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**INSPIRATIONAL TEACHING OF ALTERNATIVE DISPUTE
RESOLUTION:
UTILISING IMPROVISATION TO ENHANCE
UNDERSTANDING OF NARRATIVE MEDIATION**

KATHY DOUGLAS*

The teaching of Alternative Dispute Resolution (ADR) is undertaken in a number of law and legal studies programs in Australia. The teaching of ADR is likely to include significant attention to the practice of mediation and most academic teaching in this area will include some focus upon experiential learning models. Skills development in mediation is encouraged through the use of role-plays. Students take on the roles of a range of characters in order to play out the role-play and learn more about this widely used process. Recently, a model of mediation has been articulated that encourages mediators to see themselves as co-authors of the conflict story that unfolds in the mediation. This model, known as narrative mediation, draws upon critical theory to articulate a model of practice where the mediator is a non-neutral active contributor in the re-storying of the dispute. Law and legal studies students may be reluctant to take on this role due to their immersion in the black letter law approach that is generally adopted in legal subjects and their conviction of the need for a neutral third party to assist in dispute resolution. The techniques of improvisation from the field of acting can assist students to spontaneously contribute to the story of the conflict in mediation role-plays and enhance their understanding of a non-neutral role. This paper explores the work of Keith Johnstone, and his ideas in the teaching of improvisation. It considers a number of approaches, including the use of improvisational games, to inspire understanding of diverse practice in mediation.

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The history of the teaching of Alternative Dispute Resolution (ADR) and mediation in law schools and legal studies courses reflects the gradual recognition of the importance of this area of teaching and learning. At the beginning of the 1980's the idea of an area of study devoted to ADR would have been surprising to most legal academics.¹ Certainly, there was an understanding of alternative processes in labor law² and negotiation was used routinely by lawyers in their practice,³ but the rise of a different approach to dispute resolution, which drew focus away from litigation, was not generally accepted. With the increased use of mediation, conciliation and arbitration in dispute resolution new subjects appeared in many law⁴ and legal studies⁵ programs. Generally, termed 'ADR' and on occasion 'Mediation', these subjects attempted to capture the theory and practice of this evolving area of scholarship.⁶ The developing pedagogy often reflected the interdisciplinary focus of ADR that includes disciplines such as law, communication, social sciences, management and psychology.⁷ Indeed the study of ADR is not limited to the legal discipline, with business and social science faculties also providing subjects and qualifications in this area.⁸

With the rise in the number of subjects devoted to ADR⁹ and mediation there has

¹ For a discussion of the growth of ADR, see generally Hilary Astor and Christine Chinkin, *Dispute Resolution in Australia*. (2nd ed, 2002).

² For a history of dispute resolution processes (such as conciliation, arbitration and mediation) in Australian labor law see James Macken (Hon) and Gail Gregory, *Mediation of Industrial Disputes* (1995).

³ Astor, above n 1.

⁴ Hilary Astor, 'The Place of Dispute Resolution in Legal Education' (Paper presented at the *Beyond the Adversarial System: Changing Roles and Skills for Courts, Tribunals and Practitioners*, Brisbane 10-11 July 1997).

⁵ For instance RMIT University includes ADR in their Legal and Dispute Studies program see <<http://www.rmit.edu.au/browse;ID=BP204>> at 9 February 2007.

⁶ A recent survey of universities provides a snapshot of subjects and degrees offered in studies in Australia in ADR, see National Alternative Dispute Resolution Advisory Council, *The Development of Standards for ADR: Discussion Paper* (2000) 125.

⁷ New South Wales Law Reform Commission, *Alternative Dispute Resolution: Training and Accreditation of Mediators*, Report Discussion Paper 21 (1991).

⁸ Boulle provides a list of universities providing qualifications in mediation and notes that there are courses in ADR and/or mediation in faculties of 'law, humanities, social science and business' see Laurence Boulle, *Mediation: Principles, Process, Practice* (2nd ed, 2005) 469.

⁹ ADR generally includes the study of mediation and negotiation, see Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by Australian Universities Teaching Committee (AUTC)* (2003).

been increased scholarship relating to methods of teaching and learning to assist understandings of this area.¹⁰ For example, role-plays have been a popular strategy utilised by teachers and provide the opportunity for students to take on a number of characters when learning of different dispute resolution options.¹¹ Recently, there has been academic recognition of the more systemic contribution¹² the field of improvisation can make to the practice of negotiation¹³ and mediation¹⁴ and the teaching of negotiation.¹⁵ Improvisation has been utilised in business¹⁶ successfully for some time and its influence has spread to the practice of ADR. The insight that negotiation and mediation require the same kind of spontaneity and creativity that improvisation requires has been identified for some time. Yet the specifics of the way improvisation can assist practice¹⁷ and contribute to teaching and learning, have not, until recently, been well articulated. In this paper I wish to focus upon the use of improvisational games to assist legal students to understand the theoretical basis of a particular model of mediation, narrative mediation.¹⁸ However, the suggested

¹⁰ Negotiation pedagogy can assist in the teaching of ADR and mediation. For a recent discussion of various teaching and learning approaches to negotiation see Melissa Conley Tyler and Naomi Cukier, 'Nine Lessons for Teaching Negotiation Skills' (2005) 15 *Legal Education Review* 61.

¹¹ Boulle, above n 8; Lim Lan Yuan, 'Developing Role-Plays for Experiential Mediation Learning' (2001) 12 *Australasian Dispute Resolution Journal* 103.

¹² See for a discussion of the nature of improvisation, Viola Spolin, *Improvisation for the Theatre* (1963) and in the context of negotiation, including a case study to illustrate the synergies, see Chet Harding, 'Improvisation and Negotiation: Making It Up as You Go Along' (2004) 20 *Negotiation Journal* 205.

¹³ See for a discussion of the way improvisation can assist 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.

¹⁴ 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.

¹⁵ See for a discussion in relation to negotiation teaching, Lakshmi Balachandra, Mary Crossan, Lee Devin, Kim Leary and Bruce Patton, 'Improvisation and Teaching Negotiation: Developing Three Essential Skills' (2005) 21 *Negotiation Journal* 435.

¹⁶ See, eg, Kat Koppett, *Training to Imagine: Practical Improvisational Theatre Techniques to Enhance Creativity, Teamwork, Leadership, and Learning* (2001).

¹⁷ For instance improvisation has been linked to the artistry of the mediator, where the mediator's practice combines immediacy and responsiveness, see Michael D Lang and Alison Taylor, *The Making of A Mediator: Developing Artistry in Practice* (2000) 155. If mediation is practiced in a manner that incorporates improvisation it may be appropriate for the mediator to disclose this approach to practice to the parties. Given the recent increased risks of litigation being directed at the mediator it may be wise for the mediator to gain a signed indemnity from parties that acknowledges their agreement to the mediator incorporating this kind of practice.

¹⁸ John Winslade and Gerald Monk, *Narrative Mediation* (2000).

improvisational games can be adapted to help teach most models of mediation and could also be used in subjects dealing with negotiation skills and advocacy.

In order to achieve my aim I will firstly discuss in more detail the contribution improvisation can make to the teaching of ADR. I will then articulate the model of narrative mediation and why legal students might struggle with this model due to the non-neutral role of the mediator. I will lastly suggest specific games, drawn from the work of Keith Johnstone¹⁹ that may assist students to understand and practice narrative mediation.

I IMPROVISATION AND MEDIATION

Improvisation is the art of making up scenes on the spot. These scenes might include short or extended scenarios, songs or mime. The key is that the 'actors' do not rely on a script and the storyline is based upon collaboration.²⁰ In the context of negotiation,²¹ a phase of the mediation used in most models, the mediator can appreciate the links with improvisation in that the interactions that occur in a negotiation do not accord with a set script. Mediators must be ready to respond to what occurs in the mediation, where the parties lead the negotiation, and adapt accordingly.²² Similarly, it is the improviser's ability to accept suggestions and move forward the storyline, rather than blocking ideas from fellow actors, that is the key to success in improvisation.

In order for an improviser to be responsive to fellow actors the improviser needs to be attuned to what is being said on stage and the body language of the other actors. In the same way a mediator must be mindful²³ of the stories that parties bring to the

¹⁹ Keith Johnstone, *Impro: Improvisation and the Theatre* (1981).

²⁰ Koppett, above n 16, 4.

²¹ Balachandra et al, above n 13, 417.

²² Koppett, above n 16, 8.

²³ An approach to mediation has been drawn from Eastern traditions of meditation see 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.

mediation and the body language that parties exhibit.²⁴ The mediator must then respond to what occurs in the mediation. A well-established attribute of the art of improvisation is the ability of actors to be spontaneous and creative. Mediators benefit from an improvisational orientation as they improve their ability to spontaneously react to party suggestions and assist with creative brainstorming.²⁵

Generally, mediators will draw upon a repertoire of 'moves', as do some improvisers, which have been honed with experience to react to the unpredictable responses that may occur in mediation. These 'moves' might include reframing, summarising party responses or calling a break or private caucus.²⁶ The mediator operates from intuition built from experience.²⁷

Teaching ADR students to improvise arguably enhances their ability to develop appropriate mediation skills; to develop intuitive responses that translate into mediator 'moves'. It may also inspire students to appreciate the important qualities of mediation in dealing with disputes as a story-telling process. In this context the model of mediation taught to legal students becomes important. The above discussion of mediation and improvisation has not included a recognition of the diverse models that are practiced in the mediation industry, both in Australia and internationally. However, the model of mediation,²⁸ coupled with improvisation, can be an important part of assisting students to understand the very different qualities²⁹ of mediation as compared to litigation as some models are more adept at dealing with

²⁴ See Balachandra et al, above n 13, 419 where the authors link mindfulness to an awareness of what occurs around a negotiator (and by extension a mediator). This may be enhanced through a meditative approach, but similarly improvisers require an ability to be 'in the moment' and pick up on the varied cues occurring onstage.

²⁵ Ibid.

²⁶ Balachandra et al, above n 14, 428.

²⁷ Ibid 427.

²⁸ 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.

²⁹ Some models of mediation, such as the evaluative model are closer to litigation than other models such as the transformative model which focuses more upon relationship issues, see Boule, above n 8, 45.

emotion.³⁰ For instance, the transformative model draws from post-modern and psychological literature,³¹ to deal with relationship dimensions of disputes³² and has begun to be seen as a viable alternative to problem-solving models, although not generally in the court-connected context.³³ Similarly, another new model termed, narrative mediation, rejects dominant problem-solving models and deals with emotion and relationships, although this model is not yet widely practiced in Australia.³⁴

II NARRATIVE MEDIATION

The narrative model has a social science basis to its practice, utilising theory primarily from a social constructionist perspective.³⁵ Mediators focus upon the conflict stories that parties bring to the process and try to de-stabilise stories of mutual blame as articulated by the disputants. The mediator validates each party's perspective and through the techniques of mapping the history of the dispute, curious questioning³⁶ and deconstruction of societal influences upon the dispute, seeks to re-story the conflict. The mediator will often use the written word as part of the process.³⁷

Amongst many innovative approaches adopted by narrative mediators is the technique of curious questioning. The mediator asks a series of questions aimed at helping the participants tease out the assumptions that underline the expectations that they bring to the mediation. The mediator adopts a naive stance that questions the

³⁰ Robert A Baruch Bush and Joseph P Folger, *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition* (revised ed, 2005).

³¹ In the context of learning about ADR the transformative model has been included in a recent casebook dealing with ADR see David Spencer and Tom Altobelli, *Dispute Resolution in Australia: Cases, Commentary and Materials* (2005) 142.

³² For a useful analysis of the benefit of diverse models when addressing different kinds of conflict and the possible need for different codes of conduct for diverse models see Katherine A Mills, 'Can a Single Ethical Code Respond to All Models of Mediation?' (2005) *Bond Dispute Resolution News* 5 <<http://www.bond.edu.au/law/centres/drc/newsletter/Vol21Dec05.pdf>> at 22 February 2006.

³³ It would appear to be supported in family and workplace disputes, Boule, above n 8, 46-47.

³⁴ *Ibid.*

³⁵ Winslade and Monk, above n 18, ch 2.

³⁶ *Ibid* 23.

³⁷ *Ibid* ch 10.

meaning of terms used in the mediation and thus assists parties to revisit their own preconceived attitudes to the conflict.³⁸

Another technique used is that of separating the conflict from the parties through externalising the problem. The idea is for the mediator to help the parties see the conflict as external to them, and although each party is affected by the conflict, *they* are not the conflict.³⁹ Externalising the problem allows parties to see the conflict afresh. This approach acknowledges that self is not stable and that participants can construct themselves anew. New stories can be created that deal with the conflict that brought the parties together in the mediation process.⁴⁰

Importantly, in this model the mediator is not a neutral third party. Although, many other models of mediation categorise the third party as neutral⁴¹ they have been critiqued for creating an illusion of the mediator being able to separate the process from the content in mediation.⁴² In contrast the narrative model acknowledges the impact of the mediator on the story of the mediation.⁴³

Arguably, many in the legal field would find rejection of the neutrality attribute of mediation a serious concern. Although, many scholars have critiqued neutrality in the context of the judiciary⁴⁴ this concept underpins much of the legitimacy of courts.⁴⁵ The persistence of this approach has meant that the legal community are likely to be suspicious of models of court-connected mediation that do not include

³⁸ Ibid 80.

³⁹ Ibid 6.

⁴⁰ Ibid 37-47.

⁴¹ Sara Cobb and Janet Rifkin, 'Neutrality as A Discursive Practice: The Construction and Transformation of Narratives in Community Mediation' (1991) 11 *Studies in Law, Politics and Society* 69.

⁴² Ibid 35.

⁴³ For a detailed discussion of neutrality see Hilary Astor, 'Rethinking Neutrality: A Theory to Inform Practice Part 1' (2000) 11 *Australasian Dispute Resolution Journal* 73; Hilary Astor, 'Rethinking Neutrality: A Theory to Inform Practice Part 2' (2000) 11 *Australasian Dispute Resolution Journal* 145.

⁴⁴ See, eg, Margaret Davies, *Asking the Law Question: The Dissolution of Legal Theory* (2nd ed, 2002).

⁴⁵ Linda Mulcahy, 'The Possibilities and Desirability of Mediator Neutrality-Towards an Ethic of Partiality?' (2001) 10 *Social and Legal Studies*, 505-6.

neutrality⁴⁶ and to explore this issue further I will now canvass the context of teaching ADR in legal courses.

III THE TEACHING OF ADR IN THE LEGAL CONTEXT

The teaching of ADR and mediation can occur in law schools in undergraduate and postgraduate offerings.⁴⁷ ADR in legal education is often linked to a greater focus upon skills development for lawyers.⁴⁸ The skills of empathic listening, summarising and reframing, are now seen as valuable attributes for prospective lawyers to master, and these skills are taught in ADR.⁴⁹ The practice of law is changing and ADR skills can assist law students to adapt to those changes.⁵⁰ Legal education and ADR encompasses teaching lawyers how to be mediators⁵¹ and also includes consideration of the role of the lawyer⁵² in the mediation process.⁵³ However, teaching legal students ADR can arguably be a challenge due to the preconceptions that students often bring into the classroom. Much of legal education promotes a litigious orientation.⁵⁴ Although there is evidence that lawyers have now come to accept ADR in their culture,⁵⁵ there seems to be a preference for those models of mediation which mirror their litigious orientation.⁵⁶ The most commonly adopted models of

⁴⁶ Ibid.

⁴⁷ Boulle, above n 8, 463-72. The teaching of ADR can also occur in the clinic context in law schools, see Jeff Giddings, 'Using Clinical Methods to Teach Alternative Dispute Resolution' (1999) 10 *Australasian Dispute Resolution Journal* 206.

⁴⁸ Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (2000) [2.14].

⁴⁹ Laurence Boulle, 'Educating Lawyers in ADR' (2005) 8 *ADR Bulletin* 28.

⁵⁰ Ibid.

⁵¹ Edwin H Greenebaum 'On Teaching Mediation' (1999) 2 *Journal of Dispute Resolution* 115.

⁵² Suzanne J Schmitz, 'Giving Meaning to the Second Generation of ADR Education: Attorneys' Duty to Learn about ADR and What They Must Learn' (1999) 1 *Journal of Dispute Resolution* 30. The teaching of ADR to law students is arguably more effective when those students have experience in the profession, see David Spencer and Marilyn Scott, 'ADR for Undergraduates: Are We Wide of the Mark?' (2002) 13 *Australasian Dispute Resolution Journal* 22.

⁵³ ADR will also include topics such as conciliation, early neutral evaluation and arbitration.

⁵⁴ See Leonard Riskin and John Westbrook, 'Integrating Dispute Resolution into Standard First Year Courses: The Missouri Plan' (1989) 39 *Journal of Legal Education* 509.

⁵⁵ Archie Zariski, 'Disputing Culture: Lawyers and ADR,' (2000) 7 *E Law-Murdoch University Electronic Journal of Law* at <<https://elaw.murdoch.edu.au/>> at 6 February 2007.

⁵⁶ Laurence Boulle, 'In and Out the Bramble Bush: ADR in Queensland Courts and Legislation' (2004) 22 *Law in Context* 93.

mediation are the settlement,⁵⁷ evaluative⁵⁸ and facilitative⁵⁹ models of mediation which focus upon finding a solution to the problem that brings the parties to the process.⁶⁰ The most popular model amongst lawyers and courts would appear to be the evaluative model.⁶¹ However, this kind of practice of mediation may not sufficiently deal with relationship issues in disputes and arguably circumscribes the benefits that mediation can provide to parties.⁶² Issues of case management and efficiency lead to a practice of mediation that values results.⁶³ If courts and lawyers neglect relationship issues the potential of mediation to deal with conflict in a unique manner is curtailed.⁶⁴

It is therefore important that legal students appreciate models of mediation that value emotions and relationships,⁶⁵ not merely case efficient models of problem-solving.⁶⁶ Improvisation can be a tool for teachers of ADR to help students experience the kind of inspiration that promotes understanding of the need for diverse models in practice.

⁵⁷ For a recent discussion of the use of the settlement model in the West Australian Supreme Court see Ralph Simmonds, 'The Practicalities of Mediation in the Supreme Court of Western Australia: The Current State of Play' (2005) 12 *E Law- Murdoch University Electronic Journal of Law* <http://www.murdoch.edu.au/elaw/issues/v12n1_2/Simmonds_Jan2005.html> at 9 February 2007.

⁵⁸ The evaluative model is much in evidence in 'court-connected, commercial and industry-based mediation' see Boule, above n 8, 43.

⁵⁹ The facilitative model is currently widely used in 'training, writing and practice in community, neighborhood and family disputes' see *ibid.* However, note that Boule also posits that practitioners will move between models in the mediation.

⁶⁰ See for a discussion of the attributes of the various models, *ibid.*, 44-5.

⁶¹ *Ibid.* 40.

⁶² Nadja Alexander, 'Mediation on Trial: Ten Verdicts On Court-Related ADR' (2004) 22 *Law in Context* 8, 17.

⁶³ The Hon. James Moreton Rolfe, 'The Relationship Between Case Management and Mediation' (2006) 25 *The Arbitrator and Mediator* 81.

⁶⁴ Bush and Folger, above n 30, 37.

⁶⁵ Lawyers need to counsel clients on the range of models in mediation see Robert Rubinson 'Client Counseling, Mediation, Alternative Narratives of Dispute Resolution' (2004) 10 *Clinical Law Review* 833.

⁶⁶ Kathy Douglas, 'Mediation as Part of Legal Education: The Need for Diverse Models' (2005) 24 *The Arbitrator and Mediator* 1.

At present in legal education there is continuing discussion about the kinds of skills and knowledge lawyers need to acquire in order to practice.⁶⁷ For instance, in Victoria there has recently been a review of legal education.⁶⁸ The teaching of narrative mediation is one way to introduce perspectives from the social sciences to law students⁶⁹ who will traditionally largely learn through a focus upon black letter law.⁷⁰ Due to the social science base of the narrative model, the inclusion of this model gives a more multidisciplinary⁷¹ focus for law students when studying ADR and mediation.

IV PARTICULAR GAMES FROM IMPROVISATION: THE WORK OF KEITH JOHNSTONE

There are numerous improvisation games that can assist in the teaching of ADR and mediation. In this paper I will confine myself to addressing teaching the concept of neutrality⁷² in the narrative model as this issue will arguably be the most challenging for students who subscribe to neutrality in court-connected matters.

I would suggest utilising games from the work of Keith Johnstone.⁷³ These games allow students to improvise within a 'safe' teaching and learning structure. Teachers can assure students that they cannot 'fail', and that they should 'aim to be average' to

⁶⁷ In the United States litigation and alternative dispute resolution processes are part of the 10 fundamental lawyering skills, see American Bar Association, *Legal Education and Professional Development: An Educational Continuum, Report of the Taskforce on Law Schools and the Profession: Narrowing the Gap*, McCrate Report (1992).

⁶⁸ See for the review Susan Campbell, *Review of Legal Education Report: Pre-Admission and Continuing Legal Education* (2006)
<<http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/eb42554eca29368/Legal%20Education%20Review.pdf>> at 8 February 2007.

⁶⁹ See Andrew Stewart 'Educating Australian Lawyers' in Charles Sampford, Sophie Blencowe and Suzanne Condlin, (eds), *Educating Lawyers for a Less Adversarial System* (1999).

⁷⁰ Paul O'Shea, 'The Complete Law School: Avoiding the Production of 'Half-Lawyers'' (2005) 29 *Alternative Law Journal* 272.

⁷¹ Commentators have called for ADR teaching to be informed from a multidiscipline perspective, Charles Brabazon and Susan Frisby, 'Teaching Alternative Dispute Resolution Skills,' in Charles Sampford, Sophie Blencowe and Suzanne Condlin, (eds) *Educating Lawyers for a Less Adversarial System* (1999).

⁷² Dale Bagshaw, 'Language, Power and Mediation' (2003) 14 *Australasian Dispute Resolution Journal* 130.

⁷³ Johnstone, above n 19.

assist reducing expectations and facilitating understanding.⁷⁴ These games have been famously used in shows entitled ‘Theatresports’ all over the world.⁷⁵

In the teaching of negotiation it has been found that merely improvising in role-plays does not necessarily assist students to learn about the process. Reflection is also a crucial part of the experience of learning in this context.⁷⁶ I would therefore suggest that understanding the complexity of neutrality as a concept would be assisted by preparing students with articles.⁷⁷ Small group discussion around the articles would set the scene for the use of the improvisational games. Journal writing about the experience of the games, and applying that reflection to the concept of neutrality, would also assist ‘deep’ learning.⁷⁸

The first game that might be useful to help students understand neutrality and the role of the mediator in narrative mediation is the game ‘People as Objects’.⁷⁹ Drawing from traditions of mime, students can be asked to become various objects in a scene. This game can help students understand that everyone in a scene contributes to that scene. For instance, a teacher may ask for suggestions from the class⁸⁰ and the students act out the scene with the requirement that one person contribute to the story as an inanimate object. Usually, the scene will be funny as students incorporate the player who is an inanimate object. The student as the object may try to be part of the scene while still keeping up the pretence of being a chair or a lamp. Teachers should debrief afterwards and ask students to consider the analogy of the ostensibly neutral role of the mediator. Can the mediator be like a chair or a lamp in a scene? Can a mediator contribute to running the process of the mediation, but not impact upon the story of what is unfolding in the mediation? Generally, questions regarding neutrality engender vigorous discussion, but the aim is to help students to conclude that everything in a scene affects how that scene plays out. The analogy can then be

⁷⁴ Keith Johnstone, *Impro For Storytellers* (1999) 62-6.

⁷⁵ *Ibid* 66.

⁷⁶ Tyler and Cukier, above n 10.

⁷⁷ See articles for example by Astor, above n 43.

⁷⁸ See generally Paul Ramsden, *Learning To Teach in Higher Education* (2nd ed, 2003).

⁷⁹ Johnstone, above n 76, 303.

⁸⁰ *Ibid* 25

drawn with the role of the mediator and the fact that what the mediator does in mediation inevitably affects the unfolding story of the mediation.

Another useful game is the game of 'Yes and...' which asks that actors improvise and respond only in a positive manner to suggestions from fellow actors. In this game it is possible to firstly use the Keith Johnstone approach of 'Yes but...' and then to play out the game of 'Yes and...'⁸¹ Students can be asked to stand in pairs and create a conversation about an upcoming class reunion of their fellow students. The students should be asked to respond to each suggestion from the other person with 'Yes but...' effectively blocking the storyline of the discussion. This game is usually funny as participants attempt to keep the storyline of the conversation moving forward with constant blocking from their partner. Students should then be asked to play the more 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.

In the debriefing afterwards teachers should ask students to reflect upon the game and consider the context of mediation. How would participants in mediation respond to the two approaches? Students are likely to posit that a mediator who responded with 'Yes but...' would be off putting to participants and the opposite would be true if the mediator adopted the approach of 'Yes and...' The teacher can then ask them to consider whether by merely responding to what is said in the mediation the mediator affects the story of the mediation? After discussion students may see that the mediator cannot be neutral and impact only upon the process of the mediation as his/her reaction to the storyline *changes* that storyline. Reference to the readings provided in relation to the literature of neutrality may be helpful to incorporate into the discussion.

The next game builds upon the insights of the students that the mediator cannot be neutral. It attempts to relate this understanding to the new role of the mediator in

⁸¹ Ibid 190.

narrative mediation. If the mediator is not neutral then he/she becomes an acknowledged co-author of the storyline of the mediation. But the mediator needs to be collaborative in that approach. For instance, when the mediator asks curious questions, as outlined previously in this paper, he/she must be open to the answers. The mediator must peel back the assumptions that parties bring to the mediation table, but also be open to what the parties say. The mediator needs to be listening in the moment in the same way that an improviser must listen for offers from fellow actors. A game to help students understand collaborative storytelling and the need to listen for offers is a simple game called 'Word-at-a-time'.⁸² In this game 6-8 students are asked to sit in a circle and construct a story by offering one word at a time. Listening is a key skill in this game and also the discipline to provide only one word to add to the storyline. In this way spontaneity and collaboration can be highlighted and students may come to understand that each person must make a contribution (even if it is only a linking word such as 'and'). If a student hesitates, is ungrammatical or uses too many words he/she should be ejected from the game. Clearly, the aim here is to help students to see that simple additions can make a powerful contribution to a storyline. Teachers should ask students to draw an analogy with mediation and assist them to reflect upon the kinds of 'moves' mediator's make. Teachers should possibly discuss the literature relating to curious questioning and point to the effect on the conflict story that asking naïve questions can have.

Similarly, the active non-neutral role of the mediator in narrative mediation may be highlighted by considering the mediator 'move' of externalising the problem. To help students to understand this concept teachers may ask students to play 'Guess the Phrase'. In this game a student is sent out of the room and the others in the scene decide upon a well-known song or phrase. A scene is played out where the student must guess what this song or phrase is, but without any of the other students explicitly mentioning the song or phrase. After the game students should be encouraged to see how sub-texts can occur in scenes. It is possible to link the phrase

⁸² Ibid 31.

that is hidden from view to the narrative mediation approach of naming the conflict between parties. Sometimes, this name must be searched for, but once out in the open parties can see the 'problem' as separate to themselves.

V CONCLUSION

In all of these games the aim is to provide another way of looking at the role of the mediator. Students are assisted to understand that mediators cannot be neutral and that their role can be that of a collaborative storyteller. Improvisation has much to offer the teaching of ADR and mediation. It is a useful tool to aid reflection and can mean that students are inspired to understand complex ideas such as the contested notion of neutrality. The games of Keith Johnstone give structure to the tool of improvisation. They can be adapted to highlight theory and practice issues in models of mediation, such as in the narrative model, and they can provide an entertaining way of developing storytelling skills in students.