Catherine Morris. "Where Peace and Justice Meet: Will Standards for Dispute Resolution Get Us There?" In *Qualifications for Dispute Resolution: Perspectives on the Debate*, edited by Catherine Morris, and Andrew Pirie, 3-24. Victoria, B.C.: UVic Institute for Dispute Resolution, 1994

[page 3]

Where Peace and Justice Meet:[1] Will Standards for Dispute Resolution Get Us There?

Catherine Morris

> The peacemaker gets two-thirds of the blows. *Montenegrin proverb*.[2]
>
> The hardest blow of the fight falls on the one who steps between. *Scottish proverb*[3]
>
> The mediator is struck from both sides. *Kurdish proverb*[4]
>
> All that the intervenor gets is torn clothes. *Arab proverb*[5]
>
> The peacemaker is a bridge walked on by both sides. You can either make peace or get the credit for it. But you cannot do both. *David W. Augsburger*.[6]

1The concept of a state of wholeness (or *shalom)*, where "peace and justice join hands," is Hebraic in origin. The expression is found in Psalms 85:10.

2 quoted in David W. Augsburger, *Conflict Mediation Across Cultures: Patterns and Pathways*. (Louisville, Kentucky: Westminster/John Knox Press, 1992), 187.

3 quoted in Augsburger, *Conflict Mediation Across Cultures*, 191.

4 quoted in Augsburger, *Conflict Mediation Across Cultures*, 191.

5 quoted in Tim Roberts, "Avoiding Torn Clothes Syndrome: The Role of Self-evaluation in ADR," *Interaction* 6 (Spring 1994).

6 Augsburger, *Conflict Mediation Across Cultures*, 187.

Dispute Resolution: The Journey So Far

In spite of the intimidating prospects reflected in this collection of sayings, the 1990s are heady days for the field of dispute resolution. Government officials all over North America are busy exploring the possibilities of institutionalizing or legislating consensual approaches to conflict for everything including commercial disputes, neighbourhood disputes, family disputes, child-protection disputes, victim-offender issues, and large public policy disputes. This is in marked contrast to the sceptical responses to alternative dispute resolution in the early 1980s, when enthusiastic proponents were trying to foster the use of alternatives, particularly mediation, as faster, cheaper and better than court or other adversarial methods of dispute settlement. "It's a fad," responded detractors.[7] "It's dangerous," warned critics.[8] "Conflict meditation?" queried puzzled members of the public. [page 4]

The changes in public perception over the past decade are mirrored in dramatic changes which have occurred within the field of dispute resolution itself. In the early 1980s, the field was primarily peopled with community activists, peace activists, members of religious organizations, disenchanted lawyers, and others wanting to bring about social transformation by experimenting with ways to resolve conflict in ways that promoted both social justice and social harmony. Mediation was the process of choice for many

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7 Mr. Justice Allan McEachern, then the Chief Justice of British Columbia, reflected the opinions of many lawyers when he described mediation as "trendy, compromising, naive and soft." Quoted in "Chief Justice Puts Boots to ADR," *Lawyers Weekly* (October 26, 1989): 2.

8 For a summary of feminist criticisms, see Barbara Landau, "Qualifications of Family Mediators: Listening to the Feminine Critique," this volume.

experiments. Most mediators (apart from labour mediators and diplomats) were volunteers. In the 1990s, these now aging and only slightly more prosperous community activists still animate the field. But the field of dispute resolution is markedly more populated and organized than it was ten years ago, and the scene is now dominated by bright, young and not-so-young professionals, graduate students and university professors. Represented are groups which span the gamut from grass roots organizations, university programs, and government initiatives, to successful dispute resolution businesses. Arbitration, mediation, facilitation and their hybrids are offered to help with everything from environmental policy to landlord-tenant problems and neighbourhood bylaw complaints. Dispute resolution training in a variety of settings has become big business. Thus, the field of dispute resolution has now come to be marked by a diversity of practitioners, values, goals, processes, contexts and disputants.

A Motley Crew

Values and goals

The values and goals ascribed to dispute resolution have a powerful influence on the development of policy in the field, including policy concerning qualifications and standards of practice. Development of policy concerning qualifications is complicated because the field of dispute resolution has attracted people with differing views, goals and values. For example, some hold the view that dispute resolution is a method of working toward peace and social justice. This group uses a reparative or restorative paradigm of justice rather than a retributive one. Problems are viewed as needing solutions. The breakdown of relationship is seen as needing reconciliation. Harms are viewed as requiring remedies, rather than as violations requiring punishment.[9] A second view sees the goal of alternative dispute resolution as increased court efficiency which values alternatives as providing cost-effective and time-saving options. A third view sees the goal of dispute resolution as promoting social order based on increased consensus. This group sees the value of collaborative dispute resolution options as offering opportunities for resolution of underlying conflicts rather than the mere settlement of manifest disputes. A fourth view sees dispute resolution as an opportunity for participation of disputants in decision-making processes, and control of the participants over the outcome. This group may also see dispute resolution options as [page 5] a method of working toward increased direct democracy. Yet another view may see dispute resolution alternatives as having more utilitarian objectives. In this view, alternatives are processes aimed at resolving disputes efficiently and sensibly in ways that promote smooth and stable business or other interests. Individual service providers, programs and organizations may emphasize one or the other (or a combination) of these underlying values and goals.[10]

As values and goals differ, so do processes, definitions of success, desired competencies, and standards of practice. For example, a dispute resolution program which has as its goals clearing the court calendar may utilize short processes which are recommendatory in nature and aim at settlement of a narrow set of issues. An illustration is the judicial

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9 See Eric B. Gilman and David L. Gustafson, "Of VORPs, VOMPs, CDRPs and KSAOs: A Case for Competency Based Qualifications in Victim Offender Mediation," this volume.

10 See also Andrew Pirie, "Manufacturing Mediation: The Professionalization of Informalism," this volume, [@6-9].

mediation program in the British Columbia Small Claims Court which uses judges as mediators in settlement hearings lasting about half-an-hour.[11] By contrast, community mediation centres like Toronto's St. Stephen's Community House and Mediation Services of Downsview, driven by goals of community harmony and justice, may utilize processes which are longer and slower. Co-mediators may be involved, party definition may tend to include more people, and issues may be identified broadly. Processes may last for two or more hours, or even several weeks or months in more complex community disputes.[12] Thus, the relative importance of values and goals will be reflected in the way various conflict resolution processes are developed. The attributes and skills needed by the judge-mediators in a Small Claims Settlement Conference in B.C. may be different from the attributes and skills required by the case intake workers and mediators in a community mediation program.

Diversity of dispute resolution practitioners and practices

To add to the diversity of the field, structures of dispute resolution services differ markedly from one another. Services are provided by individuals, groups, or rosters of practitioners. Processes may be mandated or voluntary or somewhere in between. Service providers may be community volunteers or paid professionals, non-profit or for profit. Also, individuals in the field of dispute resolution come from a wide variety of educational, occupational and other backgrounds.[13] [page 6] It is interesting to note who is present—and who is absent—in the current discourse on qualifications for dispute resolution. For the most part, dispute resolution organizations in Canada are dominated by middle class professionals largely from Anglo-European descent. Missing in significant numbers are Aboriginal people and members of other ethnic or cultural minorities. In this collection of essays, Patricia Monture-OKanee[14] and Michelle LeBaron Duryea[15] reflect on the reasons for and effects of domination of the field by the majority culture. Monture points out how the field of dispute resolution has largely excluded the perspectives of Aboriginal people. Duryea warns the field of the current danger of setting dominant culture standards and qualifications which may be unsuitable in an increasingly pluralistic society.

Dispute resolution continuum

Diversity in the field is further marked by its variety of processes which may be found anywhere

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11 Peter Adams, Colleen Getz, Jan Valley and Suzanna Jani, *Evaluation of the Small Claims Program, Vol. 1.* (Victoria, B.C.: Province of British Columbia, Ministry of Attorney General, 1992)

12 There are a number of other community mediation centres throughout Canada with these values and goals. Some have had difficulty maintaining this vision given financial difficulties which lead centres toward funder driven initiatives. Many funders, especially governments, have emphasized the importance of court and fiscal efficiency.

13 This phenomenon is reflected in Peter N. Duinker and Margaret A. Wanlin's essay in this volume, "Attributes of Consensus Facilitators: Lessons from Some Experiences with Natural Resources in Ontario," in which the authors reflect on the value of their own diverse backgrounds.

14 Patricia A. Monture-OKanee, "Alternative Dispute Resolution: A Bridge to Aboriginal Experience?" this volume.

15 Michelle LeBaron Duryea, "The Quest for Qualifications: A Quick Trip Without a Good Map," this volume.

along the dispute resolution continuum. This continuum extends from facilitation to mediation to adjudication.[16] Also, mediation and arbitration are by no means "pure" processes nor are they easily defined. Some arbitration processes incorporate significant degrees of consensus building.[17] Some mediation processes contain adjudicative elements such as recommendations from the third party which, while not binding, may be persuasive or even coercive.[18] Other processes blend mediation, conciliation and arbitration either informally or formally. Even processes called by the same name may differ significantly from one another depending on local practices and individual styles. For example, mediation in a community dispute resolution centre utilizing a relatively long process of consensus building may look quite different from a judicial mediation hearing or institutional mediation program which utilizes "muscle mediation" approaches of short duration. A broad range of dispute resolution processes exists; many differing processes are finding credibility within their own contexts.

16 The dispute resolution continuum from least to most intervention ranges from: negotiation->conciliation->mediation-> arbitration->adjudication. Also see Duinker and Wanlin, "Attributes of Consensus Facilitators", this volume, for a discussion of the different applications of facilitation and mediation in public dispute resolution.

17 For example, the Alberta's *Arbitration Act*, 1991, section 35, states that an arbitrator can use mediation or similar techniques during the arbitration to encourage settlement, provide the parties consent. After attempting to mediate, the arbitrator can revert to the role of arbitrator without disqualification.

18 For example, labour mediation typically results in recommendations from the mediator.

Standards of fairness concerning outcomes

The fairness of outcomes is judged by varying standards.[19] Legal norms may be considered the standard by some programs. In some contexts, however, legal norms have been challenged as unfair. For example, feminist critics have pointed out gender inequities in the application of legal norms in divorce settlements. In some processes fairness of outcomes may be measured by social norms, the norms of the particular group of society in which the conflict arose, or even the norms of the particular parties. Critics of the concept of mediator neutrality suggest that the mediator's own standards of fairness, even unspoken or unconscious ones, play an important part in both process and outcome. Concepts of neutrality tend to reflect the prevailing norms of the surrounding society. Thus, mediator neutrality replicates and reflects the dominant values in society including, for example, male dominance and culture dominance.[20]

19 Some practitioners, particularly in the field of labour mediation, operate from the point of view that mediators are to be concerned exclusively with process and not with outcome. In other contexts, notably divorce mediation, fairness of both process and outcome is a major concern. See Landau, "Qualifications of Mediators," this volume. For a discussion of value differences concerning mediator neutrality in labour and family disputes, see Sydney E. Bernard, Joseph B. Folger, Helen R. Weingarten and Zena R. Zumeta, "The Neutral Mediator: Value Dilemmas in Divorce Mediation," *Mediation Quarterly* 4 (1984): 65-6.

20 See Duryea, "Quest for Qualifications," this volume; Martha Shaffer, "Divorce Mediation: A Feminist Perspective," *University of Toronto Faculty of Law Review* 46 (1) (1988): 162-200; Martha J. Bailey, "Unpacking the `Rational Alternative': A Critical Review of Family Mediation Movement Claims," *Canadian Journal of Family Law* 8 (1989): 61-94.

Thus, while one of the main concerns in the debate about qualifications is outcome fairness, this concept defies neat definition. The personal qualities and qualifications required of dispute resolution practitioners may vary with the standard of fairness expected. For example, legal standards of fairness may require a third party to have knowledge of the legal norms in the particular jurisdiction. Fairness norms of a particular trade, industry, religious or cultural group may require specialized knowledge.

Dispute context and party needs

Parties may have differing needs and expectations concerning process and outcome depending on the context of the dispute—whether it is a family dispute, a business dispute, a conflict among colleagues, or a large public policy dispute. Much literature has focused on the specific needs of parties in family disputes. Landau presents a detailed opinion about the particular qualifications required by family mediators in the light of critiques which see mediation as endangering women, especially abused women. There is a growing body of literature concerning the specific needs of parties in multi-party public policy disputes. In relation to competency of third parties, the relevance of context-specific substantive knowledge is a matter of continuing debate. Duinker [page 8]
and Wanlin and Schirch-Elias discuss their perspectives on this issue in their essays concerning public dispute resolution.[21]

Cultural context

The context of dispute resolution includes, in every case, a cultural context. Concepts of culture are most usefully discussed if culture is defined broadly as "the configuration of learned behaviour and results of behaviour whose components and elements are shared and transmitted by the members of a particular society.[22] Cultural differences are commonly associated with race and ethnicity, but cultural differences also may flow from age, gender, socioeconomic status, national origin, religion, recency of immigration, sexual orientation, and disability.[23] In the field of dispute resolution, culture also includes other factors such as family, commercial, community, environmental or other "subcultural" dispute contexts.

Some contexts are more culturally diverse than others. Practitioners successful in dominant culture settings can inadvertently have blind spots concerning the universal applicability of practices that work well in their familiar and often relatively homogeneous settings. When dispute resolution practitioners become aware of the need to be culturally sensitive, sometimes they fall into the "taxonomy trap"[24] wanting to know the "do's and don'ts" relevant to a particular ethnocultural group they have encountered. While this approach may be valuable in specific

21 Duinker and Wanlin, "Attributes of Consensus Facilitators"; Lisa Schirch-Elias, "Public Dispute Intervenor Standards and Qualifications," this volume.

22 R. Linton, *The Cultural Background of Personality* (New York: Appleton-Century Co., 1945)

23 See Michelle LeBaron Duryea, *Conflict and Culture: A Literature Review and Bibliography* (Victoria, B.C.: UVic Institute for Dispute Resolution, 1992), 4.

24 Judith A. Kruger, "The Tapestry of Culture: A Design for the Assessment of Intercultural Disputes," in Michelle LeBaron Duryea, *Conflict Analysis and Resolution as Education: Culturally Sensitive Processes for Conflict Resolution, Training Materials* (Victoria, B.C. UVic Institute for Dispute Resolution, 1994)

situations, it fails to take into account the fluid nature of culture and the fact that within a specific group there is considerable diversity.[25]

Of more value to practitioners in multicultural settings is a general approach to culture which acknowledges some fundamental principles. Cultural awareness is not just a matter of being aware of behaviour or approaches which may disadvantage others, nor of developing more effective communication strategies. Culture has much more fundamental implications: Culture shapes world view, language, beliefs, values, concepts of space and time, religion, and social and family relationships. Culture shapes the way disputants and dispute resolvers perceive, approach, process and resolve [page 9] conflict. Therefore, culture is important to all dispute resolvers, not just those working in obviously multicultural settings.

Issues of culture combined with issues of power cannot be overlooked or underestimated. While it is true that every cultural group and every individual has biases, for the most part it is those groups and individuals who have less power in society who experience disadvantages in relation to members of the dominant cultural group. This has profound implications for conflict resolution methods in a multicultural society. For example, where there is severe or systemic power disparity between members of one cultural grouping and members of another, dispute resolution methods which assume more-or-less equal power among parties may fail to address or even aggravate inequities. Thus, where power imbalances are severe or systemic, there may be a need for advocacy for disempowered groups or persons. Also, in such cases non-neutral approaches to third-party intervention may be needed.[26]

How diversity affects qualifications

The question is fairly raised whether the same criteria of competency, standards of practice or accountability can be applied in all the diverse contexts in which dispute resolution is practised. In summary, the specific context of dispute resolution affects:

· how conflict is perceived, identified and approached. That is, when is a conflict defined as a conflict, and when does it require intervention?[27]
· what model of service is chosen (e.g. education, third-party intervention, advocacy, or cultural interpretation);
· the kind of dispute settlement process selected (e.g. mediation, arbitration, court, trusted mutual friend, or wise elder advice);
· particular dispute resolution practices (e.g. therapeutic mediation, structured negotiation mediation, "muscle mediation");
· the degree of neutrality which is expected or appropriate;
· definitions of "success" including who defines success (e.g. settlement, reconciliation or other measures defined by parties, practitioners, critics or others);

25 Shashi Assanand, "Indo-Canadian Diversity Issues in Mediation," *The Mediator* 39 (Winter 1993-94): 1; Tom Kalpatoo and Langley Family Services, *Multicultural Dispute Resolution*, videorecording (Langley, B.C.: Langley Family Services, 1993)

26 See, for example, Barbara Landau's discussion on non-neutral approaches to mediation in cases of woman abuse in Landau, "Qualifications of Mediators," this volume. Also see Barbara Whittington, "Mediation and Sexual Harassment: Strange Bedpersons," *Interaction* 4 (Spring 1992).

27 Duryea, "Quest for Qualifications"; Monture-OKanee, "Alternative Dispute Resolution," both in this volume.

· what constitutes an acceptable or "fair" resolution;
· definitions of "competency";
· particular skills and knowledge required;[28]
· how competency is acquired[29] and assessed; [page 10]
· the kind of training offered (both the elements of training and the overall approach to training[30]);
· accountability mechanisms;
· consumer education strategies concerning competency.

Policies concerning qualifications and standards of practice will not be useful if they are not relevant in specific contexts.

The common strand in the field of dispute resolution appears to be the desire to resolve conflict better, even though "better" may mean different things in different contexts and for different people. The common cause of "doing better" means a number of groups and individuals with often very differing values, goals and expectations have joined together to promote alternative dispute resolution (ADR) processes.[31] This fact may explain in part why ADR has begun to "take off" in North America.[32]

The Institutionalization of Dispute Resolution

With the rapid growth of this diverse field has come discussion about institutionalization of dispute resolution processes. In the early and mid-1980s, community leaders, academics and professionals in several parts of Canada began to talk about how mediation could be developed in the Canadian context. The result included the birth of national and provincial dispute resolution organizations such as Family Mediation Canada, the national Network: Interaction for Conflict Resolution, and several provincial mediation organizations. Another organization, the Arbitration and Mediation Institute of Canada, began as an organization of arbitrators; in 1988, when it noticed the swelling interest in mediation, it changed its name to include mediation. An early concern of many of these organizations was the development of standards for this new type of practice in which it was feared "anyone could hang out [page 11] a shingle." Most of these organizations

28 See Duinker and Wanlin, "Attributes of Consensus Facilitators"; Landau, "Qualifications of Mediators"; Constance L. Edwards, "Qualifications of Dispute Resolution Practitioners in Education"; Gilman and Gustafson, "Of VORPs, VOMPs, CDRPs and KSAOs," all in this volume.

29 Duinker and Wanlin, "Attributes of Consensus Facilitators," this volume.

30 Michelle LeBaron Duryea, "Training Techniques and Culture: Power distance and uncertainty avoidance," in Michelle LeBaron Duryea and Victor C. Robinson, Conflict Analysis and Education:[@CC3. Trainer Reference (Victoria, B.C.: UVic Institute for Dispute Resolution, 1994), 12-4.

31 For example, The Network: Interaction for Conflict Resolution (NICR) embraces dispute resolution of all kinds, as does the Society of Professionals in Dispute Resolution (SPIDR) and the National Conference on Peacemaking and Conflict Resolution (NCPCR).

32 There are several other reasons cited for the growth of mediation, including the decline of traditional institutions such as social, cultural and religious institutions which traditionally intervened informally in conflict, and an accompanying dissatisfaction with the formal justice system. See Cheryl A. Picard, "Emergence of Mediation as a Profession," this volume. Also see Pirie, "Manufacturing Mediation," this volume.

have rapidly increased in membership over the last decade. Most are now active in developing qualifications standards.[33]

In the 1980s a number of alternative dispute resolution experiments were conducted, including several community mediation centres across Canada, and a variety of family mediation and commercial mediation experiments. Many of these experiments were sponsored by governments. The attention from powerful institutions was welcomed by struggling proponents of alternatives, who in many cases actively promoted the idea of court-annexed mediation schemes or "mandatory mediation" schemes by which disputants would be steered to mediation to attempt settlement before going to court.

The proposition that mediation could be a viable alternative to litigation did not escape the notice of lawyers. Some Canadian law societies set standards for lawyers practising mediation.[34] In British Columbia, the 1988 Justice Reform Committee made recommendations favouring use of ADR in the justice system, and recommended that standards be set for dispute resolution practitioners including a system of certification.[35] In 1989 the Canadian Bar Association (CBA) Task Force Report on ADR recommended the encouragement of ADR training for law schools, lawyers, judges, and the public education of adults and school children. The CBA urged cautious examination of the possibility of mandatory ADR processes, legislated institutionalization of ADR processes, and accreditation of neutrals.[36]

The press toward standards in the late 1980s came at a time when Canadian dispute resolution experiments were tentative—short-term, modestly funded, and staffed largely by volunteers or part-time professionals with other practices. At that time, the prospect of institutionalization was viewed within the field as a mirage on some distant horizon. By contrast, established professions and institutions saw the potential long-term institutionalization of dispute resolution experiments as something requiring firm control and standardization. Many of those active in the aspiring field saw standardization and development of qualifications in a more positive light—as a way to credibility that would enhance the future possibility of widespread use.

[page 12]

The Qualifications Debate

A "profession" of dispute resolution

During the late 1980s, debate emerged within the field on the issue of qualifications. Should mediators have professional degrees? What training and experience should they have? Canadians tended to

33 An exception is The Network: Interaction for Conflict Resolution, which has not involved itself directly in the development of standards, although there is a liaison between NICR and the three Canadian members of the SPIDR Commission on Qualifications.

34 The first, in 1984, was the Law Society of British Columbia, "Ruling G-12," in *Professional Conduct Handbook* (Vancouver, B.C.: Law Society of British Columbia, 1988)

35 Province of British Columbia. British Columbia Justice Reform Committee, E.N. Hughes, Chairman, *Access to Justice: Report of the Justice Reform Committee* (Victoria, B.C.: British Columbia, Ministry of Attorney General, 1988)

36 Canadian Bar Association, Task Force on Alternative Dispute Resolution, *Report of the Canadian Bar Association Task Force on Alternative Dispute Resolution: A Canadian Perspective* (Ottawa: Canadian Bar Association, 1989)

follow American organizations like the Academy of Family Mediators which at that time prescribed graduate or professional degrees and certain hours of training from approved trainers.[37]

These initiatives were spawned in part by a belief that mediation is, or should become, a new profession. Given low public demand for mediation services, professionalization was seen as a way for mediators to gain public respect and to begin earning a decent living. Cheryl Picard[38] discusses the history of the professionalization of mediation, including an analysis of how mediation currently measures up against eight criteria used by some scholars to define a "profession." While many refer to the field as a "profession," Picard, along with Duryea, concludes that the field of dispute resolution does not currently meet the criteria denoting a profession. Andrew Pirie's essay presents a compelling critique and some sobering prospects concerning professionalization.[39]

Consumer protection

Another motive for the setting of qualifications for dispute resolution practitioners has been the desire to ensure that consumers can find competent mediators and to provide guidance for mediators. Connie Edwards'[40] essay discusses the need for standards for those teaching mediation skills in the school system. Barbara Landau[41] provides persuasive arguments on the need for consumer protection in the area of family law mediation. Most poignantly, Landau points out the need for screening practices and procedural safeguards to protect women and children who have experienced abuse from further abuse or coercion during the course of family mediation.

[page 13]

The articulation of basic principles for qualifications

The debate was taken up in the late 1980s by the U.S.-based Society of Professionals in Dispute Resolution (SPIDR) through the work of its Commission on Qualifications. The Commission's landmark 1989 report[42] articulated several underlying principles for qualifications and certification criteria, notably that qualifications should be based not on university degrees or training courses, but on the attainment of certain skills ("performance-based criteria"). SPIDR also affirmed that standard setting should not be done in ways that create inappropriate barriers to the field or limit the spread of peacemaking skills in society. It affirmed that no single entity should establish standards in the diverse field of

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37 See several documents which emerged in the late 1980s including Standards and Ethics Committee of Family Mediation Canada, *Report from the Standards and Ethics Committee of F.M.C.: Proposed Guidelines for Practising Family Mediators*; Ontario Association for Family Mediation, *Criteria for Practising Mediators*; Academy of Family Mediators, *Membership Standards*; all in Mediation Development Association of British Columbia, *Brief on Standards and Ethics for Mediators Presented to the Attorney General of British Columbia*. Victoria, B.C.: Ministry of Attorney General, 1989.

38 Picard, "The Emergence of Mediation as a Profession," this volume.

39 Pirie, Andrew, "Manufacturing Mediation," this volume.

40 Edwards, "Qualifications of Dispute Resolution Practitioners in Education," this volume.

41 Landau, "Qualifications of Mediators," this volume.

42 Society of Professionals in Dispute Resolution (SPIDR), *Qualifying Neutrals: The Basic Principles: Report of the SPIDR Commission on Qualifications* (Washington, D.C.: National Institute for Dispute Resolution, 1989)

dispute resolution and that regulation was best conceived on a continuum: the less institutionalized or mandatory the process and the more choice a party has over process and intervenor, the less mandatory should be the standards. Conversely, where processes are mandated by legislation and parties have little control over process or intervenor, standards should be mandatory. These principles have received wide acceptance throughout North America.

The delicate balance between consumer protection and wide-spread dissemination of conflict resolution skills may not be easily achievable given the seemingly powerful forces which are energizing the move toward credentialing and professionalization. Several organizations have adopted in part the principle of performance-based standards for dispute resolution qualifications. Most, including the Academy of Family Mediators, are moving from standards based on certain degrees to standards based on a certain number of hours of a particular kind of training, together with some experience requirement or testing process. Some organizations have resorted to devices such as letters of recommendation and samples of mediation agreements. Experiments have been conducted in which mediators are selected on the basis of performance in role plays. Results have been promising,[43] although the universal applicability of the criteria for selection used by some of these experiments has been challenged by Duryea.[44] Also, performance-based testing procedures can be time consuming, labour intensive and costly.

The Commission on Qualifications' principle of setting standards that are context specific rather than broadly applied has received less attention. This principle is discussed later in this essay.

[page 14]

Pressures from Within and from Outside the Field: The Gathering Storm

It is undeniable that demand is growing for the establishment of standards of practice and qualifications. The demand is fuelled by practitioners through their organizations, by consumers asking how to find a qualified practitioners, and by governments contemplating institutionalization of dispute resolution processes. This drive has led one author to note that the dispute resolution movement has moved from the "forming" stage on to the "storming" stage of development with "norming" still beyond the horizon.[45] As Gustafson and Gilman state, the dispute resolution movement is at a cross-roads in its exploration of qualifications and standards.[46] The direction taken by those setting policy in this "stormy" time sets the course for dispute resolution norms of the future.

In 1994, the agenda of many dispute resolution organizations are dominated by this topic. Several organizations in Canada and the United States have

43 Christopher Honeyman, Kathleen Miezio, and William C. Houlihan, *In the Mind's Eye? Consistency and Variation in Evaluating Mediators* (Cambridge, Massachusetts: Program on Negotiation at Harvard Law School, 1990)

44 Duryea, "Quest for Qualifications," this volume. Also see the collection of essays in the October, 1993 edition of *The Negotiation Journal.*

45 Hugh O'Doherty, "Mediation Evaluation: Status Report and Challenges for the Future," *Evaluation Practice* 10 (4) (1989): 8-19.

46 Gilman and Gustafson, "Of VORPs, VOMPs, CDRPs and KSAOs," this volume.

developed or are developing criteria for mediator qualifications, including Family Mediation Canada[47] and several of its provincial affiliates, and the Arbitration and Mediation Institute of Canada. In 1993, a sub-committee of Ontario's Law Society of Upper Canada recommended that consideration should be given to issues of standards, credentials and certification of arbitrators and mediators.[48] In the United States, initiatives have included undertakings by the Academy of Family Mediators and the prominent Society of Professionals in Dispute Resolution (SPIDR). In 1992 SPIDR convened a two-year Commission on Qualifications, bringing together nineteen people from a variety of sectors of dispute resolution, including three Canadians.

The work of Christopher Honeyman and his associates has had a strong influence. In several articles in the late 1980s, Honeyman documented studies which tested criteria for selection of labour mediators.[49] SPIDR, in its 1989 report, commented favourably on this work. Since then, Honeyman and others have formed an independent Test [page 15] Design Project, funded by the National Institute for Dispute Resolution, which has been conducting job analysis of the work of commercial, family and community mediators. This is the initial phase of work which aims to develop performance-based skill testing of mediators. These are documented in *Interim Guidelines for Selecting Mediators*[50] and are based largely on Honeyman's earlier work in which he maintains from observation that effective mediators have five types of skill (investigation, empathy, invention, persuasion, and distraction) and two kinds of experience (managing the interaction, and substantive knowledge). Part of Honeyman's purpose in providing these working guidelines concerning skills of mediators has been to forestall the trend toward using arbitrary guidelines as the basis of legislation of criteria for practice. Honeyman predicts that the work of this project will demonstrate "a high degree of `common core' skills" for mediators.

The work of the Test Design Project has been greeted with "cheers and jeers."[51] The *Guidelines* have been praised for:

· providing a valuable reference for evaluating and

47 Peggy English, *The Standards and Certification Project* (Guelph, Ontario: Family Mediation Canada, 1993)

48 Lloyd Brennan, Q.C., *Alternatives: The Report of the Dispute Resolution Sub-committee* (Toronto: Law Society of Upper Canada, 1993)

49 Christopher Honeyman, "Five Elements of Mediation," *Negotiation Journal* 4 (2) (1988): 149-60; Christopher Honeyman, "On Evaluating Mediators," *Negotiation Journal* 6 (January 1990): 23-36; Christopher Honeyman, "The Common Core of Mediation," *Mediation Quarterly* 8 (1) (1990): 73-82; Christopher Honeyman, Norman Peterson and Teresa Russell, "Developing Standards in Dispute Resolution," paper presented at the Law and Society Association Annual Conference, Philadelphia, May 1992; Brad Honoroff, David Matz and David O'Connor, "Putting Mediation Skills to the Test," *Negotiation Journal* 6 (January 1990): 37-46.

50 National Institute for Dispute Resolution (NIDR), *Interim Guidelines for Selecting Mediators* (Washington, D.C.: National Institute for Dispute Resolution, 1993)

51 Editor's note in the fall, 1993 edition of *The Negotiation Journal*, "In Practice: Who *Really* Is A Mediator?" 293. This special edition is devoted to comment on the *Guidelines*. Also see the perspectives of Duryea, "Quest for Qualifications," Gilman and Gustafson, "Of VORPs, VOMPs, CDRPs, and KSAO's," and Landau, "Qualifications for Mediators," this volume.

selecting mediators;[52]
· supporting performance-based standards for mediation.[53]

The *Guidelines* have also provided a valuable focus for discussion and debate. They have been criticized for:
· failing to recognize that different types and settings of mediation may require different skills and abilities and perspectives;[54]
· being culturally biased, in the implicit assumption that there are universal values and needs related to neutrality, empathy, logical reasoning, analytical skills, anger management, impartiality, objectivity;[55]
· omitting to list as a crucial third party skill the ability to gain the trust of the parties;[56]
· omitting skills important for culturally sensitive assessment;[57] [page 16]
· assuming that mediators can be "neutral" whereas in fact research shows that mediators affect both the process and the substance of mediation;[58]
· reinforcing the concept that mediation is a new and modern "profession" whereas in fact it "has been practiced informally and formally for centuries."[59]

Tensions about professionalization

In general, the discourse around qualifications and standards is laden with the idea that mediation is, or should become, a recognized profession.[60] Increasingly, an accompanying uneasiness has been voiced, notably by those from community dispute resolution backgrounds. The uneasiness centres around discomfort with the idea of professionalization of the field, the accompanying search for "core competencies," and the drive for broadly applied standards. These views are represented in this collection by Cheryl Picard, Eric Gilman and Dave Gustafson, and Andrew Pirie. Their view is that in order to promulgate true social justice and community empowerment, peacemaking skills need to be practised by a wide variety of people, including diplomats, members of all occupations, government officials, community leaders, ordinary citizens, and

52 George H. Friedman and Allan D. Silberman, "A Useful Tool for Evaluating Potential Mediators," *Negotiation Journal* (October 1993): 313-5.

53 Carrie Menkel-Meadow, "Measuring Both the Art and Science of Mediation," *Negotiation Journal* 9 (4) (1993): 321-4; Gilman and Gustafson, "Of VORPs, VOMPs, CDRPs and KSAOs," this volume.

54 Richard Salem, "The *Interim Guidelines* Need a Broader Perspective," *Negotiation Journal* 9 (4) (1993): 309-2; Duryea, "Quest for Qualifications," this volume.

55 Duryea, "Quest for Qualifications," this volume.

56 Salem, "*Interim Guidelines*."

57 Duryea, "Quest for Qualifications," this volume.

58 Susan S. Silbey, "Mediation Mythology," *Negotiation Journal* (October 1993): 349-53, referring to Sara Cobb and Janet Rifkin, "Practice and paradox: Deconstructing neutrality in mediation," *Law and Social Inquiry* 16 (1) (1991): 35-62.

59 Silbey, "Mediation Mythology."

60 For example, the recent "Chartered Mediator" proposal of the Arbitration and Mediation Institute of Canada is a clear attempt to move in the direction of professionalization. See Goss, "Progress report on the Chartered Mediator designation," *Interaction* 5 (2) 1993. The idea of professionalization is also present in the discourse of Family Mediation Canada. Peggy English, *The Standards and Certification Project* (Guelph, Ontario: Family Mediation Canada, 1993)

even school children. Gilman and Gustafson suggest that many disputes, including many conflicts of a criminal nature, are best resolved in the context of the community using peer mediators. Picard and Gilman and Gustafson point out that many of North America's most experienced mediators have no special credentials and are volunteers in community-based mediation programs. The fear is that professionalization will squeeze out community peer mediators and cause the field to become the exclusive domain of already powerful elites. Pirie locates the present qualifications debate within the broader framework of critical theory about professionalization, which suggests dominance and autonomy are the true hallmarks of a profession.

Tensions about adequate knowledge within the field

At the same time, a growing number of academics, researchers and practitioners are commenting on lingering questions which have not been answered by conflict theory and research so far. One example pointed out by Lisa Schirch-Elias[61] is the question of what is more important for a mediator, substantive expertise in the area of dispute, [page 17] or procedural expertise. More troubling is the persistence of the requirement of "neutrality" in many sets of dispute resolution standards, including the Test Design Project's *Interim Guidelines*. The concept of neutrality has been ill-defined and has come under increasing critical scrutiny. Barbara Landau points out the current lack of consensus about neutrality, and comes down on the side of non-neutral intervention by third parties in family disputes, particularly in cases of abuse. Michelle LeBaron Duryea, Eric Gilman and Dave Gustafson, and Lisa Schirch-Elias all raise questions about the notion of neutrality, which neither research nor practice has yet adequately probed.

Gender is another important factor. Persistent critiques of mediation have focused on disadvantages which may be experienced by women in family mediation. In particular, special concerns relating to violence against women are relevant to the topic of qualifications and competency of dispute resolution practitioners. Valuable work recently conducted by a joint committee has resulted in a draft policy statement on mediation in the context of spousal abuse.[62] The Ontario Association for Family Mediation formalized a policy on abuse in June, 1994.[63]

Several researchers have noted that North American dispute resolution methods are culturally biased.[64] Methods which work in unicultural settings with dominant culture North Americans, who tend to have individualistic values, may not make as much sense to members of cultures which have a more collectivist focus, such as many members of Chinese, Japanese, and Latin American societies and many

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61 Lisa Schirch-Elias, "Public Dispute Intervenor Standards," this volume.

62 Fund for Dispute Resolution, *Report from the Toronto Forum on Woman Abuse and Mediation* (Waterloo, Ontario: Fund for Dispute Resolution, 1993); Landau, "Qualifications of Mediators," this volume.

63 Ontario Association for Family Mediation, *OAFM Policy on Abuse* (Toronto: Ontario Association for Family Mediation, June 1994)

64 See Kevin Avruch and Peter Black, "Conflict Resolution in Intercultural Settings: Problems and Prospects," in Kevin Avruch, Peter Black and Joseph Scimecca, eds., *Conflict Resolution Theory and Practice: Integration and Application* (New York: St. Martin's Press, 1993):131-45; Duryea, *Conflict and Culture: A Literature Review*; Duryea, "Quest for Qualifications," this volume.

members of indigenous societies. The staged linear model of mediation prevalent in North America may seem inappropriate and inaccessible to members of many non-dominant communities. Even more troubling is research which suggests members of cultural minorities may realize poorer mediated outcomes than members of the majority culture unless members of minority cultures serve on panels of mediators.[65] Some experience suggests that several fundamental skills presented in dispute resolution training require modification or deletion in some cultural contexts. For example, the use of open-ended direct questions (particularly probing questions) may be considered inappropriate in some contexts. Widely taught active listening techniques, such as paraphrases which include both the content and feeling of a speaker's comments, may be embarrassing [page 18] and inappropriate in a number of contexts. Also, in cases where disputants favour discreet and indirect approaches to conflict, the direct approach to conflict inherent in face-to-face mediation may be counter-productive, and may hinder such clientele from using such services.[66] Research is only beginning to tell dispute resolvers what is known and what is known about the universality or cultural specificity of the effectiveness of mediator behaviour.[67]

65 Michele Hermann, Gary Lafree, Christine Rack and Mary Beth West, *An Empirical Study of the Effects of Race and Gender on Small Claims Adjudication and Mediation* (New Mexico: Institute of Public Law, University of New Mexico, 1993)

66 Brishkai Lund, Catherine Morris and Michelle LeBaron Duryea, *Conflict and Culture: The Report of the Multiculturalism and Dispute Resolution Project* (Victoria, B.C.: UVic Institute for Dispute Resolution, 1994)

67 Duryea, "Quest for Qualifications," this volume.

Opposing pressures: Stormy weather

In summary, a number of tensions are highlighted within this collection of essays. There is tension between the desire for professional status and the desire for dissemination of dispute resolution skills in a variety of contexts. There is discrepancy between the field's desire to professionalize and its incipient understanding of conflict and how to resolve it. There are conflicting pressures from powerful groups: some of these groups are working to institutionalize alternative dispute resolution methods within government and other institutions; others oppose such institutionalization. For example, there are those who fear that women and other minorities may experience further disempowerment in society with increased institutionalization of dispute resolution alternatives.[68] Some community activists, who see dispute resolution as a radical movement for community justice and empowerment, fear co-optation by forces which would institutionalize and dilute the potency of a counter-culture dispute resolution movement.[69] In particular, some fear that dispute resolution may be taken over by the lawyer "subculture" as in the case of legislation or government policy dictating that only lawyers (or members of other specified professions) may receive cases.[70] Such policies would exclude those of other disciplines, as well as potentially

68 Monture, "Alternative Dispute Resolution"; Pirie, "Manufacturing Mediation"; see also the feminist critiques cited in Landau, "Qualifications for Mediators", all in this volume.

69 See Gilman and Gustafson, "Of VORPs, VOMPs, CDRPs and KSAOs," this volume.

70 See Gilman and Gustafson. "Of VORPs, VOMPs, CDRPs and KSAOs", this volume, @4.

excluding local dispute resolution efforts which have origins in and serve particular ethnic communities.

Hand-in-hand: Institutionalization and professionalization

These tensions have escalated rapidly in Canada. Pressure to institutionalize dispute resolution processes has given rise to the pressure to both professionalize and standardize. Institutionalization brings with it the fear that government may interfere with the field in arbitrary ways. This fear is legitimate given the "creeping legislation" [page 19] which has had the effect of setting standards for dispute resolvers in a number of American states.[71]

However, it does not necessarily or logically follow that fear of government imposition of standards means that the field should set broadly applied standards for its practitioners. Plenty of evidence points to the fact that the field is in its infancy. Methods are culturally biased. Sketchy research means the field lacks sound theory and practical sophistication. The good news is that the field is experimenting with some methods that seem to be working.[72] Unsettling is the idea that experimental good news, while promising, could become institutionalized before its time. It would be ironic if the undoing of dispute resolution should be its early blossoming into fully institutionalized mechanisms, force fed by those eager to demonstrate its beauty and too impatient to observe carefully, tend, and wait for the fullness of time.

Risks of institutionalizing current practice standards and qualifications

The field has not explored the diversity of values, goals and methodologies used by diverse dispute resolution practitioners.[73] This poses concerns about some current trends toward development of standards of practice and qualifications which have broad application for mediators in general. Many of these efforts are based on the current state of knowledge, which demonstrably is only beginning to emerge. It is alarming that many current approaches to standards suffer from North American cultural biases, assume a universal applicability which may not exist, and appear to be oblivious to the diversity of valuable approaches to dispute resolution.

Risks of premature institutionalization include "normalizing" culturally biased dispute resolution methods. Institutionalization of current practice standards in the form of certification, licensing, legislation, or case law[74] could perpetuate any inherent cultural and gender biases. In an increasingly multicultural society, this seems unwise. The research of Hermann et al. raises the spectre of miscarriage of justice for members of cultural minorities utilizing

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71 See Gilman and Gustafson, "Of VORPs, VOMPs, CDRPs and KSAOs,"@3; Picard, "The Emergence of Mediation," both in this volume.

72 Gilman and Gustafson, "Of VORPs, VOMPs, CDRPs and KSAOs," this volume. The results concerning several experiments in public multi-party dispute resolution, such as B.C's Commission on Resources and Environment, have yet to be evaluated.

73 Juliana Birkhoff, "Draft Report to the Qualifications Commission: Research on Mediator Qualifications," in *Qualifications Sourcebook Compendium* (Washington, D.C.: Society of Professionals in Dispute Resolution, 1993)

74 So far reported case law concerning liability for dispute resolution is negligible. Growth in case law would likely accompany increased institutionalization of dispute resolution practices.

dominant culture mediation services.[75] Standardization of culturally biased methods could institutionalize such injustices. This is of particular [page 20] concern where standards are incorporated in legislation. Once enshrined in legislation it is a complex and time consuming matter to change them. The current trend toward standardization, certification and professionalization of current mediation methods bears with it the risk of normalizing current mediation methods while marginalizing minority culture dispute resolution methods and practitioners from minority contexts and cultures. Even if domination by particular professions is avoided, there is still the risk of creating a new hegemony of professional mediators unduly bound by standards which threaten with strangulation those who would move beyond the currently dominant vision of third-party neutrality and prescribed mediation models.

Unity of Purpose: Excellence in Practice

Where do we go from here?

Notwithstanding the tensions within the field, there is a universal desire for a high quality of dispute resolution practice. Response to the 1989 report of the SPIDR Commission on Qualifications has affirmed the principle of "performance based standards." Considerable consensus has developed in the field about the merits of this approach.

Also, there appears to be at least nominal appreciation and respect for the diversity of values and goals represented in the field of dispute resolution. Given the diversity within the field, there may be merit in picking up one of the other principles articulated in the SPIDR report to see how it might assist the field in struggling with the problem of who should set standards and for whom. In its 1989 report, SPIDR affirmed that because of the diversity in the field, no single entity should establish standards. Approaches to the issue of qualifications need to acknowledge the diversity present in most North American dispute resolution contexts, and also to specifically include detailed examination of the implications of a diversity of cultural contexts.

Who should develop standards?

There has been a tendency for individual services to look to larger organizations of dispute resolvers to establish standards for the field. Many individual services have either not developed or not articulated standards for themselves. In the case of some service providers which allocate cases to rosters of practitioners, the failure to articulate the criteria by which people are selected to serve on their rosters or receive cases means there may be a certain informality in choosing to whom cases are sent. This can result in disillusionment on the part of practitioners who are not in the "inner circle" and do not understand the methods by which practitioners are selected. Charges of cronyism can occur.

Research by the current SPIDR Commission on Qualifications indicates that individual community dispute resolution organizations often do have well developed standards. A notable example is the Victim-Offender Reconciliation Program (VORP) [page 21] movement, in which standards of service and qualifications have been long articulated and continuously refined.[76]

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75 Hermann et al., *An Empirical Study of the Effects of Race*.

76 See Gilman and Gustafson, "Of VORPs, VOMPs, CDRPs and KSAOs," this volume.

Context specific standards: Why and how?

Given that standards set by organizations may not suit the specific contexts within which individual services operate, there is a strong case to be made that individual services and their particular constituencies are in the best position to develop standards within their own contexts. Competence within individual organizations will be reflected in clearly articulated statements of the values by which they operate and the criteria and methods by which they select and evaluate practitioners. Included within the definition of an individual organization would be programs which are court-annexed or mandated by legislation. In such programs, public policy considerations make it particularly important that caution attend policy decisions on qualifications, and that decisions be sensitive to the particular cultural and other social contexts of the particular jurisdiction, including local concerns about social justice. At the same time there needs to be active resistance of efforts which suggest that "one list" of mediator competencies is an adequate template for all dispute resolution practitioners in sundry jurisdictions.

Current thinking within the SPIDR Commission on Qualifications is supportive of context-specific approaches. It appears that the currently constituted Commission, scheduled to issue a report in late 1994, does not intend to produce a definitive "set of qualifications," nor does it consider it possible at this time to provide a definitive set of "core competencies" given the nascent state of knowledge and the multiple contexts in which a variety of dispute resolution processes are used. Rather the Commission has developed a framework[77] which could be used by individual groups, agencies, associations or government programs for moving through a process of standard-setting. This framework provides a way to consider standards by asking all of the following questions in a systematic way:

· What groups or individuals have a stake in the standards of the organization? These groups or individuals, which could include members, practitioners, program administrators, policy makers, funders, users and potential users (including members of cultural minorities), and other interested parties such as educators and researchers, may have a great deal to offer organizations developing their standards of practice and excellence. Answering this question may help an organization decide who should be involved in decision making processes around standards and qualifications. [page 22]

· What is the specific context (both practice and cultural) for the dispute resolution activity or service in question? Is the service provided by an individual or by a group? Is it court-annexed or community-based? Are consumers mandated to use the service or is use voluntary? Who are the practitioners? Are they paid or volunteers? What is the cultural makeup of the service providers and the consumers. To whom does the service need to reach out? What are the needs, rights, and expectations of each of these groups?

· What are the values and outcome goals of the particular service or activity? How is "success" defined? These questions are key. The answers will help in the design of processes to be carried out in the service.

· For what purpose are standards sought? Selection of practitioners? Evaluation of practitioners or

77 Robert Barrett, "Commission on Qualifications' Report and Update," *SPIDR News* Vol 18 (Spring 1994): 6. It is important to note that this article contains a draft version of the framework which is being revised for the Commission's forthcoming report.

programs? Certification?
· What are the particular tasks required of individual practitioners and of the organization as a whole to accomplish the particular goals of the service or activity?
· What knowledge and skills do practitioners need to carry out these tasks?
· By what methods may competency be acquired in these skills and knowledge? The current diversity of career paths of mediators reflects a variety of methods by which competency in dispute resolution may be acquired: innate ability, reputation, experience, education, training, or a combination of these.
· By what methods may the acquisition of these competencies be assessed? There may be a variety of methods, including letters of reference, testing and evaluation of various kinds.
· Finally, who, when and how will the assessment be implemented? Will people be assessed before or after training, selection, or appointment? Who will assess—users, administrators, peers or others? How will they be assessed, and how will the assessment relate back to the organization's definition of "success"?

This kind of framework for working through the issues related to standard setting could accommodate a diversity of values, processes, and practice models. Used in specific settings, it could take away the concern about a monolithic "cookie cutter" set of broadly imposed standards. Rather, this flexible framework for analysis could be utilized by individuals, services, associations, or governments in thinking through the various policy and practical questions involved in developing standards. Of particular importance is adequate reflection on contextual factors before launching ahead to list competencies and qualifications, or to hastily adopt standards developed in other settings. The contextual variety in the field makes this essential.

The Missing Qualification: And a Final Question

As a final observation, one fundamental qualification for dispute resolution has not been raised in the debate. This qualification is alluded to in the list of sayings at the beginning of this introduction. Paradoxically, mediators must win the respect and trust [page 23] of parties who would turn to them and, at the same time, recognize that they may experience "two-thirds of the blows."

As a potential occupation, dispute resolution seems to be attractive, as witnessed by the many who seek out mediation training.[78] Perhaps there is something about being a mediator which touches the desire within many people to be the agent of peace—perhaps even a hero. Perhaps images of Ghandi or Martin Luther King are the stuff of the would-be mediator's Walter Mitty dreams (except that with two hundred or so hours of training, a certificate from a respected institute, or a graduate degree in dispute resolution, perhaps one would be able to do it better). But alas, the reality of life for dispute resolution practitioners is hard work and chronic struggle with the difficulties of helping people reach settlements, let alone resolve conflicts or reconcile. Those who have any degree of experience in dispute resolution know that third-party intervenors are often the innocent parties on whom the wrath of

78 Jay Folberg likened mediation training to a pyramid scheme. Folberg, "The Seven Pitfalls of Mediators." Another commentator quipped that the field of mediation is like Hollywood in its ability to attract "wannabes," Muriel Pickard, "Hollywood," *The Mediator* 39 (Winter 1993-94): 7.

disappointed disputants is vented at the end of the day.

The wisdom of the ages in this list of sayings hints that a prime qualification for a third-party intervenor may be the willingness and commitment to step in between the parties and experience with them whatever may happen. This may mean voluntary acceptance of the possibility of blows, bruises or torn clothes (often in the figurative sense, and perhaps in a worthy cause quite literally). In the quest for standards this qualification has not been mentioned. Perhaps this is because it is a qualification which cannot be included in a list of measurable credentials. Rather, the current drive toward qualifications is focused on technical qualifications and appears to be aimed toward trying to ensure that mediators—and the field of mediation—achieve a status and success which is respected in society.

How realistic is this goal? With the growing use of mediation, mediators need to remain aware that it is not always the mediator's fault when things do not work out the way all parties planned. In the event of "failure" the field may need to resist the tendency to say: "if only the mediator had the right constellation of attributes, substantive knowledge and microskills, the dispute could have been resolved." In aspiring for success, the field may be tempted to hold mediators responsible for problems which may more properly belong to the parties or, indeed, to society itself. No ethical mediator would guarantee settlement of a dispute; frequent failure is inherent in the job of intervention. In the pursuit of institutionalization of third-party intervention, the field's attempt to insist on ever better qualified mediators may be an attempt to keep promises of success (faster, cheaper, better) that should never have been made concerning the potential of mediation to alleviate societal problems. Better training, more experience, or other qualifications may not be the whole answer. [page 24]

Consider the famous, gifted and respected examples of Ghandi and King[79] whose work is searched for clues about how better to facilitate the achievement of the twin goals of peace and justice. Sometimes forgotten is that these people did not start in powerful positions within the societies they sought to change. They were marginalized in society. They suffered much. And each ended up in a pool of his own blood.

A final question to the field of dispute resolution: How willing is the current crop of professional dispute resolvers to accept that this kind of trustworthiness and persistent commitment may be one of the most important qualifications needed by a true peacemaker? This question brings one back to the values and goals underlying questions of qualifications. The current emphasis on technical qualifications and professional credibility may lead eventually to the establishment of a well-paid occupation of institutionalized and often useful service providers. Is this the goal? For many this may be sufficient. A group of professionals with this goal may help many people. However, how much difference can a group of professionals with this goal make while it is aligned with the powerful elites of a world riddled with injustice and dissension? No matter what technical standards the would-be profession of dispute resolution develops for itself, real differences in communities and society will likely be made by individuals and groups driven by deeply held values of both harmony and fairness who refuse to be neutral in the face of injustice and who refuse to

79 Note that neither of these peacemakers were "neutral" in any sense of the term.

call an uneasy or unfair settlement "peace."[80] To this end, the true peacemakers will probably be committed in a deep and sustained way to research and inquiry about effective conflict resolution, and excellence in training and practice. To avoid co-optation, they will likely be willing to remain marginalized in society and perhaps in their "profession." And, in the end, their sense of vocation and their intense commitment to the people and societies they serve may mean they will not expend their time and energy in movements toward professional qualifications.

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80 For a discussion of the propensity of the dispute resolution movement to replace principles of justice with "harmony ideology," and to "trade justice for harmony," see Laura Nader, "Controlling Processes in the Practice of Law: Hierarchy and Pacification in the Movement to Re-Form Dispute Ideology," *Ohio State Journal on Dispute Resolution* 9 (1) (1993): 1-25. For a warning about the tendency of mediators to become "mesmerized by the process" of settlement at the expense of rights and principles, see Stephen Lewis, "Conflict Resolution: Challenging Canadians at Home and in the World," *Interaction* 2 (2) (Fall 1990): insert.