Understanding Multidisciplinary Approaches in Alternative Dispute Resolution

by
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Presentation Overview

• What is Collaboration?
• Why is it beneficial to consider multidisciplinary approaches when practicing ADR?
• ADR approaches & historical evolution
• How to facilitate collaboration amongst ADR practitioners
• Current ADR trends & Suggestions
• Questions & Answers
Collaboration

- What is Collaboration?
- Personal Experience
- Professional Experience
- Observations
- Teaching Mediation
“The Best of Both Worlds”

Jorge Rice, Ph.D.
- E Filing
- Legal “Mumbo Jumbo”
- Case Referral
- Mediation Coverage

Marc Narotsky, Esq.
- Different ADR Theories
- Different ADR Methods
- Teaching Experience
- Publication Opportunities
“One Size Does Not Fit All”
Current Certification Requirements

- Subject Matter Knowledge
- Law School “Socratic Method”
- How to run a successful ADR practice
- 40 hour mediation Course enough? (Civil & Family)
- How can we Improve as ADR practitioners
History: A Religious Comparison

The Evolutionary Tree of Myth & Religion

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Please note: due to the vague nature of mythology, the origins of many of these beliefs are estimates only and should not be counted as fact. This chart can only offer an approximation to the founding dates of ancient religions.
Biblical Scriptures

- Moses – Ten Commandments “You shall not steal, nor deal falsely, nor lie to one another.

- Jesus Christ – “All authority in heaven and on earth has been given to me” Matthew 28:18

- Islamic Mediation - *Al-Nisaa 4:35*] If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, Allah will cause their reconciliation: For Allah hath full knowledge, and is acquainted with all things.
Confession

- Transformative Form of ADR
Native American ADR

The Hopi Tribe consists of 12 villages located on high sandstone mesas in northern Arizona. The Hopi Reservation of 1882 encompassed traditional villages built circa 1050 A.D. Skilled craftsmen produce ancient styles of pottery, textiles, basketry, silver jewelry and katsina dolls. Hopi Tribe
Navajo Tribe
U.S Declaration of Independence
We the People of the United States, in Order to form a more perfect Union, establish Justice, ensure domestic Tranquility, provide for the common Defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.
TERRITORIAL GROWTH

COLONIAL PERIOD: 1775
- Original Thirteen Colonies
- Other British territories

UNITED STATES: 1790–1920
- States
- State claims
- Special status areas
- Territories
- Unorganized territories
- Claimed areas
- Foreign areas

1803  Dates of territorial acquisitions
1805  Dates of initial territorial organization
(1809) Dates of latest change within given time period
1812  Dates of admission to the Union

Map scale 1:34,000,000

Boundary between Mississippi River and 49th parallel uncertain due to misconception that source of Mississippi River lay further north

1775
DEVELOPMENT OF US ADR

- 1888: ARBITRATION ACT
- 1917: CREATION OF U.S. CONCILIATION SERVICE
- 1926: FORMATION OF AMERICAN ARBITRATION ASSOCIATION
- 1947: CREATION OF FEDERAL MEDIATION AND CONCILIATION SERVICE
DEVELOPMENT OF U.S. ADR (cont)

- 1969: Philadelphia Municipal Court Arbitration Tribunal
- 1971: Columbus Night Prosecutors Program

“The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried.” — Sandra Day O’Connor
Florida as a Leader
Florida History ADR

- 1975: Dade County Citizen Dispute Settlement Center
- 1980: Mid 1980s DRC Established
- 1987: Florida Legislature enacted Chapter 44 Florida Statues which allowed Judges the ability to refer most cases to mediation
- 1994: USPS Redress pilot program begins in Florida
Florida ADR Growth

- Marc Narotsky, Esq. (23859)
- Jorge Rice, Ph.D. (27126)
- 5 months total increase in certified mediators 3,267

Practitioners of ADR & demand of mediation increasing, as opposed to litigation.

- On record first Civil certified mediator in Florida. ANTHONY J. ABATE
Collaboration

Tractable

- Parties: Well-Organized Clearly Define Members Roles & Mission
- Issues: *Consensual* Agreement on values
- Social System: *Prescribed* Well – Defined structures Clear Procedure & Rules Legitimate Authority
- Conflict Process: *De-escalated* contained & focused, commitment to resolving.

Intractable

- Parties: *Diffuse* Unorganized Loose Collective Members Roles Lacking Structure
- Issues: *Dissensual* Fundamental value difference
- Social System: *Ambiguous* Uncertainty in Procedure Absence of clear Authority
Collaborative games are a way to reinvent government, to move beyond the conflict game where all sides have spent a lot of time and a lot of resources blocking opponents’ initiatives and cancelling each other out (Weber, 1998, p. 221).
Grassroots & Collaboration

Wagner and Fernandez-Gimenez: identify five variables that foster and enhance collaborative approaches. These simplistic methods should be taken into consideration when initiating the collaboration.

- **Respect** and **Understanding** – respecting and listening to the viewpoint of all partners facilitates mutual understanding, thus laying the foundation for trust and social capital;

- **Empathy** – mutual understanding among partners leads to collective reverence towards diverse perspectives, which fosters empathy;

- **Commitment** and **continuity** – commitment to partnerships and consistent participation among members leads to norms of reciprocity;

- **Predictability** and **dependability** – the ability to depend on partners and predict their actions creates trustworthiness and;

- **Transparency** – open communication concerning partner’s motives, objectives, and actions instills transparency. (Morris et al., 2013, p.42)
## Power Frames

<table>
<thead>
<tr>
<th>Frame Type</th>
<th>Definition</th>
<th>Example</th>
</tr>
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<tbody>
<tr>
<td>Authority - positional</td>
<td>Actual ability to make decisions on the basis of formal role assignment, job title - description, or organizational position.</td>
<td>I mean he had the power because he was the ranking member of the transportation committee. He had the power to basically just push through whatever he wanted.</td>
</tr>
<tr>
<td>Resources</td>
<td>Have power because of resources (e.g., time, support staff, money, etc.) that others do not possess.</td>
<td>It all comes down to the golden rule again. Those who got the gold make the rules.</td>
</tr>
<tr>
<td>Expertise</td>
<td>Possess relevant or unique knowledge and experience that others do not have.</td>
<td>He is influential because he knows a lot about the technical issues in the case.</td>
</tr>
<tr>
<td>Personal</td>
<td>An individual's interpersonal style grants credibility and power in interaction (e.g., charisma, competent communication skills, negotiation experience, etc.).</td>
<td>I think that if we would have had somebody like Dave from the beginning it probably would have been really good because Dave is a very powerful person and has a lot of capability.</td>
</tr>
<tr>
<td>Coalitional-relational</td>
<td>Power comes from membership in and/or affiliation with a particular group of people who support that individual's perspective.</td>
<td>They know how to rally the numbers just like the National Rifle Association can put their people, whether it's right or wrong, you know what I mean, they know how to rally their people.</td>
</tr>
<tr>
<td>Sympathy-vulnerability</td>
<td>Power comes from the victim role because the victims' situation is likely to be supported by others on an emotional level (e.g., children, endangered species).</td>
<td>They've used it to get their way, and after a while they either just did not come back to the table or they would come back and just be angry and mad for the rest of the day, like a small child would be, because they didn't get their way.</td>
</tr>
<tr>
<td>Force-threat</td>
<td>Power comes from coercion, or from threatening coercive action, from a party's threat to use their Best Alternative to a Negotiated Agreement (BATNA) (e.g., to sue another).</td>
<td>When the government came in to possess the land... there were some threats and some intimidations that were made.</td>
</tr>
<tr>
<td>Moral-righteous</td>
<td>Have power because position is on the &quot;moral high ground&quot; or believe themselves to be ethically or morally &quot;right.&quot;</td>
<td>He usually not in big trouble. When he runs for reelection. But, if he took on the moral high ground, as it were, he stands a terrible risk of really piss[ing] off people who have very deeply held beliefs.</td>
</tr>
</tbody>
</table>
Conclusion

- Trends towards ADR docket alleviated, reduce litigation cost, & empowering those involved in the conflict (Self Determination)

- As a comparison to the practice of medicine, a holistic approach it. E.G. collaborative family where you have a therapist, Certified Public Accountant, mediator and attorneys