



Mediating with Lawyers at the Table

By Marilyn J. Endriss

"The good lawyer is not the man who has an eye to every side and angle of contingency, and qualifies all his qualifications, but who throws himself on your part so heartily, that he can get you out of a scrape."

— Ralph Waldo Emerson

"When it comes to the cause of justice, I take no prisoners and I don't believe in compromising."

— Mary Frances Berry

As lawyers, we are (and are expected to be) zealous advocates for the legal rights of our clients – to take up the sword and fight our client's battles in the courtroom toward victory and justice! Our focus is on promoting and securing our client's legal rights. In law school we are taught to focus on what is relevant to the rule of law. Emotional and interpersonal dynamics are de-emphasized, if not outright ignored or dismissed as irrelevant.

In her article, *Law as a Healing Profession: The "Comprehensive Law Movement,"* Professor Susan Daicoff notes that law school actually fosters two shifts in values. The first is a shift from "care ethic," values such as "preserving interpersonal harmony, maintaining relationships, attending to people's feelings and needs, and preventing harm" to a "rights or justice" orientation that "focuses on rights, rules, standards, individuality, independence, justice, fairness, objectivity, accomplishments, ambitions, principles, personal beliefs, and freedom from interference of others." The second shift is from "an emphasis on 'growth/self-acceptance, intimacy/emotional connection, and community/societal contribution'" – that is, intrinsic values – towards "an emphasis on 'appearance/attractiveness,' 'money/luxuries, popularity/fame, and beauty/attractiveness,'" – that is, extrinsic values. According to Prof. Daicoff, empirical research indicates that these shifts appear among law students as early as their first year in law school and are embedded by the time students graduate and become lawyers.

As community mediators, we are (and are expected to be) professional neutrals and impartial to the rights of the parties in conflict. Our focus is on ensuring a meaningful opportunity for the parties in conflict to communicate with each other. Our objective is to facilitate their communications as they share information and negotiate a resolution of their interests. As facilitative media-

tors, our approach places high importance on the "care ethic" and intrinsic values. It often seems that there is a clash of values between interest-based mediation and rights-based legal practice. How ironic that we may find ourselves as mediators directly at odds, if not in conflict, with the very people the parties have hired to support them in the mediation!

Fortunately, an increasingly number of law schools are offering curricula that promote more humanistic approaches to the practice of law. And, there are growing numbers of lawyers who are changing the way they practice law away from a rights-based orientation to one that is client-centered and values a comprehensive, integrated and restorative approach to problem-solving.

"Our task is not to fix the blame for the past, but to fix the course for the future." -JFK

When a party has retained a lawyer who will attend the mediation, the mediator should recognize that the lawyer has been hired to do a job, just as the mediator has role to play and a job to do. I like to describe our respective functions this way, "As a mediator, I am the guardian of the mediation process while you as the lawyer are the guardian of your client's legal rights."

Given my awareness that lawyers are trained to focus on legal rights and that a shift in values may have (knowingly or unknowingly) resulted, I acknowledge that the facilitative model of mediation may seem foreign and may cause the lawyer some level of discomfort or uncertainty of his or her role. As guardian of the mediation process, one of my jobs is to help the lawyers serve a useful role in mediation. There are several ways to accomplish this. First, mediators (or intake staff) should talk with the lawyer prior to the mediation and describe the interest-based negotiation model using a

facilitative process. Attorneys who practice traditional litigation are familiar with a rights-based and distributive negotiation models and use a shuttle style of mediation where parties and their attorneys remain sequestered in separate rooms. Pre-mediation contact is essential so that lawyers know what to expect and have a meaningful opportunity to prepare for the facilitative process. Second, mediators (or intake staff) should explain the role that lawyers will play during the mediation. I like to say that the lawyer's role is to ensure that the client's important legal and non-legal concerns are addressed, that all reasonable options are identified and that the client has a meaningful opportunity to make informed decisions. I tell the lawyer to view his or her role as a counselor of law rather than an advocate of rights. Third, I review the principles and benefits of the facilitative model as it pertains to people in circumstances similar to the lawyer's client. I often mention the importance facilitative mediation places on interpersonal, emotional and relational concerns. Fourth, I emphasize that as a professional neutral I honor the voluntary nature of mediation and respect the self-determination and autonomy of the parties. And fifth, I often paraphrase JFK's quote and say that it will be up to the attorneys to help their clients move from the past (and fixing blame) and seize the opportunity that mediation affords to design their client's future. These preparatory explanations open up the process as transparent; help to build rapport, credibility, and respect; and assure that the mediation table is set and ready for all participants.

In my experience, the most rewarding mediations have been those when I have come to the mediation table with an open heart, respecting and appreciating that every person – client, lawyer, union steward,

HR representative or management official alike – is contributing value to the mediation process. For more tips on how to work effectively with lawyers in mediation, I hope you'll attend the in-service training workshop on June 17th. © 2008 Sound Conflict Solutions LLC

Marilyn J. Endriss is the principal owner of Sound Conflict Solutions, LLC. She is a full time mediator, conflict resolution trainer and consultant. She practiced employment law for over 20 years and from 1999–2001 served as an EEOC administrative judge. In addition to her private practice, she is a contract mediator for the EEOC and a part-time faculty member at the UW School of Law where she teaches a class on Interviewing and Counseling. She is a certified mediator member of the Wash. Mediation Association, former chair of the Wash. State Bar Assoc. Dispute Resolution Section, a member of the Assoc. for Conflict Resolution and a founding member of Mediators Beyond Borders.

Congratulations to our Parent-Teen Graduating Seniors!

Here is where they will be going next fall.....

Brian Tolkin	Stanford University
Allen Oh	UW
Stephen Coyle	Foster's Business School UW
Daniel Matson	BCC
(turned down UW to pursue his music interest)	
Parisa Khalighi	UW
Lizbeth Sanchez	Seattle University

Thank you for your dedication to the parent-teen program. We wish you well!

Book Group Corner:

By Barb Miller



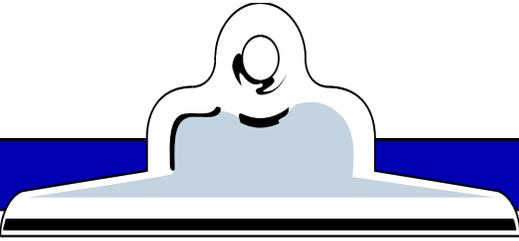
For May the book group read *Flow: The Psychology of Optimal Experience* by Mihalyi Csikszent-

mihalyi. This book, published in 1992, is frequently cited by more recent books exploring the idea of what makes people feel happy or fulfilled. Csikszentmihalyi's research led him to the concept of "flow," a state in which one's consciousness is full of experiences that are in harmony with one another. (For athletes, this state is called "the zone.") Activities that can induce a state of flow are those in which there are clear goals, feedback is immediate, and the challenge is just about at the edge of our skill level. If the activity is too easy, we get bored; if it is beyond our current level of ability, we grow anxious. As our skill levels grow, the level of challenge in the activity must grow as well, so that this

balance between frustration and anxiety can be retained.

In June we will read and discuss *High Conflict Personalities* by William Eddy, in connection with the seminar he will be presenting in Seattle in mid-June. The time and date are not set yet, but will most likely be within a week of the presentation of the seminar, June 16-20. If you are interested in participating in this discussion, contact Barb Miller at bmill07@comcast.net.

Next Meeting: After June we will take a break for summer, and resume on Wed., Sept. 10 at 5:30 p.m. at City Hall. We will be reading Dan Ariely's book *Predictable Irrationality*.



Parent—Teen Update

By
Cathy Goldman

I have completed the recruiting process and have selected the volunteers for the June 2008 training. The class is full with teens on the waiting list. It is a joy to see the interest teens have in becoming mediators for our program I am looking forward to the upcoming training.



Many of my volunteers are able to help me with this year's training. Once again, I am so grateful for the help and support. Thanks to all who are able to help coach, present and role-play. It is a fun learning experience to be on the training side of the program.

On June 4th from 6 to 8pm, we will meet at Bellevue City Hall to go over the training components so that those who are assisting have a clear vision of their role. We will concentrate on coaching techniques and how to support the learning of our new volunteers.

Once again, I feel very fortunate to have a dedicated group of volunteer mediators. Thanks for all your help!

BNMP Training Opportunities For Mediators and Conciliators

Neighborhood In-service:

Mediating with Attorneys at the Table

Marilyn Endriss

Tues. June 17th at 6:00 PM in Room 1E-120
6:00 Refreshments, 6:30-8:30 Program

Parent Teen In-Service:

Training for Training Assistants

Cathy Goldman

Wed. June 4th, from 6-8 PM Room 1E-112

Trainings:

Parent Teen Mediation Training—

June 23rd—27th, 8:30 am to 5:30 pm.

Contact Cathy Goldman 425-452-4091 for more information.

Book Group:

Wednesday, September 10 at 5:30 p.m. at City Hall. We will be reading Dan Ariely's book *Predictable Irrationality*.

Con/Med Consultation Group:

Join us to discuss your current conciliations/mediations or questions. Great networking and learning opportunity. Open to all volunteers.

Wed. June 11th at 5:30 in Room 1E-118.

Program Staff:

Program Co-Manager:	Cheryl Cohen	-	452-5222
Program Co-Manager:	Andrew Kidde	-	452-5288
Program Assistant	Gwen Jones	-	452-2897
Parent-Teen Coordinator:	Cathy Goldman	-	452-4091

City of Bellevue website: <http://www.bellevuewa.gov>
(Look for the Mediation Program under "Neighborhood Information")

Basic Mediation Training

Class of 2008



Congratulations to the graduates of the 2008 Basic Mediation Training: Mary Gewolb, Monroe Norman, April Cheng, Silvia Wilson, Frank Eulau, Josh Sundt, Chun Lu, Ann Levine, Phyllis Smilen, Debra Pinckney, Travis DesAutels, Penelope Nyder, Marion Weldon, Marina Nepom, Ellen Inman, Tana Thiele, Jill Sulzberg, Catherine Zimmerman, and Pam Womack.



City of Bellevue Department of Planning and Community Development
P.O. Box 90012 Bellevue, WA 98009-9012