

REFLECTIONS FROM THE INTERNATIONAL ACADEMY
OF MEDIATORS CONFERENCE AT HARVARD UNIVERSITY MAY 2006

I am not usually a name dropper. I often wonder why people do it in conversation with other intelligent people. But on my return from the IAM Conference at Harvard University I feel compelled to share the line up of speakers we were engaged, challenged and enriched by. They are the authors of the books in the ADR section of your office library shelves. So I am going to break a rule and name drop and share with you a take away or two from each speaker.

First up we heard from Sheila Heen and Douglas Stone authors of "Difficult Conversations" who asked us to reflect on the personal conflicts in our own lives and how we deal with them. They suggested our answer to this question would inform our mediation practices. In the mediation room we bear witness to other people's pain and confusion. Reflecting on our own experience of conflict will make us more empathic and better mediators, so let's do it.

Robert Mnookin, Chair of the Program on Negotiation at Harvard Law School, Director of the Harvard Negotiation Research Project and author of "Beyond Winning" spoke to us about the many faces of ethnic conflict. He spent time in Israel in February 2006 meeting with both Israelis and Palestinians trying to unravel the paradox which he articulated as "Why is there no resolution when there is a clear deal from Camp David which could be achieved by the moderates?". The answer for him was that there are "behind the table" conflicts within each community which preclude movement toward resolution. He commented on the parallel themes within each community, including issues of identity, narratives of suffering and the need for compensation and relocation. He also identified three universals (the high value placed on faith, family and education) within each community. Both these parallel themes and shared values provide a basis for perspective sharing, dialogue and future resolution. In the meantime, there is a need for internal dialogue within these communities which may be promoted by the international community, but whose role in the dialogue can only be limited.

The takeaway from this discussion for the 120 mediators present, was the suggestion that we consider the "behind the table" conflicts which might impact upon

the work done at the mediation table. This struck a chord with me. It has been my experience that cases are sometimes difficult to resolve because of the agendas of absent communities of interest, or other stakeholders who are not at the table. Identifying how we might engage these stakeholders in the talk at the table is a challenge for us.

William Isaac, a senior lecturer at the Massachusetts Institute of Technology's Sloan School of Management, spoke about the mediator's role in producing profound change in conflict situations and focused, in particular, on the stages in mediator awareness and development required to achieve this capability. The most striking concept that he discussed was the mediator's need to create a container or a still place in which a conflict can change and unfold.

We know as mediators we need to bring calm to smooth troubled waters. What personal tools and practices do we have to allow us to do this? I believe many mediators are taking up various forms of spiritual and reflective practices to enable them to bring peace into the mediation room.

There were a number of practical tips in the paper by Daniel Shapiro, Associate Director of the Harvard Negotiation Project, Instructor in Psychology at Harvard Medical School and co-author with Roger Fisher of "Beyond Reason: Using Emotions As You Negotiate". He stressed the need for mediators not to deal with the emotions manifested in the room per se, but what stimulates them, namely, the core concerns. He identified these core concerns as appreciation, affiliation, autonomy, status and role. We need to express appreciation, build affiliation, respect autonomy, acknowledge status and help parties make their role fulfilling. By using the core concerns as a lens and a lever we can have a positive impact the conflict.

This takes the idea of validation, empowerment and recognition one stage further. I now have a valuable portfolio of motivational cues to watch for.

Professor of Psychology at Harvard University, Stephen Kosslyn gave a view from neuro-science, outlining his theory recently reported in the New York Times about how we extend the capacities of our brains. It was a stretch to think of ourselves as using other people as social prosthetic systems (like artificial limbs) to extend the

capacities of our brains but on reflection it made sense. His three key ideas are that we rely on other people to “complete” us, we are different people when working with different social prosthetic devices (different people extending our capacities) and we are motivated to develop skills, abilities and capacities that will attract others to serve in our social prosthetic systems. I confess that the application of this thinking to my mediation practice is still a work in progress.

Erica Fox, Director of the Harvard Negotiation Insight Initiative (HNNI) and Law lecturer at Harvard Law School talked about “getting to a deeper yes” suggesting that the final frontier for mediators is the leverage achieved when mediators are willing to drill deeper into the conflict. Her research work has led her to highlight to mediators the importance of mindfulness and the “spiritual” quality of mediation practice.

There is more. The icing on the cake of this conference was that it coincided with a “Perspectives on Dispute Resolution” Conference by the Program on Negotiation at Harvard Law School honouring Professor Frank Sander, the Bussey Professor of law and Associate Dean of Harvard Law School on his enormous legacy to ADR. It is 25 years since Professor Sander delivered his seminal paper entitled “Varieties of Dispute Processing” that articulated the notion of the multi-door Courthouse at the Pound Conference in 1976. Many people made tributes to Professor Sander including David Hoffman of the Boston Law Collaborative, co-author of “Bringing Peace into the Room” who spoke about trends and projections and shared a number of personal insights into our future as ADR providers. He expressed three hopes for the future of ADR. First that diversity will triumph over consistency and sameness, with the practical result that difference will be the celebrated norm and regulation of mediation will be limited. Second, he hopes that there will be a renaissance of idealism so that mediators can fulfil their role as peacemakers. His third hope is for broader universal training of peacemakers. These sentiments echoed those of the conference and resonated for all of us.

His predictions included the increasing role of technology in ADR (online mediation “in your pyjamas”), the expansion of the multi-disciplinary nature of the practice (which is now informed by cognitive neuro-science, genetics and evolutionary biology,

as well as the ancient wisdom traditions) and the growing significance of values of identity, meaning and spirituality which are reflected in our mediation practices.

Many New Zealand lawyers and mediators will remember Frank Sander from the Five Day Mediation Workshop which he conducted in Auckland with Linda Singer and Michael Williams in 1996. His work at Harvard University Law School created ADR opportunities which were quickly legitimised and have changed the face of litigation practice both there and, in turn, here. It felt very meaningful to be sitting in a Harvard Law School lecture theatre honouring him for making my career as a mediator in private practice possible.

These take aways or reflections will not all be new to you. However, taken in totality they suggest a path for the future and for me provide valuable signposts for the development of my practice and thinking. I hope by writing this you get to share in those benefits.