

### Mediation: A Fledgling Profession or A Pot Puri of Good Intentions?

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#### Introduction. What is mediation? A Snapshot.

A possible definition. *Mediation is a decision making process, in which the parties are assisted by a third party, the mediator, who attempts to improve the process of decision-making and assists the parties reach an outcome, to which each of them can assent.* (Boulle 2001:3)

#### A Historical Perspective.

*"Mediation is both as old as human interaction and as new as the recent 'reinvention' of this old form has made it, in its modern use of courts, private disputes, public policy formation and governance. Mediation is both a legal process and more than a legal process used for thousands of years by all sorts of communities."* (Menkel Meadow 2001: X11)

Moore (1996) considers mediation to be the intervention in a negotiation or conflict of an acceptable third party who has limited or no authoritative decision-making power; but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute. Historians have identified that third parties have intervened in disputes since time immemorial. Traditional mediation is believed to have its routes in Confucianism. The peaceful organisation of society, according to Confucius starts from proper enquiry and understanding. He believed the latter lead to compassion and empathy, the core of Confucianism. Linked concepts are harmony and a conflict free, group based, system of social interaction. Boulle (2001:223) considers that *"concepts of enquiry, understanding, empathy and forging harmonious relationships are the essence of mediation"*. There is in part a religious linkage to mediation, where in Christian culture in the Middle-Ages clergy were called upon to act as mediators in disputes between families, as well as diplomatic disputes. Equally the Islamic culture has a strong tradition of mediation. Both Confucian and Buddhist traditions value dispute resolution through mediation rather than litigation, which is perceived as *'loss of face'*.

Menkel Meadow (2001) notes that despite its wide usage there is no cultural uniformity to the form the practice of mediation takes. It is the principle, which has prevailed and will remain interest based, reflecting the flexibility of its nature. Equally important was the idea that the intervention of a wise leader, or the airing of grievances, might

reduce the perceived need for individual revenge or violent vengeance. It was a process aimed at the common good as well as individual consideration.

In secular society, the mediating role of village elders, tribal councils and the like can be traced across all major continents. Arguably local councils continue to fulfil an important role as mediators in local disputes. However it was not until the twentieth century that mediation came to be institutionalised in our secular society and began to gain recognition as an emerging profession.

Boulle (2001) states that within more modern times in Western society, mediation has its roots in America, when in 1913 a small claims mediation scheme was introduced in the Municipal Court in Cleveland Ohio. By the late 1960's mediation was considered a means of increasing access to justice in the United States, and by the late 1970's had increased in usage considerably, having developed to its existing levels by the 1990's.

In the UK in the early 1970's the Final Report recommended mediation for the resolution of family disputes. However there was a failure to implement the report, and by the late 1970's independent family mediation services had been set up, and were endorsed by the Booth Committee in 1995. Community mediation was established in the mid 1980's, while growth in commercial mediation began in the early 1990's (Boulle 2001).

With the publication of the Woolf Report it became clear that mediation was about to blossom in England and Wales. The recommendations of this report were entirely endorsed by the U.K. government, and resulted in the new Civil Procedures Rules, which were enacted in April 1999. The latter half of the 1990's have demonstrated a steady growth in the use of A.D.R. and with it came the growing awareness by the more enlightened, that mediation was destined to become an extremely significant dispute resolution tool, providing a real alternative to the adversarial legal system.

Wilson (2002) considers that apart from the motive of avoiding the potential costs of litigation, the growth of mediation in the Western world has evolved from the need for people enmeshed in conflict, to find a mechanism whereby they are enabled to address multifaceted, complex issues complicated by widespread democratic and demographic societal changes. Life has become very complicated. Mediation with its inherent capacity to

evolve with its cultural roots, has attempted to meet the changing needs of society.

#### **The difficulties of defining mediation.**

Menkel Meadow (2001 XXVII) considers that "because mediation is seen as an ideology (of peace-seeking, transformative conflict- restoring, human problem solving) and practice (of task- orientated, communication enhancing dispute settlement), there are many controversies about appropriate definitions, forms, and boundaries," Boulle (2001) likewise sees difficulty in its definition, given its flexibility as a process, and open interpretation of terms such as 'voluntary' and 'neutrality', which causes problems of certainty consequent to their unclear boundaries and the subjective nature of the activities undertaken. The other difficulty of definition being that mediation as yet has not accrued a coherent theoretical base, which would clearly distinguish it from other non-adversarial processes, being a fledgling profession in comparison to more traditional professions, such as law and medicine. Aligned to the previous comment, a third difficulty lay in the diversity of its uses, interpretations and understanding. Mediation is used for different purposes by different people, who practice in a variety of different social and legal contexts. Equally mediators have roots in a range of backgrounds, often with extensive differences in qualifications, training, levels of skill and mode of operational style. Hence mediation presents as a patchwork of diversity, linked by themes of commonality, to include the core principles of neutrality/ impartiality, fairness, and mutual agreement, grounded within an ethical framework.

Davis (1998:65) however "*doubts it is safe to assume any characteristic of mediation, simply because the label is applied, for some forms of mediation are self- consciously evaluative and directive; while others claim to be purely facilitative, but have coercive elements*". Despite these problems the attempt to achieve uniformity continues. Boulle (2001:4) considers that a conceptualist definition would not necessarily reflect the reality of practice, while enjoying wide acceptance as a definition consequent to its idealistic content. He cites Folberg & Taylor (1994) in their definition of mediation as "*The process by which the participants, together with the assistance of a neutral person, systematically isolate disputed issues in order to develop options, consider alternatives and reach a consensual settlement that will accommodate their needs.*"

Arguably the reality of the situation may be that the process involves no more than incremental bargaining towards a compromise situation, and has scant regard for 'needs'.

Equally some conceptualist definitions identify empowerment and an aspiration to improve relations between the disputing parties, a concept considered quite unrealistic and positively "*misleading*" by (Boulle 2001:5) . A reality or descriptive definition of mediation however demonstrates more accurately the practice of mediation. Boulle cites Roberts (1992) in describing mediation as "*a process of dispute resolution in which the disputants meet with the mediator to talk over and then attempt to settle differences.*" The disadvantage within such a value free definition being that it omits the ideal of an underlying philosophy. Boulle (2001:6) sees definitions as "*idealistically and politically significant*", given the current climate of take- over of mediation by a variety of competing professionals. Davis (1998:66) sees it in far more pragmatic terms, asserting that irrespective of definition "*It is rather a matter of what works tolerably well, for how many, at what cost*".

#### **The Process of Mediation.**

Dingwall & Greatbatch (2001) identify that solo mediation is becoming more common, although co-mediation is the preferred method in some places. Some providers have preliminary fact- finding meetings with each party; others do not. Some of the latter use caucuses where they speak to each party separately; others do not. Some have clear rules about who gets to speak about what and when, others seem to improvise. In their research on quality for the Legal Services Commission they found that the client experience varied greatly, although most individual mediators were explicit about how they would manage the session.

Richards (1999:174) considers the first task of the mediator to be that of providing structure for the negotiation, with a view to converting the dispute into "*conversation*". Pou (2002) places structure on the process by identifying key elements of the process.

- Information gathering.
- Facilitation of communication.
- Communicating information.
- Analysing information.
- Facilitating agreement.
- Managing cases.
- Documenting agreement.

The process should begin by gathering all information relative to the dispute in question. The approach should be a measured, unhurried, methodical form of negotiating, which sometimes calls for tenacity, and always for absolute impartiality. The clients must be supported to remain focused on solutions, and where necessary impartial advice is provided by some mediators. Regular review of views and progress is made, continually questioning understanding of issues and summarising responses in solution- focussed language. Questioning should be respectful, demonstrating neutral, but genuine interest, while summarising should be impartially constructive, care being taken not to undervalue the difficulties within the dispute. Active listening must be practiced, by the mediator who needs to ensure that the clients are actively involved with the process by checking understanding. It is also important that the parties involved in the dispute listen to and take on board each others perspective. Encouraging the client's confidence in their capacity to find their own solutions to their particular problems, can also be helpful. Roberts (1999:174) believes that " *It is important to maintain the belief that all human beings have the capacity to run their own lives; that they usually accept fairness as the criterion for resolving disputes, and that what they decide..... is their right.*"

Boulle (2001) reminds us that after identifying areas of agreement, which are ascertained in consultation with the clients, the situation is moved to areas in dispute. The disputed areas can then be prioritised for negotiation. The process adds structure, aids clarity and tends to focus minds, providing an agenda upon which to focus negotiation, the negotiation providing the core element of the process.

#### **The purposes of mediation.**

The purpose of the processes of negotiation is described by Boulle (2001:133), as "*involving the parties in constructive negotiation for the purposes of quality decision making;*" identifying and exploring in detail major elements of the dispute, as well as encouraging direct communication between the parties, enabling them to express their position and feelings. There needs to be a positive effort by the mediator to promote mutual understanding while moving forward in the process of identifying needs and interests. There should be an exchange of information and views; developing and exploring options being necessary. Evaluating positions and

considering consequences, while moving through the problem solving negotiation, can prove stimulating and challenging.

Spurin (2002:2) identifies that the intention of the mediation is to bring the dispute to an end by consensual means, "*involving the disputing parties directly in shaping the terms of the resolution .....* However depending upon the model of assisted negotiation ..... *what the parties retain control over varies considerably.*" Within the arena of Family Law, mediators are required to ensure that clients are clearly informed at the outset, about the nature and purpose of mediation; to include its differences from marriage counselling or legal advice representation. However Dingwell & Greatbatch (2001) found in their exploratory research for the Legal Services Commission, into the quality of mediation being provided, that it was questionable whether clients were being made aware of the purposes of the intervention of mediation.

Clearly and perhaps unsurprisingly standards are not uniform, but as Dingwall & Greatbatch (2001:381) assert "*parties should be able to rely on greater uniformity*", so that clients can expect consistency and reliability in the provision of a predictable, quality service.

#### **Outcomes. Binding and Non Binding Agreements.**

Given that one of the prime intentions of mediation is to achieve a consensual agreement from disputing parties, focus on aspects of the agreement which are less contentious, would appear to be a significant position to start, moving progressively to more difficult issues. The agreement within mediation can be two fold, the only difference being in the enforceability or otherwise of the negotiated settlement.

#### **Binding.**

Spurin (2002:2) reminds us that "*the parties cannot be forced to actively participate in the process and are free to withdraw at any time.*" Clearly withdrawal equals breakdown and causes settlement by means of mediation to be impossible. However once the parties have agreed and signed a 'binding agreement' it is enforceable, and produces closure on the dispute. If the settlement is of an enforceable nature it is treated by the courts as a 'simple contract'.

#### **Non Binding.**

Spurin (2002:3) again reminds us that "*a non binding agreement is binding in honour only, and thus cannot be*

*enforced by the courts,"* and only indicates approval of the terms of the agreement, but do not have enforceability.

The common factors within these agreements is their consentuality. The agreement is subject to some legal constraints in that where a new agreement has an element of reciprocal bargain it might be unenforceable in the absence of a device to give it the force of law. The agreement may be made under seal to ensure its enforceability, or lodged as a settlement if the parties had commenced legal action. The enforceability of the agreement can only be challenged on the basis of misrepresentation, which is very difficult to prove. Practice which emanates from an ethically established base, would hopefully protect the mediator (in conjunction with insurance).

#### **Distinction Between Mediation & Conciliation**

The terms '*neutral*', '*voluntary*' and '*interventionist*', are subjective and can equally be applied to mediation or conciliation. Evaluative mediation can be difficult to differentiate from conciliation, but there are differences. Principally conciliators have a more '*interventionist*' role, recommending solutions, otherwise influencing the parties, and affecting the outcome. Conciliation is less neutral has a statutory context, and does not have mediations '*alternative character*'. However evaluative mediation can just as interventionist. There lurks the danger of undue coercion where an interventionist model of mediation is practised. Arguably an action for undue coercion might lie here in appropriate circumstances.

#### **Conclusion.**

There is clearly much to know about the process and product of mediation, and a great awareness that what has been overviewed within this chapter, does not begin to scratch the surface of available knowledge. The intention was to give a flavour of mediation, as an introduction to concerns and considerations about standards and quality issues, which currently prevail within the arena of mediation.

#### **Professionalism and Mediation**

##### **The Professional Status of Mediators.**

The professionalisation (defined as the status of a designated body of people) of mediators, seems to preoccupy the minds of a number of writers to include Boule (2001) and Morris (1997) who cites Pirie (1994) in suggesting that the professionalisation

of mediation may be more about power, market forces and control, prestige, elitism and patriarchy than it is about specialised bodies of knowledge, commitment to service and meeting the broader interests of society.

However arguably in an overarching sense there are benefits to be gained by the profession of mediation from a generally recognised professional status; not least by the implicit commitment to produce a generally recognised standard or quality of workmanship, deemed appropriate to their professional status. Characteristic determinants of professional status have traditionally been identified by a sound academic knowledge base, autonomy and self regulation, accountability, affiliation to and membership of, an appropriate professional organisation, which is bound by an agreed code of ethics/ practice and conduct. Linked to these are social prestige, status and eventually at least, financial reward, with the expectation of identifiable, ongoing professional development (knowledge and skills), being an essential component of today's professional persona.

Black- Branch (1998) identify intellect, a substantial body of cognitive knowledge developed over a protracted period, accompanied by practical experience, used in problem solving complex and important issues, as essential to professionalism (defined as a code of behaviour). The passing on of this specialised body of knowledge, skills and techniques by effective teaching to selected others, self regulated by an organisation which guides the further education of its members and places the highest value on altruism and a desire to serve the community, are identified by Friedson (2001) as essential components of a true profession. Hence professionalism provides the foundation stones for daily practice, while simultaneously improving the ethos of the organisation which is geared for the benefit and support of society.

Professionalism is clearly not that purist and there are a multiplicity of alternative agenda operating simultaneously. However the principle is idealistic and arguably should apply to mediators. Black-Branch (1998) views the professional status of mediators with concern seeing it to be a sadly neglected area, requiring focus and attention, given its increased promotion by academics, lawyers and care professionals. It is seen as a more humane means of settling disputes; in cases of divorce, child contact and property distribution. This principle

can equally apply across other fields of mediation. His anxieties lay in his perception that minimal 'gate keeping' appears to exist, consequently allowing access to potentially unsuitable practitioners; unlike law medicine and accounting, for example, who's self governing body presents compulsory training schemes. In these cases the central regulating body governs the profession, identifies a central role of members, sets standards, applies discipline (to its members) and identifies issues of ethical concern and accountability. The centrality of this situation does not present in the arena of mediation, which remains largely unregulated. No central compulsory training exists, no central regulatory body exists, no central register of members, no central regulatory body governs the profession. Consequently no central body sets uniform standards.

Issues of accountability and ethical standards equally do not possess a central identity. Clark & Mays (1996) in their study conducted in Scotland between January and March 1996 involving sixty-seven field interviews and forty questionnaires, found in their responses a great diversity of opinion in the regulating of Alternative Dispute Resolution (ADR) activities, with attitudes ranging from complete laissez fair, to the imposition of tight regulatory and supervisory controls. Scotland in common with the rest of the U.K. is subject to very little regulation of mediation, beyond the service providing organisations. Clark & Mays (2003) identify the suggestion that mediation would benefit from the establishment of a national umbrella organisation, who's remit would be to co-ordinate education and training, provide regulation and accountability for practitioners, and act as a monitor on the quality of service being provided. They acknowledge the difficulties inherent within the imposition of a national body aiming to regulate all mediation, considering it to be a situation burdened with deep difficulties. Such problems however despite their difficulties are not insurmountable, if there were a majority view to pursue such a course. Such consensus would not appear to currently exist, if the Scottish experience is accepted as a national guide.

In an attempt to address issues of standards and adequate training the Law Society introduced rules on mediation which are contained in Chapter 22 of their Guide to Professional Conduct of Solicitors. Equally a range of alternative organisations eg. The U.K. College of Family Mediators, the British

association of Lawyer Mediators, Mediation U.K., The Academy of Experts and others, have established codes of practice and guidelines. However Clark & May (2003) remind us that there is opportunity for criticism because there is no universally accepted code, with little means to monitor adherence to approved 'best practice'. Some of the difficulty with attempting to establish a benchmark of acceptable mediation practice within the diverse range of organisations which exist, emanates from a lack of cohesiveness and a conflict of interests and opinions; which is arguably not helpful to a sense of belonging, a universality of standards or a solid power base upon which to build professional status.

A plethora of mediation organisations taking the initiative for attempting to set standards and present a professional façade demonstrates initiative and self interest; but arguably a non compulsory policy of registration is unhelpful to uniformity of standards and the process of monitoring. There is limited hope of consistency of standards outside a central system, given Boule's (2001) comments on mediators basic training considerations. "*At present there is little agreement in the U.K. on what the mediation training content and methodology should be.*"

Arguably this lack of central regulation prompts concern relative to standards of service and commitment to a central ethos of professionalism.

Black-Branch (1998) cites Hoy & Miskell in identifying a professional orientation as characterised by technical competence acquired through long training, adherence to a set of professional norms to include a service ideal, objectivity, impersonality, impartiality, a colleague orientated reference group, autonomy in professional decision making, and self imposed control based on knowledge, standards and peer review.

Within Family mediation, Glenn's study of the Central London County Court Mediation Pilot, cited by Boule (2001:424) highlighted that "*currently there is no formal requirement in the U.K. for training or qualifications, and any person can hold themselves out to be a mediator.*" It is consequently not surprising that Black- Branch (1998:40) identifies that the degree of professionalism amongst mediators is perceived as being very ad hoc. It would appear that three categories of mediators currently practice in U.K. There are those individuals that are affiliated to the

Law Society and the U.K. College of Family Mediators, who are striving to achieve professional status against an academic back-drop, while setting high standards of training and simultaneously moving towards a self regulated profession, subscribing to an organised body which governs its membership and binds individuals by a code of professional conduct and ethics. Secondly there exist the alternatively qualified professionals (who are professionals in their own right), who have migrated to mediation, demonstrate a professional approach and may be skilled mediators. They do not however subscribe to an organised body bound by a code of professional ethics, with disciplinary power over its members. Thirdly there exists the quasi-professionals who are not responsible to any of the existing regulating bodies presently established in the U.K., may not be well trained, and are not well placed to competently perform effectively as a mediator, but function in that capacity; with no effective control being exerted to influence their standards of professionalism – which in reality do not exist. This scenario identified by Black- Branch (1998) is not helpful in the promotion of mediations professional status. However this focus is related to family law mediation and does not include the expertise, training and professionalism provided by a cluster of organisations, such as the Chartered Institute of Arbitrators, ACAS, the Nationwide Academy of Dispute Resolution, the Centre for Dispute Resolution and numerous others.

Arguably where there exists a prior knowledge base accompanied by practical experience in people management, extended periods of training may well be inappropriate and unnecessary. *'Bolt-on'* sessions of appropriate material accompanied by designated periods of professional development, would probably prove more appropriate. Spurin (2003:14-15 July) identifies the broad range of training available to help promote mediator expertise, noting that *"competence examinations provide perhaps the best measure of quality assurance"*, and that professional communicators are likely to need less training given that their pre existing persuasive skills are already highly developed. He also considers that mediators highly skilled in interpersonal skills maybe able to handle any dispute irrespective of subject matter. However that is not the case in evaluative or pseudo-judicial mediation, which requires a firm grasp of the law and the industry context of the dispute. Hence quality of the individual influenced

by training and experience will ultimately reflect in the quality of the body of the organisation and the profession.

Features of group solidarity, *'closing ranks'* when problems emerge, and *'gate-keeping'* entrance to the profession, also tend to be features of professions. Also the existence of a subculture, which comprises explicit or implicit codes of behaviour has been noted by Moloney (1986). Arguably this level of cohesion is not present within mediating, consequent to the diverse nature of its collective body and lack of central control. Affiliation to many organisations does not lend itself to professional cohesiveness. The commonality of traditional professional characteristics and ethical values set certain groups apart (eg. law and medicine), from other occupational participants. Arguably the reasons for acceptance of certain occupations as professions is their value to society, esteem for the prolonged training, knowledge and skills that are required to conduct this work and respect for those engaged within those spheres, given the societal expectation of dedication to a service ideal. However public scrutiny facilitated by media coverage has somewhat displaced automatic respect for professionals, within our current social climate.

Boulle (2001:530) cites Morgan in considering that *"professionalism in itself is undergoing considerable change, and some would say decline"*. He asserts that in its current stage of development, mediation is only able to claim some exclusive technical competence, which does not meet the calibre of the traditional professions.

Arguably mediators do not fit into this category of professionalism, given the invisibility of their status to the public at large. There would appear to be little awareness of their role, function, and potential for facilitating the solving of disputes, effectively, flexibly and without the involvement of an expensive, laborious, adversarial, confrontational legal system.

Clearly there are a diversity of opinions on what it means to be a professional, and what constitutes professionalism. However it is generally accepted that a profession should have the trust of the public and a very high set of ideals and ethical standards with which to underpin practice. Arguably individual trust will emanate from personal interface with an individual professional group or individual professional person. A more public trust

is likely to emerge from a reputation gained from a more collective experience and possibly affected by media coverage, and provision of information in conjunction with culturally accepted 'norms'.

Black- Branch (1998) considers that, while it may not always be possible to attain perfection, mediators must strive for excellence through the acquisition of technical competence, acquired through rigorous training, adherence to professional norms, objectivity, impartiality, a colleague orientated reference group, professional autonomy and self imposed control based on knowledge, high standards and peer review. Black- Branch (1998:40) identifies practitioners as being "*characterised by a strong service motivation and a lifetime commitment to competence*". He also notes that the practitioner has relative freedom from supervision and direct public evaluation (hence the increased need for peer evaluation); and accepts responsibility in the name of the profession, being accountable through his profession to society.

Arguably belief in the profession of mediation and the quality of its practice must include governance by a professionally accepted code of ethics. However Boule (2001), Mc Farlane (1997), Black- Branch (1998), identify the existing lack of a mandatory centralised authority to regulate the profession leaves 'loop holes' within the system, and allow for untrained persons to enter the mediation profession, with the potential to damage its reputation by inadequate practice. If mediation is to continue to gain strength as an increasing alternative to the traditional legal adversarial system, rigorous surveillance of its professionalism, as evidenced by its standards; which reflect from its ideals, ethics and training are arguably essential. The critics who consider regulation to be stifling, constraining and in contradiction to the ethos of flexibility and imaginative free thinking, may need to consider the consequences for its status as a sub-profession.

Grossman (2003 July) considers that the "*face of professionalism is changing and that more practitioners, including those in established professions are working in managed, or multi-disciplinary environments, where the trend is towards higher specialism. Within this arena greater emphasis is placed on working in partnership with people rather than 'doing things for' clients.*" He considers that the older traditional view of professionals meeting a set of characteristics against which occupation of a profession can be assessed is seductive; but dangerous, because it ignores the

changing conditions of society and changes in how occupations operate.

Evolution of professional status, and changes within the structures of the working relationships of many professionals, may call for reassessment of how the current state of professionalisation provides a secure base for reflecting professional identity as well as a qualifying association. Arguably given the diversity within the range and practice of mediation, a single institutionalised body might prove unwieldy and inappropriate. However the desire by some for allegiance to a recognised body and the need for training remains. An array of mediation agencies already exist, and many like for example CEDR already have an accreditation function, principally dealing with commercial and civil matters. However standards and circumstances are not equal across the fields of mediation e.g much of community mediation, it would appear, is undertaken by volunteers with minimal training. Arguably they require a different level of training and support, given their status and the nature of their very different field of mediation. Hence central regulation could prove very difficult, and standardisation of training equally difficult, given the highly variable context of the mediation.

Equally "*it is difficult if not impossible to instil through training, personal characteristics that pre-figure competence in mediation. Mediators very much use their own personalities as an instrument of mediation, through which their skills are transmitted*" (Grossman 2003 July). Duration and depth of training must fit need and situation if it is to be effective as a means of improving knowledge, outcome, and professional status. Experts are required to move the 'fledging' profession of mediation forward, and such people are clearly in evidence; judgement being made from the evidence of secondary research. However the cohesiveness of the body of expertise is arguably not readily identified in places beyond the 'inner circle of experts'. To the public at large, mediation is largely invisible and local community mediators struggle to enlighten not only the public, but the involved professionals e.g police and housing departments, to recognise and use their services (Ms B interview 2003)

The European Union are desirous of uniformity in standards to reflect appropriate uniform levels of professionalism, in an effort to 'harmonise' cross-border working relationships. Grossman (2003 July) identifies that recently the Legal Affairs Committee

of the European Parliament debated the draft directive on the recognition of professional qualifications, to enable the free movement of professionals within the European Union. The Committee however, was unable to reach a consensus on the definition of a profession, and whether the directive should be limited to the established professions, or include other occupations. Arguably qualifications and standards must leave sufficient scope in the regulatory mechanism to allow for different and emerging types of professional practice.

The European Union are equally concerned about regulation of mediation, and assurances have been provided by the commission that it does not intend to regulate to remove the flexibility of ADR. There was desire to produce regulation to ensure harmonisation between systems, on such matters as understanding the effect of ADR processes on statutes of limitation. (Mackie 2003 Sept). Concern has also been expressed by CEDR that the implementation of regulation by the European Commission, creating minimal standards of accepted practice, rather than those set out by the leaders in the field, could produce the reverse effect. This would have the effect of reducing rather than improving standards which will reflect in levels of professionalism. As an example, which will have implications for other fields of mediation, Mackie (2003 Sept) sees that commercial mediation is only now beginning to deal with questions and concerns regarding professionalisation, and practitioner ethics. This extends beyond regulatory measures and codes. He sees it as an urgent priority that the European Commission and its member governments promote the social environment and actions necessary to enable the growth of ADR referrals, rather than regulation of mediation practice, or mediation professional status. The message from the European Parliament to the European Union Commission has been clear. Policy towards ADR is to be focussed on research, promotion of best practice, with legislative activity directed at simplification rather than direct regulation (CEDR 2003)

Mackie (2003 Sept) considers that it would be inappropriate to start from a presumption that there can be a simple of single set of regulation or ethical guidelines for mediation. He asserts structure and management of mediation must be specific to the needs of individual situations and contexts.

There exists a section of mediators who clearly feel that implementation of a tight regulatory framework could lead to *“unnecessary professionalisation of mediation activity, which could detract from the long – term goals of grass-roots mediation”* (Clark & Mays 2003:5). The obvious concern being the exclusion of lay persons, some of whom possess excellent mediation skills, and may well find themselves excluded by the introduction of further regulation. Others see central mandatory regulation as closing options and monitoring the process as difficult in the extreme. Arguably a desirable process, to provide real accountability for practicing mediators and protection for mediating parties, but identified by some and cited by Clark & Mays (2003:5) as *“no more than a theoretical fancy, a practical impossibility in a world awash in a sea of conflicting interests and combating agenda.”*

#### **Mediation’s professional status.**

Has mediation achieved true professional status? Some would argue definitively yes, albeit as a young profession. However if the comparison is being made with traditional professions like law, and medicine, and the same criteria are applied, mediation clearly does not reach that benchmark. Others it would appear have no desire to move down the professional road with its perceived restrictions and constraints. Central control and registration produces howls of pain from many, while others see it as a ‘natural’ progression. Multiple considerations require agreement. Clearly the path to resolution on this issue is long and tortuous. ‘The jury is still out’.

#### **The Role of The Mediator.**

Boulle (2001:155) uses the term role to refer to “the overall aims and objectives of mediators. Thus the roles of the mediators can be represented as being to create the optimal conditions for the parties to make effective decisions and to assist the parties to negotiate an agreement.” She considers that “role operates at a high level of generality, and does not clearly identify what mediators actually do.” The nature of the mediator’s functions will be dependant upon the type of dispute, the characteristics of the parties involved, the agency providing the service, the terms of the agreement and the individual guidelines that describe the role and functions of the mediator. The model of mediation being used will affect the process as will the individual style of the mediator.



Spurin (2002:1) defines mediation as *"the process whereby an independent third party acts as a facilitator to bring about an agreement between the disputing parties, as to the terms of a settlement of the dispute. The parties negotiate the terms of a settlement agreed between themselves, with the assistance and guidance of the mediator"*

Hence the mediator as the independent third party has a specific role to play within the particular process of mediation. The three concepts of roles, functions and skills overlap significantly, and arguably the distinctions are somewhat arbitrary. There would appear to be agreement amongst multiple authors of mediation that the function of a mediator should be neutral and impartial, with fairness and 'even handedness' being critical, key elements. The role is one that respects the concept of confidentiality, and the ultimate aim is to obtain settlement of the dispute between the parties in question. How that process is expressed however will be variable and susceptible to individual interpretation, variability of context and the pressures of circumstances.

The possession and use of excellent communication skills are the clear requirement of a good mediator. Active listening is essential, demonstrating that what has been said is understood. It is not necessary to agree with someone to register that understanding, in a non- judgemental manner, has occurred. It requires one hundred per cent attention and concerted concentration in an effort to, not only communicate, but to catalogue facts and information. Main (1989) reminds us that becoming involved with another person and becoming the significant 'other' is not achieved by following rules or rehearsing set patterns of behaviour. He sees listening as a dynamic activity, the dynamism of such interaction always having the potential for uncertainty. However the potential for change and movement towards resolution is unlikely to be achieved without this essential element. Benjamin (2001) admitted to regularly feeling 'confused' producing levels of uncertainty, with the constant effort required to feel his way through new situations.

Rodgers (1973) an eminent psychologist, considered that the quality of the interpersonal encounter provided the most significant element in determining the effectiveness of the result. The mediator must also be aware that prior to making a significant statement he/she should have some

insight into the effects of that act of communication, and ensure that the language used is clear and unambiguous. The capacity to inspire the clients to pursue long -range goals, and the tenacity to persist where such goals are perceived, with effort to be achievable, could be regarded as complimenting the role. Burns (1990) considers it to be a particular capacity that human beings possess. Arguably without communication there is no mediation, hence the quality of the former must be of the highest standard.

Neutral and mediator are words that are often used interchangeably. There is an expectation and a need for the mediator to be indifferent (Collins definition of neutral). Such indifference would not of course indicate lack of interest, but lack of bias as to the outcome. Richards (1997:51) considers that the mediator has a responsibility to remain sincerely neutral as to the outcome, while remaining strongly committed to a process of negotiation; what he refers to as *"managing other peoples negotiating from a neutral position"*. Neutrality is a totally critical and a central element of the mediator's role.

Arguably it is impossible or at least unlikely that any human being does not have an opinion or biases, and is truly neutral. However it is also arguable that if the mediator is sufficiently self-aware and is a reflective practitioner, attuned to his/her reactions and able to articulate intuitive feelings and actions; the possibility of bias negatively affecting interventions is reduced. Cohen (2003: 2) suggests that *"The reflective practitioner goes further by thinking carefully through a range of options, while contemplating interventions to make in mediation .... The mediator makes conscious choices based on cognisance of core values and biases, as well as using conflict and mediation theory, techniques, and experiences, that combine to form a skill base"*.

She identifies that the mediator's role requires more than a basic set of techniques, giving high priority to reflective practice in which opportunity is made to reflect upon and analyse the interventions of particular cases. The dynamism of the conflict at multiple levels are reflected upon, recognising mistakes and articulating intuitive feelings; as well as understanding personal values and biases. Essential to the exercise, is the value of learning from experience.

A sound theoretical and researched based approach, informed by practice and experience are essential. Cohen (2003) considers that professional

development conducted through reflective practice of day -to -day mediation encounters, are a powerful resource for mediators seeking a disciplined and introspective way of thinking about client interventions. However the mediator also needs to accept what Walker (1989) identifies in his studies upon reflection. He asserts that success cannot always be guaranteed even with excellent facilitation and the specialised help of a mediator. However lasting binding agreements are a real possibility. Spurin (1999) identifies an average success rate as 83%. Walker (1989) considers that reflecting upon situations and events, acknowledging feelings, both positive and negative aid learning and enlighten the evaluation process; thereby improving the prospect of a more informed decision making process.

Arguably the mediator must be a critical thinker with the capacity to make explicit what is implicit within a given situation (Brookfield 1993), and be very aware that understanding cultural difference and variability in the language meaning, can often prove crucial to understanding and acceptance of ideas. Fisher & Ury (1991) point to the Middle Eastern interpretation of the word mediator as '*someone who meddles*', a negative connotation, not appreciated in the West. Such awareness is necessary in the application of successful communication. Brookfield (1993) considers the ability to be critically analytical concerning the assumptions underlying our own actions are an essential component of professional practice. Updike cited by Friedson (2001) stated that his four years at Harvard had left him with a lot to learn, but had give him the liberating notion that now he could think for himself. Arguably one cannot reach that state of liberation until one has learned the art of critical analysis. Brookfield (1993:X) considers that critical analysis is essential to self- development and self- determination. He defines it as "reflecting on the assumptions underlying the ideas and actions of others, as well as self, and contemplating alternative ways of thinking"; this should constitute a critical element in the role and practice of mediators.

The capacity to think critically is clearly vital not only to academic analysis, but to the evaluatory process of daily living and could be considered one of the most significant activities of the adult mind. The nature of the activity explodes the myth of single answers to problems, and invites alternative analysis, action and behaviour. Brookfield (1987)

considers the characteristics of critical thinkers to be competence, ability and humility (the converse of know it all arrogance), and a capacity to be insightful and perceptive. Arguably the mediator's role in encouraging clients to critically analyse their conflict with view to resolution, supports their efforts to solve their problems; or approach questions and issues from new perspectives, which should encourage their capacity for logical reasoning. Richards (1998a) considers that emotions need to be attended to prior to that point, but that does not distract from the importance of the mediators need to apply critical analysis. Change or a changed state of perception may be the end product of critical analysis, and within many contexts change may be unrealistic or difficult to achieve, for "*most people live within structures and circumstances that are extremely hard to change*" (Brookfield 1987:248), hence clients may find the process of adjusting to a new/ altered position within mediation difficult and painful, with the danger of disconnection. The mediator will be required to be vigilant and patient. However taking the risk to think critically can prove innovative and prove empowering for the clients. If there is to be movement of positions by the clients and some level of resolution, change is inevitable. Hence the importance of this skill to the professionalism of the mediator.

The essential element within this process has to be that the neutral mediator "provides structure for the negotiating, in order to transform the client's dispute into a conversation" (Richards 1999:174). There is a clear need for the mediator to have a very thorough knowledge and understanding of the process and procedure of mediating, (the detail of which has received attention in an alternative section of the dissertation). The mediator has to manage conflict by responding neutrally and impartially, maintaining a different role from that of a judge or advice giver, being careful not to fall into the role of counsellor or arbitrator. Richards (1999) considers it is important to maintain the belief that all human beings have the capacity to run their own lives. Given that guiding principle, the mediator will facilitate the process to ensure that any agreement is client led in outcome. Richards (1999) believes that helping clients deal with their disputes in a manner which is mutually satisfactory to them, in their own time and in their own way, ultimately helps them

manage future conflict with self- respect and greater fairness.

Mediators are people and hence do not live within a vacuum. The mediator brings to the role transferable skills gained from life experience, professional experience, and training, hopefully. Richards (1998:633) considers that mediators who are also professionals in an alternative capacity “*tend to resort to values and methods of their major profession*”, which he sees as problematic. Arguably such professionals should leave their profession at the door, and take in with them their professionalism. It is not the role of the mediator to inject judgements and advice into mediation sessions. Spurin (2001:1) identifies that “*the role of the mediator does not differ in any significant manner, simply because the mediator is an expert; though that may depend on whether or not the mediator is an expert on the issue in dispute*”. However he considers it “*essential for all mediators to possess high degrees of mediating expertise*”.

The mediator will be aware that the motivating source for settlement will vary with context, but what is common to all situations, is that it is arguably in the best interests of both parties to settle the dispute as promptly as possible. Spurin (2003 July) reminds us that the interest based mediator invites the parties to consider the long- term benefits that could occur from looking beyond the immediate disputed issues. Settlement of the dispute would allow the disputing parties to ‘*move on*’ in their lives, and relationships, and short term sacrifices may well produce long term gains. It is necessary for both parties to cooperate, finding common ground on which to move forward. The cost of litigation, and the stress and disruption of a trial, the loss of privacy over commercial trade secrets, the welfare of a child; the list of wider interests is endless, all provide motivating reasons for settlement. Spurin (2003:11July) considers that “*the majority of disputants are not unreasonable*” and that early intervention by the mediator is preferable, before attitudes harden and the parties become too entrenched into their own positions. The incentive to settle Spurin (2003:11July) considers can be highly dependant upon the personality of the parties. However mediation aims to “*separate the personalities from the issues, and adopt an objective view, thereby facilitating a reasonable pragmatic settlement of the dispute.*”

Richards (1998b) considers that the mediator should provide a stimulating environment, which will

enable the conflict to be reconstructed in a format acceptable to the clients, for he pragmatically sees ending the conflict as an impossible task. The clients must eventually come to their own resolution, and Spurin (2001) identifies that the outcome must be entirely consensual. He also warns of the need for a potentially higher standard being placed upon the mediator to ensure equality of bargaining information for clients who are not professionally represented, especially where the issues at stake concern significant legal interests, rights and duties.

Hence if the clients are to be the experts within their own situation, why is it so important for the mediator to hold such expertise in mediating? There in lay the art and practice of the mediator, in guiding their clients to their own personal solutions.

#### **Conclusion.**

“*The test of a first rate intelligence is the ability to hold two opposed ideas in mind at the same time and still retain ability to function*”. ( Fitzgerald 1965 cited by Peters & Waterman 1995). Arguably the mediator will require not only a first rate level of intelligence, but be prepared to demonstrate the quick mind, strong nerve, persuasive manner, resilient nature, and sensitivity that Atkinsons identifies (cited by Spurin 1999). Equally he/she is required to demonstrate professionalism, to incorporate appropriate levels of confidentiality; while acting as a facilitator and sometimes a guide (while not being directive). Meanwhile there will remain the need for neutrality and impartiality, while negotiating a compromise that is acceptable to the parties involved. The mediator will use strategies, tactics and well-developed skills to enable a settlement, which results in a contract devised by the parties and facilitated by the mediator.

#### **High Standards: :Acquisition & Maintenance.**

##### **How shall we know it? How shall we measure it?**

Simon (2002:1) identifies the standards of mediation in the U.S.A. as “*a crazy quilt of rules, regulations, standards, and legislation.*” Arguably that concept is transferable to the U.K. Here there exists no universally applied set of standards, and those that do exist, emanate from a diverse selection of service providers. Hence different interpretations are applied by different groups and individuals, who function within very variable context and present with highly variable backgrounds. This arguably results in a fairly meaningless array of mediator standards. It is obviously possible to measure the

competency of an individual against a defined set of criteria. Selection of criteria and consideration of the validity and reliability of the assessment process, present yet another area of debate. It is usually possible to gauge the competence of a profession by the structures it has in place for selection, training, assessment, supervision / monitoring and disciplinary processes, directed at its members; in conjunction with its aims and ethical standards. As no agreed set of standards exist, for use as a reference point, potential clients are left with no universal 'benchmark' upon which to gauge quality. It is argued by some that neutrals offering services such as early neutral evaluation and expert determination are usually either qualified lawyers or are qualified in some other profession. They are consequently subjected to alternative professional standards and codes of conduct so do not require the further constraint of yet more 'rules' to underpin an existing professional base.

Equally others argue that mediation is about bringing people together to formulate an agreement, where it is possible. Also there must be a willingness to cooperate, within a situation where good communication skills and a sound understanding of the specific skills of a neutral, to include appropriate process, are the requirements. Bingham (2003) would argue that context 'rules' are an unwanted intrusion. Others argue that it does not take years of formal education and 'paper qualifications' to become a highly competent mediator, who's origins might be as diverse as a coal miner, or a university professor. Simon (2002:2) indicates that regulation and accreditation to this group signals a closed profession dominated by those possessing the finances and education to acquire the necessary qualifications; removing mediation from its "*grass-roots solutions*" and transplanting it into a, "privileged licensed practice", thereby betraying its origins.

However there does exist a concern amongst many practicing mediators about the quality and standards being offered by the mediation service in the U.K., Wilson (2002), Simon (2002), Honeyman (1999), and Black –Branch (1998), to name but a few authors, identify the quality as inconsistent and patchy. Consequent to this concern amongst practitioners and some academics, consideration has been applied to the most appropriate means of evaluating the process and measuring its standards. Wilson (2002:64) considers that mediation "*one of the*

*most scrutinised of the newer professions*", has spanned the spectrum of the evaluatory methods through evaluating taped mediation conversations, looking at caseloads, percentages of cases settled, post mediation litigation, sustainability of outcomes, cost/ benefits, client satisfaction and mediator process skills. However she considers that much of the research has been hampered by "*linear thinking*" involving the principle of application of a pre-established "*correct process*" using prescribed pre-identified formula, with increased possibility of uniformity of result. Such quality assurance she sees as inappropriate to the uncertainties associated with the dynamics of mediation. Dingwall & Greatbatch (2001) would seem to agree that there exists a degree of variation in practice that cannot be addressed by the imposition of external codes and standards for they are highly reliant upon the dynamics of the interaction, the quality of the mediator's skills, and the capacity of the mediator to work with uncertainty within a flexible framework. Arguably the personal qualities of the mediator will undoubtedly influence the quality and outcome of the process. This has been described by Benjamin (2000) as confused, voyeuristic, compulsive and marginal. This use of adjectives and perspective are unconventional, and challenging to a more traditional perspective of mediation. However it is arguable, that a talented mediator will possess intrinsic personal qualities and knowledge that informs their practice, and is not easily measured by psychological testing.

Wilson (2002) considers that most mediators and academics interested in the issues accept the premise that mediation requires evaluation and that mediators should demonstrate accountability, working from an ethical position of tried and tested 'best practice' principles and strategies. Most are in agreement that there is a need and requirement for ongoing professional development, incorporating updating of skills and theoretical knowledge. Updating should include refreshment of standard practice, evaluation of new research and its effect on, and position within, a working environment. Maybe new approaches could be applied to jaded practice. It is therefore generally accepted that the measurement of mediation (either qualitative or quantitative) is necessary and desirable, though it may not be readily achieved.

Dingwall & Greatbatch (2001:381) identify that currently aspiring mediators, intending to practice family mediation, are examined (by their organisation) on their knowledge of what they ought to be doing, rather than demonstrating their capacity to undertake the role effectively. They consider this approach to be limiting and ineffectual, a *"secret garden .....with no direct quality assuring, other than by assuming compliance with the organisational requirements"*.

Honeyman (1999) considers that any strategy devised for the qualification and scrutiny of mediators must have as its foundation the consideration and well being of clients and the public at large, whom he considered ill served by an existing system of inaction. He identifies a system which failed to provide a performance-based mechanism, whereby skilled mediators could demonstrate the key elements of effective performance, which he considered socially valuable as well as professionally significant. Dispute settlement, as an indicator of mediator competence he considered neither valid nor a reflection of mediator competence. Equally he dismissed substantive knowledge as an important criteria of mediator skill. More than a basic and mediation-specific knowledge of law was seen as important only for relatively few types of situations.

Spurin (2003:15 July) believes that from the interests based perspective, it may well be true that *"the mediator only needs to be a highly skilled inter-personal guru, who can handle any dispute irrespective of subject matter"*. However this does not apply equally to the evaluative mediator, who needs to have a firm grasp of both the law and the industry context of the dispute.

Simon (2002:2) cites research by Rogers & Sander (1997) which identifies the difficulty of writing meaningful criteria for evaluating mediator effectiveness. *"Their study examined 650 cases mediated by volunteer attorneys, and its conclusions identified that the amount of training had no significant affect on settlement rates or client satisfaction or perceptions of fairness. Equally expertise in the subject matter of the dispute did not affect settlement rates"*. If neither education nor subject expertise can serve as the criteria, what can be used? Experience seemed to be the only aspect of qualification that was related to increased settlement. The obvious conclusion being that the greater the experience, the more well refined the mediator's skills.

Experience is a quality well respected by Benjamin (2001:1) who identified prior work experience which encouraged a need for *"the quick development of street sense for survival and sanity"*, as critical in his acquisition of the core skills and confidence so essential to his work as a mediator. Transferability of skills with intelligent adaption clearly is an advantage and a bonus, given that there is understanding of the differences which may exist in values and function within an alternative profession. Benjamin (2001:1) considers that effective mediators frequently have prior experience of people management; albeit not gained via the professional practice of mediation. He also considers that formal professional education cannot offer the kinds of experience critical for the training of effective mediators and that over intellectualised individuals divorced from his/her *"intuitive sensibilities ....relying on rules and formulas"* is no substitute for practical experience.

However assessment is a critical factor in daily living. It commences at the moment of birth and proceeds with us through life; for the assessment spectrum ranges through from the very formal stylised examination system, through to the informal and the casual. Rowntree (1987:Xii) identifies it well *"Assessment will remain with us from the cradle to beyond the grave. Scarcely have we taken our first breath before we have a label fastened to our wrists ...and our first file has been opened. From then on the assessments come thick and fast ...from practically everyone we have dealings with"*.

Consequently how can mediators believe they can escape the process that the remainder of society are subjected to on a daily basis. Given acceptance of the need, the more difficult issue of establishment of criteria by which to judge mediator competency requires attention. As Rowntree (1987) cover page notes *"how shall we know them?"*

Pou (2002) considers that mediator skills and inherent personal attributes can be vital to a quality outcome within a mediation encounter. Influencing the process will be the mediator's training and experience as well as the variable context within which the mediation takes place. Pou sees the nature and diversity of roles that mediators play as presenting complications for setting standards, and accepts that strong differences of opinion exist within the dispute resolution community as to what constitutes quality results, how best to define quality practice by neutrals, and how to assess whether

practitioners have the required skills. *“Competence is the term often used to describe the ability to use dispute resolution skills and knowledge effectively, to assist disputants in prevention, management or resolution of their disputes in a particular setting”* (Pou 2002:4). Hence the need for a clear understanding of the term competence, described by Collins English Dictionary (1992) as “being capable or able”; a highly subjective definition, requiring subjective criteria to itemise the considered essential elements of mediation efficacy. Freidson (2001:69) considers *“It is difficult if not impossible to establish truly objective criteria by which to characterise the knowledge and skill required to perform work; for all criteria seem to be contestable as either indefensibly evaluative or relative”*.

There would appear to be no clear consensus on the knowledge, skills, abilities and extra attributes needed to conduct a high quality mediation. However Pou (2002:4) identified the results of the project ‘A Performance Based Assessment. A Methodology for use in Selecting, Training and Evaluating Mediations’, which he considered offered a methodology for making performance based assessment of mediations a workable opportunity. Pou outlines the generally accepted descriptions of a mediator’s task, identified below:

#### **Mediator Tasks.**<sup>1</sup>

- ❑ Gathering background information.
- ❑ Facilitating communication.
- ❑ Communicating information to others.
- ❑ Analysing information.
- ❑ Facilitating agreement.
- ❑ Managing cases.
- ❑ Helping document any agreement by the parties

#### **Mediator Criteria.**

- ❑ Investigation  
Effectiveness in identifying and seeking out pertinent information.
- ❑ Empathy  
Conspicuous awareness and consideration of the needs of others.
- ❑ Impartiality  
Effectiveness in maintaining a neutral stance between parties; plus avoiding undisclosed conflicts of interest or bias.

- ❑ Generating opinions  
Pursuit of collaborative solutions and generation of ideas. Proposals consistent with case facts and workable for the opposing parties.

- ❑ Generating agreements  
Effectiveness in moving parties towards finality and a closing agreement.

- ❑ Managing the interaction  
Effectiveness in developing strategy, managing the process and coping with conflicts between clients and representatives.

- ❑ Substantive knowledge  
Adequate competence in the issues and type of dispute to facilitate communication. Help parties develop options alert parties to relevant legal information.

He identifies that endorsement has come from many mediators, relevant to the use of the above criteria, and an accompanying assessment scale. Equally some mediators have criticised the structure as one that is deal-seeking and not sufficiently reflective of diverse needs and party goals (Pou 2002)

What does seem obvious is that such a programme could provide structure to a mediation. For it to be used in an evaluative capacity it would require monitoring, possibly by both supervision (direct and taped) and by self -assessment consequent to reflective practice. Some would argue that an element of client satisfaction would also be necessary. Essential to this process is a high level of self -awareness. Cohen (2003) reminds us that we must have a well grounded self understanding of internalised biases, and that mediators who believe they can enter mediation as ‘blank slates’, being totally objective with no prejudices need to re-evaluate their position. Arguably no one is ever truly neutral, consequently understanding and taking account of our biases will produce a higher quality mediation experience. Cohen (2002:2) reminds us of the importance of being mindful of “our core values and world view as well as our own mediation and life experience. In the best circumstances we also filter what we hear through a screen of conflict theory and mediation ethics”. Hence the need for ongoing self -awareness and self-assessment. This process is complimented by supervision which provides an essential element of the quality process, whereby high standards are maintained.

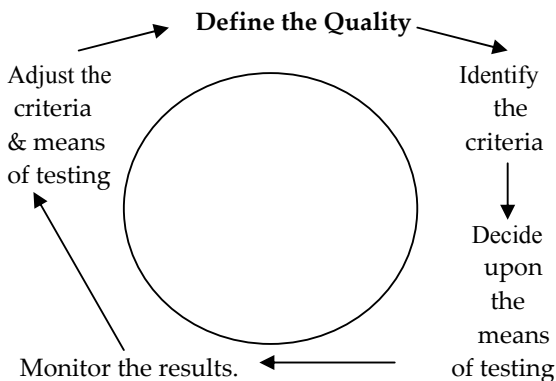
<sup>1</sup> Cited by Pou 2002 and extrapolated from the Hewlett NIDR Test Design Project.

Self awareness needs to extend to cover core values to include for example ideas of fairness, honesty, religious beliefs, civil liberties and personal responsibility. Beyond that we require insight into our biases about what as an individual we perceive to be abusive, obnoxious, or manipulative behaviour, which is likely to be coloured by life experience. Superimposed upon that situation is the personality, the self determinism and the training, which results in mediator competency and the ethics of confidentiality.

There will always be a degree of variation in practice that cannot be addressed by good intentions or Codes of Practice. It is the human element within an encounter. Arguably the most helpful means of maintaining standards lay in monitoring by supervision; whereby a range of means are used ie. The supervisory presence of a colleague, taped mediation sessions (with permission), post mediation evaluatory sessions in conjunction with a colleague and self- assessment are possibilities; all using an agreed set of identified criteria as a benchmark.

However this does have the potential to increase costs, which arguably could be self-defeating, as one of the benefits of mediation is its lower financial impact. It also raises the problem inherent within assessment itself of validity, reliability, bias in selection of criteria for assessment, as well as a generalised dislike of assessment by those exposed to its rigours. Despite such reservations however there exists within the profession a desire by some for more uniform standards, which might begin with a quality circle.

**A Quality Circle.**



While such a process begins to feel constraining, and inhibiting of flair and imagination, consideration needs to revert to the criteria, to allow sufficient 'space' for the inherent flexibility of mediation to

prevail. If standards are to be identified, there has to be a means of measurement. What to measure and who will measure arguably results in more questions than answers, other than maintenance of the prevailing belief in high quality, and the need to measure it in an effort to demonstrate high standards of practice. Arguably it must not only be done, but be seen to be done, for purposes of transparency. All mediators would not agree its necessity, seeing post qualification testing as an expensive waste of time, only necessary where there are investigations ongoing in situations of asserted malpractice.

Codes of Practice and regulation go some way to contributing to that effort to develop, set and maintain standards. Pou (2002:2) talks about defining mediation quality in terms of "addressing programme goals" and considers that "efforts to define and measure quality mediation must first recognise and address these variations". He considers that a variety of individuals and bodies are currently involved to include judges, courts, interested official entities and multiple mediator associations. He considers the possibility of having a central entity setting policy guidance, while allowing separate standards for different programmes, or different kinds of mediation activity. Arguably that is not too far removed from the existing situation, for the range extends through qualified professionals eg. Lawyers who practice as mediators, who have undertaken 'bolt on' courses; frequently associated with family law disputes. Academics who hold Alternative Dispute Resolution / Mediation qualifications, some to a very advanced level, through to alternative professionals such as counsellors, social workers and health professionals. The list also includes unqualified 'ordinary' volunteers who practice with very minimal training. A very diverse group, spanning a wide spectrum.

Who will be allowed access reflects back to the issue of credentials. Simon (2002) tells us that qualifications, substantive knowledge and training are what is valid for entry, described by Pou (2002) as the initial 'hurdle', which is ironical given the research findings by Rogers & Saunders (1997) cited by Pou (2002) which identify the only significant factor affecting positive mediation outcome was the experience of the mediator. It does however give value to the situation found in volunteer mediating, where no entry qualifications and minimal training are the order of the day. Given sufficient experience

it has to be assumed such low cost/ no cost investment might ultimately be the most useful formula, from a cost benefit perspective; assuming such unpaid persons can be persuaded to continue to give of their time. There are arguably multiple paths to competence, and quality mediators come from a diversity of backgrounds, having developed skills in ways other than standard training. Potential within an individual and experience, should never be overlooked in favour of exemplary 'paper qualifications', desirable though they may be. Being a mediator is about far more than an affiliation to paper.

Quality once established by thorough training, supervision and experience, requires maintenance and should include ongoing professional development. Pou (2002) identifies the importance of ongoing training, mentoring and continuing education; which arguably should also include regular supervision, providing the check for quality. How such supervision is undertaken will be variable to the organisation but could include peer consultation, supervisor consultation, group supervision of appropriate individuals, as well as self-evaluation through reflective practice, reports, and the process should include client evaluation.

Relative to competence Pou (2000) considers that:

**Context:** The context of the mediation should identify what should be determined as competent practice – being specific to the situation.

**The responsibility for ensuring competence:** This lay with a range of interested parties, all who have differing roles and responsibilities for assuring quality, to include mediator organisations, the practitioners as well as the consumers, who's views should be sought.

**Competency:** Essential is the acquisition and demonstration of the core skills adapted for the needs of the context.

**The acquisition of competency:** Competency could be acquired via multiple paths, to include academic and practice based approaches. There should also exist some combination of natural aptitude/people skills, an appropriate knowledge base, in addition to other attributes developed through training and experience.

**Assessment of competence:** Variable methods should be applied, not relying upon one method of assessment to the detriment of others. Assessing

competence should be a shared responsibility between the interested parties.

**The assessment tools for quality assurance:** Quality assurance tools should be used to support the aims of mediation, and be consistent with the practice context. The more formal the accreditation process the greater the number of considerations that should accompany the implementation. Programmes should assure competence through training, supervision, monitoring and the use of assessment tools.

Pou's (2002) suggestions sound nicely ideal and rather imprecise, which no doubt will increase its level of acceptance by many practitioners, but it 's interpretation of necessity has to be a very subjective exercise. Hence we are left with possibly more questions than answers, with the realisation that much work needs to be done in an effort to ensure and maintain high standards within mediation.

### Conclusion.

If the use of mediation as a form of A.D.R. is to continue to develop and evolve, it has to be argued that standards related to selection and competence of mediators must be addressed, to protect both consumers and the integrity of the profession. Academic skills alone, however desirable, are insufficient unto themselves in the measurement of competence. There is the need for the development of principles and policies, resulting in qualifications and competencies which are measurable and acceptable to the profession and public, as considerations of policy.

Simon (2002:4) admits that compilation and introduction of a credible form of accrediting mediation knowledge and skills will prove a difficult and onerous task. However he sees it as desirable and achievable. Further he sees that "if mediation is ever to become a credible profession, it will be partially built on a foundation of quality assurance, only attained in Western Society through accreditation. He sees that "accreditation is coming, it is our future. We must not let it slip through our fingers". Beyond accreditation The Joint Mediation Forum U.K. considers there is an overriding need for the accreditation to be centrally managed. The forum includes representatives from CEDDR, ADR Group, The Academy of Experts, Mediation U.K., and others, including mediators specialising in family disputes, who are all working towards establishing a new over-arching body for the whole



profession. The intention- to set ethical and training standards, for community, commercial, and family mediators across the country. Such developments on both the private and voluntary sectors towards common standards, would appear to render action by Government unnecessary. However not for the first time, it may be that Government, private and voluntary sectors can work together to achieve effective procedures and standards, for the assurance of good quality mediators and clients alike.

Wilson (2002) considers that mediation is not a mechanical, replicable process, but a dynamic interaction with many intangibles and unknowns, arising from unique sets of circumstances. Consequently quantifiable measurements of quality and standards continues to pose an ongoing challenge, for those concerned with trying to ensure the business of mediation continues to aspire to the highest standards of best practice and professionalism. Diversity with core values appear to be the passwords.

#### **Some thoughts on Ethics as an essential element of standards.**

Menkel-Meadow (2001:430) sees it as *"deeply ironic"* that as a proponent of alternative dispute resolution with its promise of flexibility, adaptability and creativity, she now sees the need for ethics, standards of practice and rules (all so potentially limiting) as necessary, to *"insure its legitimacy against theoretical and practical challenges"*. She acknowledges the variety and complexity of the present situation, acknowledging mediations pursuit of different goals, intentions and behaviours, many of which being inconsistent with the original aims of mediation. Arguably mediation has been hijacked, the rules of behaviour having become less clear and hence more important. Mediation is not an adversarial situation, hence it requires the application of a different set of underlying values that inform and are responsive to its practice. *"Rules premised on adversarial and advocacy systems ... do not respond to process which are intended to be conducted differently and produce different outcomes"* (Menkel - Meadow 2001:432). However, that ethical rules are in position is important, given a changing scene where mediators function as both facilitators and evaluators, and lawyers function as both litigators and neutrals. Changing *'hats'* is not impossible, but the process requires consideration. Considerations of ethically appropriate behaviour by the mediator

within a mediation session, are ultimately a facet of standards and quality. Also issues of advice giving and conflict of interests, pose obvious mediation ethical dilemmas.

Menkel- Meadow (2001:441/2) sees that the *"flexible, adaptive and creative processes of alternatives to litigation and court have produced their own abuses"* and there has developed a need to reconsider *"rules, norms and standards of conduct"* and denies movement towards a more codified structure is associated with *"new professions attempts at legitimacy through the promulgation of ethical codes and rules"*, in an effort to more effectively control itself. She poses the pertinent dilemma *"at what level of generality or particularity should we address our standards? Should we aim for enforceable rules or aspirational, ethical, considerations"*? Arguably concern for quality and good practice reflect professional self- interest. However the flexibility and variety of neutral roles make reliance on currently existing ethical standards problematic. Arguably mediation is always facilitative, hence there is the potential to provide neutral information that is not advice or prediction. However there is the potential to move along a continuum of mediation activity ranging from information giving, to advice, prediction and eventually evaluation, suggestion or decisions (usually non-binding in evaluative mediation). The authors of the *'Joint Standards'* however take the view that mediation should refrain from providing professional advice.

Third party neutrals (including mediators) who serve the courts are granted quasi-judicial immunity, thus rendering information given by them, irrespective of quality, immune from scrutiny. Hence no mechanism for quality control or accountability. A.D.R. to include mediation, acquires its foundational principles from a problem solving perspective of joint gain, and future, rather than past orientation. Trust, confidentiality, creativity and openness identify a particular wholesome set of ethical precepts and standards. Considerations of accountability and legitimacy still prevail, but the openness places greater emphasis upon transparency and a more democratic process. Confidentiality, neutrality and impartiality, are three of the most significant ethical issues faced by practitioners of mediation.

**Neutrality / Impartiality.**

Neutrality according to Boule (2001) reflects the mediator's background, and his/her relationship with the parties and the dispute. It includes issues such as prior knowledge of the dispute, the degree of mediator interest in the substantive outcome, or in the way the mediation is conducted; to include the extent of mediator expertise in the subject matter in dispute. He considers that while neutrality is obviously a desirable quality it is a less absolute requirement and could be put aside, without necessarily prejudicing the integrity of the mediation process. Boule (2001) sees the existence of neutrality as a question of degree, rather than an absolute entity. Arguably with sufficiently high levels of self-awareness and integrity, it is possible for the mediator not to be personally neutral about the dispute, but to conduct the process in a fair and unprejudiced manner.

Impartiality it is argued refers to an 'even-handedness', objectivity and fairness towards the parties during the mediation process and includes issues of time allocation, facilitation, avoidance of favouritism, bias or adversarial conduct and indicates an inclusive communication process. Its absence would fundamentally flaw the nature of the process, and must present as a constant feature.

Menkel -Meadow (2001) identifies the diversity in practice that arises within the flexible framework of mediation. She presents the argument for the distanced, unbiased, impartial and neutral stance of the mediator, to ensure that process and outcomes, are freely chosen by the disputing parties. This should allow for self-determination, with an absence of coercion. Arguably mediators with expert subject knowledge might be tempted to influence the decision making process, consequent to their expert knowledge base. However Spurin (2002:1) identifies a clear and particular place for the subject mediator, noting that within mediating what is required is "*the acquisition of mediator skills*". The mediator does not require subject expertise to conduct mediation. Mediating skills effectively learned and practiced, should inhibit crossing the boundaries of professional practice. However some parties seek substantive expertise, which at times will cause ethical difficulties relative to neutrality. Brand (2003) argues that a mediator with particular subject expertise, brings to the mediation an intellectual framework of understanding, which may help the parties develop a creative solution that works.

Hidden within that framework is always the agenda of mediator bias, which requires consideration. Ultimately it must be the parties who formulate the agreement.

The mediator also has to contend with issues of power balancing with view to reducing inequalities within the mediation process, Menkel -Meadow (2001:446) identifies that "momentarily neutrality may be exchanged for fairness". Arguably good third-party neutrals vary their practice flexibly to deal with the contexts of the disputes, giving consideration to the underlying values which inform the practice differences, bearing in mind it is not only the parties' interests, but the integrity of the process which is at issue.

**Confidentiality.**

Confidentiality within professional domains, is not about absolute secrecy as suggested by Collins English Dictionary (1992), who define confidentiality as 'secret'. It has a somewhat broader meaning and works principally on a need to know basis. The system by which confidentiality works between professionals also varies somewhat. Within professional counselling, confidentiality means sharing with a supervisor, who will in turn share with his/her supervisor. This acts to check and balance the quality of service as well as producing support for the individual. However the privileged information is 'ring fenced'. Confidentiality within mediation also has its own pattern, and arguably has become increasingly complex and controversial with the passage of time.

In general terms there must be an intention to protect party interests, as well as third party neutral and process interests. Ascertaining exactly what is to be protected however can be more difficult. By definition anything said in mediation would not be confidential, because at least in joint sessions, adverse parties are revealing information freely and in the presence of a neutral, and are consequently outside the protected zone of a lawyer -client confidentiality. Hence mediation has had to provide its own confidentiality rules, so that parties can share settlement facts with each other without fear of that information being used outside of mediation.

Some disclosures however by-pass confidentiality provision and require disclosure eg. Child abuse or domestic abuse, or intentions to commit crime, or admissions of serious crime eg. murder. Ethical rules and guidelines, in addition to private contracts

and agreements for confidentiality are subject to 'the law of the land', raising significant issues about the need for 'Miranda' warnings, that clients may need in mediation in determining just how candid to be in their revelations. Mediators promise confidentiality in contracts, agreements and dealings, and are invariably concerned to protect personal integrity and personal reputation. Menkel-Meadow (2001:464) identifies that while ethical standards attempt to deal broadly with issues of confidentiality "the reality is that case law and common law development will be required to deal with the myriad of factually specific conflicts that exist between competing policies". Confidentiality in the context of mediation is complex, especially given the variability of practice demonstrated through the profession. The mediator is required always to be thoughtfully reflective in conversation, careful not to violate confidentiality, and maintain intact his/her personal integrity. Awareness of the foundation stones upon which one's personal value system is built, and adherence to a personal framework of integrity and honesty, will invariably support ethical considerations of confidentiality.

#### **Upholding Standards.**

Arguably at this point in the evolution of mediation, ethics 'best practice' format may better serve the needs of the parties in making informed choices about process, than a rigid set of ethical rules or standards. There is an extensive list of issues which require ethical consideration which are outside the scope of this dissertation, but which affect standards. These include, though the list is not exhaustive, competence, scope of representation, diligence, fees, disabilities, truthfulness, dealing with unrepresented parties, advertising, contracts with prospective clients, communications about fields of practice, reporting professional misconduct and misconduct.

The dealings with all such matters requires a foundation of ethical principles, advised by a code of conduct broadly acceptable to the profession; for such consideration protects not only clients, but the integrity of the profession. Menkel - Meadow (2001:469) identifies that regulating practice by ethical standards "begs the question of the appropriate unit of analysis". Equally the profession will have to "confront the issues implicated in provider accountability, internal ethics and responsibility". She also considers that issues affecting 'public interest' be treated differently from

purely private disputes. Menkel -Meadows (2001:473) feels that the profession is not yet quite ready for clear rules and standards on many issues, but could consider some "discretionary aspirational standards which commit to providing alternative justice .... based on adherence to ethical moral and 'good' non-adversary principles.

#### **Conclusion.**

Mediation requires its own set of ethical underpinning, which must reflect from foundational principles. It is not an adversarial system, so legal ethics do not fit comfortably with a problem solving, joint gain concept. The ethics of mediation must reflect the trust, confidentiality, creativity, and openness of its process. At that point it will meet the appropriate standard. It has to be remembered that not everyone accepts the joint gain concept. The Risk Evaluator in looking for a settlement that gets as close to legal liability / responsibility as possible, moderated by a Cost Risk opportunity figure.

#### **Research Strategy.**

##### **Introduction.**

It was my intention to gain an overall perspective of volunteers experience of mediation at a local level; with particular emphasis on standards and professionalism. My reading on such issues suggested that standards within mediation generally could be variable and inconsistent Black-Branch (1998), Hughes & Waddington (2001), Simon (2002), and I was anxious to make my own discoveries.

I needed to ascertain what services were locally available, given that access is an ever present difficulty when attempting to undertake any research. However as a native of the area I felt confident that with effort I could identify services, and convince the people involved to be supportive of my project.

The intention was to use both qualitative and quantitative research, involving three interviews, which would be face- to- face encounters and which I intended would be tape- recorded. The interviews would be semi- structured, using the same basic questions for all three participants, with an expectation of the interviews lasting approximately one hour. The three volunteers were recruited from three different sources of community service volunteering, and were self selecting, in as much as they agreed to my request for an interview; their status being ascertained by personal recommendation. The three volunteers were white and female, and while it would have been desirable

to interview a male for gender balance, ultimately I needed to utilise the material available to me. I identified no interest in social status, only an occupational background, as an indicator of possible prior experience.

#### **The Issues.**

The issue was standards and levels of professionalism apparent within the local community mediation service. It was my intention to identify the quality of service available to the public and maybe identify variability in standards between these community services.

The intention to use both qualitative and quantitative research meant that the questions for the qualitative interviews needed to be open, encouraging a more well-developed insightful response. The questions for the questionnaire however needed to be closed, demanding a more simplistic contained response, while allowing some room for limited comment. I used basically the same questions for both situations, but during interviews encouraged the interviewees to expand and develop the informational themes. In effect the interviews were semi structured, aimed at gaining information without being interrogative. I was interested in the individual experience, while simultaneously being interested in threads of commonality.

#### **The Questions.**

The questions were designed to reflect issues of quality and standards, either directly or indirectly. They were structured from my prior reading and from my experience of interfacing with standards, both at university and during my limited experience of teaching law to students on access courses. During the interview I did not provide the volunteers with a rationale for the questions, but merely identified at the outset that my interest was in the quality of community mediation services.

I was interested in their background prior to their work with mediation services, because of its relationship to issues of experience and transferable skills (Benjamin 2001), and the 'double-edged sword' potential to infect the mediation process with inappropriate ideals.

Self-awareness is arguably highly significant to personal encounters (Rogers 1974), and I was particularly interested in issues of self-awareness, reflected in question two, four, and sixteen particularly (see appendix), as an indicator of a quality encounter (Cohen 2003). Quality of

community mediators will reflect in levels of experience (Simon 2002); and as retention is a major issue (Hughes & Waddington 2001), duration of service was also a significant factor.

Question four was intended to reveal awareness of process, indirectly indicating levels of training/knowledge and interpretation of appropriateness of model applied to the type of mediation, and awareness of role; while appreciating that a mix is frequently used. There was an attempt to illicit the values of prior alternative qualifications, consequent to the skills versus academic qualifications debate, within the mediation literature (Honeyman 1999). As well, identification of the duration of training was requested, given the prior entry requirements are non-existent.

A broader perspective was sought in the questions relative to linkages and support from external regulatory bodies; given the relevance of codes of practice and guidelines to standards of practice. Questions on the helpfulness of legal and specialised knowledge were intended to give an indication as to levels of awareness and standards of training. Supervision of practice constitutes a critical element in maintaining standards of practice, as well as supporting volunteers. The four questions relative to supervision (Richards 1998c), in conjunction with the question relative to evaluating practice, were intended to be critical indicators of adherence to 'best practice'. The question relative to significant problems affecting practice was intended to indicate levels of critical thinking, necessary for effective practice (Brookfield 1987).

My intention throughout with these questions was to attempt to ascertain some indication of whether quality practice was taking practice.

#### **Access.**

Access is always a major consideration. If access is prohibited there is no research. It is a critical factor. Hammersley & Atkinson (1995) consider that the mobilisation of the resource of acquaintanceship, kinship, utilising existing social networks and occupational membership, may/will prove helpful in facilitating access, to what would otherwise prove difficult areas to penetrate for purposes of research. The presence of gatekeepers, especially though not exclusively, found in professional domains, serve to limit inclusion and safeguard what is perceived to be the legitimate interests of that organisation. Hence knowing who holds the power to legitimise the research is not only useful, but ultimately

critical. As Hammersley & Atkinson (1995) identify, personal knowledge may make judgement of the most effective strategy for gaining entry obvious. My serious considerations of undertaking voluntary mediation within the community had placed me in an appropriate position to make contacts, which made this research possible.

Arguably the most innovative of research ideas will shrivel and die without the appropriate respondents with whom interaction can take place. Access has to be a very early consideration, and enquiries were made and a poster prepared (see appendix). Verbal permission was gained from appropriate persons and the questionnaires were delivered with stamped addressed envelopes for a response. Persons who undertook to give interviews were contacted by telephone, and arrangements made to meet at their convenience, which was at a location where interruption would not occur and privacy could be maintained.

#### **Some thoughts on ethics in relation to researching.**

Hammersley & Atkinson (1995) consider that the essential ethical issues in research production include informed consent, considerations of privacy, harm, the potential for exploitation and the consequences for further research.

#### **Consent.**

Within this study the volunteer community mediators participated freely, consent being given verbally, and passed via an internal network. Hammersley & Atkinson (1995) note that obtaining free consent is not straightforward and individuals may agree to be involved for complex social reasons. There appeared to be no difficulty with consent when assurances of confidentiality were given.

#### **Privacy/Confidentiality.**

Privacy is clearly seen to include trust that the information given to the researcher will be used in a professional manner, which respects confidentiality. The information is 'privileged' and consequently would not be used or divulged in the course of normal social interaction, only being used for the purposes identified. In addition the volunteer mediators in this study were identified only by Mrs A, B, C. No names were requested of people completing the questionnaire. At an early stage it was apparent that confidentiality and the privacy of the respondents, was a critical ingredient in their participation in the process. Within the context of this work it was not difficult to assure them of

confidentiality, informing them that only myself and my tutor would be processing the material. Its academic library residence also ensures a selected readership. The tapes used in the process of interviewing were offered to the respondents on completion of the work, or the promise of destruction. The latter option was accepted by all three respondents.

#### **The Potential for Harm /Exploitation.**

It was important for me to give careful consideration to the questions asked and their possible impact. The purpose of enquiring into standards and levels of professionalism, was not in any sense intended to implicate or criticise in any way the organisations concerned. The trust placed in me to act with integrity and professionalism was evident. Hammersley & Atkinson (1995:277) emphasise the importance of "avoidance of serious harm to the participants," conducting the interview with sensitivity and analysing the findings with integrity. However interpretation relies upon perception and understanding, and translating the respondents information truthfully as it is understood. Sensitivity, awareness and adherence to a personal value system have to be in operation. Trust in the researcher's professionalism and confidentiality are essential. The scale of this piece of work is small and unlikely to affect any of the volunteers who directly participated.

It has been argued that ethics are about responsibility to others. I attempted to address that issue, despite the limited nature of my empirical research. Questioning related to their perception of standards and professionalism within their organisation. It was vital that I too demonstrated and applied the highest standards in interpreting their position.

#### **Interviews.**

*"Perhaps we live in what might be called an interview society, in which interviews seem central to making sense of our lives"* (Silverman 1993:19).

Of the major methods used by qualitative researchers, observation, analysis of text and documentation, interviewing, recording and transcribing, pursuit of a method which focused on a one to one interaction proved very appealing. This may not provide the illusion of the clear cut answers apparent within questionnaires, where statistic comparison of people and actions appear more objective. However arguably there is much benefit

to be gained from a personal interaction which is more likely to take on an extra dimension of depth and richness, and where the complexity of people and their actions becomes more obvious. The interviews lasted approximately one hour, and I aimed to talk as little as possible, beyond giving encouragement to expand on various issues. Life is not black and white, it is very complex, and as Coffey & Anderson (1996:118) note "no text can have a completely fixed meaning", it is open to some level of individual interpretation. Inherent within that is the need to be very aware of personal biases, and be rigorous in the interpretation of the material.

### **Questionnaires.**

The same information was requested in the questionnaires using closed questions, providing for a more confined, limited response. Care must be applied when asking questions, for the answers received will be a response to the question asked, and so need careful crafting; for within a questionnaire there is little opportunity for expansion, and no opportunity for checking meaning. Pilots should always be conducted of a limited number of questionnaires, with a view to correcting problems early, before major errors are made and the situation becomes irreversible. The presentation must be attractive, clear, and the meaning of the questions unambiguous. Two pages is usually a maximum consideration, unless it is the intention to inspire a loss of interest in its completion.

My questionnaire was two sides in length on A4 paper, the perception of length being less than it was in reality. I had no desire to discourage participants, and intended that the questionnaire should not take too long to complete. A pilot test of the questionnaire was carried out on one willing volunteer prior to the survey being distributed. This identified an approximate time it took to answer the questions, and also served as an opportunity to identify any fundamental flaws within the question design. As a result some questions were reworded, aiming for increased clarity. An identical layout and pattern was used throughout, and most of the questions were similarly formatted, to enable ease of use, and not to give an impression of some issues being more important than others. Tick boxes were provided for ease of use, and clear guidelines provided on how to answer the questions (without being directive) were inserted in italics under each question to avoid confusion. An attempt was made

to group subject areas together, so that a logical sequence was followed. The questions comprised a mix of options, including opinion, knowledge, and factually based questions. As anonymity and confidentiality were extremely important issues, a confidentiality clause was inserted at the back of the questionnaire. This was printed in capitals and underlined. I used a red font colour to highlight its importance.

On reflection maybe I should have placed that guarantee on the front. However it did not appear to have affected the response. My thanks was expressed at the end of the questionnaire.

### **Data Analysis.**

During the three interviews I gained permission to use a tape recorder. Clarity was essential for accuracy, and relieved me of the pressures of taking copious notes of what was being said. I was able to concentrate upon the interaction. I transcribed all three tapes, the production of which is seen as essential activity to good research (Silverman 1993), but found benefit from re-listening to them also. My intention was content analysis and to identify common themes, as well as differences throughout the interviews. A new tape was used for each interview, clearly identified by a label.

As Coffey & Atkinson (1996) identify much qualitative analysis begins with the identification of patterns and themes. A pattern of information could be seen emerging. I identified the main themes of each interview which produced commonalities and differences. There were crossovers of information which required coding. This coding as identified by Coffey & Anderson (1996) is essential for effective retrieval, organisation and interpretation of data. After transcribing the information I tagged the individual interviews with protruding labelled stickers to promote easy access to information. Having established the themes within the commentary by colour coding, I marked the pages by using a profusion of coloured paper clips eg. blue referred to similar attitudes on regulation. The principle proved very effective, enabling me to extract appropriate commentary with relative ease. As I only interviewed three women I was able to remember the basis of what they said, which made checking the content material easier. A functioning system is essential to effective management. The selection and consequent grouping of the questions did to some extent assist in the process of retrieving material. Having clarified the themes I then

attempted to critically analyse my findings, while acknowledging the comments of Coffey & Anderson (1996) that analysis is never complete.

### **Writing up the qualitative & quantitative research.**

#### **A personal starting point.**

My personal starting point began with writing key words and ideas on A4 sheets, followed by a preliminary literature search in the library. This process further refined my thinking. A thorough search for articles, law reports, careful use of Lexis and the Internet followed. A system of coding information in books using coloured paper clips, and a variety of highlighter pens on photocopied articles provided a wealth of information. Articles were summarised for future ease of reference, and appropriate themes identified. My personal books were equally well marked. However when it came to the actual task of writing, the wealth of information collected overwhelmed me to the extent that I felt I could not write anything. It would seem that the more one knows, the more one realises just how much one does not know. Perhaps the reading of yet another book, another article, just might provide some flash of inspiration. Wolcott (1990:21) supplied that inspiration by citing Clifford Geertz (1973:20). "It is not necessary to know everything in order to understand something". Such obvious wisdom thawed my frozen mind and pen. I proceeded to design a plan of my dissertation, which was extremely useful in keeping me on track, and decided to take the advice of Wolcott (1990:21), "and commence the task for the "knowing is never complete".

#### **Some thoughts on the writing process.**

Silverman (1993) asserts that there is no direct route to what he calls inner experience, and no pure data from which to undertake the writing up process. There is perhaps only that formulated through the writer's reasoning, assisted and supported by empathy and possibly by being part of the culture/subculture one is researching. Positivists would argue that, that results in distortion and increased bias. I would argue it represents a truer flavour of the truth. The perspective of the volunteer mediators within this research may not present as universal truth, but it is not invalid because of its partiality. Delmont (1992:9) identifies it is essential to be scrupulously self conscious about the construction of text, making all processes explicit. Given that condition exists Delmont considers that "issues of reliability and validity are served".

### **Conclusion.**

I have tried to follow the directions of Delmont (1992:67) in ensuring the writing is "ethically sound", thereby reflecting the perspectives of the respondents. The data reflects the perceptions of volunteers who work in a mediation capacity on issues of professionalism and standards. I made an effort to critically and honestly review the information supplied.

### **The Interview Questions.**

These questions were asked, with encouragement to expand and develop informational themes.

- What was your background before mediation?
- How long have you been practicing as a mediator?
- What approach / model do you use in mediation?
- What are your existing qualifications if any?
- How long did your initial training last?
- Are you required to attend ongoing training courses, and if so how often?
- What do you see as the most important goal of the mediation session?
- Do you have a code of practice?
- How useful do you find the code of practice?
- How satisfied are you with the level of supervision?
- How would you grade the satisfaction on a range of 1-10?
- Tell me about the frequency of supervision?
- Explain the format of your supervision?
- What do you perceive are the existing skills you bring to the mediation process?
- Do you think you should have expert subject knowledge?
- Do you think having legal knowledge is an advantage in facilitating mediation?
- Do you think all mediation should be regulated centrally?
- What mandatory regulation do you see as beneficial to effective mediation practice?
- How do you evaluate your practice?
- How often does this evaluation occur?
- What do you see as the most significant difficulty or problem affecting the quality of your practice?

### **The Interviews. Mediation as it appears within the voluntary sector. A local perspective.**

#### **How can we ensure quality?**

Liebmann (1997:169) identifies community mediation as being "connected with disputes which cause problems between people in the broader community". The range usually encompasses

neighbourhood mediation, mediation affiliated to educational establishments and victim offender mediation; though places of employment also offer clear opportunities for the use of mediation services. The community mediation focus for purposes of this work are confined to neighbourhood mediation and victim offender mediation.

Three interviews with volunteer mediators were conducted, with a view to obtaining a flavour of the quality and standards available from local mediation services. This was undertaken in conjunction with the use of twelve questionnaires, using different respondents. The interviews were conducted using basically the same question bank, but the interviewees were encouraged to elaborate on statements, with a view to adding quality and depth to the encounter. The numbers are small and consequently statistically insignificant. However the project would have constituted an adequate basis for a pilot study, and the principles and questions could be transferred for use with a larger piece of work. One volunteer worked with a neighbourhood scheme, another with youth offending, while the third worked as a victim support youth offending team volunteer mediator. The questionnaires were distributed between neighbourhood, victim support, and youth offending panel volunteer mediators.

#### **Youth Offending Panel Mediation.**

The main provision of the Youth Justice and Criminal Evidence Act (1999) that concern young people (under 18yrs) are those, which create the relatively new sentence of a Referral Order and the establishment of Youth Offender Panels. The Referral Order is intended to replace the conditional discharge, and is in accordance with the government's interventionist policy towards young offenders. Youth Offender Panels draw heavily on restorative justice for their philosophy.

*"Restorative justice is a process whereby parties with a stake in a specific offence, collectively resolve how to deal with the aftermath of the offence, and its implications for the future..... It is a problem solving approach to crime which involves the parties themselves, and the community generally, in an active relationship with statutory agencies".* (Marshfield 1999 cited by Haines 2000:60)

The principles allow for:

- Personal involvement of those concerned ie. Offender, victim, family and community.
- Locating crime problems in their social context.
- Utilising a problem solving orientation.

- Utilising flexibility of practice and creativity.

The Youth Justice Board (2001:1) identifies that *"resolution should aim to make amends as far as possible. It seeks to balance the concerns of the victim and the community, with the need to reintegrate the offender into society"*.

The process (as outlined by Mrs A.)

The young person is referred to the Youth Offending Panel by the court. The young person is accompanied by a relative or guardian (usually), as well as their youth offending team worker (classified as a panel member). The other panel members, numbering two minimally or three, made up of trained volunteer mediators from the community, engage the young person in conversation with a view to establishing information. Victims rarely express a desire to be present, though it is their 'right', given the agreement of all parties. All parties have the opportunity to express their position, and significant issues relative to the offence are selected for discussion, with a view to providing greater understanding and providing the young person with the opportunity to rethink his/ her position. A list of items for attention by the young person are identified and agreed eg. sessions on consequential thinking, referral to a substance misuse worker, referral to the health worker, in addition to identification of the number of hours reparation to be undertaken. Where there is agreement a contract is signed, which formulates a legal and binding document. Successful completion of the contract ensures the young person has no criminal record. Failure to complete (what are clearly identified as achievable goals) within a specified time span, results in the young person being returned to the courts and the Criminal Justice System, resulting in a criminal record.

There are issues with this process, which Mrs A identified as potentially problematic in her interview.

- She considered there to be the potential for conflict of roles, between the role of neutral/ mediator and interested citizen. Arguably there exists a clear difference and conflict between the position of a responsible public citizen with access to rights, powers and civil responsibility (Abercrombie 1984), and that of a neutral independent facilitator.



- She identified a realisation that contracts are signed under circumstances of what could arguably be classified as coercion. Although the young person has an opportunity to present his/her position, failure to sign the contract results in a return to the courts. It is clearly in the young person's best interests to sign the document, but the balance of power is decidedly uneven, which is perhaps inevitable. Pressure to sign the contract, as being in the best interests of the parties, is a concept well identified in mediation literature. Davis (1997:65) identifies situations where he observed mediation sessions in which "a great deal of pressure was brought to bear" on parties concerned. While the 'carrot' of a 'clean record' provides incentive, some level of coercion, however well intentioned would appear to exist. Boule (2001:304) recognises the power imbalance and significantly identifies that victim offender mediation involves "a different model of neutrality", as the parties, including the mediator acknowledge that a wrong has been committed and the process is aimed at reparation. Haines (2000) considers that the process diminishes the attention applied to the needs of the offender, and infringes the Human Rights Act (1998). Arguably it is the rights of the victim that have been infringed. Mrs A identified that the hours of reparation are never onerous and always undertaken at a time convenient to the young person. 'Bolt on' sessions are invariably applied to help support the young person with his/her problem eg. alcohol; but the child is obligated to give consideration to victim issues, because sessions with the Youth Offending Team Worker are identified in the contract, to focus the mind of the young person. In Mrs A's experience the issue of consequences and the affect on victims are invariably addressed during panels. The young person is left in no doubt that there is a victim, and actions have consequences. Mrs A considered that the offender was invariably treated in line with the United Nations Convention on the Rights of the Child (1989) Art.3, where "the best interests of the child shall be a primary consideration".
- Mrs A considered that venues for panels were regularly unsatisfactory and did not meet an acceptable standard; not being in tune with the significance of the occasion ie. cold, shabby, inappropriate, difficult to locate, with the

location some considerable distance from the place of residence, resulting in transport problems. Arguably funding affects quality and standards, and government directives established in law should be adequately funded.

When looking at the issue of local standards of community mediation, and in my decision to undertake interviews in conjunction with the use of questionnaires, I was very aware that what people say and what they actually do, does not always equate. Hence consideration of the issue of supervision, where there is emphasis, albeit subtle, on observation, assessment and feedback.

- Mrs A identified a very veiled process of supervision, which took place in the form of observation by peers and paid youth offending team workers; but which lacked transparency and overt form. It was successful however in excluding 'unsuitable' panel members, but did not stand on clearly identified criteria, and was of an ad hoc nature. There would appear to have been nothing 'official' or structured about the process of feedback, but it existed. Dingwall & Greatbatch (2001:381) in their comment on lawyer mediators identify that "mediators are examined on their knowledge of what they ought to be doing, rather than demonstrating what they actively do". Within Mrs A's situation it would appear that supervision of quality and standards is taking place, though hardly in what could be described as an acceptable format.
- Mrs A identified that initial training involved substantial effort on the part of the organisers, but consequent to the newness of the project did not adequately prepare her for the reality of the task. That only came with the doing of the job. Simon (2002:2) cites the research of Rogers & Saunders (1997) in their findings that "*Experience in mediating seemed the only aspect of qualifications that was related to increased settlement*". The old Chinese proverb '*I hear and I forget. I see and I remember. I do and I understand*' would appear appropriate.

Benjamin (2001) similarly extols the value of experience, and considers it to be critical to an appropriate instinctual response; the 'instinct' having developed from the benefit of experience.

- Hence it would appear that supervision existed in a surreptitious format, which Mrs A seemed to find quite acceptable, despite her awareness of its

unstructured nature. She had no problem with its arguably unsatisfactory character and format. This I believe resulted from her highly developed self-confidence and self-awareness, which was a reflection of her professional background, knowledge and experience. Mrs A considered her prior professional experience, which was extensive, in addition to her life skills was a valuable resource. She saw no contradiction with previous professional experience and present mediator role, only a need to adjust her mind to the need to practice mediator skills within the full awareness of the model utilised; giving full cognisance to the ethics and aims of the session. She admitted that life experience invariably affect perceptions, and consequently actions, identifying the importance of reflective practice.

Benjamin (2001:1) admits to being *“professionally schizophrenic, a state not readily accepted in legal circles”*. However what he clearly identifies is the benefits of experience, and the value of transferable skills; for which high levels of self-awareness are arguably necessary.

- Despite Mrs A's extensive range of professional qualifications and experience, her only official mediating skills were those gained during the process of her minimal training for her voluntary role. However her perceptions of the requirements of the role appeared well grounded, with an awareness of the model of mediation necessary for her practice; which is that of an adjusted model of neutrality, giving consideration to the intention of reparation.
- Mrs A was in possession of a copy of 'Good Practice Guidelines For Restorative Work With Victims Of Young Offenders', and identified an effort by members of the group to draw up separate guidance, more specifically helpful to new panel members.

It would appear that however well intentioned codes of practice and guidelines are in attempting to develop consistent practice, they do not always prove as helpful as intended. Dingwall & Greatbatch (2001) identify that a Code of Practice is intended to define the culture of practice; which in this case would appear is inadequate for volunteer mediators undertaking a new project in mediation, who might find more detailed guidelines more helpful, always with the danger that they might prove inhibiting and restrictive. Umbreit & Greenwood (1997) has produced helpful guidelines on the Criteria for

Victim Sensitive mediation and Dialogue with Offenders, which although directed at the State of Minnesota USA, might prove helpful in the current system.

- Mrs A saw no necessity for expert subject knowledge, only the need for mediator skills, a professional presentation and excellent communication skills to enable the acquisition of facts and information, to facilitate the process effectively.
- When asked about the regulation of mediation Mrs A saw the overall process of the mediation of Youth Offending Panels already being linked to the state by legislation, though felt benefit could be gained by the existence of a central body, with whom all practicing mediators should register. She did highlight the issue of difficulty in retaining volunteers and considered such a system would be difficult to administer.

An inability to retain volunteers is problematic. This has to have a detrimental effect on quality and standards, because experience is being lost that has been gained, or never reaches peak performance. This is an issue well realised by Hughes & Waddington (2001:IX&XIV), who in reference to a project undertaken for the National Assembly of Wales identify *“an annual fall-out rate of 40% of volunteer community mediators”*. They further identify *“a need to recruit 20 new mediators every six months”* to maintain adequate numbers. Arguably that is costly, wasteful and does not result in a quality product. It is a highly significant issue, given that experience has previously been identified as affecting outcome.

- However the individual process of mediation she saw as a more individual encounter, the quality of which was heavily dependant on the individual panel member mediator, some of whom were very good in her estimation, while the quality of others *“left much to be desired”*
- When asked about evaluating her practice Mrs A identified a high level of awareness of the need for the process, but stated there was no *‘official’* mechanism in place at present for realisation of this process at an overt level, but recognised it happened at a subliminal level. This she saw as unsatisfactory with a need for an identifiable process of assessment. She also identified the difficulties inherent with quality issues and volunteers. *“They tend to leave if they are placed under any pressure. Why should they stay, they are*

*not paid*". Hughes & Waddington (2001:IX) would have a clear affinity to that statement, when they identify that *"Retention of volunteers is a challenge for mediation services"*.

- Mrs A identified that she relied heavily on her professional background and life experience to self-support her in her role; in addition to undertaking ongoing education.

*"It is important to feel part of a live structure and process, and that can be difficult as a volunteer. The support structure in my experience is not there. Ultimately it can affect the quality of practice as well as retention rates. Ongoing personal effort is required. Many volunteers are not prepared for that"*. It is perhaps no surprise that retention of volunteer mediators is a major problem, with a consequent detrimental effect on the quality of service provided.

#### **The Interviews. Neighbourhood Mediation.**

Boulle (2001:229) identifies that neighbourhood disputes constitute the largest category of work for community mediation services. The 1995 Community Mediation Service identified that "95% of the work of 16 community mediation services involved neighbour disputes, and comprised 92% of one other service; while for a further 8 community mediation services, it formed the bulk of their work". Mrs B was able to identify that this situation prevailed locally and constituted the bulk of her work.

#### **In Synopsis:**

Mrs B identified a commitment to her role as a volunteer mediator by her assertion that she was one of only two people who remained from her original training. This had involved commitment on her part, as well as a belief in the nature and quality of the work undertaken.

She identified that the role of volunteers was undervalued, especially by government and bureaucracy, who saw volunteers, be they mediators or not, as a cheap option, not to be valued but "used and abused". If this proved to be more than an individual assertion, it could provide a further indicator of the problems associated with retention identified by Hughes & Waddington (2001) which arguably affect quality and standards of practice.

However at a more immediate level she identified her training as of quality and relevance, and provided by a mediator of considerable positive reputation. She was in receipt of supervision. Her supervisor was supportive and did indeed provide

the levels of support and supervision of practice she considered so essential to the maintenance of quality practice. Quality feedback she measured in unsolicited telephone calls of thanks to the department. This process however appeared totally ad hoc, and while they were encouraged to be reflective and fill in a self-evaluation form, for personal consideration and supervision perusal. However she identified she did not understand some of the questions, so omitted to complete some areas of the documentation. Guidelines in the form of a Code of Practice were utilised and considered helpful and directive to good practice.

She identified a model of facilitative mediation, which involved co-mediating where the mediation was supported by an experienced mediator, until an adequate (undefined) level of experience had been gained by the less experienced person. The core values were expressed as impartiality, and confidentiality, based within a client led situation. Facilitation to meet the needs of both parties equally was seen as paramount. Fairness and "even-handedness" were considered touchstones for ethical practice.

She clearly identified issues of quality encounters, clarifying the need for good communications, cultural awareness, experience and a professional approach – identified within the concepts of a dress code, language, and identification of her position as trained and experienced.

She monitored success by a mediation which resulted in a signed contract and telephone calls of thanks from the clients. (The service is free within the local area). She considered the success rates to be particularly commendable, as the organisation tended to get only 'hard core' problems which alternative professionals had failed to resolve ie. Police and housing officials.

She saw a lack of willingness to refer disputes to mediation, as a reflection of misplaced perceptions of 'role poaching'. Police saw it as their role to deal with disputes, as did housing officers, each believing it to be their responsibility to take on mediating roles; without necessarily having the time and skills to deal with the issue effectively and to the clients' satisfaction. For mediation it was 'the' central task, and not subsidiary to another role, hence a more effective outcome. She saw the promotion of organisational image as critical to an increased flow of work, and ultimately a better

quality service. Marketing was clearly a significant issue, and the responsibility of management. The public she considered had no real perception about what the service had to offer.

Mrs B identified funding as a problematic issue, which ultimately reflects in standards. This seemed to be an ongoing issue, with levels of funding being reflected in client numbers. Problematic without a high profile and a good public image. Mrs B also saw health and safety as a quality issue, identifying a process of checks and supports for the volunteer mediator.

She demonstrated a clear understanding of the boundaries of her role, and the significance of staying within those boundaries, clearly appreciating the inappropriateness of not giving legal advice at any time. Despite her primary facilitative role, she saw place for the giving of factual information and identifying the significant issues for resolution. Face to face encounters at an early stage in entrenched conflicts, she had found to be counter productive. Quality outcomes she saw as emerging with the application of appropriate mediator skills and patience.

Mrs B considered situations beyond mediation eg. poor building construction, affecting noise levels, were issues that cause frustration and were beyond the remit of the organisation to quality control. Ultimately she believed the local mediation service to be a valuable resource that offered good standards,(not defined), which she saw as benefiting the community.

#### **Comment.**

Mrs B showed a clear commitment to her role as a voluntary mediator and indicated her commitment to high standards and a quality service. Arguably it is not what people say, but what they do which is of consequence. However her commitment to the service and dedication is without question.

The executive summary of 'Making Mediation Work for Communities' which was compiled for the benefit of the National Assembly of Wales as part of a commitment by that body to improve community life, clearly supports the concept of a strong mediation service locally. It identifies the importance of well screened and well trained volunteer mediators, providing a much needed service to the community, recognising the significance of quality, so that high ethical and practical standards are achieved. It recognises the

challenge of recruiting quality volunteers, and the provision of high quality training, as well as the difficult problem of retaining volunteers once trained.

There exists a quality issue relative to retention. Mrs B like Mrs A clearly understood that they were being used as 'cheap labour'. Hughes & Waddington (2001:IX) identify in this specifically locally targeted report a "fall out rate of 40%. Arguably that is pure wastage and requires re-evaluation of recruitment and retention policies. However while volunteers continue to feel used and unappreciated, they are unlikely to remain as voluntary mediators. Society it would appear does not value that for which it does not pay. Consequent to failure with retention, the report projects the need to recruit 20 new mediators every six months; which is arguably unrealistic and wasteful.

Mrs B's commentary would suggest that the projected number of mediations anticipated did not materialise, hence not requiring such large numbers of volunteers; arguably take up being a feature of poor marketing. However the principle of wastage remains an un-addressed quality issue.

It would appear locally that the commitment to mediation by some volunteers exists, as does the belief in the quality and standards of the product. This is combined with a belief in the ultimate benefit of mediation, to both the individuals concerned, and the community at large. However the path ahead is far from smooth.

#### **Interviews : Victim Support Mediation.**

Boulle (2001) identifies that victim offender mediation can take place before criminal proceedings, during criminal proceedings ahead of sentencing, or following criminal proceedings. The types of crime mediated are wide ranging, to include common assault, theft, robbery, affray, carrying an offensive weapon and driving offences. The list is not exhaustive.

Victim Offender mediation provides an opportunity for victims to express their feelings relative to the offence, to offer some input into the reparation that will be undertaken by the young person, to obtain an apology if required; and to be present during the panel meeting enabling a face to face encounter with the young person, if so desired, given that all parties concerned are agreeable. " Victims need to be approached sensitively and given time to decide whether to participate in a restorative process....

and facilitators should have received suitable training" (Guidelines for Good Practice. Restorative Work with Victims and Young Offenders. Feb 2001)

#### **In Synopsis.**

Mrs C had agreed to provide me with an interview, despite the fact that she no longer worked within the voluntary role of victim offender mediation, as related to youth offending. Her departure from the scene was recent, so I felt it legitimate to proceed with the interview. Mrs C identified a situation in which she was an existing voluntary community worker and had been recruited into this particular mediating role. She identified the training specific to this role as being inadequate and inappropriate, and very focused for the benefit of the young offender; ill preparing her for the task ahead. The initial phase of the process involved high levels of telephone work and some report writing, the former of which she found highly unsatisfactory. Victims were not infrequently organisations, shops or businesses, and finding an appropriate person with whom to form part of the mediating process often proved frustrating and unrewarding at a personal level. There were also very high levels of reluctance amongst individual victims to be involved within the process of reparation. They usually had no desire to meet the young offender, and frequently expressed the desire to undertake an unlawful approach to the problem. She assured me that in the rare instances where mediation between victim and perpetrator occurred, the anecdotal results were usually positive; in that the victim was relieved to be met with a 'child' often with an unfortunate background. The offender meanwhile found it a learning experience which included an apology.

Mrs C's experience however was less positive. She found communications between linking organisations were poor to non-existent, support did not exist and personal satisfaction levels were minus zero. Attempts to correct the issue of bad communications proved fruitless, given that the power did not lay with her to make the necessary adjustments. Mrs C eventually decided that she was making extensive efforts with no reward of personal satisfaction, which was important for she received no expenses, never mind financial gain. She considered the potential within the role to be promising, but the reality for her proved gravely disappointing Hence her resignation from that role.

#### **Comment.**

It would appear there is little that was positive within this experience, beyond the recognition that there is potential for improvement and positive outcomes. Arguably this scenario reflects an inadequate management structure, a non-existent supervisory role, and a total breakdown in communications, between interested departments. The situation would appear to reflect poor standards and a failure to retain the volunteer.

This has to be unfortunate, not only for the volunteer but for the principle and process, which has consideration of victims as well as rehabilitation of the offender in mind. Umbreit's study in 1996, cited by Boule (2001) identifies that offenders who participated in mediation were more likely to consider it important to apologise to the victim, when compared to young persons in similar situations who did not participate in mediation. Umbreit's study highlighted that 80% of victims considered it important to receive an explanation from the offender, compared with 36% of victims who did not participate in mediation. Perhaps more importantly 90% of victims participating in mediation considered that it was important that they had an opportunity to explain to the offender the impact of the crime on them, compared with 64% of victims who did not participate in mediation. 93% of offenders who participated in mediation stated that they considered it important that they have an opportunity to provide an explanation, compared with 59% of offenders who did not participate in mediation (Umbreit & Roberts 1996:21)

The loss of the volunteer is also in line with the problem identified by Hughes and Waddington (2001:IX) when they cite "an annual fall out rate of 40%". Highly unsatisfactory and a very negative indicator of quality. It would appear that there exists enormous opportunities for positive improvement within the system, which require improved communications, higher levels of commitment to volunteers and an educational programme directed at the public to increase awareness of the benefits of community involvement with young people.

#### **The Questionnaire. Dissection of a document.**

##### **1. What is your work background pre mediation?**

The logic behind question one emerged from the possibility of using transferable skills in communicating effectively and interfacing with the public and individuals. Arguably 'people skills' form an integral facet of mediation skills. Entwined

within that concept is the issue of self confidence (Cohen 2003) and experience. Rogers & Saunders (1997) cited by Simon (2002) clearly saw experience within mediating as critical to a successful outcome. Part of the experience is in people management as well as specific mediating skills. The need to act as a mediator and not as a counsellor or a social worker is paramount. The professionalism should remain, but attached to the best practice of mediation.

It would appear from this small (pilot) sample that a range of professionals are involved in community mediation, which perhaps unsurprisingly given the nature of the mediation, does not include lawyers, doctors, or the clergy. The professionals in this instance emerged from the caring/ service providers, and numbered 50% of the total surveyed. The remaining 50% were identified as divided between home based 30% and industry based 20%. The desirability of a diverse range of mediators is arguably beneficial in reflecting the personage of the clients. The perception of volunteers has traditionally been seen to be 'middle class do-gooders'. With 30% home based and 20% emanating from an industrial background, the trend in this instance does not necessarily reflect that common perception. However Hughes & Waddington (2001:XX1) clearly identified a lack of success in their efforts to recruit and train "disadvantaged groups" as mediators; the course being considered "too intensive and the venues too remote". That does not bode well for an absolute cross section of mediators, but is simultaneously and arguably an unsurprising facet of the culture of life in the identified geographical area. The value judgement emanated from experience of interface with valley folk over many years.

## ***2. Do you think your background and culture influence the way you deal with mediation sessions?***

The intention was to attempt to reflect levels of self-awareness within the mediators, considered necessary for effective practice (Cohen 2003). Arguably culture and experience will inevitably influence personal performance, it is part of what we are. Superimposed upon that however is the discipline of process and experience, which should reflect best practice and acceptable standards.

Within this group of respondents 70% perceived that background and culture did influence their management of the mediation session, while 20%

felt it had no influence and 10% felt it sometimes influenced the mediation session.

Arguably mediation needs to be context based and reflect that culture and situation. The situation in Japan and Rhondda might differ in format and social decorum, while retaining the core principles of mediation; always with the need for mediating skills.

## ***3. How long have you been practicing as a mediator?***

The question was a direct attempt to assess the duration of mediation practice, given the link between experience and successful outcomes (Rogers & Saunders 1997 cited by Simon 2003). For this group of respondents 70% had been practicing more than 6 – 12 months, with 20% having practiced for 2yrs and only 10% for 5yrs.

This would reflect Hughes & Waddington's (2001) concern about the difficulty with retention of volunteers, and produce concern relative to the negative connotations of lack of experience on mediation outcome. Within that study it proved to be the only factor which effected positive outcome.

If this pilot were to reflect a larger study it would appear that only 10% of mediators would remain after 5yrs, with a loss value of 22.5% annually. These figures are however far too small to be of any statistical significance. Hughes & Waddington (2001:X1V) identify a need to recruit 20 new mediators every six months over a three year period, allowing for an annual fall out rate of 40%.

The issue is clear, retaining volunteer mediators is a significant and wasteful problem, in terms of training costs, and arguably less satisfactory mediation outcomes.

## ***4. Identify the approach or style of mediation you most often use?***

This question aimed to identify awareness of the process, which to some extent would reflect context, training and practice, and highlight the appropriateness of the model in use. Arguably many mediation sessions result in a mixed model approach.

50% of this group of mediators clearly identified a facilitative approach, which could be readily identified with a neighbourhood mediation style, where an effort was being made to establish harmony and good relations; while maintaining the core principles of neutrality, fairness and a client led

agenda. The remaining 50% identified a mixed style which incorporated a facilitative, interventionist and settlement geared agenda. The source of this difference was identified as arising from the need to adopt a necessary style for the satisfactory outcome of restorative justice, and Youth Offender Panels. Mates (2003:1) identifies the essence of these panels " *Restorative Justice allows the victims a voice that has no place in the traditional court system.....while offenders are given the opportunity to explain motive .....hopefully developing a new understanding of accountability ..... Involving a circle of dialogue .....moving from adversarial position to cooperation and understanding*". A set of values which sit comfortably with mediation. However within Youth Justice there remains the necessity for evaluation, intervention and a contract, for successful completion. The alternative is a return of the youth to the adversarial court system, which is the antithesis of the intention of Youth Offending Mediation Panels.

**5. What is the highest qualification you have in firstly mediation and secondly other disciplines?**

I was conscious of the issue of transferable skills and residual ability, and interested to see if this transferability applied to this cohort of mediators. Also involved was the relevance of Rogers & Sanders (1997) research cited by Simon (2002) which demonstrated that the only issue that significantly affected outcome was experience.

This group demonstrated that 100% had been trained 'in house' as mediators. The quality of such training is somewhat indefinable and could provide the substance for further work. A reasonable assumption gained from alternative questions is that the standards were variable over the three organisations.

Alternative qualifications demonstrated that 50% had degrees and within that 50%, 10% had multiple qualifications to include higher degrees. It however must be remembered that because absolute numbers were small, 10% represents one person, it distorts the results. 30% presented with no qualifications, while 10% had qualifications to diploma level, and 10% had certificate level qualifications. Entwined with this is the 'voluntary issue', and the reasons why people undertake voluntary work. It would appear from my anecdotal conversations with volunteers that the reasons are various, and range from altruism, to 'looks good on the CV.', to placing oneself in a good position to get a job. From that

perspective the range of qualifications, combined with a relatively low level of mediator experience, might indicate that an undefined percentage are seeking this route as a means to employment, not necessarily as a mediator. The clients are to some extent the by-products in this arena.

**6. How long did your initial training last?**

The intention of this question was possibly to establish a linkage between duration and quality. It is a very tenuous link, but the reasoning was that an organisation who only provided 1 days training was less interested in quality than one who provided 1 week; given that no prior mediation qualifications or experience were required of the voluntary mediators.

60% of this group identified initial training as having a duration of 8 days (40hrs).

30% a duration of 6 days (30hrs), and 10% a duration of 2days (10hrs). This would appear to be a reflection of volunteer status, in that compulsory attendance was required but not always a necessity. Arguably if workers are not being paid, it becomes more difficult to inflict draconian rules and standards. However it would appear that some of the training was highly satisfactory.

**7. Are you required to attend ongoing training courses?**

The thinking behind this question evolved from the belief that arguably education should not be something one does for a very short period of time. It should be an ongoing commitment for a professional person, or someone in a position of supporting others. Technology and ideas are in constant flux, and there is a need to stay 'sharp' and informed. Hence the need for ongoing professional development, in this case demonstrated in the form of 'training courses'.

Within this group of people 80% identified a requirement on the part of the organisation for ongoing 'updating'. However 20% stated that they were not required to attend, which seemed odd, given that there should have been a more uniform response. They were either required to attend, or it was not compulsory. Upon reflection I decided that my question should have been worded as in, are you required to attend, followed by, do you attend? I suspect the voluntary aspect again impinges into this situation; in that if individuals are working without payment it is difficult to enforce rules without fear of labour being withdrawn. A situation

which arguably places standards in a moral dilemma, especially if the individuals are working quite well and no complaints are received.

#### **8. How often are you required to attend courses?**

This question again emerged from the belief in professional development being a positive activity, with the need to update at regular intervals, and is clearly linked to the last question.

60% within this group identified a requirement to update every 6 months, while 20% stated a need to update every 12 months. That would account for the 80% who identified in question 7 a requirement for updating. 10% identified no requirement for updating and 10% an ad hoc requirement, again suggesting that element of flexibility.

#### **9. What do you see as the most important goal of the mediation session?**

The question sought to identify quality of practice, as well as quality of training, while appreciating that value systems are likely to be somewhat variable, and the context of the mediation may affect the process. There were eight options, to be ranked in order of importance.

**Settlement with agreement.** 60% saw it as taking 2<sup>nd</sup> position of importance within the mediation session, while 40% saw it as taking 3<sup>rd</sup> position of importance. Clearly this issue is seen as a highly significant aspect of mediation within this group of mediators.

**Fairness and impartiality.** 50% saw the issue as 1<sup>st</sup> in order of importance, while 20% saw it as 2<sup>nd</sup> in line of importance, while a further 10% saw it as 3<sup>rd</sup> in line of significance, and 20% as 4<sup>th</sup> in order of importance. I have to admit to finding 20% of the number finding it as 4<sup>th</sup> in order of importance quite alarming, as it could be argued to rank as second only to confidentiality in significance. Richards (1997:573c) sees it as “fundamental to the role of the mediator”. However again the numbers are very small and may not be representative of a larger group. Equally in no way was this a randomised approach. The group was in many senses self selecting, thereby arguably affecting the results.

**Reduction in hostility.** 10% saw this factor as 4<sup>th</sup> in line of importance, while 60% saw it ranking as 5<sup>th</sup> in line of importance, while 30% saw it as in 6<sup>th</sup> position of significance. 90% of these respondents saw reduction in hostility as not ranking within the four most important goals of mediation. While it is clearly desirable in an ideal world, they like

Richards (1998:b.) saw it as an issue over which they had limited control.

#### **Providing a forum for parties to express themselves.**

30% saw this as primary and of 1<sup>st</sup> importance. Maybe the input of Restorative Justice Panel Members felt this to be of significant importance to victims. 30% of this group saw it as of a 3<sup>rd</sup> level of importance. Clearly these mediators saw a forum for expression (clients having their say), as of real significance.

**Saving money/ reducing court work- load.** 100% of respondents saw this as of least importance of all eight issues identified. Saving money and reducing the court work- load are clearly an issue, but not for these mediators it would appear.

**Fair outcome to both parties.** After distribution of the questionnaire I wondered if respondents would be confused by fairness and impartiality of the process and a fair outcome to both parties; which from my perspective were very different questions. However the answers were very different, so I will presume understanding. 10% saw it as of primary importance, 10% saw it as of 3<sup>rd</sup> importance, 30% as 5<sup>th</sup> in line, and 20% as 6<sup>th</sup> in order of importance.

Arguably if the parties are in agreement, and the situation is client led, then maybe a fair outcome in legal terms may be of secondary importance to a satisfied client. There was clearly some division of opinion between respondents as to its importance.

**Confidentiality.** 70% of respondents identified this issue as of first importance in conjunction with other factors, which registered equally eg. fairness and impartiality. Within that 70%, 30% identified confidentiality as of first (singly) importance. The remaining 30% of the respondents saw confidentiality as 2<sup>nd</sup> in line of importance. Confidentiality was clearly a leader, with impartiality and fairness being rated as either equally important, or only secondary to confidentiality

**Legal rights of individuals not infringed.** Out of eight possible positions 60% of the respondents placed the issue in 7<sup>th</sup> position of importance, and 20% placed legal rights in 6<sup>th</sup> position of importance. Arguably these mediators did not see their role as reflecting legal significance. Maybe this is a reflection of context. None of these respondents have a legal background. Restorative Justice Community Panel Members appear to have a clear agenda. This does not appear to impinge on legal



rights, beyond the obvious rights of the child, the rights of the victim and the right for all present to be heard. Maybe neighbourhood mediators do not see legal issues as part of their remit. Clearly the legal rights of individuals are not seen as an issue with this group, though it clearly has relevance and importance.

10% of respondents however perceive legal rights in 4<sup>th</sup> position of importance and 10% in 5<sup>th</sup> position. Spurin (2002) argues the importance of legal rights when the participants have no legal representative.

#### **10. Do you have a Code of Practice /Guidelines?**

The intention of this question was to establish awareness of Codes of Practice in relation to mediation behaviour and best practice.

100% of the respondents identified that they had no Code of Practice. The subdivision within the question however identified 60% had guidelines, and comments included on the questionnaire stated that the remaining 40% had general policy statements.

Arguably as Mediation UK is affiliated to all these organisations it is somewhat worrying that these voluntary mediators did not appear to have possession of a code of practice. (see appendix (Mediation UK Code of Practice).

#### **11. How useful do you find a Code of Practice or Guidelines in conducting your practice?**

The intention was to establish the degree to which respondents found Codes and Guidelines. 50% identified guidelines as not that helpful, 30% as helpful and 20% as very helpful. Clearly they have a place of usefulness, given that no one found them actually unhelpful the comments added to the questionnaires proved interesting. One respondent said "I rely on my prior professional experience, though less experienced persons might find it helpful". Another respondent stated "Watching, being a part of, and doing the job is the most helpful and the way I have learnt most".

#### **12. How satisfied are you with the supervision and the support from your organisation?**

Arguably support is a significant element in retaining workers (especially volunteers). It is an important element of supervision which is critical to the maintenance of high standards. 50% of the respondents identified a mid range level of satisfaction with 10% being very satisfied. However that left 30% who were very dissatisfied at the

extreme end of the linear of possibility, and 10% who were moderately dissatisfied.

Hence only 10% were very satisfied with the supervision and support provided. Arguably that has serious implications for retention, which reflects in experience, which emerges in quality encounters and satisfactory outcomes. Perhaps it is unsurprising that retention rates are so poor (Hughes and Waddington 2001)

#### **13. Do you consider the levels of supervision to be – options?**

This question was a clear link to the two previous questions reflecting the same principles. 60% identified a non existent level of supervision. As supervision could be perceived by some as assessment, which is viewed negatively, maybe the strategy is not to frighten the unpaid workers? However that cannot be good for standards. 20% identified that there was too little supervision while 20% felt that the level of supervision was 'just right'. Overall 80% of this group of mediators identified severe deficiencies in supervision, which has severe implications for standards of practice.

#### **14. How often to you receive supervision?**

60% identified no supervision. 30% identified that assessment took place, but not in an overt manner. The assessment was "via an underground system of perceived performance". There was no formal supervision and feedback. 10% identified that supervision and feedback occurred after each session. Again lack of support and supervision will have implications on standards and retention of volunteers.

#### **15. What is the format of your supervision?**

90% of the respondents were unable to answer the question, given that supervision did not occur, and in the 30% of situations where it was perceived to take place no formal system of feedback existed. One respondent commented "If we were supervised all the points identified in this question would be important". 10% of respondents identified that supervision involved discussion with the supervisor who was not present during the mediation, plus completion of an evaluation form rating the mediators perceptions of the session. Arguably that would not meet high standards of supervision. By any scale of measurement the level and quality of supervision was highly unsatisfactory. Richards (1998:106. c.) sees supervision as supportive of "the provision of a consistent mediation service, built by

a collective search for higher standards”, whereby the mediators thinking is constructively challenged and support is provided to ensure a quality service.

**16. How do you perceive your skills – ranking and ability?**

100% of the respondents perceived all the identified skills as of high importance, which was remarkably positive.

From the perspective of their grasp of those skills 60% believed that they achieved 100%. Of the remaining 40%, 20% believed they achieved 100% in communication and interpersonal skills, while the remaining 60% of the 40% demonstrated some uncertainty in levels of intellect, self awareness and management skills.

Overall a remarkably confident set of individuals it could be argued. Maybe mediators need to be confident to enable them to manage people and situations. However there is a great awareness by the author that the emphasis is upon the perception of skills. Reality may well be ‘a different ball game’.

**17. Do you think you should have subject knowledge of the subject area of the dispute?**

100% of respondents identified that they did not require subject knowledge of the dispute to function effectively. One respondent noted “ I do not necessarily need to be an expert on the subject, just an ‘expert’ at mediating, but I must have knowledge to deal with the situation effectively. That knowledge can be gained from the client and or the documentation. Perhaps this is a reflection of the context of the mediation.

**18. Do you think having a basic legal knowledge is an advantage in facilitating the mediation?**

100% of the respondents identified that they did not think it an advantage, to the point of being completely unnecessary. One respondent commented “ It is not my role to make legal decisions”.

**19. Do you think all mediators should be compulsory regulated?**

80% of respondents considered the answer to that question to be no. 20% considered that regulation would be a good idea. 10 % identified that their organisation was affiliated to Mediation UK, while the remaining 90% were not affiliated to any mediating body. Given the nature of the one organisation – community youth offending team panel members, they would probably consider themselves to be covered by the criminal justice

system, as they are indeed a part of that organisation. How well that situation supports them in a mediating capacity and how well it controls standards is debatable.

**20. What type of mandatory regulation do you see as most beneficial to effective mediation?**

50% of respondents said none with an adherence to the present system. 30% perceived that a central umbrella body overseeing mediation would be a positive advantage, while 20% saw that specialised regulation e.g Mediation UK could be a positive benefit. One respondent noted that a central governing body could have problems regulating volunteers, consequent to the insubstantial time and commitment many of them gave to volunteering.

**21. How do you evaluate your practice?**

40% of respondents identified they do not evaluate their practice. 30% identified that peer feedback provided evaluation. 10% identified written reports as an evaluatory mechanism. 10% noted client feedback as an evaluatory tool. 10% identified that supervisor feedback formed an evaluatory mechanism.

When asked to identify how often this evaluation occurred 40 % stated never. 40% stated each session and 20% said occasionally.

It would appear that the three organisations have different or no system for self evaluation of practice in place, hence a level of mild confusion over the responses. Writing reports is something they all do at one level or another and self evaluatory report writing verses report writing has confused the issue I suspect. What is clear is that self evaluation of practice is not being undertaken in an overt manner by all mediators; which is arguably a beneficial practice.

**22. What is the most significant problem affecting the quality of the service that you provide?**

30% of respondents identified a problem with supervision.

20 % identified insufficient or inadequate training

10% identified a lack of funds as being problematic

10% saw a lack of awareness of the potential of the mediation service as a drawback

20% perceived there to be no problem

10% identified the transience of volunteer as problematic

Additional Comments included

- Inadequate administration
- Lack of continuity of mediators with clients
- No evaluation of sessions
- Lack of support

### 23. Identification of gender

Gender balance was noted to be 3 males and 7 females.

#### SUMMARY OF MAIN FINDINGS

There was:-

- Difficulty in retention of volunteers, resulting in a continuous flow of inexperienced people undertaking mediation. Average retention rates were quoted as having a duration of three months, but information literature identified the service as using professionally trained volunteers.
- A generalised lack of awareness of the presence, purpose and role of mediation, by professionals and the public, resulting in poor uptake.
- Inadequate funding resulted in insufficient money, even for the provision of adequate promotional leaflets.
- Supervision was minimal, to non-existent, in a formal setting. Supervision that did exist was arguably open to criticism.
- No volunteers held qualifications in mediation.
- All mediation training was 'in house'.
- Problems with Restorative Justice Mediation were minimised by a professional approach from management, who were experienced, academically qualified, and had a clear perception of the requirements, both interpersonal and legal.
- There was a perception by the volunteers of being undervalued.
- Overall women volunteers outnumbered men.
- Role conflict, mediator versus citizen, was noted in relation to Restorative Justice Mediation.

#### Conclusion.

I came to Alternative Dispute Resolution and hence to mediation via an uncertain path, being unsure as to its merits, but was enticed by its promise of flexibility, adaptability, creativity, and the possibility of people taking control of their own lives and decisions. The impersonality and arrogance so much a 'natural' element of the adversarial system, and the impersonality of the Criminal Justice

System, had for me resulted in an alienation of that process, while being simultaneously entranced by the process of law and its inherent desire for justice.

There is the innate belief that justice will bring fairness. The Criminal Justice System applies the law, with no guarantee whatsoever of fairness; and the process is well beyond the control of the individuals who are its 'victims'. Rather obviously the Justice System is a critical component of our functioning society, and provides the only reasonable and appropriate outlet for the attention of many issues. Menkel – Meadows (2001) identify the essential need for what is in the public domain to be dealt with by that appropriate route. However there are many other issues which are arguably not of public interest, that fit more comfortably within a non –adversarial structure, and mediation provides the ideal medium for consent led personal involvement in the resolution of dispute.

Menkel-Meadows (2001:416) cites others when she says that *"It serves a metonymic function for understanding the tensions in the development of our legal system from formalism to realism, rule- based to standard-based laws, formal equality to substantive equality, law to equity, substance to process, statute to common law, uniform to particular and most recently, justice to care"*.

The fascination with mediation developed into a preoccupation with its standards and levels of professionalism, which set me on a path of discovery. Coffey & Atkinson (1996:110) identify that *"One of the most important disciplines for analysts .... is the ability to read the work of others as part of the required craft skills"*. Beyond identification of the toil and enlightenment of others, I attempted to identify issues of quality and perceived professionalism. At a local level I accessed the community mediation service via interviews and a questionnaire. I looked at quality issues with a view to ascertaining local standards.

The results identified in the previous chapter, and followed by a synopsis, were arguably unsurprising. They showed as the literature had suggested, a variability in standard, which ranged from excellent through to that of dubious quality. High levels of commitment and quality were demonstrated by some of the volunteers identified, while equally demonstrating professionalism and adherence to the principles of quality based criteria led training and practice. Some volunteers demonstrated an

extension of their professional prior good practice, while adhering to the ethos and principles of mediation. Arguably leaving their profession at the door, while taking their professionalism in with them to that experience of mediation. Wilson (2002:67) considers “*becoming a mediator means not just undergoing a profound transition of role and understanding, but also possessing intrinsic personal qualities not easily susceptible to psychological measurement*”.

The use of interview and questionnaires did however attempt to measure in some limited way the quality of the local service. However there exists a very real awareness that the numbers are insignificant, and I am but demonstrating a process.

The findings were nevertheless interesting, demonstrating overall, that efforts had produced some success at establishing and maintaining standards. There existed limited awareness of the broader picture, beyond the immediacy of the working environment ie. linkages to organisations. There existed limited experience of mediation amongst many volunteers, consequent to problems with retention, and a perception that volunteers were not valued or appreciated for their quality and professionalism.

However it was clear from two of my interviews that quality does exist, and to a very high standard, with some volunteers. Equally it would appear there are those who ‘come and go’, finding sustained effort, albeit for an altruistic cause, not to their taste.

In the closing moments of this work I am reminded of the words of Antoine De Saint – Exupery cited by Campell (1995)

“*A rock-pile ceases to be a rock-pile the moment a single man contemplates it, bearing within him the image of a cathedral*”.

Mediation itself seems to me to be a ‘rock pile’ of different agencies, good solid stones, with the potential to be developed into an impressive structure, for the benefit of its users, if the appropriate vision and effort is applied.

My ideas for this work started as a ‘rock pile’ of possibilities and questions, with which I aimed to produce a structure. Perhaps my labour has not produced a ‘cathedral’, but I hope it no longer resembles a rock pile. My endeavours have certainly further developed my interest in non- adversarial resolution of disputes.

## References

- Abercrombie, N., et al.(1984). *Dictionary of Sociology*. Middlesex, UK: Penguin Publishers.
- Benjamin, R.D., (2001). Gut Instinct: A Mediator Prepares. Mediate.Com <http://mediate.com/pfriendly.cfm?id=963> visited (17/05/2003).
- Benjamin, R.D., (2000). On Being Too Fussy About Values In Mediation: Consider The Hedgehog And The Fox. <http://mediate.com/pfriendly.cfm?id=569> visited (17.05.2003).
- Black-Branch, J.L., (1998). The Professional Status Of Mediators. *Family Law. January. pp39-41*.
- Boulle, L., & Nestic, M., (2001). *Mediation Principles Process Practice*. London: Butterworths.
- Brand, N., (2003). Choosing The Expert Mediator. Mediate.Com <http://mediate.com/pfriendly.cfm?id=231> visited (17.05.2003).
- Brookfield, S.D., (1993). *Developing Critical Thinkers*: Guildford UK: Open Uni. Press.
- Brown, H.J & Marriot, A.L., (1999). 2<sup>nd</sup> ed. *ADR Principles And Practice*. London: Sweet & Maxwell.
- Burns, R.B.,(1990). *Essential Psychology*. Lancaster: MTP Press Ltd.
- Campbell, E., (1995). *Healing Our Hearts And Lives*. New York: Harper Collins.
- Clark, B., & Mays, R., (1996). Regulating ADR – The Scottish Experience. Web Journal of Current Legal Issues. <http://webjcli.ncl.ac.uk/1996/issue5/clark5.html> visited (13.05.2003).
- Coffey, A., & Atkinson, P., (1996). *Making Sense of Qualitative Data Complimentary Research Strategies*. Thousand Oakes, CA, London: Sage Publications.
- Coffey, A., Holbrook, B., & Atkinson, P., (1996) Qualitative Data Analysis: Technologies and Representations. School of Social and Administrative Studies, University of Wales. <http://www.socresonline.org.uk/1/1/4.html> visited (19/3/2003).
- Cohen, J., (2003). Reflective Practice: How Veterans Can Benefit From Rookie Training. Mediate.Com <http://mediate.com/articles/cohen5.cfm> visited (17.05.2003).
- Davis, G., et al. (2001) Mediation and Legal Services. The Client Speaks. *Family Law. Feb. pp110-114*.
- Davis, G., (1998). Monitoring Publicly Funded Mediation. *Family Law. Feb. pp64-66*.
- Delamont, S., (1992). *Fieldwork in Educational Settings. Methods, Pitfalls and Perspectives*. London: The Falmer Press.
- Dingwall, R., & Greatbatch, D., (2001). Family Mediators – What Are They Doing? *Family Law. May. pp378-383*.
- Dobbins, R., (2003). Mediation: Through The Eyes Of The Mediator. Mediate.Com. <http://www.mediate.com/pfriendly.cfm?id=1265> visited (18/06/2003)
- Fisher, R. Ury, W., & Pattern, B., (1991). 2<sup>nd</sup> ed. *Getting To Yes. Negotiating an agreement without giving in*. London: Century Business
- Freeman, C., (1998). *The Teachers Book Of Wisdom*. Nashville: Walnut Grove Press.
- Freidson, E., (2001). *Professionalism*. Oxford: Polity Press.
- Goldberg, S.B, Sander, F.E.A, & Rogers, N.H., (1999). 3<sup>rd</sup> ed. *Dispute Resolution. Negotiation, Mediation And Other Processes*. New York: Aspen Law & Business Publishers.
- Grossman, A., (2003). Professionalising Commercial Mediation: Discarding the Baggage of Idealised Professions. Mediate.Com <http://www.mediate.com/pfriendly.cfm?id=1312> visited (03/08/2003).

- Haines, K., (2000). Referral Orders and Youth Offender Panels. Restorative Approaches and the New Youth Justice. In Goldson, B., (Ed.) *The New Youth Justice*. Lyme Regis: Russell House Publishing.
- Hammersley, M., & Atkinson, P., (1995) 2<sup>nd</sup> ed. *Ethnography. Principles in Practice*. London: Routledge.
- Hartwell, G.M.B (2003). Justice In Our Own Hands. NADR Website. [http://www.nadr.co.uk/articles/published/mediation/Justice\\_in\\_our\\_Own\\_Hands.pdf](http://www.nadr.co.uk/articles/published/mediation/Justice_in_our_Own_Hands.pdf) visited (18.04.2003).
- Honeyman, C., (1999). On The Importance Of Criteria For Mediator Performance. Mediate.Com. <http://mediate.com/pfriendly.cfm?id=122> visited (17.05.2003).
- Honeyman, C., & Pou, C., (1996). Finding and Hiring Quality Neutrals: What Every Official Government Official Needs To Know. <http://www.convenor.com/madison/fnl.htm> visited (11/04/2003).
- Hughes, K., & Waddington, G., (2001). Making Mediation Work For Communities. Executive Summary. Website of the Welsh Assembly. [http://www.assembly.wales.gov.uk/subihousing/content/smallgrantsscheme/mediation\\_e.rtf](http://www.assembly.wales.gov.uk/subihousing/content/smallgrantsscheme/mediation_e.rtf) visited (13.04.2003).
- Liebmann, M., (1997). Community and Neighbourhood Mediation: A UK Perspective. In Macfarlane, J (Ed.) *Rethinking Disputes: The Mediation Alternative*. London: Cavendish Publishing.
- Macfarlane, J., Ed., (1997). *Rethinking Disputes: The Mediation Alternative*. London: Cavendish Publishing.
- Mackie, K.J., ed., (2000). *A Handbook Of Dispute Resolution. ADR In Action*. London: Routledge.
- Mackie, K., & Carroll, E., (2003). Regulation or Positive Promotion? How To Foster The Art Of Mediation. Centre For Effective Dispute Resolution. [http://www.cedr.co.uk/idx.php?location=/library/articles/positive\\_promotion.htm](http://www.cedr.co.uk/idx.php?location=/library/articles/positive_promotion.htm) visited (17.05.2003).
- Mackie, K., (2003). Education Not Regulation Will Help Drive The EU Desired Harmonisation. CEDR Website. [http://www.cedr.co.uk/index.php?location=/library/articles/legal\\_week\\_regulation.htm](http://www.cedr.co.uk/index.php?location=/library/articles/legal_week_regulation.htm) visited (4.10.2003).
- Main, A., (1989). Reflection and the Development of learning skills. In Boud, D. (Ed). *Reflection: Turning Experience into Learning*. London: Kogan Page.
- Mates, J., (2003). Restorative Justice: The Impact Of Writing The Wrongs. Mediate.Com. <http://www.mediate.com/articles/mates.cfm> visited (10.05.2003).
- Mays, R., & Clark, B., (1996). Legal Studies Research Findings No4. Alternative Dispute Resolution In Scotland. The Scottish Office. <http://www.scotland.gov.uk/cru/resfinds/1sf04-00.htm> visited (12.05.2003).
- Menkel-Meadow, C., (2001). *Mediation. The International Library of Essays in Law and Legal Theory Second Series*. Aldershot: Ashgate Publishing Company.
- Moloney, M.M., (1986). *Professionalization of Nursing. Current Issues and Trends*. London: J.B. Lippincott Company.
- Morris, C., (1997). The Trusted Mediator. Ethics and Interaction in Mediation. In Macfarlane, J., (Ed.) *Rethinking Disputes: The Mediation Alternative*. London: Cavendish Publishing.
- Peters, T., & Waterman, R.H, Jr., (1982). In Search of Excellence. Lessons from America's Best-Run Companies. London: Harper Collins Publishers.
- Pou, C., (2002). Mediator Quality Assurance A Report to The Maryland Mediator Quality Assurance Oversight Committee February 2002. Email: [CHIPBLOC@AOL.COM](mailto:CHIPBLOC@AOL.COM) visited (3.04.2003).
- Richards, C., (1999). How is Mediating Different From Counselling Advising Arbitrating? *Family Law. March. pp173-174*.
- Richards, C., (1998) (a). Mediators With Attitude. *Family Law. October. pp633-634*
- Richards, C., (1998) (b). Information – Did They Hear What I Said? *Family Law. April. pp220- 221*.
- Richards, C., (1998) (c). Why Do Mediators Need Supervision? *Family Law. February. pp105-106*
- Richards, C., (1997) (a). Mediation – Who Does It Belong To? *Family Law. December 823-824*.
- Richards, C., (1997) (b). The Impasse. An Insurmountable obstacle for Mediation. *Family Law. October 689-690*.
- Richards, C., (1997) (c). Neutrality and Impartiality. A Practice in Search of Theory. *Family Law. August. pp573-574*.
- Richards, C., (1997) (d). Mediation – Context Not Content Knowledge. *Family Law. June. pp 434 – 435*.
- Richards, C., (1997) (e). The Expertise of Mediating. *Family Law. January. pp 51-52*.
- Rogers, C.R., & Stevens, B., (1973). *Person to Person: The Problem of Being Human*. London: Souvenir Press Ltd.
- Rowntree, D. (1987) *Assessing Students. How Shall We Know Them?* Guildford: Kogan Page.
- Silverman, D., (1993). *Interpreting Qualitative Data. Methods For Analysing Talk, Text and Interaction*. London: Sage Publications
- Simon, B., (2002). Smoke & Mirrors: The Importance Of Credibility. <http://mediate.com/pfriendly.cfm?id=1054> visited (17.05.2003).
- Sinclair, J.M (1992) Ed. *Collins Softback English Dictionary*. London: Harper Collins Publishers.
- Spurin, C.H., (2003). Awkward Disputant Relents. *Nationwide Academy Of Dispute Resolution Academy (N.A.D.R). A.D.R News Vol 3 Issue 2 July pp6-19*.
- Spurin, C.H., (2002). The Role Of The Mediator. Autumn Conference 2002 Of The Society Of Expert Witnesses. NADR Website. <http://www.nadr.co.uk/articles/published/mediation/RoleOfTheMediator.pdf> visited (18.03.2003).
- Spurin, C.H., (1999). *L.L.M Mediation Materials*. Glamorgan. University of Glamorgan.
- Umbreit, M., (2001). *The Handbook of Victim Offender Mediation. An Essential Guide To Practice And Research*. San Francisco, California: Josey Bass Inc.
- Umbriet, M.S., & Greenwood, J., (1997). Criteria For Victim-Sensitive Mediation & Dialogue With Offenders. Centre for Restorative Justice and Peacemaking. School of Social Work University of Minnesota. <http://ssw.che.umn.edu/rjp/Resources/Documents/UmbGr97a.pdf> visited (10.04.2003).
- Umbriet, M., & Roberts, A., (1996). *Mediation of Criminal Conflict in England. An Assessment of services in Coventry and Leeds*. Minesota, U.S.A
- Walker, D., (1989). Writing And Reflection in Boud, D. (Ed.) *Reflection: Turning Experience into learning*. London: Kogan Page.
- Whatling, T., (2002). Observed Practice Matters – The Direct Observation of Mediation. *Family Law. August. pp623-627*

Wilson, B., (2002). The Triumph of Uncertainty – 'Or Measuring Mediation'. *Family Law. January*. pp64-65.

Wolcott H.F., (1990). *Writing up Qualitative Research. Qualitative Research Methods Volume 20*. London: Sage Publications

Youth Justice Board Practice Notes. *Good Practice Guidelines for Restorative work with victims and Young Offenders*. February 2001.

### Bibliography

#### Bibliography

#### Internet Sources

Abrahams, C., (2002). Give Peace A Chance. Guardian Unlimited. <http://www.guardian.co.uk/weekend/story/0,3605,646312,00.html> visited (09/05/2003).

Allen, R., (1999). Peace Dividend. Guardian Unlimited. <http://www.guardian.co.uk/guardiansociety/story/0,3605,313615,0,0.html> visited (07/05/2003).

Anon., (2003). Peer Support helps combat bullying. The Western Mail. <http://icwales.icnetwork.co.uk/learning/news/page.cfm?objectid=12505122&method>

Visited (09/08/2003)

Anon., (2003). An Unfamiliar Concept? [http://web.lexis-nexis.com/professional/document?\\_m=83850d9089b37ded49bf0f3e3](http://web.lexis-nexis.com/professional/document?_m=83850d9089b37ded49bf0f3e3) visited (10/05/2003).

Anon (2003) Restorative Justice Fact Sheet – [http://www.ojp.usdoj.gov/nij/rest-just/CH 5/7\\_impnl.htm](http://www.ojp.usdoj.gov/nij/rest-just/CH 5/7_impnl.htm) visited (04/06/2003).

Anon., (2003). ADR Discussion Paper: Summary of Responses. The Lord Chancellors Department. <http://www.lcd.gov.uk/consult/civ-just/adr/adrresp.htm> visited (17/05/2003).

Anon (2002). Professionalism and Trust – The Way Ahead. Guardian Newspaper visited (9/05/2003) <http://www.guardian.co.uk>

Anon., (2001). Earrings ban judge urges mediation. BBC News. <http://news.bbc.co.uk/1/209476.stm> visited 09/05/2003).

Anon., (2000). Measuring competence of professional person. The Times: Law Reports. <http://www.the-times.co.uk/news/pages/tim/2000/08/04/timlawcoa01001.html> visited (8/5/2000).

Anon (1999) Do I Really need a lawyer to sort out neighbour problems. Guardian Newspaper <http://www.guardian.co.uk/law/story/0,3605,245070,00.html> visited (03/06/2003).

Anon., (1996). Legal Studies Research Findings No.4. The Scottish Office Central Research Unit. <http://www.scotland.gov.uk/cru/resfinds/lstf04-00.htm> visited (12/05/2003).

Barry, N., (1999). Talking it Through. Aberdeen Press and Journal. [http://web.lexis-nexis.com/professional/document?\\_m=12bf3a5b6f5558bb290af3809](http://web.lexis-nexis.com/professional/document?_m=12bf3a5b6f5558bb290af3809) visited (3/04/2003)

Benjamin, R.D., (2001). Gut Instinct: A Mediator Prepares. Mediate.Com <http://mediate.com/pfriendly.cfm?id=963> visited (17/05/2003).

Benjamin, R.D., (2001). On Being Too Fussy About Values In Mediation: Consider The Hedgehog And The Fox. <http://mediate.com/pfriendly.cfm?id=569> visited (17/05/2003).

Brand, N., (2003). Choosing The Expert Mediator. Mediate.Com <http://mediate.com/pfriendly.cfm?id=231> visited (17/05/2003).

Clark, B., & Mays, R., (1996). Regulating ADR – The Scottish Experience. Web Journal of Current Legal Issues.

<http://webjcli.ncl.ac.uk/1996/issue5/clark5.html> visited (13/05/2003).

Coffey, A., Holbrook, B., & Atkinson, P., (1996) Qualitative Data Analysis: Technologies and Representations. School of Social and Administrative Studies, University of Wales.

<http://www.socresonline.org.uk/1/1/4.html> visited (19/3/2003).

Cohen, J., (2003). Reflective Practice: How Veterans Can Benefit From Rookie Training. Mediate.Com <http://mediate.com/articles/cohen5.cfm> visited (17/05/2003).

CPR Institute For Dispute Resolution (2002). Response to the European Commission's Green Paper on A.D.R in Civil and Commercial Law.

<http://www.cpradr.org/EUGreenPaperResponse.htm> visited (04/09/2003).

Cunningham, J., (2001). Pouring oil. Society Guardian.

<http://society.guardian.co.uk/practice/story/0,8115,519542,00.html> visited (09/05/2003).

Dobbins, R., (2003). Mediation: Through The Eyes Of The Mediator. Mediate.Com.

<http://www.mediate.com/pfriendly.cfm?id=1265> visited (18/06/2003)

Dyer, C., (2003). Peace Talks. Guardian Unlimited.

<http://guardian.co.uk/law/story/0,3605,290348,00.html> visited (03/05/2003).

Grossman, A., (2003). Professionalising Commercial Mediation: Discarding the Baggage of Idealised Professions. Mediate.Com <http://www.mediate.com/pfriendly.cfm?id=1312> visited (03/08/2003).

Hardy, S., (2000). Society Tomorrow: How To Take Some Of The Stress Out Of Having An Argument/ Mediation in Domestic and Neighbourhood Disputes. Guardian Limited [http://web.lexis-nexis.com/professional/document?\\_m=086338a6e70ce698b7282538f](http://web.lexis-nexis.com/professional/document?_m=086338a6e70ce698b7282538f) visited (10/05/2003).

Henderson, F., (1999). UK. Scotland. Support To Stamp Out Neighbourhood Disputes. BBC News.

<http://news.bbc.co.uk/1/hi/scotland/456140> visited (10/5/03).

Honeyman, C., (1999). On The Importance Of Criteria For Mediator Performance. Mediate.Com.

<http://mediate.com/pfriendly.cfm?id=122> visited (17.05.2003).

Honeyman, C., & Pou, C., (1996). Finding and Hiring Quality Neutrals: What Every Official Government Official Needs To Know. <http://www.convenor.com/madison/fhl.htm> visited (11/04/2003).

Hughes, K., & Waddington, G., (2001). Making Mediation Work For Communities. Executive Summary. Website of the Welsh Assembly.

[http://www.assembly.wales.gov.uk/subihousing/content/smallgrantsscheme/mediation\\_e.rtf](http://www.assembly.wales.gov.uk/subihousing/content/smallgrantsscheme/mediation_e.rtf) visited (13/04/2003).

Ibrahim, S., (2001). What Is ADR and What Has It Got To Do With Lawyers? NADR Website

<http://www.nadr.co.uk/articles/published/mediation/What Is ADR.pdf>

visited (20/04/2003).

Lightman (2003). The Civil Justice System and Legal Profession – The Challenges Ahead. The 6<sup>th</sup> Edward Bramley Memorial Lecture. University of Sheffield. Lord Chancellor Website.

<http://www.lcd.gov.uk/judicial/speeches/j1040403.htm> visited (13/05/2003).

Mackie, K., & Carroll, E., (2003). Regulation or Positive Promotion? How To Foster The Art Of Mediation. Centre For Effective Dispute Resolution.

[http://www.cedr.co.uk/idex.php?location=/library/articles/positive\\_promotion.htm](http://www.cedr.co.uk/idex.php?location=/library/articles/positive_promotion.htm) visited (17/05/2003).

Marsh, S.R (2000). History. A Simple Explanation of Mediation. ADR Resources. Mediation Essays. <http://adrr.com/adri/> visited (6/05/2003).

Mates, J., (2003). Restorative Justice: The Impact Of Writing The Wrongs. Mediate.Com. <http://www.mediate.com/articles/mates.cfm> visited (10/05/2003).

Matheson, S., (2002). Justice For All In A Second Chance. Evening News (Edinburgh) [http://web.lexis-nexis.com/professional/document?\\_m=cld8c30da76aaf4e0094bea14](http://web.lexis-nexis.com/professional/document?_m=cld8c30da76aaf4e0094bea14) visited (13/06/2003).

Mays, R., & Clark, B., (1996). Legal Studies Research Findings No4. Alternative Dispute Resolution In Scotland. The Scottish Office. <http://www.scotland.gov.uk/cru/resfinds/1sf04-00.htm> visited (12/05/2003).

Pandya, N., (2001). New Course that helps bosses keep the peace. Guardian Unlimited. [http://www.guardian.co.uk/guardian\\_jobs\\_and\\_money/story/0,3605,532109,00.html](http://www.guardian.co.uk/guardian_jobs_and_money/story/0,3605,532109,00.html) visited (03/05/2003).

Pou, C., (2002). Mediator Quality Assurance A Report to The Maryland Mediator Quality Assurance Oversight Committee February 2002. Email: [CHIPBLOC@AOL.COM](mailto:CHIPBLOC@AOL.COM) visited (3/04/2003).

Ramrayka, L., (2000). Through Brick Walls. Guardian Unlimited. <http://www.guardian.co.uk/guardiansociety/story/0,3605,339633,0.html> visited 08/05/2003).

Simon, B., (2002). Smoke & Mirrors: The Importance Of Credibility. <http://mediate.com/pfriendly.cfm?id=1054> visited (17/05/2003).

Spurin, C.H., (2002). The Role Of The Mediator. Autumn Conference 2002 Of The Society Of Expert Witnesses. NADR Website. <http://www.nadr.co.uk/articles/published/mediation/RoleOfTheMediator.pdf> visited (18/03/2003).

Umbriet, M.S., & Greenwood, J., (1997). Criteria For Victim-Sensitive Mediation & Dialogue With Offenders. Centre for Restorative Justice and Peacemaking. School of Social Work University of Minnesota. <http://ssw.che.umn.edu/rjp/Resources/Documents/UmbGr97a.pdf> visited (10/04/2003).

Wolchover, J., (2003). The ladies of the LAMP; Just The Job. Evening Standard. [http://web.lexis-nexis.com/professional/document?\\_m=33cbd0f9ff798432d53efc728](http://web.lexis-nexis.com/professional/document?_m=33cbd0f9ff798432d53efc728)

Visited (04/06/2003)

Wright, M., (1999). Making Amends. Guardian Unlimited. <http://www.guardian.co.uk/guardiansociety/story/0,3605,259043,0.html> visited (03/04/03)

#### **Research/Reports/Leaflets/Miscellaneous**

##### **Papers**

Hourihan, H., (2001) Unpublished LLM paper on The Art Of Judging: The Education Of Dispute Resolution Practitioners In The Art Of Decision Making. University of Glamorgan, South Wales.

##### **Documents**

Clerke, R., (1999). Mediation Awareness Day. PDT Professional Development & Training.

Youth Justice Board Practice Notes. Good Practice Guidelines for Restorative work with victims and Young Offenders. February 2001.

##### **Leaflets**

James, H., (2002) Referencing Technique for Law Students. University of Glamorgan

Nationwide Academy for Dispute Resolution NADR Membership Application Pack (2003).

Youth Offending Team Remedy Team. Have You Been The Victim Of Crime? The Victims Of Crime Have The Opportunity To Have Their Views And Opinions Heard.

Community Mediation Services. Have you thought of Mediation? A service for Neighbours in conflict or dispute.

Community Mediation Services Information Pack  
Volunteer's Charter.

##### **Course Material**

Hartwell, G.M.B., (2001). *LLM Commercial Dispute Resolution. Mediation And Arbitration Skills. Application For Ruling On Jurisdiction*. Glamorgan: University of Glamorgan.

Hartwell, G.M.B., (1999). *LLM Commercial Dispute Resolution. Philosophy And Ethics Of Dispute Resolution*. Glamorgan. University of Glamorgan.

Litton, C., (1996). *ADR/Mediation LPC*. Course Booklet. Glamorgan. University of Glamorgan

Spurin, C.H., (1999). *Form And Content Of Mediation Agreements*. Glamorgan: University of Glamorgan.

Spurin, C.H., (1999). *LLM Commercial Dispute Resolution. Ethics and Philosophy Part 2, 3 & 4*. Glamorgan. University of Glamorgan.

Spurin, C.H., (1999). *LLM Commercial Dispute Resolution. Mediation Materials*. Glamorgan: University of Glamorgan.

Spurin, C.H., (1999). *Alternative Dispute Resolution Training Courses. Mediation Methods for Party Representatives*. Glamorgan: Nationwide Mediation Academy UK Ltd.

Spurin, C.H., (1999). *Alternative Dispute Resolution Training Courses. Basic Civil and Commercial Mediation Course. An NMA Certified Continuing Professional Development Training Program*. Glamorgan: Nationwide Mediation Academy UK Ltd.

Spurin, C.H., (1999). *Mediation Methods. Representing Your Client At A Mediation*. Glamorgan: Nationwide Mediation Academy UK Ltd.

Spurin, C.H., (1999). *Why Choose NADR As Your Service Provider?* Glamorgan: Nationwide Mediation Academy UK Ltd.

Spurin, C.H., (1999). *What is ADR? Who And What Is NADR*. Glamorgan: Nationwide Mediation Academy UK Ltd.

Spurin, C.H., (1999). *Handbook of Rules And Regulations*. Glamorgan: Nationwide Mediation Academy UK Ltd.

Spurin, C.H., (1999). *Mediation Manual. A complete package Containing Forms and Advice To Guide You Through The Dispute Resolution Process*. Glamorgan: Nationwide Mediation Academy UK Ltd.

Spurin, C.H., (1999). *NADR Employment Scheme. A Complete Package Containing Advice Forms And Rules For The Administration Of The Employment Dispute Resolution Scheme*. Glamorgan: Nationwide Mediation Academy UK Ltd.

##### **Journals**

Alexander, N., ed., (2003). Perspectives. Global Trends In Mediation *World Arbitration & Mediation Report. Vol 14, No 1. pp 14-25*.

Allen, T., (2003). Using Mediation to Settle Personal Injury And Clinical Negligence Claims. *Quantum. Issue 1 January 14<sup>th</sup>. pp2-5*.

Barton, C., (2003). The Mediator as Midwife – A Marketing Opportunity? *Family Law. March. pp195-197*.

Bevan, et al. (2001). Can Mediation Reduce Expenditure on Lawyers? *Family Law. March. pp186-190*.

Bingham, L.B., (2002). Why Suppose/ Let's Find Out: A Public Policy Research Program on Dispute Resolution. *Journal of Dispute Resolution. Vol 2001, No1 pp102-126*.

- Black-Branch, J.L., (1998). The Professional Status Of Mediators. *Family Law. January. pp39-41.*
- Black, M., & Price, D., (1996) Mediation And The Shadow Of The Past. *Family Law. November. pp 693-69.*
- Booth, M., (1996). The UK College Of Family Mediators. *Family Law. February. pp 67*
- Brown, H., (1998). SFLA's Mediation Programme And Training. *Family Law. September. pp562-563.*
- Burrow, D., (1996). Legal Aid and Mediation. *Family Law. October. pp 640-641.*
- Burrows, D., (2000). Mediation – The King's New Clothes? *Family Law. May. pp363*
- Butlin, I., (2000). Outcome Measures In All Issues Mediation. *Family Law. March. pp212-215*
- Butterworth, C., (2003). Mediation - What Is Going On? *New Law Journal. March. pp452-*
- Cartridge, M., (1998). SFLA Professional Development Group. *Family Law. pp107-108*
- Cantwell, B., & Nunnerley, M., (1996) March. A New Spotlight On Family Mediation? *Family Law. March. pp177- 180.*
- Clerke, R., (2000) Mediation and Legal Help. *Family Law. August. pp574-575*
- Coleridge, P., et al. (1996) FDR – The Pilot Scheme. *Family Law. December. pp 746-749.*
- Cox, C.J., (2003). Getting A Successful Outcome Through Mediation. *The Journal of Chartered Institute of Arbitrators. Arbitration. Vol. 69. No 1 February. pp 18-23.*
- Cretney, S., (1995). The Divorce White Paper – Some Reflections. *Family Law. June. pp302-305.*
- Davis, G., Bevan, G., & Pearce, J., (2001). Family Mediation – Where Do We Go From Here? *Family Law. April. pp265-269.*
- Davis, G., Finch, S., & Fitzgerald, R., (2001). Mediation and Legal Services – The Client Speaks. *Family Law. February. pp110-114.*
- Davis, G., (1999). Monitoring Publicly Funded Mediation. *Family Law. September. pp625-635.*
- Dobson, P., (2002). EEJ-Net- Codes Of Practice – Arbitration, Mediation. *Student Law Review. Vol 35. pp11-12*
- Dingwall, R., & Greatbatch, D., (2001). Family Mediators – What Are They Doing? *Family Law. May. pp378-383.*
- Eadon, N., (1998) A Study Of Mediation, Conflict And Implications For The Child. *Family Law. June. pp353-354.*
- Eekelaar, J., (1996) The Family Law Bill-The Politics Of Family Law. *Family Law. January. pp45-47.*
- Fisher, T., (2001). Family Mediation – Did It Make Things Better? *Family Law. April. pp270- 273.*
- Fisher, T., (1995). Training For Family Mediation. *Family Law. October. pp 570-573.*
- Fricker, T., (2001). Mediation The Way Forward. *Family Law. Dec. pp826-830.*
- Greenebaum, E.H., (1999). On Teaching Mediation. *Journal of Dispute Resolution. Vol 1999. No 2. pp115-151.*
- Hayes, S., (2002) Family Mediators In The UK – A Survey Of Practice. *Family Law. October. pp760-764*
- Hensler, D.R., (2002). Suppose It's Not True: Challenging Mediation Ideology. *Journal of Dispute Resolution. Vol 2002. No 1. pp81 – 99.*
- Hodson, D., (1998). SFLA Code of Practice – New Fourth Edition. *Family Law. April. pp222-223.*
- Kendall, J., (2003). Mediation For Free. The Law Works Mediation Scheme. *The Legal Executive Journal. March. pp32-33.*
- Kirby, C., (2003). Raising Standards. *Gazette. 100/12 27 March. pp 19.*
- Leigh, J., (1996). Mediation – The Law Society Line. *Family Law. May. pp309- 311.*
- Logan, A., (1996) Lawyer-Mediators and Supervision. The Balm View. *Family Law. May. pp 311-312*
- Macfarlane, J., (2002) Culture Change? A Tale of Two Cities And Mandatory Court Connected Mediation. *Journal of Dispute Resolution. Vol 2002, No 2. pp244-325.*
- Mantle, G., (2001) The Effectiveness of County Court Mediation. *Family Law. February. pp147-148.*
- Masson, J., (1996). The Family Law Bill. *Family Law. January. pp3*
- Mayer, M.A., (1999). The Use of Mediation in Employment Discrimination Cases. *Journal of Dispute Resolution Vol 1999, No2. pp153-172.*
- McCarthy, P., & Walker, J., (1996). Mediation & Divorce – The FMA View. *Family Law. March. pp109 – 112.*
- McCarthy, P., & Walker, J., (1996). Involvement Of Lawyers In The Mediation Process. *Family Law. February. pp154 – 158.*
- McCarthy, P., & Walker, J., (1995). Mediation & Divorce Law Reform – The Lawyer's View. *Family Law. July. pp361-364*
- Mc Ewen, C.A., & Wissler, R.L., (2002). Finding Out If It Is True: Comparing Mediation and Negotiation through Research. *Journal of Dispute Resolution. Vol 2002. No 1 . pp 131-142.*
- Merkin, R., ed., (2002/2003). Mediation. Binding Effect of Settlements Following Mediation. *Arbitration Law Monthly. December – January pp8-13.*
- Newman, P., (2003). Negotiations Skills. *The Legal Executive Journal. March. pp36-37.*
- Newman, P., (2003). Does ADR Have A Future? *The Legal Executive Journal. February. pp14 – 16..*
- Nichols, T., (1999). Mediation – Section 29 And All That. *Family Law. September. pp656-657.*
- O'Shea, N (2002). Mediation – Your Place in the Market. *Family Law. September p704.*
- Pemberton, A., (1996). Mediation & Divorce Reform Proposals. *Family Law. April. pp220 – 221.*
- Phillips, J.R., (2002). Mediation as One Step in Adversarial Litigation: One Country Lawyer's Experience. *Journal of Dispute Resolution. Vol 2002, No 1. pp143-154.*
- Pigott, S., (1996) Lawyer-Mediators and Supervision. The FMA View. *Family Law. May. pp 313.*
- Reich, J.B., (2001). A Call For Intellectual Honesty: A Response To The Uniform Mediation Act's Privilege Against Disclosure. *Journal of Dispute Resolution. Vol 2001. No2. pp197-252.*
- Resnik, J., (2002). Mediating Preferences: Litigant Preferences for Process and Judicial Preferences for Settlement. *Journal of Dispute Resolution. Vol 2002, No 1 . pp 155-169.*
- Richards, C., (2001). Allowing Blame and Revenge into Mediation. *Family Law. Oct. pp775-777.*
- Richards, C., (2000). Who says Mediation is a Minority Choice? *Family Law. April. 282-283.*
- Richards, C., (1999). Facing the Unavoidable. The Help Wanted for Mediators. *Family Law. Oct. pp730.*
- Richards, C., (1999). Co Working, Impasses And High Conflict – Mediators' Talk. *Family Law. April. pp263-264.*
- Richards, C., (1999). How is Mediating Different from Counselling, Advising Arbitrating? *Family Law. March. pp173 – 174.*
- Richards, C., (1998). Managing Conflict through Open Negotiations. *Family Law. December. pp776-779.*
- Richards, C., (1998). Mediation As A Business. *Family Law. November. pp696-698.*



- Richards, C., (1998). Mediators With Attitude. *Family Law. October. pp633-634*
- Richards, C., (1998). Reframing In Mediation – Moving From Statements Into Conversations. *Family Law. August. pp 488- 490*
- Richards, C., (1998). How To Get People To Mediation. *Family Law. July. pp 424-425.*
- Richards, C., (1998). Information – Did They Hear What I Said? *Family Law. April. pp220- 221.*
- Richards, C., (1998). Managing Conflicts and Resolving Disputes. *Family Law. March pp169-170.*
- Richards, C., (1998). Why Do Mediators Need Supervision? *Family Law. February. pp105-106*
- Richards, C., (1997). Mediation – Who Does It Belong To? *Family Law. December 823-824.*
- Richards, C., (1997). Securing Agreement in Mediation. *Family Law. November pp752-753.*
- Richards, C., (1997). The Impasse – An Insurmountable Obstacle For Mediation? *Family Law. October. pp 689-690.*
- Richards, C., (1997). Generating Options in Mediation. *Family Law. September. pp 626-627.*
- Richards, C., (1997). Neutrality and Impartiality – A Practice In Search Of Theory. *Family Law. August. pp 573-574.*
- Richards, C., (1997). Mediation – Context Not Content Knowledge. *Family Law. June. pp 434 – 435.*
- Richards, C., (1997). ‘Sorry We’ve Wasted Your Time – Walk-Outs From Mediations *Family Law. May. pp 356-357.*
- Richards, C., (1997). Do You Expect Me To Force Them To See Him? – A Well Known Impasse. *Family Law. April. pp 275.*
- Richards, C., (1997). The Expertise of Mediating. *Family Law. January. pp 51-52.*
- Roberts, S., (1995). The Lawyer as Mediator. *Family Law. November. pp 636-637.*
- Robinson, M., (1995). Mediation Skills. *Family Law. April. pp 208-209.*
- Robinson, N., & Brisby, T., (2001). Family Mediation Referrals Under The Funding Code Revisited. *Family Law. January. pp59-63.*
- Sclater, S.D., (1995). The Limits Of Mediation. *Family Law. September. pp 494-497.*
- Shepherd, N., (1996) The Family Law Bill – Key Concerns. *Family Law. February. pp118-119.*
- Shepherd, N., (1995). Mediation Training. *Family Law. September. pp 510-511.*
- Sibley, S.S., (2002). The Emperor’s New Clothes: Mediation Mythology and Markets. *Journal of Dispute Resolution. Vol 2002. No 1. pp 171-177.*
- Singer, S., (1996). FDR And The Holy Grail. *Family Law. December. pp751-752*
- Stylianou, K., (1998). The Tensions Between Family Mediation Principles And The Formal Legal System. *Family Law. April. pp 211-222.*
- Thomas, G.R., (2003). Self Regulation and A.D.R. *ADR News. Nationwide Academy of Dispute Resolution. Vol 3 issue 2. pp 4-5.*
- Walker, J., (1995). Divorce Reform Dilemmas. *Family Law. December. pp 696 – 698.*
- Walsh, E., (1997). Mediation – Information For The Bar. *Family Law. July. pp501-502*
- Warchus, J., (2003). Mediation Comes Of Age. *Solicitors Journal. February. pp164*
- Way, P., (2002). SFLA News. Good Practice For Solicitors In Dealing With Clients. *Family Law. November. pp854 – 855.*
- Welsh, N.A., (2002). Disputant’s Decision Control in court-Connected Mediation: A Hollow Promise Without Procedural Justice. *Journal of Dispute Resolution. Vol 2002 No1 . pp179-192.*
- Whatling, T., (2002). Observed Practice Matters – The Direct Observation of Mediation. *Family Law. August. pp623-627*
- Wilson, B., (2002). The ‘Thing with Feathers’ – The Roles of Hope And Optimism In Mediation. *Family Law. July. pp555-558.*
- Wilson, B., (2002). The Triumph of Uncertainty – ‘Or Measuring Mediation’. *Family Law. January. pp64-65.*
- Wilson, B., (2001) When Nothing is a Good Thing To Say – The Silent Mediator. *Family Law. September. pp701-703*
- Wilson, B., (2000). Mediation and Morality. *Family Law. November. pp853.*
- Wilson, B., (2000) Mediating Single Issue Disputes. *Family Law. September. pp664-668.*
- Winner, M., (2000). Is Research on Mediation Providing the Answers? *Family Law. February. pp138-139.*
- Zylstra, A., (2001). Mediation and Domestic Violence: A Practical Screening Method for Mediators and Mediation Program Administrators. *Journal of Dispute Resolution. Vol 2001, No2. pp253-301.*

#### Textbooks

- Acland, F.A., (1995). *Resolving Disputes Without Going To Court. A Consumer Guide To Alternative Dispute Resolution.* London: Century Limited.
- Allison, B., et al. (1996). *Research Skill For Students.* London: Cogan Page Ltd.
- Boulle, L., & Nestic, M., (2001). *Mediation Principles Process Practice.* London: Butterworths.
- Bradney, A., & Cownie, F., (2000). *Living Without Law. An Ethnography Of Quaker Decision-Making, Dispute Avoidance And Dispute Resolution.* Aldershot: Ashgate Publishing Limited.
- Bradney, A., Fisher, V., Masson, J., Neal, A.C., & Newell, D., (1991). 2<sup>nd</sup> ed. *How To Study Law.* London: Sweet & Maxwell Limited.
- Brookfield, S.D., (1993). *Developing Critical Thinkers:* Guildford UK: Open Uni. Press.
- Brown, HJ & Marriot, A.L., (1999). 2<sup>nd</sup> ed. *ADR Principles And Practice.* London: Sweet & Maxwell.
- Caller, R., ed., (2002). *ADR And Commercial Disputes.* London: Sweet & Maxwell.
- Child, D., (1981) 3<sup>rd</sup> ed. *Psychology And The Teacher.* London: Holt.
- Conneely, S., (2002). *Family Mediation In Ireland.* Cornwall: Ashgate Publishing Limited.
- Curzon, LB., (1997). *Brief Case On Family Law.* London: Cavendish Publishing Limited
- Curzon, LB., (1990). 4<sup>th</sup> ed. *Teaching In Further Education. An Outline In Principles And Practice.* London. Cassell.
- D’ Ambrumenil, P., (1997). *Mediation and Arbitration.* London: Cavendish Publishing Limited.
- Dick, A.H & Ballantine, T., (2001). *The Art Of Family Law. Skills For Successful Practice.* Edinburgh: W.Green /Sweet & Maxwell.
- Fisher, R. Ury, W & Pattern, B., (1991). 2<sup>nd</sup> ed. *Getting To Yes. Negotiating an agreement without giving in.* London: Century Business
- Freidson, E., (2001). *Professionalism.* Oxford: Polity Press.
- Goldberg, S.B, Sander, F.E.A, & Rogers, N.H., (1999). 3<sup>rd</sup> ed. *Dispute Resolution. Negotiation, Mediation And Other Processes.* New York: Aspen Law & Business Publishers.

Hawkins, L. Hudson, M. & Cornall, R., (1991). *The Legal Negotiator. A Handbook For Managing Legal Negotiations More Effectively*. Australia: Longman Professional.

Haynes, J. M., (1993). *Alternative Dispute Resolution. The Fundamentals of Family Mediation*. Cornwall: Old Bailey Press Limited.

Jaques, D., (2000) 3<sup>rd</sup> ed. *Learning In Groups*. London: Kogan Page.

Kennedy, G., (1999). *Profitable Negotiation*. London: Orion Business Books.

Larson, M.S., (1977). *The Rise Of Professionalism. A Sociological Analysis*. Berkeley: University Of California Press.

Leicht, K.T., & Fennell, M.L. (2001). *Professional Work. A Sociological Approach*. London: Blackwell Publishers.

Macdonald, K.M. (1995). *The Sociology Of The Professions*. London: Sage Publications.

Macfarlane, J., ed., (1997). *Rethinking Disputes: The Mediation Alternative*. London: Cavendish Publishing.

Mackie, K.J., ed., (2000). *A Handbook Of Dispute Resolution. ADR In Action*. London: Routledge.

Mackie, K., Miles, D., & Marsh, W., (1995). *Commercial Dispute Resolution An ADR Practice Guide*. London: Butterworths.

Martin, E.A., (1997). 4<sup>th</sup> ed. *A Dictionary Of Law*. Oxford: Oxford University Press.

Marshall, T.F., & Merry, S., (1990). *Crime & Accountability. Victim/Offender Mediation In Practice*. London: HMSO Publications.

Menkel-Meadow, C., (2001). *Mediation. The International Library of Essays in Law and Legal Theory Second Series*. Aldershot: Ashgate – Dartmouth.

Menkel-Meadow, C., Ed., (2001). *Mediation. Theory, Policy & Practice*. Aldershot: Ashgate Publishing Limited.

Mills, H.R., (1997). *Teaching And Training*. London: McMillan.

Minton, D., (1991). *Teaching Skills In Further And Adult Education*. London: Macmillan Press.

Moloney, M.M., (1986). *Professionalization of Nursing. Current Issues and Trends*. London: J.B. Lippincott Company.

Muncie, J. Hughes, G. & McLaughlin, E., (2002) Eds. *Youth Justice. Critical Readings*. London: Sage Publications.

Oldham, M., ed., (2002). 10<sup>th</sup> ed. *Statutes On Family Law*. London: Blackstone Press Limited.

Palmer, M., & Roberts, S., (1998). *Dispute Processes. ADR And The Primary Forms Of Decision Making*. London: Butterworths

Reece, I & Walker, S., (2001). 4<sup>th</sup> ed. *Teacher Training And Learning A Practical Guide*. Gateshead: Business Education Publishers Ltd.

Roche, D., (2003). *Accountability in Restorative Justice*. Oxford University Press: Oxford.

Rowntree, D. (1987) *Assessing Students. How Shall We Know Them?* Guildford: Kogan Page.

Silverman, D., (1993). *Interpreting Qualitative Data. Methods For Analysing Talk, Text and Interaction*. London: Sage Publications

Sinclair, J.M (1992). *Collins Softback English Dictionary*. London: Harper Collins Publishers.

Traverso, G.B., & Bagnoli, L., (2001). *Psychology And Law In A Changing World. New Trends in Theory, Practice And Research*. London: Routledge.

Umbreit, M., (2001). *The Handbook of Victim Offender Mediation. An Essential Guide To Practice And Research*. San Francisco, California: Josey Bass Inc.

Urdang, L., (1997). *The Oxford Compact Thesaurus*. Oxford: Oxford University Press.

Wolcott H.F., (1990). *Writing up Qualitative Research. Qualitative Research Methods Volume 20*. London: Sage Publications

#### Statutes and Rules of Court

- Civil Procedures Rules 1999
- Human Rights Act 1998
- United Nations Convention On The Right Of The Child 1989
- Youth Justice and Criminal Evidence Act 1999

#### Volunteer's Charter

**Volunteers** should have a clear idea of the tasks they are being asked to perform and the responsibility that goes with these tasks.

**Volunteers** should know who is designated as having responsibility for their support and supervision. Volunteers should have regular access to this person, and the person should ensure that each volunteer is adequately supported.

**To Ensure** fair representation of the needs and interests of volunteers, volunteers should have access to and play a part in the decision making process for the group/organisation for whom they are working as volunteers.

**Volunteers** should be protected against exploitation of their interests, both as individuals and volunteers. Volunteers should not be put under any moral pressure to do work which goes against their principles.

**Volunteers** should not suffer financial loss through doing voluntary work. Volunteers should receive out of pocket expenses and be provided with appropriate equipment/tools/materials to enable them to carry out their tasks.

**Volunteers** should not be used in place of previously paid workers.

**The relationship** between paid workers should be complimentary and mutually beneficial. Paid workers in an organisation should be fully aware of the work undertaken by volunteers and of the responsibilities of both themselves and volunteers.

**Volunteers** should have the right to join a Trade Union relevant to the work in which they are involved. The organisation using volunteer help should encourage volunteers to take up union membership. Some unions now offer free membership to volunteers.

**Volunteering** should be a fulfilling experience. Through adequate support and supervision, volunteers should be able to develop, expand and change their area of work