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CIAN



NEWS

Ground Rules in Mediation: A Reflection

Heather Pincock

My recent experiences as a volunteer mediator for child custody cases in New York State have caused me to reflect on the use and misuse of ground rules in mediation. Sometimes called guidelines or community procedures, ground rules establish boundaries on acceptable communication and behaviour in a mediation. Common ground rules might be, do not interrupt each other, no personal attacks, no shouting, no cursing etc. Incidentally, the examples above are all framed negatively and for the purposes of mediation it may be useful to reframe them in positive terms: speak one at a time, focus on the issues at hand, speak at medium volume, use appropriate language. That digression aside, I have recently been thinking very hard about this part of the mediation process. In my mediation training I have encountered two schools of thought about ground rules. I have found that my theoretical commitments and practical experiences are bringing these two approaches into conflict and I am currently unsure how to resolve this tension.

I like the idea of developing ground rules organically throughout the mediation as needed. I believe that my own comfort level is almost entirely irrelevant when it comes to communication guidelines and that participants should have the freedom to communicate in the ways they find comfortable.

The first school of thought concerning ground rules that I have encountered in mediation trainings is mediator focused. The ground rules are provided by the mediator at the outset of the mediation during an opening statement that covers other process related details. Mediators develop their own set of ground rules or get them from the Centre where they mediate. They state them at the beginning of the mediation and enforce them throughout. These rules are designed to keep the meeting under control and to allow the mediator to do their job. By minimizing chaos and emotionally charged exchanges between the parties, the mediator is able to keep track of the content of the mediation

and to host a productive conversation.

The second school of thought concerning ground rules that I have encountered in mediation trainings is participant focused. This approach stresses cultural accommodation and self determination for the participants in mediation. Essentially, proponents of this school are critics of the mediator oriented ground rule approach. They say such an approach assumes a certain kind of interaction (reserved, quiet, polite) which may not fit the needs of the participants. According to this view, if the participants are both comfortable with yelling and swearing, the mediator should not be imposing restrictions on their communication. In practice, this means that the mediator begins with ground rules as the first item for negotiation and enforces whatever rules the participants agree to. Another approach along these lines is to omit the topic of ground rules and only bring it up if participants ask for them or cue the mediator

that they want/need guidelines (for example: Are you going to let her talk to me that way? I didn't come to mediation to hear this from him!)

Theoretically I am drawn to the second school of thought, and convinced by the critique it offers about the first approach. Listing guidelines at the beginning of a mediation makes me feel patronizing and presumptuous. I like the idea of developing ground rules organically throughout the mediation as needed. I believe that my own comfort level is almost entirely irrelevant when it comes to communication guidelines and that participants should have the freedom to communicate in the ways they find comfortable.

Yet my recent experiences have forced me to



acknowledge some problems with such an approach. First, and perhaps most obvious, a problem arises when one participant is comfortable with yelling or interrupting but the other is not. This allows one participant to dominate and limits participation from the other. Clearly in this case ground rules need to be established and enforced in such a way that both participants can speak and listen comfortably. Unfortunately, in practice, this is more difficult than it seems.

Second, I have realized that relying on cues from participants to indicate when they may want or need ground rules is a risky approach. I have been listening and watching for direct and obvious cues and these, I have realized, often come too late. A participant voices their dissatisfaction with the way mediation is going, in many cases, just before they announce that they do not wish to continue. A promise from the mediator at that late stage to establish and enforce ground rules comes far too late. For this reason I am beginning to develop my own approach to guidelines that balances all these concerns. As a mediator I seek to increase self-determination while minimizing victimization. Victimization however, can come in extremely subtle ways, and although the mediator can never prevent parties to a conflict from upsetting each other I think ground rules can minimize this to some extent.

For a couple of reasons I think this is a particularly difficult question when applied to child custody cases. In such cases parties have come from a failed relationship of some kind. They do not come to mediation with a desire to reestablish that relationship but instead to establish guidelines for how they will cooperate concerning custody and care of their child or children. This often means that there are many emotionally charged issues between the parties, stemming from the failed relationship, that really cannot be resolved through the mediation. The temptation to stray into exchanges focused more on the previous relationship than on the current arrangements for the children is very strong and may demand a more directive approach from the mediator when it comes to guidelines.

Another reason why I feel ground rules are particularly important yet challenging in this context is because of the gendered power relationships that often exist. Although I do not wish to generalize about relationships or gender relations, the cases that have caused me to question my open ended approach to ground rules have involved women

feeling victimized or attacked by men. I do not think that power imbalances can be reconciled or controlled in mediation but I am beginning to think that clearly articulated and enforced ground rules can provide some much needed balance in those cases where the relationship was particularly imbalanced.

As I continue to reflect on these issues, in my studies and practice as a mediator, I will work to establish an approach to ground rules that balances the concerns of the two schools of thought. So far my experiences have taught me to discuss ground rules broadly at the outset and invite additions from the participants. I have also learned that in those cases where communication seems to be aggressive I need to ask the participants if they are comfortable with it and invite them to articulate ground rules more specifically and clearly. This needs to happen early so that participants will see that I am capable of enforcing the ground rules that they establish. My challenge continues to be finding a way to raise the important issue of ground rules in ways that respect the principle of self-determination which I feel is central to mediation.

Heather Pincock is a third year PhD student in political science at the Maxwell School, Syracuse University. She served as the 2004-2005 Coordinator of the University's Conflict Management Center, at Syracuse University's Program on the Analysis and Resolution of Conflicts (PARC) and volunteers at a mediation center in the city of Syracuse. Heather is a graduate of Carleton University in Ottawa and a former CIIAN intern.

Call for Trainers!

CIIAN wishes to build a "**community of practice**" (CoP), where a community of practice is a group of people bound together by passion for a shared vision and shared expertise.

To this end, CIIAN would like to welcome and engage new trainers who share our common values, expertise, and passion for creating a world where violence is prevented and destructive conflict at the personal, family, community, and global levels is resolved nonviolently.

If you would like more info or to submit your workshop outlines for consideration then please email us at: ciian@ciian.org



Thoughts From Sri Lanka

Ben Hoffman (President, CIIAN) and Flaurie Storie (Executive Director, CIIAN) have both had the opportunity to work in Sri Lanka over the past year. Just before the Winter Holidays we received this letter from Abdel Burkan in the Ampara offices of FORUT which reminds us of the challenges and the hope that must be sustained in the face of growing violence in Sri Lanka.

Dear Friends and colleagues,

A year of Tsunami tragedy has passed like its wave. In the Eastern part of Sri Lanka many were made homeless; many died and went missing and most of all they were severely traumatized by the tragedy. FORUT East is carrying out the post Tsunami recovery program, which was designed and implemented to assist the Tsunami affected population to secure their living conditions through permanent housing and water and sanitation, to improve their psycho-social well being through education and to increase their level of income through livelihood support.

Over the last few months, tensions between the parties have been mounting, and the situation is particularly volatile in the East. This unstable security situation is adding more suffering to the plight of the IDPs and their attempts to establish a more normal and safe living conditions in the aftermath of the catastrophic tsunami. It is becoming more difficult for relief organisations, including FORUT, to deliver humanitarian assistance in the East due to the sharp rise in tensions and violence.

FORUT is focusing on conflict sensitivity by trying to deliver assistance in ways which contribute to reducing tensions, thus contributing to the multiethnic harmony in the area. We hope for more peaceful times in the years to come

Finally, we would like to thank our beneficiaries, FORUT's staff, CBOs, INGOs, INGOs, volunteers from the East, contractors, former PMs, and partners representing the local authorities for the good cooperation in the 2005. FORUT is looking very much forward to work with next year.

Thanks for doing a great job and thank you for your support.

Keep up the good work and the good spirit

Season's greetings and best wishes for 2006

On behalf of FORUT- Batticaloa and Ampara
On the 22nd Dec 2005

Program manager
Abdel F Burkan



Dr. Ben Hoffman & colleagues debrief after a day of training in Sri Lanka.

Editorial: Change is Good!

Evan Hoffman

In the last edition of the CIIAN News (Spring 2005) we alerted readers that CIIAN would be undergoing some changes in 2006. Well, the change process has begun and I believe, as I hope you will find too, that change is indeed good!

In 2006 CIIAN will be offering several new training courses. Among others, there will be a Power Clinic for Mediators, a course on preventing political violence, and a new course about reaching agreements in conflict settings.

Full descriptions of these new courses and the dates that they are being offered are posted on the CIIAN website.

In other new developments, we are pleased to announce that the International Peace and Prosperity Project (IPPP), which was formerly housed at the Washington-based Alliance for International Conflict Prevention and Resolution (AICPR), now has a new home at CIIAN.

This innovative violence prevention project is a demonstration of how Early Response of various integrated



horizontal and vertical actions based on Early Warning can help prevent the outbreak of violence.



Members of the IPPP meet with General Tagme Na Wai, GB Armed Forces Chief of Staff (June 2005).

On a related note, CIIAN is also creating a new book on violence prevention for release next spring.

Lastly, I would like to mention that we are continuing with preparations for a new CIIAN research project and activities that will address the question of

“Should efforts be made to talk to terrorists?”

This important question has been largely overlooked by governments, militaries and members of the peace and conflict resolution communities.

The dominant working assumption today is that terrorists are irrational; indeed, that they no longer wish to come to the table to discuss their demands, they “want to destroy the table itself”. Increased security measures, enforcement, and hostile engagement to neutralize them follows.

CIIAN is generating research and dialogue on the following questions:

The definition of terrorist:

Insurgents, freedom fighters, rebels, terrorists. What

is the internationally adopted working definition of terrorist? What has changed in the definition? What are the implications for current policy and practice? What corrections should be made?

What drives contemporary terrorists?

Are the motives of today’s terrorists always negative? Are their actions rational in any sense? Does their cause ever have legitimacy?

Lessons from History

What does past experience with known terrorist groups offer today (ie, IRA, FLQ, Biner-Minhoff Group)?

How can terrorists be dealt with more effectively?

Are terrorists beyond engagement through dialogue? Can soft and hard power be combined effectively? Is there a role for conflict resolution practitioners?

To read more about any of these new training programs and projects or to continue to stay informed of the latest developments at CIIAN, please check our website often.

Evan Hoffman provides “Research & Technical Support” to the IPPP and is the newly appointed Coordinator at CIIAN.

Suitable for (Re)Framing: Moving from the Tragic to the Comic Frame

Evita Roche

In her 1998 article, “The Language of Cooperation: Negotiation Frames,” published in the *Mediation Quarterly*, Katherine Hale wrote, “The development of the field of conflict resolution in the past two decades brings us to a point where we are increasingly concerned with theoretical frameworks for conflict resolution processes and for ourselves as interpreters and practitioners.” She goes on to identify frames of interaction that parties bring to and negotiate in conflict situations. After discussing the problematic “tragic” frame, Hale presented the “comic,” or hopeful, frame, and advocated its use for the resolution of complex conflicts.



The concept of framing is one that has not been discussed in detail at an advanced level. For most students of conflict, framing and reframing are simply basic techniques for rephrasing a party's angry, frustrated, and confused statements into more palatable ones to help advance the process. The concept of framing is actually much broader. Frames have been defined as "underlying structures of belief, perception, and appreciation," as "principles of organization which govern events – at least social ones – and our subjective involvement in them," and as "basic cognitive structures which guide the perception and representation of reality." Put simply, a frame is the lens through which a person interprets and makes sense of conflict.

Why are frames important? Frames can significantly affect the intransigence of disputes by creating conflicting interpretations of events. When we experience conflict, we create frames to help us understand why the conflict exists, what actions are important to the conflict, why our opponent acts as he does, and how we should act in response. Frame identification is the first step in helping parties resolve conflict. Because the way conflict is framed has a powerful unconscious effect, analyzing the assumptions underlying each person's view of the conflict is important.

By canvassing the work of some conflict resolution practitioners writing today, one can see that, although few specifically identify the comic frame as their preferred frame of interaction, many are in fact working in this frame, as their articulated visions of conflict resolution attest.

So, what exactly is the comic frame? Using Hale's article as a jumping-off point, here are ten possible hallmarks.

1. The comic frame assumes people can change.

The comic frame is hopeful, Hale tells us, because it assumes people can change, situations can change, systems can change. In this frame, people in conflict are free to create their own solutions, to make better choices than they have in the past. The tragic frame, by contrast, assumes that man is governed by fate, that he has no real control over his future. The outcomes of his conflicts are largely predetermined.

Mediators working in the comic frame take a positive view of conflict, seeing it in an optimistic and hopeful way as an opportunity for change. In his book, *The Magic of Conflict*, Thomas Crum writes, "Conflict is nature's prime motivator for change," and suggests that we accept nature's "invitation to change." David Cooperrider, developer of the process of

Appreciative Inquiry, talks about "the coming epidemic of positive change."

By assuming change is possible, both mediators and participants working in the comic frame move to a higher place. Crum says the ability to change allows one "to move from a point of view to a viewing point – a higher, more expansive place, from which you can see both sides." He emphasizes that "our ability to change...is directly related to how clear our vision is, how powerfully and deeply in touch we are with our highest purpose."

A belief in change means a belief that things can be different. *The Promise of Mediation* authors Baruch Bush and Joseph Folger say that, "Time and again, we have seen people change in small but significant ways....These changes occur because through mediation, people find ways to avoid succumbing to conflict's most destructive pressures..." Although the authors don't identify them as such explicitly, these destructive forces are those associated with the tragic frame. Overcoming these pressures changes people for the better, they believe. Bush and Folger also encourage participants in mediation to "listen for news," echoing anthropologist Gregory Bateson's statement that all perception is "simply news of difference." And in their very choice of a title for their book, Bush and Folger imply that mediation can be a hopeful process, full of promise and the potential for change.

People trying to resolve conflict using the comic frame have faith in the future. Change management specialist Margaret Wheatley writes, "I have faith in the future because I know it's not a predetermined path we're obligated to walk down. We can change direction from here."

2. The comic frame is a frame of possibility.

The Danish philosopher Soren Kierkegaard once wrote, "If I were to wish for anything I should not wish for wealth and power, but for the passionate sense of what can be, for the eye, which, ever young and ardent, sees the possible. Pleasure disappoints, possibility never. And what wine is so sparkling, what so fragrant, what so intoxicating as possibility?"

Possibility implies choice. The comic frame embodies the idea of choice, the belief that people in conflict are not subject to fate or whimsy, but can consciously create their future. Wheatley believes that every living system is free to choose whether it changes. Author and professor Michelle LeBaron writes that "an essential part of bridging conflict



relates to choice – the choices we make as we tell stories about our worlds and the people in them.” In *The Art of Possibility: Transforming Professional and Personal Life*, Rosamund Stone Zander and Benjamin Zander say, “The frames our minds create define – and confine – what we perceive to be possible. Every problem, every dilemma... only appears unsolvable inside a particular frame or point of view.” Problems may seem intractable inside the tragic frame, but within the comic frame, there is a world of possibility.

This concept of choice is lacking in the tragic frame, where the hero has little control over the outcome. “The actor is locked into the tragic dilemma he did not create and over which he has little tangible control. So there is a feeling of fate, of having to play out the hand that was dealt...,” writes Hale. Cooperrider says that under conditions of crisis and urgency, people become pessimistic about what they can do to change circumstances and downward spirals are triggered that are “dizzying in their momentum.” The story of the tragic frame is one of a downward spiral. The comic frame, on the other hand, write the Zanders, “is about restructuring meanings, creating visions, and establishing environments where possibility is spoken – where the buoyant force of possibility overcomes the pull of the downward spiral.”

In the comic frame, a mediator helps people resist the pull of the downward spiral and articulate a vision for a new future that is possible for them.

Crum writes that we have a choice in conflict processes when we are not getting what we want. We can choose the “depression spiral” of escalating conflict, or the “expansion spiral” of learning and growth. In the depression spiral a person’s personal vision and ego are threatened, and she starts to attack whatever it is that she perceives is causing her failure. “This causes us to go into an ever-tightening spiral of ego survival, depression and contraction...” In contrast, “if we choose to follow nature’s principle that conflict is an invitation to change and to expand who we are as human beings, we move into the exciting spiral of growth and creativity.” Crum’s expansion spiral is the positive spiral of possibility and choice found in the comic frame.

In the comic frame, a mediator helps people resist the pull of the downward spiral and articulate a vision for a new future that is possible for them. Disputants are encouraged to brainstorm about solutions to their dispute, and helped to see that their own conduct and language can impact that future. Together, they can create new meanings, new solutions. They can escape the downward spiral of fate.

The comic frame’s emphasis on possibility reminds one of George Bernard Shaw’s statement, famously repeated by Robert F. Kennedy, “You see things as they are and you say, ‘Why?’ But I dream things that never were, and I say ‘Why not?’ “

3. The comic frame is a frame of self-reflection.

Self-reflection is a means of escaping the downward pull of the tragic frame. This practice of introspection is absent from the tragic frame, where the hero’s energies are consumed battling fierce external forces.

Many writers have linked self-awareness to the concept of emotional intelligence pioneered by Daniel Goleman. For LeBaron, being self-aware includes being “emotionally fluent.” In *The 8th Habit: From Effectiveness to Greatness*, Stephen Covey says that self-awareness is “the ability to reflect on one’s own life, grow in self-knowledge...” In “Emotionally Intelligent Mediation,” an article included in

Daniel Bowling and David Hoffman’s book, *Bringing Peace Into the Room: How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution*, self-awareness is described as one of the four key competencies of emotional intelligence.

Some writers tell us how to improve our self-awareness. Bowling and Hoffman suggest that mediation training could teach how the feelings and experiences of a mediator constitute useful material she can use, “albeit judiciously” in helping parties reach a resolution. Bowling also talks about the importance of mindfulness in encouraging awareness of being and quotes Gandhi, “The development of being leads to change.” Covey advises us to cultivate self-awareness by trying to understand and make explicit our underlying assumptions, theories and paradigms.

A few writers suggest that learning from self-reflection may involve the feedback of others. Covey recommends we seek comments from other people who can point out our “blind spots.” LeBaron advises exchanging practice journals with colleagues or conferencing with them in practice circles.

One of the results of self-reflection is to loosen the grip of a fixed point of view on an individual. Rather than holding fast to a fixed position, a disputant is able to stand outside himself. William Isaacs, author of *Dialogue and the Art of Thinking Together*, says “I am not my point of view.” Crum



makes the same point when he talks about moving from a point of view to a viewing point. “A viewing point is a place of increased perspective...”

The idea of self-awareness includes awareness of one’s own contribution to the process of conflict resolution. In their chapter titled “Being a Contribution,” the Zanders write, “Unlike success or failure, contribution has no other side. Focusing on what one can contribute to the process of conflict resolution gets away from the win-lose mentality. The question becomes not, ‘How can I win this argument?’ but rather, ‘How will I be a contribution today?’”

4. In the comic frame, relationships are important.

Tragedy is concerned with the cosmic man, comedy with the man in society. The tragic frame posits a world of individualism where man is alone, fighting his doomed battle against the odds. In contrast, the comic frame sees man in a larger context. It understands the paradox of individualism, that we need others to be fully ourselves, reflecting Jung’s belief that “I needs ‘we’ to be fully ‘I.’”

After looking inward to examine oneself and one’s own contribution to the conflict resolution process, one must then turn one’s gaze outward, focusing on relationships with others. “A comic actor is aware of and acts in connection with community,” writes Hale. “Conflict is a relational journey,” says LeBaron. And Wheatley adds: “The experience of facing ourselves at the individual level helps us be together differently at a societal level.”

In the comic frame, communication is transactional in nature. Each participant’s statements determine the other’s response, which in turn shapes the next exchange.

Hale says this theory “assumes that one’s identity and one’s communication does not really exist within oneself but in ‘the in-between’ of relationships.”

Being in relationship requires participation. Wheatley believes that participation, engagement with others, is an essential element for change. “Participation is not a choice,” she writes. “Life, all of life, insists on participation.” Conflict resolution demands that “...people must always participate in the development of those things which affect them.”

In the comic frame, participants work together to create the meaning of their dispute. If we assume the transactional nature of communication, writes Hale, “we understand

communication to be a process in which meaning is created together, between the individuals, and in a context rather than the more traditional view of communication as the meaning of the sender being transferred to the receiver.” In his chapter called, “Choose to Co-Create,” Crum writes, “Cocreation is a natural result of accepting our connectedness to the world around us and recognizing its indisputable interdependence.”

5. The view of “the other” changes from villain to fool in the comic frame.

Hale writes that there is no perspective-taking in the tragic frame. “The hero sees in the other party no legitimate concerns, no valid but different point of view.” In the tragic frame, we stereotype “the other” as a villain, and a villain only, incapable of change.

In the comic frame, however, the view of the other changes from villain to fool. This does not mean that we see the other person as deserving of ridicule. The “fool” means someone who is a real human being, not a caricature or stereotype, and who is imperfect and capable of change. The comic frame defines a person in a way that allows us to enter into an evolving relationship with him.

When we persist in seeing our adversary in the narrow role of villain, we are guilty of what psychologists call the fundamental attribution error. As Malcolm Gladwell explains in *The Tipping Point*, this is “a fancy way of saying that when it comes to interpreting other people’s behaviour, human beings invariably make the mistake of overestimating the importance of fundamental character traits and underestimating the importance of a situation or context. We will always reach for a ‘dispositional’ explanation of events, as opposed to a contextual explanation.”

We avoid the fundamental attribution error when we see the other in context. LeBaron talks about dialoguing as a process that “shows participants to each other in context.” Seeing the other in context means seeing the richness of the other, seeing that she is capable of change. When we are operating from within the tragic frame, we see ourselves as the fool, the other as the villain. LeBaron writes that the fundamental attribution error operates when we excuse our own mistakes as arising out of the situation at hand, but attribute others’ failures to their flawed characters. “This adds to the perception born of limited contact that there are substantial and problematic differences between us and them.”



Being able to move from seeing someone as villain to seeing them as fool involves the idea of recognition, and some may see echoed here Bush and Folger's concept of recognition. "A party gives recognition in mediation when he actually allows himself to see the other party, and her conduct, in a different and more favorable light than before," and also when "he consciously engages in reinterpreting the past conduct and behaviour of the other party and tries to see it in a more sympathetic way."

It is interesting to note that there is an element of self-awareness in the fool that is absent in the villain. The comic frame holds it is important to see the other as a fool, but we must remember we are also fools. Caught up in his cosmic drama, the villain is not aware of himself as such, whereas the fool sees himself clearly. As Shakespeare said in *As You Like It*, "The wise man knows himself to be a fool."

6. The comic frame values discourse.

The comic frame is based on discourse, Hale tells us. "Whereas the tragic frame pits the power of the hero in action against the power of the hostile forces, the comic frame values talk."

The use of language becomes critical in the comic frame. The Zanders write, "We can make a conscious use of our way with words to define new frameworks for possibility that bring out the part of us that is most contributory, most unencumbered, most open to participation..." They emphasize that it is important to distinguish between "talk in the downward spiral" and "conversations for possibility." "Imagine," they write, "if we were to faithfully whisper the immortal words of Martin Luther King, Jr., 'I have a dream...', as a preface to our every next remark. Speaking in possibility springs from the appreciation that what we say creates a reality; how we define things sets a framework for life to unfold." William Ury in *Getting Past No* also talks about the importance of language in creating hope and possibility and suggests disputants frequently ask "What if..." as a means of staying with the language of possibility

Images and Voices of Hope is an international project that examines the impact of our words and stories, and promotes the process of Appreciative Inquiry. In language that might be describing the tragic frame, it stresses that we must change the current "deficit discourse," the conventional practice of the world that focuses on problems, threats and

pathologies. "We believe that a deficit discourse does not contribute to a new story of possibilities." By contrast, the process of AI consciously explores the language, and the stories that create hope and possibilities for the world.

Some writers talk about the ritualization of dialogue. In many multi-party processes, a talking stick is used. Passed from speaker to speaker, each person holds it and only he may speak until he feels understood. Each holder of the stick in turn is given the full attention and respect of the group. Covey calls the talking stick "one of the most powerful communication tools I've ever seen, because, while it is tangible and physical, it embodies a concept that is powerfully synergistic."

In an exhortation that could be seen as supporting the comic frame of interaction, Eleanor Roosevelt once said, "We have to face the fact that either all of us are going to die together or we are going to learn to live together, and

if we are to live together we have to talk."

7. The comic frame promotes a spirit of inquiry.

The comic frame values curiosity, uncertainty, ambiguity, paradox and surprise, characteristics that are absent from the tragic frame.

As we entertain different ways to invent ourselves, dancing with paradox and imagination, we recognize our choices and our active participation in a constant process of inventing and reinventing our identities.

LeBaron writes of the need to develop a spirit of inquiry about the other, to really think about who others are. This means reflecting on "who they might be, what they want, and what it means to be them." She offers the image of "shapeshifting" as a way to accomplish this. Taking the shape of someone else means adopting their perspective. In a clear reference to the comic and tragic frames, LeBaron writes that shapeshifting "may find more opposition in fatalistic settings than in those favoring free will, because the former dictate acceptance of one's lot rather than challenging it." "Shapeshifting helps us because it challenges the old notion that our personalities...are fixed, stable, consistent entities. As we entertain different ways to invent ourselves, dancing with paradox and imagination, we recognize our choices and our active participation in a constant process of inventing and reinventing our identities. Shapeshifting helps us remember that when it comes to human relationships, there is not one objective reality." The practice of "frame-shifting" becomes easier, she says, as we cultivate a spirit of inquiry, "because this spirit orients us toward generosity and learning."



Maintaining a spirit of inquiry can, of course, be a challenge. “Feeling defensive and angry we may find it difficult to maintain curiosity and deepen our understanding of the other,” writes LeBaron. “With all the goodwill in the world, it remains difficult to get outside our own frame of reference.”

8. The comic frame encourages humility.

The tragic frame is full of aggression which, in the comic frame, disappears. Wheatley writes, “To step aside from aggressive responses to problem-solving requires a little-used skill: humility. Humility is a brave act – we have to admit that we don’t have the answer.” Covey emphasizes the importance of humility in inter-personal communication and says this is the most important of all virtues.

Peacemaking processes in particular emphasize the importance of humility. The practice of non-violent communication observes that, “The somewhat mysterious nature of conflict requires humility on the part of the conflict resolver. This humility, in the form of openness, allows the conflict resolver to listen for novel ways of working with disputants.” The process of Appreciative Inquiry also sees humility as a personal strength. One of the sixteen guiding principles for AI consultants is “We realize, with a profound sense of humility and a stance of ongoing curiosity, that we are just beginning to understand the enormously rich potential of appreciative ways of knowing, relating, and changing. In this spirit we are committed to the Gandhian principle: ‘We must become the change we wish to see in the world.’”

The U.S. Institute for Environmental Conflict Resolution stresses that it works to promote sustainable solutions “with humility, respect and creativity.” And at the International Leadership Forum held in Istanbul, Turkey in 2001, Dr. Oscar Arias, 1987 Nobel Peace Laureate, listed humility as one of the qualities necessary for leadership in international conflict resolution situations. “Humility,” he wrote, “is a virtue which comes more naturally to some of us than others, but in situations of tension and disagreement, humility often tends to disappear altogether, as all parties feel the need to justify their positions.... Humility, without sacrificing self-respect, respects the points of view of others. Conflict resolution cannot happen without it.”

9. The comic frame is a holistic frame.

Hale writes that the comic frame is a holistic one. It values wholeness and coherence. A holistic worldview sees the

world as an integrated whole rather than a disassociated collection of parts. Unlike the reductionist worldview inherent in the tragic frame, it amplifies the frame of interaction.

LeBaron talks about the need for “whole system involvement” in helping people to bridge their conflicts. Covey discusses the “whole person paradigm,” encompassing body, mind, heart and spirit and says all four dimensions are necessary to deal with conflict in organizations. Wheatley suggests we ask ourselves, “What is my contribution to the whole?”

Isaacs devotes an entire chapter of his book to wholeness. In “Taking Wholeness Seriously,” he links the ideas of wholeness and dialogue. The dialogic process increases awareness of the whole, he writes. “Through it we can expand our awareness to include ever-greater wholeness. Dialogue is a process that can allow us to become aware of our participation in a much wider whole.” This is not easy to do as we lack a language of wholeness. “Our language has become fragmented. We speak to reinforce our positions.”

But it is not just our dialogue that is fragmented. Many conflict resolution processes emphasize the parts of the process – fixed and static opening statements, set groundrules, distinct procedural stages - and neglect the whole. We need a paradigm shift in our perceptions, from the parts to the whole. We need to rejoin the whole. We need to adopt a systems perspective, where the relationship between parts becomes as important as the parts themselves.

When two persons participate whole-heartedly in a conflict resolution process, the result is greater than their combined contributions. Synergy occurs and something new, different and greater than the two parts alone, is created. Mediator Michael Lang has talked about the “third story” that is created in mediation by the parties together, after they have each recited their own individual stories. Covey makes the same point with this “third alternative” concept. “The Third Alternative isn’t my way, it isn’t your way – it’s *our* way. It’s not a compromise halfway between your way and my way; it’s better than a compromise.” Like the “middle way” in Buddhism, Covey says his third alternative is “a higher middle position that is better than either of the other two ways, like a tip of a triangle.”

A holistic approach is often taken to community, health care, and environmental conflict resolution. In communities, holistic approaches often involve peace-making circles. The Savory Center, a non-profit organization founded in 1984 to



restore deteriorating landscapes, developed its trademarked concept of “Holistic Management: A New Framework for Decision Making.” It finds integrated solutions that incorporate sustainable agriculture, whole farm planning, wildlife management and community development and emphasizes solutions that benefit the social, economic and environmental health of their communities.

10. The comic frame embraces invention.

As early as 1924, American conflict resolution pioneer Mary Parker Follett said that successfully dealing with conflict requires “a brilliant inventiveness.” Follett was talking about the importance of creatively integrating the needs of the various parties to a conflict. Integration, for her, involved invention, “and the clever thing is to recognize this and not to let one’s thinking stay within the boundaries of two alternatives which are mutually exclusive.”

Since Follett, many conflict resolution writers have dealt with the idea of invention. In his 1988 study of common qualities found in mediators working in various fields with different styles, Christopher Honeyman identified invention as one of five characteristics every good negotiator should possess, and defined this as “an attempt to create out of whole cloth a solution to an issue.” The word invention may also call to mind one of Fisher and Ury’s negotiation principles in *Getting to Yes*, “invent options for mutual gain.”

Follett, Honeyman, and Fisher and Ury all use the term “invention” mainly in relation to crafting creative outcomes to a dispute. More recently, other writers have begun to use the term in a broader sense that includes creativity and imagination in the conflict resolution process as a whole. One of LeBaron’s seven “mountains,” or principles of a creative, relational approach to conflict set out in her *Bridging Troubled Waters*, is “Invention Mountain,” with its tools of metaphors, stories and rituals.

Being creative and inventive within the comic frame means generating new metaphors. Comic frame metaphors differ significantly from those found in the tragic frame. War metaphors are particularly inapt in a frame that eschews the tragic perspective. Phyllis Beck Kritek, author of *Negotiating at an Uneven Table*, emphasizes this point. “At the table I find it helpful to simply state that I choose not to use war metaphors because I find them inconsistent with the goals at the table. I try to explain that they make me feel like we are actually engaging in some strange new

variant of war called conflict resolution.”

Ever since Deborah Tannen pointed out in *The Argument Culture* how these and other metaphors are characteristic of an adversarial mindset that we might associate with the tragic frame, many writers have deliberately created new metaphors. These include images involving the heart, dance, webs, aikido, music, magic and food and many other images of hope and connection. Metaphors in the comic frame have a positive purpose. By consciously inventing new metaphors, we reframe our view of the conflict from the tragic to the comic.

Invention also suggests imagination. “Imagination is more important than knowledge,” Einstein said. Stephen Covey speaks of the necessity of “vision” in resolving disputes and repairing broken relationships. “Vision is applied imagination,” he writes. “It represents desire, hope, goals and plans.” Kritek makes the same point. “People with knowledge make great partners for Trivial Pursuit, but they are rarely of value in addressing profound human dilemmas.”

In this age where profound human dilemmas proliferate, we can take one more step on the road to resolution by consciously adopting the comic frame of interaction.

Evita Roche is an Ottawa-based mediator, lawyer and ADR trainer and consultant. She taught negotiation and mediation at CIAN for many years in the 1990’s. This is another article in her “Ten Hallmarks” series.

The Commencement of Negotiations in the Mediation Process (The Parties’ Opening Statements)

Richard Moore¹

One of the primary tasks of a mediator is to manage the interaction of the disputants. In his or her opening statement, the mediator introduces the process and the rules, and sets the tone of the mediation. Generally speaking the mediator tries to establish a tone that is open, positive, and informal. Setting the appropriate tone is very



important for the success of the mediation.

Following the mediator’s opening statement, the mediator invites the parties or their counsel to speak. In mediations where the parties are represented by legal counsel, it is quite common to invite each counsel to deliver an opening statement, often followed by a reply statement from the counsel who had spoken first. Contrary to this approach, I have generally found it more productive to invite the parties to commence the negotiation process, as opposed to counsel.

Some of the reasons why I believe that it is often more effective for counsel not to deliver opening statements are as follows:

1. If counsel begin, it may send a signal that they will take a more active role than the parties in the mediation. This should not happen. Mediation is generally most effective when the parties lead the negotiations. There are many other stages in the dispute resolution process where counsel can take the lead and be productive.

2. It avoids defining the dispute in legal and technical jargon and allows the parties to define the dispute in their own terms, terms that have more meaning to them. It is not uncommon to see a glazed look come over the eyes of the parties when counsel speak in “legalese”. The parties simply are often unable to understand or relate to the language of the lawyers.

3. Lawyers’ prepared opening statements often focus extensively on the diverse positions of the parties, that is, what the parties say they want. However, at this early stage, the mediator wants to gain an understanding and wants each of the parties to begin to gain an understanding of the various issues and priorities in the minds of all of the parties. An early focus on positions detracts from this purpose and may needlessly derail the process or, at the least, require the mediator and the parties to expend time and energy putting discussions back onto a more productive basis.

My experience is that following the mediator’s opening statement, the commencement of negotiations should be undertaken by the parties whenever they are able to do so. Some of the main reasons for this are as follows:

1. Symbolically, it thrusts the primary responsibility for the

conduct of the mediation onto the parties. This is where it belongs. *Mediation is all about the parties taking responsibility for the resolution of their own problem.*

2. It immediately engages the parties actively in the process. Attending for mediation is a strange and difficult undertaking for most people. Allowing people direct involvement early, in a proper and safe environment, helps them release their tension and begin to focus on the matters at hand.

It allows all involved in the mediation to see and hear how each party defines the situation in his or her own terms. The presenting problem takes definition and meaning from the standpoint of those directly involved in the dispute, not from some external source. This is of great benefit to both mediator and counsel in their efforts to assist the parties in arriving at a resolution.

My experience is that following the mediator’s opening statement, the commencement of negotiations should be undertaken by the parties whenever they are able to do so.

3. Usually, the parties will identify what is most important to them at this early stage in the mediation process. This can be compared to the “shot gun” approach often followed (and for good reason in other settings) by counsel. It is not unusual for the opening remarks of the parties to differ from the positions taken or issues identified in the pleadings or other material prepared by counsel. The issues, and the prioritization of them, can often be clarified directly by the parties at this early stage in the mediation.

If the parties are to take the lead at the commencement of the negotiations in the mediation, what then is the role of counsel at this stage? Some of the more important ways in which counsel can assist are as follows:

1. Counsel can play a supportive role in assisting the client if the client is having difficulty in expressing him or herself, or in helping the client refocus if his or her behaviour is not helpful to move the process forward effectively.

2. Counsel can help “fill in the gaps” of areas overlooked by his or her client who are, understandably often quite nervous at this early stage of the mediation.

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3. Counsel can raise the legal aspects or implications of the presenting problem. These can include both legal hurdles to settlement and opportunities for settlement based on the lawyers' specialized legal training and knowledge. This kind of input could be especially important in court-connected mediations where the parties are negotiating in the shadow of the courthouse.

Once it has been decided to invite each party to commence the negotiations, then counsel and client must prepare thoughtfully for this stage of the mediation.

Richard Moore is Director of Domestic Training, CIAN & President MDR Associates.

Violence Prevention Book

We are currently seeking authors to volunteer to write short non-academic articles or provide editorial feedback for a new violence prevention book scheduled for release in the Spring of 2006. Please check the following website for more information or to read the current articles: <http://iarpv.blogspot.com>.

Understanding the dynamics of power in conflict analysis was equally important. Power, we learned, is not always held by those we see as the 'rich and powerful' in society.

Reflections on CIAN Dispute Resolution Training

Toni Connolly

In Feb. of 2005, I was given the opportunity by my employer at Algonquin College, to pursue a sabbatical year. This was the chance of a lifetime for me, as I had been interested for a long time in Mediation. When I left my job in June, I was acting Manager at the Centre for Students with Disabilities. Mediation, negotiation, and conflict resolution are all skills that are needed in this demanding job, to ensure that all students have equal access to education opportunities, regardless of disability. We have a supportive administration, who are very much on board with our mandate.

After researching the various mediation training opportunities in both the public and private sector, I

decided that the Canadian International Institute for Applied Negotiation best suited my needs. Their courses were short and intense. Both Richard Moore and Heidi Ruppert came highly recommended to me by our college ombudsman, who had also trained with MDR Associates. I was not to be disappointed.

I have worked as a college counsellor for many years now, and feel that communication skills are one of my strengths. I had so much more to learn! Communication and conflict resolution are the key to successful negotiation. Getting rid of the 'buts' and 'whys' allowed us to rethink our probing questions. Shifting from judgement to curiosity was a theme that stayed with us through all the modules. Exploring the interests of persons and parties through the various techniques learned at CIAN has helped immensely in my mediation skills. Understanding the dynamics of power in conflict analysis was equally important. Power, we learned, is not always held by those we see as the 'rich and powerful' in society.

My greatest learning experience came through the many role plays we took part in for each module. The case studies were fantastic, and very realistic. This was especially true during the Multi-Party Mediation sessions. Each day we were given an opportunity to be the mediator for one session. We studied and prepared our cases in the evening, to be ready for the next days' scenario. I learned so much about building consensus in the multi-party, multi-issue environment. My memory aid on the mediation process became my bible.....and I surprised myself with my success. I became more aware of my strengths, and almost always managed to mediate the conflict to the satisfaction of all parties. Conflict at work will no longer make me feel apprehensive, as I now clearly see it as a vehicle for change and better understanding.

What I enjoyed most during the modules, were the people that I met. Richard and Heidi were fantastic facilitators who worked very hard to make each day such a positive experience. Other colleagues in the courses became friends. Indeed, Mariko and I discovered that we shared so many interests and had so much in common, that our friendship has become an important part of my life.

I believe that people enter into your life for a reason, a season, or a lifetime. CIAN was there for a reason. I am



now full swing into my sabbatical, and writing a manual for disability services counsellors at the 24 Ontario colleges, on mediating academic disputes. The facilitators are there for a season, my learning season in mediation, and continued group learning. The friends and colleagues may be there for a lifetime, as we stay in touch, learn from each other, and begin new adventures. I am so thankful for all I have come to know.

Toni Connolly is Acting Manager of the Centre for Students with Disabilities at Algonquin College, Ottawa and a former CIIAN Student.

Waging Peace in Sudan

Ben Hoffman's work waging peace in Sudan was the feature of a recent article in The Walrus Magazine (June 2005 edition) entitled Sudan's Lost Chance by Cathy Cook.

Back Issues of The Walrus Magazine can be purchased online at the magazine's website: <http://www.walrusmagazine.com>

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Rates start as low as \$50.00/insert, depending upon placement, frequency, and duration of contract. If you're interested in advertising in our newsletter, please send us an email at ciian@ciian.org or call 613-237-9050.

Alumni News

To our Alumni:

Ever wonder about anyone you trained with at a CIIAN course?

Want to find out what some of your colleagues are doing?

Want to share your current work and how the CIIAN training played a role?

CIIAN News wants to hear all about it! Send us a brief email about your current work and ask us about another CIIAN graduate. We'll run your blurb in the ALUMNI NEWS section of each issue and contact those you asked about and ask them to do the same.

Send Alumni News to:

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Upcoming CIIAN Courses...

CIIAN is proud to announce several new Training Courses that it will offer in 2006.

Violence Prevention: Theory-Informed Practice

This course gives participants a comprehensive framework and practical skills to link Early Warning to Early Response through holistic multi-sectoral, multi-level interventions. The course emphasizes practical ways to apply theory on the ground and at strategic levels. The assertion that you cannot prove success in prevention is challenged through a focus on power and violence. The role of the "Peace Guerrilla" is outlined including peace advocacy skills and action. Both operational and structural recent research and lessons from a demonstration case in West Africa are highlighted, especially the relationship between security and development and role of local actors.

FEATURES:

- A simulated multi-issue and multi-party peacegame.

Negotiating Agreements in Conflict Settings

This five day, dynamic course gives participants a set of key skills to meet the challenges of working in high conflict, violent settings. These "toxic" environments can cause personal stress, decreased efficiency, and team breakdown resulting in compromised or failed projects. Personal and organizational readiness are required. The course is interactive, experiential and on the leading edge of practice.

FEATURES:

- The role of power in conflict;
- Negotiation and mediation skills;
- Dealing with tough adversaries; and
- Effective teamwork.



The Power Clinic for Mediators

During this engaging workshop, Dr. Ben Hoffman, President of CIAN, will present his views on how and why he now breaks all the rules of mediation to help his clients as they dispute on what he calls the “power axis”.

Based on his findings as a mediator with experience in conflicts ranging from violence in the home to aggravated political conflict and war, Ben will argue that at the heart of conflict is power. Three principle forms of power will be outlined, and the challenges, tools and techniques for moving parties from destructive to constructive use of power will be explored. Participants will examine the implications for their own practice as “third party neutrals”, challenged to address power imbalances at, and away from the table.

Use of the “power axis” in personal development and organizational transformation will be introduced.

FEATURES:

- Disputing along the power axis;
- Beyond neutrality;
- Expanding the clinical event; and
- Power self-assessment with implications for personal and clinical practice.

Certificate Program in Conflict Prevention and Peacebuilding

The Conflict Prevention and Peacebuilding Certificate Program is a ten-day, comprehensive program focusing on the theory, models, and skills applicable to conflict prevention and peacebuilding. This knowledge can be applied in conflict zones, complex humanitarian emergencies, fragile and failing states as well as post conflict transitions from war to peace.

The course is designed to provide participants with opportunities to build bridges between theory and practice. It will also enhance their work with others to prevent violence, make peace, keep peace and build peace in increasingly challenging conflict situations. Developing networks with others who work in the conflict field and zones of conflict is an added benefit

for those going through the program. Conflict analysis, negotiation, mediation and multiparty dialogue skills are central to the program, as is advocacy for violence prevention/peace and programming through a conflict lens.

The course encompasses a wide range of materials in a highly interactive learning environment. Participants will be introduced to the latest theories, models and skills in the context of the most current developments in international conflict prevention and peacebuilding. The realities of conflict, characteristics of our changing times, and the challenges that intervening actors must face is the point of departure.

All courses and dates shown above will be delivered in Ottawa. Please contact us for information on courses offered in other locations.

To register for any of the above-mentioned training please visit the CIAN website.

Domestic

CIAN will continue to offer Modules I, II, and III throughout 2006.

Module I	<i>Conflict Theory and Introduction to Negotiation and Mediation</i> February 13-16, 2006 August 15-18, 2006
Module II	<i>Mediation</i> March 20-23, 2006 August 21-24, 2006
Module III	<i>Advanced Negotiation & Mediation</i> October 16-19, 2006

All courses and dates shown above will be delivered in Ottawa. Please contact us for information on courses offered in other locations.

For course descriptions, fees or courses offered in other locations, please contact Heidi Ruppert, Director of Domestic Training Program at 613-230-8671 or toll free at 1-866-212-8022. For information on the web, see www.cian.org (Domestic Program).



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The above named practitioners are registered with the Canadian International Institute of Applied Negotiation (CIAN). Registration attests to the fact that they have successfully completed the Institute's 120 hour program and submitted a Practitioner's Portfolio which includes subscription to a code of practice. The Institute, however, is not a governing body and is not responsible for the practice of those listed. We do, however, provide these names to potential clients.

RPDR Faculty

- Flaurie Storie (613) 222-1901
- Richard Moore (613) 230-8671
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Evita Roche is a lawyer and full-time ADR practitioner with 25 years' experience as a mediator, lawyer and trainer. A visiting Professor at the University of Ottawa Law School in the 1990's, she received its first annual Excellence in Teaching Award. Evita is noted for her creative and fun teaching style.

For more information about this course contact Evita at 613.237.7335 or evitar@sympatico.ca



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