



# The Balancing Act of Mediation Training

Between private negotiation and legal recourse falls mediation, an alternative method of solving conflicts with the help of a neutral third party. At the Neighborhood Justice Center of Honolulu, volunteers receive sophisticated professional training in empowering people to settle their disputes.

By PETER S. ADLER

*"Litigation is a machine in which you go in as a pig and come out a sausage."*  
Ambrose Bierce

Conflict is inherent to society and culture. When individuals and groups do not resolve disagreements quickly among themselves, disagreements become disputes. Violence, avoidance and competitive substitution are methods of settling disputes. More common in American culture is the evolution of disputes into legal battles.

As an adversarial system, the American legal process recalls Greek and Roman traditions in which trained gladiators (lawyers) engage in face-to-face combat (litigation) in a ritualized and mysterious arena (the courtroom) before an ultimate authority (the judge or jury) who must find one party the loser (the judgment).

Formal legal process is necessary in a complex society. It is objective, orderly and allows for a common discovery of facts. It also has significant drawbacks.

Legal recourse is time-consuming, expensive and complicated. Because it requires expert definition, conflict often must be constrained to its narrowest and

least meaningful dimensions. Potential joint gains often are not pursued, and litigation, instead of terminating with a single judgment, often leads to further litigation.

Since the 1960s a significant social movement aimed at creating alternatives to formal litigation has emerged. More than 200 programs around the country offer direct peacemaking services to the public. Beyond settling conflicts without violence or going to court, these alternative dispute resolution centers promote a new approach to peacemaking, educate people about conflict management and foster public acceptance for new ways of handling disagreements.

Mediation also may have consequences beyond the settling of disputes. Within the mediation forum, disputants observe and participate in procedures that acknowledge and honor diversity. People see, and in some cases learn, that social control can be created internally rather than imposed externally. Beyond the confines of the conflict, participants become "responsible." Responsibility, usually an abstract notion, is made behaviorally concrete as people in conflict situations become responsible for the outcome of their disputes.

Mediation, the most popular alternative resolution method, involves a neutral third party who helps people in conflict reach a voluntarily negotiated settlement. Mediators have no power to render deci-

sions, force people into agreements or judge right and wrong. They use a variety of techniques to help people communicate, negotiate and formulate agreements that are fair by their definition.

Mediation is an intermediate step between private negotiation and adjudication. The mediator convenes meetings, acts as facilitator and helps all parties focus on potential solutions to the issues that divide them. Historically, mediation

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has been associated closely with labor-management bargaining. In the last two decades the range of applications has expanded dramatically to include environmental conflicts, consumer problems, disputes over educational placement and conflicts that arise in the home and work place.

## The Hawaii model

Mediators in Hawaii have helped nearly 6,000 people involved in 2,000 cases settle their differences out of court since 1979. The Hawaii model grew out of work begun by the Makiki Neighborhood

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Board and the University of Hawaii that is being continued by the Neighborhood Justice Center of Honolulu, an independent, nonprofit community organization. What began as a modest experiment in one neighborhood has expanded to a model of mediation that encompasses community issues, family disputes and environmental problems. The model and the Justice Center's Programs are based on several assumptions.

Conflict is not viewed as a problem. Mediation's aim is not to suppress argument but to give it meaningful form and coherent process. Whereas most legal and political institutions treat conflict as an aberration, something to be investigated and fixed, mediators regard it

Volunteers at the Neighborhood Justice Center are placed in three different programs. The Family Mediation Service assists immediate and extended families caught in conflicts involving custody, visitation, juvenile problems, property settlement and domestic violence. Cases may be referred by the courts or social service agencies, or be self-initiated. The Neutral Ground Program helps people involved in neighborhood disputes, landlord-tenant conflicts, consumer-merchant disagreements and problems with local schools. The Conflict Management Program uses a few highly trained volunteers to help government agencies, private developers and community action groups negotiate public policy disputes.

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### **Underlying relationships often are more important than legal facts.**

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as a legitimate vehicle for social and, in some cases, personal change. In mediation, the evaluation and memorialization of social conflict take a back seat to the development of workable social contracts.

In mediation, the conflict's outcome remains in the hands of the disputants. The mediator may suggest ideas for consideration, but the power to accept or reject them remains with the disputants. In contrast to the adjudication process, mediation does not hinge on rules of evidence; underlying relationships often are more important than legal facts. Nor does mediation try to discover truth and establish fault. It emphasizes future behavior: mutually agreed-upon rules that the disputants can live by once they leave the mediation table.

American society tends to turn successful social innovations into paying jobs, then centralize them and impose bureaucratic routines. Bureaucracy is a powerful imperative, and mediation might be expected to follow the pattern of professionalization. The Hawaii model, however, keeps mediation voluntary. Integral to this commitment is the notion that the benchmark of true professionalism is not salary level but quality of training.

### **Training**

The Neighborhood Justice Center of Honolulu's volunteer training program is based on theoretical perspectives from sociology, psychology, counseling, law, communication, political science, organization development and industrial relations, and on the practical experience of training more than 400 volunteer mediators in Hawaii, California and Canada.

The training requires a 30- to 50-hour commitment from the volunteer and generally takes place over two weeks, on evenings and weekends. At the Neighborhood Justice Center, mediation training is analogous to foreign language or musical training; it emphasizes practice, preparation and self- and peer evaluation. The objective is to train a group of volunteer mediators to be competent, self-confident, ready to handle real cases and prepared for additional learning.

Of primary importance to the training is the notion that many kinds of people can do this work. Volunteer mediators represent a broad social and economic spectrum—professionals, students, retired people and housewives—and people from different ethnic groups. While family and environmental mediation may require special sensitivities and skills, virtually anyone with a high tolerance for ambiguity and a genuine interest in human affairs can learn to mediate community disputes involving neighbors, landlords and tenants, and consumers and merchants.

A second essential concept is that training in mediation must prepare volunteers for future learning. A quality of professionalism in any field is a commitment to future learning, personal growth and pro-

professional development, and advancing the state of the practice. The Justice Center's training enhances the mediator's capacity for self-evaluation and continued learning.

Any mediation training program should offer multidimensional preparation that is cognitively sound, experientially useful, relevant in content and challenging. Not only must mediators understand the concepts and procedures of good negotiation, they must participate in simulated mediations and learn how mediation relates to criminal justice and social service systems.

Finally, mediator training must focus and sharpen volunteers' motivation to help people while teaching them to keep their own egos detached. David Chandler, one of the Neighborhood Justice Center's leading trainers, describes mediation as an egoless "eye of the hurricane." The mediator, says Chandler, must be fully neutral without losing the essential caring qualities that make mediation such a powerful forum. That attitude, expressed in the language of neutrality and trust, is present in the best, most versatile mediators.

The Justice Center's basic curriculum divides naturally into three broad sections: the conceptual context of alternative dispute resolution, the mediator's role (methods, skills, techniques) and the mediation process (specific procedures used in community, family and environmental cases).

The context section covers the social function of conflict, the process and dynamics of disputing, historical and cultural perspectives on mediation and mediation fundamentals. Also covered are the ethics and values implied in mediation, the components of conflict, the potential outcomes of intervention and techniques for analyzing conflict.

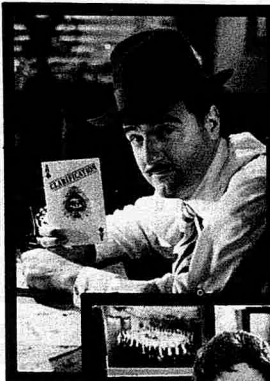
The role section focuses on building skills in five areas. The first skill module is the "language of neutrality" that mediators must convey behaviorally to disputants to build trust. Next are responsive communication techniques, including active listening, sending congruent messages, questioning and interviewing techniques, building nonverbal rapport and a general understanding of neuro-linguistic programming. This skill area also includes technical and practical information on how values and emotions operate in conflict situations, the various communication roles a mediator can play and blocks to effective communication. Mediators typically work in pairs or on

panels, and they are trained in methods of joint supervision.

The third skill module emphasizes negotiation: the conditions under which negotiations can take place, why people choose or refuse to negotiate, the types, dynamics and phases of negotiation and how resistance to agreement can be lowered. Fisher and Ury's *Getting to Yes*, which focuses on principled, interest-

based bargaining is part of the curriculum.

A fourth and closely related area is creative problem solving, a method of thinking that leads to richer, more interesting solutions via brainstorming, lateral thinking, conceptual blockbusting and suspending judgment. The final module covers managing and facilitating meetings; the instructional methods include discussion, practice and structured



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In the process area, the training covers procedures for different types of cases. Community, family and environmental mediation differ dramatically in their intensity, time frame, substance, stakeholder characteristics and interaction patterns.

But regardless of case type, successful mediations move through three phases and eight generic steps, beginning with the *forum phase* and its three steps:

■ *Exploration*—The mediator, through discussion with the disputants and others involved, gauges the appropriateness of the conflict for mediation.

■ *Entry*—The mediator explains the mediation process and secures agreement from all parties for his or her involvement.

■ *Information gathering*—The mediator meets individually or in caucus with all parties, listens to how each perceives the situation and becomes educated about the conflict.

The *strategic planning* phase follows, with its steps:

■ *Analysis*—The mediator examines the information gathered to date, reviews the conflict's history and assesses the issues,

positions and interests involved.

■ *Design*—The mediator develops an action plan and asks the disputants to concur.

The final, *problem solving* phase involves:

■ *Implementation*—Using any of a number of procedures (joint meetings, shuttle diplomacy, caucus, single-text negotiating document), the mediator defines potential solutions.

■ *Joint decision making*—Using negotiating techniques and creative problem-solving methods, the mediator helps the parties make specific arguments.

■ *Closure*—Agreements are recorded, and the process concludes.

While these eight steps are implicit in virtually every successful mediation, the timing and staging of each step may vary. Mediators must not use these steps as a verbatim formula but instead stay alert to the needs of the conflicting parties. Steps may be collapsed, repeated or even discarded as the situation and disputants dictate.

Single-issue, two party disputes often are mediated in hours, while family conflicts with multiple issues and complex

histories may take multiple sessions. Environmental, interorganizational and public policy disputes may take six months to a year or more.

## Questions for the field

The growth of alternative dispute resolution, the development and popularization of mediator training and the use of volunteers in professional roles evoke important questions for theoreticians and practitioners: Who should be trained in mediation? What prerequisites, if any, should be established? Do certain types of people make better mediators than others? What should be learned in training sessions? How are skills and concepts best transferred, and who should the trainers be? What standards should be set for trainees, and by what performance criteria should trained mediators be measured?

Mediation is gaining recognition by academicians, corporate executives, judges and government officials. As mediation training becomes more adaptive, however, the process is in danger of being oversold, made trendy and faddish or simply diffused into personal growth experiences. Without commonly understood definitions and objectives, virtually anyone could claim expertise in the field on the basis of one brief training course.

To some extent that is already taking place. Many more people are trained in mediation than there are cases to mediate. In some locales, mediation training is being marketed to lawyers, social workers and therapists. With little or no case experience, professionals in these more traditional problem-solving disciplines are beginning to argue for standardization, certification and control of the field. It is interesting that the growing "turf" problem between lawyers and therapists blindly excludes the idea of trained community volunteers.

Highly voluntarized mediation programs like the Neighborhood Justice Center are important social experiments. They offer American society two potential insights: the utility of investing money in the human "capital" of our primary institutions (families, schools, neighborhoods); and the value of empowering people to settle their own disputes. The success of these experiments will, in large part, depend on the ability to sustain and improve the caliber of training.

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