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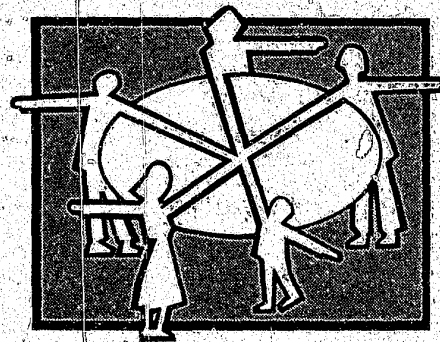
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A MEDIATOR'S MANUAL FOR

# Parent Child Mediation

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U'S HEARINGS PROJECT  
Large Family and Children's Service  
MA 02139

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FOR PARENT CHILD MEDIATION

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A Mediator's Manual  
For Parent-Child Mediation

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SUGGESTED READINGS

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Neighborhood Justice Center of Honolulu, Inc.,  
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Joseph B. Stulberg, Citizen Dispute Settlement:  
A Mediator's Manual, for the Supreme Court of Florida,  
1981.

Crime & Justice Foundation, Boston, Massachusetts.

Neighborhood Justice Center of Atlanta, Inc.,  
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## FOREWORD

The purpose of this manual is to acquaint you with the practice of parent-child mediation, a specialization within the alternative conflict resolution field of mediation. It should give you a good understanding of the basics of mediation theory, principles, and skills integrated with information and techniques relevant to family situations. However, it will not teach you to be a mediator -- you will need to attend a training course and practice with the guidance of experienced mediators and instructors. In fact, the manual is designed to accompany a training course and the various chapters correspond to a sequence followed in training sessions.

If you are already familiar with mediation, you will recognize many familiar principles and approaches. The current state of the art of parent-child mediation as presented here, brings two developments together -- one borrowed and learned from other mediation models and practitioners and one evolved from the practice of volunteer mediators at the Children's Hearings Project. Over the years, mediators, trainers and staff associated with the project have worked to improve and perfect the practice. In an important way, this manual represents how this experience has contributed to the advancement of knowledge in parent-child mediation and the art of its application.

Your learning and development as a mediator will continue after you finish your formal training course. Although much of the information and many of the suggestions will be helpful to you during training, some of it only will become meaningful after you actually begin to mediate. Re-reading sections of the manual will be helpful as a review and as a refresher. As you gain experience, we hope you will find ways to share your knowledge and insights with your associates and to gain from them as well. This kind of exchange is needed for your own personal growth and satisfaction and for the further advancement of a new and challenging way to assist troubled families.

## INTRODUCTION

Programs offering mediation for parents and children are a fairly recent development. The Children's Hearings Project began in 1980 in Cambridge, Massachusetts, as a demonstration program to test the applicability of mediation to family cases before Massachusetts courts, in particular to cases involving status offenders -- children whose behavior as runaway, truant, and so-called stubborn or incorrigible would not be considered criminal if they were adults. The Children's Hearings Project was one of the first mediation programs of its kind and was founded on the growing belief of many in the juvenile justice and child welfare fields that family conflict can often be handled much better outside the formal court system.

Long before the creation of our modern, formal court system, mediation was a traditional method used to resolve family disputes. In its basic form, mediation involves a third party trying to help two or more people resolve their conflict. Its use again today as an alternative to the court for youths and their families represents the coming together of three significant court reform movements of the past decade: the introduction of alternative dispute resolution programs to handle minor disputes, the development of diversion programs for juveniles, and the creation of the Scottish Children's Hearings System which replaced court with citizen panels. All are informal, non-judicial efforts based on a shared interest in improving the quality of society's response to conflict. All assign a significant role to the community: volunteers instead of court officials meet with families in the Scottish Children's system and with parties to a dispute in community mediation centers throughout this country. Youth diversion efforts have created a network of community-based services to meet the various needs of juvenile offenders.

The pioneer programs in alternative dispute resolution did not focus on youth and family cases. They addressed the inability of courts to get to the underlying issues in disputes between adults, and they attempted to counteract the role courts play in escalating tensions, especially where those in conflict have had a prior relationship. The

new programs provided a forum where people could air their differences in private and without the hurried and impersonal atmosphere of busy courts. Most of these programs were located in urban centers -- e.g., the Urban Court in the Dorchester section of Boston, the Community Boards in San Francisco, and the Neighborhood Justice Center in Atlanta. Their successes for the most part were based on the high marks given by people who had gone through the mediation process. Before long, youths involved in minor disputes were referred to these programs.

Status offenders are a challenge to courts and service agencies. Their behavior is not criminal and is most often related to family, community, and "growing-up" issues. Out of concern for the harmful effects court involvement can have on a status offender, a wide-range of specialized service and educational programs outside the supervision of the court have been developed. Since most status offender situations involve conflicts between parents and child, mediation was a logical outgrowth of other diversion efforts.

The Scots have taken a different but complementary approach to the handling of young offenders. Not relying on an existing court system nor creating diversion or alternative programs, they initiated an entirely new system. The Scottish Children's Hearings System relies on volunteers to determine a youth and family's needs. The system substitutes an informal process for juvenile court and encourages participation by the youths, parents, school representatives, and social workers in determining the course to follow. It influenced the development of the parent-child mediation techniques used by the Children's Hearings Project (CHP) by demonstrating how well community volunteers can work with troubled families and how children and families can participate together in a system less formal than court.

One other important development has been the use of mediation with divorcing families. During a time when the divorce rate has increased dramatically, interest and support for divorce mediation has grown. It can work as an alternative to families' bitter disputes over

property and custody of minor children and avoids long, usually costly legal battles. Divorce mediation and parent-child mediation share the same goal of helping family members--whether or not they live under the same roof--find ways to work out their differences without imposed solutions.

Preliminary findings of a research project associated with the Children's Hearings Project indicate that an overwhelming majority of parents and children are satisfied with the mediation experience and find it a helpful and fair process. Although mediation is not appropriate for all families, a majority of parents and children are interested in the "new" method once they have the opportunity to hear about it. The families also respond to the fact that the mediators are volunteering their time.

The initial success of the Children's Hearings Project led to adoption of the model by the Massachusetts Department of Social Services and funding for seven new parent-child mediation programs throughout the state. With the support of the Department of Social Services, this manual was written to share with parent-child mediation programs and mediators the practices and policies of the Children's Hearings Project.

S.W.



## CHAPTER I

### WHAT IS MEDIATION?

#### I.1. Mediation And Other Types Of Dispute Resolution.

Mediation is one among several ways of settling conflicts between groups or between individuals. It is a voluntary, non-adversarial, informal method involving a third party. In this chapter, we will define mediation within the context of other types of dispute resolution options, and describe how it can be applied to conflicts within the family, specifically between parents and children.

Where did the idea of mediation come from, and how has it developed over time? When people get into disagreements, they usually have to find a way to resolve their conflict. All societies provide ways, some formal, others informal, for disputes to be settled. Depending on the structure of a given society, and its values and institutions, different methods are available. In our own society, many types of disputes are taken to the courts, where the process of litigation is used. Through the application of law, people seek to obtain their rights. This is an example of a formal method of resolving a dispute.

However, when in a situation of conflict, people also may look to informal ways to solve their problems -- ways which are more private, more flexible, and less costly. What, for instance, are the choices for a tenant who is having a fight with a landlord? Or for a mother who can't seem to control her teenaged child? Here are some possibilities:

- 1) Continue or escalate the fight, or else give up
- 2) Ask your friend or sister or uncle for advice
- 3) Consult some outsider who has special skills  
for example - your minister, lawyer, a mental health counselor, a school official
- 4) Ask for someone to intervene  
for example - call the police, find a third party to settle the problem

Not all of these choices are options in every situation. The real choices may be limited by the nature of the problem, the personalities of those involved, and the resources available in each case. The first.

choice is, in a sense, not a solution: it either continues the conflict, or resolves it by default -- someone quits the battlefield. But quitting is not a real choice for people who cannot simply walk out of the conflict situation. The second and third options are similar: you ask somebody to tell you what to do -- in the one case, seeking help from friends or relatives, in the other, looking for some sort of expert. Each kind of expert will apply the perspective and skills of the particular field, each with its own specific approach to problem-solving. For example the lawyer will look at the question differently from the social worker; the minister's advice will be different from that of the school official.

The fourth option is where mediation fits in: you are asking not for advice, but for a third party to intervene. Intervention can be official or unofficial, formal or informal. When you call on the police for help, you are turning to an official and formal justice system. The situation becomes a "case" which eventually may be settled in court according to the applicable laws. Mediation -- like several other types of informal intervention -- offers something else. It is an alternative method for dispute resolution.

Informal intervention by a third party is an approach that has a long history. In societies that are less complex and less pluralistic than ours, informal ways of resolving disputes have long been favored. People living in such societies settle their conflicts by bringing them before a council, or by consulting the elders of the community -- individuals whose impartiality, good sense, patience and concern for harmony naturally suit them to the role of "peacemaker". These "third parties" function in different ways, depending on how their role is defined. The objectives, however, are the same:

- to preserve or restore relationships among people
- to avoid escalating the conflict
- to arrive at a fair settlement.

In our own modern-day society, mediation has come to be used in a number of situations where litigation -- turning to the courts for

remedy -- either is seen to make the conflict worse, or cannot, because of the complexity of the relationships between the opposing parties, really solve the problem. Mediation has been successfully used in areas such as labor-management disputes, neighborhood conflicts, and consumer complaints. Recently, mediation has been found to work well in family disputes, such as situations of separation and divorce, or parent-child conflict. In all these, an informal method is useful, because in each, the warring parties have a mutual investment in some kind of continued relationship; they are part of the same community or the same family; they depend on each other in some way or have some other common interest in working things out.

In Table A, you will see how mediation fits into the array of formal and informal dispute resolution methods. By studying the definitions, you can see how mediation differs from the other methods, and how it is similar, too. The methods each have areas where they overlap, yet each has its own distinctive characteristics.

Note that each of these methods offers a different format for resolving disputes. Except for NEGOTIATION, each uses a third party. However, the role of the third party is defined somewhat differently in each case. The other important variables are the degree of coerciveness in each process, how formal it is, and how the process is structured.

### 1.2. The Characteristics Of Mediation.

Here is a useful definition of mediation in the context of family disputes:

- MEDIATION: a structured but informal confidential process through which members of a family in dispute are helped by trained community volunteers serving as neutral third parties to clarify issues and identify steps to their resolution. Mediation culminates in a written agreement mutually determined by family members, specifying the responsibilities of each for carrying out the points agreed to.

TABLE A.  
DISPUTE RESOLUTION METHODS\*

**NEGOTIATION** An informal process at which no neutral or third party is present. The parties, with or without their advisors, meet and discuss their differences. Options are examined and compromises are discussed until either a resolution is reached or the negotiations are stopped and some other method of resolving the dispute is found.

**CONCILIATION** An informal and unstructured process in which a third party, who has no coercive powers, facilitates discussions and offers a neutral and safe place for the parties to negotiate with each other. A conciliator can arrange for the parties to meet in the same place and/or can serve as a go-between.

**MEDIATION** A structured but informal process conducted by one or more third parties, who operate entirely without coercive powers. The agreement that is reached is designed by the parties themselves. The parties present their point of view and the mediator, working with both sides, actively assists them in designing an agreement that meets both sides' needs. Participation is always voluntary.

**OMBUDSMAN** An investigation carried out by an independent, neutral third party who acts as fact-finder. Fact-finding inquiries usually involve very limited contact with the disputing parties, (for instance, phone conversations, letters, etc.); the ombudsman lacks coercive powers, but may derive authority from his/her position of neutrality. Fact-finding results in a non-binding opinion about the controversy.

**ARBITRATION** A formal hearing is conducted by one or more arbitrators who may be officially sanctioned to reach decisions that are "binding" on the parties. Each side presents arguments with much of the formality of a court hearing. The arbitrator then decides how the dispute is to be resolved. Participation is usually voluntary.

**ADJUDICATION** The most formal method of resolving a dispute. The hearing is conducted by a judge, in a court of law, backed by the state's formal coercive powers. Each side presents narrowly focused arguments within a highly structured format; the judge makes a decision based on case and statutory law while considering existing precedents.

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\*Definitions adapted from mediation materials of the Crime and Justice Foundation, Boston, Mass., and Daniel McGillis and Joan Mullen, Neighborhood Justice Centers: An Analysis of Potential Models, 1977.

This definition embodies the most important characteristics on which the concept of mediation depends. We shall discuss them one by one in this section.

Mediation is . . .

- . . . a VOLUNTARY, NON-COERCIVE process
- . . . which is NON-ADVERSARIAL in nature
- . . . it takes place in a NEUTRAL and CONFIDENTIAL setting
- . . . and the outcome is DETERMINED BY THE PARTIES THEMSELVES.

What does each of these characteristics mean when applied to the parent-child mediation process? VOLUNTARY and NON-COERCIVE means that the family members have chosen to try to resolve their conflict through mediation. They come into mediation because they want to, not because they've been forced. The family has probably been referred by an agency, such as the court or social services. They have discussed the option with a staff member from the mediation project at an intake interview, and have signed a consent form agreeing to participate. (See Appendix A.) In reality, willingness to participate can vary considerably: either youth or parent may have a more, or a less clear understanding of what mediation really is, as well as greater or lesser confidence that the process will really help. Reluctance and doubt are natural, since the whole idea of mediation is unfamiliar to many people. However, the fact that they are willing to give it a try, and that they have consented to participate, is what the mediators then can re-affirm and build upon in the course of the mediation hearing.

NON-ADVERSARIAL means that, unlike what happens in court, mediation does not try to determine who is right and who is wrong. Unlike lawyers or judges, mediators do not engage in questions of legality. The focus is on a given family's own perception of fairness. The aim is to enable the people who are in conflict with each other to reach a resolution, not to impose a remedy according to an abstract idea of equity. Where the justice system causes parties to take adversarial positions, mediation encourages them to see where their common interests lie. Thus the emphasis of mediation is not to determine who is at fault, who is to blame, but to find areas of mutual

concern and make these the basis for reaching agreement. In applying these principles in situations of family conflict, there is an inherent advantage: the family is an organism, and as such, has a deeply-rooted investment in its own survival. Although many families that are in trouble seem to be about to dissolve or explode, the very fact that they agree to participate in mediation shows that there is this investment in working something out. Where some methods of dispute resolution offer a chance for one side to "win", mediation offers all sides a chance to gain at least some of what they want. It is a "win-win" alternative.

NEUTRALITY and CONFIDENTIALITY are fundamental to the mediation process. Neutrality means that the conditions are such that no side can feel either favored or discriminated against. The mediators are unknown to the family members and enter into the process with no preconceived ideas about the situation. The physical setting is neutral too: it is not on anyone's "turf". Mediators enter the family session with a minimum of factual information given them by the staff. Everything that happens during the hearing depends on what the family members choose to tell. This avoids any possible bias transmitted by the staff person, and it gives the participants the responsibility for explaining the situation as they see it. Mediators, by their words and their behavior, constantly re-affirm their neutrality. They make it clear that they are not there to decide right or wrong, or to become anyone's advocate, but to empower the family members to articulate and define and resolve their own issues in their own way. Refusing to be co-opted is one of the challenges of the mediator role -- one which we will examine further in Chapter II.1.

Parent-child mediation poses a special challenge to mediator neutrality. There is a built-in tendency for the young person to view the mediators -- who are after all grown-ups, not kids -- as the natural allies of the parent. To offset this tendency, mediators must be particularly careful to demonstrate respect towards the child and his/her concerns. They must show by their language and behavior that they are immune to the effects of the generation gap -- not by trying to talk like a teenager (which may be perceived as phony or patronizing) --

but by being as fair-minded, serious and honest with the youngster as they are with the parents.

Confidentiality works along with neutrality in making mediation a "safe" situation in which conflicts can be aired and dealt with. At the start of every mediation, the guarantee of confidentiality is stated: that everything which is said within the hearing will remain private. This promise -- which the mediators have affirmed with an oath taken at the completion of their training -- is what makes it possible for participants to be frank about their difficulties without fear that something revealed will be used against them later, reported to any authorities, or made part of any written record.\* Trust is a major element for success in mediation. By their demeanor and by their statements, mediators make it clear that they can be trusted.

The fact that the mediators don't know the family makes it in some ways easier for family members to be open and frank. They are given the chance to describe their situation afresh, to new listeners who have no prior knowledge. And they know from the outset that their contact with the mediators will be limited. (It is a little like the kind of confidence we feel when we talk to an empathetic stranger we meet on a trip. We know they can't gossip among our friends and relatives.) Confidentiality and neutrality thus work together to protect the family's privacy and to enable them to work cooperatively with the mediators.

The main goal of mediation is to reach an agreement between the family members, a written contract that is based on a RESOLUTION DETERMINED BY THE PARTIES. This central principle of mediation distinguishes it sharply from several other methods. In arbitration or adjudication, for instance, it is the third party (arbitrator, judge) who hands down the decision. The role of the mediator is different. The mediator works actively to bring about a resolution, but does not impose one. Various techniques are used and the mediator is very

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\*The only exception is in situations of suspected child abuse or neglect. See Chapter V.2 for a discussion of this issue.

much of an active participant in seeking areas of agreement. These tools, however, are used only to help family members break out of entrenched, antagonistic positions and to foster their ability to discover alternatives. In the end, the family "owns" its agreement just as it "owns" its conflict.

Mediation seeks to empower the family, rather than to cause them to feel more helpless and dependent. Even if a written agreement is not reached, the aim is to have parents and youth leave the session feeling that they have more control of their lives and relationships. In this, the mediation experience is often in sharp contrast to what families have encountered when dealing with courts, clinics, schools and other agencies in "the system". Often, power over their affairs has seemed to be in the hands of experts who are making decisions for them and about them. Their sense of competence is undermined. Mediation seeks to put family members in a position where it is they who have the power to make some changes. Being put in this situation, even when -- as happens -- the actual changes made seem relatively minor, can have a profound effect on how the family views itself. And seeing itself as more capable, less helpless, can then affect the way individuals in the family interact.

### 1.3. What Mediation Is Not.

It should be clear from the previous section how mediation differs from the formal, legal method of dispute resolution and how it is distinguished from other informal alternative ways of resolving disputes. It is important to see, as well, how it differs from other kinds of "help" a family might seek. Because the mediator's role is that of a "helper", people often wonder whether mediation isn't a form of therapy, social work, or advocacy. It isn't.

The role of mediator is fundamentally different from that of counselor or advocate. Counselling means giving advice, enabling another person to achieve insight or change behaviors; advocacy means taking up another's cause or acting on someone else's behalf. How does mediation differ?



- Duration and depth of involvement. Mediation is a brief, intense, but limited intervention. Mediators enter into the family's situation, act as catalysts for change, then leave the field of action. A mediator remains an outsider who for several hours takes a role in the conflict situation, but who does not remain a part of the dynamic. In contrast, in a counselling process or in acting as an advocate, the helping professional expects to build up a relationship and to remain involved over time while the clients attempt to solve their problems.
- Focus. A counselor or an advocate needs to focus on past events in order to discover in detail how the situation developed. An effort is made to form a hypothesis or explanation of "what the problem really is". Mediation, on the other hand, focuses to a greater extent on the present and -- in a special sense -- on the future. An understanding of what led up to the situation is necessary, but the main thrust is to help family members, on the basis of how they view the issues now, to decide on ways in which matters could be altered from now on.
- Expertise. A therapist or a social worker or an advocate are seen as having special knowledge. Their advice is being sought and their aid is enlisted. The help they give is based on a theoretical model and on their training and experience. Mediators, on the other hand (in the kind of program we're describing here) are lay people. Their function is not to diagnose or prescribe or give advice. Whatever their actual occupations may be, within the hearing the only expertise mediators offer is their ability to use the techniques of mediation to help resolve the dispute. Their task is to apply the specific problem-solving skills of mediation to the family's dilemma in order to make a resolution possible.

As we shall see in later chapters, mediation is a method which works best under certain definable conditions. It is no panacea. It is also no substitute for other forms of help a family might need. Thus, while some issues can be dealt with in mediation, others may be more appropriately handled in a different setting, with different helpers. The various kinds of help can best be seen as adjuncts to one another. A family may benefit from mediation, and also need the services of a counselor, a social agency, an attorney. Indeed, many agreements arrived at through mediation include a referral to other types of services, just as other agencies refer families to a mediation program if they see that certain issues could be dealt with using this process.

#### 1.4. Parent-Child Mediation: Special Aspects.

Neighborhood dispute settlement centers have used mediation techniques successfully in resolving disputes between tenants and landlords, between neighbors and between people sharing living quarters. Property and commercial disputes have been dealt with, too, and recently, mediation is used to help divorcing couples work out separation and custody issues in a non-adversarial setting. Parent-child mediation is a new application of the process, based on the same principles and techniques.

Mediation works well in all these situations because the following conditions exist. The individuals in conflict are. . .

- . . . closely involved with one another/have a common interest
- . . . need to find a way to resolve the conflict in order to preserve the relationship
- . . . in positions of roughly equal power.

(Another way of saying this is that mediation does not work well in situations where people do not see the need for a continued relationship -- can quit or give up -- want to escalate the conflict, or are in positions of such unequal power that it is not possible for a fair deal to be achieved in an informal setting.)

How does a family fit these conditions for mediation? A family certainly falls within the first two criteria: its members are closely involved in a long-term, reciprocal relationship to one another, and they usually want to find a way out of the conflict situation which does not destroy the integrity of the family unit. The third criterion, that of "equal power", raises some questions in the parent-child context, since we usually think of parents as having most of the power.

Looking at parent-child mediation and your task as a mediator in the light of these three conditions, some special characteristics and questions become apparent. The members of a family indeed know each other well and are involved in a complex, reciprocal set of relationships. In fact, they are so intimately and deeply involved with one another that you, as mediator, will need to work hard and skillfully in

order to enter into the family system and be effective. It will also take skill to resist becoming a partisan -- to avoid taking sides in the conflict -- because, as we shall see, a family has a great deal of emotional power.

A family comes to seek help in mediation with a strong need to resolve its conflicts -- and to do so in a way that makes relationships better. At the beginning stages of a mediation hearing, family members often seem ready to give up -- the parents may say they want the teenager to move out, the youth may say s/he doesn't care or hates the parent. These feelings are real, and the family's frustration and anger are serious. Yet as mediator you will do well to stick with the premise that if things could be more satisfying for each person, if antagonisms could be lessened, these attitudes could change. Even more than people in a neighborhood dispute or a couple that is breaking up, parents and children are part of a life-long relationship. While it's true that they can separate, the bond is one, whether positive or negative, that endures. Parents and children don't divorce one another, though they may at times wish such a "divorce" were possible. This basic parent-child bond is one fact that makes mediation "inside the family" special. It can work two ways: on the one hand, it enhances the will towards positive change, on the other, it can deepen the disappointment in a relationship that doesn't work. The job of the mediator, then, is to help family members discover ways to get what each of them wants that are constructive and that improve the quality of the relationships.

As mediator, you seek to re-orient the family members in some crucial ways, so that their common interest in settling their dispute becomes clear to them. Every family is of course unique, but families in crisis around teenagers have certain things in common. Generally, the problems the whole family system is experiencing are assigned to the youth who is in trouble. This "troublemaker" is seen as the source of all the stress -- the one who is to blame. Since adolescence is a stressful time in our society for a number of reasons, it is not surprising that the adolescent's personal developmental needs can upset the

whole family's apple-cart. (The family, in fact, goes through a kind of developmental crisis whenever one of its members goes through a significant change. A move, a new job, an illness can cause as much commotion as an adolescent child.) Your role as mediator enables you to shift the focus -- and the blame -- from this individual. By helping the family members work together to resolve conflict, you affirm the integrity of the family. Each individual in mediation comes to see that s/he has a responsibility for asking for changes from the other, and an opportunity to make changes. This re-defines the situation as one in which each individual stands to gain as well as give.

The question of "equal power" is important here. On the face of it, parents and children are in a condition of inequality, with the parents having the legal and financial power. Childhood -- which includes adolescence in this context -- is a different and intrinsically inferior status. Children are considered "minors" and they have neither the rights nor the responsibilities of adults. Basically, they are under the control of their parents. At the same time, the state also exerts control over minors. The educational system has power to keep them in school until age sixteen; the legal system has defined certain behaviors as "status offenses" (runaway, stubborn/incorrigible child, and truancy) which are only considered offenses when committed by minors; social agencies have power to protect them if they are in danger. Given these facts, which define youths as part of a special class which is in significant ways not equal, how can parent-child mediation work?

The "equal power" condition for mediation must be looked at in the light both of the family as a system and of the mediation process. What often brings a family to seek outside intervention is in fact a power struggle. The growing child is challenging the parents' authority. Rules which used to work are useless; parents feel powerless and frightened, and the teenager is confused. In mediation, this reality can be addressed quite directly, as the mediator helps each family member clarify his/her expectations and, if necessary, re-define some rules and responsibilities. Making constructive use of the power

struggle defuses it. Moreover the mediation process, by its nature, helps to offset the seeming inequality between parent and child. The youth is treated as an equal. As mediator, you accord each participant the same kind of respect, listen with the same seriousness to their concerns, pay equal attention to their expressed needs and hopes. The youth is made an active partner in solving the family's conflict.

Does this attempt of mediation to equalize the power between parents and children mean taking authority away from the parents? No. Mediation does not try to re-structure the family system. It works to allow some inner adjustments to happen. Each family has its own deeply held values, its own rules and customs, its own manner of coping. As mediator, you honor the basic premises of each family, and work within these boundaries to foster useful changes. That is to say, you can assist the family in improving and amending a few of its "laws" and "ordinances", but you don't try to overthrow its "constitution". The challenge in parent-child mediation is to create a setting where the needs of each family member are addressed in even-handed fashion. When the agreement is completed, neither parent nor child should feel s/he has given up too much; both should emerge feeling that they have gained. In terms of where power in the family resides, the parents should not feel they have traded away their authority, or been forced to alter the family structure in ways that are unacceptable. Nor should the child feel s/he has come to terms under the weight of parental, adult authority.

#### 1.5. Why Mediation Works, Whom It Works For.

Hearing for the first time about parent-child mediation, you may wonder why it is an effective process. How can an intervention which is so brief affect the problems a family may have built up over time? How can the mediators, as lay people, help bring about significant changes in what are often deeply-rooted conflicts? Wouldn't one of the other, more traditional and long-term kinds of help be more appropriate?

As we've said, mediation does not substitute for other sorts of help. It offers something different -- an intervention which works well for some kinds of families, and some kinds of situations. When the program staff screen in a family for mediation, what are they looking for?

- The family seems to have enough strength, stability and flexibility.
- The youth involved is mature enough to use the process.
- The issues (or some of them) are mediatable.

The family. Although in distress at the moment, it must have the capacity to function and to change. Family members must be able to accept responsibility for their actions, to understand the process, to negotiate, to tolerate some frustration, to deal rationally with emotionally-charged issues. No family member can be so seriously impaired -- physically or mentally -- that s/he cannot minimally meet these criteria. This, however, does not rule out people with serious problems -- such as alcoholism, depression or the like -- as long as they can function within the structure of mediation.

The youth. The child participating in a mediation session needs to be mature enough to understand the process, to be able to articulate his/her concerns, to negotiate, to make a commitment. In practice, the age range is 12 to 18. Children younger than 12 usually don't have the necessary ability to function as separate individuals within the family. Though younger children can be part of the process as family members, it is the teenager in conflict with the parent who takes the active role. Older adolescents, who are near the age of emancipation, are less willing to negotiate or make significant changes as they can consider the real alternative of leaving home. Parents of older teenagers, similarly, are readier to take a "shape up or ship out" stance as they see the time of separation approaching. There is less investment on both sides in trying to work things out.

The issues. In screening a case for mediation, the staff looks at the array of problems and sees that at least some of them can be dealt with by negotiation between the parent and the child. This means that the nature of the conflicts are such that concrete, specific changes made by each individual could help. There are many real issues which cannot be changed by either individual. For example, the family needs a more adequate apartment, a relative is seriously ill, a divorced parent neglects to visit the child. These issues are outside the scope of mediation and help needs to come from other sources. But issues like school truancy, chores, behavior between family members, curfew rules and the like can be addressed in mediation, because parent and child can decide on changes they want, and commit themselves in a contract to carry

out these changes. (More on mediatable/non-mediatable issues in Chapter IV, 1.)

Within these limitations, mediation offers certain specific and unique benefits. The brevity and intensity of the mediation hearing can actually be an asset. It helps a family to focus, it forces people to clarify their concerns. Most families come into mediation with a large, unsorted bundle of grievances. Your job as mediator is to help them sort out this mass of material, and focus in on ways of doing something about certain pieces of it. The way a mediator listens, the way a mediator asks questions and searches for solutions often has a deep effect on the way family members come to see their conflict. Mediation provides an atmosphere of complete attention and respect. Each individual, in the course of the three to four hour mediation session, has ample time to state his/her point of view in a non-judgmental setting.

The fact that you, as mediator, act as a member of the community rather than a professional, has meaning for a family in distress. One meaning is that they are worth caring about, since you -- an unpaid volunteer -- choose to spend this much time and energy trying to help them. Another implication is that they, not some expert, are the ones who can make the decisions which will improve life for their family. You, the mediator, are there to help them discover the resources which they already have, not to impose a solution from the outside. Many families who might in fact benefit from treatment, can accept mediation because it is so much less threatening. For some, mediation may provide a necessary first step towards seeking counselling -- a step in which they can identify the issues for which they need further help, and at the same time deal with those that can be mediated.

The changes made through mediation are characteristically concrete and often may seem minor in the light of the large-scale problems a family may be experiencing. The written agreement is a contract, specifying in behavioral terms what each family member will do in the future. These agreements are not in themselves world-shaking changes. However, the process of reaching agreement can be a revolutionary experience for the family members. Mediation gives people a

new way to deal with one another, a new way to communicate and to get what they want from one another. The experience often brings about a shift in their perception of each other, and it gives people skills that work long after the mediation session is forgotten. The tangible results of the written agreement are only one effect of mediation; there is a more pervasive "ripple effect" that can bring about lasting change within the family system. When a family experiences, through mediation, its own ability to function better -- to communicate, to make decisions and choices, to work together constructively instead of getting locked into adversarial positions -- the family feels healthier and more in control. And each member of the family is nourished by this success.



## CHAPTER II

### THE MEDIATOR'S ROLE

#### II.1. Characteristics Of An Effective Mediator.

People from many different personal and work backgrounds learn to be equally skilled mediators. Certain abilities and qualities matter more than level of education or professional experience. Training in mediation serves to emphasize and refine the native aptitudes different people bring to this new role, and individuals who are selected for training will already have many of these qualities and abilities. What training does is teach a process and help potential mediators become more aware of how to use their skills in a particular setting -- the mediation hearing. The characteristics of the mediator discussed here are not an exhaustive list. Rather, they highlight the skills and characteristics that seem most central to the role.

What "equipment" will you, as mediator, need to bring into the mediation room with you?

#### COMMUNICATION SKILLS--

A mediator needs to be an active listener. You must not only listen carefully, you must show by verbal and non-verbal cues that you are following attentively what the person across the table is telling you. If you don't understand, ask for clarification. Never assume you know what someone means; instead, check it out by asking.

Examples: "Mrs. Brown, when you say, 'He should show more respect,' could you give us an example of what that would be like?"

Or, "When you say, Tess, that your sister's 'a pain' -- can you tell us what she does that bothers you?"

In parent-child mediation, this is particularly important: families speak in a kind of private code. That is, they each know what the word "respect" means within their family -- but you only know its general meaning; you have to learn the code if you're going to be effective in helping them. Often, too, family members themselves are unclear about what they really mean. Through the mediation process, they can be

helped to clarify and define their concerns, and they can become better at hearing what each person is really saying.

A mediator knows how to ask questions. The ability to clarify and sort out the family's central issues depends on this skill. Different types of questions are appropriate at different stages of the process, and your repertoire needs to include a range of questioning techniques, and the knowledge that enables you to use the right kind at the right moment. Throughout the mediation, questions need to be asked in a manner that isn't threatening, in language that is simple and free of jargon, and in a way that encourages a free flow of information. (More on the art of asking questions in Chapter III.)

A further aspect of communication is the ability to process. As mediator, you not only listen and question, you remember and synthesize. You are constantly seeking to make meaning out of the welter of facts, attitudes, and feelings that are being set forth by the family members. Out of the initially confusing or disparate "stories", you must form a coherent picture of the issues and concerns. Then, based on the issues that you've helped identify, you must sort out ways to help the family resolve the conflicts. In order to do this processing, you learn to take brief, but accurate notes of what each person tells you -- notes which enable you to plan with your co-mediator in your breaks between sessions and to use each family member's own terms when discussing their concerns. Another way of saying this is that as mediator, you don't just listen -- you think about what you're hearing.

Good communication depends on the use of non-verbal cues almost as much as it does on language. Mediators need to be aware of how they come across -- your posture, facial expression, gestures, eye contact all convey messages. Likewise, you need to be alert to the body language of family members, so that you can remain tuned in to each person's feelings and underlying attitudes as well as to the verbal content of their communication.

## OBJECTIVITY--

As mediator, you bring into the hearing room all your knowledge, your interpersonal skills, and your experience, but you leave your value system outside the door. You will often be confronted by life-styles and standards of behavior which are different from yours.

Example: Family One may let their 14-year-old stay out on school nights till 12. Family Two may punish their 17-year-old if he's not in by 8 every night. In your own family, you have your own set of rules about curfew, although when you were a teenager, your parents were much more strict . . .

Which is right? A mediator has to ignore the question -- it's not relevant in mediation. What matters is not your idea of what's appropriate, but the habits, rules and styles of each family you deal with.

Objectivity means that your only aim is to find out what the issues are, what the underlying concerns are, what each person's position is on the issues, and how they might find some better way of handling their disagreements through the mediation process. You steadfastly remain respectful and accepting of the family's concerns, their values -- and keep yours out of the picture. This is equally vital whether you perceive the family as "different" from yours or "similar". When you see a family as "different", it takes objectivity to understand their way of dealing with their lives. When you see them as "like", it's easy to over-identify. This can lead to all sorts of mistaken assumptions on your part, and to trying to impose solutions that worked well for you. Remaining objective requires that mediators put aside the assumptions and values which they use in their own lives. The ability to be non-judgmental is probably the most necessary of all mediator characteristics.

## NEUTRALITY--

Neutrality has already been discussed in Chapter I as one of the conditions for mediation. It is also one of the characteristics of the mediator: the attitude of not taking sides reinforces the fact that the mediator is a neutral third party. By their behavior, mediators make clear that they enter the family's difficulties not to advocate for one

side or another, not to judge who's right or wrong, not to impose any solution of their own. Often, a parent or child will, consciously or unwittingly, try to get you as mediator to agree with their position, to express approval or disapproval, to voice an opinion.

Examples: Parent to mediator, "Do you think it's alright for a child to call her mother a bitch?!"

Or, youth to mediator, "Don't you think it's crazy to get grounded for a month just for smoking one cigarette?!"

Each time you avoid getting "hooked" by such an attempt, you demonstrate that your neutrality can be relied upon. This itself helps build trust: if one person sees that you can't be co-opted, s/he can have confidence that the other can't shake your neutrality either. A mediator must not only be neutral -- s/he must be perceived as neutral.

Since mediators are human, it happens that you may feel, privately, that one family member is more reasonable than the other. You may feel -- and at times will -- that a certain parent is much-maligned, that a certain youngster really is a brat, or else that a parent is a tyrant, and so on. Be aware that such feelings are inevitable. As the process unfolds, you may even swing back and forth, taking sides mentally first with one, then the other. It's important to recognize that you have these feelings, that you do at times inwardly take sides, that your sympathies are deeply engaged. Sharing this with your co-mediator during your breaks will serve to identify and so defuse the feelings. This enables you to get on with your job, which depends on your staying outwardly completely neutral. Acting neutral does not, of course, mean being cold or unsympathetic. You need to be both neutral and empathetic.

#### TAKING CHARGE--

A mediator is willing and able to be in control of the hearing. Families come into the setting with much confusion and frustration, disappointment and anger. As mediator, your responsibility is to create and maintain an environment where the emotional temperature can be lowered, where people can think less defensively, and where change can take place. Your first task is to establish the ground rules,

explaining the process and thus reassuring the participants about what they can expect from you and from the hearing. In the course of the mediation, you are at times more active or less active, but you always remain in charge of the process.

Unlike our behavior in social situations, where we generally avoid seeming to assume too much authority, in mediation it's in everyone's best interest for the mediators to be firmly in control of the situation. The eventual success of mediation depends on your ability to create a secure and structured setting where people can feel it's safe not only to air their problems, but to try to make changes in the way they problem-solve within the family. Although it always remains their conflict, and eventually will be their agreement, it is the mediators who manage and guide the hearing.

An extension of the mediator's ability to take charge is the ability to be both tough and persistent. As mediator, you can't afford to give up easily or to be put off by hostility or to back down from unpleasant topics. Again, this differs from our learned social behavior, where it's rude to be pushy or get too personal. As mediator, you have license to ask difficult questions, to be confronting when necessary, and to persist in helping the family open up its bundle of private business. Showing, by your willingness to be persistent, that you're not frightened off by their problems sends an important message to the family. It shows that you can help them overcome their feelings of helplessness and fear in the face of their dilemma. By your "toughness" you demonstrate your belief that something can be done and that you are committed to making it possible for them to discover how they want to go about doing it.

#### PATIENCE AND FLEXIBILITY--

Mediators need a good supply of these two qualities. In the early stages, family members are so embroiled that it's often impossible for them to articulate their concerns or tell you their story clearly. Or they may be so upset and "turned off" that they hardly seem to care whether you understand. The person who goes on at great length and

the individual who answers only in monosyllables equally require your patience. Given the right kind of help and encouragement, each can be persuaded to communicate with you.

At the later stages of the hearing, patience is needed in negotiating a resolution. It's tempting for mediators to cut short the process by offering ready-made remedies. It's hard to remain patient with what may seem like fumbling attempts or oppositional behavior on the part of individuals. You may think you have accurately figured out what the problem "really" is and thus jump to what you see as the perfect solution. Here is where patience counts. It helps, too, to remember that people will only carry out agreements that they themselves have arrived at, based on solutions they themselves have discovered. Feelings of frustrations are natural. Showing impatience, anger or hostility, though tempting, is always counterproductive and inappropriate.

Given their "shopping lists" of issues and wishes, you have to be flexible about which ones to tackle first and how to present each to the other party in the most acceptable fashion. Flexibility is particularly crucial throughout the process. While keeping your goals and your agreed-on strategies in mind, you need to be able to shift focus whenever deadlock threatens. This will vary according to family and situation. Some families, as they get closer to agreement, may "freeze" or retreat to a rigid position they held earlier. If this happens, you may need to backtrack in order to go forward.

Throughout the hearing, your flexibility, your reasonableness can be a model to family members of how people can deal with one another without either giving up their principles or getting locked in conflict. Thus PATIENCE and FLEXIBILITY are not only mediator tools, they also function to demonstrate kinds of behavior which the family can use in the future to get along more harmoniously.

## 11.2. Some Limitations Of The Mediator's Role.

What are the limitations of the mediator's role? Mediation is by nature a brief encounter. Your contact with families is very short and very intense. At most, you will meet with them twice, for an average total of six to eight hours. Your involvement will be short-term. If, then, your sense of satisfaction is dependent on some kind of on-going relationship with people, on seeing the improvements over time which may result from your work, or if you thrive on the feeling of being deeply involved and necessary, you may find mediation frustrating and unsatisfying. Although you will be able to learn, second-hand, what happened to the family after they left the hearing, your direct contact with them essentially ends once the agreement is signed or the hearing terminated.

As mediator, although you have control of the process, and although you have a good deal of influence in working out an agreement, you have no power to make anything happen. One of the premises on which mediation is based, as we discussed in Chapter 1, is that it must be non-coercive. This means that the mediators can neither force a resolution nor enforce any agreement that comes out of a hearing. All you can do as mediator is help the family arrive at the best, most workable set of agreements possible for them. After that, it's up to them to act according to the commitments they've made. The role of the mediator -- in contrast to that of the arbitrator -- leaves the decision-making powers with the family: the family members, not you, are responsible for the outcome, and they remain responsible for carrying out the changes they've agreed to.

Finally, being a mediator is stressful. Some people find they like the intensity of the experience, others will prefer a role that's not so draining. The stresses are built-in and unavoidable. There is the time-pressure -- even three to four hours, which may sound like a long time, is a short period in which to try to sort out problems that may be complex and of long standing. There is the pressure of the strong emotions people bring into the room with them, the sense of crisis. There are the surprise revelations -- often several hours into the

process -- of factors you hadn't been aware of which change the picture you'd been forming. There are your own feelings and frustrations to cope with. And moments of deep confusion, when you don't see any possibility for change or potential for resolution. The combination of stresses is experienced as overwhelming by some people, exhilarating by others.

Being a mediator is not for everyone. Is it for you? This is something you and those involved in your program will have to decide. As we've indicated, it takes a certain temperament, as well as skills and training. Some people who like the idea of mediation find they don't enjoy the reality. Some discover that they prefer to work with family issues in ways which allow them a different kind of intervention. Some find it too hard to unlearn the skills they've mastered in other helping roles. Since all this is highlighted by the role-playing you'll do in training -- in fact, training is often more stressful than actual mediation -- you will have an opportunity to find out how these pressures affect you. Mediation training, however, can be useful even if not applied formally in a mediation program, since there are many times in our lives -- on the job, in our own family -- where we can use some of the mediation approaches.

### II.3. Some Strengths Of The Mediator's Role.

The limitations of your role as mediator can be a source of frustration. They can also be seen as reassuring. You aren't, after all, being asked to undertake a vast and shapeless task -- you have a limited, clearly-defined job. You are not supposed to "fix" this family or take on all its troubles, or worry about them over a long period of time. As a mediator, you enter the situation with a definite purpose and a set of techniques with which to accomplish the task. As we will see in later chapters, figuring out what can and what cannot be done in the hearing and dealing with what's "do-able" is how a mediator helps affect change.

Another advantage of parent-child mediation is rooted in the mediator's status in relation to the family. Community-based projects,



such as the Children's Hearings Project in Cambridge, Mass. (the model we are using for this manual) use volunteer community members as trained mediators. The fact that you as mediator are a volunteer, and a member of the community is important to how the family perceives your role. Research indicates that using people who are not professional mediators -- that is, ordinary people trained to do mediation -- has profound impact on the family's perception of the process. It conveys a message, and the message is something like this: "People in my community care what happens to me and my family. They even care enough to give up all this time without getting paid. This must mean that we're worth caring about." To be able to use this advantage effectively, mediators must of course be scrupulous about confidentiality. Families must know they can trust you not to gossip about their business. Your oath of confidentiality, about which they are reminded at the start of the hearing, and your behavior as mediator throughout must guarantee that you can be relied on to honor their trust.

#### II.4 Team-work

In parent-child mediation, as in other models of family mediation, a team or panel of mediators is used, and a staff person is available, though not in the hearing room, to function as part of the team "offstage". Thus you won't be alone as mediator; you will share responsibilities. (It may occasionally happen that you will do a mediation alone, but this is an exception.) Usually, mediators are paired together for a hearing on the basis of their different skills and knowledge in certain areas or their age group and gender. The principle that a well-balanced team has the best chance of success guides these pairing decisions. The family constellation is another important consideration, with the idea for instance, that a teenage boy may more readily accept a young male mediator as more likely to understand his point of view, that the mother may feel more comfortable with an older female mediator, and so on. Then the team can divide responsibilities in the session to favor these probable alliances. In practice, these alliances won't necessarily develop along predictable lines, yet having diversity in the team is still an advantage for reasons of balance and flexibility.

You and your co-mediator will have been through the same kind of training, which will enable you to work together from the same set of principles and a shared understanding of the process. How each mediator uses the skills s/he's learned is and remains uniquely individual. Each mediator brings not only differing life experiences, areas of expertise or information, but also different strengths and a different style to the process. Working as a team, you learn to use each other's special abilities and competencies. You can support one another, take turns being in the lead, use one another's ideas and strategies. Usually, mediator pairs are not permanent, so at each hearing you're apt to find yourself with a new partner. Working closely with different partners takes flexibility, but is itself an enriching experience.

Team-work has special meaning in parent-child mediation. Because a family is a system, with its own internal laws and dynamics, families bring into the mediation room a tremendous amount of power. This is true even of so-called "dysfunctional" families, who bring not only power but their own brand of chaos as well. Although family members are there to get help, they also unwittingly may close ranks against an outsider. And although they consciously may want to make some changes in the way they interact they will often inevitably try to sabotage any such change. This and other kinds of resistance in mediation should not be seen as "bad behavior" on the part of the family, but as the family's way of protecting itself. As a team, you and your co-mediator can work to offset this tendency, by sharing the tasks of mediation. In effect, you create a mini-system of your own, and this serves to balance the power struggle a little more evenly. It also distributes the stress between mediators and prevents you from getting locked into a family's no-win conflicts.

A further effect of the mediators' team-work is that it functions as a model for the family. By the way you work together, you actively demonstrate how good communication works. You show what it's like when people listen to each other, respect one another, share authority, and arrive at agreements. This certainly does not mean you and your co-mediator have to be perfect: disagreements, missed cues,

interruptions and the like are also ways of modeling workable relationships. You show, in how you deal with these difficulties, how people can handle them constructively and non-defensively.

The other member of the team is the staff person (case coordinator.) S/he is usually the only one who has met the family, has done the intake, and will do the follow-up on the case. Customarily, s/he is on hand during the mediation, and can use the times with family members who are taking turns waiting for their Private Session to further the work of the hearing. The staff member is particularly vital in volatile situations, when someone might threaten to walk out, or when individuals are too hostile to be safely left to wait together. The staff member can keep the mediators aware of the mood of the family members who are outside the room, and can do a lot to keep that mood hopeful and positive. In this way, s/he is a kind of invisible co-mediator.

In mediator recesses, the staff member can take an active role in helping you and your partner clarify the information you've gotten from the family, focus on the issues to be mediated, and develop your negotiation strategy. At the last stage, s/he can help assess how specifically to word the agreement points. Further, the staff member is the person who has specific knowledge and access to other resources, such as social services, for the family. As mediator, you need to be generally familiar with the programs and agencies available in your community so that you can build in some referrals, if needed, when you negotiate the agreement. However, the specifics of which program or which agency, are worked out by the staff member with the family after mediation and are not usually written into the agreement. The staff member's job, unlike yours, includes advocacy, so it's up to her/him to identify the appropriate services, based on the decision a family or family member has made in the hearing, in which they agree to seek a particular kind of help. (More on the topic of referrals in Chap. V, III.)

Now that you have this overview of your role and responsibilities in parent-child mediation, we will take you step by step through the process of a hearing in the next chapter.

## CHAPTER III

### WHAT HAPPENS IN A MEDIATION HEARING

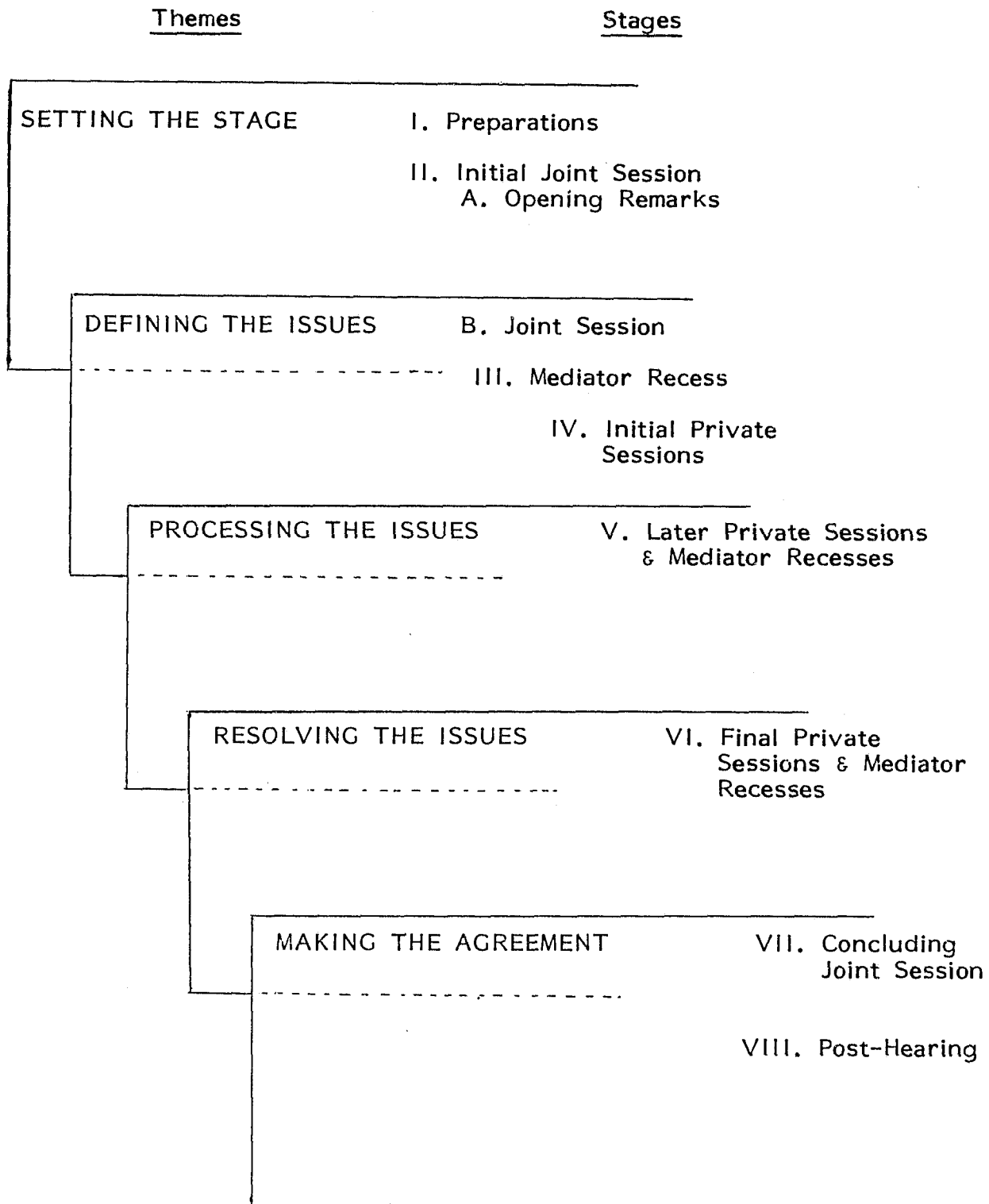
#### III.1 The Process: Step By Step

So far, we have been talking about the general principles of mediation and the role of the mediator. This and the following chapters will take you through the process step by step, showing how these principles and your role as mediator function. A Mediator's Review, (see Appendix B), provides a set of guidelines and reminders for parent-child mediation. You will find it useful during training, and as a refresher before you take part in a mediation. Please turn to the Review now, and read through it carefully before continuing. Take special note of the aims, as defined at the start of each section. The hearing has been divided into eight stages, a sequence of sessions with the whole family and alternately with one family member at a time. Before and between and after these sessions, mediators confer together and with the staff person. This chapter covers the first four stages of the process; Chapter IV is about the next four stages. Throughout these chapters, we will continue to refer you to sections in the Mediator's Review.

Mediation is a highly structured process. It is also an art--but like all arts, depends on a discipline, on its own rules and conventions. Dealing as it does with disorderly and chaotic situations, its success rests on an orderly approach. Thinking of the process in terms of progressive stages, each one with its own purpose, each building on the previous one, is a way of keeping the hearing focused. As mediator, you will find that the clearer you are about what you are doing at each stage of the hearing, the freer you will feel to use your intuition, your personal style to the fullest. A major part of your training will be focused on helping you to learn and become comfortable with the stages of the hearing.

It is helpful to think of a hearing as a play or a symphony having five acts or movements, the themes of which are developed one after

FIGURE I.



other. These themes can be defined as follows\*:

- SETTING THE STAGE
- DEFINING THE ISSUES
- PROCESSING THE ISSUES
- RESOLVING THE ISSUES
- MAKING THE AGREEMENT

As we will show, these themes overlap the hearing stages. Figure 1. is a diagrammatic representation of how themes and stages correspond. The content and aims of each stage will be discussed in the sections that follow.

### III.2 Getting Started.

A mediation hearing really begins before the family even enters the mediation room. Stage I, Preparation, sets the stage for the mediation effort to be as successful as possible. Both your own preparedness for mediation and how the environment is readied have an effect on how the hearing starts. As with so many other situations, first impressions count, and will influence the outcome. As you get ready for the hearing, you prepare yourself mentally, you put on your "mediator's hat". Looking over your Review and your notes for Opening Remarks will help to remind you about the process. You get acquainted with your co-mediator and go over the case information which the staff member has prepared for you. (See Appendix C for sample Case Information Sheet.) Together with your partner, you decide who will take responsibility for which parts of the Initial Joint Session, thus beginning your team-work even before the family is in the room. You set up your materials for easy note-taking, and jot down the details of the situation, so that you can refer to facts without having to stop and look at the case information sheet during the session. You make yourself physically and emotionally comfortable and ready to work.

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\*Adapted from Sheila Kessler, Creative Conflict Resolution: Mediation, 1978.

The environment -- how the room is prepared -- matters too: the physical details of the room provide a series of non-verbal cues to the family about what to expect from you and from the hearing. Mediators sit together on one side of the table, family members on the other. There are enough chairs -- if possible, identical ones -- for each participant; there are writing materials in front of each place. Lighting, heat and ventilation need to be good, and the whole setting should be pleasant and yet businesslike. Your own appearance helps to convey this impression, so you seek to avoid extremes: dressing either too casually or too formally will detract from the effect you want to create. All aspects of the setting should help to set up an atmosphere that is friendly, dignified, and purposeful.

All this is part of SETTING THE STAGE. This theme continues to be the focus during the Initial Joint Session. The family is brought into the room by the case coordinator, and is introduced to you using whatever form of address you've agreed on. It's preferable to use full names, for instance "Alice Conley", or else "Ms. Conley", rather than starting off too informally on a first-name basis.

It's customary for mediators to stand up when families enter and leave the room. This formality shows your respect for the family, and incidentally, contrasts with the situation in court, where citizens rise to show respect for the judge. Parents are addressed as "Mr." and "Mrs.", children usually by their first names. It's worth taking a moment to ask what the youth wants to be called, rather than using a nickname without checking it out. Calling an "Elizabeth", "Betty" when she wants to be called "Beth" can seem to a teenager just another example of adult insensitivity.

Once introductions have been made, everyone is seated, and the hearing proper begins with the mediator's Opening Remarks. These remarks, both in their content and in their tone continue the vital work of establishing atmosphere and direction. Your purpose is both to give information and to clarify expectations. Each mediator will want to work out his/her own style and wording, so that s/he can cover the

points easily and smoothly, without having to look at notes and also without seeming to be reciting something by rote. Remember that although the family has been given this same information at intake by a staff member, they may not have fully understood -- or believed -- what they were told about mediation. Also, different members of the family may have had different levels of comprehension, and probably each individual has added his/her own interpretation to the information they were given. In a sense, families tend not to really take in what mediation is all about until they are in the presence of the mediators they will be dealing with -- you. Thus what you say to them and how you say it in the Opening Remarks is what makes the process real and believable.

Both the language you use and your delivery are central to the crucial first impression. Avoid jargon and make use of ordinary, every-day words and phrases. For instance, say " . . . the situation which brings you here tonight . . ." rather than "your son's school phobia" or "your family problem". Avoid talking down to the family members. Pause between statements, and look at each person, so that you establish contact with them as you talk. Remember throughout that what you are doing, in addition to giving information about what to expect from the mediation process, is creating a setting that is comfortable, serious, yet optimistic, and an atmosphere of trust. The Opening Remarks establish both the ground-rules and expectations and demonstrate that the mediators are in control of the situation.

In Section II-A of the Review, you will find the specific points that must be covered. What follows below is a sample -- how one mediator team might present these points at the start of a hearing. Use this version as a basis for working out your own wording.

John Brown: "Hello. Welcome to the Children's Hearings Project. I know your case coordinator has explained mediation, but before we get started here today, we'd like to go over some points with you, and make sure things are clear.

Mediation is a way to try to make some changes in your situation. It's a voluntary process -- this means you're here because you've decided to give it a try. You're free to try something else if this doesn't work.



Jane and I are volunteers from the community and we've been trained as mediators. We're not going to decide anything for you or try to tell either of you what to do. Our job is to help you explore the situation and come up with some alternatives -- maybe some changes that you agree on, which might make things go better in your family. At the end of the hearing, if you have agreed on some things you want to change we will help write them up, and each person will sign an agreement. The aim we have is to help you come to some solutions that everyone feels are fair. Now, is what I've been saying so far clear? Does anyone have any questions?" (If there are questions, answer them. If not, turn to co-mediator.)

Jane Cross: "We want you to know that we have taken an oath of confidentiality. That means that we've promised that everything that is said here today will be kept absolutely private and that no one outside the Project will find out about anything you choose to discuss. You'll notice that John and I will take notes -- this is just so we are able to remember exactly what you've told us. You have paper and pencils too, in case you want to jot something down while one of the others is speaking, so you won't forget it. At the end of the hearing, all the notes will be torn up. The only document that will go out of the room will be the agreement.

Now I want to describe what's going to happen this evening. First we will all meet together, and each of you will have a turn to tell us what's been going on from your own point of view. After that, we will take a break, so that John and I can talk over what you've told us; meanwhile we'll ask you to wait in the waiting room. Then we'll ask each of you, one at a time, to come back in and discuss things with us some more. We'll take breaks between each session to go over what we've heard. This whole process usually takes quite a while -- it's necessary for everyone to be patient. We want to give each of you as much time as you need. You should expect to be here all evening, and the case coordinator will try to make you as comfortable as possible while you wait between sessions. (Here again the mediator checks whether there are any questions before going on.)

By the end of the mediator's Opening Remarks, the expectations, the atmosphere, and the purposes of the mediation have been established. The mediators' role has been defined and their control of the situation has been affirmed. Now, turning to the family members and asking them to describe their situation, the focus begins to shift to **DEFINING THE ISSUES.**

### III.3 You Listen To Each Side's Story.

During the remainder of the Opening Joint Session, your aims are to gain an understanding of the areas of conflict and hear each person's version of the situation which has brought the family to

mediation. You want to know the facts and circumstances of the dispute, and to get some sense of the range of issues -- the unspoken, underlying ones as well as the ones that are out in the open. At the same time, you want to establish the idea that it's in the family's power to make some changes. Getting a commitment to search for ways to make things better sets the stage for the negotiation that has to take place later in the process.

At this point, in the first session, you turn to one family member and ask her or him to begin.

Example: "Mrs. Prentice, will you begin, and tell us what brings you and Betty here today?"

This is a typical opening question, one which does not focus on the precipitating incident -- such as Betty's running away -- and which is open-ended and non-judgmental in tone. By addressing one family member rather than the group, the mediator sets the expectation that each will have a turn, thus making it clear that the dialogue will be structured, not a free-for-all. Generally, the mediators decide which family member they will address first; this gets things moving with a minimum of hesitation and floundering. Momentum is important, at this stage as well as later on. Asking, "Who'd like to talk first?" tends to make participants uncomfortable and delay the proceedings. Although not a fixed rule, it's often better to have the parent speak first, since the youth may need to size up the situation and may be less able or willing to respond in front of parents and other adults.

The response to your initial questions will vary. Often, there is hesitation and surprise. The family may think, having told the story to a staff member, that the mediators know more than they do. This gives you the chance to explain again that you know only what's on the case information sheet. Thus you make it plain that it's truly up to the family to tell you what they want you to know, to define their issues themselves; you put yourself in the position not of the know-it-all expert, but of asking them to educate you about their situation.

As the family members talk, you assist them by your questions. In this initial meeting, it's important to keep the dialogue well-focused; there will be time for greater detail and more peripheral concerns to be discussed in the later Private Sessions. In your note-taking, jot down specific facts, and specific language. These notes will enable you to come back, in later sessions, to the individual's own phrasing and wording. Active listening is vital. Remember that we speak at a rate of about 125 words a minute, while we can listen at a faster rate and absorb information at about 300 words a minute. Use this extra time to process what you're being told.

While paying close attention to the speaker, you need to keep in touch with the one who's waiting his turn.\* If you've started with the parent, keep maintaining contact with the youth. You can do this non-verbally as well as in words. If the parent is making a lot of negative statements about the teenager, you may see by his expression or posture how restless or angry he's beginning to feel. Reassure him that you will want to hear from him soon. Example:

"I know it may be hard hearing all this being said about you -- just hang in there for a few more minutes -- we're going to give you your turn very soon."

Acknowledging discomfort helps to defuse some of it. However, it's important to keep focused on one person's narrative at a time, and not jump back and forth between family members during the Joint Session. In doing this, you also implicitly reassure the person who's waiting, that he too will have your full attention when his turn comes.

Your questions to each individual should be aimed both at getting out the relevant facts and at clarifying the information given. The language of your questions does much to further these aims. Questions need to be phrased in a manner that is neutral, inviting, and non-threatening. Examples:

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\*For convenience, from now on we refer to the parent as "she" and the youth as "he". We also describe the process as though only two family members are present. Obviously, this is only for purposes of simplifying the discussion.

"Can you tell us some more about what's been happening at home when you and Mary disagree?"

"How do the rules about coming home work? What time do you want Jerry home on week-nights?"

The phrasing here does not imply blame or escalate the sense of conflict. You are not acting like an interrogator, as you would be if you put it: "How often did he break his curfew?" . . . "Why did he run away last week?" . . . "How did you come to call the police?"

Taking these issues a step further towards potential negotiation and settlement, you also begin to probe for ways family members might see to change the situation. Example:

"Do you think it would be a good idea if we could help you and Jerry think about the whole curfew issue?"

This reframes the conflict into an issue that can eventually be resolved. Although sometimes mediators have to work hard to get families to open up in the Initial Joint Session, it can also happen that one individual wants to dominate or needs to ventilate. It's crucial at this point for the mediators to keep control, and to prevent one person from talking too long. Speaking calmly, but firmly, remind them that they'll have time later, in the Private Session, to tell you more. Sometimes the whole family will be near the boiling point when they come to the hearing. They are only too ready to talk, to interrupt one another, to argue. They may even view you as a new audience for their battle and mediation as a new arena. It's not productive to let the family battles be fought all over again in your presence. A bit of arguing or interrupting may give you a useful insight into how family members interact, but it's wise to put an end to it before it gets too disruptive. Asking individuals to speak one at a time, reminding them to take notes rather than interrupt, requesting them to speak to the mediators not to one another, are all good ways to regain control of the session. Hostility can be contagious: remember that you need to remain calm and patient. Your objective is to contain the conflict, not squelch the participants. (More on handling of crisis situations in Chapter V.1)

The youth may be more reluctant than the parent to talk when his turn comes during the Joint Session. However, it is important for each

family member to be heard and to hear one another at this time. If the teenager has trouble opening up, or if he begins by attempting to argue or rebut what the parent has just been saying, acknowledge the situation, and encourage his participation. For example:

"I know it might be hard for you to talk in front of your parents and us. You'll have a chance to tell us more later on, in your Private Session. But we'd like to hear just a little bit about how you think things have been going . . ."

Note that you aren't asking the child to respond directly to what the parent has been saying -- this would just serve to emphasize the disagreements. You are, from the start, looking for ways to emphasize their common interest, to diminish antagonisms, and to restore harmony. Just as you did with the parent, you will ask the youth about "ways in which you would like to see things change". The main interest all family members have in common is the one that brought them to mediation: everyone is unhappy with the state of affairs as it is at present. Getting both sides to talk during the Joint Session is a way to demonstrate that they all do care about the dilemma they find themselves in.

When each of the family members has had a chance to speak, it's time to conclude the Initial Joint Session. The mediators, who will have taken turns in talking with each individual, now check with one another to make sure there aren't any further questions either would like to ask at this session. The participants are thanked and told that you are going to take a short break to talk over what you've heard, before asking one of them to come back in alone. You review briefly areas of common concerns that have been identified so far, and reinforce the expectation that some solutions can be arrived at during the mediation. It's useful to ask them to be thinking, while they wait, about specific ways in which things could change so that life would be better in the household. This "homework" serves several purposes: it shows that you believe in their capacity to find some solution, indicates that they're not helpless, and it focuses on specifics, rather than on the conflict in general. Additionally, it gives some focus to the waiting time, which otherwise might only increase their sense of frustration.

The Initial Joint Session sets the tone for the entire hearing. How it goes depends on your skills as a mediator and on the family's style, level of conflict, and what they tell you. No two sessions are the same, and much will happen that isn't predictable. In addition to the suggestions in the Review and in the preceding sections above, a few warnings are in order here. These are common pitfalls, which can be avoided if you keep your aims for this session clearly in mind.

- Getting co-opted/losing your neutrality. Accept, listen -- but avoid seeming to take sides. Never allow yourself to get trapped into giving an opinion. If you lose objectivity, you lose the trust of the other party.
- Losing focus/jumping around. Try to stick with one topic at a time. Don't switch back and forth between individuals -- hear one of them out -- then turn to the other. Be clear about which mediator is leading the conversation, thus avoiding confusion. Expect that family members aren't going to present a well-ordered, totally coherent story -- you are there to help organize and keep the dialogue focused and moving.
- Premature problem-solving. Refrain from deciding (even in your own mind) what "the problem really is" or suggesting possible solutions. It's tempting, since being witness to a lot of distress makes you want to offer relief, but at this stage, it's counterproductive, even damaging. The only real, durable solutions will come from the family and will be gradually discovered in the course of the later stages of the hearing.

#### III.4 The Mediators Sort It Out.

The Mediator's Recess (sometimes called Break or Caucus), starts as soon as the family has left the room. You will usually need to limit this to about ten minutes, so you and your partner need to work fast to get organized for the first Private Session. How carefully you organize yourselves and make decisions about strategy in your Break times will often determine how well the rest of the mediation goes. Going over the notes each of you has taken in the Joint Session, you compare facts and impressions, identify areas of insufficient information or seeming contradiction. "What did mother say about how school is going?" . . . "What do you think Chris means when she says, 'She bugs me all the time'?" . . . "Where did they say the older sister is living?" There will be gaps in what you've gleaned, and you will not both

necessarily have heard or interpreted the information the same way. Now your task is to decide what you need to know more about, who you want to talk to first, and what lines of inquiry you want to pursue. You will begin to identify issues around which future agreements might be constructed, without, however, closing the door on the possibility that there are some issues you haven't even heard about yet, which may only come in the Private Sessions.

The staff member, having settled the family in the waiting area, comes in to help with your Recess. S/he can give you an assessment of the family's mood and suggest areas for further exploration in the Private Sessions. The staff member may function as a coach, to help you plan the next session, as well as process the information you've gotten so far. You can also use his/her knowledge (of the school system, for instance, or of specific social services) to clarify details of what the family has already told you.

Which individual should you see in the first Private Session? Generally, it's preferable to see the young person first. This is because in the Joint Session it's usually the youngster who has had to listen to a recital about his bad behavior, who thus might see the whole process as just another way for adults to blame him for all the problems. You want to offset any labelling and blaming as quickly as you can. It's also true that teenagers find it harder to wait than do most adults, so it's likely that the parent is the one who can better tolerate the tension of waiting while you go through the first Private Session. On the other hand, a parent who may have felt cut off in the Joint Session, or who displays a great deal of distress, anxiety, or anger may need to be seen first.

What topics, in what order, do you plan to go into? The topics you decide on will depend on the information already given you. However, the Private Sessions are the time to do some wider exploring: what is life like in the household? In school? In relation to friends? To other family members? What are the young person's interests? In planning the session, you don't want to focus in too

closely on the areas of conflict that have already been identified, and you wouldn't, in any case, plan to begin the session around whatever recent incidents of conflict there have been.

Once you've identified the general areas you want to discuss, it's useful to decide how you and your partner will share responsibilities. Each plans to take the lead around certain topics, thus avoiding -- once again -- wasteful floundering or the appearance of not being in control. This kind of pre-planning is especially valuable if the family member is either very reluctant to talk or overly verbose and diffuse. Your plan need not prevent you from responding naturally or being spontaneous: it is not a rigid structure, it's a kind of map that will help you get where you need to go.

### III.5 Finding Out More/Developing The "Want" Lists.

As you begin your Private Session with the first family member, you go further into the second phase of the mediation process: DEFINING THE ISSUES. At the end of the first pair of Private Sessions, you aim to have formed a clear picture of the following:

- the facts of the situation and the parent's and child's perceptions of it
- the main issues around which their conflict needs to be resolved
- what each hopes to get and what each might be willing to give

To arrive at these goals, you need first to open up the dialogue in order to learn more about issues that emerged during the Joint Session and to find out what else may be important to this family member. Next, you will need to gradually narrow the focus, to begin to define and sort out the issues which are mediatable, separating these from other concerns which, though relevant to the family's situation, are not appropriate for mediation, or which cannot be dealt with at this time.

The family member has been ushered back into the room, welcomed, and seated. You'll begin with a reminder about confidentiality, repeating that he can talk to the mediators freely and that at the end of the session you will check out whether there is anything that should not be shared with the others. Now you enter the "opening up" phase



of the dialogue. Since you want to encourage a free flow of information, you ask questions which develop the picture and which invite more detail. At this stage, if an individual needs to ramble, to ventilate, to be diffuse and emotional, it's fine. People come to mediation with a confused (and confusing) bundle of woes and complaints. They usually need the mediators' help in sorting out and identifying the actual issues. Your questioning style provides this help. Useful questions are open-ended ones, where a "yes" or a "no" answer won't do, and they are neutral ones, where no "right" answer is implied. What are some useful "opening up" kinds of questions?

General:

"Are there some other things about what's been going on that you think we ought to know?"

"What's are things like for you at school?"

"What's a typical day like in your household?"

"Tell me a bit about your brother and sister . . ."

Related to earlier statements:

"You mentioned 'arguing' -- can you tell us some more about when you and your mother argue?"

"Can you remember a time when you liked school better?"

Searching for context and history:

"When do you think you and your son began really having a hard time?"

"Can you tell us how things used to be when you lived in the city?"

You begin with areas that are comfortable and non-threatening, in order to establish rapport and get the dialogue flowing. However, there may be areas that it's not easy to get information about, or that are emotionally "loaded". As mediator, you have to ask questions which may make people uncomfortable. You have the right to probe further into sensitive or private matters if they're relevant. Remember that mediation is not a conventional social situation; don't shy away from potentially difficult topics just because it's "not nice" to ask certain questions. It takes tact and empathy to address some issues, but it can be done. A Private Session is the time when you will hear clues about sensitive issues; it's vital to pick up on these, showing the individual that you are really listening, and that you really want to know what's on their mind. Each mediator has difficulty, to a greater

or a lesser degree, in dealing with certain highly-charged topics. You may be afraid of probing into such areas, although it may bother family members less than you anticipate. Your own uneasiness can be contagious. Be aware of issues that tend to shock or alarm you, and work to become more comfortable in dealing with them. Some typical issues that are hard to deal with for many people are alcoholism, drugs, illness and death, divorce, violence, sexual behaviors, religion. How can probing questions be asked in ways that don't provoke defensive reactions?

Difficult questions can be addressed if the language -- and your attitude -- remain NEUTRAL and NON-JUDGMENTAL. Your tone conveys that you are simply seeking to understand. Here are some examples:

- Around a possible drinking problem -- "You said something about Bobby's coming home drunk last week. Has this happened other times? Is it something that worries you?"
- Around separation -- "When was it that your Dad went away? Do you see him sometimes? Whereabouts is he living now?"

Note that these questions are based on information you've already been given or that's been implied. The form of question doesn't suggest that you're looking for any particular answer, and doesn't hint at any approval or disapproval on your part.

"How" and "what" and "when" are typical and useful mediator questions. "Why" questions, which address motives or feelings, aren't as useful in mediation. They usually put people on the defensive or lead away from concrete issues and instances. When a parent has stated, "I think he ought to be more responsible", and you want to find out more about this statement, rather than ask, "Why do you feel he isn't responsible?" you'd ask, "How would he show more responsibility? In what ways do you want him to act differently?" This type of questioning serves to CLARIFY the person's meaning and leads towards a definition of some concrete changes. As the dialogue of the Private Session continues, main issues will emerge more and more

clearly. The issues are what underlie the facts, each person's position, and the current situation. They tend to be embedded in the narrative, and the mediators must sort out which, among the ones mentioned, are most central to each family member, and which can potentially be dealt with in mediation.

By the end of the Private Session with the youth, for instance, you may have identified the following "want list" of issues:

- 
- 1...mother yells at me all the time, especially when she's been drinking
  - 2...school is O.K., but my homeroom teacher picks on me all the time
  - 3...I have to do a lot more chores than my sister does
  - 4...my parents are so rude to my friends it's embarrassing
  - 5...I want to go live with my uncle and aunt
  - 6...it's not fair that they ground me for every little thing
  - 7...I want some money of my own, to spend the way I like
- 

This list is a fairly typical one, jotted down in the order the topics occurred in the dialogue. It exists only in your notes at this time. It remains an informal agenda that you will continue to review and revise. As we will see in the next chapter, some of these issues are workable in mediation, some are not. For the time being, you just accept that they are the main issues for this individual, which you summarize for him before ending the session.

You have begun to create the momentum towards resolution by finding out what ideas and wishes the family member has about ways in which things could CHANGE. Asking him/her to think about changes prepares the way for later negotiation, at the same time suggesting that some things could be altered, and that it's going to be up to each individual to define the areas where changes would be desirable to lessen the conflict. Examples:

-- "Before you go, and we talk with your mom, can you think of some specific ways you'd like things to change?"

-- "We've talked a lot about how the chores are divided in your house--is that something you'd like us to discuss with your mother? How would you like to see things changed?"

-- "It seems that schoolwork is one of the main things you and your parents get into fights about--is that something you'd be willing to work on in this mediation? What would have to change so that there would be fewer hassles?"

Note that you're not specifying, at this point, who it is that is going to do the changing. Not surprisingly, at this stage, each individual is likely to identify changes they want the other person to make; that's alright--in fact, as we'll show, it's useful information to keep in mind for later negotiations.

After checking whether anything discussed in this session is to be kept confidential and not shared with the other party, the Private Session with the first family member ends. The ensuing Mediator Recess is used, as before, for you and your partner to review and think over the information you've gotten. Then, turning to your notes from the earlier Joint Session, you go over what the other family member--in this case, the parent--told you at that time. You prepare for the Private Session with the second family member just the way you did for the first one. What did she say--what more do you want to find out--which topics need to be explored? How will you structure the dialogue--which mediator will take the lead for which topics? Remember that it's vital to start afresh with this family member, putting on the back burner, so to speak, the additional material you got during the other person's Private Session.

In beginning the Private Session with the second family member, be aware that some tension has inevitably been created. The individual has been waiting in another room, anxiously and perhaps impatiently, while you were closeted with the other person, and may wonder what's been going on, what's been revealed. The parent, for instance, may be half convinced that you think her son is a rotten kid and she is a terrible mother. Or she may assume that you've been completely won over to the son's point of view. If it's the youth who's had to wait, he may think that once again all the adults are talking about him and

ganging up against him. Either way, there are fences that you need to mend before going on. You need to welcome the family member, reassure her/him, and re-establish trust. You need to again create momentum and a sense of hope. The quickest way to do this is by expressing the idea that you enjoyed talking with the other family member, that you think what s/he told you was helpful, and that you feel some issues came up that can be worked on. This emphasis on seeing the "other party" as cooperative and helpful paves the way for the reasonableness that makes later negotiation possible.

The aims and the process in the second Private Session are the same as in the first. That is, you want to open up the communication, explore this family member's concerns, identify and clarify the issues. And then you want to begin to create a climate for change. The difference in this session is that you know more than you did when you heard from her/him in the Joint Session. However, you do not make use of this knowledge until the parent -- in the example we've been using -- has had a full and equal chance to tell you how she views the situation. While she does so, you'll keep track mentally of areas where interests seem to coincide, as well as of those where there are major contradictions and opposite opinions. However, it's not useful to get hung up on minor discrepancies or to try to pin down details that aren't essential. It's only natural for people to see or remember events quite differently--especially so in a family that is experiencing a high level of conflict. As mediator, you will need to develop a goodly tolerance for ambiguity!

When and how do you use the information -- contradictory or otherwise -- gathered from the first Private Session? Never to challenge, always to clarify. An example would be: the parent is talking about Jimmy's "sloppiness" and how he won't do his chores. You want to show the connection with Jimmy's issue about "getting yelled at". You would say, "Mrs. Brown, Jimmy told us chores were a problem too -- he said this is one of the main things you get into disagreements about." This TRANSMITS Jimmy's concern, and it emphasizes the COMMON INTEREST of the parent and the teenager. Note that it

wouldn't work as well if you put it in a more loaded way, for instance, "Jimmy thinks you expect too much" or "He feels you're always scolding him". These statements, while true to Jimmy's point of view, would only serve to escalate the conflict. Your aim is to transmit the information in a manner that will defuse some of the antagonism. This is done by re-framing it in such a way that it emphasizes their common interest. Even though their points of view may be quite far apart, you are reinforcing the awareness of shared concerns.

What about a concern that's been brought up by the first individual, but doesn't come up -- or seems of minor importance -- to the other? Such issues must sooner or later be discussed, and the latter part of the Private Session is a good time to have them put out on the table. For instance, a teenager thinks she is entitled to have her own house-key. The parent hasn't identified this as an issue. You can say, "Jenny told us she really would like her own house-key. Is that something you'd be willing to discuss?" Similarly, whatever issues the parent brings up in Private Session must be transmitted to the child in his/her next meeting with the mediators. For instance, the parent is worried about the youth's use of marijuana. Jenny has not mentioned the subject. You would open up the topic with her in Private Session by saying, "Your mother said she's very worried about your smoking pot. Let's talk about that a bit..." In addressing these topics, you are not expressing any opinion or implying any judgments on your part. You are relaying each person's concerns in a neutral fashion.

By the end of the Initial Private Session with the parent, you will have developed your second "want list" of issues and be ready to ask for suggestions for changes that might be made. Don't expect that the parent's issues will look much like the youngster's. The parent's concerns might come out as follows:

- 
- A...he's got to stop cutting school
  - B...he must pick up his room & do his share of chores
  - C...I have too many troubles of my own right now to put up with his bad behavior

D...I think a boy of 14 ought to be in the house by 8 p.m.

E...he should show respect & stop using foul language to his  
parents

F...his friends are a bad influence

---

Now look back at the list of concerns that emerged from talking with the hypothetical teenager, and compare the two lists. Can you see any areas of overlap? Can you begin to imagine how some resolution might be negotiated? Are all the issues "do-able" in a mediation? These are the questions which we'll address in the next chapter. At this point, we have gotten through the first two themes in our outline of the mediation process: SETTING THE STAGE and DEFINING THE ISSUES. Now we are going to examine the next ones, PROCESSING THE ISSUES and then, finally, RESOLVING them.

## CHAPTER IV

### WORKING TOWARDS SETTLEMENT

#### IV.1. Assessing Where You Are.

You have reached the end of the Initial Private Sessions. What has taken place so far? What happens next? Up till now you have been engaged in SETTING THE STAGE and DEFINING THE ISSUES. The mediator team has developed rapport, created a setting and established ground-rules and expectations. The family has described its situation to the mediators, first in the Joint Session, then in more detail during the individual Private Sessions. The mediators know what the main issues are which are currently contributing to the family's conflict, and they know to some extent what the different positions are on each issue. You and your partner have, at least temporarily, become a part of the family system. You know something of the family's history and its style. The family members have been helped to clarify their main concerns and have been asked to try to think about specific changes that would make things better.

At this point the direction of the hearing begins to shift. The focus changes first to PROCESSING, then to RESOLVING THE ISSUES. The mediators' role shifts, too: away from fact-finding, towards problem-solving. As you now meet again in a Mediators' Recess and go over the tentative lists of issues you've elicited from each person, you begin to speculate on possible ways for the family to reach agreement. The focus now is on sorting out and thinking creatively, and your strategy is planned around how to resolve the issues through negotiation. This is probably the most difficult phase of mediation because of the often bewildering amount of material you've gotten, and because, by its nature, family conflict presents you with such an interlocking web of difficulties. Thus it is at this point that mediators need to think through the direction they want to take with the greatest care. Good planning can avoid an impasse at a later point.

The first step is to think through which of the issues can be dealt with in mediation. Remember that not all areas or concerns can or



should be addressed in a hearing: the task of mediation is a limited and defined one. It is useful to think about the issues in three possible categories. The issues are either . . .

- . . . appropriate for mediation and "do-able"
- . . . appropriate, but not "do-able" at this time
- . . . not appropriate for mediation

Let's look at examples of each of these categories.

Appropriate and "do-able" issues are the ones which are of concern to both parent and youth -- often those that are identified as being the main causes of the current dispute. Also appropriate are issues which one of the family members sees as important, and which involve the behavior of the other party, even if they don't give the issue equal weight or importance, as is often the case. Typically, in parent-adolescent conflict situations, the concerns cluster around some of the following topics:

- school-related behaviors
- parental control (curfew, rules and expectations, etc.)
- relationships (parent/child and child/siblings)
- friendships with peers (activities, choice of friends)
- sexual activity
- chores and responsibilities in the home
- alcohol or drug-related behaviors (either by parent or teenager)
- access to money or other goods (family car, house-key, telephone, TV)

It is important to note that the presenting problem may be labelled as "truancy" or "runaway" or "stubborn child" -- to use the terms of a court complaint -- whereas the actual issues that come into focus during the mediation are likely to be the ones listed above.

Issues that are appropriate for mediation, but not "do-able" can be so defined for several possible reasons. 1) There may be too many issues to deal with at one hearing, so that some must be set aside. This means that the mediators have to decide, based on the relative urgency of the concerns and their guess as to which are going to be most negotiable, to work on some issues while omitting or postponing others. 2) There is -- at this time -- insufficient information about a given issue. 3) The conflict includes, to a substantial degree, a

person -- other family member, a school representative, etc. -- who is not present at the hearing. It isn't feasible to work out an agreement if it involves a change to be made by someone who isn't there as part of the negotiation. In such a case, it can be useful to suggest a second mediation, and include this necessary, other individual to work on the relevant issues. Examples of such issues could be:

- brother who is major source of friction but not present at the hearing
- school program seems a problem but it's not clear whether there is an alternative

Issues that are not appropriate for mediation are ones where no kind of contract between the parent and the youth will resolve the difficulty. This does not mean that there's no issue, just that mediation is not the right place to seek relief. Examples of such an issue would be:

- grandmother is very ill, mother is preoccupied with her care
- family's housing is inadequate and this causes tensions
- youth misses her best friend, who has moved to another state
- divorced parent refuses to pay child support or make visits

There are ways, in each instance, that a third party might be able to help with these concerns; the important thing is to recognize that a mediator is not the right kind of "helper", and that mediation is not a suitable forum. What you, as mediator, can do in connection with such an issue is first to acknowledge that it exists and that it's important, next to define it as one that could be helped in another context, then to suggest -- if it seems feasible -- how to use the resources of the program to find the services that would be appropriate.

Having sorted out these different types of issues, you are now ready to begin figuring out how to deal with the ones that are "do-able". Going back to our imaginary case, as discussed in Chapter III, let's see how that family's issues would look by the end of the first pair of Private Sessions. Figure II. shows their issues in diagram form.

FIGURE II

SON'S ISSUES	PARENT'S ISSUES
1) Mother yells at me, especially when she's been drinking	A) son must attend school
2) school's OK but homeroom teacher picks on me	B) son should pick up his room and do his share of the chores
3) have to do more chores than sister does	C) too many troubles of my own to put up with his behavior
4) parents are rude to my friends; it's embarrassing	D) son should be in the house by 8 p.m.
5) want to go live with aunt and uncle	E) son should show respect to parents and not use foul language
6) not fair to be grounded for every little thing	F) his friends are a bad influence
7) want some money of my own to spend as I like	

Note: the numbers above are just for convenience; they show the order in which the issues came up in each Private Session, not necessarily the order of importance for each individual.

In analysing the two lists of issues, you can see some overlapping interests -- areas where the concerns of mother and son are connected. These can be summarized as . . .

- . . . how they treat one another ("yelling", "respect", etc.)
- . . . school ("teacher picks on me", "must attend")
- . . . chores ("have to do more than sister", "should do his share")
- . . . friends ("a bad influence", "rude to my friends")
- . . . rules ("being grounded", "in the house by 8" etc.)

These overlapping issues now can be dealt with by showing the family members that they each share the issue, while at the same time acknowledging that their perspectives may be quite different. The mediators re-frame the issues to emphasize how much the family agrees on the issues, so that it then becomes possible to work on the dis-agreements in the positions. Ways you can express this idea in your later Private Sessions with each individual would be to say:

"You are both concerned with how you are treated by the other . . ."

"Mrs. Parent, Nick agrees that he should do some chores . . ."

"The issue about when Nick is to come in at night and what happens if he's late is something you're each interested in working out . . ."

"Nick, both you and your mother are concerned with your friends . . ."

What about the issues in the other categories -- how do they come in? At this point, you won't know enough, perhaps, to make definite decisions, but you can make some preliminary guesses. You can guess, for instance, that son's #5 issue -- wanting to go live in another household -- may be his way of expressing how frustrated he feels. Although you may need to spend some time exploring this wish, and seeing if it's realistic, you would mostly try to focus on the present living situation, and see if there are ways tensions could be lessened. You'd use this wish as a springboard to ask, "What could be different at home so that you wouldn't need to move out?"

Son's #3 issue involves the behavior of his sister who isn't present. It may be possible for mother and son to work out some of the issues around responsibilities at home, or it may turn out to be necessary to ask them to invite the sister to come to a second mediation, so

that all three can find a better system. As to mother's issue C -- her feeling that she has too many troubles of her own -- it's impossible, until you explore further, to be sure whether this is a mediatable issue or not. If there are significant aspects of her distress which come directly out of the son's behavior, it could be a mediatable issue. If what is causing most of the upset is extraneous to the parent-child relationship, then an intervention of another kind may be called for. The guiding principle here is: mediation can only work on issues that can be dealt with directly by the family members who are present at the mediation.

#### IV.2. Settlement Techniques.

In Figure II, you have seen that there are some areas of overlapping concern, others where the concerns, though not identical, can be linked, and some that are important just to one individual. In working towards a settlement, you need to use the connections between each set of issues. Any agreement will have to be based on the concept of COMPROMISE -- though the word "compromise" is one that's not used during a hearing, since to many people it sounds like "giving in". In the discussion above, we have shown how the two sets of issues might be linked. Using these links, the mediators now work to develop trade-offs which address the problems as the family members see and define them. In this process each person will gain as well as give a little.

Underlying the idea of compromise is the concept of FAIRNESS, one which is central to the philosophy of mediation. We assume that people have personal standards for what is equitable, a sense of fairness that can be called upon, and that it's possible to help individuals use this to rise above their own immediate self-interest. As mediator, you help people to moderate their insistence on their own needs and rights, in return for the satisfaction of acting in a fair and generous manner, in the interest of greater harmony. Naturally, any given family's idea of "what's fair" will be characteristic of that unique family. As mediator, you'll sometimes be astonished at the bargains people will propose and agree to live with. However, since it's their

solution that's most likely to work, you refrain from arranging matters to suit your idea of what's equitable. Your only responsibility is to make sure that what they arrive at is feasible in a practical sense, and to protect each individual from entering into a contract that would be either unrealistic or destructive.

The family enters mediation because they are stuck. In the later stages of a hearing, it's your skill in building the will to negotiate which moves the family away from the stalemate they've become locked into. As you meet alternately with the parents and the youth in the Later Private Sessions, you actively negotiate around each of the issues that have been identified. Between sessions, you continue working as a team to clarify the potential resolutions that develop. The skills of negotiation are what make it possible for the family to move from stalemate towards settlement. In the following section, we examine what some of these skills are, and how you apply them.\*

- IDENTIFY & CLARIFY THE ISSUES. The mediators sort out the central concerns of each party from the mass of the story each has told. They label each important issue, thus separating it from all the rest. They re-frame the issue, if necessary, in terms that make negotiation possible. This then focuses the energy on the areas that will be dealt with in mediation, highlighting and isolating the "do-able" issues.

Example: Both mother and son have talked about his friends. This has been identified as an issue each is concerned about. Mother sees friends as a nuisance and source of stress when they visit the house, and also worries about those she hasn't met as a bad influence. Son resents how parents treat his friends and wants the freedom to choose who he goes around with. By re-framing the conflict around friends as an area where each wants something to be changed, you can begin to help them define exactly what sorts of changes would lessen the tensions.

- FIGURE OUT PRIORITIES. By careful listening and checking back over their notes, mediators gain an understanding of what is most important to each family member. The family's priorities may be quite

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\*Adapted from Joseph F. Stulberg, Citizen Dispute Settlement: A Mediator's Manual, for the Supreme Court of Florida, 1981.

different from what you expect -- or from what yours would be if you were in their shoes.

Example: Son mentions that he wants some spending money. This doesn't come up at all in your interview with mother. But it turns out that this issue matters deeply to the adolescent, and no agreement which fails to address this need will be acceptable to him. On the other hand, mother's most important issue is about his school attendance -- a matter that he doesn't see as central. The agreement must address the school issue if it's going to satisfy the parent.

Priorities among individuals almost never match exactly. Each person has a different idea of what's most important. It is the mediators' job, however, to make sure that all the most important issues for each person are addressed in one way or another: either dealt with directly at some point in the mediation, or acknowledged and set aside for either a later mediation or another setting.

You also set priorities when you decide how to order the issues that are to be dealt with. In most instances, it makes sense to tackle them in the order in which they will be most workable -- not necessarily in the order of relative importance. This is effective because you are trying to create and maintain an atmosphere of success, a climate of agreement. Thus you would choose to talk first about those areas in which you think people are least in conflict, then move on to more problematic items. This serves to create a momentum for change and a feeling of hopefulness about each person's willingness to compromise.

- DEVELOP TRADE-OFFS. Mediators get to know what each person wants and so are in a position to practice a kind of shuttle diplomacy, transmitting information between the parties. They can actively suggest possible ways in which each individual could get satisfaction, at the same time suggesting what each might consider giving up in order to gain something. In proposing hypothetical solutions of this kind, you do not try to tell people what they "should" want or do; your aim is to offer creative ideas which will help them find ways out of their dilemmas.

Example: Having heard what both mother and son say concerning chores, you might ask the son, "What if your mother gave you a

list of the things she wants done each week and agreed not to hassle you about them the rest of the time?"

Or, around the same issue, you could propose to the parent: "What if John agreed to do three jobs around the household -- which three would you most like him to be responsible for?"

It's also possible to propose an idea which links up two issues that are related. Thus (to the son), "Your mother says she'd be willing to let you stay out later on some evenings if you'd be more responsible about doing your chores. What do you think would show her that you want to act responsibly . . .?"

Note that in each of these suggestions, the mediator stays close to what each individual has already brought up; the suggested remedies are not something foreign to how family members already manage their daily lives. This is where your objectivity as a mediator is vital: you must tune in to the family style, its values, its customs, otherwise your proposals will be rejected as alien to their ways. In suggesting trade-offs, whereas you can offer some general proposals, you must leave the specifics up to the family to define according to what they perceive as fair and workable.

- STRUCTURE THE COMMUNICATION. Families in trouble usually have difficulty communicating what they want to one another. Anger, frustration and distress create so much static that people cannot hear each other. Having first helped to clarify what each wants, mediators work to transmit what each person is trying to say, by taking the messages back and forth between parent and young person. Often this means translating the messages into less emotionally-charged, more neutral terms. (This, incidentally, is a sound reason for having the main part of the hearing take place in private sessions, rather than dealing with the issues with everyone in the room.)

Example: The adolescent tells you, "My mom always yells at me in front of my friends as if I was 6 years old. I hate her." In transmitting this to the parent, you'd say, "It really seems to bother your son that you're critical of him when his friends are around. Can you think of a way this could change so he'd be less upset?"

Here you are giving the message, but in a way that won't further aggravate the hostilities. Whereas, as a general principle, you want to use the participants' own words, when you're trying to transmit this



kind of message, it is more productive to change the wording in order to lessen conflict and defensiveness. Here you are de-emphasizing the strong negative feelings in order to focus on what the son wants, that is, to have his mother stop embarrassing him in front of his friends. You are also opening up for her a choice -- to act differently -- rather than just stating the boy's point of view.

Grouping together issues that are related is another way mediators structure the negotiation process. The family members often are unable to see how inter-related their concerns really are. When you emphasize the connectedness between issues, you demonstrate that individuals have a lot of common ground under the apparently conflicting positions they've taken. This means identifying for them areas in which their interests -- although not their positions -- are the same.

Example: To the son -- "You both agree you don't like the fighting that's been going on lately. Your mother has told us she hates having to ground you so often. And you've told us how badly that makes you feel, too. It seems that the two main things you fight about are the chores at home and what time you come in on the nights you're out with friends. What if we could figure out some ways things could go differently around these two things . . .?"

Here you are first identifying the issue both are concerned about -- fighting. Then you are transmitting mother's desire to change one of her ways of responding to the son's behavior -- grounding. At the same time, you connect that to the son's wish not to be treated this way. You name the two areas of maximum conflict -- chores and curfew hours -- and propose that these be worked on, with your help, by both.

Sometimes, on the other hand, it may be necessary to identify an issue as one both sides are concerned about, but set it aside for the time being. This is a question of judgment: you do it when you think that it's an issue where deadlock is likely. Rather than sacrifice progress in other areas, you choose to avoid dealing, at least for the moment, with an issue where positions seem too far apart and where agreement is going to be very difficult to reach.

Example: To the parent -- "Emmy's friends seem to be very important to her, and you are worried about this boy she's been seeing. It looks like you two don't really agree about this right now. Why don't we see if there are some other things you can decide about first, and then we can talk about it some more . . ."

You may eventually be able to come back to deal with this issue, but you may also not be able to. What you have done here, however, is to separate it out from the other issues, acknowledge its importance, and clearly set it aside. Later in the mediation, you can return to it, either postponing it to a second hearing, or acknowledging it openly as an unresolved issue. Such unresolved issues, if not swept under the rug, can sometimes be dealt with by the family outside of mediation, based on what they've learned in working out some of their other disagreements within the mediation.

- BE WILLING TO TAKE A STAND. In Chapter II we discuss how mediators need to assume control of the process, and how, at times, this can mean acting in an authoritative (though not "authoritarian") fashion. In the later stages of a hearing, you may have to switch from being a kindly, supportive listener in order to move the process towards resolution. Your purpose remains the same, though your technique changes. Just as, in the fact-finding stage of mediation, you need to ask probing questions that can make people uncomfortable, in the problem-solving stage you need to be able to confront and persuade and challenge when it's appropriate to do so.

Mediators, when faced with unrealistic demands or inflexible positions on the part of a family member, need to act as "agents of reality". This means that you confront the person by questioning the position they're taking on a given issue. You challenge the feasibility of what they propose not, it should be noted, their "right" to want this solution nor their values.

Example: A parent insists that her daughter must absolutely be in by 5 p.m. every evening. You might say, "Mrs. Brown, we realize how strongly you feel about having Emily home in the evenings. But she's told us that she really wants to be able to be on the basketball team -- practice isn't over till 5:00 -- so how is this going to work?"

Or, the child insists that she will leave home and live on her own. You could point out, "Is that really possible? How would you manage? Where could you live and how could you realistically support yourself?"

Another type of confrontation is helpful when a parent or child begins to stall or back away from agreements that are nearly in place -- something that can happen as people suddenly realize that they're giving up some position they'd previously been holding onto with all their might. At such a point, the mediators can remind the individual of the consequences of not reaching any solution in the hearing. This concept has been termed BATNA, an acronym for the question, "What's your Best Alternative To A Negotiated Agreement?"\*

Example: To a parent who becomes unwilling to make any concessions. "You came here today because you want Ellie to stop running away from home. She's made it clear that she needs a bit more independence. It looks like you'll have to find some ways to ease up on the rules, or she'll probably keep on running, and you'll just end up in court again."

To an adolescent who is relentlessly negative and says, "This isn't going to work -- I'm going to leave." Mediator: "Yes, you could do that, but you're here now and we've all been working hard, so maybe you could hang in a bit longer. If you leave, things will probably stay as they were. And besides, you will have lost a chance of getting some of the changes that you really want."

From the above examples, you can see that it is alright for you to be assertive at certain moments. Persuasion has its place in the mediators' repertoire, though it must be sparingly used and never in the earlier stages. In these later stages, however, you do lead and guide (but not coerce) the family in the direction of negotiating with each other and reaching agreements. This means taking an active role in keeping the momentum going, in searching out possible solutions, and in persuading individuals not to give up trying.

By the time you reach the settlement stage of the process, several hours will have elapsed. Family and mediators alike will be tired and may feel discouraged. It is crucial for the mediators to show leadership and optimism. Emphasizing even small gains, pointing out progress

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\*Roger Fisher and William Ury, Getting to Yes, 1981.

made, and praising each person for the efforts s/he is making are all ways that are effective in maintaining the will to settle. It is at this time in the process that you may need to muster up your own patience, too. In the face of what seems like stubbornness and hostility, it is easy to get angry. As a human being, you're entitled to feel anger; as a mediator, you must refrain from showing anger. You can vent your feelings during your breaks -- this is a good way to use the team for support -- so that during the negotiating sessions you can remain calm and constructive.

#### IV.3. Getting To A Settlement.

In the preceding section, we've discussed the principles mediators use to negotiate towards an agreement. Let's now return to the process -- the actual mechanics of the hearing stages where these principles get applied. After the Initial Private Sessions, you can expect to meet alternately with each person for two or three further sessions. The earlier ones may again last anywhere from fifteen to forty-five minutes; later sessions, where you are ironing out the details of specific agreement points, may be quite short. In between every meeting, you and your partner will take a break to plan and review what's happening. These times, though they may get briefer, remain crucial: you must continually revise and clarify for yourselves the progress that's being made on each issue, so that the shape of each agreement point becomes steadily clearer. As negotiation continues, each issue begins to crystallize. You sum up for each family member as you go along, identifying the issues that have been discussed and reviewing the tentative resolutions that have been arrived at.

Example: "Patty, we've talked about quite a few of the reasons you and your parents have been having so many hassles. You'd like us to talk to them about letting you go to your friends' parties, and you've agreed that if you did, you'd call home so they'd know where you are. You've agreed that you will do the dishes three times a week. You'd like your mother to agree not to go through your bureau drawers; we'll talk about this with her. You've agreed that you want to be in school, but there needs to be some kind of system to help you get up and organized in time in the mornings. That's something you could think about now, while we talk some more with your mother. Is that O.K.?"

This summing up makes it possible for both you and the family member to know clearly what's settled and what's still left to work out. It also defines which issues you will bring up in your meeting with the other party. Note that you are not promising that any decision will come out exactly the way the individual would prefer it -- what you are promising is that you will faithfully transmit this person's point of view, and try to find an acceptable solution.

It is during this phase of negotiation that it's in the mediator's power to help people see one another as reasonable. Often, each individual thinks the other is hopelessly rigid, and can hardly believe that any concessions at all will be forthcoming. This perception is strengthened and exaggerated when people view making concessions as "weakness". In mediation, it's possible to structure the communication in such ways that being reasonable is advantageous: what might have seemed like "giving in" turns out to be a welcome way out of a hopeless bind. For instance, the parent in the case above, hearing that Patty is willing to do the dishes, go to school regularly, and call home when she's out in the evening, will probably react with surprised pleasure. (Patty, we're assuming, has been running away, avoiding school, and refusing to do anything her parents ask.) Hearing how cooperative her daughter is being will make it easier for the mother to make some concessions as well. This is what is meant by building the will to settle.

By the end of several rounds of Private Sessions, the agreement points around each issue will have emerged. The final task -- which belongs principally to the mediators -- is to put these agreements into specific terms so they can be written down. For illustration, let's go back to the issues that emerged from the hypothetical case we used in Chapter III. (See Figure II on page 51.) After several hours of work, you've arrived at agreements which address the following issues:

- SCHOOL ATTENDANCE
- CURFEW TIMES & CONSEQUENCES FOR LATENESS
- CHORES
- FRIENDS

- RESPECT/MUTUAL CIVILITY
- MOTHER'S PERSONAL PROBLEMS AND STRESSES
- SON'S NEED FOR MONEY
- SON WANTS TO MOVE TO UNCLE'S HOME

As we saw earlier, these issues were viewed differently by each. Mother and son placed different priorities on the topics, blamed different causes for the conflicts, and some issues were only of importance to one of the individuals. Following the general principles outlined in Section 1 of this chapter, you have explored the issues and determined that some of them need to be eliminated or postponed for the time being. This decision comes about through the Later Private Sessions with parent and youth. In this case, three issues are involved:

- son wants to move out (#6): this is acknowledged, but eliminated, since he is willing to try to keep on living at home, given certain changes.
- school issues (#2 and A): since it turns out he wants to transfer to a different school and nobody knows if this is possible, the issue is set aside for a later hearing, or may be resolved outside of mediation. The case coordinator is informed, for follow-up help if needed.

The remaining issues are joint concerns, and you have negotiated agreement points which address each of them. The agreement points reflect the fact that there are linkages between the issues, and these connections have been clarified and discussed with the family members. Each agreement point however, addresses one issue at a time. Specifics have been worked out verbally with each individual in private. In your final Mediator's Recess, you put them down in written form.

#### IV.4 Writing The Agreement and Ending The Hearing.

There is an art to writing agreements. Each point must accurately reflect what the participants have said they are committing themselves to do. In addition, the language has to be concrete, clear and appropriate to the situation. Here are some guiding principles about agreement-writing.

**BALANCE** -- The agreement must seem fair. Responsibilities are evenly distributed between each person. Each family member gets something and gives something.

CONCRETENESS -- The contract is made in terms that are specific and limited. Changes that are agreed to are expressed in behavioral terms, not in generalities.

NEUTRALITY -- The wording does not imply blame. Emphasis is on the future: what each will do to alleviate the situation. In order to minimize potential friction, one agreement point is not made strongly dependent on another. "If he does that, I'll do this .." kinds of agreements can lead to further cycles of blaming.

REALISM -- The agreements are such that they can be achieved. They are not written as though they were to last forever, but so that by making a series of small changes, more fundamental shifts in the family's ability to resolve their problems can develop.

Using our same hypothetical case and the issues that have been identified, this is how a draft agreement might look. To help you understand the thinking behind each point, we have added comments.

#### AGREEMENT

1) Mrs. Parent agrees to allow Nick to stay out till 9:30 p.m. on week-nights up to three times a week. Nick agrees to let his parents know where he is if out after supper. Weekend curfew times will be worked out each week by discussing the matter on Fridays.

Comment: Wording the curfew issue this way honors the parent's need for control while relaxing the rules. It builds in the idea of continuing to negotiate around this matter. It could have been worded so as to emphasize the son's cooperativeness, for instance "Nick agrees to be in by 9:30...etc." The choice depends on your understanding of the family dynamics, and on the need to make a balanced agreement.

2) Nick agrees to clean his room at least once a week, without being reminded and to put out the trash Tuesdays before leaving for school. He also agrees to wash the supper dishes 2 evenings a week.

Comment: This structures the chores issue in a way that can affect the other discipline issues (being yelled at, being grounded) by removing it from the conflict between parent and adolescent. It gives the son a sense of control over what he does to contribute to the running of the household.

This does not address the boy's complaint about the sister's chores. If this were central, it would be necessary to have the sister present at a second hearing. You could, however, put in another agreement point that would say, "Mrs. Parent agrees to speak with Alice about specific chores she could do so that the work is shared fairly between the children."

3) Mrs. Parent agrees to pay for Nick's clothing and his school supplies. She will help him find baby-sitting or yard jobs in the neighborhood, and will pay him for raking the leaves or shovelling snow. She agrees that the money he earns will be his to spend as he chooses.

Comment: This enlists the parent in helping the child with the money issue. It is based on information the parent volunteered, which seemed practical. (Note that, although the school issue is not going to be directly addressed in this settlement, it is implied in both the previous two agreement points that Nick will, in fact, attend school.)

4) Nick agrees to bring his friends home so that his family can get to know them. Mrs. Parent agrees that she will refrain from making critical remarks about Nick's friends, and that they will be welcomed when they do visit.

Comment: This is a somewhat risky set of statements -- a lot is left to good will. However, it is an attempt to address the issue of friends. Note that the agreement point links the behavior of each person but doesn't use a "he'll do this if she'll do that...." formula. The gamble is in using such vague terms as "critical remarks" and "welcome". If this matter has been adequately discussed in the sessions, however, and everyone understands what is meant, it will work.

5) Mrs. Parent agrees to seek counselling for herself. She will meet next Tuesday with the staff member to decide which agency or program to choose.

Comment: This is a typical way to make a referral for another kind of intervention. (See Social Services, Chapter V.3) The



agreement point does not specify "therapy" or "A.A." though these may have been discussed during the hearing. This point addressed mother's issue about her troubles; having it as part of the agreement affirms to the son that all the commotion is not his fault and reassures him that she is willing to do something about her temper and her drinking, which were issues for him.

6) Both Mrs. Parent and Nick agree to try to avoid using bad language when they argue. If they get angry with each other, they agree to separate and go to different rooms until they feel calm enough to talk without shouting.

Comment: In addressing both party's complaints about yelling and showing respect and foul language, this agreement point emphasizes joint responsibility. The way it is worded reflects the need to put things in a realistic, "do-able" framework -- it would invite failure if we said that they "will not use bad language", instead we use "try to avoid". The fact that they will probably continue to argue and even get angry with one another is acknowledged, at the same time that a way to deal with anger--a way which they themselves suggested and can accept-- is mandated.

7) Both Mrs. Parent and Nick agree to return for a second hearing to talk about school issues if the matter is not settled within two weeks. The staff member will help them find out what other schools or classrooms are available for Nick.

Comment: This might or might not be written in -- it could just be left as a verbal understanding. You would put it in writing as in this example if you felt it was necessary to make the family feel that some movement on the school issue is going to take place. It also sets a time limit, which is useful, and offers a second hearing if necessary.

There are of course a number of ways in which each of the foregoing agreement points could have been phrased and still meet the criteria of BALANCE, CONCRETENESS, NEUTRALITY and REALISM. The choices depend on all the discussions that have taken place in the hearing -- both the facts of the situation and the attitudes and feelings of the family members. Many agreements are briefer than this one,

since for purposes of illustration we included many issues in this one case. What every agreement has in common is that it is a contract which both sides willingly and knowingly enter into, and that it reflects a set of decisions on their part around identified areas of disagreement, specifying how each will behave in the future.

Once the draft agreement has been written by the mediators, each family member comes in alone to hear it read and to make any last-minute changes. At this point, there should be no surprises; however, you must make sure that each point is clearly understood and accepted. This may mean going over the reasoning behind some of the phrasing, reminding people about earlier parts of the discussion, or re-affirming that some issue is not going to be addressed in this mediation. However, you do not want to re-open any negotiations at this time, or allow any major changes in commitments that have already been arrived at. People sometimes do waver at the last minute, but if the work of negotiation has been carefully done, they can be persuaded to follow through, and at least try to stick to the commitment they've offered to make.

After each participant has listened to the draft agreement and any needed changes have been made, the agreement points are written up using the official form (see Appendix D for a sample). Then everyone comes into the hearing room for the Final Joint Session. The agreement is read aloud by the mediators, and the family signs its. The mediators then sign it as witnesses. It is helpful, but not obligatory, to have the staff member also be present at this last session. Family members are reminded about follow-up, and the staff member can make any necessary appointments for meeting with family members -- in this case, for instance, to discuss a referral for counselling or how to make contact with the appropriate school personnel. Each family member receives a copy of the agreement, and one is kept for the program files. Mediator's notes are destroyed -- unless a second hearing is planned, in which case they can be put in a sealed envelope and kept in the program files for future use. The mediators congratulate and

thank the family for coming; good-byes are exchanged; the hearing is over.

What we have described in the last two chapters is a typical hearing. However, each case is unique and each mediation has a life of its own. Not all come to the same type of conclusion, nor do they all follow the same kind of pattern. In the next chapter, we will look at some variations on this basic model.

## CHAPTER V

### VARIATIONS, ENDINGS, AND OUTCOMES

#### V.1. When A Hearing Involves More Than Two Family Members.

So far, we have been describing a typical mediation, where just two members of a family are present. This is not always the case. More than one parent or more than one child may participate. Under some circumstances, other interested persons, whether family or outside parties, may take part in the process. Parent-child mediation can be adapted to include these different participants, provided some short-cuts are used in order to avoid what could be the cumbersome and complex task of doing a full mediation with more than two principals. Let's address these special circumstances one by one.

How do you integrate other family members into a mediation? Two parents or a step-parent, siblings or grandparents, or other close relatives can be included in the process. In the Initial Joint Session, you would meet with everyone and encourage each family member to speak. Then you would probably see each individual, except young children, for at least one brief Private Session. Even if two parents appear to be united in their views during the Joint Session, it is worthwhile to meet with them individually at least once, to check whether they may have some separate issues. Depending on your assessment of the family dynamics after these sessions, you would then focus on the issues between the "identified" child and the parent (or parents). Thus the Later Private Sessions would consist of alternate meetings with both parents together and the adolescent. If some agreement points involved any of the other family members, they would be brought in at relevant moments of the negotiation stage. All family members would then be present at the Final Joint Session.

There are occasions, too, when parties other than the family may be involved in mediation. A basic rule is that all family members must agree to the inclusion of another party. What other parties might be present?

- Professional. - If a professional, such as counselor, social worker, or school official is present, it will usually be planned in advance. The role of such a participant will usually be to help in working out that part of the agreement that has to do with services or an educational program. The extent of their participation will have been discussed beforehand, either during the intake process or in the waiting room before the mediation begins. The professional is often someone who has access to and control of such resources, so their involvement can lead to more realistic agreements. It is part of the mediators' role to help define and if necessary limit the professional's role in the hearing, which can be very different from their usual role outside of mediation. Sometimes the professional's role may be a supportive one -- either for mediation as a means to help the family, or on behalf of one individual, as when for instance, a social worker is present in connection with a youth who is in placement outside the home.
- Advocate. - A family member may request the presence of a lawyer or other advocate. Since the hearing is defined as a situation in which each person has an equal voice, and the mediators are there to ensure a fair hearing, there is no active role for an advocate to play. If, however, at the insistence of a family member, an advocate is present, the staff member will explain the nature of mediation, and the mediators will see that the advocate, if present, remains an observer rather than a participant.
- Friend. - On occasion, a friend may accompany a family member to the mediation. This usually happens if the family member feels in need of support and is nervous about the situation. However, the presence of such a person in the hearing can inhibit other family members or seem threatening, so generally the practice is to ask them to stay in the waiting room during sessions.
- Observers. - An observer may occasionally be present, but only with the permission of the family, for purposes of research or to learn more about mediation. It is essential that observers remain as unobtrusive as possible, and that they refrain from any kind of participation in the process. Any observer must be briefed about confidentiality by the staff.

## V.2. Some Difficulties You May Encounter.

Certain question can arise in parent-child mediation which are particularly difficult to handle. The two kinds we will address here are, "What to do if it seems that the process can't work in a given situation?" and "What to do if there is suspected child abuse or neglect?"

What can you do if it looks as though mediation is going to break down? As mediators, it is in your power to make the decision to terminate a mediation session. There are a number of possible circumstances when it might be necessary to stop the hearing even though no agreement has been reached. Here are a few of the most common:

- Fatigue. - The hearing goes on too long, and the participants -- whether the family members or the mediators -- are exhausted. A forced agreement or a deadlock can result from this; either result would be equally unproductive.
- Time Constraints. - One family member has another commitment -- the babysitter at home has to leave at a given time -- the building where the hearing is held must be closed. It's worth checking out at the very start of the hearing whether such a time issue is a factor for any of the participants, to avoid sudden, unplanned exits.
- Missing Members. - One of the needed family members fails to show up -- or the main issue turns out to involve a family member who's not present.
- Emergencies. - One family member comes to the hearing under the influence of drugs or alcohol -- or the heat in the building is shut off -- or someone becomes ill or otherwise unable to continue.
- Case Inappropriate for Mediation. - In spite of screening and intake procedures, it can occasionally happen that a case turns out to be unsuitable for mediation. This can occur for a variety of reasons. If, in your and your partner's judgment, mediation is not going to work for a particular family, you and the staff member can decide to end the hearing. The staff then has the responsibility for helping the family find another resource for help with its dispute.

In circumstances such as these, mediators and staff members should consult and use their judgment about whether to continue the hearing. As a rule, it is better to break off in a reasonable and orderly fashion, rather than to plow ahead regardless of realities. In deciding to terminate a hearing, mediators demonstrate to the family their concern and respect for everyone's needs and show that a mediation hearing is a humane and flexible process. In most situations another hearing date can then be set for a convenient time in the near future.

How can mediators deal with crisis situations? The potential for violence exists in every conflict. Strong feelings are what bring

families into mediation, and they can be expressed in various ways, depending on the family style. Mediators need to remain in control of volatile episodes, avoid over-reacting and use common-sense in intervening. Individuals in a family may express their anger in a variety of ways. Here are some of them:

- Arguing. - As we've indicated, a certain amount of arguing during the Initial Joint Session can help you understand how family members interact, and is only natural in a situation of conflict. However, fighting must not be allowed to get out of control, and the venting of angry feelings is best handled in Private Sessions, where further damage to relationships won't occur. Arguments among family members outside the room, in the waiting area, can be counter-productive, and the staff member needs to be warned by you if you feel that it would be best for individuals to be separated during any waiting periods -- for instance, during Mediator Recesses.
- Violence. - Although it's not usual for families to act out their angry feelings in the mediation setting, it can occur. If you feel this is a danger, you can separate the parties by firmly asking one of them to leave the room for a while or by directing them to move their chairs apart. You can call the staff member into the room if you need help. Unless you are sure people are able to control themselves, do not continue with the mediation.
- Threatening to Leave. - A family member may want to "run" if the level of frustration or anger gets too high. Acknowledge their feelings, while pointing out the advantage -- for them -- of sticking with it. If you're worried that the person may decide to leave during a waiting period, be sure to alert the staff person to this possibility. If necessary, postpone and re-schedule the hearing rather than let one person break off the mediation unilaterally.

Naturally, you yourself will have some reaction to the anger in the situation, however it may be expressed. Remember that hostility can be not only unnerving, but also contagious. Be aware of how you react to expressions of anger, and remain -- at least outwardly -- unflustered.

In dealing with such situations, always bear in mind that it's the family members who have to leave the hearing, go home together, and continue to try to get along. Every effort must be made not to make matters worse by allowing the conflict to escalate or get out of control.

What is your responsibility in cases of suspected abuse or neglect? Because you are working with families who are experiencing stress and conflicts in their lives, there may be occasions when one or more of the family members suggests or expresses directly a concern about child abuse or neglect. As with other issues and concerns that are expressed by family members during the course of mediation, you can explore and clarify the extent and significance of these issues and see how a family member may want the situation to change. On the other hand, although a family member may raise the issue, there may be reluctance to talk about it.

One major responsibility of any program working with children and families is to be aware of and responsive to alleged or suspected instances of serious abuse and/or neglect. If such a situation arises you must use your recesses to discuss it with the staff person. There are two reasons for doing so. One is to decide how it needs to be handled within the mediation session itself, and the other is to respond to the state law which requires it to be reported to the Department of Social Services.

This of course raises the issue of whether you are violating the confidentiality provisions of mediation. You are not, for the following reason: each family member signs an agreement to participate in mediation where the confidentiality and privacy rights are spelled out. The agreement specifies that Massachusetts law requires this privacy right be suspended in situations where there is suspected child abuse and neglect. So every family you see in mediation has come to the session with that knowledge. (See Appendix A.) Although you as mediators and volunteers are not required under the law to report suspected child abuse and/or neglect, the staff of the program are "mandated reporters" under this law.

At times, mediation can provide a very effective way for parents to realize that they need help around the issue of parent-child violence, and this need can be addressed through referrals to counselling or to programs, such as Parents Anonymous. Very few of the total number



of cases that come to mediation programs will actually require a report to the Department of Social Services.

### V.3. The Role Of Social Services.

At several points in this manual, we have mentioned social services. In discussing how mediation and other kinds of services to families are connected, we will here be using a broad inclusive definition. Whatever resources are available in the community to strengthen the functioning of a family are included in this term. "Social services" can mean counselling or mental health services, housing or financial assistance, as well as whole range of other types of help, such as alcohol/drug treatment, self-help groups, foster care or other placement services, employment or recreation assistance. Finally, the local school system is included, as a primary resource for youths and their families.

How does mediation help identify the need for services? To begin with, it's important to remember that the purpose of a mediation session is to help a family in resolving some of its conflicts, not to work out a social service plan. Many families, you'll find, are already involved with one or another social agency or service. The family may have been referred to mediation through such an ongoing contact, in fact. Usually this service will continue after mediation, and mediation can serve to make the focus of that service more specific, by taking care of some of the family's difficulties. Often, the service provided addresses itself to one aspect of the situation -- for instance, the youth sees a School Adjustment Counselor around school issues, or the parent belongs to a support group for single parents -- and is meant to alleviate one part of the family's total situation.

Through the mediation process, further needs for social services can be identified. The family may come to see and want more or different sorts of help. It is important, of course, that it is the family members that perceive such a need, and that mediators refrain from imposing their own perceptions. As mediator, for example, you may come to think that this father needs help around his depression, or

that this teenager needs to take part in a peer-group. While you may be right, the need must emerge from a family member in the course of mediation. When the issue is raised, you can foster the idea by discussing it, as you would any other avenue towards better family functioning. You may find ways during Private Sessions to explore whether an individual is open to some kind of referral, by posing hypothetical options; however, mediators cannot decide for a family member, or advise, or urge their own opinion.

It often happens that one party identifies the other as the one who needs to "get some help". This is part of the tendency to blame each other, and to assign all the problems to one individual. For instance, a mother may tell you her daughter is "crazy" and should see a therapist, or a son may ask you to tell his father to go to A.A. because he's "a drunk". As with other issues, it's then up to you to transmit these concerns to the other party, and explore them in as positive a way as possible to see what the identified individual thinks of the issue and what s/he wants to do about it.

How do you go about building social services into the resolution? Before you can make an agreement that includes a referral to social services, you need a good general understanding about the resources available in the community. Although the agreement usually will not specify a given resource, you do need to be aware of what's realistic before you can suggest services. This means that you have to be knowledgeable about the following areas:

- Schools. You will want to have a basic understanding of the law on Special Education, "Chapter 766", since this can provide needed evaluation and program changes for youth having school-related problems. It is also helpful to know what Jr. High or High Schools serve your area's populations, whether there are vocational or alternative programs, etc.
- Entitlement Programs. A working knowledge of programs that are available to low-income groups, disabled persons and the like is useful. This would include basic understanding of Welfare and Aid to Families with Dependent Children.
- Local Agencies and Groups. It is very useful to know what the community can offer in terms of clinics, youth centers and

activities, family or child welfare agencies, self-help organizations, etc.

Once the need for some kind of service has been recognized by the family member who is going to seek it, your task as mediator is to build it into the agreement in the most acceptable and practical manner. This usually means writing it only in general terms, such as, "Ronnie agrees to take part in group counselling.. He will discuss with Jim (staff person) on Friday which agency to go to." This defines what the youth has committed himself to do, but leaves the specifics of the referral to be worked out by him with the help of the staff person. Similarly, an agreement point about school issues could read, "Mr. Clark (the father) agrees to ask the school system for a CORE (special education) evaluation for Amy. He will meet with Jim (staff person) at the High School on Tuesday to write and file this request."

The staff person thus functions, as we've pointed out earlier, both as a resource for information about services available, and as an advocate to obtain the services a family wants. In addition to those needs for service identified and built into the agreement, there may also be a need for services not included in the agreement. Through the mediation, it may become obvious, for instance, that the family is not getting adequate help from the agencies they are already involved with. The staff person can then explore with the family how to find more appropriate help. It could turn out, as well, that the family was unaware that they were entitled to a certain kind of service -- for instance, a supportive health and nutrition program -- and the staff person could assist them in enrolling. A different situation arises when an individual refuses to seek the help that other family members, and perhaps the mediators, think is called for. Although a referral cannot be made part of the agreement, if the staff person is alerted to this need, it may be possible for it to be dealt with informally, during follow-up or in a later mediation hearing. The staff of the program can be seen, then, as extending and supporting your work as mediator, particularly in connection with referrals for social services. You can use the staff for . . .

. . . consultation, to help you know more about resources available

. . . referrals, to assist the family in carrying out agreements around service needs that are identified

. . . outreach and advocacy, to help coordinate existing services for the family, and to help them get others that might be necessary or helpful.

Referrals to social services are a useful part of resolution for some families and some situations. However, it is important that mediation not be seen primarily as a way to link a family up with other agencies. Many agreements will not involve any referral to other services and it's important for you, as mediator, not to be too quick to see referrals as a solution to issues that can, in fact, be dealt with in mediation.

#### V.4. Thinking About Successes And Failures.

What is a "successful" mediation? The process as we've described it in this manual emphasizes a written agreement as the usual and desirable goal of mediation. This is accurate, but it also over-simplifies the purposes of mediation in relation to families and their functioning. Every agreement, like every family, is different and unique. It is difficult to predict how well the agreement will work, or what the longer-term results of this type of intervention may be. Thus it is also difficult for you, as a mediator, to know when you have been "successful". Your job ends when an agreement is signed, or else when the mediation terminates without reaching an agreement. You do not monitor the agreement -- that's the work of the program staff. Your involvement with the family is over unless you are called upon to mediate a second hearing, in which case (if that's the program's policy) the same team will be reconvened.

Although you will no longer be directly involved with the family, you will probably be curious about the effect mediation has had on the situation. Staff members can share this information with you from time to time. The written agreement is a major goal, though not the only one. In follow-up conversations, family members often report that though only some of the agreement points are being lived up to, things are going better in the family. Mediation can serve as an educational experience -- one through which the family members restructure and

re-orient themselves and their ways of handling conflict. Thus the success of a hearing can be measured indirectly through such changes as improved communication and a greater sense of competence for the family. It is the process, then, rather than any specific outcome, which may improve the health of the family system.

With this in mind, you can see that even if a written agreement is not reached in a given hearing, this does not necessarily represent a "failure". If the family learns some new ways of talking things over and is exposed to a more productive style of problem-solving, that may be enough. In some instances, it may even be better not to try too hard to get a written agreement if, for instance, the only agreement points you could achieve were on issues that are unimportant to the family. Such agreements are usually counterproductive. In ending a hearing that has not resulted in a written agreement, it is crucial not to leave people -- yourself included -- with a sense of failure. Some ways you can offset this possibility are by . . .

- . . . acknowledging all the effort each person has put into the hearing,
- . . . thanking the family members for being committed enough to at least try to solve their differences,
- . . . pointing out that they can keep on working on these issues when they're at home, using some of the techniques they've learned in mediation,
- . . . encouraging them to come back and try again at a later time.

Such statements are not an attempt to paper over the disappointment everyone feels at not reaching the goal of a written set of agreements. The disappointment needs to be acknowledged, without losing sight of the gains. And in order to deal positively with their frustration, you need to keep your own sense of frustration out of the picture. A hearing that does not reach the hoped-for agreement stage must be ended in a way that does not make the family feel more powerless and more hopeless. This is why it is so important that you re-affirm their sense of self-respect before letting them leave. How you terminate a hearing is almost as vital as how you begin it: the closure is like a chord that re-affirms the trust and respect between mediators and family. Whether or not they carry an agreement with

them out the door, they must take with them a sense of their own worth, integrity and hope.

#### V.5. After The Family Leaves.

There are basically just two further responsibilities for the mediators once the hearing is over. They are 1) discussing the case with the staff member and 2) making an assessment of your and your partner's work during the mediation. Since it is the staff's task to do the monitoring and follow-up on the case, they need to know from you not only all the relevant facts you discovered, but also your opinions and ideas about how best to continue program support of the family. Since confidentiality includes staff of the program, it is alright for you to share necessary confidential information at this time with the staff member.

Your thoughts about social service referrals will be particularly useful. You may know, for example, from the conversations you've had with the family members, that they have a dislike of a certain mental health clinic because of some previous experience. This piece of information can help the staff member identify a different agency, which the family is more likely to accept. Or you may have some insight to share about what type of service is going to be most relevant, such as individual counselling, group work, or a support group. This is also the time to go over with the staff person any outstanding unresolved issues, since these will be relevant for follow-up work with the family.

Mediators' input is useful, too, around the question of how suitable a case was for mediation. Your comments can affect screening and intake decisions in the future. As you gain more experience, you become clearer about what factors make cases easy or hard to deal with in mediation. Your insights will strengthen your program.

There are several ways in which you can make an assessment of how effective your team was. The longer-term effects of the hearing, when you later hear about them, will tell you something about your skill. However, most of us need and want some immediate feedback,

and this is where you and your co-mediator can help one another, since you are the ones who have experienced the whole process together. For all its rational structure, parent-child mediation is an intensely emotional experience. It's worth taking some time to try to review and understand not only what happened at different moments in the hearing, but also your own reactions. Talking it all over with your partner, if not immediately after the hearing, then within the next few days, is a valuable tool. The more honest and frank you can be with one another, the more you can learn. If it happened that one of you always seemed to dominate, or one tended to get the session off the track, or you had trouble reading one another's signals and knowing when to end a session, or you struggled when trying to develop a strategy -- this is the time to talk it over. It is this sort of discussion that helps mediators continue to hone their skills.

Self-assessment after a hearing is useful too, and your program may have an evaluation form to use in order to help you do this. (See Appendix E.) You will want to think about such questions as, "What did I do well? Where did I feel most confused? What were the issues that were hardest or easiest for me to deal with? How was my team-work?" Another kind of self-assessment is to ask yourself "What areas do I need to know more about in order to be more effective -- special education? The court system? AFDC and Welfare?" etc. If you are aware of gaps in your knowledge, you can work to remedy this by participating in your program's on-going training activities, by your own research, or by asking the staff for information.

Becoming a mediator is a continuous learning process in which both knowledge and skills keep growing. Mediation itself is an expanding field, one which has many different possible applications. Parent-child mediation, which has been described in this manual, represents only one possibility among many for using the principles, attitudes and abilities of the mediator. You are entering a field that offers great personal satisfaction and provides a much-needed service to families and communities. Your role is one of high trust and responsibility. It is a serious undertaking, but one in which your sense of humor and your compassion are essential. Good luck!

## APPENDICES



# THE CHILDREN'S HEARINGS PROJECT

of

## CAMBRIDGE FAMILY AND CHILDREN'S SERVICE

99 Bishop Richard Allen Drive, Cambridge, Massachusetts 02139

Phone: (617) 661-4700

### AGREEMENT TO PARTICIPATE

The Children's Hearings Project offers families and other parties an opportunity to settle differences through mediation. During mediation sessions, community volunteers acting as mediators help everyone in the making of an agreement which meets the needs of each person.

In mediation, family members and other parties talk with the mediators and discuss how they see their situation. Each person has an equal voice in expressing his or her opinion. The mediators then assist everyone in finding resolutions that can be put into a written agreement.

Only the parties themselves can reach an agreement. The mediators do not make decisions on behalf of the parties who are participating.

Each person voluntarily agrees to come to the Children's Hearings Project. At any time before an agreement is reached, any person can withdraw his/her consent to participate. Everything said in the mediation to the mediators or to the project staff is confidential and will not be used by anyone for any reason except for the Children's Hearings Project. Massachusetts law requires us to suspend this privacy right only in situations where there is suspected child abuse and neglect.

Other parties attend the hearing only if all family members agree. No one is allowed to use the Children's Hearings Project staff, the mediators or the records of the project in a court proceeding of any kind.

When an agreement is reached, it is written and signed by each person. The project staff is responsible for reporting the outcome to the person who referred the case--whether or not an agreement has been reached.

I (We) have read the above description and understand the conditions for participating in the Children's Hearings Project.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Witness: \_\_\_\_\_ Date: \_\_\_\_\_



A MEDIATOR'S REVIEW

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Children's Hearings Project

STAGES IN MEDIATION

## I. PREPARATION

Mediators arrive 30 minutes before the scheduled hearing to meet with case coordinator and to review procedures.

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## II. INITIAL JOINT SESSION

a) OPENING REMARKS. Mediators introduce mediation concepts, outline the hearing process, clarify rules and expectations.

p. 3

b) SESSION. Family members tell their version of the situation in everyone's presence.

## III. RECESS

Mediators take a break to review information, develop strategy, and confer with case coordinator.

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## IV. INITIAL PRIVATE SESSIONS

Mediators meet as a team with each family member individually to explore issues further.

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## V. LATER SESSIONS

Private sessions, recesses and joint sessions (if appropriate) are repeated as needed until settlement is arrived at--or until it's clear no settlement is possible at this hearing.

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## VI. FINAL SESSIONS &amp; RECESSES

The details of the agreement are worked out.

p. 7

## VII. CONCLUDING JOINT SESSION

The agreement is read, with all parties present, then signed. Each person receives a copy and the hearing is ended.

p. 7

## VIII. POST-HEARING

Mediators review the mediation with one another and with case coordinator.

p. 7

I. PREPARATIONS FOR A MEDIATION

## SCHEDULING:

- Give the staff a schedule of your preferred days and times. Keep it up to date by notifying the program staff of any changes.
- Expect a week's notice when you are asked to do a mediation.
- Note time and place of the hearing, and name of case coordinator who calls you.
- Disqualify yourself if you know the family or if you are not positive you can be present at the assigned time and location.

## PRELIMINARIES:

- Arrive at the site 30 minutes before the scheduled hearing.
- Get acquainted with your co-mediator(s) and review together the initial stages (introduction and joint session) of the process. Decide how to divide up your responsibilities for the first Joint Session.
- Go over case information sheet with the case coordinator. Be sure you are clear about facts, names, etc.
- Ask the case coordinator regarding any special circumstances of the case, e.g., court involvement, social services, school status.
- Check over and prepare room--seating, writing materials, etc.

II. INITIAL JOINT SESSION

---

A. OPENING REMARKS

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Aims: Set the Tone, Clarify Roles & Expectations, Outline the Process

---

- ° Describe how mediation works:
  - different from court or social services
  - a voluntary alternative family has agreed to try
  - goal is to help discover their own solutions to the situation
- ° Review mediators' role:
  - volunteers from the community who've had extensive training in mediation
  - not there to judge who's right or wrong
  - will help family explore the situation and think about solutions
  - goal is to arrive at an agreement that everyone feels is fair and that will make things go better for the family
- ° Discuss confidentiality, explain note-taking:
  - mediators have taken an oath of confidentiality: nothing discussed will be known outside of the program
  - mediators will take notes in order to remember what is said and family members are welcome to do so too
  - all notes will be destroyed at the end of the hearing
  - written agreement is the only document from the mediation which will be kept on file
- ° Describe the process:
  - joint session is for individuals each to have their turn to describe the situation from their own point of view
  - mediators will then take a break to review notes and talk with the case coordinator
  - each family member in turn then meets privately with the mediators to give more information and to explore ways of settling their differences
  - each person has the right to ask that certain information they give not be discussed with the others
  - the process gives everyone as much time as they need. This usually takes quite a long time--about 3 hours--it's necessary to be patient
- ° Ask for questions before going on.

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B. SESSION

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Aims: Fact-Finding, Beginning to Build Trust, Observing How Family Interacts

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- ° Ask each person, one at a time, to describe the situation. Take notes so you can refer back to them in later private sessions. (As a general rule, begin with the parent.)
- ° Make it clear that each will be heard now and also again later. Encourage each to participate. Ask each to talk to mediators rather than each other.
- ° Encourage a free flow of information while maintaining control. Discourage interruption or argument.
- ° Create a respectful, encouraging atmosphere for all family members.
- ° Use both verbal and non-verbal signals to establish rapport between family members and mediators.
- ° Suggest that parties begin to define what they hope to get out of the mediation.
- ° End session when you've gotten basic statements from each person or if you see that one person is dominating the process too much.
- ° Ask family to continue thinking over specific ways in which things could change while mediators take a break and while they wait their turn for Private Sessions.

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III. RECESS

---

Aims: Review Information; Identify Gaps; Develop Strategy; Discuss Which Issues Seem Most Mediatable

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- ° Talk over what you've learned about family and their initial positions in the dispute.
- ° Use your notes to check on exact language and facts.
- ° Decide what you need to know more about; avoid premature conclusions.
- ° Identify factual discrepancies but don't get hung up on them.
- ° Speculate on potential areas of common interest.
- ° Decide which individual to meet with next and plan your approach. (As a general rule, see the youth first.)
- ° Decide which mediator will take the lead on each topic. Plan how you'll approach touchy issues.
- ° Discuss information or strategy with case coordinator as needed.

IV. INITIAL PRIVATE SESSIONS

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Aims: Find Out More about Situation; Discover Attitudes, Feelings, Priorities; Begin to Develop 'Shopping List' of Desired Changes

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- ° Remind and reassure about confidentiality.
- ° Keep plan of approach in mind. Remember to work as a team.
- ° Ask for more information in an open-ended, non-judgmental fashion.
- ° Develop line of questioning. Avoid jumping from point to point.
- ° Avoid interrogation while searching for specifics.
- ° Probe for underlying issues and attitudes. Show empathy and concern.
- ° Acknowledge and specifically exclude issues that are inappropriate to mediation. Suggest an alternative forum for such concerns, if possible.
- ° Avoid counselling or giving advice.
- ° Invite suggestions about how situation could change for the better.
- ° Keep session moving. Be aware other(s) are waiting their turn.
- ° Beware of coming to conclusions before you've heard the other party.
- ° Before ending, review information gained and check out priorities around main issues.
- ° Suggest family members continue thinking about 'shopping list' of potential changes.
- ° Thank him/her for cooperation, show optimism about progress made.
- ° Check whether anything said in the session must be held in confidence.
- ° During Mediator Recess and before starting next private session, carefully review what that person told you in Joint Session.

V. LATER SESSIONS

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Aims: Identify Negotiable Issues; Clarify 'Shopping Lists';  
Move towards Settlement

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- ° Keep positive momentum going.
- ° Remain confident and point out common interests and progress made.
- ° Keep strategies, plan of action, and team-work in mind.
  - ° Transmit information between parties in constructive ways.
  - ° Focus in on key mediatable issues. Be clear about each person's position on issues.
  - ° Re-frame statements in positive terms.
- ° Use hypothetical, "What if ..." questions to suggest options for change. Tailor any suggestions to family members' views.
- ° Avoid imposing your own solutions: be aware of family's own style.
- ° Reinforce reasonable positions. Note specific resolution ideas.
  - ° Act as agent of reality by beginning to challenge extreme positions.
  - ° Emphasize and praise time and effort everyone is putting in.
  - ° Reinforce that it's in their common interest to reach agreement.
- ° Begin to build on small areas of agreement and recognize when specific agreements have been reached. State them clearly--in individual's own language--whenever possible.
- ° Consider option of omitting certain issues if not negotiable at this time.
- ° Remember the possibility of having a second hearing to deal with other issues or to include other family members.
- ° Begin to narrow focus and try out language around specific agreement points.
  - ° Continue emphasizing that resolution depends on family's own ideas, wishes and decisions.
  - ° Take breaks when needed, to review progress and plan each session.



VI. FINAL SESSIONS (Private, joint, recesses)

Aims: Negotiating Specific Settlement Points; Drafting the Agreement

- ° Work towards a balanced agreement that addresses each person's main issues.
- ° Phrase agreements tactfully and in clear concrete terms.
- ° Go over specific agreement points separately with each party.
- ° Check wording of each point to be sure it's accurate and as specific as it needs to be.
- ° Include social service referrals and second hearings as part of agreement if appropriate.
- ° Acknowledge verbally important issues which are NOT addressed in the agreement.
- ° Write up final draft in recess before presenting it to family.

VII. CONCLUDING JOINT SESSION

- ° Read agreement out loud to all parties. (Case coordinator can be present at this session.)
- ° Check out whether content and wording of each point is acceptable to each person.
- ° Family members sign agreement and mediators sign as witnesses.
- ° Copies are made and given to each person.
- ° Thank and congratulate the family for its participation.
- ° Destroy all notes in the presence of the family. (If a second mediation is part of the agreement, notes can be sealed and kept on file at the Project.)
- ° If agreement calls for a second hearing, arrange time and date with case coordinator's help.

VIII. POST HEARING

- ° Family confers with case coordinator to set up any further appointments.
- ° Mediators discuss hearing and offer follow-up recommendations to case coordinator.
- ° Mediators complete post-hearing evaluation forms, or arrange to discuss mediation by phone with staff.

TYPE OF HEARING: FIRST  
DATE OF HEARING: 2/28/84  
TIME: 6 P.M.  
CASE COORDINATOR: A. Smith

CASE INFORMATION

INVOLVED FAMILY MEMBERS:

Mrs. Ellen Brown

Jimmy Brown

AGE: 14

OTHER FAMILY MEMBERS:

Julie, sister, age 16  
Mr. Edwin Brown, father  
Mrs. Brown's mother

CHINS STATUS:

Mrs. Brown filed CHINS-Stubborn application on 2/11/84  
Case continued to 2/30/84

REFERRAL SOURCE:

Lou Smith, probation officer

INVOLVEMENT WITH OTHER AGENCIES:

None at present

SCHOOL:

9th grade at Memorial High School

EXTENT OF CONTACT WITH CHILDREN'S HEARINGS PROJECT:

A. Smith met with family 2/12/84. Jimmy and mother  
agreed to attend mediation.

ADDITIONAL INFORMATION:

Mr. Brown works as a security guard - has irregular hours -  
may not be able to come to hearing.

**THE CHILDREN'S HEARINGS PROJECT**

of

**CAMBRIDGE FAMILY AND CHILDREN'S SERVICE**

99 Bishop Richard Allen Drive, Cambridge, Massachusetts 02139

Phone: (617) 661-4700

AGREEMENT

Family Members: \_\_\_\_\_

Other: \_\_\_\_\_ (Relationship: \_\_\_\_\_)

We have taken part in a hearing session on \_\_\_\_\_ and have  
agreed to the following terms and conditions: \_\_\_\_\_ (date)We agree the above represents a fair and reasonable settlement and further  
agree to follow its terms and conditions.

Signatures of Parties: \_\_\_\_\_

WITNESSEDWe the undersigned mediators have heard these parties resolve their  
differences. We have witnessed the agreement signed above.

Signatures of Mediators: \_\_\_\_\_



**THE CHILDREN'S HEARINGS PROJECT**

of

**CAMBRIDGE FAMILY AND CHILDREN'S SERVICE**

99 Bishop Richard Allen Drive, Cambridge, Massachusetts 02139

Phone: (617) 661-4700

MEDIATOR'S EVALUATION FORM

FAMILY NAME: \_\_\_\_\_ CASE COORDINATOR: \_\_\_\_\_

DATE OF HEARING: \_\_\_\_\_

MEDIATORS: \_\_\_\_\_  
\_\_\_\_\_

1. Are there any suggestions you would like to make to the staff for the follow-up of this case?

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2. Are there any potential or actual social service needs that were not identified in the agreement that the staff should follow-up with the family?

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3. Do you feel that this was an appropriate case for the program?  
YES\_\_\_ NO\_\_\_ If not, why? \_\_\_\_\_

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4. Were there any particular problem areas for you with the family members and/or the mediation process during the hearing? Describe these and the methods you chose to address them. \_\_\_\_\_

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5. Please think about the role and responsibilities that you assumed as a mediator. Was there any particular role that you played within the team of mediators? (information gatherer, trust builder, agent of reality, presenter of hypotheticals, strategizer, etc.)

6. Is there any way that you would like to see yourself change or develop as a mediator?

7. Did you feel the mediator team was well chosen in order to address the needs of all parties involved? If not, what could have been done differently?

8. Did you feel at any point that your personal values or point of view clashed with those of the family? YES\_\_\_ NO\_\_\_ Did this interfere with your ability to be objective?

9. Are there any areas in which the case coordinator or other staff may be of help to you?

10. Other comments? \_\_\_\_\_

## SUGGESTED READINGS

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- Fisher, Roger; and Ury, William. Getting to Yes: Negotiating Agreement Without Giving In. Boston: Houghton Mifflin Company, 1981.
- Martin, F.M.; and Murray, K. (Eds.). Children's Hearings. Edinburgh: Scottish Academic Press, Ltd., 1976.
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