

NEIGHBORLY

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WELCOME ALL-

to Neighbor-to-Neighbor's quarterly newsletter **NEIGHBORLY!** Recently N2N has gained talented volunteers through our Spring Basic Mediation Training as well as our Small Claims and Community Representative Trainings. Our MHPM (Manufactured Home Park Mediation) Program has received a breath of fresh air through trainings in both Salem and Albany as well as renewed outreach efforts. A big thank you to our wonderful volunteers who have continued to show dedication to continuing education by attending monthly In-Service sessions!

We appreciate Mary Frances Campana for sharing her insights with us in the edition and we're always looking for volunteer input so please let us know if you'd like to contribute to future newsletter editions.

Warmly,
The N2N Team

We are very happy to welcome Petrina Bigford, Administrative Assistant in Salem, to our staff! She has an extensive background in administration and is quite an asset to our office. She has already completed the recent Basic Mediation Training in April, and is quickly learning about our programs. Welcome Petrina!

In-Service Reviews the Whys and Hows of Mediator Interaction, by Mary Frances Campana

On Wednesday, February 21, the monthly N2N In-Service was held at the Juvenile Department in Benton County. The primary topic for the evening was 'why or why not' and 'how' mediators should speak up during a mediation. Group discussion, guided by Michael Thomson, developed this picture of mediator involvement:

Why

- power imbalance
- enforce ground rules
- validation
- no new information being introduced
- client comments not relevant or helpful to conversation
- lack of participation by one or more of the parties
- stuck/deadlock
- need to gain clarity
- when one party is ready to leave mediation
- emotions getting out of control
- take emotion out of discussion, create more objective frame
- provide neutral/positive language for parties



Participants from "Becoming a Community Rep. in the RJ Process"

Why Not

- silence pushes people to talk
- give space for words to sink in
- when parties seem to be listening and/or responding and/or new information coming out
- maintain role of impartial mediator
- room for expression of emotions

How

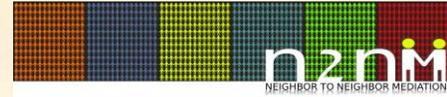
- caucus
- reframe
- set and enforce ground rules
- reflection
- questions
- summarize

This exercise was followed by a lively role play to practice what we'd just discussed.

Article Share, by Marc Steiner

I wanted to share this article on the three most common types/styles of mediation, written by Zena Zumeta. I took an Elder Care/Adult Guardianship training with her years ago and really enjoyed the training. I think her article sums up many of the key considerations regarding these mediation styles. Note she also mentions one of Oregon's own, Sam Imperati. As you may know, Neighbor-To-Neighbor, along with most of the dispute resolution centers in Oregon, teach and support the Facilitative model. I, for one, believe that the facilitative model allows for a transformative process by the very nature of the role of the mediator, along with the relationship of the parties. This is most obvious in parent/teen mediation but can be experienced in other types of mediation including neighborhood, business, VOMP, and even small claims disputes at times.

For those with expertise in various areas, it's important to be mindful about not defaulting to the evaluative model, especially where legal issues arise. Giving advice, for instance, in Manufactured Home Park mediations or Small Claims cases can actually compromise Neighbor-To-Neighbor's role as providing impartial volunteers. As with most discussions, nothing is black and white, and there is a place for each of these styles. The key as a mediator is being aware of our intentions while protecting our role as impartial facilitators of a process that enables clients to make their own decisions. Perhaps we can discuss this article in more detail at our next In-Service. Enjoy! - - Marc



Styles of Mediation: Facilitative, Evaluative, and Transformative Mediation by Zena Zumeta

Mediators around the country find themselves uncomfortable with what is being called mediation in their own and other areas. Accusations are made that one or another approach to mediation is not “real” mediation or are not what clients wanted. In addition, many clients and attorneys are confused about what mediation is and is not, and are not sure what they will get if they go to mediation.

Facilitative Mediation

In the 1960's and 1970's, there was only one type of mediation being taught and practiced, which is now being called "Facilitative Mediation". In facilitative mediation, the mediator structures a process to assist the parties in reaching a mutually agreeable resolution. The mediator asks questions; validates and normalizes parties' points of view; searches for interests underneath the positions taken by parties; and assists the parties in finding and analyzing options for resolution. The facilitative mediator does not make recommendations to the parties, give his or her own advice or opinion as to the outcome of the case, or predict what a court would do in the case. The mediator is in charge of the process, while the parties are in charge of the outcome.

Facilitative mediators want to ensure that parties come to agreements based on information and understanding. They predominantly hold joint sessions with all parties present so that the parties can hear each other's points of view, but hold caucuses regularly. They want the parties to have the major influence on decisions made, rather than the parties' attorneys.

Facilitative mediation grew up in the era of volunteer dispute resolution centers, in which the volunteer mediators were not required to have substantive expertise concerning the area of the dispute, and in which most often there were no attorneys present. The volunteer mediators came from all backgrounds. These things are still true today, but in addition many professional mediators, with and without substantive expertise, also practice facilitative mediation.

Evaluative Mediation

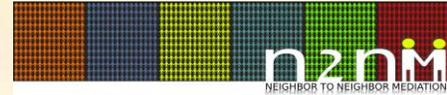
Evaluative mediation is a process modeled on settlement conferences held by judges. An evaluative mediator assists the parties in reaching resolution by pointing out the weaknesses of their cases, and predicting what a judge or jury would be likely to do. An evaluative mediator might make formal or informal recommendations to the parties as to the outcome of the issues. Evaluative mediators are concerned with the legal rights of the parties rather than needs and interests, and evaluate based on legal concepts of fairness. Evaluative mediators meet most often in separate meetings with the parties and their attorneys, practicing “shuttle diplomacy”. They help the parties and attorneys evaluate their legal position and the costs vs. the benefits of pursuing a legal resolution rather than settling in mediation. The evaluative mediator structures the process, and directly influences the outcome of mediation.

Evaluative mediation emerged in court-mandated or court-referred mediation. Attorneys normally work with the court to choose the mediator, and are active participants in the mediation. The parties are most often present in the mediation, but the mediator may meet with the attorneys alone as well as with the parties and their attorneys. There is an assumption in evaluative mediation that the mediator has substantive expertise or legal expertise in the substantive area of the dispute. Because of the connection between evaluative mediation and the courts, and because of their comfort level with settlement conferences, most evaluative mediators are attorneys.

Transformative Mediation

Transformative mediation is the newest concept of the three, named by Folger and Bush in their book THE PROMISE OF MEDIATION in 1994. Transformative mediation is based on the values of "empowerment" of each of the parties as much as possible, and "recognition" by each of the parties of the other parties' needs, interests, values and points of view. The potential for transformative mediation is that any or all parties or their relationships may be transformed during the mediation. Transformative mediators meet with parties together, since only they can give each other "recognition".

In some ways, the values of transformative mediation mirror those of early facilitative mediation, in its interest in empowering parties and transformation. Early facilitative mediators fully expected to transform society with these pro-peace techniques. And they did. Modern transformative mediators want to continue that process by allowing and supporting the parties in mediation to determine the direction of their own process. In transformative mediation, the parties structure both the process and the outcome of mediation, and the mediator follows their lead.



Pros and Cons

Supporters say that facilitative and transformative mediation empower parties, and help the parties take responsibility for their own disputes and the resolution of the disputes. Detractors say that facilitative and transformative mediation takes too long, and too often ends without agreement. They worry that outcomes can be contrary to standards of fairness and that mediators in these approaches cannot protect the weaker party.

Supporters of transformative mediation say that facilitative and evaluative mediators put too much pressure on clients to reach a resolution. They believe that the clients should decide whether they really want a resolution, not the mediator.

Supporters of evaluative mediation say that clients want an answer if they can't reach agreement, and they want to know that their answer is fair. They point to ever-increasing numbers of clients for evaluative mediation to show that the market supports this type of mediation more than others. Detractors of evaluative mediation say that its popularity is due to the myopia of attorneys who choose evaluative mediation because they are familiar with the process. They believe that the clients would not choose evaluative mediation if given enough information to make a choice. They also worry that the evaluative mediator may not be correct in his or her evaluation of the case.

Strong Feelings

Mediators tend to feel strongly about these styles of mediation. Most mediation training still teaches the facilitative approach, although some attorney-mediators train in the evaluative model, and Folger and Bush have a complement of trainers teaching the transformative approach. Many mediation standards (from national and state mediation organizations, and state legislative and judicial mediation programs) are silent on this issue; others prohibit evaluation, and a few require it. For example, the Mediation Council of Illinois Standard IV (C) Best Interests of Children states: "While the mediator has a duty to be impartial, the mediator also has a responsibility to promote the best interests of the children and other persons who are unable to give voluntary, informed consent.....If the mediator believes that any proposed agreement does not protect the best interests of the children, the mediator has a duty to inform the couple of his or her belief and its basis."

Another example of these strong feelings is that in 1997, Florida's professional standards for mediators were reviewed, and the committee got stuck on the issue of evaluation in mediation. The current rule says "a mediator should not offer information that a mediator is not qualified to provide" (Rule 10.090(a)) and "a mediator should not offer an opinion as to how the court in which the case has been filed will resolve the dispute" (Rule 10.090(d)). The committee came out with two options for a new standard on this issue: Option One would prohibit giving opinions except to point out possible outcomes of the case; Option Two states that the mediator could provide information and advice the mediator is qualified to provide, as long as the mediator does not violate mediator impartiality or the self-determination of the parties. After receiving comments on these two options, both were withdrawn and the committee is trying again. The comments were many and strong. Early in 2000, the new rule was written to reflect Option Two.

In a new Michigan Court Rule effective August 1, 2000, which authorizes judges to order cases to mediation, the Supreme Court of Michigan differentiated facilitative processes from evaluative processes. The rule states that courts may order parties to facilitative processes, but not to evaluative processes.

Concerns

There seem to be more concerns about evaluative and transformative mediation than facilitative mediation. Facilitative mediation seems acceptable to almost everyone, although some find it less useful or more time consuming. However, much criticism has been leveled against evaluative mediation as being coercive, top-down, heavy-handed and not impartial. Transformative mediation is criticized for being too idealistic, not focused enough, and not useful for business or court matters. Evaluative and transformative mediators, of course, would challenge these characterizations. Sam Imperati, for example, sees evaluative mediation as ranging from soft to hard: from raising options, to playing devil's advocate, to raising legal issues or defenses, to offering opinions or advice on outcomes. He therefore believes that it is not appropriate to assume that evaluative mediation is necessarily heavy-handed. Folger and Bush, on the other side of the discussion, see transformative mediation as ultimately flexible and suited to all types of disputes.

Another concern is that many attorneys and clients do not know what they may get when they end up in a mediator's office. Some people feel that mediators ought to disclose prior to clients appearing in their offices, or at least prior to their committing

to mediation, which style or styles they use. Other mediators want the flexibility to decide which approach to use once they understand the needs of the particular case.

Styles vs. Continuum

Samuel Imperati and Leonard Riskin believe these styles are more a continuum than distinct differences, from least interventionist to most interventionist. The Northwest Chapter SPIDR Survey and other less formal surveys have noted that most mediators use some facilitative and some evaluative techniques, based on individual skills and predilections and the needs of a particular case. Folger and Bush see more distinct differences in styles, particularly the difference of "top-down" vs. "bottom-up" mediation. That is, they believe that evaluative and facilitative mediation may take legal information too seriously, and that resolutions coming from the parties are much more deep, lasting, and valuable. However, in informal discussions, many practitioners who utilize the transformative model state that they mix facilitative and transformative techniques rather than using one or the other exclusively. It would seem that in general mediators are on a continuum from transformative to facilitative to evaluative mediation, but are not squarely within one camp or another.

Conclusions

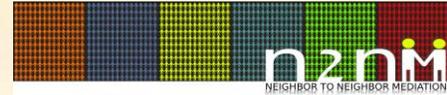
There is room in mediation practice for many styles, including facilitative, evaluative and transformative mediation. Each has its usefulness and its place in the pantheon of dispute resolution processes. Imperati believes that most mediators use a combination of these styles, depending on the case and the parties in mediation, as well as their own main approach to mediation. Some sophisticated mediators advise clients and attorneys about the style they think would be most effective for their case. Some parties and attorneys are sophisticated enough to know the difference between types of mediation and to ask mediators for a specific type in a specific case. It appears that it would be helpful for mediators at the very least, to articulate to parties and attorneys the style(s) they generally use, and the assumptions and values these styles are based on. This will allow clients to be better and more satisfied consumers, and the field of mediation to be clearer on what it is offering. It can only enhance the credibility and usefulness of mediation.

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 - Joint Committee Standards of Practice (American Arbitration Association, SPIDR and ABA).
 - Mediation Council of Illinois Standards of Practice.
 - State of Florida Standards of Practice for Mediators.
 - State of Michigan Court Rule 3.216 on Domestic Relations Mediation, 8/1/00 changes.
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"Becoming a Community Rep. in the RJ Process"
Training in February



Restorative Justice as an Antidote to Moral Disengagement, by Michael Thomson

"You can't trust *them*. They're *monsters*."

My social psychology professor at Bennington College had a knack for "performing" the material we reviewed in class, with this particular performance aiming to demonstrate the power of dehumanization in allowing people to sanctify harmful actions that they would otherwise find morally abhorrent and unacceptable. The performance was also my introduction to a line of inquiry that I spent the next few years researching and to this day hold as foundational to my worldview. Namely, how do people justify to themselves and to others behavior that they would, in any other circumstance, find morally reprehensible and indefensible? In other words, how do ordinary people commit atrocities and live with themselves?

This inquiry first led me to Stanley Milgram's famous 1963 "obedience experiments," which included a Subject, Learner, and Experimenter.¹ Subjects were told that the experiment's purpose was to determine how an electric shock of increasing voltage affected the Learner's memory. The Subject, under the direction of the Experimenter, was responsible for asking memory recall questions to the Learner, who was hooked up to an electric shock machine. The Subject was directed by the Experimenter to shock the Learner with increasingly high voltage every time the Learner failed to reply with a correct answer (the Learner was an actor hired by Milgram and was never actually shocked). As the shock voltage increased, the Learner had pre-set reactions, including grunting, shouting, demanding the experiment be stopped, and, finally, silence (implying unconsciousness). Similarly, the Experimenter had four pre-set reactions to any Subject who disobeyed the Experimenter's directive, including prods to the Subject like "You have no choice, you *must* go on."

Unexpectedly, over 60% of Subjects fully obeyed the Experimenter in shocking the Learner up to the lethal maximum voltage. What is noted with less frequency in these experiments, however, are the 10 variations in the experiment that Milgram used to control variables such as proximity of Subject to Learner, proximity of Subject to Experimenter, Experimenter's appearance of authority, and peer Subjects acting either obediently or disobediently. Taken together, these results convincingly suggest the following: 1) The power and presence of an authority figure alone can compel someone to commit atrocities, 2) The more someone is allowed to minimize or ignore harmful consequences resulting from their actions, the more that person is likely to commit atrocities, 3) Peer pressure has a strong influence in determining whether someone will obey or disobey an order to commit an atrocity.

These revelations were accentuated by social psychologist Philip Zimbardo's Stanford Prison Experiment, in which Zimbardo created a fake prison in the basement of a Stanford University building and asked residents of surrounding neighborhoods to play the role of either "prison guard" or "inmate" for two weeks in August 1971.² Zimbardo ended the experiment on Day 6 due to the brutal and inhumane treatment of the inmates by the guards, including acute verbal, physical, and sexual abuse. In his book *The Lucifer Effect*, Zimbardo outlines his belief that atrocities are committed not by "bad apples," but by "bad barrels." In other words, environments can have a staggering influence on people's propensity to dehumanize others, conform to peers committing atrocities, and minimize harmful consequences resulting from one's actions. Hannah Arendt's 1963 commentary on the "banality of evil" regarding the atrocities committed by Nazi leader Adolf Eichman,³ historian Robert Browning's 1992 investigation into the lives of draftees in a German Police Battalion in WWII,⁴ and Dave Grossman's 1996 analysis of violence in warfare⁵ all point to the conclusion that ordinary people can be drawn to commit horrible atrocities under certain conditions.

Psychologist Albert Bandura coalesces this research in his Theory of Moral Disengagement,⁶ which outlines eight mechanisms of moral disengagement whereby ordinary people can bypass internal moral self-sanctions and thereby rationalize inhumane actions. The first three mechanisms –moral justification, palliative comparison, and euphemistic labeling- allow people to justify terrible means in pursuit of supposedly righteous ends. The next set of mechanisms –displacement and diffusion of responsibility- provide a way for people to view themselves as just a cog in a machine or simply obeying orders when acting harmfully towards others. The third set of mechanisms –minimizing, ignoring, or misconstruing consequences- allow people to distance themselves from the harmful effects of their actions by warping or avoiding those effects. The final set of mechanisms – dehumanization and attribution of blame- provide perpetrators of atrocities an avenue to disengage from empathic instincts towards those whom they've harmed. Taken together, this body of research provides a comprehensive and compelling outlook on how ordinary people can do terrible things.

It is within this framework that the principles and practice of Restorative Justice become particularly compelling. In an ideal RJ process, trained RJ facilitators bring together stakeholders who inflicted harm, who experienced harm, and who can speak

¹ Milgram, Stanley. *Obedience to Authority: An Experimental View*. Printer & Martin, 2013.

² Zimbardo, Philip. *The Lucifer Effect: Understanding How Good People Turn Evil*. Random House, 2013.

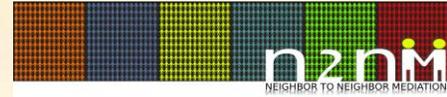
³ Arendt, Hannah. *Eichmann in Jerusalem: A Report on the Banality of Evil*. Penguin Classics, 2006.

⁴ Browning, Christopher R. *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland*. Harper Perennial, 2017.

⁵ Grossman, David. *On Killing: The Psychological Cost of Learning to Kill in War and Society*. Little, Brown, 1996.

⁶ Bandura, Albert. *Moral Disengagement: How Good People Can Do Harm and Feel Good about Themselves*. Worth Publishers, 2016; "Moral Disengagement in the Perpetration of Inhumanities." *Personality and Social Psychology Review*, vol. 3, no. 3, 1999, pp. 193–209.

⁷ Zehr, Howard. *The Little Book of Restorative Justice*. Good Books, 2002.



to the impact of harm on the wider community.⁷ In this setting, the person who inflicted harm is faced directly with both the narrow and broad impact of their actions, and is asked to explicitly take responsibility for their part in causing the harm identified and in taking steps to “make things right.”

I can think of no more direct way to address the mechanisms of moral disengagement than through a RJ process. Attempts by the offender to sanitize their actions with euphemisms or means-justify-the-ends logic can be unmasked by victims and community stakeholders who reject that language and logic. Skilled RJ facilitators can challenge an offender’s displacement and diffusion of responsibility by focusing solely on the offender taking accountability for *their* actions and *their* part in causing harm. Minimizing, ignoring, or misconstruing consequences become increasingly difficult when the victim speaks directly to the harm they experienced. Similarly, dehumanization and attributing blame to the victim are directly challenged by face-to-face dialogue with the offender.

What would it look like if the Subject and Learner in the Milgram experiments (assuming the Learner had actually been shocked) had come together for a conversation around harm, accountability, and restoration? How could RJ have been used between inmates and guards in the Stanford Prison Experiment following the termination of the experiment? I would posit that RJ could have unearthed the underlying drivers of harm in both cases, leading to the possibility of healing and transformation for all parties involved.

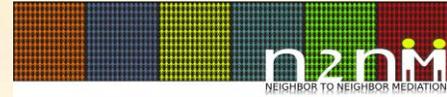
The theory and research on how people rationalize atrocities tends to focus on the most extreme incidents of harm and abuse. However, applying this research to a RJ framework suggests that it could be just as useful in addressing quotidian and less egregious harm. A youth taking part in vandalizing a public building with graffiti may first speak to the impact of peer pressure (diffusion of responsibility), the presence of more obscene graffiti on the building (palliative comparison), and the shoddiness of the building (attributing blame to the victim) as excuses for their action. An RJ conversation would give an opportunity for the youth to take accountability for their own actions and the impact of those actions after understanding the extent of harm they caused. In sum, RJ offers a compelling counter to the forces that people use to justify causing harm, and thus in preventing future harmful actions.



Neighbor-to-Neighbor staff- Marc, Michael, Petrina and Robyn



Happy spring!



Upcoming Events:

In-Service Dates-

- April 11th
Corvallis
- May 9th
Salem Office
- June 13th
Corvallis

Trainings-

- Basic Mediation Training
 - April 6th-7th, 13th-15th
- JVOM (R/J) Training
 - June 20th, 21st, 23rd & 24th
 - Location TBD
- Parent/Teen Training
 - July 18th, 19th, 21st & 22nd
 - Location TBD

*For more information regarding trainings contact N2N staff.

Volunteer Opportunities-

- Volunteer newsletter submissions!
- Upcoming outreach/farmers' market tables
 - Albany Farmers' Market
 - May 12th
 - Corvallis Farmers' Market
 - June 16th

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