hawaii: Ho'oponopono and Mediation* (Univ. of Haw. Program on Conflict Resol., Working Paper No. 1987-10, 1987), available at http://www.peaceinstitute.hawaii.edu/pages/resources/wp_1987_10.pdf (last visited Apr. 7, 2009).

105. See *generally* SHOOK, *supra* note 104, at 7-20.

106. *Id.* at 80-93. Shook discusses a variety of approaches, including modern applications. *Id.*

Interviewees reported that as indigenous groups in the future continue to reclaim and develop particular cultural practices and traditions, mediation compatible with these practices will continue to emerge and will undoubtedly defy mainstream norms and perspectives.

With the renaissance of these cultures, however, the mediation field will likely experience a veritable reaffirmation of these traditional mediation approaches in certain instances as a countercultural trend, despite the homogenizing influences, discussed above.

2. Sector Specialization

Some of the movement toward specialization is due to exigencies of particular social situations and disputing environments in which mediation occurs. The nature of certain disputes requires particularized mediation responses. Interviewees predict that as mediation is applied to an ever increasing variety of social problems, practices will continue to diverge. The following are a few notable examples.

First, child protection cases and family mediation are two areas developing particularized approaches. In both these areas, interests of the children are paramount,¹⁰⁷ which means that mediators dealing with these cases must prioritize the best interests of the children above the concerns of the parents. This approach must, by its nature, deny the parties, on occasion, a *neutral* and *impartial* process to be successful.¹⁰⁸ Attempting to preserve mediator *neutrality* in child protection mediation runs a real risk of neglecting the best interests of the child.¹⁰⁹

Family group conferencing ("FGC") in child protection cases arguably provides a special form of mediation, which often includes traditional indigenous practices.¹¹⁰ The model, which originated in child protection work in Maori communities in New Zealand, is now widely practiced in the United States, Canada, and Australia, among others.¹¹¹ FGC is based on the notion that the extended family members can bring resources and influence to assist the parents to produce more successful parenting plans.¹¹² Instead of working solely with the parents, the conference coordinator actively solicits the participation of the extended family and other connected community members in the development of a comprehensive parenting plan.¹¹³ O'hana Conferencing in Hawaii is a successful example of FGC.¹¹⁴ In short, FGC, like many other mediation processes, diverges significant-

107. See Kimberly A. Smoron, Note, *Conflicting Roles in Child Custody Mediation: Impartiality/Neutrality and the Best Interests of the Child*, 36 FAM. CT. REV. 258, 261 (1998).

108. *Id.* at 261-62.

109. *Id.* at 262.

110. See generally GALE BURFORD & JOE HUDSON, FAMILY GROUP CONFERENCING: NEW DIRECTIONS IN COMMUNITY-CENTERED CHILD AND FAMILY PRACTICE (Gale Burford & Joe Hudson eds., Aldine Transaction 2000).

111. *Id.* at xix-xx.

112. *Id.* at xxiii.

113. *Id.* at xx-xxiii.

114. See generally National Council of Juvenile and Family Court Justices, *NCJFCJ Activities by State*, available at <http://www.ncjfcj.org/images/stories/dept/states/Feb09/hawaii.stateoutreach.pdf> (last visited Apr. 7, 2009).

ly from legal norms of *neutrality* and *standing* by including the interests of the extended family and community members.

Second, certain approaches to mediation fit certain disputing dynamics. This is particularly evident in cases involving power imbalances. Because narrative mediation aims at balancing power and imposing a measure of equality on the parties, it is often helpful in disputes in which perceived power imbalances exist.¹¹⁵ For example, at the University of Hawaii ("UH"), mediators in the UH Alternative Dispute Resolution ("UHADR") program recommended using *narratives* in disputes involving claims of gender, ethnic, or disability discrimination claims in higher education.¹¹⁶ In a recent study, I reported the concerns of UHADR mediators.¹¹⁷ I discovered that many felt pressured to maintain a façade of *neutrality* when addressing grievances against more senior, belligerent members of the university community, despite their better judgment.¹¹⁸ Mediators wanted to explore power imbalances between junior and senior faculty but lamented that they were directed to maintain an objective, neutral stance, distant from the parties.¹¹⁹ Indeed, Professors John Winslade and Gerald Monk documented numerous such cases in which power imbalances become evident in such narratives.¹²⁰

Third, disputes involving historical grievances and identity politics require yet another mediation approach. Jay Rothman's work with conflicts in Israel and elsewhere provides a good example.¹²¹ Rothman has developed practices to effectively resolve identity-based conflicts, including ethnic and culturally based struggles.¹²² In his work in Israel, he describes his success in surfacing deeply held core values that make up the respective group identities of both Palestinians and Israelis.¹²³ Rothman describes his directive use of narratives in order to resolve inter-group conflict as follows:

Creative reflexivity in deep conflict situations can do this. It leads parties to articulate their own underlying motivations and needs in a conflict. Hearing each other speak about deep needs and values, disputants in identity conflicts regularly discover common concerns. They may begin to speak interactively of We instead of Us and Them and begin to reformat the conflict issues--why they matter so much, why they hurt so much. This can generate a new focus for analysis and discourse by zeroing in on which core values, hopes, and fears are at stake and which needs are threatened and frustrated. In articulating their deep narratives through this kind of interactive introspection, disputants can begin to hear overlapping stories of joys and sorrows, hopes and fears, needs and motivations, and begin to discover places in the others side's tale that

115. See WINSLADE & MONK, *supra* note 40, at 51, 117-118, 243-244.

116. See generally Jarrett, *Resolving Discrimination Disputes*, *supra* note 56.

117. *Id.* at 233.

118. See WINSLADE & MONK *supra* note 40, at 51, 117-118.

119. See Jarrett, *Resolving Discrimination Disputes*, *supra* note 56, at 235.

120. See WINSLADE & MONK, *supra* note 40, at 51, 117-18, 243-44.

121. Jay Rothman, *Resolving Identity-Based Conflict in Nations, Organizations, and Communities* 88-108 (Jossey-Bass 1997).

122. *Id.*

123. *Id.* at 16-17, 145-50.

powerfully merge and mesh with their own. A disputant may say, 'We have sought control over our destiny above all else; it seems that they too have been driven by a similar motive.'¹²⁴

Rothman concludes that, based on their very nature and quality, identity-based conflicts, unlike resource-based conflicts, require distinct treatment in mediation.¹²⁵

Fourth, in the public international arena, disputes often require pragmatic compromises that are simply not comprehensible in terms of an objective facilitative model.¹²⁶ Historically, public international disputes involve mediators as state actors who have vested interests in the outcome of the case.¹²⁷ The United Nations, and its predecessor, the League of Nations, have enthusiastically sponsored *conciliation* in international public matters.¹²⁸ Arguably, these United Nations *conciliation* initiatives are mediations with unique features, including an emphasis on shuttle diplomacy and multi-stakeholder meetings. As a practical matter, public international conciliation by its nature often necessitates less-than-ideal ad hoc solutions to interstate conflicts mediated by other interested parties.¹²⁹ For example, when the United States mediates between Palestine and Israel, it must do so as an interested party, because it is a stakeholder with its own legitimate geopolitical interests in the global community. In fact, bias is inevitable for any country that engages in conciliation, because its own geo-political interests are always, directly or indirectly, at stake.¹³⁰ In this sense, the United Nations provides a kind of practical *power politics* in its mediation programs that have precious little to do with the objectivity, *impartiality*, and *neutrality* associated with the facilitative model.¹³¹

Fifth, mediators working in the area of restorative justice, including Victim-Offender Reconciliation Programs ("VORP") or Victim Offender Mediation ("VOM") have had to adopt strategies that diverge significantly from the facilitative model.¹³² In this subfield, Professor Marty Price argues that *neutrality* and *impartiality* and notions of objectivity have to be set aside in order to pursue the substantive goals of restorative justice.¹³³

Neutrality, as we understand it in the vast majority of conflict resolution settings (civil settings, rather than criminal), requires that the mediator will not 'agree' with either party in regard to the issues in dispute. The role of a 'neutral' requires that the mediator in no way favors one disputant over another. The mediator does not 'take sides' and does not make

124. *Id.* at 43-44.

125. *Id.* at 16-17, 145-50.

126. See generally ALAN C. TIDWELL, CONFLICT RESOLVED?: A CRITICAL ASSESSMENT OF CONFLICT RESOLUTION 147-70 (Pinter 1998).

127. See generally *id.* at 107-25.

128. See generally *id.*

129. See generally *id.* at 107-47.

130. See generally *id.*

131. See generally *id.* at 107-60.

132. See Marty D. Price, A Victim-Offender Mediation Model of Neutrality, 7 (1) VICTIM OFFENDER MEDIATION ASS'N Q. J. (1995-1996), available at <http://www.vorp.com/articles/neutral.html>.

133. *Id.*

judgments of right or wrong as to the actions of the parties that led to the dispute.

The mediation of crime situations, however, presents a unique set of circumstances for the mediator. When a crime has been committed, the same concept of neutrality is not appropriate. In the majority of juvenile/criminal cases, a wrong has been committed against another person. The parties, therefore, come to a victim offender mediation program as a wronged person and a wrongdoer. If no wrong had been committed (in the majority cases), these people would not have been referred to the program. Restorative justice is about righting wrongs in a more healing and meaningful way.¹³⁴

Price goes on to describe the difficulty in VOM training programs where mediators have already received training in the facilitative model.

This distinction between models of neutrality is also important because new victim-offender mediation trainees have often had mediation training in other mediation settings. They have been trained in the traditional civil dispute model of neutrality, which is by far the more common one. Victim-offender or criminal mediation is unique in this respect. I have found that unless this distinction is clarified, previously trained mediators often have difficulty directly approaching and acknowledging a 'wrong.' They believe they should be neutral in all respects, when they should be addressing the righting of a wrong.¹³⁵

In short, victim-offender mediation has required the development of a particularized substantive social-justice focus, which diverges significantly from the contemporary facilitative model.

Sixth, workplace mediation is now emerging as a unique set of practices. Because people in the workplace must frequently maintain ongoing working relationships, mediators often gear their approaches to this reality. Interviewees reported that the transformative approach is particularly effective in this environment because it can improve the quality of future interactions.¹³⁶ Interviewees reported that the transformative approach has been particularly successful for managers in the workplace context. The transformative approach is currently in favor in both the U.S. Postal Service and the U.S. Transportation Security Administration ("TSA") and appears to have met with some success.¹³⁷ In sum, transformative mediation, as it differs from facilitative mediation, appears to be useful in the workplace where the parties have an ongoing interdependent relationship.

The above are all examples of sector specialization. Because the particularized practices associated with each appear to respond effectively to particular

134. *Id.*

135. *Id.*

136. *Id.*

137. See Bingham & Pitts, *supra* note 26. See also Rawlings, *supra* note 27.

social dynamics and disputing environments, they are all likely to continue to gain prominence in their respective areas.

3. *Disciplinary Specialization*

Approximately half of the interviewees reported that some specialization has arisen, in part, as an expression of resistance to the perceived dominance of the legal field in mediation. Interviewees reported that many mediators believe that the legal field imposes certain structural constraints on mediation. Consider, for example, the UMA *impartiality* opt-in provision, rules of court, and codes of ethics, discussed above, that all favor *impartiality* and/or *neutrality*, as central to their definition of mediation.¹³⁸ Additionally, certain struggles over turf in the definition of mediation may have, as an unintended consequence, caused some in the mediation community to seek practices that they can claim distinctly as their own, such as counseling-mediation hybrids. For example, the prohibition on non-lawyers giving legal advice in mediation has encouraged some to develop practices that fall clearly outside the perceived traditional legal turf. Some interviewees speculated that these kinds of dynamics have been an impetus for specialization. Interviewees reported that resistance to the facilitative model is most notably evident in the narrative and transformative approaches.

Sociologist Andrew Abbott's renowned work on *fractal distinctions* is helpful in understanding how this resistance will likely affect future practices in mediation.¹³⁹ If mediation is a form of social science, then understanding how discipline development has progressed in the social sciences can help us understand how mediation will likely develop as a *discipline*. Abbott demonstrates that as disciplines in social science continue to develop, they split into their fractal opposites.¹⁴⁰ He argues that the opposing paradigm then flourishes precisely *because of* its opposition to the mainstream paradigm.¹⁴¹ Abbott argues that one can accurately trace the development of disciplines in social science through the development of their fractal opposites.¹⁴² For example, the emergence of structural-functionalism in sociology gave rise to its fractal opposite, namely Marxism, after the Second World War.¹⁴³ This occurred primarily because Marxist social science did not require the funding necessary to support the scientific method associated with logical positivism. Advancing a philosophical position which derided expensive quantitative social research as a hegemonic self-serving enterprise worked to the advantage of the young Marxist scholars who had little money or support to conduct such research. In fact, under these conditions, the Marxist fractal opposite to structural-functionalism flourished.¹⁴⁴

According to Abbott, the formation of new disciplines relies on this fractal process.¹⁴⁵ Accordingly, the fractal opposites of structural-functionalism and

138. See Jarrett, *Mediators as "Neutrals," supra* note 28, at 118-22.

139. See generally ANDREW ABBOTT, *CHAOS OF DISCIPLINES* (Univ. of Chi. Press 2001).

140. *Id.* at 22-23.

141. *Id.* at 23-26.

142. *Id.* at 26-27.

143. *Id.* at 25-26.

144. *Id.*

145. *Id.* at 24-25.

Marxism in the next generation produce, for example, *structural-functional/Marxist* hybrids and *Marxist/structural functional* hybrids, respectively. In future iterations, these hybrids continue to divide into their fractal opposites.¹⁴⁶ New generations of scholars, in their turn, invent new names for the derivative fractal hybrids as they emerge.¹⁴⁷ In the example, neo-positivists and critical theorists have surfaced in recent times as new hybrids emerging out of the old theme of positivism versus critical social science. The result is that there are few truly new developments under the social-science sun. Rather, disciplines develop along certain fractal, thematic lines.¹⁴⁸ The main idea, and its opposite, continue to reappear in an endless progression. Economic conditions shape the nature and success of the fractal hybrid and its progression along the way.

According to the fractal process, philosophical debates within disciplines emerge, becoming axes of distinction and cohesion around which debate and knowledge development take place within the field.¹⁴⁹ Colleagues naturally align themselves on one side or the other of these fractal distinctions in order to promote themselves and their ideas. Over time, the process of disciplinary camp formation engenders solidarity in members on one side of the fractal divide or the other, and provides a badge of identity for its adherents.¹⁵⁰

Following this model, mediation, as a discipline, should emerge as a series of hybrid practices forming along similar thematic lines (axes of distinction and cohesion). Interestingly, interviewees reported that in the mediation field, there does appear to be a strong division emerging between the facilitative model and the narrative, evaluative, and transformative alternatives. In this regard, one of the axes of distinction and cohesion may well be the question of *neutrality* and *impartiality*. The facilitative model appears to embrace these ethics, whereas the narrative model does not.¹⁵¹ Winslade and Monk, leading proponents of the *narrative approach*, leave no doubt about their objection to the notions of *neutrality* and *impartiality* in mediation.¹⁵² Further, evaluative mediators, relying on evaluations, may find themselves predisposed to favor particular solutions and therefore surrender their neutrality.¹⁵³ In fact, a substantial number of *evaluative* mediators balk at the notion of *neutrality*, if that requirement would prevent them from giving the parties opinions or advice.¹⁵⁴ Lastly, while *transformative* mediators Bush and Folger tip their hats to the notion of *neutrality*, the core of their practice rests on the assumption that the parties must engage in a non-directive humanistic process in which the parties freely define their process and interaction, through recognition and empowerment.¹⁵⁵ Such an assumption about the purpose of mediation is surely not value-free or neutral in any meaningful way. Thus, it would appear that the *impartiality* debate has indeed become a fractal divide or thematic line along which mediation, as a discipline, will likely continue to develop.

146. *Id.* at 26-28.

147. *Id.* at 28.

148. *Id.* at 28-30.

149. *See id.* at 79-80.

150. *See id.*

151. *See* WINSLADE & MONK, *supra* note 40, at 35-36, 48.

152. *See id.* at 35-36, 49-51.

153. *See* Love & Kovach, *supra* note 34, at 3.

154. A number of evaluative mediators in my interviewee pool argued this view forcefully.

155. *See* BARUCH BUSH & FOLGER, *supra* note 37, at 104-06.

Indeed, interviewees reported that one's espoused theory and approach to practice depends on how one views these ethics. Interviewees also reported many instances of mediators defining mediation with reference to these ethics. In the future, these ethics are therefore likely to continue to be a critical axis around which mediators advance theory and practice, and future progress in mediation will continue to develop.

III. CONCLUSION

From a sociological perspective, plotting the future of mediation is best achieved by exploring the social forces acting in the disciplinary field and assessing their combined effects. Interviewees in this study revealed five main sources of such pressures, which can be summarized in the following themes. The first four pressures tend to create, for the most part, centripetal vectors, and the last one tends to produce a centrifugal vector.

1. Competition in an Uncertain, Unstable, and Competitive Mediation Market
2. Struggle for Professional Identity
3. Increasing Legalism and Formalism
4. Increasing Institutionalization of the *Neutrality* and *Impartiality* Ethics
5. Increasing Specialization Within the Mediation Field

On its current trajectory, given the socio-economic pressures of the marketplace and struggle for professional identity, mediation is likely to continue to become more formalistic and legalistic as a discipline. In the future, a growing divide will continue to emerge between legal and non-legal. The mediation field is likely to experience greater institutionalization of certain legal ethics including *neutrality* and *impartiality*. In addition, and somewhat paradoxically, in certain sub-fields, it will experience increasing specialization in practice along cultural, sector, and disciplinary boundaries. Social forces associated with culture, sector, and discipline will continue to pull mediation in very different and distinct directions. As a discipline, hybrid forms of practice will inevitably emerge along certain thematic lines (axes of distinction and cohesion). The related ethics, *neutrality* and *impartiality*, likely represent such a thematic axis.

The implications for mediators and mediator organizations are significant. The effects associated with the above sociological themes are already beginning to resonate among practitioners and mediator organizations. Further, the current splintering occurring within the field has caused some leading mediators to question the very use of pan-mediator organizations, such as the Association for Conflict Resolution.¹⁵⁶ If the mediation community is truly committed to developing a

156. Robert Benjamin, *Our Once and (Dimming?) Future Hope for a Professional Home: Peter Adler's Letter to the Board of ACR*, MEDIATE.COM ONLINE NEWSLETTER, August, 2005, available at <http://www.mediate.com/articles/benjamin23.cfm> (last visited Apr. 7, 2009). Benjamin cites Peter Adler, well-known mediator and sociologist, and his 2005 letter to the Association for Conflict Resolution (ACR), which is arguably the most prominent pan-mediator organization. The following is an excerpt:

unified mediation field that is capable of welcoming a genuine diversity of approaches, it has little choice but to carefully address and proactively navigate the above five themes.¹⁵⁷ Indeed, the very future of mediation depends on it.

So I fear the center cannot hold and the 'field' will continue to balkanize in ways that militate against the financial survival of a large, single tent, generalist organization. ACR faces very big forces: specialization, routinization, and institutionalization. The days of the generalist mediator are coming to a rapid close. In the shift from 'movement' to 'mainstream,' the greatest locus of activities is sectoral. The action is, and will increasingly be, in the specialties: family, workplace, civil and commercial, environment, courts and regulatory agencies, and so on. This has a profound implication...if its[sic] true. Unless you dramatically, strategically, and perhaps exclusively focus on these, unless you find the 'sweet spot' they all share, ACR can't be held together in its present form.

So as a radical alternative, and without changing the super ordinate goals of 'being a voice for conflict resolution,' here is what I suggest you consider as you try to figure out where you want to be by the end of 2007. Shrink, narrow, and focus. Instead of resisting the centrifugal forces that are at work, use an aikido strategy and help them along. Specifically, I would urge you to at least ponder a strategy that would over the next three years:

1. Help each sector and chapter become independent or merge with other entities but try to retain them as organizational members. In other words, help them leave. 2. Slowly, gracefully, and in a well planned manner, abandon individual memberships and become an 'association of associations, organizations and institutions.'

Id.

While Adler's proposed solution is a matter for continuing debate, the reality is that the mediation community will have to face both the issue of balkanization within the field.

157. See MODEL STANDARDS OF CONDUCT FOR MEDIATORS IX (2005), available at <http://www.mediate.com/pdf/ModelStandardsOfConductforMediatorsfinal05.pdf> (last visited Apr. 7, 2009):

STANDARD IX. ADVANCEMENT OF MEDIATION PRACTICE

A. A mediator should act in a manner that advances the practice of mediation. A mediator promotes this Standard by engaging in some or all of the following:

1. Fostering diversity within the field of mediation.
2. Striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate.
3. Participating in research when given the opportunity, including obtaining participant feedback when appropriate.
4. Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.
5. Assisting newer mediators through training, mentoring and networking.

B. A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.

These standards were prepared in 1994 by the American Arbitration Association, the American Bar Association's Section of Dispute Resolution, and the Association for Conflict Resolution, and revised in 2005. *Id.*

