# Mediation, Multiple Minds, and Managing the Negotiation Within

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*"Faust complains about having two souls in his breast, but I harbor a whole crowd of them and they quarrel. It is like being in a republic."*

- Otto von Bismarck[1]

INTRODUCTION

Mediators, like most people, encounter ambivalence all the time. We encounter it in ourselves and, of course, we see it in the people who come to us with their conflicts. It is a rare dispute in which the parties do not pursue settlement while simultaneously resisting it.

In the *Shuttlesworth* mediation, described below, ambivalence was a major theme.[2]

First, some background. When the Shuttlesworth family came to mediation, they were deeply enmeshed in conflict. The Shuttlesworths are wealthy – each of the four adult siblings and their elderly father has an individual net worth of more than $10 million. All five serve on the board of a family foundation worth more than $100 million. (The mother died when the children were young, and the father never remarried.)

The conflict began shortly after the five family members acquired this wealth by selling the family's highly successful retail business to a national firm. Neither the father nor his children had worked in the business, but they all owned stock given to them by the father's parents, who founded the company and died in a tragic car accident two months after the company was sold. The father and his four children were suddenly multi-millionaires.

The first major battle broke out when the siblings could not agree on a philanthropic strategy for the family foundation. Each of the siblings had a different favorite charity. The deadlock worsened when two of the siblings, Carly and Sam, leaked a story to the press about alleged conflicts of interest within the foundation. In response, the other siblings and their father filed a lawsuit against them, alleging breach of fiduciary duty.

A second major battle followed. Carly and Sam filed suit to force a sale of the family's summer house on Nantucket, which the four

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1. Otto Pflanze, *Toward a Psychoanalytic Interpretation of Bismarck*, 77 AM. HIST. REV. 419, 432 (1972).

2. Names and identifying information have been changed to protect the parties' privacy and the confidentiality of the mediation process.

siblings owned jointly – another legacy from the grandparents. While this lawsuit lumbered along through the courts, the siblings and their families chose to stay away from the summer house, the memories of summers together now tarnished by the litigation.

By the time the Shuttlesworths came to mediation, six years after the first lawsuit was filed, several million dollars had been spent on legal fees, and a third fight was brewing over whether the father, who was now in his 80s and chronically depressed, needed a guardian. The family was no longer spending holidays together, and some of them had in recent years seen each other only at depositions and court hearings.

The first mediation session began in a conference room in downtown Boston, and intense bickering – barely controllable by the mediator – caused everyone to wonder whether mediation made sense.

"Why are you here?" the mediator asked. The siblings and their father were suddenly silent. "I'm serious," she went on. "With all the intense anger that is evident at this table, I would really like to know why you think mediation is worth your time and your money. How about if we go around the table, one at a time – I would like to hear from each one of you about this."

Each of the five family members expressed profound ambivalence about the idea of mediation. The father, who seemed withdrawn and almost affectless, said, "Our lawyers have been pushing for mediation. And one of the judges essentially ordered us to come here."

"Yes," said the mediator, "but what I want to know is this: now that you're here – even though the judge and the lawyers have insisted on mediation – do you see any value in reaching a settlement?"

No one responded, but each looked around the room. The silence and body language spoke volumes. There were sheepish looks, and some of the family members shifted in their seats.

"I guess the answer is 'yes' and 'no,'" said Carly. "Part of me wants to get this resolved, and another part wants a public court decision. I don't want all of this swept under some rug."

"Well, that's pretty normal, in my opinion," said the mediator. "Most of the people that I work with in mediation feel some ambivalence about resolving their cases." The mediator called for a break and asked to speak to each of the parties separately, in what mediators refer to as a caucus session. She decided to meet with the parties in alphabetical order. Carly was first.

"Tell me about the part of you that wants to get this resolved," said the mediator. "What goals would be served by settlement?"

"That's easy," said Carly. "The rational side of me says that we're spending a ridiculous amount of money on lawyers. In fact, we have spent more money on the lawyers – if you add up what everyone has spent – than the amount of money at stake in these various litigation wars."

The mediator wondered how much family sentiment was left. "Is there some part of you that wants the family to reunite?" she asked.

Carly shrugged. "Yes, I want that too, I guess – though I am not sure that's possible after all of this litigation. Even if all the legal issues get resolved, we will never be as close as we used to be. That's over – for me, at least. There's nothing like getting sued by your own father and sister and brother to make Thanksgivings together seem a little implausible."

"How about your children, and your nieces and nephews – do they see each other?" the mediator asked.

"They haven't seen each other as much in the last few years. A few of them go to summer camp together – that's about it."

"Is there a part of you that would like the cousins, at least, to have a shot at being family again?"

"Absolutely," said Carly. "I would like that a lot."

"OK," said the mediator. "But let's not forget to talk about the part of you that wants vindication – the part that thinks a settlement means giving in. Perhaps there is some way you can make sure that *that* part of you is getting its needs met."

Carly pondered for a moment. "An apology might do it," she said, "if it was sincere." She pondered a moment longer and said, with a wry smile, "Yes, a totally abject apology might do it."

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When faced with the parties' profound ambivalence, a mediator's instinct is to focus on the positive side of the equation – reinforcing the logic behind settlement, questioning overly optimistic assumptions about the outcome if there is no resolution, and reminding the parties of the cost of continued conflict. Experience teaches, however, that mediators should not quarrel with the quarrelsome side of our clients' minds. Each part needs and deserves our attention, curiosity, compassion, and respect.

Conflict can only be resolved when the parties achieve some type of alignment with each other, and the individual parties likewise need internal alignment in order to settle and stick with that decision. In short, each of the parties is engaged in an internal negotiation.

Mediators can facilitate the parties' negotiations with each other more effectively if we can help the parties manage their internal negotiations. At the same time, mediators need to be aware of their *own* internal negotiations – balancing those parts inside that may, from time to time, feel angry with parties because of their intransigence, or insecure about our own ability to produce a settlement.[3]

This article describes a method that mediators can use to help manage all of these internal negotiations – those going on within the mediator and those going on within the parties.

Part I describes some of the techniques that mediators commonly use for managing the parties' ambivalence and resistance to settlement.

Part II discusses some of the theories of "multiple minds" that psychologists have developed as a means of understanding the parties' internal negotiations.

Part III examines a specific theory – known as Internal Family Systems (IFS) – which seems to be a particularly promising tool that mediators can use to examine the sources of the parties' resistance to settlement, to address such resistance, and to achieve greater self-understanding.

Part IV explores the common features of mediation and the IFS model and offers suggestions for the use of IFS insights in the mediation process.

Part V applies the techniques discussed in this article to manage some of the internal negotiations in the *Shuttlesworth* mediation.

One important premise of this discussion is that mediation is not psychotherapy.[4] Although mediators often draw on the insights of psychology and the techniques of couples counselors and other psychotherapists, we must resist the temptation to think that our primary goal is anything other than the resolution of conflict. Even if a mediator is a licensed mental health professional, her role as a mediator precludes her – as a matter of professional ethics[5] – from providing psychotherapy services in connection with the mediation process.

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3. For useful discussions of the negotiation within, see Jonathan R. Cohen, *The Negotiation Within: Outer Ideas on Inner Dialogues*, HNLR ONLINE, March 18, 2010, http://www.hnlr.org/?p=710, and Erica L. Fox, *Alone in the Hallway: Challenges to Effective Self-Representation in Negotiation*, 1 HARV. NEGOT. L. REV. 85 (1996).

4. For a useful discussion of this point, see Joan Kelly, *Mediation and Psychotherapy: Distinguishing the Differences*, 1983 MEDIATION Q., Sept. 1983, at 33.

5. *See* MODEL STANDARDS OF CONDUCT FOR MEDIATORS VI (Am. Arb. Ass'n, Am. Bar Ass'n, & Ass'n for Conflict Resol. 1994) ("Mixing the role of a mediator and the role of a professional advising a client is problematic, and mediators must strive to

The purpose of psychotherapy is *healing*, which usually requires deep engagement with the patient over an extended period of time. A mediator's involvement is ordinarily more compressed – sometimes as brief as a single day or, in small claims court, only an hour or two. Other mediations, such as those involving large-scale, multiparty environmental disputes, may last for a year or more. In all of these mediations, however, the primary objective is facilitated negotiation and not psychological healing.

A second premise of this article is the flip-side of the previous admonition – that although mediation is *not* psychotherapy, it can have therapeutic effects. In other words, in their most successful cases, mediators not only succeed in facilitating a resolution of conflict but also help the parties feel comfortable with the settlement and feel better about themselves, and perhaps even improve the relationships of the parties in conflict. Accomplishing such a result involves more art than science, and yet many mediators have found that increasing their knowledge of human psychology enhances their ability to make mediation a healing process.

In addition to therapeutic effects, mediation can provide an education for the parties and the mediator.[6] Carol Liebman's insightful essay, *Mediation as Parallel Seminars*, explains that the mediator is teaching the parties about negotiation while facilitating the negotiation.[7] In addition, the mediator is learning from the parties about the subject matter of the dispute. But, as is evident throughout Liebman's essay, the parties and the mediator are learning deeper lessons as well – lessons about themselves and about our continual negotiation within.

## I. Managing Ambivalence and Resistance

A simplified model of mediation suggests that mediators can help the parties reach agreement by (a) eliciting their respective *stories*, (b) exploring the parties' underlying *interests*, (c) helping the parties

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distinguish between the roles. A mediator should, therefore, refrain from providing professional advice.").

6. I appreciate the suggestion from mediator Don Greenstein to include this point.

7. Carol B. Liebman, *Mediation as Parallel Seminars: Lessons from the Student Takeover of Columbia University's Hamilton Hall*, 16 NEGOT. J. 157 (2000).

generate *options*, and finally (d) facilitating the *negotiation* of the options that best serve the parties' interests.[8]

This time-honored technique suggests a linear approach that conforms only occasionally to the flow of actual mediation. But even when progress toward resolution careens erratically between and among these basic elements – for example, with the parties veering immediately toward options, then doubling back to the story – many cases require only attention to these basic elements in order to reach resolution.

In this model of mediation, rationality is at the helm, steering a course toward settlement. In many conflicts, however, emotion has its hand on the wheel and in some of the most intractable cases, emotion has ousted rationality almost entirely from the wheelhouse.

Some mediators consider intense emotion to be the enemy of settlement. This reaction is understandable because the venting of intense emotions by one party often produces an equal and opposite reaction by the other parties. Neuroscience tells us that when someone is angry with us, this emotion may make rational discourse difficult. And our reaction to their anger often triggers a biochemical "fight or flight" response that compromises our own rationality.

Yet neuroscience also suggests that in even the simplest of situations, our decision-making is unavoidably informed by emotion. In one of the early findings on this subject, described in Jonah Lehrer's book HOW WE DECIDE (2009), doctors were treating a patient whose capacity for experiencing emotion was destroyed by a brain tumor. One of the surprising effects of this unusual condition was that the patient had difficulty making the simplest decisions. But the patient's intellectual functioning remained fully intact. For example, he continued to score at the same high level on IQ tests, but he "endlessly deliberated over irrelevant details, like whether to use a blue or black pen, what radio station to listen to, and where to park his car."[9] The doctors concluded that "emotions are a crucial part of the decision-making process. . . . A brain that can't feel can't make up its mind."[10]

One of the critical elements in the decision-making process is our body's production of dopamine, a neurotransmitter that triggers feelings of pleasure in our brain. Sound decisions that turn out well are

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8. In addition, mediators often encourage parties to consider their *alternatives* – i.e., steps that the parties can take on their own – as opposed to options, which require the other party's involvement.

9. JONAH LEHRER, HOW WE DECIDE 15 (2009).

10. *Id.*

reinforced by a release of dopamine. According to Baylor University neuroscientist Read Montague, humans are probably "99.9 percent unaware of dopamine release . . . [but] 99.9 percent driven by the information and emotions it conveys to other parts of the brain."[11]

The relevance of these insights for mediation practice is obvious, and sheds light on some of the strategies available to mediators when they encounter ambivalence, resistance, and indecision. One conclusion from this research is that mediators should not bother trying to wall off emotion from the decision-making arena, but instead seek to harness emotion to the task at hand.[12]

The following discussion considers some of the strategies that mediators use in this endeavor.

## A. *Permitting Venting*

In some cases, the simple release of emotion – letting the steam out of the kettle, so to speak – is an essential step toward settlement. Mediators are trained to manage the venting process, so that it does not derail the mediation. For example, mediators sometimes use separate "caucus" sessions to create a safe place for venting, thereby avoiding a situation in which the other parties' reactions to the venting escalate the conflict. For some parties, it is enough that the mediator has witnessed the intensity of their emotions. In other cases, venting will only be productive if it is done in a joint session with all parties present.

One of the drawbacks of the venting process, however, is that the effect is not entirely palliative. Psychologists tell us that venting can produce the opposite of the intended effect – for example, deepening the anger of the person who is venting or distorting that person's decision-making.[13] According to psychologist Daniel Goleman, "ventilating anger is one of the worst ways to cool down: outbursts of

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11.  *Id.* at 41.

12.  For a useful exploration of how to manage emotions in negotiations by examining the "core concerns" that drive those emotions, see generally ROGER FISHER AND DANIEL SHAPIRO, BEYOND REASON: USING EMOTIONS AS YOU NEGOTIATE (2005).

13.  Collaborative law colleague Nancy Cameron alerted me to this phenomenon. *See* Brad J. Bushman, *Does Venting Anger Feed or Extinguish the Flame? Catharsis, Rumination, Distraction, Anger, and Aggressive Responding*, 28 PERSONALITY SOC. PSYCHOL. BULL. 724 (2002); Jennifer S. Lerner & Katherine Shonk, *How Anger Poisons Decision Making*, HARV. BUS. REV., (Sept. 2010) available at http://hbr.org/2010/09/how-anger-poisons-decision-making/ar/1.

rage typically pump up the emotional brain's arousal, leaving people feeling more angry, not less."[14]

Experience suggests that, when ambivalence is fueled by anger, creating opportunities for managed venting may be useful, but it is seldom sufficient, by itself, to overcome the parties' resistance to settlement.

## B.  *Engaging the Parties' Logic Circuits*

A common strategy for mediators is to ask what will happen if there is no settlement.  In negotiation literature, this is described as the party's "BATNA" (best alternative to a negotiated agreement).[15]  In most cases, impasse means a court will decide the outcome.  Mediators may emphasize how much time, money, and aggravation would be saved by settlement.  Risk analysis charts are sometimes used to quantify the risks and opportunities of litigation.

The limits of human rationality, however, are well-known.  Our memories are often unreliable, and our perceptions sometimes faulty. Moreover, cognitive psychology has identified dozens of distortions that our minds create when weighing options, such as endowment effects, self-serving bias, fundamental attribution error, hindsight bias, availability heuristic, "halo" effects, anchoring heuristic, reactive devaluation, cognitive dissonance, illusion of control, and sunk cost bias.[16]  Each of these, and others, cause us to believe that our assessment of risk is more accurate than that of our opponent; that our understanding of the facts is more accurate than theirs; and that our sense of fairness is superior to theirs.

Bounded rationality is part of the human condition, and so encouraging the parties to look objectively at their situation is often not enough to overcome resistance to settlement.  Indeed, trying to use

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14.  DANIEL GOLEMAN, EMOTIONAL INTELLIGENCE 64-65 (2006); *see also* Keith G. Allred et al., *The Influence of Anger and Compassion on Negotiation Performance*, 70 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 175, 178 (1997) (noting that when people are angry, they become even less likely to know what other parties want).

15.  *See* ROGER FISHER, WILLIAM URY & BRUCE PATTON, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 100 (2d ed. 1991).

16.  *See* Barry M. Staw, *The Escalation of Commitment to a Course of Action*, 6 ACAD. OF MGMT. REV. 577 (1981); LEON FESTINGER, A THEORY OF COGNITIVE DISSONANCE (1957); Robert S. Adler, *Flawed Thinking: Addressing Decision Biases in Negotiation*, 20 OHIO ST. J. ON DISP. RESOL. 683 (2005).

logical persuasion can, paradoxically, deepen the rut of resistance and ambivalence.[17]

## C. *Engaging the Parties' Sub-Logic Circuits*

Recent research has explored the subtle effects of priming and framing – phenomena that generally occur below the threshold of conscious attention. These effects are akin to the subliminal messages that advertisers sometimes use.

Research on priming has shown that the subtlest of suggestions can trigger surprising effects. For example, in an experiment a group of African-American test-takers who were asked to indicate their race at the beginning of the test performed substantially worse than a comparable group of African-Americans who were not asked to indicate their race.[18] In other words, just reminding someone of a racial difference of this kind may be a trigger that affects performance. In a similar test involving math skills, asking Asian-American women questions that evoked consciousness of their race at the beginning of the test produced higher test scores, while asking them questions that evoked consciousness of their gender resulted in lower test scores.[19]

How can priming effects be useful in mediation? One answer is suggested by an experiment described in Dan Ariely's book PREDICTABLY IRRATIONAL.[20] In this experiment, test-takers were allowed to score their own tests, record and hand in the results on a separate piece of paper, and then dispose of the original test. The test-takers were on an honor system to report accurately their performance

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17. *See* WILLIAM R. MILLER & STEPHEN P. ROLLNICK, MOTIVATIONAL INTERVIEWING: PREPARING PEOPLE FOR CHANGE 19 (2nd ed. 2002) (noting that ambivalence is a common feature of human experience and "attempts to force resolution in a particular direction (as by direct persuasion . . .) can lead to a paradoxical response, even strengthening the very behavior they were intended to diminish").

18. *See* Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Performance of African Americans*, 69 J. OF PERSONALITY & SOC. PSYCH. 797 (1995).

19. *See* Margaret Shih, Todd Pittinksy & Nalini Ambady, *Stereotype Susceptibility: Identity Salience and Shifts in Quantitative Performance*, 10 PSYCHOL. SCIENCE 80 (1999); *see also* Laura J. Kray et al., *Stereotype Reactance at the Bargaining Table: The Effect of Stereotype Activation and Power on Claiming and Creating Value*, 30 PERSONALITY & SOC. PSYCHOL. BULL. 399, 400-401 (2004) (noting that women do worse in negotiation when stereotypes are primed, even if women are not mentioned).

20. DAN ARIELY, PREDICTABLY IRRATIONAL: THE HIDDEN FORCES THAT SHAPE OUR DECISIONS 282-84 (rev. ed. 2010).

on the test.  One group was asked, prior to taking the test, to list ten books that they had read in high school.  Another group was asked to list as many of the Ten Commandments as they could recall.  The second group's average score was identical to that of a control group that was not allowed to score their own test.  The first group's average score was 33% higher than both of the other groups, suggesting that the first group engaged in a non-trivial amount of cheating, while the "Ten Commandments" group did not.  In other words, directing the participants' attention to the subject of ethics just before a task caused them to behave more ethically.

One possible lesson for mediators is that we may be able to influence the parties' resistance to settlement by priming them for resolution.  For example, in addition to telling the parties about confidentiality, informed consent, and self-determination as core elements of the mediation process, mediators could also suggest, at the outset of the mediation and throughout the process, that the goal is "fairness" and a "reasonable" solution to the conflict.[21]  Some mediators tell the parties at the beginning of the process that "flexibility" will be needed in order for the parties to find "common ground."

Priming effects are similar to framing and reframing, which are among the most commonly used tools in the mediator's toolbox.  For example, when presenting a $20,000 settlement offer from defendants who have previously offered only $10,000, a mediator might say to a plaintiff seeking $100,000 that the defendants have "doubled their previous offer," because this wording creates a more positive frame.  Similarly, mediators often focus on the most easily resolved issues first, so that the parties' success in resolving those issues creates an optimistic frame for discussing tougher issues.

Experience suggests that these effects are important tools, but generally insufficient by themselves, to overcome entrenched resistance to settlement.

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21. For an excellent discussion of this issue, see Jane Juliano, *Primed for Resolution: What Mediators Can Learn from the New Research on Priming and the Unconscious Activation of Mental Processes*, ACRESOLUTION (forthcoming 2011) (copy on file with author).

## D. *Deploying Neurotransmitters*

Neuroscientists have identified specific chemicals in the brain that foster trust – chief among them is oxytocin.[22]  Oxytocin is released in women during breast-feeding,[23] and men and women experience increases in oxytocin levels during sexual arousal.[24]  Many scientists believe that oxytocin plays a role in forming romantic attachments.[25]  According to one researcher, "oxytocin makes both men and women calmer and more sensitive to the feelings of others."[26]  Another study found that physical touch, in the form of a relaxation massage, produces higher levels of oxytocin in women.[27]  Research in Sweden showed the following:

> Oxytocin can induce anti-stress-like effects such as reduction of blood pressure and cortisol levels.  [It reduces anxiety] and stimulates various types of positive social interaction . . . . Oxytocin can be released by . . . touch and warmth.  Ingestion of food triggers oxytocin release . . . .  In addition, purely psychological mechanisms may trigger the release of oxytocin.  This means that positive interaction involving touch and psychological support may be health-promoting.  The social interaction of daily life, as well as a positive environment, continuously activate[s] this system.[28]

Experiments involving the use of functional MRI scans have shown that people who were given oxytocin nasally were more trusting

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22.  *See* Michael Kosfeld et al., *Oxytocin Increases Trust in Humans*, 435 NATURE 673 (2005).

23.  *See* R. F. Drewett, A. Bowen-Jones & J. Dogterom, *Oxytocin Levels During Breast-Feeding in Established Lactation*, 16 HORMONES AND BEHAV. 245 (1982).

24.  *See* M.S. Carmichael et al., *Plasma Oxytocin Increases in the Human Sexual Response*, 64 J. CLIN. ENDOCRINOL. METAB. 27 (1987).

25.  *See* HELEN FISHER, WHY WE LOVE: THE NATURE AND CHEMISTRY OF ROMANTIC LOVE 89 (2004).

26.  *See* Linda Dopierala, *Love, Neurochemistry, and Chocolate: A Word from Cupid, Ph.D.*, CYBERHEALTH (Ivy Greenwell), Feb. 1999, http://www.antiaging.com/cyberhealth/CyberHealth_21.html.

27.  *See* R.A. Turner et al., *Preliminary Research on Plasma Oxytocin in Healthy, Normal Cycling Women: Investigating Emotion and Interpersonal Distress*, 62 PSYCHIATRY 97 (1999).

28.  *See* K. Uvnas-Moberg & M. Petersson, *Oxytocin, A Mediator of Anti-stress, Well-being, Social Interaction, Growth and Healing*, 51 PSYCHOSOM. MED. PSYCHOTHER. 57 (2005), abstract available at http://www.ncbi.nlm.nih.gov/pubmed/15834840).

in games involving risky investments and more generous in games that involved sharing a fixed amount of money.[29]

The applicability of these findings to mediation remains to be seen, but many mediators make a point of serving food, or at least having it available in the room. "Breaking bread" together may turn out to be a ritual that has not only social significance but also biochemical benefits. At a minimum, studies of neurochemicals underscore the importance of creating an emotionally safe environment for the parties in mediation in order to promote trust.

However, with our current state of knowledge, trying to increase the parties' production of oxytocin as a means of encouraging trust is a subtle and unpredictable tool that could contribute to overcoming resistance to settlement, but certainly cannot be relied on solely to do the job.

## E. Engaging the Components of Resistance Directly – the "Multiple Minds" Conversation

Perhaps the most promising strategy for managing the parties' ambivalence about settlement is to discuss it directly. When someone says "a part of me wants to settle, and another part of me doesn't," a mediator has an important tool for understanding resistance. Even if the party does not volunteer this information, the mediator can inquire further. The mediator may say, "I am hearing a lot of ambivalence about the idea of settlement," or "it sounds like a part of you wants to reach a settlement, but another part is not so sure."

Such phrases are a common, everyday way of expressing and understanding the "multiple minds" experience that is an element of the human condition. We often hear people say, "I am of two minds about this" or "I have mixed feelings about that." When engaged in conflict, one part of us wants to be optimistic about the possibility of settlement and the good that may come of it; another part of us is wary. One part of us wants to trust the opposing party; another part fears being exploited. One part of us is looking for the most practical, cost-effective solution; another part wants to vindicate an issue of principle in a court of law regardless of cost.

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29. *See* John J. Medina, *Oxytocin and the Bottom Line*, Psychiatric Times 9 (2008). For a useful discussion of the trust-enhancing properties of oxytocin and how they can be elicited in psychotherapy sessions, see Linda Graham, *In Consultation: A Warm Bath for the Brain: Understanding Oxytocin's Role in Therapeutic Change*, Psychother. Networker 6 (2009).

By framing the problem of ambivalence in this way, a mediator creates an opportunity to explore the thoughts and feelings that inform each of these paired parts, and in some cases help the individual *mediate* these dueling internal perspectives.

## II. Multiple Minds, Sub-personalities, and Ego States

Humanity's earliest understanding of the mind reflects the idea that our minds consist of multiple parts. In *Phaedrus*, Plato uses the metaphor of a chariot with the human soul as a charioteer.[30] Plato tells us that the chariot is pulled by two horses – each one embodying the passionate part of our human nature. One of the horses represents our darker passions and appetites while the other horse represents our passion for truth and morality.

In the early twentieth century, Freud theorized that the human mind is comprised of the id, ego, and superego.[31] Paul Federn, a close associate of Freud, hypothesized that our personalities consist of clusters of perceptions, cognitions and affects that he called "ego states" – each one of them forming an organized system of behavior and experience.[32] Eric Berne based his theory of transactional analysis on a demarcation of our personalities into parent, adult, and child ego states.[33] Negotiation theorist Max Bazerman more recently developed a simpler demarcation of the mind into two selves – the "want self" and the "should self."[34]

These theories attempt to describe the normal range of human experience and behavior. They are not intended as descriptions of multiple personality disorder (now known as dissociative identity disorder)[35] or any other pathological state. Also, unlike the now-discredited study of phrenology,[36] the concept of sub-personalities

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30. PHAEDRUS, in PLATO IN TWELVE VOLUMES, § 246b (Harold N. Fowler trans., 1925).

31. *See generally* SIGMUND FREUD, THE EGO AND THE ID (1923).

32. *See* Paul Federn, *Some Variations in Ego-Feeling*, 7 INT'L. J. PSYCHOANALYSIS 434 (1926).

33. *See generally* ERIC BERNE, TRANSACTIONAL ANALYSIS IN PSYCHOTHERAPY (1961).

34. *See* M.H. Bazerman, A.E. Tenbrunsel & K.A. Wade-Benzoni, *Negotiating with Yourself and Losing: Understanding and Managing Conflicting Internal Preferences*, 23 ACAD. OF MGMT. REV. 225, 228-30 (1998).

35. *See* AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS § 300.14 (4th ed., text revision 2000).

36. John van Wyhe, *Overview of Phrenology*, THE HISTORY OF PHRENOLOGY ON THE WEB, http://www.historyofphrenology.org.uk/overview.htm (last visited Mar. 2,

described here is not based on specific physical structures within the brain. To be sure, there are parts of the brain that correlate with certain aspects of our experience and behavior. For example, the amygdala acts as the center of our "fight or flight" response, and our logic circuits are predominately found in the left cerebral hemisphere of our brains, while the right hemisphere is more involved in artistic expression and creativity. But the "multiple minds" discussed in this article are not known to correlate, in a one-for-one manner, with specific locations in the brain.

Accordingly, the idea that each of us has within us various "parts" is more of a metaphor than a map of the mind. However, as Jose Ortega y Gasset has written, the metaphor is the most powerful tool known to humankind.[37]

## III. THE INTERNAL FAMILY SYSTEMS MODEL

One "multiple minds" theory that seems particularly useful for mediators – as a tool for understanding the parties, guiding our interventions, and managing our own internal negotiations – is the Internal Family Systems model ("IFS"). IFS was developed by psychologist Richard Schwartz in the 1980s. It combines two well-developed perspectives about human psychology: (a) the theory of sub-personalities described above, and (b) family systems theory, which clinicians developed to understand the complex dynamics within families. In treating his patients, Schwartz developed a systems-theory approach to the complex dynamics among the individual parts of the human personality.

The IFS model departs from previous thinking about sub-personalities in two important respects. First, unlike other models, there is a multiplicity of parts – no fixed number – each part arising from the individual's unique experience. Second, the IFS model includes the concept of "Self," which is discussed more fully below, but in short is the centered, peaceful region of each person that has no

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2011) ("Phrenology has been almost universally considered completely discredited as a science since the mid-19th century. Even during the peak of its popularity between the 1820s and 1840s, phrenology was always controversial and never achieved the status of an accredited science. . . .").

37. JOSÉ ORTEGA Y GASSET, THE DEHUMANIZATION OF ART AND IDEAS ABOUT THE NOVEL 33 (Helene Weyl Trans., Princeton University Press 1948) (1925) ("The metaphor is perhaps one of man's most fruitful potentialities. Its efficacy verges on magic, and it seems a tool for creation which God forgot inside one of His creatures when he made him.").

agenda other than to bring health and harmony to the individual parts. One of the goals of IFS therapy is to enable the Self to achieve leadership within the "internal family" of individual parts and thus support the well-being of our individual parts and the health of the patient as a whole.

## A.  *The Concept of Self*

In INTRODUCTION TO THE INTERNAL FAMILY SYSTEMS MODEL, Schwartz describes eight attributes of Self, all of them beginning with the letter "c": calmness, clarity, curiosity, compassion, confidence, courage, creativity, and connectedness.[38]  Schwartz also describes the Self as "a very active, internally nurturing form of mindfulness."[39]  The Self is an aspect of our being that is always with us, but is often occluded by our various parts when they come to the fore, seeking to take over leadership.  However, we are functioning at our best when no one part is in charge and instead, Self energy is leading the way with the assistance of our various parts.

Schwartz describes the "Self-led" person as follows:

> You feel immediately at ease in a Self-led person's company, sensing it is safe to relax and release your own Self.  Such a person often generates remarks like, "I like [her] because I don't have to pretend – I can be myself with [her]."  From the person's eyes, voice, body language, and energy you can tell you are in the presence of someone who is authentic, solid, and unpretentious.  You are attracted by the Self-led person's lack of agenda or need for self-promotion, as well as by his or her passion for life and commitment to service.  Such a person does not need to be forced by moral or legal rules to do the right thing.  [S/he] is naturally compassionate and motivated to improve the human condition in some way because of the awareness that we are all connected.[40]

One might think that such a person has transcended the vicissitudes of life, but Schwartz explains otherwise: "[A] Self-led person is not detached from the world, with emotions always held in abeyance.  Instead, such a person drinks deeply from the bittersweet

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38.  RICHARD C. SCHWARTZ, INTRODUCTION TO THE INTERNAL FAMILY SYSTEMS MODEL 33-48 (2001).

39.  E-mail from Richard C. Schwartz (Dec. 20, 2010) (on file with the author).

40.  Schwartz, *supra* note 39, at 31

fountain of life while simultaneously maintaining a center of equanimity."[41]

One of the intriguing aspects of this description of the Self-led person is the correspondence to personal qualities that make mediators successful.[42]  Likewise, these attributes enable the Self to be successful in mediating the conflicts between and among our internal parts.[43]

## B.  The Concept of Parts

Although everyone has *different* parts, there are enough similarities that one can generalize about them.

### 1.  Basic Parts

Most people have problem-solving, managerial parts that we call upon when we need to balance our checkbook, cook an elaborate dinner, prepare a presentation for a business meeting, or handle maintenance tasks in our home.  Most of us also have fun-seeking parts that enjoy sports, music, reading, or other recreation.  Some parts are loving and romantic; others are detached and critical.

Each of our parts arose from our life experience to respond to our needs and circumstances at that time.  Some of our parts are "child" parts – and many of these carry the burden of painful or embarrassing experiences that we had as a child.  For example, the (often unsuccessful) effort to please our parents can give rise to a wounded child-part who feels unworthy.  The (often unsuccessful) effort to gain acceptance from other children can give rise to another wounded child-part who feels unattractive or uninteresting.

In the IFS model, there are no "bad" parts.  Each one arose with an intention to serve us in some manner.  For example, our internal critic may annoy us or even make us miserable with self-doubt, but it arose to serve a protective purpose – namely, to help us adapt to externally imposed norms and expectations, and thus to avoid painful criticism from others.

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41.  *Id.* at 81.

42.  For a discussion of the personal qualities of the mediator, see BRINGING PEACE INTO THE ROOM: HOW THE PERSONAL QUALITIES OF THE MEDIATOR IMPACT THE PROCESS OF CONFLICT RESOLUTION (Daniel Bowling & David Hoffman eds., 2003).

43.  For an interesting discussion of the similarities of the role of mediator and the role of Self in the IFS model, see Marjorie Hall Davis, *Structures of Evil Encountered in Pastoral Counseling*, 43 ZYGON 665, 671-76 (2008) ("The role and goals of the mediator are very similar to those of the client's Self in collaboration with the therapist's Self in the IFS approach.").

One other important feature of our parts, particularly from the standpoint of mediation and managing the parties' ambivalence, is the polarization of parts. Many of our parts have a mirror-image twin. For example, if we have a strong optimist part, there is likely a pessimist part as well, thus maintaining some measure of balance within our internal system. The polarized parts may not be of equal strength, but the presence of opposing parts may contribute to ambivalence.

### 2. Exiles and Protectors

Our parts are so numerous that the term internal *family* systems is slightly misleading – our internal systems are more like villages.[44] Conflict and disharmony are a normal and expected part of the life of any village or society, and in those systems, individuals sometimes take on extreme roles – for example, with one individual or another seeking to be in charge, or other individuals persistently complaining, seeking attention, or misbehaving. Similar disharmony can be found in the internal village inside us. Some parts take on extreme roles. The IFS model designates those parts as exiles and protectors.[45]

*Exiles* are wounded parts – often carrying the emotional scars of growing up – and are generally closeted in our psyches. A typical exile might be carrying the shame of an embarrassing gaffe in a school play – causing, even in adulthood, a shiver of panic whenever there's a need for public speaking. Some exiles arise in adolescence or adulthood – for example, from the wounds of rejection after a failed romance, leaving behind a part that quakes with fear whenever there's an opportunity for intimacy. The loss of a job or a failing grade in a college course can leave behind a wounded exile who feels perpetually incompetent even as we experience success. Though locked away, and mostly unknown

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44. A similar vision is described in Ian McEwan's recent novel *Solar* (quoted in James Surowiecki, *What Does Procrastination Tell Us About Ourselves?*, THE NEW YORKER, Oct. 11, 2010: "At moments of important decision-making, the mind could be considered as a parliament, a debating chamber. Different factions contended, short- and long-term interests were entrenched in mutual loathing. Not only were motions tabled and opposed, certain proposals were aired in order to mask others. Sessions could be devious as well as stormy.").

45. *See generally* JAY EARLEY, SELF THERAPY (2009) (describing the roles of exiles and protectors). In Schwartz's writing the protectors are often described as "managers" and "firefighters." *See* Schwartz, *supra* note 39 at 103-18. However, he sometimes uses the more general term "protectors." *See generally* RICHARD C. SCHWARTZ, YOU ARE THE ONE YOU ARE LOOKING FOR: BRINGING COURAGEOUS LOVE TO INTIMATE RELATIONSHIPS (2008).

even to the people closest to us, our exile parts powerfully affect our daily life by causing us to avoid certain kinds of experiences. One might analogize the situation to that of a person who has several major bruises that resist healing and thus cause her to make her way in the world gingerly, seeking to avoid reinjuring the bruised areas. Others may be unaware of the bruises because they are covered with clothing, and thus only those who know us most intimately may be aware of them.

The way in which our lives are most visibly ruled by these exile parts can be measured by the exertions of our *protector* parts, whose chief job is to protect the exiles from further suffering. For example, for some people there are protector parts that are fanatical about us completing assignments on time, fearing that disappointing a professor or boss will reinjure an exile who carries the burden of having been harshly chastised for tardiness in our youth. Some protector parts serve as our inner critics, warning us against taking chances in love or work because of fear that rejection or failure would unbearably re-injure one of our exiles.

Protectors also play highly useful roles in our day-to-day lives. For example, our inner critic may prevent us from over-eating at times when our food-loving part is crying out for a second helping of dessert. When that inner critic becomes over-active, however, and dominates our decision-making in unhealthy ways, as in the case of anorexics, our internal system is no longer in balance.

Some protector parts play their role in an extreme way. Some of the more extreme protector parts may be prone to excessive drinking, workaholism, over-spending, over-eating, and/or sexual promiscuity. Each of these activities, though destructive to the overall system, arises from the effort to protect us from hurt. The source of that pain, in the IFS model, can be found in our wounded exiles. For example, if the death of a close relative causes one of our exiles to feel excruciatingly lost or abandoned, the reassurance of a rational protector part may be wholly ineffective in soothing us, and instead a more extreme protector may leap in to smother the pain with excessive drinking or an over-abundance of comfort food.

To shift the focus to the world of dispute resolution, mediators often encounter the protector parts in the people for whom we mediate. Anger and righteous indignation can be major protectors when we have experienced a loss or betrayal of some kind. When we understand the vital role that anger plays in that person's internal system, our approach in mediation may shift. Instead of trying to persuade the

person that his/her level of anger is out of proportion to the issue that gave rise to it, our stance is more likely to be curiosity about how this angry part came to the fore and, if one dares go that far, what injured part is it protecting.

## C.  Applying a "Systems" Approach to Our Parts

Now that we have been introduced to the concepts of Self and our various parts, we next examine the differing ways in which psychotherapists and mediators make use of these insights.

### 1.  Therapeutic Approaches

Unlike mediators, therapists are charged with promoting the patient's overall well-being.  Using the IFS model, the clinician assists the patient in identifying and healing wounded parts.  A useful analogy for this work can be seen in the treatment of actual families where one of the parents is an alcoholic and a young child has thus been forced to take on the adult role of looking after the addicted parent.  So too in our internal systems, we have parts that have taken on an extreme role because of extreme conditions of one kind or another.  For example, in some people who experience a painful rejection in a failed romance, a protector takes over and sends us into a series of sexual encounters in which we try (usually unsuccessfully) to allay the fear that we are unlovable, or instead causes us to shy away from all contact with any potential romantic partner to avoid reinjuring the hurt part of us.  For the clinician, the task is to help the wounded part heal and thus relieve the promiscuous protector, or the overly vigilant protector who insists on withdrawal, from the extreme roles that they have taken on.

One of the techniques for doing this therapeutic work is for the clinician to help the patient find his/her Self and, in alliance with the person's Self, embark on an inquiry about the patient's wounded and protective parts.  Curiosity about these parts, and compassion for them, are essential elements of this exploration.  As noted above, the patient's Self can play the role of mediator in this system, helping the parts negotiate for what they need in order to play productive, non-extreme roles in this internal system.  For example, the patient who has become withdrawn after being wounded in love may be encouraged by the clinician to access her Self energy and negotiate a deal with her protective parts – perhaps agreeing to go out on one date per month and only with someone who is recommended by a close friend.

Another important technique is for the clinician, working in alliance with the patient's Self, to ask overactive protective parts to "step back" so that attention can be paid to a specific part that needs attention. By stepping back, these parts create more space for the patient and the clinician to understand, reassure, and negotiate with the patient's parts in an orderly, non-threatening manner.

A key element in IFS therapy is protecting vulnerable exiles from more exposure than they can handle. The clinician will go slowly, meanwhile making sure that there is sufficient Self energy in place and that protective parts are reassured that the inquiry is safe. To use a rather extreme analogy, used by Richard Schwartz, if one imagines that our exiles are young children who have been locked for an extended period of time in the basement of our psyches, suddenly releasing them, without any plan or preparation for managing their recovery and healing, is dangerous and could result in protectors taking over in an extreme manner. (These unsocialized children would likely be so demanding and create such havoc that only an extreme solution – such as intoxication or some other form of escape – could protect the person's system from the chaos of unmanageable emotions.) Instead, a clinician will prepare the way for reintroducing the exiles to the internal system with gradual healing and successful negotiation with the other parts of that system.

### 2. A More Limited Model for Mediation

How can mediators use the insights of the IFS model for their work? Four ways come to mind.

First, the IFS model provides valuable insight into the hearts and minds of the people with whom we work. Mediators sometimes see people at their worst – for example, under the influence of barely controllable anger. The IFS model not only gives us tools for seeing a more multi-dimensional view of the person, but also helps us understand how excessive anger may be playing an essential role in that person's internal system. When viewed in that light, the mediator can begin to see the person's anger not as the mediator's foe, but rather as the manifestation of a protective part that needs to participate in the negotiation.

Second, if we analogize the internal system of parts in the individual to the complex system of *parties* in conflict in the mediation, certain helpful conclusions follow. For example, if, like the IFS practitioners, we believe that there are no bad parts of us, only parts that have been forced by circumstance to take on extreme roles, so too

in the mediation – there are no bad parties, only parties that have been forced by circumstance into extreme positions.  Also, just as the clinician must deploy curiosity and compassion as the primary tools for coaxing parts from their extreme roles, so too mediators may find that their ability to influence the parties will be enhanced by greater curiosity and compassion in their discussions with the parties.

Third, the concept of internal parts provides mediators with a linguistic tool for managing ambivalence and resistance.  The parties in mediation are sometimes prone to exaggerated statements of their views.  The mediator can deescalate such commitments, using the language suggested by IFS, by reframing them: "So, I hear you saying that a *part* of you is very angry and wants vindication . . . "  This statement has a significantly different meaning than the same statement without the concept of parts (viz. "I hear you saying that you are very angry and want vindication").  The concept of parts allows the mediator to inquire as to whether there are *other* parts with differing goals and agendas – thus providing the parties with a psychologically safer way to express the full range of emotions they may be experiencing, and to consider loosening their commitment to strongly held positions.  This technique also provides the mediator and the parties with an easily understandable vocabulary for communicating about ambivalence.

To illustrate the point, the following is an excerpt from an email message to one of the parties in the *Shuttlesworth* mediation, in which the mediator tried to introduce the concept of "parts":

> All of us, the social scientists would say, are hardwired to desire revenge when we feel wronged.  But there are other parts of us that are equally powerful – for example, in the mediation, we heard you articulate some of the other concerns and interests you have. For example, there's a part of you that is a welfare-maximizing, rational person that's got goals like saving time, money and effort. There's an altruistic part of you that wants to use these vast family resources to help people most in need, as opposed to financially comfortable lawyers and, indeed, mediators. There's a part of you that has emotional goals, such as restoring some semblance of family feeling for the next generation, even if that's not possible for this generation. Those other parts may want a larger role at the negotiation table, and they may even argue that there's been enough retribution, in the form of a court judgment, depositions, trial testimony, articles in the newspaper – and that now's the time for both sides of the family to put down the swords, resolve the

remaining disputes as cost-effectively as possible, and use the resources that remain for more useful and altruistic goals.

Finally, the IFS model provides mediators with useful tools for understanding our own complexity and, in particular, our ambivalence about the parties. It is a rare mediator who does not at times wonder why bickering parties in mediation cannot simply "grow up and get a life!!" To make matters worse, our impatience with the parties may not be even-handed. Sometimes one party is making our job much harder than the other party, and it is a normal and natural feeling to be annoyed, or even angry, with a party who may be causing us to feel frustrated or to question our ability to manage the conflict. At such moments, the IFS model provides a window into our own internal system, hopefully enabling us to identify a wounded exile that has been triggered by the mediation party's intransigence. The solution, in moments of that kind, is to marshal sufficient Self energy to recognize what's going on inside, compartmentalize it (perhaps for later consideration and attention), and return our attention to the mediation with Self-led energy guiding us.

## IV.  APPLYING IFS INSIGHTS IN MEDIATION

Although mediation is not therapy, there is a substantial overlap in the techniques used by mediators and those used by IFS practitioners. Among the specific areas of overlap are the following.

### A.  *What Do IFS and Mediation Have in Common?*

#### 1.  *Focusing on strengths*

Both mediation and the IFS model focus on empowerment. The IFS clinician seeks to heal and thus empower the patient's parts to play a constructive role in his or her life. The mediator reminds the parties that all of the decision-making power is in their hands, and they can choose to resolve the conflict instead of prolonging it.

This basic orientation – namely, that the parts/parties have the innate resources that they need to shift into less conflictual modes of behavior – fosters less dependence on the clinician/mediator and helps the parts/parties identify the tools that they need in order to avoid future conflict. Both models are based on respect for patients/parties and their ability to marshal the internal resources that they need to solve their problem. Although the clinician/mediator assists in this

process, the professionals are not charged with having all of the good ideas.

### 2. Avoiding judgment

When faced with conflict, it is a natural human reaction to form judgments about who is right and who is wrong. Mediators, like clinicians, learn to suspend judgment, recognizing that the situations we encounter are usually more complex – both morally and factually – than they first appear. With its emphasis on no bad parts, the IFS model uses the same principles of non-judgmental awareness that mediators aspire to.

### 3. Listening empathically

Mediators frequently marvel at how the simple act of creating a forum for people to be heard generates momentum for resolution. Likewise, in the IFS model, curiosity about each part's story (i.e., how it came into being and what its concerns are) can be curative. Richard Schwartz notes that "the act of listening to your parts helps them relax. . . . [A]s you get to know these parts and learn why they are the way they are – that is, you witness their stories from the past about how they were forced into the roles they are in – they change."[46] So too in mediation, empathic listening by itself can open the doors to settlement.[47]

### 4. Stories matter

Beginning mediators often make the mistake of rushing through the portion of the mediation in which the parties describe the history of the conflict that led them to be in mediation. After all, mediators sometimes think, "I have read the memos that the parties submitted – let's just get to the issues." The parties' stories often seem to contain an abundance of irrelevant details, perhaps because the parties are not experienced negotiators or advocates. The lesson of experience, however, is that stories matter a great deal. Our minds encode our experience in the form of stories, and those stories tend to become more deeply engraved in the hard-drives of our mind than the experiences

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46. SCHWARTZ, *supra* note 39, at 124, 127.

47. For an example of this phenomenon, see David Hoffman, *Mediation and the Art of Shuttle Diplomacy*, 27 NEGOT. J. (forthcoming 2011) (§ IV(A) ("Up Close and Personal").

themselves.[48]  The details that the parties recall, whether accurate or suffering some degradation in accuracy over time, are meaningful clues to what's important to those parties.  So too with IFS, stories encode the emotional material for therapy.  As noted above, parts arise out of experience, and therefore it is impossible to fully understand the emotional burden carried by those parts until one hears and understands the stories that brought them to life.

### 5. Process counts

Marshall McLuhan famously observed that "the medium is the message."[49]  In both mediation and IFS, the process often matters as much as the outcome.  In both disciplines, success requires giving each of the parts/parties their fair share of time and respectful attention.  Creating a feeling of safety is vital in both mediation and IFS in order for self-disclosure to occur.  And in both disciplines, attention to process is vital because both have the potential – if poorly handled – to make a bad situation worse.  If parts/parties feel disrespected, or that their self-disclosure has been exploited in some manner, that additional wound will compound the injury and stymie healing (in the IFS context) or resolution (in the mediation context).

### 6. Bringing it all back home

The IFS model was developed as a method of psychotherapy, but it has a broader applicability.  The concept of Self-leadership, a concept that has much in common with core elements of Buddhism, provides a model for personal growth.  In similar fashion, many mediators consider the *life* lessons learned from mediation practice, such as empathic listening and focusing on underlying interests instead of positions, to be one of the major fringe benefits of such a career.

## B.  What Can IFS and Mediation Learn from Each Other?

Mediators can learn a number of things from IFS theory and practice.

First, mediators can learn from the IFS model the importance of emotional engagement with the parties.  Mediation training emphasizes

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48.  *See* Carey Goldberg, *Brain Has a Way of Distorting Memories*, BOSTON GLOBE, May 13, 2003, at C3.

49.  MARSHALL MCLUHAN, UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN 7 (1964).

the importance of *impartiality* in our dealings with the parties – the term suggests emotional distance. The IFS practitioner's stance, which is based on curiosity and compassion, is more likely to evoke self-disclosure, which the mediator often needs in order to understand the parties' underlying interests and thus uncover the foundation for settlement.

Second, mediators often shy away from strong leadership in the search for resolution. A typical mediator's mantra is that s/he is responsible for the *process* but the parties are responsible for the *substance* of settlement. In other words, leadership in the mediation is *shared*. In the IFS model, in which an important goal is Self-leadership, there is no hesitancy or ambivalence about the importance of leadership. The attributes of Self, which have so much in common with those that mediators aspire to, include the ability to lead without an agenda, other than healing the internal system. To the extent that mediators feel any reluctance to engage in similar leadership, the IFS model suggests a model for more active leadership with regard to the substance of the conflict, but with no specific agenda other than a mutually satisfactory result. On the process level, the IFS model also encourages the mediator, like the Self, to engage with the parties at the deepest levels of the conflict between themselves and their internal conflicts.

Third, while some mediators encourage the parties to access their "higher selves" as they struggle with their ambivalence about settlement, we often do not know precisely what we mean when we say that. Even if we do, the parties may understand the term differently. The IFS model provides a useful roadmap of our inner operating systems, and gives our "higher self" a more defined role and a clearly defined set of attributes, so that, as mediators, we can help guide the parties to a place where they can more easily access Self energy.

Fourth, while mediators are encouraged to be self-reflective in their practice,[50] mediation trainings in the United States seldom provide beginning mediators with any specific tools for that important discipline. The IFS model provides mediators with one such tool that can be used not only as we reflect after-the-fact on what went well and what could have gone better in a completed mediation, but also as a tool that mediators can use in "real time" when the parties intentionally or unintentionally push our buttons.

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50. *See* MICHAEL LANG & ALLISON TAYLOR, THE MAKING OF A MEDIATOR: DEVELOPING ARTISTRY IN PRACTICE 67-149 (2000) (discussing reflective practice).

Fifth, to the extent that we as mediators seek to evoke Self energy in the parties, we can take a lesson from IFS practitioners who understand that, to evoke such energy in their patients, they too must exhibit Self-leadership.[51]

Finally, the IFS model teaches mediators that ambivalence is normal. It is an inherent feature of the design of our psyches. Even when the parties in mediation express no ambivalence whatsoever, there is at least the possibility that some part of them is privately registering concern or skepticism. By understanding ambivalence as a normal part of the decision-making process, mediators can avoid the trap of considering such ambivalence as an obstacle to be eliminated. We need to learn to work with it, instead of against it.

Mediators also have knowledge and experience that could be useful for IFS practitioners.

One of the core skills that mediators learn is the successful management of negotiations. Mediators learn how to probe for underlying interests, as opposed to focusing solely on the parties' positions. So too in IFS therapy there is a need to explore the interests that troubled parts are seeking to advance.

Second, mediators promote creativity in the exploration of options. One of the mediator's core skills is thinking "outside the box." This skill can be useful in IFS therapy as the clinician and patient explore the multiple ways in which a part's needs might be met.

Third, skilled mediators are adept at coaching the parties on how to harness the "rule of reciprocity." Social psychologist Robert Cialdini has explained that the norm of reciprocal exchange is hard-wired into us – meaning that every time we receive a favor or concession, we experience a feeling of obligation.[52] Mediators coach the parties on this fundamental rule of negotiation and help them see that, in order to keep a negotiation on track, each side must be willing to reciprocate or at least acknowledge the moves made by the opposing party. In the IFS model, parts are asked to "step back" and, in effect, renegotiate their roles in the overall system. For example, a protector part may be willing to play a less extreme role in a person's internal system in exchange for assurances from other parts, or from the Self, that its protective role can be performed in other, more adaptive ways. A lesson of mediation experience is that, for changes of this kind to occur,

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51.  *See* SCHWARTZ, *supra* note 39, at 131.

52.  *See* ROBERT CIALDINI, INFLUENCE: THE PSYCHOLOGY OF PERSUASION 17-56 (rev. ed. 2007).

the terms of a reciprocal exchange need to be negotiated and articulated clearly.

Finally, in mediation, in order for deals to remain durable, the parties often need to define measurable benchmarks of performance. In IFS therapy, in the internal negotiation of parts led by the Self, explicitly articulating the terms of the deal and the methods of determining compliance with the deal could be a useful therapeutic element.

## C. *Implications for Mediation Practice.*

According to Austrian mediator and social scientist, Dr. Mario Patera, the training of mediators in his country ranges from 220 to 360 hours of formal instruction and practice.[53]   This length of time contrasts starkly with the average of 30 to 40 hours of basic training for mediators in the United States.  In the Austrian model, much of the instruction focuses on the psychological dimensions of the process – for example, how the mediator is reacting to the parties, how they are reacting to her, and why the mediator chose one form of intervention versus another.[54]  The emphasis on psychology and self-understanding in this model goes far beyond any systematic training in these subjects that most mediators receive in the United States.

The IFS model provides a uniquely user-friendly, easily comprehensible approach to such self-inquiry.  In his book SELF-LEADERSHIP (2009), psychologist Jay Earley outlines a methodology for using the IFS model for greater self-understanding and personal healing without the involvement of a clinician.  He suggests that an individual who is interested in this form of self-therapy might pair up with another individual, or simply do IFS exercises on her own.

Regardless of whether one uses IFS techniques or other techniques, however, the IFS model provides a vision of Self energy that could be useful to mediators seeking to develop the personal qualities and skills that will make them more successful in their work. The Austrian model of training, which uses techniques that are

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53.  Conversation with Dr. Mario Patera on February 13, 2011.  The Austrian Ministry of Justice maintains a registry of mediators, currently numbering approximately 5,000, who must receive their training in one of the 25 training centers approved by the Ministry.  Lawyers and psychotherapists are required to have at least 220 hours of training, and other professionals (such as accountants, architects, and engineers) are required to have 360 hours.  The training takes place over the course of eight to twelve months. *Id.*

54. *Id.*

different from the IFS model but with similar goals, fosters the development of these qualities and skills. Much would be gained if a focus on such development played a larger role in the beginning and ongoing training of mediators in the United States.[55]

In addition to its value in training, the IFS model provides a specific discipline for the mediator to use in "real time" as the mediator becomes aware of her own feelings. Consider the following mediation situation and the mediator's response:

*A company has been sued by a terminated employee who alleges that his firing was motivated by race discrimination. In the mediation, the company's CEO is souring the atmosphere for settlement with self-important pronouncements about how accomplished and busy she is, how she is doing a big favor to the employee by attending the mediation, and how offended she is that anyone would question her motives or the company's motives in firing the employee.*

*The mediator calls for a separate caucus session with each side. Before sitting down to talk with the CEO, the mediator pauses to reflect on why he is feeling so repelled by the CEO's apparent narcissism. He recognizes that a part of him is judging the CEO, and he needs to ask that part to relax. To accomplish this, he gets in touch with his compassion and curiosity (Self energy). He then notices that the part of him that is being judgmental about the CEO is the same internal critic that gives him a hard time whenever he begins to feel jubilant about some personal accomplishment. "Ah," he thinks to himself, "I know this critic well." He knows that this part is hyper-vigilant – a royal pain, actually – but it is continually trying to protect him from embarrassment or rejection if he starts to feel or act self-important. He recognizes how annoyed he is that he must constantly deal with this internal critic, while the CEO seems to blithely ignore her internal critic, or perhaps does not even have one.*

*As soon as he recognizes the source of his resentment of the CEO, the feeling begins to abate. Stepping into the conference room with the CEO and her counsel, he asks the CEO, with genuine curiosity and warmth: "How did you get to the CEO position that you're in?" "I clawed my way to the top," she says. "As a woman, I was viewed with suspicion at every step up the ladder, and I had to attack the glass ceiling with a sledge hammer." The mediator inquires further:*

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55. One of the themes that IFS and the Austrian model of mediation training have in common is that both offer tools that practitioners find useful in their personal, as well as professional lives.

*"It sounds like there was never any doubt in your mind that you could make it." "Wrong," says the CEO. "To be utterly frank, and I would appreciate your not sharing this with the other side, I have always had this nagging suspicion that the naysayers were right about me. You know that old saying about how we all suffer from an 'imposter complex'? Well, that's me." "Me too," says the mediator with a laugh, feeling both a renewed sense of compassion, and also bonding in a not-so-subtle way with the CEO. "I wonder," said the mediator, "whether any of those feelings were triggered in you by the filing of this lawsuit against your company?"*

By exploring the emotions that were complicating his reaction to the CEO, the mediator embarked on an internal negotiation to compartmentalize those emotions so that they would become less intrusive. As a result of that exploration and negotiation, the mediator was led to an area of vulnerable emotions in the CEO, and armed with that knowledge, the mediator could explore directly with the CEO some of her feelings about the decision to fire the employee.

Managing our own feelings about the parties in a mediation is challenging. However, one of the implications of the IFS model for mediation practice is that this discipline can not only help us manage our emotions – it can also help us use those emotions like a Geiger counter, leading us to the "hot" spots in the *parties'* emotions.[56] As such, it is a particularly valuable addition to the mediator's toolbox.

In addition to the value of reflective practice in "real time" and in mediation training, many mediators have found enormous value in participating in peer supervision groups to reinforce the discipline of reflective practice. Such peer supervision is common in the field of psychotherapy. In the field of law, such groups are virtually unknown. In the world of mediation, such groups are just beginning to emerge, because of the recognition that mastery in almost any field can be elusive without mentorship and reflection.

## V. Closing the Deal

Returning to Carly Shuttlesworth gives us the opportunity to apply some of the principles described in this article. The mediator is meeting with Carly after separate sessions with each of her siblings and her father.

"I broached the idea of an apology," said the mediator. "And I got some interesting reactions."

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56. I appreciate Richard Wolman's suggestion of this point.

"What do you mean by 'interesting'?" Carly asked.

"Well," the mediator paused, searching for a diplomatic way to explain. "It appears that each of your family members believes that *they* are the ones who are owed an apology."

"That's absurd," Carly said, her agitation evident as she raised her voice a bit. "Sam and I are the only ones negotiating in good faith around here. I don't see what either one of us needs to apologize for."

"I wonder," said the mediator, "if you could roll back the videotape of this conflict, is there anything you would do differently? Anything at all?"

"Not really."

"'Not really' sounds like there might be a part of you that had just a few slight misgivings. Is that true?"

"Well, there's a part of me that was nervous about going to the Boston Globe."

"Tell me about that part, and why was it nervous?" asked the mediator.

"It's the part of me that fears my father's disapproval. Our family has always been very private – I knew Dad would be very angry at Sam and me for going to the press."

"It sounds like that part of you got outvoted by other parts of you."

"Absolutely. Sam and I were furious. We kept complaining to Dad and our siblings about clear ethical violations. None of them would listen to us. Finally, we got tired of being ignored – essentially, we were being ostracized from the family."

"So, it sounds like you were angry about being shunned, being disrespected. It sounds like the part of you that got angry is looking out for you – to keep you from being hurt."

"You're right. There's definitely a part of me that gets overheated sometimes. Calling the Globe seemed like a good idea when I was so angry. I can sorta see their point that calling the paper was over the top. I just didn't know what else to do."

"Well, I think we all have that same kind of angry part, looking out for us when someone pushes our buttons very hard. It sounds like that's what happened here."

"Definitely."

"So, what would you like to do now?" the mediator asked.

"What do you mean?"

"Well, is there some peaceful, centered part of you that can look objectively at your anger, and look at your fear of Dad's disapproval,

and help you steer the right course. 'Cause it sounds like those two parts of you are pushing in opposite directions."

"When I look at my situation objectively – which, frankly, is very hard to do because I get so worked up about this – I think I could apologize to my Dad about going to the press, but *only if* he told me that he was sorry for ignoring me all those years about the foundation. Do you think he would do that?"

"I don't know, but I'll find out," said the mediator.

Before walking into the room where Carly's father was waiting, the mediator slowed down, gathered her thoughts, and took a deep breath. "I know there's a part of me that's very invested in getting this resolved," she thought to herself. "There's a part of me that wants another notch in my belt – the part that's worried about whether I am a competent mediator or not. If that part is in control when I talk with Carly's Dad, I may blow this chance to settle the case by pushing him too hard. I need to find my center here and keep at bay my attachment to succeeding. This is *their* conflict, not mine. I am just here to help. I will still have grounds for believing that I am a decent mediator, whether this case settles or not." Another deep breath. "OK, I think I'm ready."

After talking with Carly's father for an hour or so about a mutual apology, the mediator returned to the conference room where Carly and Sam were waiting.

"So," Carly asked, "what happened in your meeting with Dad? You were gone a long time."

"He's on board with the idea of a mutual apology," the mediator said. "He had mixed feelings about it at first, and he asked me to tell you that. But he also said that he's worked through those mixed feelings and it would mean a lot to him to patch things up with both you and Sam. He said he misses you two."

Carly and Sam let out a sigh of relief – they both got a bit choked up. "We miss him too," Sam said, wiping a tear from his eye. "Thank you," said Carly.

"You're welcome," said the mediator, "but we're not done yet. We still have the litigation issues to resolve. I'm off to speak with your siblings. Wish me luck."

## CONCLUSION

Not every mediation results in a settlement. Ambivalence and resistance sometimes bar the door. Anger often overpowers reason and

other emotions.  However, even in the toughest of cases, mediators can sometimes help people open their minds and hearts.  The key to doing so can often be found in the vocabulary that we use to explore the mixed feelings that we all have when embroiled in conflict.

The concept of "multiple minds" provides such a vocabulary for naming the underlying components of our perspectives and managing the negotiation among them.  The Internal Family Systems model exemplifies one such concept.  It enables mediators to explore the extraordinary complexity of our thoughts and feelings in a non-stigmatizing way.  Each part of us has value and all parts of us benefit when negotiation – both internal and external – results in our needs being met.

In order to achieve mediation's highest potential, mediators need to develop an understanding of the negotiation within – both within the parties to the mediation and within themselves.  One of the valuable insights of the IFS model is that it identifies a mediator inside each of us – our Self.  As our internal mediator gains strength, experience, and leadership within our internal system, our ability to help others do the same will be enhanced.  For some mediators, this task may be unfamiliar or uncomfortable terrain.  But leadership – both Self-leadership and leadership of the parties in mediation – involves risk and requires courage.  Mediators have the opportunity – and perhaps, in order to be effective in the most difficult cases, the obligation – to exercise such leadership.