

---

# *In Practice*

## Five Elements of Mediation

*Christopher Honeyman*

It is becoming well understood, both by dispute resolution practitioners and scholars, that the purposes and qualities of different mediation programs are subject to sharp debate on a political level. (See, e.g., Becker, 1986) What is less conspicuous is that, even within the politically or legally defined terms of a given program, there is much room for doubt as to what, exactly, constitutes effective performance. Clear and consistent standards for selecting, training and evaluating mediators simply do not exist. Program evaluations often slide past this point, and the common interest of programs and agencies whose budget and other support is often tenuous may make the development of standards a "can of worms" issue. The necessary discussion is, therefore, too often relegated to the level of private chats.

This doesn't help any agency that is prepared to admit its faults. Lack of candor results in lack of understanding, and failure to address quality control problems in a systematic way becomes self-perpetuating, as vested interests emerge among people who fear—in many cases wrongly—the development of stringent standards. But at least the well-established programs ought to be able to have this discussion out in the open. This article will attempt a contribution to that process: It is an account of one agency's conscious endeavor to find a way to be more consistent and effective in selecting and training mediators.

### **Recognizing a Problem**

"The moment I go out that door it's all pick-and-shovel work."

That sardonic comment, made by a new colleague some years ago, marked his transition from starry-eyed newcomer to working professional. It's a delicate moment. If the training provided to a new mediator fails to help the trainee to pass beyond the first flush of enthusiasm with a real sense of his or her potential,

---

**Christopher Honeyman** is Coordinator of Arbitration Services for the State of Wisconsin Employment Relations Commission, P.O. Box 7870, Madison, WI 53707-7870. He has played a variety of dispute resolution roles—including those of mediator, arbitrator, and administrative-law judge—in cases involving labor and environmental issues.

---

repeated dealings with recalcitrant parties are likely to cause strain and frustration. This is particularly true under circumstances in which the parties tend to feel they have little to lose by not settling.

My colleague's training, like my own, consisted of a few nights on the road—with luck as many as 15—watching a variety of seasoned co-workers mediate labor disputes, in turn being watched by them, and talking over the problems in the hall, between sessions and afterward. Following this somewhat haphazard series of encounters, we were deemed sufficiently qualified to be assigned a share of the burgeoning caseload.

In a number of instances, this “road training” worked better than it had any right to. But even with greater amounts of time devoted to the process in more recent years, such undirected efforts produced inconsistent results. It now appears that this method works adequately only for people who are naturally inclined toward mediation; experience has demonstrated that, for those in whom some level of understanding is not innate, a more formal method of training is necessary to inculcate it. At the same time, the classroom-oriented training in use elsewhere aroused skepticism in our agency, both because it was felt that the real emotions and problems posed by real parties cannot be successfully duplicated in that setting, and because of the substantial supervisory time this method would demand. An agency with the usual budgetary problems, combined with a high and rising caseload per person, could not overcome these objections to classroom training within any reasonable time. No matter what else the agency did, therefore, it appeared that “road training” would have to remain the backbone of its approach.

This meant the agency would have to confront the confusion created by the different methods of working advocated by different mediators. Time and again trainees had encountered conflicting instructions given to the same person by two successive “trainers.” Typically, competent mediators had strong opinions on how best to get results, derived from their own experience. But their opinions, unfortunately, were all over the lot. If an “aggressive” mediator was likely to criticize a given trainee for being slow and ineffectual, a week later a “patient” mediator would roundly reject the same trainee's attempt to put into practice the lesson just learned, and castigate the trainee for haste and lack of concern for the parties. The result of these mixed messages, too often, was low morale, slow development, and a tinge of cynicism about the process that did not bode well for the trainee's career.

It was obvious that each proficient mediator had evolved a *modus operandi* of an almost organic quality. Perhaps the solution to clashes of “style” would be to apprentice each trainee to one or two specific mediators known to work in a way compatible with the trainee's character. This, however, seemed unpromising, if only because it was unlikely that we could determine early on which kind of mediation approach would eventually be most appropriate for a given trainee. Also, there seemed to be some value in exposing the trainee to as many different approaches as possible, if this could be done in an intelligible way: Broad exposure to different styles had, at least, given the agency's mediators a sense of the range of possibilities.

It became clear that the lack of a convincing morphology of mediation—a most theoretical issue—was causing some very practical problems. But biology does not deny physics, and there was a suspicion on my part that the “organic”

---

and individualistic styles of mediators might harbor within them some common ground, a matrix of basic skills that could be used to explain the field and to develop a more sophisticated training program. With the cooperation of the agency's Commission, staff and employer and union representatives, I undertook in 1985 and 1986 a study designed to try to find out if there was, in fact, such a structure hidden within this apparently amorphous field. Brief and nonacademic as it was, the study was nevertheless sufficient to change several aspects of our operation.

## Background

The Wisconsin Employment Relations Commission is a labor relations agency, in existence 50 years, which employs about 20 staff members, all of them cross-trained to serve as mediators, arbitrators and administrative law judges. This cross-training is a major distinction of the agency and, in many ways is an asset; but it has caused difficulty in one key respect: The fact that all employees must be presumptively capable of conducting arbitration hearings, writing law decisions, *and* mediating calls for talents not commonly mixed, and complicates the hiring process. Some solace is available to the agency in view of the fact that staff members tend to establish varying case distributions, depending on their different areas of interest and strength. But they are all expected to attain at least adequacy in each area; moreover, mediation cases—at about 1000 per year—roughly equal in numbers all other types put together; mediation therefore looms large in virtually everyone's caseload.

Meanwhile, the parties even our newest mediators are expected to deal with are not unsophisticated. The state was one of the first to pass public sector labor legislation, from which emanates the bulk of the caseload, and the parties' representatives typically have substantial experience in an environment replete with legal and technical maneuvering. Wisconsin statutes provide for resolution of bargaining impasses in municipalities by final-offer arbitration. Strikes are extremely rare, the parties don't feel that impasse is much of a threat, and bargaining strategies tend to focus more on developing "winnable" offers than on traditional concepts. This leads to complex game-playing behavior, at discerning which the mediators must be adept. In Kolb's terms (1983), the Commission's mediators are compelled by these conditions to act as "deal-makers" rather than "orchestrators."

## Method

I felt that isolating the riddle of "style" could best be addressed by confronting it head-on, studying *mediators* known to work in different ways but in *situations* as similar as possible. Much of the agency's mediation is in municipalities represented by a relatively small coterie of attorneys and labor relations consultants, with again a relatively small number of unions on the other side. For this reason and because both parties structure their bargaining heavily around comparisons with neighboring and similar bargaining units, it was possible to arrange for a fairly consistent set of cases.

Initially, the mediators involved were all assigned to teacher/school board mediation cases arising within an area roughly equivalent to the middle of the state, an area approximately 100 miles in each direction. The school districts within the target area shared relatively similar demographic and economic

---

characteristics, except for the larger towns, which were excluded. After the study began to show certain similarities in conduct between the mediators, other types of cases were added to see if the variety caused any shift.

A total of 16 cases, some involving more than one meeting, were involved. These were parceled out among five mediators, who were chosen from the larger group of 20 based on two criteria—demonstrated consistency of results, and the maximum possible variation of character and known style of mediation. Consistency of results was, in turn, defined in terms conventional to labor mediation: settlement rate relative to other mediators, acceptability to the parties, and respect among their peers.

Extensive notes were taken throughout each meeting, and these were supplemented with initial general interviews, as well as specific taped question-and-answer sessions after each meeting. The tapes provided both an opportunity for the mediator to explain what actions had been taken outside my presence, such as over the telephone prior to the first meeting, and an opportunity to discuss peculiarities of the case, particularly errors made by the mediator. These errors, obviously, had to be factored out of a pattern to be used for training.

The parties were advised in each case of my impending presence, and no objections were raised. My subjective view is that my presence did not materially alter the parties' tactics or the mediators' actions, essentially for two reasons. First, I had been active myself as a mediator for long enough that all but a few of the negotiators involved already knew me from prior cases. And second, I took pains to minimize my presence; a general explanation at the outset of each case of why I was there, coupled with an assurance that I was extraordinarily boring to watch, was apparently credible to everyone present. By and large, the parties took little interest in my presence after the first few minutes.

With respect to the differences in character among the five mediators, an adequate description of each would be tedious and unnecessary to the present purpose; evocation is sufficient. The satirical titles they acquired during the study were the "Stoic," the "Family Doctor," the "Strategist," the "Bulldozer" and the "Medicine Show." I don't mean this to imply that any of them is a one-trick pony; each has a developed range of tactics. But the central characteristic of the Stoic—patience—is altogether different from the Bulldozer's forceful salesmanship, the Strategist's self-controlled balance or the Family Doctor's ability to empathize with two (or more) warring factions simultaneously. To give a sense of the accuracy of these honorific titles, it's enough to say that some were coined by the mediators themselves, and that each, upon hearing the list of "characters," was able to identify all of the others.

## Observations

On the surface, these mediators do almost everything differently. The initial taped interviews established that three were primarily interested in the problems of the moment, and in getting the settlement; two were more concerned with the parties' long-term relationship. One read up on comparable settlements and disputes before going to the meeting; two spent substantial time before each case discussing it with the negotiators on the phone; two others did almost no specific preparation. One mediator routinely used the physical environment, such as whom to sit next to in a caucus; four at least professed to ignore it. Three used sidebar meetings as often as possible; two, as seldom as possible. And, when asked

---

to identify types of cases they particularly liked or disliked, no two came up with the same answer.

But they also had several things in common. All five identify themselves primarily as mediators, in an agency where that is not inevitable. They all had, as noted above, a demonstrated record of success, whether that be measured by the high rate of settlements in their cases, the number of requests for their services jointly filed by the parties, or their general reputation among their peers. But most significantly, it developed that, to a surprising extent, *they all followed the same sequence of action*. This was not immediately evident, because it took time to discern the factors which resolved apparently dissimilar tactics under a common heading. But what gradually emerged was the conception that there were, in fact, five generic types of activity in which all the mediators were engaged; that dividing all of their actions into those types left no residue; and that this typology made it possible to explain their differences in style. After several tries with other phrases, I now feel that the five types of activity are best described as investigation, demonstrations of empathy, invention, persuasion and distraction; they will be discussed separately, with a brief explanation of how they interrelate to produce different styles.

*Investigation.* A comparison of the notes of the sessions shows that, in different ways, all of the mediators engaged in intensive investigation of the facts behind the dispute early during the case. For the most part, this took the form of questioning spokespersons and other team members in a caucus. Under this heading, the mediator was performing two functions at once: Obtaining hard information, sometimes information the party did not want to give; and demonstrating to the same party some potential holes in its point of view. The ability to pin down a spokesperson not only got the mediator the information, but allowed everyone else present to see that the negotiator was trying to evade that process. The fact of an attempt at evasion, conspicuously opposed by the mediator, itself became evidence to those present that their position might be untenable.

The notes of the sessions by themselves, however, would not have shown this consistently. It became clear that the initial interviews were necessary partly to offset a lacuna in the notes, as in, for instance, the example of a mediator who asked few questions at the outset of the case. In that instance, it was important to know that that mediator worked primarily in the same geographic area of the state throughout the year, knew all of the negotiators more intimately than did most of the other mediators, was in constant contact with them about other cases, and was consequently known to all concerned to have a grasp of the facts relevant to the case which equalled or, in some respects, exceeded the negotiators' own even before he walked in. This type of correction to the notes' raw impressions was required in a number of instances.

*Empathy.* All the mediators took various steps to try to establish empathy with the disputants. These demonstrations, I found, tended to occur at the same time as investigative attempts, probably because in their absence the investigation element can appear hostile or negative to the party involved. Each mediator showed himself or herself as being obviously willing to hear and discuss matters, of concern to the parties or individual team members, which were not necessarily "relevant" to the dispute. Other demonstrations of affiliation or openness, such as body language, could also be seen, but were difficult to record quickly enough.

---

(See Kolb, 1983, on the difficulties of taking adequate notes under the typical conditions of a mediation case.)

*Persuasion.* Specific attempts to obtain concessions began early, at a relatively low level, and typically rose in intensity during each case. I must concede that one mediator started out at a level of intensity that resembled another's last-ditch effort; but it is the progression, not the general level, which I find significant. It was clear from the outset that parties "read" the mediator's temperament—otherwise, patient mediators would never get anywhere. The progression in intensity thus signifies to the party both the mediator's rising self-confidence in pressing for concessions (based, as noted, on increased understanding of the dispute) and the increasing need for action as the dispute draws to a head.

It should not be offensive to anyone experienced in the field to note that the bag of tricks drawn on by the mediators in this respect is quite similar to that of salespeople; the fact that mediators must operate on a high ethical plane did not, in my observation, prevent the use of techniques that, at first sight, appear manipulative. It seems reasonable to hypothesize that the reason this was acceptable to the parties, and generally considered ethical, was that the parties had implicitly, and sometimes explicitly, asked for this pressure to be applied to them. It was quite common for a negotiator, for instance, to approach the mediator (in the hall) with a comment such as "My people are off-the-wall on the \_\_\_\_\_ issue. I can't get them to listen to reason. You're going to have to really go to work on them on that." Parties needed this pressure to settle on a deal that was always less than an ideal.

Which issue or issues became the first to undergo this escalation of pressure seemed to vary according to style, though this pattern/sequence appears consistent for any given issue. But the study was not sufficient to determine why one mediator might choose to attack the major issue first while another would lead up to it by demonstrating progress on minor issues. This suggests an area for further research that might well be useful to mediators seeking to refine and develop their individual approaches.

*Invention.* Attempts to create out of whole cloth a solution to an issue, or more likely a series of proposed solutions, were generally reserved until after the mediator was not only knowledgeable about the parties' situation, *but obviously so*. The reason seems to be that an early attempt by the mediator to invent a solution appears condescending to the parties, even when the mediator happens to have found the "right" answer. Once or twice during the study, a mediator did try to move things along by coming up with an invented solution early in the game; in each case, however, this was a conspicuous failure.

*Distraction.* All of the mediators found a need to distract the parties regularly. This could be described as a function of entertainment; one of my colleagues describes it as the "vaudeville element" in mediation, but the common factor appears to be distraction rather than the ability to tell jokes as such. It rapidly became evident that a frequent resort to some kind of relief of tension was necessary, in order to keep the parties from assuming a "set" which soured the atmosphere and made settlement more difficult.

Only one mediator—the Medicine Show—relied exclusively on identifiable jokes and wisecracks to fulfill this function. It was his precision of timing, always beginning or ending a caucus with an (often off-color) joke, and predictably

---

inserting one just when tempers were starting to flare, that first suggested the *predictability* of this element. That, in turn, heightened sensitivity to other mediators' use of very different specific techniques, which did not at first suggest entertainment but, on close examination, served the same purpose. I do not, I admit, fully understand the ways in which these instances of distraction related to instances of invention or persuasion; many of the parties' movements occurred after a long series of such interactions which I could not record in adequate detail, and there remains much to be discovered. But some of the examples were relatively simple, and susceptible to a coherent explanation on the basis of the imperfect notes obtained. An example:

One negotiation was heading for a wage freeze, but the union wanted a clothing allowance of \$100 a year. (There were also other issues.) The employer was willing; the dispute on this item was over whether the allowance would be paid in a lump sum or a reimbursement for expenses. In the former case it was thought taxable, to which the employer objected. But the union objected to having to prove the expense.

The notes of this session show that the issue was identified in a joint meeting at 11:14 a.m. The union, in a caucus at about 11:50, roundly rejected the employer's position; the mediator immediately went on to other matters. Half an hour later, in the employer's caucus, the mediator failed to get the employer to drop its objection, but did get the employer to define its requirements in terms of being able to defend its lack of Social Security deductions to an auditor, so that the contract language would require employees to *keep* receipts but not to turn them in unless there was an audit.

In each succeeding caucus, the mediator touched on the subject, but did not harp on it after the party expressed either a modest movement or rejection; and about 1:20 p.m., the mediator was able to get the union to accept the employer's position on this issue. The notes show that the mediator expected the union to have to concede on the issue in some way, and show—in essence—two forms of distraction (jokes and switching to other issues), and one minor reformulation of the employer's position, as the techniques used toward that end.

## Results

This was not, of course, a wide-ranging study, and the problems in recording data were such that mathematical rigor in the analysis was not likely to be fruitful. The results reached are therefore suggestive rather than conclusive. But the study did not take place in a vacuum, or even in the rarefied air of the academy; between my own practice and that of the other mediators involved, there was several thousand cases' direct experience as a backdrop against which I could evaluate the propositions that seemed to be developing. Thus I have some confidence in advancing several hypotheses directly or indirectly drawn from the study's results:

1. *For practical purposes, mediation can be divided into the five skill-based elements described above (plus a sixth element—substantive knowledge of the field in which the dispute takes place; in our case, obviously, labor relations).*
2. *Differences in style can be accounted for by differences in relative skill and knowledge among these five elements.*

Even though each of the mediators demonstrated all of the qualities described, there were substantial differences in the levels at which they

---

seemed comfortable. The Stoic and the Family Doctor found it difficult to “hammer,” or hard-sell, a recalcitrant team or individual; the Bulldozer treated empathy as a good thing in small doses. Though each could rise to an occasion, it was plain that their respective preferences dominated their performance; what comes easily, in the end, is what is relied on most. Style therefore emerged as a mediator’s particular combination of strengths and weaknesses, consciously or unconsciously used to the best overall advantage.

Landsberger (1956) used somewhat similar terms to describe the skills involved in mediation, and referred to a “halo effect” in which unusual ability in one aspect of mediation would carry the mediator over relatively low ability in another respect. The present study supports this, but the similarity of cases observed brought home the fact that (in different ways) each of the five mediators demonstrated at least a workable competence in each of the five skills. This suggests that no one can be considered even a journeyman mediator if any of the five skills is entirely lacking; but that to be perceived as exceptional, it is not necessary to accomplish heroic levels in all five.

3. *It is possible to use this division of skills to develop a thorough training program, while obviating the problem of style.*

The five skill-based elements constitute a useful matrix for explaining what a trainee is seeing, and for helping a trainee pick and choose among techniques within each skill to find a “fit” to his or her personality.

For example, some people can’t tell jokes, and it is useless to tell them that this is an essential tool in distraction; that just discourages them. But if they can be told that there are *other* tools which serve the same purpose, the way is open for them to search for a personal solution to this generic problem. It’s important for them to hear of one of our colleagues who, although an excellent mediator, cannot tell a joke to save his life. Years ago he adopted a series of tactics, the significance and range of which was not apparent until it was discussed in light of the study; my favorite of these tactics is the “The Threat.” At an early opportunity in a case, this mediator will often tell the parties that if they don’t start to show some movement, he will be compelled to begin telling jokes, and that they will regret this. It always gets a chuckle, but more important, it becomes in and of itself a running joke to which he can return again and again; thus the purpose of distraction is reliably served.

In view of these conclusions, the Commission became willing to experiment with a substantial redirection of the agency’s training program. While it is still undergoing development and experimentation, these features are salient: New mediators are given exposure to the different elements on a theoretical level; they are required to give special attention to each “road trainer’s” approach to each element, and to turn in written analyses of what they have observed in each of many “ride-along” cases; they are scheduled to see a known variety of styles at work and encouraged to consider each as an assemblage of parts; and they are, for the first time, given a reading list (which is the subject of the next hypothesis). I believe that by these means it will be much easier—and faster—for each trainee to assemble an accomplished style of his or her own in due course, without either the lack of imagination which can result from excessive fidelity to a particular trainer’s approach, or the confusion which can result from the clash between a given trainee’s needs and the available trainer’s (perhaps) diametrically-opposed methods.

- 
4. *Division of mediation skills into the five elements discussed here allows easy comparison of mediation to other professions, in which thorough approaches to skill development already exist.*

For a busy agency, it is always desirable to avoid reinventing the wheel; there was little justification for trying to write comprehensive materials on each skill if adequate analogies could be found elsewhere. The large quotient of job analysis inherent in our work proved helpful here: It did not take long to identify other professions closely related to each of the elements of mediation, and which have generated their own materials. These offer a comprehensiveness, at their best, which would be difficult to replicate; at worst—in the highly personal element of distraction—there are, if nothing else, books that discuss such things as the problems of the after-dinner speaker.

These analogies deserve brief discussion. The function performed under the heading of investigation, to begin with, consists mostly of asking specific questions at a meeting. A mediator is constantly seeking information from spokespersons and others, who may try to avoid giving it, or who may unintentionally or intentionally mislead the mediator. The skills involved closely resemble those of a journalist—particularly a broadcast journalist, for whom both the question and the answer are intended to be heard in their original form by the audience. In this case, of course, the mediator's "audience" is the non-speaking members of the group.

A professor of journalism has addressed these issues, near enough. In *Interviews That Work*, Biagi (1986, pp. 67-75; 81-97; 115-117) laid out in three chapters solid advice, applicable to mediation, that requires little more adaptation than to imagine "mediator" wherever "reporter" appears. Chapter titles such as "How to Conduct an Interview," "How to Ask Hard Questions," and "How to Interview for Broadcast" adequately suggest the content.

Empathy is a necessary element in any number of fields, and the wide variety of published materials would allow a mediation program to select something keyed to its perceived special problems. *People Skills* (Bolton, 1979) is useful here, primarily for its discussion of various forms of listening skills.

Distraction is, as noted, highly personal, and development of this approach is not yet—if ever—at a high enough level to be able to offer much guidance. The two books listed as references in this area (Humes, 1985; Rosten, 1985) do, however, discuss as serious business the problem of getting an audience to respond, and thus serve as something more than joke books.

The most difficult material to read is found under the heading of invention; perhaps this is an indication that the ability to create a solution to a knotty problem is one of the least "trainable" functions. DeBono (1986) and Adams (1986) are, however, intellectually challenging, and Fisher and Ury (1981) relate these high-flying mental gymnastics to real problems in bargaining.

Last comes the least heart-warming element, persuasion. Sales, not surprisingly, is where the necessary material is found. Trainees tend to think of mediation in near-theological terms, and may be offended by a comparison between one of its elements and the job of a "Professor Harold Hill." But there is no escaping the practicality of this material. Even if the trainee is convinced that he or she would never try a "hard sell," the skill must be taught, so that the trainee can recognize how the negotiators use it on each other—and on the

---

mediator. Meanwhile, any would-be mediator disdainful of the soft-sell techniques and maneuvering also described by Girard (1977) and Hopkins (1982) is best directed to some other profession. “Which would you rather buy?” a veteran federal mediator once asked me when I was starting to get into the field, “a roll with a hole, that was boiled before it was baked—or a bagel?”

Much of the content of each of these readings is redundant—they weren’t after all, written with mediation in mind—but that’s easily handled by excerpting the relevant sections.

5. *It is possible to construct a reasonably reliable oral examination for selecting mediators.*

As noted above, the problem of how to select the best staff had arisen repeatedly over the years. Adding to the conflicts between the requirements of mediation and those of our various forms of adjudication were the strictures of a punctilious civil service agency, which had repeatedly rejected varied proposals from us concerning examination methods; with some justice, they argued that the oral examinations we then were proposing could not be guaranteed to have the same content from one candidate to the next. Over a period of years, the Commission was compelled to rely on written examinations despite the obvious—that mediation was largely oral.

In the year following the study, the agency encountered turnover for the first time in several years. The need to address the hiring problem thus recurred at a time when there was a better “handle” on objectivity; and the agency was able to convince the civil service examiners that a tolerably objective oral examination could therefore be run. There follows a brief description of its design:

A role-play exercise was written for two “union” and two “management” negotiators, all played by experienced mediators. The conditions included a set of background facts given to the candidate, who was to play the mediator, and another set necessary to understanding the situation, which the mediator had to elicit from the negotiators in five short caucus sessions. The candidate was told this, and scored for investigative performance based on the number of facts obtained and the effectiveness of the questions asked.

The four players were given roles ranging from abrasive to overbearing to whiny, and they were arranged with two men on one team and two women on the other. The candidates were scored as to empathy according to their ability to deal with these somewhat obnoxious characters, without hostility or apparent bias in favor of one party or sex.

Ability to distract was abandoned as a test element, because we felt that the pressure on the candidate, combined with the tight (45 minute) overall time limit, made this just too much to ask. But persuasiveness was graded on a scale which guided the raters as to various aspects of that quality. Finally, inventiveness was measured, primarily in accordance with the quality of answers given to a complex set of questions asked orally after the role-play.

Various precautions were taken to ensure fairness; only a few will be noted here. The role-play was structured so that an early error would not trigger a whole chain of adverse consequences. To make sure it was neither too easy nor too hard, it was tested twice in advance—once with an experienced mediator known to work in a slow style, and once with a person unfamiliar with mediation or labor relations.

---

After considerable discussion, equal points were allocated on the numerical scales for each of the four qualities tested; without much more experience with this system, it was not possible to justify any conclusion that certain elements of mediation could safely be left to training and therefore be downgraded on the examination. And to guard against personal and cultural predilections, the examination was graded by a team of three—all experienced in mediation, but varied in race, sex and, to some extent, type of experience. Only one of the graders was currently employed by the agency.

Twenty-five candidates took the examination, representing about the top 18 percent of those who had taken a prior four-hour written examination (which addressed decision-making abilities, and is not germane to this discussion). The examinations were videotaped, and we were fortunate to be able to use rooms provided by Department of Psychiatry of the University of Wisconsin, so that the grading team could work in an adjoining room, behind a half-silvered mirror, without distracting the role-players.

It should by now be apparent that this was a complex (and expensive) undertaking, which took a team of nine people almost five days to run. The consensus, however, was that the results were worth the effort. For the first time, the Commission was able to examine and re-examine different candidates' performance on videotape. Scores on a 108-point total varied from about 90 down to 36; there was immediate consensus as to the relative merits of most (if not all) of the candidates, and significantly, there was little correlation between these candidates' mediation performance and any factor we could find. Neither age, nor sex, race, prior experience, law school grades (two-thirds of the group were lawyers) or even relative performance on the written examination predicted performance in the mediation setting. In the end, confidence in the test's validity was high, and the mediation examination was given controlling weight in the reduction to a short list invited for interviews.

Confidentiality, as well as space, limits the details which can be recounted here. I think, however, that the strengths and weaknesses identified in each of the candidates were not only the best method yet found to identify likely success in our field, but that such an early indication of relative qualities in investigation, empathy etc. in the four eventually hired will sharpen our focus in training, help us identify any problems earlier, and help each new mediator achieve his or her particular potential.

\*\*\*\*

In sum and substance, dividing mediation into five elements has greatly aided understanding of what a mediator does and how to do it better. It has enabled the agency, for the first time, to make reasoned comparisons between sharply different ways of working; to construct and defend a more searching hiring examination; and to define and explain, in training, exactly what it is that we want. I expect that these developments will significantly aid our mediators, the agency, and the parties whom we serve.

#### NOTES

This typology was first presented in somewhat different terms under the title *Five Professions of Mediation*, at the Third National Conference on Peacemaking and Conflict Resolution, Denver, Colorado, June, 1986.

---

Almost forty professionals were involved in the events described here, as mediators, union and management representatives, role-players, test graders and in other capacities. I am grateful to all of them. Some deserve particular mention: Deborah Kolb, Frank E. A. Sander, Roger Fisher and Daniel J. Nielsen provided significant advice from an academic perspective, while Herman Torosian, Stephen Schoenfeld, Thomas L. Yaeger and William C. Houlihan each individually made one or another of the phases of this project possible. If there is credit here, it is widely shared. But the opinions expressed in this article do not necessarily represent agency policy, and it should not be assumed that all of those who participated in this project share all of my conclusions. Thus any errors of conception or interpretation are my own.

## REFERENCES

- Adams, J.** (1986). *Conceptual blockbusting*. Reading, Mass.: Addison-Wesley.
- Becker, T.** (1986). "Conflict and paradox in the new American mediation movement: Status quo and social transformation. *Missouri Journal of Dispute Resolution* vol. 1986: 109-130.
- Biagi, S.** (1986). *Interviews that work*. Belmont, Calif.: Wadsworth, Inc.
- Bolton, R.** (1979). *People skills*. Englewood, N.J.: Prentice Hall.
- DeBono, E.** (1986). *DeBono's thinking course*. New York: Facts on File.
- Fisher, R. and Ury, W.** (1981), *Getting to YES*. Boston: Houghton Mifflin.
- Girard, J.** (1977). *How to sell anything to anybody*. New York: Warner, pp. 135-155, 173-193, 224-228.
- Hopkins, T.** (1982). *How to master the art of selling*. New York: Warner, pp. 32-43, 60-61, 83-85, 187-210.
- Humes, J.** (1985). *Podium humor*. New York: Perennial/Harper & Row.
- Kolb, D.** (1983). *The mediators*. Cambridge, Mass.: MIT Press.
- Landsberger, H. A.** (1956). "Final report on a research project in mediation." *Labor Law Journal* 7 (No. 8): 501-507.
- Rosten, L.** (1985). *Leo Rosten's giant book of laughter*. New York: Crown.