

Conflict Resolution in Child Welfare:
Collecting the Wisdom of 25 Years of Experience

A Think Tank on Child Protection Decision Making
September 25-26, 2007

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Think Tank Summary
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Introduction

Over the past thirty years there have been many chapters in the development of child welfare mediation and decision making programs. Programs have been developed, altered, improved, and re-invented. There are many programs that began strong and continue to thrive. Others have faced hard challenges, lost funding and been discontinued. In an effort to consolidate the wisdom that has been gained, the lessons that have been learned, and questions that remain to be addressed, a group of organizations and individuals concerned about child protection decision-making organized a two-day conference of experienced practitioners, administrators, researchers, and policy makers. Prior to this meeting, a survey of child protection decision-making programs was conducted, supplemented by a series of in depth interviews. A paper summarizing the results of this survey served as the working paper for the think tank.

Thirty judges, mediators, program administrators, researchers, and policy experts attended the Think Tank, which was held immediately prior to a regional conference of the Association of Family and Conciliation Courts (AFCC), September 27-29, 2007 in Columbus, Ohio. Attendees came from all parts of the United States and Canada, and brought a wealth of expertise and wisdom about child welfare mediation and family group decision-making processes.

In this summary, we present an abridged version of the discussion that occurred at the think tank. We also summarize the main points in each section, but we hope the diversity of input and the richness of the interchange will be conveyed by the reporting of the actual comments. It was not the intention of this process to consolidate consensus recommendations for how these programs should be organized, funded, administered, staffed, or operated. There may be a purpose in establishing a best practice document in the future, but that was not the intention here. Instead, the hope was to engender a rich interchange of ideas, experience and thinking. We believe that purpose was very well accomplished.

Executive Summary

Think Tank participants came together from a wide variety of areas and backgrounds. Researchers, policy makers, program administrators, mediators, family group decision-making consultants, judges, and professional organization representatives all took part. Goals for the Think Tank were varied and included learning how to deal with professionals, funding, sustainability, program design, empowering families, system resistance, and marketing. Participants were also interested in exploring research and evaluation processes and how best to coordinate child protection mediation programs (CPM) and family group decision making (FGDM), which is also referred to as family group conferencing (FGC). The overall goal, however, was to learn from each other. Participants expressed a sense that those interested in child protection conflict resolution and decision making programs had a great deal to offer each other but had not had adequate opportunities to take advantage of this.

The survey and interview process that preceded the Think Tank offered many insights and framed the agenda and discussions. Among the notable findings were the wide variety of practices in regards to structure, mediator background, point of entry, allotted time, purpose, confidentiality, range of participants, and funding. Despite this variety almost all programs struggled with funding and sustainability and felt that the key to successful programs lay in the degree of ongoing support from courts, agencies, and the legal professionals involved. Also, finding an effective path to parental involvement was a key challenge and opportunity for almost everyone interviewed and surveyed.

Participants were very committed to encouraging research and evaluation. Some programs have resources to do in depth evaluation, but many do not. One of the key questions is how should success be defined and measured. On the one hand, courts want to minimize their backload and to assure an efficient and safe transition to permanency as soon as possible. On the other, allowing families, parents, and children to have an effective voice in the process may be the most important long term goal of these programs—but this can be at cross purposes with the efficiency goals. Success really has to be defined by participants, and evaluation should begin during the program-planning phase. Most participants felt that success should not be measured simply in terms of agreements reached, but in terms of the impact on family and children. Current research indicates high levels of parent satisfaction with mediation, higher compliance rates (at least over the short term), more nuanced agreements, and a somewhat quicker path to permanency. Mediation seems to produce positive results no matter what stage of the process to which it is applied.

Programs vary in almost every conceivable way—where they are located, who funds them, whether mediators are volunteers, paid staff of court or agencies, or outside contractors, whether mediation is voluntary or mandatory, who is present and at what point in the process, how much time is allocated for intake and pre-mediation work, whether and how screening for domestic violence, substance abuse, or mental health concerns is done and by whom, what stages of the process mediation or FGDM occurs, and how programs are funded, among other variables. But there also seem to be certain

important constants—the challenge of empowering families, the importance of addressing cultural norms and experiences, the challenge and value of obtaining systematic stakeholder support, and the importance of focusing on children’s needs.

All programs face the issue of sustainability and this is closely tied to the challenge of obtaining the support of the different professional groups and stakeholders involved in the process. Many programs have identified the importance of creating a stakeholder advisory group early in the process. Understanding the legitimate concerns of stakeholders as well as speaking to their fears and concerns about what kind of impact the process will have on their ability to do their job is necessary to winning their support. Program managers generally spend a considerable amount of time on this effort. The task is ongoing—turnover and the inevitable ebb and flow of cases mean that this work is never complete. Sustainability can be achieved if funding is put into the line item budgets of the court or other systems, but for many programs, there is never a safe harbor when it comes to funding. There is often a difficult gap between initial, demonstration funding and ongoing support, and programs need to plan for this from the outset. Interestingly, many administrators did not believe that mandating mediation or FGDM was necessarily a route to sustainability, although it might sometimes have other benefits. The problem with mandating mediation is the backlash among professionals and agencies that this can create. Mandating mediation may help establish a habit, but it is important to work very carefully with stakeholders in doing this.

FGDM and CPM both share as a fundamental goal empowering parents and families. FGDM has as an additional goal of creating a family led process. Furthermore, research indicates, and parents’ lawyers report, that parents do feel empowered and better listened to with these processes. So the bottom line is that by and large, the goal of empowerment seems to be an achieved objective. However, from a programmatic point of view and a practitioner’s point of view this is always a challenge. The language used, professional jargon, location, dominant presence (at least in CPM) of professionals, and limited choices that the system and legal structure allow are major obstacles. Mediators and facilitators need to be tuned in to cultural and power dynamics, and they should go out of their way to help families feel comfortable and at ease with them. Many programs have found that advance work with families is critical (and many found that food was also extremely important).

While mediators come from a wide variety of backgrounds, almost everyone felt that specialized training and specialized knowledge of the child protection system was very important to their success. Mentoring, co-mediating, continuing education, supervision, and feedback are also very important. Ideally, mediators should come from a similar background as families, and the use of paraprofessionals who have been through the system has been very helpful in certain locations. Mediators, facilitators, and program managers should make sure that everyone understands the limits of confidentiality and the protections of confidentiality. Preferably this should be part of the written contract or agreement to participate that everyone signs.

Almost all programs have to deal with three particular challenges to the ability of parents or other family members to participate effectively: domestic violence, substance abuse, and mental health concerns. In these programs, perpetrators and victims are not normally brought together in mediation, so the nature of the problem with domestic violence is different than in divorce mediation, but it is a concern nonetheless. Victims may not feel safe. Parents and other family members who have a violent history may both be involved in some manner. The impact of violence on the victims can affect their ability to participate effectively. So can a substance abuse problem, a cognitive impairment or psychological disturbance. In a high percentage of child protection cases, one or more of these problems are present, and this means that programs need to screen for these issues and respond accordingly. In some programs, agencies provide the screening, but many felt this was problematic because of the agency's power over the parents and suggested that mediators or other outsiders do the screening. Some felt that mediators were not really equipped to screen and that special experience and training was necessary. Several participants said the point of screening was not to deny the option of CPM or FGDM but to adjust the process to make sure that everyone could participate in a safe, constructive, and protected manner.

In principle, CPM and FGDM should be complementary approaches, and in some jurisdictions they are, but in others the integration or coordination of these programs is more difficult. This may be because of system limitations and the tendency of CPM to be "owned" by the court system and FGDM by child protection agencies. Furthermore, the availability of these options, while desirable, is also confusing to families who do not always understand the differences or nuances of these approaches. Considerable more work has to be done to realize the potential (of which almost everyone present was convinced) of integrating, sequencing, or coordinating these approaches.

After participating in the two-day conference, attendees were committed to establishing a structure that would allow such discussions to continue. In the future, meetings such as this should also involve stakeholders and agencies if possible, and should consider establishing a research agenda, create best practice documents, and provide a regional and national voice for this work. A steering committee was created along with committees to look at funding, research, the relationship between FGDM and CPM and future conference participation. The group plans to meet again in May 2008, for one day prior to the AFCC conference in Vancouver. The AFCC has offered to provide an institutional home for this effort and the Werner Institute to provide the support of an academic institution.

People left feeling something very valuable had happened and that this was time well spent.

Think Tank Proceedings

Day One:

Overview of Think Tank: *Marilou Giovannucci started the Think Tank by discussing how the Think Tank got started. She explained that the planning committee was a loosely based group of people, each of whom took on a variety of tasks. The committee wanted to convene a discussion, and fortunately many organizations and individuals pitched in to make this happen. She specifically thanked the members of the organizing committee, the Association of Family Conciliation Courts (AFCC), the National Council of Juvenile and Family Court Judges, the National Center for State Courts, the Werner Institute for Negotiation and Dispute Resolution (Creighton University), and the states who had provided funding (Alaska, New York, Connecticut, and Maryland). She then turned the meeting over to Bernie Mayer who facilitated the Think Tank.*

Introduction:

By way of introductions, participants formed into groups of 3-4. In these groups, each person shared their background, what motivated them to be a part of the Think Tank, and their hopes for the meeting. The participants then shared these remarks with the larger group. The following were some of the goals/hopes expressed by the participants:

- To identify ways in which AFCC can be supportive
- To reinvigorate the field
- To find ways to sustain child welfare conflict resolution programs
- To learn the state of the art and what information/research would be useful
- To figure out how to get buy-in from different stakeholders
- To learn practical ideas and develop an international vision for programs
- To meet and network, to implement and support programs with a particular eye to concerns about diversity
- To learn about stakeholder involvement
- To gather ideas about how to energize programs and about relevant studies
- To rejuvenate my program
- To self-rejuvenate
- To find ways to sustain funding
- To learn how to support and build, how to find creative funding, what other places are doing, how to bring people (especially courts) together
- To learn how to train stakeholders to be more collaborative
- To learn how to grow, to incorporate/integrate programs, and affect mindset of the child welfare system
- To learn about system development and funding, to develop relationships with national organizations
- To learn ways to institutionalize the program and learn applications that can be used for many types of programs
- To learn how to combine processes and how to train on this basis

- To find out about evaluation and how it helps funding and buy-in, and how evaluation can show what these programs are doing for the courts, to find ways to raise awareness in courts
- To find a collective ADR voice, so that different approaches are in competition with each other
- To create a legacy that focuses on children and families
- To find ways to maximize ADR possibilities and find ways to benefit from data collection
- To learn about FGDM and how to promote and sustain its use

Overview of the Agenda

Bernie provided a brief overview of the agenda. The issues included in the proposed agenda were: empowering parents; coordinating FGC and CPM; obtaining buy-in; appropriate role of children and extended families; promoting more effective evaluation; recruiting, training, and retaining high-quality mediators; gaining access to more effective intervention services; creating an ongoing forum for communication; time constraints; and working with attorneys and other professionals.

Overview of survey and interview summary

The participants had received the survey and interview summary prior to the Think Tank. Bernie Mayer, aided by a PowerPoint presentation, gave an overview of the summary to the participants. During this time participants shared their reactions to the survey and the insights they gained from it. (Please see the report on the survey and interviews for a more complete discussion)

The following are highlights from the discussion:

- There is an issue with what “agreement” means.
- Success is also a complicated concept.
- Volunteer mediators can be a powerful part of the process.
- Many (not all) viewed the obstacle of resources (e.g., mental health, parenting, therapeutic foster care, and substance abuse programs) as the responsibility of other organizations.
- Mediation is a great place to discuss what resources are lacking. The process of mediation can help with providing resources. Mediators might know resources.
- Participants were particularly interested in the role of lawyers at the mediation table and whether it is positive or negative.

Defining and Measuring Success:

Summary: Nancy Thoennes opened this section with a summary of the state of the art of research in child protection mediation and decision-making. She emphasized the importance of multiple approaches to evaluation. Overall, families tend to be very pleased with their experience in mediation because they feel heard in a way that they have not previously experienced. Agreements, while more tailored are within the range

of outcomes achieved in court. There are signs that an increased rate of compliance is achieved, but long-term compliance rates still need to be assessed. Savings of time and money are harder to ascertain.

After Nancy Thoennes shared her findings, participants discussed the importance of evaluation from the viewpoint of both refining practice and making the case with judges, administrators, and funders for the value of these programs. There is sometimes a tension between evaluating the real impact on families and showing that permanency is more quickly and effectively achieved. There were a variety of ways of looking at success, and many felt that success should be defined by the stakeholders themselves. One problem is that success for the courts is reducing the backlog of cases and the time that the court has to spend on them, but success for the families and children is what happens in the room.

Nancy Thoennes initiated this component of the agenda by providing an overview based on her research. The following are some highlights from her discussion:

- You can't determine success by looking at only one issue.
- Evaluations are often a satisfaction questionnaire for all participants, including professionals and families.
- Mediation has become a lot more inclusive. Family members are now generally involved, not just professionals.
- It is hard to determine if time is effectively used.
- Family members feel comfortable with CPM.
- Another step in evaluation (interviews with participants) indicates that parent's attorneys generally feel that their clients are amazed that they had everyone's attention for two hours. For most, this has never happened in the system before.
- We also look at user evaluations of outcome results.
- What is the impact of mediation on permanency, due process, and child safety? Programs are going to have to address this, and many other issues involved.
- We discovered that it is very difficult to predict success of a program beforehand.
- Mediation is not supposed to be about mediators, court administrators, judges and what they want.
- We looked at agreements and what we found is reassuring. They are not wildly different from the plans made in other forums. It would be difficult to explain that mediation provides fundamentally different plans or outcomes. What we are finding is that the orders tend to be more specific if mediation has occurred.
- The mediation agreement tends to be more liberal about visitation.
- The services being offered to children are more likely to be used as a result of mediation.
- In mediation the plans are not cookie-cutter. They are more likely to be tailored to the parents.
- A lot of programs have been able to shave time off case duration with mediation.
- In the short-term, people have seen positive results with good compliance.
- We don't have good information about the long-term outcomes of mediated cases.
- Measuring what the results are nearest to the mediation is important and more feasible than measuring long term results. So many things can happen in 2-3 years that should not be considered the result of the mediation sessions.
- It may not work so well when judges are micromanaging.

The following are highlights of comments from the large group discussion on evaluating successes:

- One key factor to consider is whether the process led to a safe permanency for children. We should evaluate starting on day one. The bigger question is the impact on children.
- We don't want to compromise the parents' due process in order to get safety and permanency for the child.
- Our language around child welfare and courts permeates the work, whether in agency or private practice work. State systems are often judged on the basis of a family and child services review. There have been various performance reviews about how each state is doing. These are not going away.
- What is the problem with us using the same model of evaluation used by court programs? We set up all these different evaluation processes that are not translatable.
- Defining success is something this community cannot figure out. It has to be defined by stakeholders, but factors of success include: settlement rates, efficiency, is there informed self-determination, does process result in greater understanding, is there a change in relationship and reducing conflict, is there a satisfaction by the parties, is it a benefit to children, is it a benefit to parents and families, is it safe for all involved, does it role model collaborative methods and impact their work outside of this case.
- When we talk about success, unfortunately we tend to concentrate on how many cases there are and how to reduce backlog. Success is about what happens in that room.
- Evaluation was required as a condition of funding. They picked an expected outcome on timeliness of permanency and what we found was that we had no impact on that. We are improving other things. We are doing so many other interventions, but we only focused on one part and one intervention. People sensed the anecdotal success of the program, but we did not measure good success.
- There are these parallel tracks of success. I don't think of success. I think of values.
- Part of the problem that I see is that court programs want to see results. They don't want to hear other things. It costs money and takes time. We are trying to change a culture.
- We are trying to determine appropriateness for referrals. It makes me think about adding a criterion, we need to evaluate so that the reason for a program is to address the issues that led to it in the first place.
- We had a great timeline in our program because that is what we worked to do. I spent the first years in a new program making up to lawyers about the forced nature of mediation. People didn't want to use it because they were forced to use it. We have to be careful about our timeline piece. It did a disservice and did not help the program.
- We made one list of judges' terms of references (often vague but sometime specific) and we made a list of what issues usually come up. By the time we finished it and correlated it, the potential of getting a full agreement became

almost impossible. But how do you evaluate that process? It raised a lot of questions.

- We will mediate any dispute. Evaluating success seems to be what happens when you use mediation instead of... As long as you think that way, it will be hard to look at the whole picture. Mediation needs to be integrated into the whole program. It is a way to empower people and get people to talk and not choke each other. How do you take that to the judge while saying they didn't write anything down?

Structural Variations in Program:

Summary: Participants were divided in four small groups to discuss how different programs were structured. One insight was that there was in fact a great deal of variation and that the structure of the program was a major factor in the nature of the actual service. Some programs were mandatory, others voluntary, some court based, others private or agency based, some provided extensive pre-mediation preparation, others none. The amount of time allocated to the process, the stakeholders involved, and the training of mediators or facilitators were among many other variations. One interesting difference (and point of some contention) was whether it was advantageous to have lawyers present. In one program, lawyers were asked not to attend so that parents and social workers could have direct conversations about treatment plans. A number of others said such an approach would not work in their jurisdiction.

Small groups met to discuss specifics about how programs are structured. The task was to discuss how programs vary including any or all of the following topics: auspices, staffing, participation, location, timing, funding, focus, goals, length, evaluation procedures, administration, mediators, and/or "other." The purpose was to give participants a chance for a significant discussion of the approaches of different programs. The groups reported back a brief summary of their discussion:

Group One: As mediation professionals, we need to promote the skills more broadly. What happens over long stretches of time? A lot is happening in agency work and we need to work with them. We talked about program models and staffing. States trying to create collaboration have led to court initiatives. For example, one brings together county based teams and other stakeholders to get out of their day-to-day implementation mode. That led to a discussion on differences and comparing and contrasting models of mediation or decision-making. There is a large difference between the ways in which we deliver services.

Participant comment: programs often started at agency level and moved to courts because of the need to find a stable funding source and legitimacy for the effort.

Group Two: We had Canadian and US programs. We had FGDM and CPM people. We had court and non-court individuals. FGDM has caused a lot of programs to move out of courts. In some locations there are huge distances separating people and you have to be flexible. We talked about mediator quality, the hiring and initial training processes. We

also talked about how to keep people motivated and fresh and about continuing education. Administrators should sit in on cases regularly to get an idea of how a mediator is working. There should be regular opportunities for mediators to meet because their work can be isolating. We talked about ways to have stakeholders give input and feedback. We also talked about variations in funding and whether it is done legislatively, from a child services agency, or through other mechanisms. We had an extensive conversation about how different processes fit together. People felt that different ADR processes could coexist and this would be the best of all possible worlds. They all have things to offer and to learn from each other. We talked about cultural aspects and how to address these. The FGDM process has an indigenous component to it. The process can be chosen based on what the goals are.

Group Three: We identified many differences in programs including whether they are voluntary/mandatory, whether court approval is required, who can attend and is that the mediator's decision or the parties. Some programs had no intake work, some a little, and others a great deal. There are all different levels of pre-mediation education for parents. There were many different types of mediators. There were court based and non-court based programs. Some mediators read files, and some don't. There was a variation in the use of domestic abuse screening, when and how lawyers are involved, the role of parents...for example in some programs, parents are not present at the beginning but come in later. The role and participation of children varies. Training and qualification varies. There are funding differences, but a lot of programs are on short term or temporary money. Some have court funding, but even that may not be permanent. There are many ways to label mediation processes. Confidentiality and privilege vary greatly. The agreements used and the nature of them are different. There are none/some/lots of evaluation. We talked about diversity—including for example how programs work with Native American culture and language. There is a lot of variation in the availability of mediation services and the degree to which mediation services are institutionalized.

Group Four: We talked about what start-ups need to know. How much time does it take and how do you account for everything involved in the process? It can be a problem when the lawyer nixes the ideas when they are not in the room. The CP workers are too new and young. How do you avoid making them feel like a failure when you make changes/suggestions? There are factors that have an impact on the capacity for responsible decision-making: such as worker turnover and children involvement. Location varied--sometimes in court and sometimes in other places. We talked about the role of culture and how it plays out in mediation. Hidden culture can really hurt. Funding is an important topic.

As a side note, program use of grievance procedures varied greatly.

Obtaining Professional Support

Summary: Everyone felt that obtaining the support of the different professional groups involved was critical to program success, and for many administrators this occupies a great deal of their attention. Working with an advisory group from the beginning of the

planning process, addressing stakeholder concerns, and helping them understand how this process would benefit them were essential to obtaining their support. Having mediators who understood the system and in particular the pressures that workers and courts were under was also seen as critical. Others found it was very helpful to provide training to stakeholders, and to arrange for them to provide training to mediators as well. Several people pointed out that a wider context has to be created for obtaining support than just mediation or FGDM processes—this has to be looked at in terms of the entire child protection and permanency planning system.

Highlights from the group discussion on obtaining professional support:

- This is an ongoing process. You always have to engage stakeholders because there can be so much turnover.
- We engaged them initially in the design process. Once we piloted the program, we met with the stakeholders again. We then created an advisory group. Then we used those people to be our champions when we went to implement it in other areas.
- When we started FGC, the court improvement group worked to sell this to the stakeholders because they were sponsors. After a while, we had an external trainer come to the state to train us on FGC and we had stakeholders come to the same training. Everybody getting the same message at that same training was a nice starting place.
- We acceded to stakeholder concerns on almost everything, except for our core issues. For example, we had narrowed in on four types of cases that were deemed appropriate. The feedback from stakeholders regarding those four types of cases was, “why aren’t we doing this in other types of cases?” So, their input opened up more possibilities.
- Having peer-to-peer training from attorneys to attorneys, services to services, etc. chipped away at the resistance.
- We pulled the plug on certain pilot programs. We learned from these and now we have a better sense of what works.
- Food is a great component in our training. They don’t have to leave.
- This year we plan to do a training and in order for certain mediators to come to the training, stakeholders have to attend too.
- The board continued their work after the government takeover of the project. We worked with the CP organizations. We went regularly and did training with their social workers. They didn’t have to give up power for training. There was a stakeholder meeting and ADR people spoke on the topic. You cannot just concentrate on stakeholders at the beginning; they have to be involved throughout the process.
- One of the ways I get buy-in from the legal profession is selling them on the efficiencies of time. If you have attorneys doing other jobs, you can convince them that 2-3 hours on mediation sessions is more efficient than minimum 10 hours trial time.
- In our jurisdiction, a lot of mediators are former lawyers. When we started to use former social workers, we got some resistance from lawyers.

- We got buy-in from the top and the line workers who had to implement the program. We asked the top leadership to be supportive, but to let us develop support from the line level.
- At the individual case level what worked was good quality facilitators who knew to go to the caseworker first to find out the bottom lines. Having good interview skills was important, as was having a facilitator who focused on the process. It requires relationship building with all parties, including the parents, and being clear about your role. By doing this, the facilitator built a relationship with the parties.
- Don't think of buy-in as buy-in at the table. It needs to be a collaborative process. We need to go out to the stakeholders and train them on collaborative decision making.
- Putting our work into that big context is really important. We are working to shift away from the adversarial nature of decision-making.
- Talking about other ways to reach out... one of the things we have actually found to be effective and essential is going beyond speaking to judges or formally educating them. We go to the courtroom and sit there. In this way we establish a relationship and help them determine when a case might be appropriate for mediation. This is hard for them to do initially.
- We don't teach them about mediation, we just teach them about theories. We are just now beginning to talk about collaborative decision-making. It needs to be a much larger pie than mediation. There is a group of people for whom this process is very uncomfortable
- Expanding of services available.... People have talked to our organization about what to do about different types of ADR processes. What kind of training can different services provide? Then they think they can try a case or two. It doesn't have to be just child protection cases.
- If you want to know how to get judges to buy-in, ask them about their biggest concerns with CP cases, things that bug them? Once they articulate, you can say, "did you know mediation can..."? That is a way to engage them and let them see it in their own view.
- Our para-professional parent used to go to parenting classes and substance abuse programs. She talked about mediation and parents would then ask for mediation.
- We had an upsurge of referrals (30%) after we made a video of an entire mock mediation. It has caucuses and other components. It is not until you do it that you get it.

Funding and Sustainability:

Summary: Relatively few programs have reached a completely stable place where they can count on funding through the regular budgetary processes, although some have. Sustainability requires an ongoing marketing plan, mobilizing stakeholders to support the program, making the work tangible to decision makers, and continuing to evaluate and demonstrate the value of the programs. There is often a difficult transition from initial funding through soft money, demonstration grants, or special program budgets and ongoing, long term funding. Despite these concerns, the long-term picture is positive.

Increasingly these services are understood, accepted and supported in both the US and Canada.

Highlights from the discussion on funding and sustainability:

- I contacted the clerk of our court to get forms for mediation. I wanted check boxes that look like everybody else's order. It is amazing how this really changed things. Some people got scared and realized we were here to stay. I stirred the pot a bit. Case intake still comes in waves. We then went to all the service agencies. We do that every 18 months. We did the same with attorney offices. What I am trying now is changing the focus from talking about what mediation is to discussing what I need from them. It comes in waves. Lots of cases come in and then they peter off. You develop and market the program, and then many these cases come in, but we can't just kick our feet up and count on continuing to get a bunch of cases.
- The judge is the one person of all the stakeholders who will never be in any mediation. It is a unique challenge to help them grasp what really happens.
- We require new programs to develop a PR plan. They bring in stakeholders and develop a marketing plan.
- Social workers are really not taught about conflict, negotiation, or mediation. Although social work literature makes references to social workers as mediators, this does not translate to practical training or education.
- Early on, we needed standard rules.
- We have had a top-down approach. Attendance dwindles. We need to keep them interested and offering them something new. There is always someone to be talking to at so many levels.
- We take lunch and the video to all stakeholders and we follow-up. We have a marketing plan. We have our calendar with us and little cards to give out about requesting mediation. It costs money, but it helps.
- I really like how our grant has worked out because of its assistance with sustainability. There was a program for teams to engage in multidisciplinary work. These teams formed and in the best practices presentation, we talked about ADR. The seed was planted a year ago and it has taken a year to work on influencing child welfare processes. These teams are multi-disciplinary. We had statistical information to help these teams so they can really roll up their sleeves and work on these issues. They are seeing that ADR is one set of processes to use.
- Some requirements have failed. FGDM is a process that is being included in court improvement plans. We are using secondary data sources to find strategies that states are using. Is CPM being written into plans too? Once states start to commit, they will be held to compliance.
- There is great turnover for agencies, but supervisors are pretty stable. They are often a mainstay. FGDM programs are working to get this to the supervisors and focus on working with them.
- We are fortunate to have a longstanding relationship with the National Center. Different leadership comes and goes, but they have maintained a consistent philosophical approach.

- There are other elements to sustainability such as sustainable funding. Most of these programs are not line items.
- Programs were benefiting from that first court improvement funding. That turned out to be a body of funding that is not always available. Court improvement dollars are now going elsewhere.
- Title IV-E (foster care, etc.) is used with us. You can create some flexibility with that.
- We ought to ask ourselves whether we want sustainable funding from the government and what the cost of that is. Not having it can allow you some freedom and protect your integrity. When funding comes as a line item, what is the process giving up for not having to worry about money? There are definitely trade-offs.
- Get constituents at the table to figure it out. They can become champions for funding. Programs have expanded because of this. They have been strategic with moving it across systems.
- Our chief judge is a big ADR fan. All of the trainings have come through grants. Family Support Services' budget helps too. Our person is pretty creative with funds.
- A lot of what we can talk about could be applied to general conflict work. Funding starts and it peters out. It gets embedded into agency processes. Then it works. Right from the get-go, the evaluation and training needs to be substantive and systemic. It is a parallel to other areas of conflict resolution and why they are struggling too.
- It is a place to provide a safe space for these people. The family system is at play in mediation. The systems (legal and social welfare) involved have very different values. They seem inherently in conflict with each other. There are adversarial roles between agencies and lawyers. Even the process beginnings become adversarial. How do we enable them to stay connected?
- There is an undertone of negativity to how we are thinking about this. If you look at what this was like 20 years ago, we have come a long way. There has even been a shift in legal training. You have pre-trial conferences. It is now a staple. This is positive.

End of the day reflections:

At the end of the first day, many participants noted how well the first day went. Several people commented about the direction of the meeting and what they would like to discuss the following day. The following are some highlights:

- I would like to focus on actual process. Are we doing it the right or best way?
- I would like to focus on confidentiality.
- I would like to talk about specific mediator ethical issues.
- I am noticing that we haven't really defined terms. I would like to hear about that.

Day Two:

Day two began with reflections on impressions from day one and goals for the second day. Participant highlights from the previous day's discussions:

- Goal: To get a higher vision for the program
- Improvement has happened over the past 20 years
- We are leaving a legacy. There are positive, collaborative models
- There is diversity in CP and that is good
- Definition of framework is helpful for vision
- Starting the conversation on broadening vision
- Being more collaborative and that leading to more money
- Starting the discussion on best practices
- Getting a home for CP conflict resolution
- Obtained ways to obtain buy-in
- Remembering why we are doing this

Empowering Parents and Families:

Summary: A central goal of both CPM and FGDM is parental and family empowerment. Many involved with FGDM have as an additional goal that the process be family driven and led. There are however, many obstacles to accomplishing this empowerment objective including the institutional and legal structure of child protection, the predominance of professionals in many aspects of the process, and the cultural and class differences that often exist between families and professionals.

To empower parents and families, programs need to be aware of the many ways in which families can feel alienated, excluded, or marginalized. This includes the use of jargon, scheduling, location, who speaks first, the background of the mediators, the information made available to families, and the outcome choices that are under consideration. Perhaps the key, however, is the belief that parents and families really are important, have something valuable to say, and ought to be a central part of the decision making process.

Some elements of empowerment as described by Think Tank participants:

- Choice
- Voice
- Information
- Hearing others-opportunity to shift perspective
- Opportunities for engagement
- Use of language – in sessions and agreement writing
- Consideration for parents/families schedules
- Removing obstacles
- Inclusiveness
- Being innovative, even going to the parents' homes
- Encouraging positive family involvement, for example having the birth parents and the foster parents at the same table

- Finding ways to create safety nets for families
- Listening
- Curiosity
- Family leadership of process
- Family decision-making role
- Jargon translation
- Parents speak first, rather than professionals
- Schedule at parents' convenience
- Individual meetings prior to the mediation session(s)
- Mindfulness
- Consider environmental psychology
- Allowing family to have choices
- Give the parents family-time alone to work through things
- There was a disagreement over whether or not attorneys should be in the room and its role in empowering parents. This led to a discussion on empowering attorneys to “let-go” of control
- Allowing for agreements which are suitable to the parents' needs
- Having mediators that “look like” the parties

Third Party Qualifications:

Summary: Mediators and other third parties first and foremost have to be effective in their role, have confidence in their ability to help, know how to manage the process, and be committed to the collaborative approach to decision making. Beyond this, they also need to understand the child welfare system, the constraints that everyone is functioning under, the needs of children, and the cultural background of the family. They also need to be able to relate to everyone at the table and to be aware of their own beliefs and biases.

Some elements of third party qualifications:

- Experience and observation
- Familiarity with legal processes involved
- Capacity to manage the process
- Credibility
- Confidence
- Additional training
- Know the role of all at the table
- Understand the people they are serving
- Provide opportunity for accountability and safety
- Knowing his/her own triggers
- Should not measure their success by how many agreements they get
- Knowledge of child development and adolescents
- Optimistic
- Belief that the parties are inherently good
- Take issues seriously but not themselves
- Model constructive communication even outside the room

- Adhere to ethical code
- Consider the children's best interests
- Know how to mediate; be mediators first and foremost
- Know how to act as agents of reality
- Be multi-partial
- Have at least a minimum number of training hours (which differs from jurisdiction to jurisdiction)
- Be mentored through co-mediation
- Form a diverse pool, the pool needs to mirror the population
- Have knowledge of Indian Child Welfare Act when dealing with Native Americans

Confidentiality:

Summary: Confidentiality protections and requirements vary quite a bit by location. Parents range from extremely distrusting to overly sanguine about confidentiality. Whatever the protections and limits of confidentiality are in any location, these should be made as clear as possible to parents and others involved in the process.

Some highlights of the discussion on confidentiality:

- The issue is privilege, but this differs locally.
- The use of confidentiality agreements should indicate whether there is protection of rule or law.
- There are some areas that allow the mediators to maintain confidentiality. There are others in which the mediator makes a recommendation to the court.
- Some parents seem to think that nothing is truly confidential.
- Some parents think that there will be absolutely no repercussions for what is said.
- Sometimes attorneys won't allow their clients to attend without them because of what they might say without the attorney present.

Substance Abuse, Mental Health, Domestic Abuse:

Summary: Everyone agreed that some form of screening is important to make sure no one is put in an unsafe situation or one in which they can't participate fully and effectively. There were a wide variety of approaches to who should screen, how it should be done, and how the results should be used. No matter how good the screening is, it will always be important to be alert to the dynamics of what occurs in the meetings, the triggers, the fear, and the behavioral cues that the process may not be working. For some, the question is not whether to go forward, but how to do so in the way that safeguards everyone while allowing everyone to have a role in the process as well. But concerns about mental health, domestic abuse, and mental health need to be taken very seriously.

Domestic violence, substance abuse and mental health concerns all pose screening questions and call for safeguards and procedures to avoid putting people into situations in which they are not able to advocate effectively for their own interests.

Some highlights from the discussion on substance abuse, mental health, and domestic abuse screening, which focused heavily on screening:

- The use of loosely structured interviews that allow you to delve a little deeper when you start to see issues.
- Mental health is a challenge when they have stopped taking their medication.
- Screening can only do so much.
- The lawyers can even learn during this process.
- When domestic abuse is present and we decide to mediate, we still reserve the right to terminate mediation at any time.
- The presence of domestic abuse (past or present) affects a woman's behavior.
- You have to watch for triggers, for example when someone in the room reminds someone of another person.
- One program moved away from screening and they have a clinically trained worker make an initial assessment.
- All involved should be trained to recognize and screen.
- It takes a lot of training to be able to screen and mediate domestic abuse cases.
- One program screens in order to develop strategies to enhance the capacity of everyone at the table. This might mean making special accommodations.
- Another program only looks through the court file, talking to the worker and the attorney.
- One program rarely screens out, but just finds ways to safeguard.
- The social agency does the screening at intake.
- Some information we receive can be biased.
- Everyone should be able to participate in a safe way.
- There is a need to find a way for perpetrators to be a part of the process
- Screening by agencies that have a negative relationship with the parents might deter the parents from sharing. So, mediators should do the screening.
- There are several approaches to screening that can be used.
- The child welfare intervention process often is at cross-purposed with substance abuse. One has a time limit and the other is a life-long process. The child welfare process can feed into the substance abuse problem.

Coordinating FGC and CPM:

Summary: Programs should offer a variety of options to families, and there is no reason why both processes cannot be used in the same overall structure, but there seem to be a number of obstacles in doing this. Judges are sometimes reluctant to allow this. The processes are sometimes housed in different agencies (e.g. CPM in the courts, FGC in the child protection agencies), and often the referral source is more familiar with one approach than the other. The more options that families are given, the better, and no one

approach is always appropriate. Much more effort needs to be put into helping these approaches work effectively together—which is occurring in some jurisdictions.

Some highlights from the discussion on coordination FGC and CPM:

- There are programs that are successful at integrating FGC and CPM into one overall program, but many are having problems doing this.
- The person who refers cases has to know both processes well.
- Some of the other ADR processes could take place in mediation.
- Maybe someday these meetings could all take place at the same time.
- Understanding them both can be really difficult for the families.
- Some judges won't let the two processes be put together.
- You need to define the purpose of the meeting.
- Different people have different views of FGC and whether it is conflict resolution or restorative practice.
- We are getting so nuanced in our processes that it is difficult for the parents.
- Is there really a need to label the processes that are used? And how do we provide the right services at the right time to the parent on a continuum?
- The agency should be brought into this discussion, along with other stakeholders.
- There are cases that are not appropriate for FGC.
- It is great to be able to offer a variety of options to families.
- There is a big difference between family involvement and family led processes. Families are getting ripped off sometimes.
- These are fundamentally different processes. There are similarities though.
- It is important to get people working as a team. But, it is really complicated.
- We are experiencing a paradigm shift in agencies. The shift is to give more value and inclusiveness to the families. It may be sporadic, but there is a shift.

Structures for future endeavors:

Summary: The group committed to creating an ongoing structure to bring together different child welfare conflict resolution and decision making programs. A number of committees were formed to accomplish this including a steering committee, a fund raising committee, a group to look at coordination of different approaches, and a group to coordinate proposals for the AFCC in May. We plan to get together for one day prior to the AFCC annual conference in Vancouver in May 2008. AFCC is interested in supporting this, the NCFJFC wishes to do so as well, and the Werner Institute may be able to provide academic support.

Some highlights from the discussion on structures for future endeavors:

- The AFCC can find a way to support this. Administrative support could be provided with funding.
- A mission statement is needed.
- A listserv could be created.
- Associating with an academic association would be helpful.
- We need to network.
- There is a need for writing and resources.

- This group should reconvene.
- There are ways to link local agencies to these meetings.
- People need to be willing to push this forward, so we need a steering committee.
- Funding is needed.
- The National Council is and wants to be supportive. They are experts at getting multiple systems to come together and create a whole new paradigm.
- There should be a repository.
- We should talk about the growing pains.
- National Center for State Courts should be involved.
- The repository should include Ohio Supreme Court's ideas.
- Should we try to pull together someone from all our stakeholder groups?
- We should have something like the 1999 conference to come together again.
- What about a pre-conference institute?
- We need a group to spearhead having more than one session in the Vancouver conference.
- Family services needs to be a part of these conversations.
- We should infuse ourselves into other kinds of events. There should be a dialogue.

Conflict Resolution in Child Welfare:
Collecting the Wisdom of 25 Years of Experience

A Think Tank on Child Protection Decision Making
September 25-26, 2007

Hyatt Regency Columbus
Columbus, Ohio

Agenda¹

Day I:	8:30—5:00
8:30—9:00	Register and Gather
Morning Session:	9:00—12:30
9:00—9:45	Welcome, Introductions, Overview of Think Tank
9:45—10:30	Review and Discussion of Child Protection Mediation Survey and Interviews
10:30—10:45	Break
10:45—11:15	Key Issues in Child Protection Mediation
11:15—12:30	Defining and Measuring Success
12:30—1:30	Lunch (on your own)

¹ A note on process: There will be approximately 30 people attending the Think Tank all of whom are experienced in child welfare decision-making processes. These will include program administrators, mediators, researchers, trainers, and court employees. The Think Tank will involve a facilitated discussion and will be informed by the results of a preliminary survey and set of interviews. We hope to arrive at a group consensus about lessons learned, best practices, and future directions and actions. If people have questions about the content or the format, please contact berniemayer@creighton.edu.

- Afternoon Session: 1:30—5:00
- 1:30—2:45 Structural Variations in for Child Protection Decision Making Programs:
- Auspices
 - Staffing
 - Location
 - Timing
 - Funding
- 2:45—3:00 Break
- 3:00—3:45 Obtaining Professional Support From:
- Judges
 - Attorneys
 - Child Protection Workers
 - Others
- 3:45—4:45 Issues in Funding and Sustainability for Child Welfare Mediation
- 4:45—5:00 Review of Day I and Preparation for Day II
- Evening: Optional Social Gathering
- Day II: 8:30—5:00
- 8:30—9:00 Gather
- Morning Session: 9:00—12:30
- 9:00—9:15 Welcome and Agenda Review for Day II
- 9:15—10:00 Empowering Parents and Families:
- Giving Parents a Voice in the Room
 - Dealing with Resistance
 - Cultural Sensitivity
- 10:00—10:15 Break

10:15—10:45	Third Party Qualifications: <ul style="list-style-type: none"> • Characteristics of effective third parties • Training protocols • Quality Control
10:45—11:45	Mediation Procedures: <ul style="list-style-type: none"> • Preparing Parties to Mediate • Screening • Mediation Styles • Length and Number of Sessions • Use of Caucus • Drafting Agreements • Follow-up
11:45—12:30	Special Challenges to Third Parties: <ul style="list-style-type: none"> • Substance Abuse • Mental Health • Domestic Violence
12:30—1:30	Lunch (possibly in interest groups)
Afternoon Session:	1:30—5:00
1:30—2:15	FGC and CPM: Integration and Coordination
2:15—4:15	Lessons Learned/Best Practices
3:00—3:15	Break (in the middle of previous section)
4:15—5:00	Next Steps, Review, Evaluation of Think Tank

Participant List:

The following names are the persons who attended the Child Protection Decision Making Think Tank in Columbus, Ohio. Contact information is available upon request.

Karen Anadol
Debora Brownyard
Susan Butterwick
Andrea Clarke
Shirley Dobbin
Liz Dunn
Gregory Firestone
Catherine Friedman
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Julia Pearson
Irene Robertson
Dawn Marie Rubio
Honorable Janice M. Rosa
Peter Salem
Susan Storcel
Anita Stuckey
Crevon Tarrance
Nancy Thoennes
Kristine Van Dorsten
Frank Woods, M.S.W.

Committees and Conveners:

*A list was created which detailed all the different committees and who the leader of that committee is. Each group is defining their own goal(s) and purpose. The asterisk (*) represents the convener for each committee. Again, contact information is available upon request.*

Steering Committee:

Andrea Clarke
Shirley Dobbin
Liz Dunn
Catherine Friedman
***Marilou Giovannucci**
Karen Largent
June Maresca
Bernie Mayer
Kelly Browe Olson
Peter Salem
Susan Storcel
Frank Woods

Fundraising:

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Jackie Hagerot

Resource/Repository:

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Anita Stuckey

Research:

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Intersection Between FGDM and CPM:

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Susan Butterwick
***Andrea Clarke**
Karen Largent
Lisa Merkel-Holguin
Susan Storcel
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