

Welcome everyone to this book Launch. For those of you that do not know me my name is Katherine Johnson and I am currently the Vice President of ADRA. Apart from thanking the Aboriginal custodians of this land and paying respect to their elders, past and present, I would like to dedicate this book launch to the publisher, George Jaksic, who sadly and very surprisingly passed away on Sunday 19 March at 5.00pm after a very long and bravely fought battle with his health over the last two years of his life. Despite the complications from his illnesses however, George remained resolute that the *Mediation Quest* books would be published and that the website for the books would be completed. To this end he garnished the support of his publishing team, Honeysett Press, headed by Mayo Materrazo and Warren Wickman who bravely steered the very arduous birthing process of the books through all of George's illnesses to their final publication. To the team of Honeysett Press, then, I give my heartfelt thanks.

George was far more excited than I could ever be about the long-term prospects of sharing the information in the *Mediation Quest* books with the wider community and was convinced from his research of the text within the books, that I should see them as an investment and not as an exercise in 'sunk costs' as I did, when the idea to publish my thesis as a book was first mooted. He would say with pride, that one should have the experience of marriage, the experience of having a child and finally one should have the experience of publishing a book before one dies. George was immensely proud that in his eyes he had successfully completed all three before he died and encouraged me to similarly acknowledge what an achievement it is to have simply done so. I can now say with pride how glad I am that George lived long enough to see the *Mediation Quest* books become part of his published family and a part of his proud achievements. To honour George's wish to speak at this book launch tonight therefore I dedicate this launch to him and particularly thank his wife Kris and his daughter Eloise, for attending in his place.

As there are 2 CPD points offered tonight for the lawyers and mediators in this room, I am expected to give two hours' worth of content. And being mindful of the time, I thought it best to tell the story of how the books unfolded and became almost an autobiography of theories grounded in my experiences of life. That would take about one hour after which I would take you through the website; and we could end with questions followed by drinks afterwards.

Before I begin however I do need to warmly thank the Law Society who have partnered with ADRA to make this launch available. My heartfelt thanks to both organisations for their continued support of Dispute Resolution over the years; and my heartfelt thanks to all of you for attending tonight.

To begin then, I thought that after 40 years of working as a counselling psychologist, nearly twenty of which was with the Victims Compensation Tribunal; and 25 years at the NSW Bar as a dispute resolver on all manner of Legal panels, I began to see more commonalities between the fields of Psychology and Law than there are obvious differences between them. In particular, I noticed that there is no need for anyone to go either to a psychologist or to a lawyer if there is no sense of loss from which one feels they need to recover. That loss may be a loss of self-esteem for which you would see a psychologist or a loss arising

from unfulfilled contractual obligation for which you would see a lawyer seeking compensation and/or damages.

It also occurred to me that in any dispute, the sense of loss that affects the parties actually arises from assumptions made and/or expectations held. In other words everyone attempts to minimise their sense of loss by seeking assistance either in psychology or in law. This meant that there was in fact a continuum of dispute resolution with Psychology at one end where the parties could deal with the losses on a one-to-one basis and Law on the other end where rules regulations etc are set to minimise losses for the community as a whole. Mediation then sits somewhere in the middle more like a marriage between Psychology and Law in that the personal assumptions and/or expectations of the parties are re-constructed to create a more enduring basis for relationships either together or apart.

This insight led to the realisation that disputes actually occur when expectations are not met; and this became the first tenant of my thesis and the basis of Chapters 1 and 2 - *Understanding the Loss* – where Chapter 1 sets the parameters of the study, and Chapter 2 concentrates on making sense of the loss. When this idea was expanded it was realised that not only is there a continuum of dispute resolution but that dispute resolution is actually an agent for social change and that the process of mediation is the best example of social constructionism in action. In other words, social constructionism is the process where the parties co-create or co-construct a new foundation for social interaction or relational learning between them. By doing so, the process of mediation or social constructionism in action is actually an example of democracy in action in a relational world. This idea accords with the work of Kenneth Gergen who concludes in his work *Relational Being* that there is no such thing as the individual outside relationship.

Gergen concludes that even the most isolated loner is in relationship with his environment and forms a single unit of ever-changing interactions. He continues that the idea of the individual being separate from the environment arises from perceptions about the environment as distinct from perceptions about and the person. Gergen says that this dual notion of perceptions is misleading, and that it gives the impression of separateness, whereas we are in fact one constantly changing set of interactive perceptions. This thought turns the whole notion of criminal law on its head as it clearly places the responsibility of actions not just on the individual with the mens rea philosophy but on the interactions of the various types of environment/societies which co- exist to make up the individual.

Although the law recognizes mitigating circumstances and attempts to take them into consideration for example when sentencing in criminal law, the public itself often identifies 'justice' as an eye for an eye despite intellectually knowing that no amount of sentence is likely to bring back the dead or cope with severe loss. In answering how such dissonance between thinking and feeling around loss can be reconciled the notion of readiness, willingness and ability of the parties to deconstruct their assumptions and/or expectations around the loss becomes paramount and becomes the subject of Chapters 2 and 3 – *Making Sense of Loss and Deconstructing the Loss*.

Chapter 3 introduces Berne's theory of Transactional Analysis (TA) where communication between parties occurs via the *Parent, Child, Adult* of each; and concludes that the best communication occurs when the *Adult* or empathy channel of one party can empathise with the *Adult* of the other – ie when both parties can walk a mile in each other's shoes. Berne concludes that agreements reached via the *Adult* empathy channels of both parties leads to a real Understanding and to a stronger capacity for forgiveness between the parties; whereas communication between the *Child* or Feeling/Creative channel of one party with the *Child* of the other will tend not to last as the two continue to play.

Berne continues that communication between the *Child* of one party and the *Parent* or the Moral/thinking channel of the other is likely to be negative as the *Parent* tries to tell the *Child* how they should behave and what should happen. And of course, the conventional positional stance occurs when the *Parent* of one party can only reach the *Parent* of the other. I noticed through Berne's Analysis that the field of Psychology on the dispute resolution continuum attempts to handle the *Child* within us, whereas the Law attempts to handle the *Parent*. I further noticed that it is through the process of Mediation that we attempt to reach the *Adult*.

To this scenario I have added a concept called the *Observer Self* which I claim occurs once understanding through the *Adult* empathy channel is ready to be implemented as a foundation to a new way of relating between the parties. In other words, it is through our *Observer Self* that effective implementation of any Agreement through Mediation occurs for both parties. It is also through *Observer Self* that the most effective reality testing can occur to create long-lasting Agreements in the community.

Chapter 3 also looks at the theory of grounded research through Charmez and systematically deconstructs the traditional mediation process according to the twelve tenants of the grounded research theory approach. To this is added the Normative Information Session (NIS) which is the key difference between this Re-Constructionist approach to mediation and all other forms.

Having introduced the concepts of readiness, willingness and ability to deconstruct the assumptions and/or expectations around the loss by examining communication channels via Berne's *Transactional Analysis* and the concept of *Observer Self*, we then look at reconstructing the original meaning given to the loss to a meaning that can be better endured – and this becomes the subject of Chapter 4 - *Re-Constructing the Loss* - which aims at finding a more creative approach to move forward.

Chapter 3 further introduces and implements the concepts of Meaning Re-construction to analyse the traditional mediation approach as an organic process that attempts to meet the needs of the parties. In other words, the parties become Mindful researchers of each other's worldviews within the context that they say caused the dispute between them. This raises the concept I have termed *relational learning* where each party attempts to function from *Adult* and/or *Observer Self* as they meet common ground with which they are prepared to live in their ever-changing interactions.

From the micro analysis of the mediation process which applies Mindfulness, I then go to the bigger picture in Chapter 4, where the concept of Mediation as Democracy in action is considered from a historical perspective.

I begin with the work of John Dewey an American Educationalist who lived at the turn of the twentieth century and believed that society could be democratised best through the education system where parents, teachers, students and the business community of any town could co-operate to set up systems for the benefit of all. Dewey believed that education could be used to meet the needs and interests of the disparate members of the community which in turn could contribute to an effective economic and social system.

Dewey further believed that the needs and interests of each group constitute their world view and was such an effective educationalist that he inspired the work of George Kelly, a psychologist who took the macro perspective of Dewey's work and applied it to the micro functioning within the individual. Although Kelly talked about the individual, he always noted the interactions from society that make up the individual as did Dewey. This is in accordance with Gergen's work. The result was the development of Kelly's Personal Construct Theory which has become a key process in psychology today. I have used Kelly's Personal Construct Theory as the basis of dealing with the respective world views of the parties during the micro analysis of any mediation process, which I have termed, the "Re-Constructionist Model".

Chapter 5 – *Enduring the Loss* – takes the personal agreements of the parties from the Mediation process and implements them as a foundation to build systems or institutions with which to nurture and further promote concepts of social justice as examples of democracy in action on a social scale. In other words, it effects social change as the outcome of a mediation process by reconstructing their understanding of the loss.

In summary, I noticed that both Psychology and Law are actually the opposite ends of a continuum in Dispute Resolution and that Dispute Resolution is in itself an agent for social change. I realised that Dispute Resolution is not just a settlement process but an active means of better enduring losses on an individual level at the psychology end and on the communal level at the legal end.

I further noticed that mediation was one dispute resolution process that was something like a marriage between Psychology and Law, where the individual's needs were able to be considered within their social and legal context. In other words, I realised that the process of mediation offered parties the best opportunity to experience the process of democracy in action. By 'democracy' we understand that every party's opinion is considered for implementation as part of the agreement even if a particular opinion is discarded within that process. This insight highlighted the significant role that Mediation can play in an ever-changing globally-linked relational world by empowering individuals to utilise more options with which to better endure loss and thereby create peace. This differs from the conventional positional bargaining or determinative approaches which are used as Legal tools with their emphasis on creating further loss through sanctions, trade wars or military action – all of which still are dispute resolution processes.

There is much more that I can say but under the circumstances I am mindful that drinks await. I hope I have said enough to inspire a sharing of these ideas which I feel passionately should be considered to create a more peaceful world. I am however also mindful that the books are not best sellers as the Theory Book is a PhD and written as such; and the Handbook is a guide for practitioners. Nonetheless, despite the writing style which I have been told by some colleagues may be hard reading, they also said it was worth the effort. I hope you also find it worth the effort. Thanks.