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Book Review

Mediating with Families

Reviewed by Margaret Halsmith

Linda Fisher & Mieke Brandon
Mediating with Families
Thomson Reuters

Family dispute resolution in Australia has evolved and been transformed by the *Family Law Act 1975* and its subsequent amendments. Recently, over 2000 registered FDR (family dispute resolution) practitioners (FDRPs) have decided whether to upgrade their qualifications to post graduate equivalent or to remove FDR from their practice portfolio.

To date, approximately 1200 have completed the registration requirements. To do so practitioners have necessarily been reflecting on all aspects of their practice. The publication of the second edition of *Mediating with Families* (MwF), written by Linda Fisher and Mieke Brandon, when for the first time in Australia FDRPs have been obliged to explicitly examine their knowledge and practice, is timely indeed. MwF is a book that provides renewed breadth and depth of insight and clinical practice for the FDR profession. Other professionals whose clients are affected by separation and family conflict will also find much to stimulate, challenge and inform them in MwF.

In the Preface the authors liken this second edition to a home renovation of their first. The contents pages indicate just one aspect of what is in store. Readers have more to look forward to. Subtle accretion of mediator meta-functions develop the ambience and are implicit throughout. Various reader–author conversations suggest themselves. Resources abound.

Talking the talk

The contents pages indicate an open-plan-style book structured to culminate in two constructs: the culture and the language of families. Following three initial scene-setting chapters, which analyse family dynamics, describe approaches to mediation, then emphasise the influence of the mediator, there are three chapters describing and exploring FDR.

The next two chapters extend the principles and philosophy of FDR beyond the concerns of separating couples to issues which can arise among extended family members. Having developed, applied and honed the knowledge, skills and aptitudes relevant to FDR, the authors refine and adapt them to these family circumstances.

Practitioners who have and/or would like to broaden the scope of their practice beyond FDR, will find Chapters 6–8 of MwF describe family situations in which family mediation theory and practice is effectively applied: inter family issues, adoption, parent–adolescent disputes. Those who question whether such transferability is possible or appropriate may find it salutary to recall that 'the mediator manages the process; the parties manage the content'.

The first two of the final four chapters, Chapters 9 and 10, make overt the implicit messages of the first eight: namely the essential elements of and variations on, the process of mediation and the responsibilities of family mediators. As I read it, the breadth and depth of Chapters 1–8 assumes that the reader is beyond the apprenticeship stage of practice. I recommend newly qualified practitioners consider starting with Chapters 9 and 10 entitled 'Practice Considerations'. Here they will learn sufficient of the scaffolding of mediation practice by way of endorsements (for example of co-mediation p 232), explanations (for example of power p 217) and exhortations (for example referring parties p 226) to inspire some of the momentum and confidence necessary to commence professional practice.

The final two chapters provide an analysis of the significance of language and culture. The crux of each is presented as being rigorous cultivation and demonstration of respect for mediation participants' uniqueness. Reaching these chapters, which simultaneously provide the foundation and the apex of this second edition renovation, can be likened to the satisfaction of coming home. The preceding 10 chapters of exposition and exploration of substance and meta themes through conversations with the authors reaches a natural resolution.

Walking the walk

'I hear and I forget; I see and I remember; I do and I understand' is reputedly a Chinese proverb, challenging all educators to deliver beyond 'talking the talk'. Throughout MwF Fisher and Brandon offer the reader a variety of opportunities to consolidate their understanding of mediating with families through doing. Exercises and diagrams which transform the words of the text from information through understanding to reflective practice cater well for the reader–educator, whether educating oneself and/or others. For example, genograms on pp 57–59 and pp 316–317 convey an appreciation of the complexity of families in the way that pictures paint a thousand words.

Case studies and examples complement the text, providing an opportunity for the reader to experiment with applying new insights. Each *questions to consider* segment, invites the reader to make

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the chapter their own by integrating the substance and the process into their own mediation schema.

Completing the text are 20 appendices, 19 of which provide sufficient materials to set up an FDR practice or to produce much of the portfolio of 'evidence' required to comply with FDR registration criteria. The 20th appendix needs to be read to be appreciated.

Talking and walking

As I read MwF, the conglomeration of the substantive content and the interactive opportunities provided by the resources evolved into heightened awareness of three particular mediator meta functions which having engaged me maintained my curiosity throughout. Other readers will no doubt find various different synergies to pursue.

Mediators facilitate participants' well-being

The first metafunction that surfaced together with its corollary is that the mediator can significantly influence the health of family relationships, and that family relationships are a sound predictor of personal wellbeing. Cummins[1] identified eight variables in the personal wellbeing index. 'Relationships' is one of them. Like the authors of 'Mediating with Families', Cummins conceptualises families in systems theory, commenting:

> … all homeostatic systems have a limited capacity to absorb challenge and when aversive experiences are both strong and sustained, homeostasis fails. If this occurs, people lose their normal positive view of themselves and become depressed.

Qu and Weston[2] of AIFS concur:

> Our sense of wellbeing is closely linked with how happy we are with our relationships with other people, especially those that are most important to us. Of these, relationships within families loom large, affecting all members, the family as a whole, and the community. If relationships in the family are supportive and enjoyable, then the challenges we face both within and outside the family can seem less daunting than otherwise. The souring of family relationships, on the other hand, can be a devastating experience in which our 'refuge' can become a 'minefield'.

Fisher and Brandon synthesise research regarding a variety of aspects of wellbeing in Chapter 4 which in analysing the shift from a loss of a positive view of self through to well being 'focuses on the development and breakdown of relationships, with particular emphasis on issues affecting couples who separate'. It outlines 'how mediators can assist couples to find ways to manage their emotional journey and resolve their separation conflict through mediation.'

Mediators demonstrate respect for 'help seekers'

The second strand to pique and sustain my interest was the authors' respect for those who seek the help of the profession. Careful choices of language including subheadings, for example, in Chapter 7, Challenges in the family (p 144) set and maintain the respectful tone, which extends to conveying the importance of parties' dignity in the frequent case studies.

In their study of 'help seeking behaviour' Lixia Qu and Ruth Weston, referring to FDR practitioners as 'counsellors or similar professionals', found that:

> 'counsellors or similar professionals' represented the most 'popular' source for advice or information for parents who were separating, followed by lawyers/legal services, then general health professionals.

If 'help seekers' include mediators among those to whom they go first for information, it is all the more important that respect for the dignity of clientele and excellence of practice are values commonly held and explicitly practiced. In both what they say and how they say it, Fisher and Brandon continue to make a significant contribution to identifying these as fundamental to the role of the mediator and in enhancing practitioners' skills. Paragraphs built around sentences such as on p 170 ('Family members usually wish to be respected, valued and wanted, and members of blended families are no different.') are prevalent.

Mediators display compassion for vulnerable participants

The third thread is developed early and remains prominent throughout. It is the importance of mediators displaying skilled compassion for the vulnerability of adult participants who, with their children, may be at their most vulnerable.

As Dorothy Scott[3] points out:

> One of the major challenges in protecting children from abuse and neglect is to build the capacity of adult-focused services … so that they can see, hear and respond to the needs of vulnerable children in the families they serve … with the emphasis being on the transfer of principles rather than programs.

Mediation, as described by Fisher and Brandon, builds adult capacity to respond to children's needs. Techniques for compassionate interventions include *Sensitivity*, *Open-mindedness and non-judgmental attitude*, *Inclusiveness (*p 100) and in sections such as *understanding the issues* (p 175). case studies exemplify these concepts.

As I read it, MwF provides the opportunity, through the breadth of its structure and the depth of its substance, for family mediators to reflect on the potential of the infinite combinations of their knowledge, skills and values to interact with the individuality of parties in ways that maximise the wellbeing of vulnerable participants. The authors convey, and in return expect, compassion of family mediators and in doing so raise the bar well beyond the mechanics of mediation practice in such a way that they develop the professional together with the pragmatic aspects of family mediation.

These are only three among many of the mediator meta functions readers will discover in MwF that will maintain their inquisitiveness and hold their attention as they reflect on their practice.

Conversations

As well as the breadth of its

structure and themes, the authors provide considerable depth of clinical substance. MwF invites the reader to form a relationship with the authors perhaps as mentees, perhaps as colleagues.

Mentor-mentee conversation

For those who would like to get to know each of the authors as mentors, I recommend 'listening' to the clear messages, particularly in Chapters 1–3 and 9 and 11. Linda's and Mieke's experienced and thoughtful voices can be heard clearly as they identify and explore aspects of the family, family mediation and the self-as-the-mediator.

As I read I 'listened' to the tone of these chapters. Well before I reached p 274 on which there is a list adjectives that describe the tone of 'mediatorspeak', my list describing the tone of MwF included 'compassionate', 'experienced', 'accepting', 'caring', 'interested', 'tentative', 'empathetic', 'sensitive', 'convincing'. These are among the qualities of the tone that contribute to the depth of this book.

Collegial conversation

These two veteran mediators write with confidence in a way that invites a conversation, 'biblio-supervision', with reader-practitioners. As would be expected, readers' perceptions, understandings and hypotheses will differ from those of the authors', providing the reader the opportunity to challenge, explore and clarify their perceptions and points of view, prompting reflection and growth. For example, I paused for thought when reading the section on intake and suitability for mediation (p 198): 'Two important elements of intake are to assess the safety of the parties should they come to mediation, and whether they have the necessary negotiation skills and motivation.' It occurred to me that I see it just a little differently and might have written, 'Two important elements of intake are to assess how to maximise the safety of the parties if they come to mediation, and how to design the process to maximise the likelihood of parties being able to be assertive with assistance.' These may seem small and insignificant changes to some. What is significant is that the degree of detail in MwF offers myriads of opportunities to become aware of and to develop insight into one's family mediation practice and its underpinning rationale.

MwF in context

Some texts imply that theirs is the last word on the topic. Fisher and Brandon have written a text that understates its place in the world of mediating with families and is likely to be all the more accessible and therefore influential for it. As well as the scope and detail of the book, the *Additional Resources* at the end of each chapter convey to the reader a reminder that there is much more to consider and much more that has been considered. To have identified and included the *Classics* in these sections acknowledges and affirms the foundations on which MwF and many contemporary texts are built. Footnotes provide another source for those wanting to excavate the archives.

Ideas for the 3rd edition

It is clear that this book is an asset to those who do or would mediate with families. Now follows the reviewer's obligatory 'white ant inspection'.

In the 3rd edition I will look forward to an even more consistent selection of language for mediators to emulate. Having set the language bar high, and while it would be a mistake to think of words only in their literal sense, the choice of language sometimes disappoints. For example, I prefer to think of family structures 'changing' rather than 'breaking down' as on p 5 and p 9. On p 20 I found it jarring to read 'the mediator reality tested … *for* them'. I think of participants accomplishing the reality testing, assisted by the mediator. On p 27 I found 'not completely neutral' to be a red herring that could set a reader new to mediation back a decade. Continuing, for a moment, with other expressions that disturbed my flow, p 13 could be read as implying that 'good faith' and 'genuine effort' are interchangeable. On page 156, I'd like to have read that a mediator's role is to be evenhanded rather than that 'the mediator is not on their side nor that of their child'. In a book in which generally the choice of language is inclusive, interest-based, peer-oriented, I found periodic misdemeanors all the more glaring.

Any cracks in the plaster regarding use of language are more than redeemed by the transformative title 'Mediating *with* Families'. 'With' is the perfect preposition for mediation, accentuating as it does, the philosophy of parties' self-determination and mediators' dispassionate involvement. The same book, entitled inappropriately 'Mediating *for* Families', or exchanging the audacious 'for' for the insipid 'in', 'about', 'between' or even 'regarding' could have been justifiably judged by its cover.

My other concern is that in this 'renovation' as the authors describe [p xvii] it would have been all the stronger for a firm foundation and a house plan showing the relationship among the 'rooms'. An opportunity exists here.

Although sections often commence with 'as mentioned previously', each of the sections of each of the chapters is self-contained. Just as mediation is not alone in being described as 'a practice in search of a theory', MwF is not alone among the mediation literature as 'a book in search of a blueprint'. Sound and explicit theory engenders and liberates practitioner creativity in a way that is experienced as congruent, providing security for participants. Lack of theory creates dependence on the ideas of others and ecleticism both of which can fragment participants' experience. Mediation theory is not easy to come by.

I look forward to a third edition of MwF which retains the excellence of the second edition and incorporates an explicit rationale, a readily available reference point, providing simultaneous stability and freedom to enable me to wonder, to develop hunches, to wrestle with the relationship among concepts, to hypothesise, to test hypotheses; to extend what I read beyond the examples presented, to enrich, challenge and make me confront my subliminal theorising, otherwise

known as assumption-making.

In the meanwhile, with MwF at their side, FDR practitioners and family mediators can continue to incorporate the wisdom, experience and generosity of Meike Brandon and Linda Fisher into their practice and learning. It is the families of Australasia who will benefit from their dedication, leadership and insights. If I were writing the blurb for Thomson Reuters I'd have submitted 'MwF, written by two highly-regarded, contemporary, versatile practitioners will be welcomed by the competent and diverse group of professional family mediators who, with this book in their library, can continue to aspire to delivering best practice in ways which support a progressively more informed 21st century mediation clientele.' ●

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Endnotes

1. 13 March 2008. 'Subjective wellbeing and families: Issues of measurement and data interpretation' Professor Robert A. Cummins, Professor of Psychology, Editor-in-Chief, *Journal of Happiness Studies*, Deakin University. <www.aifs.gov.au/institute/seminars/2008/cummins.pdf> accessed 11 April 2009.
2. *Snapshots of family relationships*, Australian Institute of Family Studies, May 2008. <www.aifs.gov.au/institute/pubs/snapshots/ssreport08/ssreport08.html>.
3. Dorothy Scott (2008) 'Think child, think family, think community: Building the capacity of adult services to respond to the needs of vulnerable children'; AIFS Seminar Series. Dorothy Scott is Director, Australian Centre for Child Protection. <www.aifs.gov.au/institute/seminars/2008/scott.pdf> accessed 11 April 2009.

ADR RECENT DEVELOPMENTS

New arbitration and mediation centre for Singapore

The World Intellectual Property Organisation (WIPO) is opening a new regional arbitration and mediation centre in Singapore in January 2010. The centre will administer mediation and arbitration for intellectual property disputes for the Asia–Pacific region which previously were dealt with in Geneva.

The types of matters that will be arbitrated include: patent infringements, software and patent licenses. The centre will also arbitrate agreements for: research and development, trademark co-existence, distribution of pharmaceutical products, consultancies, art marketing; joint ventures and telecommunication purchases and licence agreements.

Mediated matters will include: copyright and trademark issues; patent disputes; domain name disputes; telecommunication disputes; employment issues in an intellectual property context; consultancy and engineering issues.

The centre will also provide training and advice in mediation, arbitration and expert determination to increase the number of dispute resolution professionals in the region. It will also administer and facilitate any cases in Singapore that come under WIPO rules. ●

Mediation before foreclosure

A number of states in the US are using mediation to helping people save their homes during the tough financial times.

For example, in Nevada, the Foreclosure Mediation Program was established as a result of Assembly Bill 149 and began on 1 July. Under the Program, homeowners who receive a foreclosure notice have 30 days to request a mediation with their lender. Lenders are required to participate in the mediation. The cost to each party is only $US200. The program is designed for people who live in their homes, have an income and want to keep their home. In Nevada, it is estimated that 1200 to 1500 mediations will take place each month and have the potential to save up to 17,700 homes. ●

ADR in the GFC

UK organisation Acas has released a report, *The recession: what the future holds for employment relations*, showing that the recession has stimulated a 22% rise in unfair dismissal conciliation cases. The report also found that other employment tribunal cases have increased and demand for redundancy advice as risen by almost three-quarters.

Acas provides information, advice, training and a range of services for employers and employees to prevent or resolve problems in the workplace and improve performance.

To view this free report go to <www.acas.org.uk>. ●

On-the-spot family mediation trial in UK

The UK Legal Aid Minister, Willy Bach, has a launched an on-the-spot mediation trial in the West Midlands, UK. The in-court family mediation pilot is designed to offer an alternative to family court hearings and so reduce the time, cost and stress involved in resolving disputes by helping families reach safe, long-lasting agreements in the best interests of all involved, particularly children, before any dispute reaches court. ●

ADR Diary • ADR Diary

- The **ADRA** AGM will be held on Wednesday 21 October at 5.30 with dinner commencing at 6.30. It will be held at the NSW Law Society, 170 Phillip St, Sydney. Rex Butler will be the guest speaker. ADRA has a number of seminars coming up this year in Sydney including **Restorative Justice** on 9 November. For bookings and further information please contact <contact@adra.net.au> or 0418965875 during business hours. All seminars and workshops provide opportunities for you to fulfil professional development requirements for ongoing accreditation.
- The **VII International Conference, World Mediation Forum (WMF)** 'Mediation, Justice and Governance: An Opportunity for Peace' is being held in Margarita, Venezuela, 27–29 November 2009. For further information go to <www.worldmediationforum.org/newsletter_visualizacion.php?newsID=9>.
- **LEADR** is holding **Mediation Workshops** in Sydney on 9–13 November; Melbourne from 12–16 October; Perth from 13–17 October. For further information go to <www.leadr.com.au/training.htm>.
- **ACDC** is offering **Mediation Training** in Sydney on 19–23 October; **Mediation Accreditation** in Sydney on 28 October; **Advanced Mediation Training** on 18, 19 and 20 November. For further information, visit <www.acdcltd.com.au>.
- **The** 5th Asia–Pacific Mediation Forum Conference **will be held in** India from 21–27 November 2010. For further information go to <www.apmec.unisa.edu.au/apmf>.
- **National Mediation Conference** will be held in Adelaide on 7–9 September 2010. For further information go to <www.mediationconference.com.au/>.
- The **Bond University Dispute Resolution Centre** has upcoming courses including **Basic Mediation** on 26–29 November on the Gold Coast; and 15–18 October in Melbourne with Leo Cussen Institute; **Assessment Course** 6–7 November in Melbourne with Leo Cussen Institute; **Family Mediation Specialisation** 30 November on the Gold Coast. For more information email <drc@bond.edu.au> or visit <www.bond.edu.au/law/centres>.
- **Mediator Style Training** is running full-day training sessions across the country. Sessions will be held in: Perth on 7 November; Sydney on 3 October; Melbourne on 17 October; Brisbane on 12 September and 31 October; Canberra on 19 September. For bookings go to <www.mediatorstyletraining.com>.

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