

# Mediation and Improvisation: Teaching Mediators to Improvise the Storylines of Mediation

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## Abstract

Mediation is the third party facilitation of disputes and is widely used in a variety of contexts to deal with conflict, including in court connected disputes. Improvisation is the art of making stories up on the spot and is acknowledged in the business community and more recently by some mediator commentators, to assist with the development of skills in spontaneity, creativity and respectful collaboration. These skills can arguably assist mediators to progress from novice to 'artistic' or expert mediator practitioner. Additionally, internationally, new models of mediation have been articulated which base their practice on storytelling. These new models of mediation, including the narrative model, have a theoretical basis for practice. Mediators need to co-author the story of the conflict that brings the parties to the mediation table. However, generally mediators have not been trained in the art of storytelling. This paper explores the work of Keith Johnstone, *Impro* and his ideas in the teaching of improvisation. The paper posits that mediators trained in the art of improvisation will be able to contribute spontaneously, creatively and respectfully to the re-storying of the mediation dispute and that this understanding will assist mediators to practice with 'artistry'.

## Introduction

The use of mediation, the third party facilitation of disputes, to deal with conflict in our society is common in most western countries<sup>1</sup> and has been used by traditional cultures, in various forms in the past and in present day practice in indigenous communities.<sup>2</sup> Disputes occur in a variety of settings, ranging from workplace, family, environment to schools each benefiting from this unique dispute resolution option. Importantly, business, government and the law have

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<sup>1</sup> See for a discussion of the history and growth of ADR Hilary Astor and Christine Chinkin, *Dispute Resolution in Australia*. (2nd ed. Lexis Nexis, 2002) Ch 1.

<sup>2</sup> National Alternative Dispute Resolution Advisory Council (NADRAC), *Indigenous Dispute Resolution and Conflict Management*, (Canberra, 2006).

embraced this method of dispute resolution and over time mediation has been institutionalised into our court system and government and industry dispute resolution schemes. Many lawyers practice as mediators and lawyers are one of the main groups that influence the evolving mediation industry.<sup>3</sup> Whatever the context and model of mediation utilised mediators need to reflect upon their professional practice and in this paper I argue that improvisation, a well-established acting technique,<sup>4</sup> can assist mediators to improve their practice. Through skill development in spontaneity, creativity and respectful collaboration improvisation can assist practitioners of mediation to better understand and practice their role in the mediation process. This approach can challenge mediators and arguably move practitioners away from traditional frames of viewing disputes, particularly those mediators who come from a legal background. As part of the tradition of utilising drama in education insights from improvisation can arguably assist mediators to progress in stages from a novice, who knows the steps of the process, to an artistic mediator,<sup>5</sup> who expertly responds and creatively collaborates to re-story conflict. I also argue that improvisation can assist mediators to understand a relatively new model of mediation, focussed upon storytelling, the narrative model.<sup>6</sup> This model draws upon critical theory, including post-modern and social constructionist perspectives, to critique dominant models of mediation practice and provide the mediator with the role of co-author in the re-storying of conflict in the process of mediation. I explore how the improvisational games of Keith Johnstone<sup>7</sup> can be adapted to teach about this model of mediation.

To explore the contribution that improvisation can make to mediation training I will firstly briefly discuss drama in education. I will then focus upon mediation practice and the benefits of learning about improvisation. Next, I will discuss the differences between novice and expert practitioner and suggest ways that mediators can develop, through learning about improvisation, to become artistic mediators utilising spontaneity, creativity and respect. I will then highlight the use of improvisation, and the games of Keith Johnstone, to help mediators understand the narrative mediation model.

## Drama in Education: Uses in Teaching Mediation

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3 Kathy Mack, *Court Referral to ADR: Criteria and Research*. National Alternative Dispute Resolution Advisory Council and Australian Institute of Judicial Administration, (Canberra 2003) and see generally Astor and Chinkin for an analysis of the way that the mediation industry has evolved in the shadow of the law, above n 1.

4 See for a seminal work upon the nature of improvisation, Viola Spolin, *Improvisation for the Theatre*, (Northwestern University Press, 1963).

5 The term 'artistic mediator' is used by Lang and Taylor, see Michael D Lang and Alison Taylor, *The Making of A Mediator: Developing Artistry in Practice*, (San Francisco: Jossey Bass, 2000) 3.

6 John Winslade and Gerald Monk, *Narrative Mediation*, (San Francisco: Jossey-Bass, 2000).

7 Keith Johnstone, *Impro: Improvisation and the Theatre*, (New York: Methuan 1981).

Drama in education has been utilised in a number of contexts. For example, recently, acting techniques, including improvisation, have been suggested as a means of educating law students in advocacy.<sup>8</sup> Drama in education has been successfully used to teach medical students communication methods and clinical skills. Generally taught through role-plays actors improvise around scripts that deal with medical issues and give feedback to medical students.<sup>9</sup> Similarly, this is the way that many uses of role-plays have been incorporated into mediation training, although generally participants take the roles rather than actors.<sup>10</sup> Recently, there has been a major project teaching conflict resolution to secondary school students in Australia, Malaysia and Sweden. Initially investigating the effect of culture upon the teaching and learning of conflict resolution the project has developed in a variety of ways by the teams in each country. In Australia this research has aimed to assist students to understand conflict and bullying through the use of drama.<sup>11</sup> Utilising drama in this context goes beyond mere role-playing and asks for reflections regarding the nature of conflict and the reliving of conflict scenarios with dramatic intensity. Researchers used a variety of dramatic methods, including improvisation, to re-live and explore conflict.<sup>12</sup>

In this paper I argue that an understanding of the art of dramatic improvisation, not merely 'ad libbing' around the script, can teach mediators valuable skills which they can utilise in practice.<sup>13</sup> This kind of education draws upon the need for participants to be active learners who reflect regarding the dramatic exercises undertaken<sup>14</sup> and relate understandings of improvisation to the practice of mediation. Critical readings and journal entry writing by participants

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8 See for example James E. Smith, 'Advocacy: Performance of the Law- Acting Techniques for Law Student Mooters,' (2006) 13 (2) *E Law-Murdoch University Electronic Journal of Law* 158  
[https://elaw.murdoch.edu.au/issues/2006/2/eLaw\\_AdvocateAct\\_191006.pdf](https://elaw.murdoch.edu.au/issues/2006/2/eLaw_AdvocateAct_191006.pdf) viewed 11 September 2007.

9 See for example Helen Cahill, 'Profound Learning: Drama Partnerships Between Adolescents and Tertiary Students Of Medicine and Education,' (2005) 29(2) *NJ (Drama Australia Journal)* 59.

10 Lim Lan Yuan, 'Developing Role-Plays for Experiential Mediation Learning,' (2001) 12 (2) *Australasian Dispute Resolution Journal* 103.

11 John O'Toole and Bruce Burton, 'Acting Against Conflict and Bullying: The Brisbane DRACON project 1996-2004—Emergent Findings and Outcomes,' (2005) 10 (3) *Research in Drama Education* 269.

12 Dale Bagshaw and Magret Lepp, 'Ethical Considerations in Drama and Conflict Resolution Research in Swedish and Australian Schools,' (2005) 22 (3) *Conflict Resolution Quarterly* 381.

13 See for a case study to illustrate the synergies, Chet Harding, 'Improvisation and Negotiation: Making It Up as You Go Along,' (2004) 20 *Negotiation Journal* 205 and for an example in regards to facilitation see Viv McWaters, 'Improvised Facilitation- The Paradox of Being Prepared to be Spontaneous,' (2006) 8(6) *ADR Bulletin* 104.

14 Margret Lepp and Dale Bagshaw, 'Journals as a Tool for Learning and Evaluation in Drama and Conflict Research Projects Involving Adolescents,' (2003) 27 (1) *NJ (Drama Australia Journal)* 55.

will assist in learning by this method.<sup>15</sup>

## Mediation Practice and the Benefits of Learning About Improvisation

Unlike litigation, which mediation is seen as an alternative response to, there is no agreement as to the meaning of the term<sup>16</sup> and the model of practice that should be adopted. In fact, it is the flexibility and norm creating attributes of mediation that are often seen as a major part of the appeal of this process.<sup>17</sup> How mediators practice varies according to who they are, including their professional background and value systems, and the model of mediation that they adopt<sup>18</sup>. For instance, most mediators practice a problem-solving model where finding the solution to the problem that brought the parties together is the main aim of the mediation process.<sup>19</sup> Other models of mediation, such as the narrative model, focus upon on relationship issues and utilise theory, such as a social constructionist perspective to analyse conflict.<sup>20</sup> It might be surprising to some in the mediation industry, particularly those lawyers with a more traditional approach to dispute resolution, to be told that improvisation can assist in their professional practice. However, the education of mediators has been open to many influences, such as for example the eastern tradition of meditation.<sup>21</sup> Additionally, the teaching of mediators has evolved from a process largely based upon skill development to an academic area of study, often taught in law schools.<sup>22</sup>

Synergies with improvisation are relatively recently discussed in the mediation

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15 The use of critical readings and journal writing assists participants where role-plays are used in the teaching of negotiation (a similar process to mediation), see Melissa Conley Tyler and Naomi Cukier, 'Nine Lessons for Teaching Negotiation Skills,' (2005)

15 *Legal Education Review* 61.

16 Gregory Tillett, "Terminology in Dispute Resolution: A Review of Issues and Literature" (2004) 15 *Australasian Dispute Resolution Journal* 178.

17 Laurence Boulle, *Mediation: Principle Process Practice*, (2nd ed., Sydney: Lexus Nexus, 2005) 18.

18 John Wood, 'Mediation Styles: Subjective Description of Mediators,' (2004) 21 *Conflict Resolution Quarterly*. 437.

19 Dorothy J Della Noce, Robert A Baruch Bush and Joseph P Folger, 'Clarifying the Theoretical Underpinnings of Mediation: Implications for Practice and Policy,' (2002) 3 *Pepperdine Dispute Resolution Law Journal* 39.

20 Winslade and Monk above n 6.

21 See for example Leonard Riskin, 'Mindfulness in the Law and ADR: The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Schools, Lawyers and their Clients,' (2002) 7 *Harvard Negotiation Law Review* 1; Tom Fisher, 'Who's Minding the Mediator? Mindfulness in Mediation,' (2003) 5(10) *ADR Bulletin*, 165.

22 See for a discussion of the evolution of ADR teaching in law schools (and the possible use of improvisation to teach law students) Kathy Douglas 'Inspirational Teaching of Alternative Dispute Resolution: Utilizing Improvisation to Enhance Understanding of Narrative Mediation.' Paper presented at the *Australian Law Teachers Association: Legal Knowledge: Learning, Communicating and Doing*, Melbourne July, 2006.

literature<sup>23</sup> and stem from the realization that although mediators may plan for what will happen in mediation the process is unpredictable and a mediator must quickly adapt to changing circumstances. In the same way the art of improvisation requires actors to react to the unpredictable, acting out scenarios on stage without a set text or the benefit of a rehearsal.<sup>24</sup> In dramatic improvisation performers, who may have a strength in either writing or acting, act out a storyline without a script, and play with whatever suggestions are given to them, be it characters, a venue or a plot. They respond to each other's ideas and build their stories on stage in front of an audience. Dramatic improvisation has developed many methods and approaches to ensure that it can produce reasonably reliable results despite the extraordinary risks in its execution.<sup>25</sup> Even though the performers do not know what will happen until it happens, and must respond in the moment, reacting positively to suggestions, their skills are honed through understandings of what is required to build a story. Often years of practice contribute to the improvisational skills of an actor, in the same way that jazz musicians will practice in order to improvise music.

The use of improvisation has spread from the theatre, television shows and movie sets to corporate settings and is increasingly being used in business to assist with creativity and team-work.<sup>26</sup> Learning about improvisation can help those involved in the corporate world develop skills in strategy and idea generation.<sup>27</sup> In the same way mediators, practising in the field of conflict resolution, can benefit from learning about improvisation techniques and apply these ideas to the mediation setting.<sup>28</sup> Traditionally, mediators facilitate discussion of conflict through parties meeting and discussing concerns. After initial opening statements by each participant, parties will generally talk through issues together and seek to negotiate solutions to the problems that have brought them to the mediation table. The traditional mediator's role is to help parties in their communication and possibly encourage brainstorming of various solutions to the problem.<sup>29</sup> Due to the fact that mediation is a more flexible process than litigation a mediator can never be certain how the story of conflict will unfold.<sup>30</sup> In this respect there is a clear link with improvisation and

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23 See for an application to mediation practice, Lakshmi Balachandra, Frank Barrett, Howard Bellman, Colin Fisher, and Lawrence Susskind, 'Improvisation and Mediation: Balancing Acts,' (2005) 21 *Negotiation Journal* 425.

24 Anne Libera, *The Second City: Almanac of Improvisation*, (Northwestern University press, Illinois, 2004).

25 See for a discussion of the rules of improvisation, which are often broken by the experienced improviser, Libera above n 24, 9

26 See for example Kat Koppett, *Training to Imagine: Practical Improvisational Theatre Techniques to Enhance Creativity, Teamwork, Leadership, and Learning*, (Virginia: Stylus, 2001).

27 Joseph A. Keefe, *Improv Yourself: Business Spontaneity at the Speed of Thought*, (John Wiley & Sons New Jersey 2003).

28 It may be particularly helpful in the negotiation phase of the mediation; see for a discussion of the use of improvisation to help negotiators to be more mindful and spontaneous, Lakshmi Balachandra, Robert C. Bordone, Carrie Menkel-Meadow, Philip Ringstrom and Edward Sarath, 'Improvisation and Negotiation: Expecting the Unexpected,' (2005) 21 *Negotiation Journal* 415.

29 Boule, above n 17.

30 Balachandra et al, above n 23, 417.

the development of a storyline with no set script. It is the shared unpredictability of the two processes that makes improvisation a valuable teaching and learning strategy for the training of mediators.<sup>31</sup> Parties in conflict bring many emotional issues<sup>32</sup> to mediation and how they respond to each other can be surprising. The mediator may be briefed upon the details of the dispute prior to the mediation, but there is not guarantee how the parties once in the room together will respond to each other and what issues will arise through a facilitated discussion of the conflict.

The teaching of improvisation skills can help mediators prepare for the surprises in mediation and also assist with developing spontaneity, creativity and respect in the mediator's conduct of the process. I will now discuss the need to move mediators from novice to expert practitioner and argue that improvisation can assist mediators in this journey through reflections relating to spontaneity, creativity and respect.

### **Novice to Expert Practitioner: The Artistic Mediator**

Learning about the skills and theory regarding mediation is generally organised through short course training for the various professional groups that adopt mediation as a profession.<sup>33</sup> Social workers, psychologists and lawyers are some of the many professional groups that also work as mediators. Short course training arguably has some limitations if we wish to develop the highest levels of expertise in mediation practice. As the industry has evolved many mediators have focussed upon the steps of the process, that is opening statements, private caucus and negotiation techniques, rather than investigating and reflecting upon theory.<sup>34</sup> This is a concern in that many mediators may be stalling in their professional development, mastering the skills without eventually progressing to the artistry of the expert. Lang and Taylor, who argue artistry can be developed and is not an inherent attribute of a mediator, state that:

Artistry requires more than an ability to apply techniques skilfully; it also requires a grounding in theory, the discipline of reflective practice, and the purposeful application of interactive process.<sup>35</sup>

To achieve artistry the mediator must combine practice and theory and move

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<sup>31</sup> Koppett above n 27, 8.

<sup>32</sup> Tricia Jones and Andrea Bodtker, 'Mediating with Heart in Mind: Addressing Emotion in Mediation Practice,' (2001) 17 *Negotiation Journal* 217.

<sup>33</sup> Bouille, above n 17.

<sup>34</sup> Della Noce et al, above n 19.

<sup>35</sup> Lang and Taylor, above n 5, xvii.

through a number of stages in her career. These stages include being a *novice* and learning the fundamentals of mediation, taking on the role of *apprentice* and learning about mediation through practising under the supervision of an experienced mediator, moving to *practitioner* where there is an understanding of both theory and practice and a building of skills and professional networks and finally *artistry* where the mediator operates a high level of expertise and seems to intuitively understand the appropriate interventions in conflict. The mediator artist is more inventive and inquisitive than the practitioner and has a greater capacity to experiment and implement creative solutions to problems that present in the mediation. Artists reflect upon experience and are lifelong learners. Lang and Taylor describe artistry in a manner that includes many of the attributes of the dramatic improviser:

The artistic mediator creates interventions that are uniquely attuned to the situation and the parties, and implements them with elegance and confidence. She has an ineffable ability to notice and respond to surprising circumstances, and the capacity to be resilient and flexible. These are the hallmarks of artistry.<sup>36</sup>

Improvisation can help a mediator progress in the journey to artistry by providing an educational tool for reflective practice.<sup>37</sup> Of the six hallmarks of artistry identified by Lang and Taylor improvisation can assist to develop in three of these. The six hallmarks are as follows:

Attention to detail: Responsive in the moment  
Curiosity: Open to new perspectives  
Exploration and discovery: Not bound by limiting assumptions  
Developing and testing formulations: Holding on tightly, letting go lightly  
Interpretation: Resilient and flexible  
Patience and vision: Balanced between process and outcome.<sup>38</sup>

The first hallmark of artistry, the need to be attentive to detail and respond in the moment has resonance with the skills of the improviser. On stage actors too must be attentive to detail through the observation of offers made by fellow actors and must respond in the moment to move forward the storyline. The improviser needs to listen carefully and react to the body language of the other actors just as the mediator must be alert to the emotions exhibited by parties,

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<sup>36</sup> Lang and Taylor, above n 5, 34.

<sup>37</sup> This approach to learning could be incorporated into continuing professional development as part of the new national accreditation scheme for mediators, see National Mediation Conference Pty Ltd, *Mediator Accreditation in Australia* (Report Presented to the 8th National Mediation Conference, Hobart, Tasmania, 3-5 May 2006) <http://www.mediationconference.com.au/html/Accreditation.html> viewed 11 September 2007.

<sup>38</sup> *Ibid.*

including their body language. A mediator who operates at the level of artistry excels at noticing nuances in the parties' behavior through shifts in language or tone of voice. Teaching mediators improvisation can improve their responses in mediation and assist them to be more spontaneous in their contribution to the dispute. I will discuss spontaneity in more detail in the next section of this paper.

#### (i) Spontaneity

Improvisation teaches us to value the immediate, to be focused upon what is occurring in front of us and to respond in a positive and spontaneous manner. Improvisation can help to teach mediators, particularly novice mediators, skills in responding positively to suggestions in the mediation. The use of the improvisation technique "Yes and..." can assist mediators to see that they must be alert to developments in the story of the mediation and should respond positively. The improvisation technique of "Yes and..." asks an actor not to block suggestions made by fellow actors on stage, but to adopt and adapt what is said by others in a scene. Both audience and players are disappointed when something is suggested but not dealt with on stage. A scene looks ridiculous if one player suggests, for example, an elephant at a carnival, and the other players completely ignore the suggestion. Inclusion of everything that is suggested is one of the critical principles of improvisation.

Similarly, this technique can help mediators not to block what the participants are offering to the story of the mediation. Research into the mediation process has shown that some mediators practice 'selective facilitation' whereby particular issues raised by parties are not pursued.<sup>39</sup> This is generally because the mediator sees the issue raised as likely to stymie settlement of the dispute. Learning regarding improvisation may help mediators to include all the threads of the mediation story.

Additionally, this attention to the nuances of party behavior and the care taken not to block parties can mean that the artistic mediator is more capable of being curious and open to new perspectives.<sup>40</sup> An improviser also must be open and ready to adopt new perspectives, new movements in the story, when on stage. This issue is discussed in more detail in the next section of this paper in the context of learning regarding creativity.

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<sup>39</sup> See for a discussion of writers identifying selective facilitation Astor and Chinkin, above n 1, 151.

<sup>40</sup> Additionally, negotiation teachers would benefit from understanding improvisation as a teaching and learning strategy see, Lakshmi Balachandra, Mary Crossan, Lee Devin, Kim Leary and Bruce Patton, 'Improvisation and Teaching Negotiation: Developing Three Essential Skills,' (2005) 21 *Negotiation Journal* 435.



## (ii) Creativity

The second hallmark of artistry is curiosity and being open to new perspectives. This asks the artistic mediator to be open to the unfolding mediation story and able to recognize different perspectives. In conflict there can be the tendency for parties to see issues in dispute only through the lens of self-interest and to 'demonise' the other party as being the one at fault.<sup>41</sup> Sometimes mediators themselves can fall prey to pre-conceptions of the conflict. The artistic mediator is able to move disputants from entrenched positions and be aware of his own tendency to pre-judge conflict:

At these moments, the mediator makes strategic interventions in order to encourage each disputant to understand the other party's perspective; to take in new ideas, data, or experiences that may alter their understanding of the conflict; to question assumptions about themselves and the other party; and to stimulate the exploration for creative solutions.<sup>42</sup>

Significantly, mediators need to be able to see the opportunity to provide creative input into the mediation. The ability to lead the story of the mediation to a creative conclusion, which may or may not include settlement of the dispute, is a key skill of the artistic mediator and one that a novice mediator may struggle to replicate. In improvisation actors exhibit creativity by contributing to the storyline of the scenario unfolding on stage. Mediators, educated in the art of improvisation, may find their ability to be creative and open to new perspectives is enhanced by an understanding of the ability to build storylines on stage.

Improvisers have honed their skills over time and may have a series of 'moves' in their creative arsenal to assist them in the creation of a story. In the same way mediators have to be ready to make the appropriate 'move' in the unfolding story of the mediation and they rely upon their intuition and capacity to be creative when searching for a way to move parties forward. The mediator, practicing at the level of artistry, has the ability to seemingly effortlessly notice and respond to 'surprising circumstances' utilizing an arsenal of moves. These 'moves' might include reframing, summarizing party responses, calling a break or private caucus or brainstorming some options.<sup>43</sup>

Judgment calls are ways in which the mediator improvises over the basic

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41 Robert A Baruch Bush and Joseph P Folger, *The Promise of Mediation: The Transformative Approach to Conflict*, (revised ed, Jossey-Bass, San Francisco, 2005).

42 Lang and Taylor above n 5, 28.

43 Balachandra et al, above n 23, 428.

structure of the mediation, much like a jazz musician or improvisational comic. Mediators develop an instinctive sense from past experience about when and how to intervene. They are alert for cues that would indicate that the time is right to make a move by interrupting a negative dynamic, by suggesting private caucuses, or by offering a creative solution.<sup>44</sup>

### (iii) Respect

In mediation it is possible for bias to operate where mediators form views of parties based upon predetermined stereotypes.<sup>45</sup> Where this occurs a mediator can constrain their ability to be alive to the creative possibilities of mediation by making limiting assumptions regarding parties. Lang and Taylor see as a hallmark of artistry the ability to explore and discover whilst not being bound by limiting assumptions.<sup>46</sup> For example, assumptions regarding Indigenous participants of mediation can result in agreements that are unfair to an Indigenous party. Behrendt argues that the system of justice in Australia discriminates against aboriginal people because of limiting assumptions regarding behaviour, including the way that Indigenous men and women negotiate and the values they espouse regarding community and land.<sup>47</sup> Mediators need to be alert to the diversity within Indigenous communities and particular issues and concerns relating to the context of the mediation. For instance concerns will be different when mediating native title disputes as opposed to post-separation negotiation.<sup>48</sup> Similarly, cultural concerns relating to the diverse groups that utilise mediation are important to reflect upon for novice and expert mediator alike.<sup>49</sup> Improvisation can aid this reflection by helping mediators 'shake out' preconceptions. In improvisation actors must live in the moment and listen to what fellow actors are saying on stage, rather than hear what we *think* others are saying. Improvisers must craft a story together and show respect for each person's contribution.

## Narrative Mediation and Improvisation

Arguably, the art of improvisation can help the mediator to practice a particular model of mediation, narrative mediation. Most mediators practice a model

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44 Ibid. 427.

45 For instance mediators may harbor stereotypical assumptions regarding women and those from differing racial and ethnic groups, see for example Trina Grillo, "The Mediation Alternative: Process Dangers for Women" (1991) 100 *Yale Law Journal* 1545 and Isabelle Gunning, "Diversity in Mediation: Controlling Negative Cultural Myths" (1995) 1 *Journal of Dispute Resolution* 55.

46 Lange and Taylor, above n 5, 29.

47 Larissa Behrendt, *Aboriginal Dispute Resolution*, (Federation Press, 1995)

48 NADRAC, above n 2.

49 Kevin Avruch, 'Culture and Negotiation Pedagogy,' (2000) 16 *Negotiation Journal* 339.

focussed upon finding a solution to the problem brought to the mediation table. This model is termed a problem solving approach.<sup>50</sup> This kind of model may lead to myopic practice where mediators may facilitate a solution at all costs and possibly silence the voices of the more vulnerable members of the community who experience mediation. An alternative model is the storytelling model of narrative mediation, where the mediator focuses upon the re-storying of a dispute and does not privilege negotiation of a solution to the dispute, although frequently such a solution is found.<sup>51</sup> Based upon post-modern and social constructivist perspectives conflict is not constructed as the product of colliding individual needs, but as '...the inevitable product of the operation of power in the modern world'.<sup>52</sup> The mediator is not seen as the neutral facilitator of the process of the mediation, but as a co-author in the re-storying of the conflict that brought the parties to the mediation table.<sup>53</sup>

This approach looks beyond the facts and interests that parties articulate in the mediation and deconstructs 'the cultural and historical processes by which these facts and interests came to be.'<sup>54</sup> The mediator is given the authority to be a co-author of the re-storying of the conflict from his role in the mediation process and he utilizes a number of innovative interventions to achieve the aim of arriving at a new, more harmonious view of the conflict. Through techniques such as mapping the history of the dispute, curious questioning and externalising the problem, mediators seek to shake loose stories of mutual blame. The written word is used to assist in the development of a new story, which may address the concern/s that brought the parties to the process.<sup>55</sup>

Improvisation can help a mediator in her participation in the mediation. The narrative model accepts the constructing of a story through the mediation process with all participants, mediator included, impacting upon the story. In this model the mediator needs to shed the trappings of neutrality<sup>56</sup> and become a better story-teller. Presently, some mediators may make tentative efforts to move the mediation story along and may retreat from this effort due to a fear of infringing on the content rather than the process.<sup>57</sup> However, once the problem-solving model is abandoned and mediators acknowledge that their very presence affects the mediation, mediators will need to become more skilled in contributing to the storyline of the new conflict story. For a mediator

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50 Della Noce et al, above n 19.

51 Winslade and Monk, above n 6.

52 Ibid, 41.

53 Ibid, 34.

54 Ibid. 38.

55 Ibid. 37-47.

56 Ibid. 34.

57 Della Noce et al, above n 19.

to effectively do this she will need to trust her story-telling instincts and improvisation exercises can arguably assist her to do so.

One aspect of the narrative mediation model is the opportunity to understand the way that discussion in the mediation constructs the story of the mediation. From this perspective needs are constructed in the social discourse and the mediator's task is to deconstruct the stories that participants bring to the mediation table. The mediation process itself is a site for the construction of a participant's world. 'When they talk, people are not only expressing what lies within but they are also producing their world.'<sup>58</sup>

Larger societal stories will impact upon the mediation story as it unfolds during the mediation. Dominant stories regarding issues such as class, gender and race will affect the conversation in the mediation. Some parties in a mediation will have a sense of exaggerated entitlement. Mediators need to recognize that there are 'systemic patterns of marginalization and legitimation that are featured within a conflicted interaction.'<sup>59</sup> The mediator, as a non-neutral co-author, can make clear the discursive background to the re-storying of the mediation. Winslade suggests that positioning theory may assist in understanding the discursive positions of participants of mediation.<sup>60</sup> This theory posits that positions are taken up through conversations.<sup>61</sup> Conversational acts create positions in relation to the speaker and addressee at a given moment in a conversation that are informed by societal discourses. Winslade states:

For example, a speaker may take up a position of deference and call the other person into a position of superior knowledge and expertise, such that his utterances will have greater material effect. Or she may take up a position of exaggerated entitlement and call the other into a position of marginalization such that his utterances will be of little account.<sup>62</sup>

Thus positioning theory assists mediators to understand and make visible the operation of power and dominant discourses in conversations that occur in mediation. It also alerts a mediator to positioning dialogue in the mediation conversation that resists power through human agency. 'Mediation conversations hold out the promise of repositioning in a relation or of making

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58 Winslade and Monk, above n 6, 40.

59 Ibid. 100.

60 John Winslade, 'Narrative Mediation: Assisting in the Renegotiation of Discursive Positions,' (2003) (4) *The International Journal of Narrative Therapy and Community Work*, 64.

61 Understanding postmodern theory, such as positioning theory, can assist regarding ethical practice see John Winslade, 'Mediation with a Focus on Discursive Positioning,' (2006) 23 (4) *Conflict Resolution Quarterly* 501.

62 Winslade, above 60, 65.

more room for another's position-taking.<sup>63</sup>

## Improvisation and the Games of Keith Johnstone

To assist in understanding how to progress from novice to expert mediator specific games can be helpful. These games are commonly used in 'Theatresports', a form of improvisation made famous by Keith Johnstone.<sup>64</sup> In Theatresports actors improvise on stage in teams and compete for a prize. Suggestions are generally obtained from the audience and there are a number of different games that the actors play which can be in short or long form. These games can be utilized in the training of mediators to help mediators be more spontaneous, creative and respectful. These games may also assist in understanding aspects of narrative mediation.

A useful game to beginning understanding improvisation is 'Yes and...' where participants work together to build a story by responding in a positive manner to any suggestion made by their partners in a scene. Keith Johnstone suggests changing the game to 'Yes but...'<sup>65</sup> Starting with this approach the participant blocks every suggestion made to her with 'Yes but...' and thus constrains the storyline of the scene. Participants should then play the traditional version of 'Yes and...' where they respond in a positive manner to suggestions and add to them, so that they are an active contributor to the story. A coach can be used to intervene and assist students to understand when they are blocking suggestions or 'wimping' out of the potential of a scene. These kinds of scenes can be played through gibberish and mime.<sup>66</sup> These exercises may help novice mediators to understand their role in adding to the unfolding story of the mediation. These games may also demonstrate the need for mediators to be spontaneous in their responses to suggestions, adding and enriching the storyline of the mediation. In the context of narrative mediation it may help mediators to see themselves as a non-neutral co-author of the story.

Another improvisation game discussed by Keith Johnstone, that may help the novice mediator to be more spontaneous, is 'Word-at-a-time'.<sup>67</sup> This game is played by standing participants in a line and asking them to contribute to a storyline one word at a time. If a participant unduly hesitates, or adds more than one word, he is expelled from the game. This exercise may be used to teach mediators to think on their feet, contribute without judging their

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63 Ibid. 66.

64 Keith Johnstone, *Impro For Storytellers*, (London: Faber and Faber, 1999) 1.

65 Ibid. 190.

66 Ibid. 101-129.

67 Ibid. 131.

responses and add creatively to the storyline. It also can assist participants to listen to the contribution of others and be respectful of each contribution by building creatively upon suggestions. As such this game assists novice mediators to understand each of the three attributes of spontaneity, creativity and respectful collaboration. In a similar vein the game 'What Comes Next?'<sup>68</sup> asks participants in pairs or more to add to a story. Physical action is used in this game and each participant asks the storyteller 'what comes next?' then acts out the suggestion. The role of the storyteller can be interchanged by those in the pair or group. Again participants need to quickly and creatively add to the storyline while keeping faith with what has come before in the scene.

One of the important ideas of Keith Johnstone and his understanding of improvisation is the use of 'status'. Johnstone maintains that status is a key theatrical device to explore relationships in scenes. He also relates this idea to reproducing 'authentic' responses on stage.<sup>69</sup> When training participants in improvisation Johnstone asks actors to alter their status in a scene. For example, in scenes dealing with a master/servant scenario the master usually plays high status to the servant.<sup>70</sup> Participants can be asked to act out a scene with this traditional dynamic of class made clear to the audience, that is the master is high status and the servant plays low status. Perhaps the master in the scene might imperiously ask for his shoes to be polished. The servant, playing low status, humbly performs the task. Then Johnstone in his teaching will typically ask the actors to switch status. The servant then complains how dirty the shoes are and wonders how his master could be so slovenly. The master shamefacedly acknowledges that he is forgetful and untidy, indicating his switch in status.

Arguably, an understanding of the nuances of status is similar to an understanding of positioning theory and the dynamics of conversation in mediation. Playing improvisation status games may assist mediators to understand positioning theory and the role this theory can play in the narrative model of mediation. The understanding of status can help mediators appreciate that human agency can resist societal discourses and through the mediation process re-story conflict for a more harmonious storyline.

## Conclusion

Drama in education is a well-established teaching and learning strategy that could assist in the training of mediators. Improvisation and the games of Keith Johnstone, can arguably enhance the understanding of mediators as they

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68 Ibid. 134.

69 Johnstone, above n 7, 33.

70 Ibid. 62.

move in their journey from novice to expert. In this paper I have suggested various games that may assist mediators in their professional development. Most valuably, these games may assist mediators in understanding narrative mediation and becoming accomplished story-tellers who can re-story conflict. In particular, the idea of status may help mediators to utilise positioning theory in their practice. Teaching improvisation to mediators is an innovative technique that trainers of mediation courses should consider including in their programs.