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# Creating a Family-Centered Plan: Family Negotiation in Child Welfare

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Margaret Severson and Kim Bruns

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*In this article, the conceptual and theoretical underpinnings for child welfare negotiations, assessment strategies useful in preparing for such negotiations, and practice implications for child protective service workers involved in the process are explored. Particular emphasis is given to the benefits of employing negotiation techniques in child welfare matters. The opportunities to use negotiation strategies are numerous in the child welfare arena. They range from formal mediation of an adoption plan, to family group conferencing of a placement issue, to negotiating a visitation and access plan with a parent. Common to all of these situations is the recognition that families have a better chance of success and potential for a better outcome when they are part of the planning and when they are empowered in the process.*

## Introduction

In the year 2001, six children managed to teach thousands of people a lesson about the driving forces of need, power, control, and determination. As they barricaded themselves into their small, rural home in the hills of Idaho, demanding in part continued access to their mother, these children created a stronghold that stood for five days and held hostage people who have long been publicly recognized as wielding legitimate legal as well as physical power (Caplan, 2001). The mother of the six children was arrested on child abuse charges alleging she was not providing for her children's physical well being; she was arrested when she went to the store for supplies. It was also alleged that the family home had no electricity or indoor water source. When authorities attempted to take her six children into protective custody, the children retreated to their home and set loose their 27 dogs onto waiting law enforcement officers. Thus began the five day standoff that captured national attention. State and local officials tried talking with and to these children about giving up their fight but the children, knowingly or not, assumed a negotiating posture. It was out of this posture that they told those in their immediate surrounds and those watching the standoff from a distance, that the drive to satisfy human needs cannot be curtailed simply by a differential in age, rank, political or occupational status, educational achievement, or wealth. All the social workers, officers, friends, and relatives in the world would not make a difference until the collective power

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of those children was acknowledged. The negotiations, which proceeded, did so only because their collective power dictated it.

Though negotiations in child welfare disputes have been increasingly documented in recent years, seldom does an incident like the one involving this Idaho family so crystallize the need for dispute resolution services in child welfare matters. Clearly, in this Idaho case, law enforcement, state child protective services (CPS) personnel, and the community as a whole had the legal right and authority to intervene to bring the situation to an end. However, the acknowledgement of the family's struggle and the children's need to be heard—to have some control over their plight—was crucial to finding a solution that would meet both the needs of the family and the protective requirements of the community. In this case, the end came only because the Sheriff thought to ask the children what they wanted and opened the way for the mother to communicate with them. A much different outcome might have occurred if law enforcement or CPS had instead acted on their power and physically exerted their rights to bring the protest under control. Thus, this Idaho case, one that involves legitimate concerns of neglect, mental illness, multiple agency involvement, and missed opportunities, provides an excellent context within which to discuss the use of negotiation skills in child welfare matters.

Negotiations in child welfare matters often involve third parties who have a certain investment in the outcome, and thus these negotiations differ from more traditional forms of facilitated bargaining, and the issues at stake generally involve personal, governmental, and private sector rights and responsibilities. While most child safety-family welfare matters are not played out as publicly and as dramatically as occurred in the case of this Idaho family, their story serves as a lesson for those who hold power by virtue of their institutions and positions. That lesson is that every time a child safety-family welfare issue arises, it spells drama, pain, fear, and mistrust for the members of the family. These reactions force everyone involved into positions. Those positions aggravate the work that is left to be done by the family and the professionals involved in the case.

In the following pages, the conceptual and theoretical underpinnings for child welfare negotiations, assessment strategies useful in preparing for such negotiations, and specific negotiation skills and practice implications for professionals involved in the case will be addressed. Particular emphasis will be given to the benefits of employing negotiation techniques in varying degrees in child welfare matters. Negotiation skills and techniques can be used in formal third party mediations, in family group conferencing, or simply in interactions with family members involved in a child welfare matter. In essence, involving the family in the planning process is at the heart of family-centered practice—there simply is no other decision making process that can substitute for the family's input.

### **The Developing Reliance on Negotiation Strategies in Child Welfare**

Child welfare policy has cycled between the family preservation movement of the early 1980s and the permanency planning and adoption movement of the late 1990s. In between and ongoing are the attempts of child welfare advocates to find a way of mitigating the effects of such seemingly disparate policies. A growing body of literature addresses substantive and procedural components of family involvement interventions: child protection mediation, family group decision making, and team conferencing (Crampton, 2004). Model programs, such as Family Group Decision Making (Pennel & Burford, 2000), the Iowa Mediation Permanency Project (Landsman, Thompson, & Barber, 2003), and family group conferencing (Merkel-Holguin, 2000), have been developed. In addition, major federal legislation has been enacted that supports family rights by explicitly mandating that mediation be available at the parents' request in special education services disputes (see, Public Law 105-17, IDEA, 1997).

### **Negotiations for Child Access versus Child Protection**

Family mediation's popularity as an alternative to resolving disputes through an adversarial process first found its footing in the United States in child custody and property division matters as they arose in the legal process of divorce (Coogler, 1978). While divorce mediation still garners much attention, there are new applications of mediation, negotiation, and family conferencing emerging in practice and in the literature every year. For example see, Merkel-Holguin (2004) (family group conferencing); Landsman & Thompson (2003) (mediation in permanency planning); and van Wormer (2003) (restorative justice and child protection). There are significant differences between how the custody and parenting of children are viewed, depending on the context of the mediation. Table 1 provides a synopsis of these differences as they exist in divorce/custody cases and in child welfare cases.

The resolution of child access disputes demands that the judge proclaim which parent will be the primary custodial parent by determining the best interests of the child. In child protection cases, the judge is instead asked to ensure that the child is kept safe from immediate harm during which time a plan for permanency is developed for the child. More significantly perhaps, in child custody proceedings there is a presumption (refutable though it may be) that both parties are equally capable and equipped to act as proper parents to the child(ren). In child welfare proceedings, the presumption is that one or both parents are incapable, at least at the time, of providing the appropriate care required by the child(ren). Again, in child custody disputes, it is assumed that the parents will have an ongoing relationship that behooves them to come to some agreements about the areas of dispute. In child welfare disputes, while there may be an ongoing relationship between the parents, there may be no relationship and no desire for one between the parent(s) and the child welfare agency. Finally, in child custody matters, the

goal is often to help the parties develop a plan for an ongoing relationship with each other as parents. In CPS mediation, negotiation, and family conferencing, families may view mediation as the fastest route to ending their involvement and relationship with CPS representatives (Barsky, 1997).

**Table 1. Mediation in divorce vs. child protective services**

	<b>Divorce</b>	<b>Child Protection</b>
Physical and emotional needs of the child	Both parents assumed to be capable	At least one parent is alleged to be incapable
Child's relationship with parents	Both parents given opportunities for access	One parent may be denied visitation or access to the child
Parties negotiating	Parents	Parents, social worker, community professionals
Relationships	Goal is to build a new type of relationship that ensures ongoing communication and contact with each other	Goal is to resolve the conflict so that the parent does not have to have ongoing contact with the agency or social worker
<b>Outcomes</b>	<ul style="list-style-type: none"> <li>• Responsive to immediate needs and concerns of family</li> <li>• Individual interests are represented during the negotiation</li> <li>• Respectful of each party's interest</li> <li>• Empowered to achieve goals</li> <li>• Model conflict resolution responses that are non-violent</li> </ul>	

**Applications and Efficacy of Child Protection Negotiations**

The use of negotiation strategies and mediator facilitated negotiations in child protection cases started in the 1980s as means to resolve the highly emotional issues that keep families from being reunited and consequently, to develop viable case plans that could lead to reunification. In the 1990s Family Group Decision Making and family conferencing emerged as models of practice that were more family centered and more culturally sensitive to the families who became involved in the child welfare system (Marsh & Crow, 2003; Nixon, Merkel-Holguin, Sivak, Gunderson, 2001).

The research demonstrates that using negotiation strategies in child protection can produce more effective outcomes than traditional agency-focused practice where the caseworker devises the plan and presents it to the family not for their consideration or agreement, but solely for their notification. Those outcomes are seen in more successful family engagement (Marsh & Crow, 1998), in empowering families (Litchfield, Gatowski, Dobbin, 2003), and in a less intrusive method of engaging families as well (Merkel-Holguin, Nixon & Buford, 2003). The research also supports the use of mediation as a means to resolve cases faster, in ways that are more satisfying to the

families and which lessen the amount of court involvement (Landsman, Thompson & Barber, 2003; Campbell and Rodeburgh, 1994; Wildgoose and Maresca, 1994; Center for Policy Research, 1992; Pearson, Thoennes, Mayer and Golten, 1986).

“Dependency mediation” (Baron, 1997; Edwards, 1997; Firestone, 1997; Thoennes, 1997) has been used as a process to resolve conflicts in child protective services, termination of parental rights hearings, juvenile offender proceedings, and adoption case planning. In child protective services, the dependency mediation process brings the affected family and representatives of the state child protection agency together to communicate concerns about the child’s needs and best interests and resolve ongoing conflicts about how to best respond to those needs. Conflicts in child protection exist not just around whose definition of “the truth” will control or the extent of the abuse/neglect allegation itself, but also around the ways to approach and resolve the conflict. While substantiating the incidents or effects of maltreatment may not be the specific issue of dispute, conflict occurs when the process between the family and the agency is child- or agency-centered rather than family centered.

Ultimately, whether the children in Idaho were neglected by their mother was not the central issue. Rather, the central issue was how to keep the family intact and provide them with needed resources during a difficult time. When these basic family needs were forgotten, it was the children who reminded the community that the need to be together was more important to them than the need for food, adequate clothing, and shelter. Indeed, the Idaho Sheriff acknowledged, “We just wanted to house, feed, and clothe the kids, but it was not worthy of a confrontation” (Caplan, 2001). In all likelihood, the impasse between the authorities and the children occurred because the process was both child (“how do we get these kids to give in to us?”) and agency (“the kids need protection”) focused rather than family-centered (“how can we keep this family united while ensuring the safety of all?”). In essence, law enforcement and CPS workers initially focused solely on child and community safety, and several days passed before the needs of the family to be together, indeed, the drive of the children to have ongoing contact with their mother, were recognized.

### **Preparing for Negotiation: Recognizing and Sharing Power in Child Welfare Negotiations**

Negotiating with families can be viewed as a useful strategy at all stages of child protection proceedings. In the initial stage, which generally occurs during or just after an investigation is completed, the family benefits from the information gained in the negotiation process (Thoennes, 2003). Often, families are not offered the opportunity to get their questions answered or to be made aware of the significance of the judicial proceedings. The CPS worker gains valuable information necessary for a thorough assessment when family members are fully informed and then choose to be engaged. In

order to gain their cooperation and enter into a collaborative relationship with the family, the worker may need to give up some of the control that comes from withholding information and acting as the expert authority on the family's matters (Mayer, 1989). In a study of typical case planning in CPS, Tjaden (1994) found that family members rarely challenged the CPS agency. Family members had a difficult time articulating their positions and did not ask questions. Tjaden found that CPS workers rarely explained the meeting purpose or agenda, tended to avoid many family issues and questions, and discussed topics that were more self-serving to the agency. As Barsky (1996, p. 125), noted, "By controlling the flow of the discussion, Child Protection Workers can consciously or unconsciously disempower family members." Indeed, in the Idaho case, it was the simple act of allowing a note to pass between the mother and her children that opened the negotiation process. Had the state explained to the mother its concerns and then allowed her to explain them to her children, the five-day standoff may have been averted. Given her mental illness, grief, and social isolation, it is possible that the mother may not have understood the conditions under which her children had come to live. Her distrust of the system and the community clearly exacerbated the situation. In essence, in the investigative stage of child protective services, it must be made clear that the assessment of safety and risk is not negotiable while at the same time giving the parent(s) the opportunity to inform the agency about their parenting behaviors and current life situation.

A negotiated approach also is valuable to the agency in that workers are helped to see the family as partners rather than as resisters. As the family's strengths are made more apparent through the process of disclosure of wants and needs from both sides, workers may see a different side to the family—one that is not defensive in nature. Approaching the family in this new way can have enduring benefits for the rest of the time the family is involved with the child welfare system. This Idaho family evidenced both strengths and resourcefulness. They lived at times without electricity, an indoor source of water, conventional means of cooking, and money. In a negotiating frame, the intense need to protect and care for one another should be seen as a resource instead of a weakness.

Workers in child protection agencies have a variety of tools and skills that can be relied upon during both the investigatory and case planning stages of working with families. Indeed, the values workers embrace are the same values that can make negotiation an appropriate option in child welfare situations. Embracing the ideal of client self-determination, recognizing that all families have strengths and that people act as their own best agents of change; and acting with the belief that mutual respect enhances the helping relationship help move the family and the agency to resolution. The hoped for outcome is a co-developed plan for the family, one that reflects the interests of the state, the family, and the child(ren) and which, in its content, defines success as

something personal rather than institutional. In other words, success is an individualized concept rather than a bureaucratic mandate.

### Negotiation Skills for Family Centered Practice

There may be little incentive for CPS workers to fully engage family members in the planning process. Externally imposed time limits, limited agency resources, and the agency's legal responsibility to ensure protection and safety of the children (Barsky, 1996) may force the worker to focus on finalizing the case rather than on taking time to regard the family's desires. The use of negotiation skills may not alter the "fundamental power realities or change personalities" but it very well may "change the nature of how each party's needs are presented and considered and how solutions are generated" (Mayer, 1989, p. 92).

### Skills for Negotiating with Families

Workers can utilize at least seven critical negotiation skills that as they negotiate with families:

- Normalizing
- Partializing
- Developing Options
- Moving from Past to Future
- Mutualizing
- Balancing the Power
- Determining the Roles of the Parties Involved

The first skill is *normalizing*. Families involved in the child welfare system may assume that their individual situation is so unique, different or difficult that there is no way it can be resolved to the agency's or their own satisfaction. Often people in conflict convince themselves that their situation is unique and it is that very uniqueness that justifies their position. The CPS worker must undermine the uniqueness of each problem definition by normalizing the situation. If the situation is normal, it is solvable. In the Idaho case, for example, the family reportedly lived in isolation. With the mother removed from the family, the children may have decided that their unique situation called for drastic self-protective measures—barricading themselves in their home. A negotiator would normalize this situation by seeing it as a self-protective reaction to fear after the arrest of their mother rather than as an extremist action being taken by out-of-control children. The negotiator might start the communication process with the truth, *normalized*: "We took your mother into custody; we know that is scary for you; we understand you want your mother home."



The second skill useful in negotiating with families when there are complicated and multiple issues to resolve is that of *partializing*. There is seldom only one issue at stake in any dispute, and workers can assist the family in breaking down, *partializing*, the issues, thereby helping the family solve them one at a time. Assisting a family in meeting their basic physical needs may set into motion the ability to solve the other problems the agency or family has defined. The Idaho case was not a simple neglect case; it was about grief, poverty, mental illness, and paranoia. In this example, the negotiator might have *partialized* by saying: "We have a few things to talk about. Your mother is in jail, and we need to get her back home. We're worried you don't have enough to eat, and we don't want you to be hungry. We know you must be sad about your dad and we want to help with that."

*Developing Options* or what Fisher, Ury, and Patton (1991, p. 56) call "invent[ing] options for mutual gain" is the third negotiation skill. Negotiation around the terms of the services available or requested should be focused on the family's needs. "Regardless of laws, legal authority, and sanctions, parents almost always retain control and power to prevent intervention from being successful" (Mayer, 1989, p. 90). The worker must view the family as being its own best expert while identifying her/himself as an expert in resourcing and identifying community supports. Approaching the family with options, possible solutions, and alternatives that are unique and individualized to their particular situation gives the family the power and control to devise a plan they can implement. Indeed, this is empowerment practice: parents feel less forced into accepting services if they are recognized as being the agents of control.

The Idaho family could have benefited from this approach. The strengths and capabilities the family must have had in order to survive with so little for so long could have been marshaled to gain a better understanding of this family's needs. Barsky (1996) and Mayer (1989) concluded that mediation does not change either people or the child protection system. What it does change is how families' and CPS agencies' views are presented and how solutions are generated. Being time limited, the focus of mediation is not on whether abuse or neglect occurred or on who was responsible for it; rather, the focus is on what can be done to ensure the future safety of the children and the furthering of the family's desire to achieve its healthy objectives. As in family group conferencing, negotiating with families is a "process concerned not with holding the offender—maltreating parent—passively accountable for past actions, but with engaging the extended family group in taking active responsibility for generating and implementing solutions" (Adam & Chandler, 2004). Regardless of what neglectful behaviors the Idaho mother may have had, her adult daughter and other relatives could have been sought out and a plan developed to resolve the safety issues and to secure resources that would unite the family in a more healthy way instead of separating the family in a destructive win-lose fashion.

Of course, the very nature of court intervention in CPS matters begs another question: how does the worker keep the work future-focused when the courts are interested in adjudicating what occurred in the past? The fourth skill—*Moving from the Past to Future*—helps the worker move the discussion from a focus on the past to a focus on the future. Family history includes events that cannot be altered, except in one's perception or experience of them. Searching for solutions requires a future focus. CPS workers play an important role by acknowledging and tapping the power generated when a family is afforded decision-making responsibilities in the case planning process. The future safety of the child is of course of utmost concern, but some of the key components of the Adoption and Safe Families Act (Public Law 105-89, ASFA, 1997) address making reasonable efforts toward collaboration in the process. CPS workers can be "agents of reality" for the parents and the courts while at the same time acting to empower those who will be most responsible for carrying out the case plan—the parents. Long-term changes in economic situations, substance abuse or addictions, and generational family dysfunction may be difficult to achieve through short-term interventions, such as mediation, FGDM, family conferencing, but worker-family negotiations using mediation skills provide an opportunity to produce a safety plan and assess the family's motivation and commitment to future parenting of a child (Maresca, Paulseth & Rivers, 1989).

"Authoritative and unilateral action by caseworkers undermines the therapeutic goals of the child protection process" (Chandler, 1985 & May, 1984, cited in Tjaden, 1994). The best interests of a child and family are served by focusing on getting the parties to collaborate on developing a plan for the present and future and also, by not focusing on events that have already occurred and about which nothing can be done. Keeping the conversation future focused helps to avoid communication breakdowns, which frequently occur from conversations set on rehashing issues from the past. In reality, one cannot dispute the future. For this Idaho family, an emphasis on the possibilities for the future while acknowledging the pain of the past might have sounded like this: "We know this family has been through a rough time. What will it take to get mom home and the children cared for and protected?"

*Mutualizing* is the fifth essential skill and involves active listening and identifying and defining a common goal. This skill provides an opportunity for the worker and family to come to an agreement on a statement, goal, or perception. When the worker hears a statement made by the family that expresses a common and helpful sentiment, the worker furthers the work by verbalizing shared perceptions. *Mutualizing* moves the definition of an issue from a unilaterally defined one to a mutually agreed upon statement of the problem at hand. In the Idaho case, officers and CPS workers could have *mutualized* with this problem statement: "Everyone is concerned about resolving the standoff so that the family can be reunited."

The sixth skill involves an effort to *balance the power* between the agency, the courts, the community, and the family. Family involvement practices are collaborative processes, and families often view their interactions with the child protective system as being anything but collaborative. Feelings of powerlessness are common among parents of children in state custody. Striking the balance between caring for the safety needs of the child and preserving the composition of the family can be a conflictual process for workers. New regulations and additional statutory requirements do not reduce conflict in child welfare dilemmas, but can be viewed as an entrée into and opportunity to involve family and community in creating safety plans and ultimately, a future, for the family. Balancing the power, determining the roles of the parties involved, and designing a case plan that is reflective of the needs, desires, and capacities of all involved—family, child, and agency included—are all areas where mediation skills can and should be utilized to achieve a family-centered resolution to the conflict.

What can social workers do to balance the power? After the child's immediate safety has been secured and the threat controlled, workers can empower the family to design a family-centered plan for reintegration. The most artfully designed agency case plan will not lead to a successful resolution unless the family is engaged and has the power and commitment to complete the objectives. Agency and contract workers need to recognize both their own power and the power of the family. In turn, this recognition requires both cognitive and verbal acknowledgement: reminding oneself of the family's power and letting the family know that you know they have it. To be sure, misuse of power can occur in both overt and subtle ways. Creating a plan for family (re)integration and agency exit without the participation of the family is but one example of overt misuse of power. This strategy objectifies the family, treating it as the object of the agency's power rather than as the participant in the agency's mission to help every member of every family live in some semblance of a safe environment.

More subtle misuses of power may occur, often unwittingly. For example, it is not unexpected for workers from the state, judicial, and community agencies to be familiar with one another. This familiarity can be intimidating to families. Being part of a professional coalition may be an unrecognized power for workers, but one need only imagine being a member of the family to understand how easily the experience becomes one of *them vs. us*. Being aware of and understanding the impact of having legitimate and recognized agency power and using that power with families whose own power has not been similarly acknowledged is the first step.

Agency and contract workers also can relinquish some power in those areas that do not affect the immediate safety of the child. Placement and visitation issues are not infrequently conflict areas for families and often lead to impasse during the creation of a case plan. The worker's ability to listen to the family's suggestions for placement, pending reintegration with the parent, can be extremely helpful to the child and the parents. Would it have been possible for the Idaho children to stay in their home with

some assistance from social services? Could the professionals resolve this situation in a more empowering way by asking the mother how she has managed to take care of her children all these years and what has worked well in her situation? Could they have verified if the facts were true about there being no food in the house? The children reported that they received 200 pounds of supplies on the day of the funeral of their father—just two weeks prior to their mother’s arrest. Was it necessary to charge the mother with child endangerment and neglect when a family conference may have led to a safe resolution?

The seventh skill essential for both families and professionals involved in child welfare cases is that of *determining the roles* of the parties involved. Child protective services and the juvenile court are complicated systems for professionals—and families—to understand. Families may have a difficult time understanding the role of the child protective service worker, family preservation social worker, case manager, therapist, or court service officer. It is not surprising, then, that families learn to trust no one. The child protective service worker has a responsibility in the beginning phases of the case to listen and answer questions. A change in focus from one of interrogation to one of active listening is likely to elicit more accurate responses from the family. Treating the parents as the experts in their family is talked about but sometimes difficult to do. One simple step that workers can take in their dealings with parents is to refer to them by their names. In a system where rules of formality and informality are often not clear cut, addressing parents by their names instead of simply “mom” or “dad” can, respect-wise, elevate the parents to the level of the professionals. This should be done in direct contact with the parents and conversations with other professionals involved with the case.

Case plan development can be an intimidating process for the family and also for state and contract agency workers. Each party may have a different reason for being involved, a different motivation for staying involved and perhaps even a different interest in the outcome. The sheriff had a legitimate reason to arrest the mother based on the warrant issued by the prosecutor’s office. The child protection agency had a legitimate concern about six children whose welfare the community had concerns about for a long time. For all of these parties, their shared interest was the health and welfare of the children; the differences existed only in how the parties would act on those concerns. When all involved share agreement about what should happen in a case, the case planning process should be simply a matter of putting it down in writing. Of course, “simple” it is not. There are often legitimate differences of professional opinion. Whether advocating for the child, the parent, or the family, each party may believe that it has secured the most accurate assessment of the situation. What results from these multiple perspectives often turns into a battle of power, determination, and perseverance.

There was much misinformation afloat about the Idaho family. Some reports had the children surviving on lily pad soup. Law enforcement officers alleged that the 27

dogs killed deer and hunted in packs. The neighbors reported that the dogs killed other dogs in the neighborhood. The coroner found the father died of complications from MS and due to malnourishment. There was even a rumor that the eldest daughter, who no longer lived at home, was denied entrance into the military because of stress fractures secondary to malnourishment. Whether these reports, allegations, and rumors were true or not was not as significant as how to keep this extremely proud and strong family together and how to provide them with the resources and/or services the family, in consultation with others, determined they needed. In short, when the focus of the encounter is on how to arrive at an agreement, where safety and risk are managed, and the parent is recognized as an indispensable part of the development of case plan objectives, the need to control the definition or the truth of what is "accurate" becomes less important to the process and to those involved. Even when there is no agreement reached, the inclusive process can be beneficial to the family.

### **When Negotiation Strategies Won't Work**

Are there child welfare situations when mediation won't work? In one study, the Denver Department of Social Services estimated that in 20% of cases, the abuse situation was so severe that any type of negotiation would be unlikely to work (Mayer, 1985). Concerns about the use of mediation in sexual abuse, incest, and domestic violence cases have been raised as well. In these situations, the challenge of assuring the continuing safety of the victims is always at the fore. Intimidation of victims, threats of further violence, and threats of further psychological and physical harm make mediation efforts in these situations highly controversial.

In an evaluation of five courts in California, Thoennes found that "all types of cases settle in mediation. There is no evidence that certain types of maltreatment should be screened out" (Thoennes, 1997, pg. 195; also see, Crampton, 2003). Still, there are clearly independent safety and empowerment issues that mean that the employment of negotiation strategies should be used with caution. Legal mandates and criminal courts may be more appropriate for some cases in terms of providing protection and safety from future harm. Consequently, it is important to distinguish between negotiating the merits of allegations of abuse and negotiating the services or plan to assist the family. If the goal is protection from abuse, then treating the parents with respect and leaving them with dignity after the initial investigation can do more to safeguard the future well-being of the child(ren). Negotiation produces more opportunities for disclosure and for assumption of responsibility than does a court system where litigation and rules of evidence may not provide an accurate picture of the family situation and thus leaves families in a defensive posture (Libow, 1993).

On the surface, it seemed apparent that the Idaho children needed some intervention. Their father's death brought the children out into the public after months of

being isolated. The allegations of no electricity, no running water, foreclosure of their home, no food, and no source of income begged for some intervention. But by looking at the family from a different lens, one can see a family grieving and a family who lived a strong commitment to care for each other. Persons in the community report that the parents were loving and proud; that the children were respectful and intelligent. Building on these strengths and asking the mother what it would take to assist her and her children and then negotiating the plan to make this help a reality could have prevented some of the mistrust and harm that ensued.

### **Conclusions and Implications for Social Work Practice**

Revisiting the facts of the Idaho case, note the clarity with which the mother and her six negotiating children saw their family's situation. Upon receiving the judge's order to release her from confinement, she refused, suggesting that time behind bars was better than being held hostage by the CPS workers from whom she would need permission to see her own children. The mother wanted two things: control over her own and her family's lives and an apology from state authorities who failed, however authorized in their actions, to protect the sanctity of the family. "In turning power over to the family, child welfare workers must admit that a less-than-perfect plan for the child that the family jointly originates and 'owns' will result in a better outcome for the child than a perfect agency-initiated plan that the family resists" (McElroy & Goodsoe, 1998, p. 9).

Rather than see this mother through the lens of mental health/illness, rather than see her as an obstructionist or as having parental deficiencies, CPS workers, social service personnel, and officers should view her as a powerful and protective force for her family. In the end, whether any one of those professionals would choose to parent as she did, whether they could understand why these children wanted to be with this woman who, for most of their years, had to struggle with serious mental health problems, or whether they really believed that life could be infinitely better for these children under some other living conditions did not matter in the resolution of this crisis. Indeed, in the end, what mattered was the employment of skills that went to the heart of the matter—the interests of the children to be with their mother, the interests of the mother to be with her children, and the interests of the "authorities" to see that each family member could live in an environment that gave some assurance of safety and security. These interests would be met in whole or part only because negotiation skills were employed, because every voice that mattered was heard and because the family's power was acknowledged and integrated into the plan for family unification.

## References

- Public Law 105-89 (1997). Adoption and Safe Families Act of 1997 (ASFA) November 19, 1997, H.R. 867, 42 USC 1305 note.
- Adams, P. & Chandler, S. (2004). Responsive regulation in child welfare: Systemic challenges in mainstreaming the family group conference. *Journal of Sociology and Social Welfare*, 30 (1), 93-116.
- Baron, S. (1997). Dependency court mediation: The roles of the participants. *Family and Conciliation Review*, 35 (2), 149-159.
- Barsky, A. E. (1996). Mediation and empowerment in child protection cases. *Mediation Quarterly*, 14 (2), 111-134.
- Barsky, A. E. (1997). Why parties agree to mediate: The case of child protection. *Family and Conciliation Courts Review*, 35 (2), 164-183.
- Cambell, J., & Rodenburgh, M. (1994). *Mediation pilot project evaluation*. Victoria, BC: Ministry of Social Services.
- Caplan, J. (2001). Progress reported in standoff with Idaho kids. Available on-line [<http://www.jeremycaplan.com/CNN%202001.htm>] [<http://www.cnn.com/2001/US/05/30/idaho.standoff/index.html>]
- Center for Policy Research, Denver. (1992). *Alternatives to adjudication in child abuse and neglect cases*. Alexandria, VA: State Justice Institute.
- Coogler, O. J. (1978). *Structured mediation in divorce settlement*. Lexington, MA: Lexington Books.
- Crampton, D. (2003). Family group decision making in Kent County, Michigan: The family and community compact. *Protecting children*, 18 (1-2), 81-83.
- Crampton, D. (2004). Family involvement interventions in child protection: Learning from contextual integrated strategies. *Journal of Sociology and Social Welfare*, 31 (1), 175-198.
- Edwards, L. (1997). Dependency court mediation. *Family and Conciliation Courts Review*, 35 (2), 160-163.
- Firestone, G. (1997). Dependency mediation: Where do we go from here? *Family and Conciliation Courts Review*, 35 (2), 223-238.
- Fisher, R., Ury, W., & Patton, B. (1991). *Getting to Yes. Negotiating Agreement Without Giving In*. Second Edition. Boston: Houghton Mifflin. York: Springer.
- Public Law 105-17 (1997). Individuals with Disabilities Education Act (IDEA) Amendments of 1997, Section 615(e)
- Landsman, M., Thompson, K. & Barber, G. (2003). Using mediation to achieve permanency for children and families. *Families in Society*, 84 (2), 229-239.
- Libow, J. (1993). The need for standardization and explanation of non-adversary proceedings in juvenile dependency court with special emphasis on mediation and role of counsel. *Juvenile and Family Court Journal*, 3, 3-16.

- Litchfield, M., Gatowski, S., Dobbin, S. (2003). Improving outcomes for families: Results from an evaluation of Miami's family decision making program. *Protecting children, 18 (1-2)*, 48-51.
- Maresca, J., Paulseth, D., Rivers, B. (1989). *Mediation in child protection: A new alternative*. Toronto Department of Education, The Law Society of Upper Canada.
- Marsh, P. & Crow, G. (2003). Family group conferencing: A national process and outcomes study in England and Wales-1997. *Protecting children, 18 (1-2)*, 129-130.
- Mayer, B. (1985). Conflict resolution in child protection and adoption. *Mediation Quarterly, 7*, 69-81.
- Mayer, B. (1989). Mediation in child protection cases: The impact of third party intervention on parental compliance attitudes. *Mediation Quarterly, 24*, 89-106.
- McElroy & Goodsoe (1998). Family group decision making offers alternative approach to child welfare. *Youth Law News, 3*, 1-9.
- Merkel-Holguin, L. (2000). Practice diversions and philosophical departures in the implementation of family group conferencing. In G. Burford & J. Hudson (Eds.), *Family group conferencing: Perspectives on policy, practice and research*. Hawthorne, NY: Aldine de Gruyter.
- Merkel-Holguin, L. (2004). Sharing power with the people: Family group conferencing as a democratic experiment. *Journal of Sociology and Social Welfare, 31(1)*, 155-173.
- Merkel-Holguin, L., Nixon, P., Buford, G. (2003). Learning with families: A synopsis of FGDM research and evaluation in child welfare. *Protecting children, 18 (1-2)*, 2-11.
- Nixon, P., Merkel-Holguin, L., Sivak, P., Gunderson, K. (2001) How can family group conferences become family-driven? Some dilemmas and possibilities. *Protecting children, 16, (3)*, 22-33.
- Pennell, J., & Burford, G. (2000). Family group decision making: Protecting children and women. *Child Welfare, 79(2)*, 131-158.
- Pearson, J., Thoennes, N., Mayer, B., Golten, M. (1986). Mediation in child welfare cases. *Family Law Quarterly, 20*, 303-320.
- Thoennes, N. (1997). An evaluation of child protection mediation in five California courts. *Family & Conciliation Courts Review, 35 (2)*, 184-195.
- Thoennes, N. (2003). Family group decision making in Colorado. *Protecting Children, 18 (1-2)*, 74-80.
- Tjaden, P. G. (1994). Dispute resolution in child protection cases. *Negotiation Journal, 10*, 373-390.
- van Wormer, K. (2003). Restorative justice: A model for social work practice with families. *Families in Society: The Journal of Contemporary Human Services, 84 (3)*, 441-448.
- Wildgoose, J. & Maresca, J. (1994). Report on the Centre for Child and Family Mediation: Toronto: *Network-Interaction for Conflict Resolution*.



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