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Moving Beyond Brands: Integrating Approaches to Mediation

Brian Jarrett

Introduction

Within the larger discipline of alternative dispute resolution is the specific process called mediation. Mediation has been a growing field over the past few decades and encompasses a number of approaches. It is a method of settling disputes outside of the traditional court litigation system and involves a mediator who facilitates the process. The parties may be represented by attorneys who also participate. The mediator assists the parties in coming to an agreement and typically develops an agreement document which is then signed by both parties. The mediator may be a psychologist, a financial planner, attorney, retired judicial officer, or other trained professional who has studied the theory and process of mediation. There is no national licensing of mediators; however, individuals may receive certification from a training organization or may be required to meet minimum hours of training or certification from a state agency depending on the state in which they practice. (Alaska does not currently have any licensing requirements for practicing as a mediator.) Mediation is increasingly looked to as a way of dealing with the crushing case load of the court system and the rising cost of litigation.

An agency or organization offering mediation training may focus on a particular approach to the mediation process. Though in the mediation field it is unlikely that any one approach to dispute resolution can make a legitimate claim of being the “best” approach, several approaches attempt to do just this. In fact, it is not unusual for mediators to advocate an unwavering commitment to their chosen method across a host of disputing contexts. There has been *brand* development of different approaches—such as *evaluative*

which focuses on providing an assessment to the parties, *facilitative* which focuses on assisting the parties in identifying and recognizing their interests or goals, *narrative* which focuses on discovering the story behind the dispute and establishing a shared understanding or story, and *transformative* which focuses on assisting the parties to feel recognized and empowered in resolving the dispute. (See Table 1.) While this brand development has helped mediators promote their particular practices, there is nevertheless, a potential dark side to it which the mediation community is now confronting. Branding can engender meaningless claims of distinction and superiority, and can often supplant genuine debate about the relative merits of any particular approach.

But this result is not inevitable. In fact, mediators have an opportunity to turn this whole *brand* superiority phenomenon on its head. The mediation profession has reached a moment where it is not only possible, but also advantageous, to explore a diversity of approaches and potential integration of those approaches based on actual practice, i.e., an *integral* approach, rather than one based on advocated fixed commitments and often tenuous distinctions. Such an approach would acknowledge theory-to-practice connections and a potential combination

This article is a shortened version of a more in-depth and scholarly treatment of this topic by Dr. Jarrett, which is available at <http://justice.uaa.alaska.edu/occasionalpapers/op03.mediation.html>

of competing approaches which could reflect the realities of practice. At the same time, it would identify and acknowledge actual differences among approaches. The integral approach is above-all a brand-free, pragmatic method. It invites mediators to consider the possibility of bridging other approaches through *reflexive* practice—a practice in social science which recognizes adaptation through self-awareness, a concept developed by the French sociologist Pierre Bourdieu.

“The Integral Mediation Project” describes the process I have engaged in over the last few years to actively facilitate such a discussion among practitioners. Its focus is both the integration of theory and practice as well as the reconciliation among approaches where appropriate. It is the intention of the project to see this integral approach grow as a viable *open-source* alternative at the various mediation centers and universities

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Table 1. Mediation Approaches

	Evaluative	Facilitative/ interest-based	Narrative	Transformative
Mediated interaction	Competition for most persuasive <i>legal position</i>	Conflict over competing <i>interests</i>	Conflicting <i>narratives</i>	Conflict as a <i>failure to recognize fellow humanity</i>
Brand type	Establish and apply <i>precedent</i>	Focus on <i>interests</i>	Deconstruct/ reconstruct <i>narratives</i>	Provide opportunities for mutual <i>empowerment and recognition</i>
Recommended practices	Provide parties with an <i>assessment</i>	Move parties from <i>positions to interests</i>	Uncover <i>dominant and subordinate narratives</i> and establish functional <i>shared narrative</i>	Encourage and reinforce instances of <i>empowerment and recognition</i>

Alaska Correctional Populations 2011

Alaska's offender population continues to show a steady rise: from 2010 to 2011 there was about a one percent increase in the total correctional population while the number of prisoners institutionalized out-of-state was up by eight percent. At year-end 2011, there were a total of 5,727 offenders under the supervision of the Alaska Department of Corrections (DOC). The DOC "2011 Offender Profile" reports 4,734 institutionalized offenders: 3,663 in Alaska facilities and 1,071 in out-of-state facilities. There were an additional 993 offenders in community residential centers (CRCs), treatment centers or offsite monitoring programs. (See Tables 1 and 2.) According to DOC, Alaska's overall prison population growth has been about 3 percent per year. At the current rate, in 2020 Alaska's prison population will reach 6,313.

Of the 4,734 offenders in correctional institutions, 89 percent were male, and felony offenders accounted for 78 percent of the population. Forty-seven percent of the offender population in institutions was Caucasian; Alaska Natives accounted for 36 percent, Blacks 11 percent, Hispanics 3 percent, and Asian/Pacific Islanders just over 3 percent. About 20 percent of of-

fenders were in the age range of 25–29 years of age. (See Table 3.) Over 50 percent of offenders were incarcerated for 6 months or less. Just over 18 percent were incarcerated for 37 months or more.

Members of two minority groups, Alaska Natives and Blacks, are incarcerated at levels very disproportionate to their percentages in the general population. Alaska Natives comprise about 15 percent and Blacks 3 percent of the state's population (according to the 2010 U.S. Census). However, 36 percent of the offender population in 2011 was Alaska Native, and 11 percent was Black. Although the incarceration rate for Alaska Natives is disproportionately high,

Table 1. Prisoners under the Jurisdiction of the Alaska Department of Corrections, 1998–2011

Includes both sentenced and unsentenced prisoners in both jails and prisons.

Row percentages.

	Housed in-state		Housed out-of-state		Total
	N	%	N	%	
1998	2,601	74.6 %	887	25.4 %	3,488
1999	2,529	73.8	899	26.2	3,428
2000	2,757	76.9	826	23.1	3,583
2001	2,933	78.5	805	21.5	3,738
2002	2,973	82.0	652	18.0	3,625
2003	3,062	80.8	727	19.2	3,789
2004	3,127	80.0	780	20.0	3,907
2005	3,447	81.5	784	18.5	4,231
2006	3,359	76.9	1,010	23.1	4,369
2007	3,633	80.7	869	19.3	4,502
2008	3,377	79.0	897	21.0	4,274
2009	3,643	81.1	847	18.9	4,490
2010	3,680	78.8	991	21.2	4,671
2011	3,663	77.4	1,071	22.6	4,734

Source of data: Alaska Department of Corrections

in 2011—for the first time in 3 years—the number of Alaska Natives in correctional institutions decreased slightly—by 1 percent.

Table 2. Offenders in Institutions under the Jurisdiction of the Alaska Department of Corrections, 2011

Includes both sentenced and unsentenced prisoners in both jails and prisons.

Column percentages.

	Female (N = 507)	Male (N = 4,227)	Total (N = 4,734)
In-state	502	3,161	3,663
Anchorage Correctional Complex East	6	395	401
Anchorage Correctional Complex West	—	424	424
Anvil Mountain Correctional Center (Nome)	14	77	91
Fairbanks Correctional Center	30	231	261
Hiland Mountain Correctional Center (Eagle River)	389	—	389
Ketchikan Correctional Center	9	52	61
Lemon Creek Correctional Center (Juneau)	19	212	231
Mat-Su Pretrial (Palmer)	7	66	73
Palmer Medium Correctional Center	—	325	325
Palmer Minimum Correctional Center	—	176	176
Point Mackenzie Correctional Farm (Wasilla)	—	119	119
Spring Creek Correctional Center (Seward)	—	524	524
Wildwood Correctional Center (Kenai)	—	343	343
Wildwood Pretrial (Kenai)	19	73	92
Yukon-Kuskokwim Correctional Center (Bethel)	9	144	153
Out -of-state	5	1,066	1,071
Colorado State Prison	1	6	7
Hudson Correctional Facility (Colorado)*	—	1,043	1,043
Washington State	1	3	4
Federal Bureau of Prisons	3	14	17

* Hudson Correctional Facility is a private correctional facility operated by Cornell Companies, Inc.

Source of data: *2011 Offender Profile*, Alaska Department of Corrections

Other Offender Groups

The 993 offenders in community residential centers (CRCs), treatment centers, and offsite monitoring programs (electronic monitoring) were 82 percent male, and the average age was just over 36 years. Alaska Natives made up 31 percent of this population and Blacks 8 percent; Hispanics accounted for 2 percent of this group, and Asian/Pacific Island offenders 3 percent.

Young offenders (persons less than 20 years old) totaled 102 persons—78 in correctional institutions, 19 in CRCs, and 5 in electronic monitoring programs. All but three of the offenders in custody were in Alaska. In terms of minorities, Alaska Natives accounted for about 42 percent of this population, Blacks about 11 percent, Asian/Pacific Islanders 9 percent, and Hispanics/Latinos almost 1 percent.

Sex offenders under DOC's supervision totaled 663 at the end of 2011. Nearly all the offenders (98%) were male, and the average age was just over 36 years. Of this population, 41 percent was Caucasian, 46 percent was Alaska Native, 7 percent was Black, over 2 percent was Hispanic/Latino, and Asian/Pacific Islanders numbered about 3 percent.

Table 3. Prisoners under the Jurisdiction of the Alaska Department of Corrections, 2011: Demographic Characteristics

Includes both sentenced and unsentenced prisoners in both jails and prisons.
Column percentages.

	Female		Male		Total	
	(N=507)		(N=4,227)		(N=4,734)	
	N	%	N	%	N	%
Offense level						
Felony	366	72.2 %	3,343	79.1 %	3,709	78.3 %
Misdemeanor	136	26.8	873	20.7	1,009	21.3
Violation	5	1.0	11	0.3	16	0.3
Ethnicity						
White	271	53.5 %	1,938	45.8 %	2,209	46.7 %
Alaska Native*	169	33.3	1,546	36.6	1,715	36.2
Black	36	7.1	472	11.2	508	10.7
Asian/Pacific Islander	19	3.7	135	3.2	154	3.3
Hispanic/Latino	9	1.8	116	2.7	125	2.6
Other	0	0.0	4	0.1	4	0.1
Unknown	3	0.6	16	0.4	19	0.4
Age						
19 years and under	6	1.2 %	72	1.7 %	78	1.6 %
20-24 years	87	17.2	599	14.2	686	14.5
25-29 years	118	23.3	806	19.1	924	19.5
30-34 years	81	16.0	640	15.1	721	15.2
35-39 years	53	10.5	465	11.0	518	10.9
40-44 years	56	11.0	448	10.6	504	10.6
45-49 years	60	11.8	495	11.7	555	11.7
50-54 years	32	6.3	350	8.3	382	8.1
55-59 years	7	1.4	178	4.2	185	3.9
60-64 years	2	0.4	97	2.3	99	2.1
65 years and over	5	1.0	77	1.8	82	1.7
Mean age	34.93 years		37.35 years		37.10 years	
Median age	32.53 years		35.08 years		34.67 years	

* Includes a small population of Native Americans not indigenous to Alaska.

Source of data: *2011 Offender Profile*, Alaska Department of Corrections; additional data from Alaska Department of Corrections

Table 5. Offenders in Alaska Department of Corrections Institutions by Offense Class, 2002 and 2011

Column percentages.

Offense class	2002*		2011		% change 2002-2011
	(N=3,508)		(N=4,734)		
	N	%	N	%	
Person	1,346	38.4 %	1,258	26.6 %	-7.0 %
Parole/probation	216	6.2	802	16.9	73.1
Sex offenses	739	21.1	663	14.0	-11.5
Property	507	14.5	642	13.6	21.0
Public order/administration	99	2.8	415	8.8	76.1
Alcohol	271	7.7	392	8.3	30.9
Drugs	216	6.2	354	7.5	39.0
Transportation (traffic/driving)	49	1.4	157	3.3	68.8
Weapons	65	1.9	51	1.1	-27.5

* In 2002, the offense class of 117 offenders were unavailable; and are not included in this table

Source of data: *2002 Offender Profile* and *2011 Offender Profile*, Alaska Department of Corrections

The Department of Corrections also has supervising authority over an additional 5,951 probationers and parolees. Seventy-nine percent of this population was male. Of the total population of probationers and parolees, 25 percent were Alaska Native, about 9 percent were Black, about 3 percent Hispanic/Latino, and 5 percent were Asian/Pacific Island. Twenty percent of parolees/

probationers/parolees population there are a number of additional offenders labeled “absconders” who do not appear in the official statistics. These are individuals on probation or parole who have fled the state or are unable to be located by law enforcement. However, these offenders are still in the system database. On December 31, 2011, there were 861 absconders.

Table 4. Probationers/Parolees Under Supervision of the Alaska Department of Corrections, 2011

Column percentages.

	Female		Male		Total	
	(N=1,270)		(N=4,681)		(N=5,951)	
	N	%	N	%	N	%
Ethnicity						
Caucasian	767	60.4 %	2,619	55.9 %	3,386	56.9 %
Alaska Native/ American Indian	312	24.6	1,179	25.2	1,491	25.1
Black	77	6.1	436	9.3	513	8.6
Asian/Pacific Islander	56	4.4	244	5.2	300	5.0
Hispanic	26	2.0	152	3.2	178	3.0
Other	0	0.0	2	0.0	2	0.0
Unknown	32	2.5	49	1.0	81	1.4
Age						
19 years and under	10	0.8 %	50	1.1 %	60	1.0 %
20-24 years	213	16.8	719	15.4	932	15.7
25-29 years	252	19.8	950	20.3	1,202	20.2
30-34 years	198	15.6	744	15.9	942	15.8
35-39 years	179	14.1	495	10.6	674	11.3
40-44 years	153	12.0	482	10.3	635	10.7
45-49 years	106	8.3	474	10.1	580	9.7
50-54 years	88	6.9	369	7.9	457	7.7
55-59 years	39	3.1	206	4.4	245	4.1
60-64 years	23	1.8	120	2.6	143	2.4
65 years and over	9	0.7	72	1.5	81	1.4
Mean age	35.69 years		36.93 years		36.67 years	
Median age	33.63 years		34.01 years		33.92 years	
Supervising probation/ parole office						
Anchorage	656	51.7 %	2,379	50.8 %	3,035	51.0 %
Barrow	13	1.0	52	1.1	65	1.1
Bethel	21	1.7	248	5.3	269	4.5
Dillingham	20	1.6	59	1.3	79	1.3
Fairbanks	136	10.7	511	10.9	647	10.9
Juneau	53	4.2	174	3.7	227	3.8
Kenai	121	9.5	366	7.8	487	8.2
Ketchikan	34	2.7	100	2.1	134	2.3
Kodiak	21	1.7	78	1.7	99	1.7
Kotzebue	9	0.7	58	1.2	67	1.1
Nome	16	1.3	58	1.2	74	1.2
Palmer	159	12.5	546	11.7	705	11.8
Sitka	11	0.9	52	1.1	63	1.1

Source of data: *2011 Offender Profile*, Alaska Department of Corrections; additional data from Alaska Department of Corrections

probationers are between the ages of 25 and 29 years. (See Table 4.)

According to the DOC Division of Probation & Parole, among the probation-

Offenders by Class of Offense

In 2011, the majority of incarcerated individuals under DOC supervision were sentenced for nonviolent offenses. This number has been steadily rising—going from 54 percent in 2007 to nearly 60 percent in 2011.

Over 25 percent of offenders in DOC institutions in 2011 were sentenced for offenses against a person, followed by probation/parole offenses (17%), sex offenses (14%), and property offenses (14%). Offenders in custody for alcohol offenses numbered 8 percent of the correctional popu-

Please see *Alaska offenders*, page 4

Alaska offenders (continued from page 3)

lation; drug offenders represented about 8 percent. In contrast, in 2002, 38 percent of offenders were convicted of a crime against a person, and 6 percent were sentenced for a probation/parole offense. (See Table 5.)

Out-of-State Offenders

The number of offenders in detention out-of-state continued to rise in 2011—nearly an

eight percent increase over the 2010 figures (991 in 2010 to 1,071 in 2011). The out-of-state offender population increased over 23 percent from 2007 to 2011. (Note: The Goose Creek Correctional Center located in Wasilla is in the process of becoming completely operational. The facility can house 1,536 offenders and is due to be fully up and running in spring 2013. There is currently a daily average of 430 sentenced and unsentenced offenders in Goose Creek Correctional Center.)

Offender Groups of Particular Interest

The report provides additional data on offender groups of particular interest including Alaska Natives, juveniles, seniors, sex offenders, substance abuse offenders, and long-term offenders. It also includes a section on emerging trends in the Alaska correctional population. (See below.)

A copy of the full report is available at <http://www.correct.state.ak.us/admin/docs/2011Profile06.pdf>.

Trends in Alaska Offender Demographics

An Aging Offender Population

The “changing face of corrections” and emerging trends are highlighted in the Alaska Department of Corrections (DOC) “2011 Offender Profile.” A major trend is the aging of the offender population. Since 2007, the population of offenders 65 years of age or more has risen by 55 percent: from 53 individuals in 2007 to 82 in 2011. (See Table 1.) The number of offenders over the age of 50 has increased each year also: from 573 in 2007 to 748 in 2011—an increase of 31 percent over that period. Although offenders between the ages of 25 and 29 made up nearly 20 percent of the 2011 offender population, Alaska’s older prison population is growing. In 2011, 16 percent of Alaska’s offender population was age 50 or older. This is a nationwide trend in state and federal correctional institutions, and its impact on correctional budgets in the areas of health care and other resources has been the subject of recent reports by Human Rights Watch and the ACLU.

Human Rights Watch released a January 2012 report, *Old Behind Bars: The Aging Prison Population in the United States*, which explores the impact of incarceration on aging prisoners and catalogs the increasing cost of medical care for older prisoners and overall cost to society of current policies. The report also looks at the issue of continuing to incarcerate the very elderly who, because of mental or other medical issues, no longer pose a threat to society, and receive limited benefit from rehabilitative programs. In some cases, offenders may no longer understand why they are behind bars. The full report is available at http://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf.

The ACLU also issued a study in 2012, *At America’s Expense: The Mass Incarceration of the Elderly*, which examines the “graying prison population” and the costs to society. In 2010, 16 percent of persons in state

and federal prisons were over the age of 50—the age, according to the report, that criminologists and correctional experts agree denotes an “aging” or “elderly” prisoner. The study includes recommendations ranging from conditional release, new parole board guidelines, and a pilot program for parole for federal prisoners (federal prisoners who were sentenced for an offense committed after November 1, 1987 are not eligible for parole but may

be sentenced to probation or supervised release), to systemic reform that calls for the repeal of mandatory minimum sentencing laws, habitual offender laws, and truth-in-sentencing laws. (Truth-in-sentencing laws were passed to ensure that violent offenders served 80 percent of their imposed prison sentence, and many states enacted these laws in response to the federal Violent Crime Control and Law Enforcement Act of 1994 (amended 1996).) The full report

Table 1. Trends in Offender Demographics: Offenders in Institutions, 2007–2011

Row percentages.

	Offenders in out-of-state institutions		Alaska Native offenders		Older and younger offenders				Total offenders in institutions
	N	%	N	%	Less than 20 years		65 years and older		
					N	%	N	%	
2007	869	19.3 %	1,540	34.2 %	129	2.9 %	53	1.2 %	4,502
2008	897	21.0	1,528	35.8	119	2.8	66	1.5	4,274
2009	847	18.9	1,604	35.7	101	2.2	68	1.5	4,490
2010	991	21.2	1,717	36.8	118	2.5	71	1.5	4,671
2011	1,071	22.6	1,715	36.2	78	1.6	82	1.7	4,734
% change:									
2007–2011	23.2%		11.4%		-39.5%		54.7%		5.2%
2010–2011	8.1%		-0.1%		-33.9%		15.5%		1.3%

Source of data: 2011 Offender Profile, Alaska Department of Corrections

Table 2. Trends in Offender Demographics: Offenders in Institutions as a Result of Violent Crimes, 2007–2011

Row percentages.

	Offenders in institutions as a result of:								Total offenders in institutions
	Sex offenses		Crimes against a person		Total violent crimes		All other offenses		
	N	%	N	%	N	%	N	%	
2007	582	12.9 %	1,474	32.7 %	2,056	45.7 %	2,446	54.3 %	4,502
2008	569	13.3	1,405	32.9	1,974	46.2	2,300	53.8	4,274
2009	601	13.4	1,490	33.2	2,091	46.6	2,399	53.4	4,490
2010	544	11.6	1,310	28.0	1,854	39.7	2,817	60.3	4,671
2011	663	14.0	1,253	26.5	1,916	40.5	2,818	59.5	4,734
% change:									
2007–2011	13.9%		-15.0%		-6.8%		15.2%		5.2%
2010–2011	21.9%		-4.4%		3.3%		0.0%		1.3%

Source of data: 2011 Offender Profile, Alaska Department of Corrections

Table 3. Trends in Offender Demographics: Offenders in Community Residential Centers (CRC) and Special Offsite Programs, 2007–2011

Row percentages.

	Offenders in institutions		Offenders in Community Residential Centers		Offenders in Special Offsite Programs		Total offenders
	N	%	N	%	N	%	
	2007	4,502	87.0 %	527	10.2 %	143	
2008	4,274	85.2	571	11.4	169	3.4	5,014
2009	4,490	85.0	592	11.2	203	3.8	5,285
2010	4,671	83.8	638	11.4	267	4.8	5,576
2011	4,734	82.7	664	11.6	329	5.7	5,727
% change:							
2007–2011	5.2%		26.0%		130.1%		10.7%
2010–2011	1.3%		4.1%		23.2%		2.7%

Source of data: 2011 Offender Profile, Alaska Department of Corrections

is available at https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf.

While the number of offenders over the age of 50 has been increasing in Alaska, the total of incarcerated juvenile offenders (individuals less than 20 years old) has dropped from 129 in 2007 to 78 in 2011. (See Table 1.)

Violent v. Nonviolent Offenses

The 2011 Offender Profile also shows a change in the number of offenders sentenced for violent versus non-violent crimes. In 2007, almost 46 percent of offenders in Alaska correctional facilities were there as a result of a violent crime. By 2011, this trend had reversed, and almost 60 percent of offenders in Alaska correctional institutions were there because of a non-violent crime. (See Table 2.) This is in contrast to Bureau of Justice Statistics figures from

2009 (the most recent data available) that showed nationwide, 53 percent of individuals in jails or prisons were sentenced for a violent offense.

Other Trends Seen in Alaska Data

Non-Institutionalized Offender Numbers

While the number of offenders in Alaska correctional institutions increased by about 5 percent from 2007 to 2011, during that same time period, the number of offenders in community residential centers (CRCs) rose by 26 percent, and the number in special offsite programs (electronic monitoring) was up by 130 percent. (See Table 3.)

Average Length of Stay for Felony and Misdemeanor Convictions

Data from the Alaska Department of

Table 4. Average Length of Stay from Conviction to Discharge, 2002–2011

Average length of stay in years (felonies) or days (misdemeanors).

Year of discharge	Felony convictions		Misdemeanor convictions	
	All felony convictions	Felony drug convictions	All misdemeanor convictions	Misdemeanor drug convictions
2002	2.92 years	1.61 years	22.8 days	33.4 days
2003	3.38	2.17	24.0	17.9
2004	3.70	2.45	23.5	16.4
2005	3.88	2.33	22.5	25.3
2006	4.14	2.31	19.8	17.5
2007	4.51	2.65	19.1	21.5
2008	4.74	2.99	19.8	32.4
2009	5.04	3.17	19.5	24.2
2010	5.54	3.55	19.4	18.8
2011	5.92	3.69	18.5	21.1
% change:				
2002–2011	102.59 %	129.45 %	-18.79 %	-36.88 %
2010–2011	6.77 %	3.84 %	-4.44 %	12.01 %

Source of data: Alaska Department of Corrections

Corrections from 2007 through 2011 show that average length of stay from conviction to discharge for a felony has been increasing each year—from an average stay of about 4.5 years in 2007 to an average stay of almost 6 years in 2011. Average length of stay for a misdemeanor conviction from 2007 to 2011 has remained relatively the same—about 19 days.

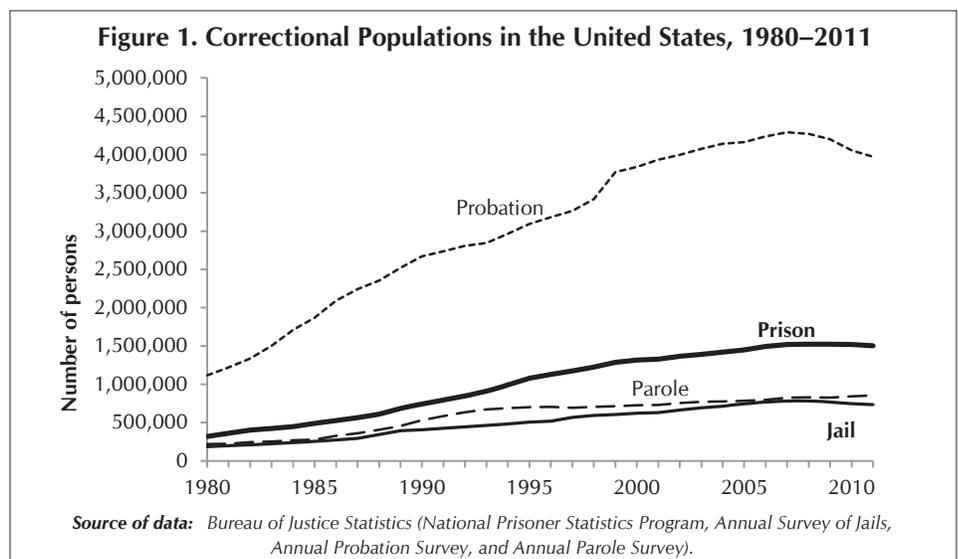
Average length of stays for drug-related felonies increased from an average of about 3 years in 2007 to almost 4 years in 2011. Drug-related misdemeanor stays have remained fairly stable at about 22 days—although there was a spike in 2008 of an average stay of about 32 days. (See Table 4.) The increase in average sentence length warrants investigation to accurately determine its causes.

U.S. Correctional Populations 2011

The U.S. corrections population declined for the third consecutive year, according to figures for 2011 recently released by the Bureau of Justice Statistics (BJS): the numbers decreased from 7,231,400 individuals in 2009, to 7,079,500 in 2010, to 6,977,700 in 2011. These figures represent individuals incarcerated under federal, state, and local jurisdiction, as well as offenders under community supervision (probation and parole). (See Figure 1.)

At year-end 2011, 1,504,150 offenders were incarcerated under federal or state jurisdiction. An additional 735,601 individuals were in custody under local jurisdiction, for a total of 2,239,751 incarcerated individuals in the U.S. This figure includes offenders in privately operated facilities and

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Corrections

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community corrections centers, but does not include inmates held in U.S. territories, in military facilities, in U.S. Immigration and

Customs (ICE) facilities, in jails in Indian country, and in juvenile facilities. (See Table 1.)

In addition, 4,814,200 persons in 2011 were under community supervision—probation and parole. In 2011, the *total cor-*

rectional population—individuals under community supervision (probation and parole) and individuals incarcerated in federal, state, and local jails—dropped by 1.4 percent from 2010. Figure 1 shows the U.S. corrections populations from 1980 to present.

Prisoners and Imprisonment Rates

The numbers discussed above are incarceration figures which include the total of *sentenced* and *unsentenced* individuals in federal, state, and local custody. The imprisonment rates which follow refer to individuals under federal or state jurisdiction who have been sentenced to more than one year. These figures exclude local jail populations.

The 2011 imprisonment rate was 716 individuals for every 100,000 people in the general U.S. population. (See Table 1.) More detailed data from BJS show that in 2011 (the most recent data available) males made up over 93 percent of the prison population sentenced to more than one year. Males had an overall imprisonment rate of 932 per 100,000 U.S. residents. The female imprisonment rate was 65 per 100,000. Of those individuals sentenced to one year or more, the imprisonment rates were 478 per 100,000 U.S. residents for white males, 3,023 per 100,000 for black males, and 1,238 per 100,000 for Hispanic males. (See Table 2.) The imprisonment rate for males was 14 times higher than for females. The rate for black males was almost 6 times higher than for white males, and the rate for Hispanic males was nearly 3 times higher than for white males. Figure 2 shows the number of sentenced offenders under federal and state jurisdiction from 1925 to 2011.

Class of Offenses and Length of Sentence

Imprisonment figures for state prisoners by most serious offense for 2010 (most recent data available) show that of those with a sentence of more than one year, 53 percent had been sentenced for a violent offense, 18 percent had a sentence related to a property offense, and 17 percent had a sentence based on a drug offense. In the *federal* system, however, only 8 percent of prisoners with a sentence of more than one year were incarcerated for a violent offense while 52 percent were in custody for a drug offense in 2010 (Table 3). In 2011, the percentage for drug offenses dropped to 48.

Alaska

Alaska has a unified state and local prison system. At year-end 2011, there were 5,727 offenders under the supervision of

Table 1. Inmates in Custody in State or Federal Prisons or in Local Jails: 2000, 2010, and 2011

	2000	2010	2011	Annual average change 2000–2010	Percent change 2010–2011
Total inmates in custody^a	1,937,482	2,270,142	2,239,751	1.6 %	-1.3 %
Federal prisoners^b	140,064	206,968	214,774	3.9 %	3.8 %
Prisons	133,921	198,339	206,004	3.9	3.9
Federal facilities	124,540	173,138	176,228	3.3	1.8
Privately operated facilities	9,381	25,201	29,776	9.9	18.2
Community corrections centers ^c	6,143	8,629	8,770	3.4	1.6
State prisoners^a	1,176,269	1,314,446	1,289,376	1.1 %	-1.9 %
State facilities	1,100,978	1,220,331	1,196,981	1.0	-1.9
Privately operated facilities	75,291	94,115	92,395	2.2	-1.8
Inmates held in local jails^d	621,149	748,728	735,601	1.9 %	-1.8 %
Incarceration rate per 100,000 population^{a,e}	683	731	716	0.7 %	-2.1 %
Adult incarceration rate ^f	918	960	937	0.5	-2.4

Note: Counts include all inmates held in public and private adult correctional facilities and local jails.

^a Total includes all inmates held in state or federal prison facilities or in local jails. It does not include inmates held in U.S. territories, military facilities, U.S. Immigration and Customs Enforcement (ICE) facilities, jails in Indian country, and juvenile facilities.

^b In 2001, responsibility for sentenced felons from the District of Columbia was transferred to the Federal Bureau of Prisons.

^c Non-secure, privately operated community corrections centers.

^d Counts for inmates held in local jails are for the last weekday of June each year. Counts were estimated from the Annual Survey of Jails.

^e The total number in custody as of December 31 per 100,000 U.S. residents. Resident population estimates were as of January 1 of the following year.

^f The total number in custody as of December 31 per 100,000 U.S. adult residents. Adult resident population estimates were as of January 1 of the following year.

Source: Bureau of Justice Statistics, "Correctional Populations in the United States, 2011," NCJ 239972.

Table 2. Number of Sentenced Prisoners and Imprisonment Rate in the U.S. by Race, Hispanic Origin, and Gender, 2011

Prisoners under state or federal jurisdiction with a sentence of more than one year.

	Male		Female		Total	
	N	Rate per 100,000 population ^a	N	Rate per 100,000 population ^a	N	Rate per 100,000 population ^a
Total under jurisdiction^b	1,433,741	932	103,674	65	1,537,415	492
By race^c						
White ^d	465,100	478	51,100	51	516,200	261 ^e
Black ^d	555,300	3,023	26,000	129	581,300	1,509 ^e
Hispanic	331,500	1,238	18,400	71	349,900	664 ^e

a. Imprisonment rates are the number of prisoners under state or federal jurisdiction sentenced to more than 1 year per 100,000 persons in the U.S. resident population in the referenced population group.

b. Total includes American Indians, Alaska Natives, Asians, Native Hawaiians, other Pacific Islanders, and persons identifying two or more races.

c. Based on prisoners sentenced to more than 1 year. Excludes American Indians, Alaska Natives, Asians, Native Hawaiians, other Pacific Islanders, and persons identifying two or more races.

d. Excludes persons of Hispanic or Latino origin.

e. These rates estimated from male and female rates.

Source of data: Bureau of Justice Statistics, "Prisoners in 2011," NCJ 239808.

of the Alaska Department of Corrections; this includes in-state and out-of-state facilities, as well community residential centers and electronic monitoring. From 2010 to 2011, Alaska reported an increase of about one percent in the inmate population. (See "Alaska Correctional Populations 2011" on page 2 for the most recent statistics.)

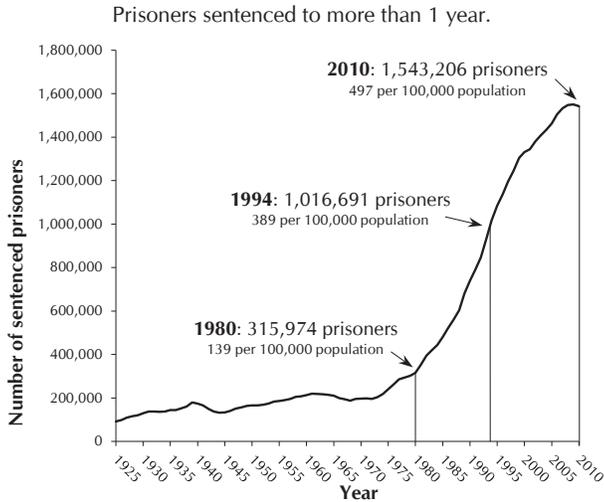
International Context

The United States continues to lead all other nations in the rate of incarceration of individuals per 100,000 of the general population. The 2011 incarceration rate of 716 individuals per 100,000 residents is 5 to 10 times higher than that of Canada and most of the industrialized democracies of

Western Europe. (See Figure 3.)

The above article is based in part on the Bureau of Justice Statistics report "Correctional Populations in the United States, 2011," NJC 239972; "Probation and Parole in the United States, 2011," NJC 239686; and "Prisoners in 2011," NJC 239808.

Figure 2. Sentenced Prisoners Under Jurisdiction of State and Federal Correctional Authorities at End of Year, 1925-2010



Source of data: Table 6.28.2010, Sourcebook of Criminal Justice Statistics, University at Albany, <http://www.albany.edu/sourcebook/pdf/t6282010.pdf>

Table 3. Sentenced Prisoners under State or Federal Jurisdiction by Most Serious Offense, 2010

Prisoners with a sentence of more than one year.

	State prisoners (N = 1,362,028)		Federal prisoners (N = 190,641)	
	Estimated N	% of total	N	% of total
Violent offenses	725,000	53.2 %	15,000	7.9 %
Homicide ^a	188,200	13.8	2,900	1.5
Robbery	185,800	13.6	8,300	4.4
Other violent ^b	351,000	25.8	3,800	2.0
Property offenses	249,400	18.3 %	10,300	5.4 %
Burglary	130,000	9.5	400	0.2
Fraud	30,800	2.3	7,500	3.9
Other property ^c	88,600	6.5	2,400	1.3
Drug offenses	237,000	17.4 %	99,300	52.1 %
Public-order offense	142,500	10.5 %	65,000	34.1 %
Other/unspecified^e	7,900	0.6 %	1,100	0.6 %

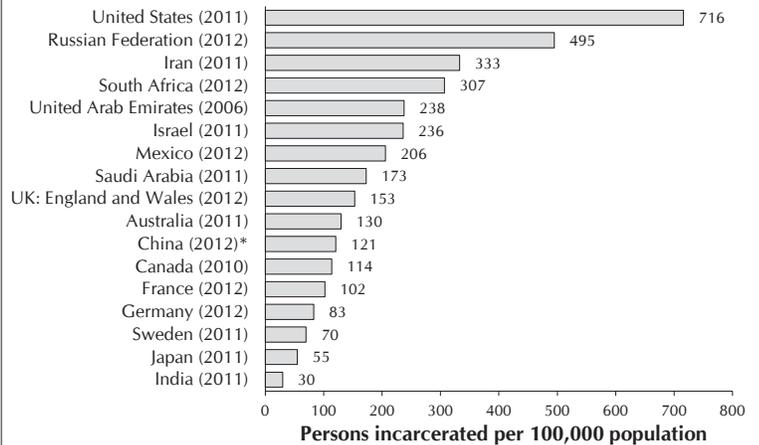
a. Includes murder and negligent and non-negligent manslaughter.
 b. Includes rape, other sexual assault, assault, and other violent offenses.
 c. Includes larceny, motor vehicle theft, and other property offenses.
 d. Includes weapons, drunk driving, court offenses, commercialized vice, morals and decency offenses, liquor law violations, and other public-order offenses.
 e. Federal figures also include immigration offenses.
 e. Includes juvenile and other unspecified offense categories.

Source of data: Bureau of Justice Statistics, "Prisoners in 2011," NJC 239808.

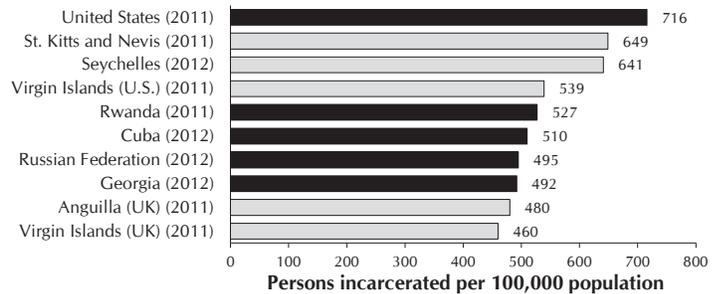
Figure 3. International Correctional Populations

Incarceration data were collected on the varying dates listed and are the

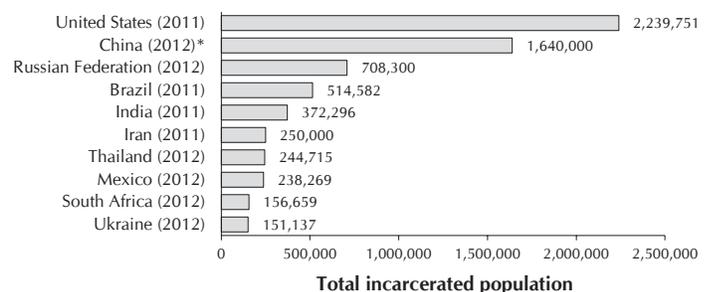
3a. Rate of Incarceration in Selected Nations



3b. Ten Leading Nations in Incarceration Rates**



3c. Ten Leading Nations in Prison Populations



* Figure for China includes sentenced prisoners in Ministry of Justice prisons only, excluding pretrial detainees and those held in administrative detention. A 2009 report from the Supreme People's Procuratorate reported an additional 650,000 persons held in detention centres in China; if these figures hold for April 2012, the total prison incarcerated population in China is more than 2,300,000.

**In 3b, nations with grey bars have total populations under 110,000 and incarcerated populations ranging from 72 (Anguilla) to 593 (Seychelles). Nations with black bars have total populations of at least 5 million and incarcerated populations ranging from 22,299 (Georgia) to 2,239,751 (United States).

Source of data: Bureau of Justice Statistics (for U.S.); World Prison Brief, International Centre for Prison Studies, King's College of London, <http://www.prisonstudies.org/info/worldbrief/>

Alaska Prisoner Reentry Task Force Update

The Alaska Prisoner Reentry Task Force focuses on promoting the goal that individuals released from incarceration do not return to custody. The Task Force is a sub-committee of the Criminal Justice Working Group (CJWG) which is concerned with “criminal justice administration issues, particularly crime prevention and reducing recidivism, and efficiencies in the justice system.”

The *Alaska Five-Year Prisoner Reentry Strategic Plan, 2011–2016* was developed by the Task Force and released in February 2011. (A summary of the plan is in the *Alaska Justice Forum* 28(2–3), Summer/Fall 2011.) There are currently four Task Force work groups—Employment, Misdemeanants, Substance Abuse, and Housing—addressing the issues identified in the *Five-Year Plan*.

Task Force members include representatives from the Alaska State Troopers, Department of Labor, Alaska Court System, Department of Corrections, Alaska Mental Health Trust Authority, Division of Behavioral Health, Department of Correc-

tions Chaplaincy Program, Alaska Housing Finance Corporation, Victims for Justice, Partners for Progress, Nine Star Education and Employment Services, Cook Inlet Tribal Corporation, United Way, Akeela House, the Alaska Native Justice Center, and an ex-offender. The co-chairs of the Task Force are Alaska Department of Corrections (DOC) Deputy Commissioner of Reentry and Population Management Ronald Taylor and former DOC Deputy Commissioner for Rehabilitation and Reentry Carmen Gutierrez. Melissa Abrami is the project coordinator.

Following are highlights of the work groups’ activity in the past year.

- **Regional reentry coalitions:** The Task Force is focusing on establishing *regional reentry coalitions* to 1) inform communities of issues around prisoner reentry and public safety impacts when reentry is not successful, 2) educate regional probation offices about available community resources, and 3) identify gaps in community resources and provide this information to the Criminal Justice Working Group. There are currently three regional coalitions: Anchorage, Kenai, and Mat-Su. Regional reentry coalitions in Juneau and Dillingham are in the process of being established.

- **Criminal justice data collection:** The Task Force Project Coordinator has been assisting with the Alaska Public Safety Information (APSIN) Identification Project to improve the state’s ability to accurately and comprehensively collect criminal justice data. Much of the work has now been transferred to the Alaska Multi-Agency Justice Integration Consortium (MAJIC).

- **Affordable housing:** The Task Force formed a Housing Work group to develop a strategic plan to improve access to affordable housing for returning offenders. The inaugural work group meeting was held August 27, 2012 to discuss the use of 2.9 million dollars of State Special Needs Housing Grant funds that have been designated to produce housing options in Anchorage for former prisoners. Several housing service providers attended to present a brief overview on their program, and to identify gaps and needs in the Anchorage community.

- **Educating employers about hiring ex-offenders:** The Task Force Employment Work Group has prepared a presentation to educate the business community on the benefits of hiring the ex-offender population. This presentation emphasizes the social and public safety implications of improved prisoner reentry outcomes. It is anticipated that representatives from DOC, the Department of Law (DOL) and a private employer will

present at Alaska Rotary Clubs, Chambers of Commerce, the Anchorage Society for Human Resource Management (ASHRM) and other community organizations. In 2012, then-DOC Deputy Commissioner Carmen Gutierrez presented at the Fairbanks Downtown Rotary and at the University of Alaska Fairbanks continuing education program.

- **Access to community-based treatment:** The Substance Abuse Work Group identified strategies and action steps to improve former offenders’ access to community-based substance abuse treatment. A critical component is the strong collaboration between the DOC and the Alaska Division of Behavioral Health (DBH). DOC and the Division of Behavioral Health are developing an electronic data interface (EDI) which will allow for single source data and a two-way information sharing system. DOC is in the process of hiring a criminal justice technician to oversee the electronic data interface. DOC and DBH are working on determining certification eligibility of all substance abuse treatment providers within the State, and establishing a means to monitor and recognize the certification status of all agencies. The work group also identified the need for offenders to have alcohol/drug assessments while incarcerated and in community residential centers.

- **Sentencing options for misdemeanants:** The Misdemeanor Work Group investigated deferred sentencing options for lower level misdemeanants, and the Department of Law has agreed to consider greater use of the state civil compromise statute—AS 12.45.120—and to encourage prosecutors to consider deferred sentencing options when appropriate. (According to AS 12.145.120, under certain conditions, a misdemeanor crime involving a victim could be the basis for a lawsuit in civil court, and the victim may choose to file a civil suit. In such a case, the criminal charges might be dismissed and the matter of the civil remedy handled by the criminal court as part of the disposition of the criminal case.) A misdemeanor attorney from the Alaska Public Defender and from the Department of Law are now members of the work group. The work group also presented information on electronic monitoring (EM) to the Department of Corrections and the Department of Law Criminal Division, and provided updated information on EM cost and eligibility to district court judges. A recommendation was made to establish 24/7 sobriety programs and cognitive behavioral treatment programs in communities to provide judges with alternative sentencing



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ajjust@uaa.alaska.edu
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options for misdemeanants. (Cognitive behavioral treatment is described in the U.S. Department of Justice National Institute of Corrections report, *Cognitive Behavioral Treatment: A Review and Discussion for Corrections Professionals*, as therapy through which “[c]lients are not only taught more positive behaviors to replace their old ways of getting through life, they are also shown how to be more attuned to the thought processes that led them to choose negative actions in the past.”) Alternative ways to handle first-time minor consuming cases have also been discussed, and the Anchorage District Court is exploring the diversion program for first-time minor consumers now in place in the Juneau District Court.

Other progress on the *Five-Year Plan*

In addition to the specific activities of the work groups, other progress on the *Five-Year Plan* includes:

- **Behavioral health needs of return-**

ing prisoners: DOC is implementing an electronic medical records system and now has an additional IDP+ (Institutional Discharge Plus) counselor.

- **Fairbanks PACE Project:** The Fairbanks PACE (Probationer Accountability and Certain Enforcement) domestic violence program for misdemeanants is being implemented and is designed to provide swift and certain consequences for probationers who violate conditions of release. The project will also survey victims’ perceptions of safety before and after the offenders complete a batterers’ intervention program. The UAA Justice Center is designing and implementing an evaluation strategy for the project.

- **Alaska sex offender population:** Funds are in the Governor’s FY13 budget for an additional institution-based sex offender management program for medium and minimum risk offenders at the Palmer Correctional Center. The FY13 budget also funds a mental health clinician to support

the Bethel community-based sex offender program.

- **Faith-based prison reentry support:** DOC has hired two state chaplains—one in Anchorage and one in Seward—as a result of funding in the Governor’s FY13 budget. The Kenai Wildwood Institution now has an Alpha Ministries Program.

For information on the Alaska Prisoner Reentry Task Force and Alaska Department of Corrections Rehabilitation & Reentry, go to <http://www.correct.state.ak.us/rehabilitation-reentry>.

Staff Changes

Charlotte Titus joined the Justice Center staff as office manager in January 2013. Charlotte most recently was the Administrative Coordinator in the Office of the Dean, UAA College of Education. We look forward to working with Charlotte as we start this new chapter.

Mediation

(continued from page 1)

providing mediation training. The project encourages mediators to collectively develop a public professional space in which to explore a plurality of approaches that are emerging in the rigors and throes of practice, without fear of losing favored status among fellow practitioners, and without the need to adhere to fixed theoretical ideologies. Importantly, the integral approach does not seek to exclude or denigrate alternative approaches. Rather, it simply acknowledges the reality that certain mediation approaches are becoming increasingly entrenched and institutionalized. By denigrating, or alternatively ignoring, the institutionalized approaches, the integral method would simply create yet another competing brand, which risks reproducing the same brand-bickering exchange that now beleaguers the field. Instead, integral mediation represents a true alternative to branding, creating an open-source meta-practice available to any practitioner committed to exploring and expanding integration.

This article focuses on the following: (1) the rational and pragmatic basis and need for integral mediation, (2) the exploration of mediation as a reflexive practice and the need to be aware of and to observe our actions and role in the mediation process—and our impact on the process, and (3) the argument for the development of ethics based on the integral approach and the difficulties with the neutrality and impartiality ethics put forth in contemporary mediator ethics codes.

The Need for *Integral Mediation*

Standard IX of the jointly-adopted mediator ethics code of the Association for Conflict Resolution (ACR), the American Bar Association (ABA), and the American Arbitration Association (AAA) provides the underpinnings for the integral approach. Pursuant to Standard IX, mediators should foster diversity within the mediation field, make mediation accessible to clients, assist the public in developing an improved understanding of mediation, and demonstrate respect for differing points of view within the field:

Standard IX. Advancement of Mediation Practice

A. A mediator should act in a manner that advances the practice of mediation. A mediator promotes this Standard by engaging in some or all of the following:

1. Fostering diversity within the field of mediation.

2. Striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate.

3. Participating in research when given the opportunity, including obtaining participant feedback when appropriate.

4. Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for,

mediation.

5. Assisting newer mediators through training, mentoring and networking.

B. A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.

If respect for diversity and differing points of view in the mediation field is to be meaningful, both academics and practitioners need a professional space in which they can engage in critical debate. Arguably, Standard IX therefore allows for and even supports a professional space in which mediators work out compatibilities and incompatibilities through a good faith dialogue.

Yet this does not appear to be happening with the vigor one would hope for in an emerging professional field such as mediation. In fact, there are several troubling developments that have surfaced. The field appears to be plagued by, and at times, even deadlocked by, claims of brand distinction and superiority. Mediators have reported that these purportedly exclusive approaches are often driven in significant part by a strong desire to create a marketing edge. They note that it is not unusual to hear colleagues marginalizing and even denigrating approaches other than their

Please see *Mediation*, page 10

Mediation

(continued from page 9)

own. Researchers in the field of mediation have seen this repeatedly. (See “Mediation Resources” below.)

One would expect market competitors to seek to distinguish themselves by their uniqueness. This by itself might even be good for the development of the mediation field. The problem is where exaggerated claims of brand distinction and superiority work to thwart the possibilities of an authentic practice-based discourse. These claims tend to produce a pseudo-debate that risks constricting and thereby impoverishing mediation as a valuable service to society. Interviewees overwhelmingly agreed that this was an unproductive development in the mediation field, and that they would welcome a more practice-based open debate.

We need a forum for this open debate. But a truly integral approach cannot simply be an exercise in which mediators throw together divergent approaches in an arbitrary and capricious manner. Rather, an integral approach must work out the practical logic of each approach in order to demonstrate both authentic difference and potential integration.

Mediation as a Reflexive Practice

Whether they are aware of it or not, mediators are tapping psycho-social processes within their clients and within themselves whenever they engage in the mediation process. If medi-

ator interventions both respond to and produce psycho-social events during mediation, then mediators have the power and responsibility to act as change agents in their clients' lives. Reflexive practice can help guide the mediator in these endeavors.

Mediation brands have tended to become self-affirming, reproducing their own logic for any given conflict. For example, *evaluative mediators* tend to construct theory relying on the evaluative framework, which relies on precedent and previous authority. Accordingly, good mediation for evaluative practitioners tends to look like an exercise in strict evaluation. *Facilitative mediators* construct theory based on the interest-based framework. Good mediation for interest-based practitioners tends to look like instances of interest-exploration that move the parties from legal positions to underlying interests. *Narrative mediators* build theory based on the narrative or story-development framework. Good mediation for this group tends to look like the unpacking of narratives or stories that describe. Lastly, *transformative mediators* build theory based on the humanistic framework. Good mediation for this group tends to look like encouragement of mutual recognition and empowerment. The point in each of the above types of mediation is that mediators construct events in mediation based on their respective frameworks.

Reflexive practice, while acknowledging the value of theory, requires the mediator, as social actor, to recognize his or her own influence on the disputing dynamics and the potential distortion the mediator produces. The

process is a dialogue, in which all parties are constantly negotiating the meaning of what is happening with the help of the mediator. The mediator does not presume to be an external observer—the mediator is as involved as the parties. Admittedly, the narrative approach also acknowledges this negotiated nature of social interaction, but the narrative method insists that language itself produces meaning. The narrative approach does not recognize the structural aspects of social reality that may be present without language—the feeling within a room and body language also affect the process. In contrast, the integral approach does acknowledge this possibility.

The frustration with a fixed approach can be seen in reports from newly-trained mediators. They often comment on their disillusionment with the stultifying nature of much mediation training. Among these individuals, there is a shared sense of disappointment about what the fixed-framework approach has produced. In many cases, mediators feel a lack of resonance between their training and their subsequent experience in mediation. They report feeling alienated from mediation service-provider organizations because they could not make an unwavering commitment to the organization's particular mediation *brand*.

Fortunately, the reflexive approach is extremely helpful to mediators. It teaches them to pay attention to their moment-to-moment micro-interactions during mediation. With this approach mediators have the opportunity to catalogue their inner experiences while working through various social conflicts

Mediation Resources

Websites

American Arbitration Association. <http://www.adr.org>
 Association for Conflict Resolution. <http://www.acrnet.org/>
 American Bar Association: Mediation. http://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/mediation.html
 JAMS (Alternative Dispute Resolution). <http://www.jamsadr.com/>
 Alaska Court System: Mediation in the Alaska Court System. <http://courts.alaska.gov/mediation.htm>
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with mediation participants—noting patterns, themes, and tendencies. In this way, theory development is tied much more closely to the mediator's inner experience and the production of shared-meaning, as opposed to the cataloging of general rules and protocols. In short, reflexivity ties together experience with observation in a meaningful way.

Reflexive practice also attempts to tackle the problem of interpretation. In order for social actors or speakers (e.g., mediators) to convey their understanding of any social situation to an interested listener or reader, they must first interpret it as they see it. To understand a speaker's message, the listeners or readers must further re-interpret the speaker's message within their own social context. With particular regard to mediation, this means the mediator, who is removed from the initial social facts in any dispute, must now attempt to gauge the degree to which each party's interpretation shapes those facts, and the extent to which the mediator's own interpretation shapes those facts still further. Each party has a distinct story which is in turn interpreted by the mediator through the mediator's own lens of experience and training.

Reflexive practice is predicated on this notion of first admitting the biases that make up one's worldview—a concept called *verstehen* by the German sociologist Max Weber. Accordingly, practitioners must constantly strive to understand their own biases regarding any situation they hope to understand. This is often a demanding task, as practitioners must examine their own core assumptions and presuppositions in any social situation.

In mediation, the problem of reinterpretation—the mediator's reinterpreting what is transpiring during mediation—is exacerbated by back-and-forth interactions between the mediator and the parties, making matters even more difficult. In the mediation process, it is not uncommon to experience feedback loops, as information travels back and forth between various parties in all directions. It is more useful to emphasize the inter-relation between observation and experience based on moment-to-moment interactions, rather than on *preconceived* notions. In this way, reflexive practice can support mediation to develop as a complex adaptive system. Mediation requires constant reinterpretation and reassessment of what is happening with and between the parties and with the mediator him/herself.

Social conflict between social actors is, by its nature, rife with instances of increased complexity and chaos. People hire mediators because mediators are willing and able to manage the complexity and chaos of the conflict. Therefore, integral mediation, which seeks to integrate potential practices, as well as to bring practice to theory, necessitates methods capable of navigating such social complexity. Reflexive practice can produce those methods. Any meaningful attempt at integration requires some kind of reflexivity on the part of the mediator. Reflexive practice

simply acknowledges that the mediator and the parties are always negotiating the very nature of social reality itself in any given conflict. Through reflexive awareness, mediators can come to develop an intuitive understanding of dispute patterns, themes, behavioral tendencies, and attitudinal valences that emerge in any field of social conflict. It is this intuitive knowledge that the integral approach taps.

Identifying Integral Practice Ethics

In any discipline, developing ethics codes that are unambiguous and consistent with best practices helps to create a foundation for that discipline. Conversely, adopting ethics purely for political expedience can undermine the discipline in the long run. In a rush to mimic other source disciplines such as law, mediator organizations have promulgated ethics codes that often clash with best practices in mediation. The legal field has played a prominent role in this adoption of certain counter-productive mediator ethics; it has produced significant sociological forces through the dispersion of professional capital through social networks. For instance, lawyers and judges act as gate-keepers in referring clients to mediation. These individuals are much more likely to refer clients to mediators whose practices fit their own respective worldviews. In the aggregate, these referrals put pressure on mediators to conform their practices to legal expectations. To gain access and continued participation, mediators soon find themselves espousing ethics that resonate with lawyer best practices.

Mediators do not ascribe malicious motives to the actors involved in these processes. Individual actors are often unaware of these effects. It is understandable that lawyers and judges would support practices they recognize and that mediators would feel the pressure to conform to juridical expectations. The problem lies in mediators' failure to recognize these influences. If the mediation community does not acknowledge them as it searches for best practices, then it hamstring itself from determining the legitimate ways in which mediator ethics diverge from legal ethics. In order for the mediation profession to advance, mediation organizations must develop more unambiguous practice-based ethics—integral ethics.

Two legally-derived ethics stand out as particularly problematic: *impartiality* and *neutrality*. An examination of mediator ethics codes reveals that almost all of them require the mediator to be either *neutral* and/or *impartial*. On the surface this sounds well and good, and even desirable, but such ethics are unfitting based on the following. When I asked what mediators actually meant by "*impartiality*" and "*neutrality*," mediators provided several divergent, and sometimes contradictory, notions of what these terms mean. In fact, there was no consensus among mediators on the

exact meaning of these terms. Before we can begin to meaningfully adopt these ethics we need to determine what exactly they signify.

Even if we could determine what these two ethics concepts mean unambiguously, they still arguably do not represent best practices in mediation. The *neutrality* and *impartiality* ethics appear to have migrated from the judicial field, emerging from legal doctrines that require judges to maintain the appearance of disinterest and objectivity. It is important for litigants to view the judge's authority as fair and legitimate. This perception of legitimacy results in greater acceptance and compliance with unfavorable decisions.

Mediation organizations appear to have un-reflexively adopted these notions in whole cloth. This is an unintended consequence of the fixed doctrinal approach to mediation which produces blind-spots and mimicry. Unfortunately, adopting legalistic ethics will ultimately impoverish and institutionalize mediation because it renders mediation "Court Lite," preventing it from developing organically as its own independent practice. If legally-derived ethics worked without mediation, we wouldn't need mediation in the first place. Mediation came along because there was an obvious need for it as a complement to the standard litigation map. We are now ironically in danger of thwarting the potential of mediation through excessive deference to legalistic ethics.

To make matters worse, *impartiality* or *neutrality* in any abstract sense in mediation may well be impossible, so as to make such a requirement absurd and meaningless. Paradoxically, exploring and admitting one's own biases is the only way one can hope to see social reality in an unbiased fashion. The problem is that imposing the *neutrality* and *impartiality* ethics on the mediator means that the practitioner cannot openly admit bias and partiality without risking potential denunciation, poor evaluations, and condemnation by the parties and their lawyers. If the mediator could admit and explore bias reflexively with the parties, the mediator may well come to gain a far more impartial view of their conflict and provide greater assistance to the parties in their efforts to resolve their dispute.

Imposing *neutrality* and *impartiality* may not only weaken the potential of mediation practice, it might even exclude certain forms of mediation, contrary to Standard IX promulgated by the Association for Conflict Resolution the American Arbitration Association, and the American Bar Association, discussed above. It would indeed appear that the *neutrality* and *impartiality* ethic contradict the diversity ethic contained in Standard IX. Certain mediation practices that do not align themselves with standard legal doctrine may be the casualties of imposing whole-cloth ethics without modification from originating source disciplines. For example, researchers have noted that Hawaiian



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Mediation

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practitioners of *ho'oponopono*-reconciliation, and Native groups in North America and South East Asians who practice peace-making mediation, among other groups, have reported that imposing *neutrality* and *impartiality* requirements would actually work to undermine effective practice.

Indigenous protocols often work best through the mediation work of wise and respected Elders. Many times Elders are effective precisely because they are connected to the parties by relation or social proximity. To require such practitioners to have no biases or prior relations with parties would likely prove counter-productive to the mediation process. Yet the Uniform Mediation Act, adopted in several states, like many organizational ethics codes, requires *impartiality*, unless expressly waived by the parties. This prescription fixes impartiality as the base line for practice. Do we simply redefine and romanticize Wise-Elder mediation to exclude it from the reach of mediation's logic and debate? This may well effectively eliminate it as a form of practice because it cannot be so narrowly constrained.

One can apply similar logic to several sectors of practice including, among others, victim-offender mediation, family mediation, child-protection mediation. For example, in victim-offender mediation cases it would be unreasonable to expect the mediator to remain issue-neutral on matters of serious crime. Surely, in these areas, we would reasonably expect the mediator to be expressly biased and evidently partial. Likewise, in family disputes, it would be unreasonable to require

the family mediator to remain neutral and unbiased toward the interests of the child. Crime victims have a right to be free of crime and children have a right to good parenting, respectively. We would surely all hope that the mediator would favor the best interests of the child and would be sympathetic toward victims of crime.

In sum, these simple examples quickly demonstrate the problem of imposing inappropriate ethics on the practice of mediation. Placing unnecessary and misleading restrictions on mediators impairs their ability to engage in effective practice. The problem is that mediation cannot be easily normalized as a dispute-resolution process. We need integral ethics that represent the finely textured variations associated with each manifestation of practice. The integral approach allows for ethics that permit a variety of approaches. An integral code would simply define mediators broadly as those third parties who assist others to negotiate their conflicts. It would work out directives for particular areas of practice and applications. Regarding the *neutrality* and *impartiality* ethics, the integral approach would pursue ethics that support mediation fairness, so that all sides are fully informed and have a reasonable chance to communicate their respective interests, rather than imposing judicial ethics based on courtroom norms. Fairness could be maintained, for example, by requiring mediators to encourage the parties to engage in full participation, and to seek independent legal advice regarding any mediated settlement. Whatever one's views are on this issue, at the very least, the integral approach requires us to re-think our notions of what constitutes good mediation ethics.

Conclusion

Mediation can succeed as a valuable multi-disciplinary practice, despite the emerging tendency toward brand development. This requires an integral approach. The basis for this approach is evident in Standard IX of the American Bar Association, Association for Conflict Resolution, and American Arbitration Association respective ethics codes. Currently in the dispute-resolution field, mediation is becoming needlessly constrained. A significant part of the problem stems from a reluctance on the part of the mediation community to challenge emerging claims of brand distinction and superiority. While branding may serve to increase market-share for its respective brand proponents, unchallenged it risks unduly restricting and thereby impoverishing mediation as a coherent and integrated professional activity. The challenge for the mediation community is both modest and ambitious at the same time. It is modest in that it requires the mediation community to acknowledge and validate what is already happening in the practice of mediation. It is ambitious in that it invites the mediation community to explore and clearly articulate integral possibilities which call into question claims of brand exclusivity and superiority. Essentially, *integral mediation* represents the brand-free open-source alternative. As such it invites both scholars and practitioners to work in concert to explore, expand, and inter-relate various aspects of mediation theory and practice in order to unlock mediation's vast potential.

Brian Jarrett is an associate professor with the Department of Justice, University of Alaska Fairbanks.