SAN DIEGO MOVEABLE FEAST: COMPETITION IN COOPERATION-BUILDING

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with 24 colleagues

Local boosters refer to San Diego as "America's Finest City." This, of course, is an invitation to skepticism. Likewise, the strong culture of dispute resolution created by San Diego invites a closer look.

The context for that closer look was a bit odd, given that it occurred shortly after the first bombs fell in Iraq; San Diegans can never long forget the city's role as a military center.[1] But amidst wartime upheaval, a group of dispute resolution professionals assembled to talk about the current state of our field. Like some other groups convened in collaboration with the Broad Field project,[2] we gathered to consider whether dispute resolution in our particular city had an indigenous quality to it; in particular, whether it was stamped by the nuanced culture of a town that from some perspectives has been among the most successful at institutionalizing dispute resolution into what the military would call SOP — "standard operating procedure."

The conversation took place over dinner at the Thomas Jefferson School of Law,[3] Broad Field's event co-sponsor. Gathered together was an eclectic assemblage: academics from both San Diego and the neighboring Tijuana, judges, individual practitioners, government program administrators, community mediation staff and board members, and state and county officials charged with overseeing government-sponsored dispute resolution activities. At each table, we included individuals from different professional walks of life, hoping that the cross-seeding (irrigated by pre-dinner

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1 *See* San Diego's Naval Training Center, *at* http://www.sandiego.gov/ntc/index.shtml (last visited Jan. 22, 2004).

2 *See* Broad Field, *at* http://www.convenor.com/madison/broadfld.htm (last edited Jan. 5, 2004).

3 Thomas Jefferson School of Law is located in San Diego, California.

white wine) would yield a rich intellectual harvest. Participants were asked to consider a series of questions:

- *Whether the local dispute resolution community is unique or distinguishable from communities in other geographic regions;*
- *Whether the community is, on the whole, collaborative or competitive;*
- *Which sectors were growing, and which contracting;*
- *Who gets served and who gets left behind; and*
- *What quality control mechanisms, if any, exist to ensure competence and effectiveness?*

We record the results of those discussions below, but will admit to taking some editorial liberties. We would like to note here our debt to those who volunteered to record the essentials of the discussions at the various tables.

San Diego's Local Culture and its Impact on Dispute Resolution

The group generally agreed that San Diego's local culture is subtler than it looks. East Coast transplants, taking in the predictable sunshine, ubiquitous palms, and standard apartment-complex weight-room and Jacuzzi, tend to feel they have been transplanted from real life to a "forever-vacation zone." The siren call of sun and surf does lead some to pull back from the rigors of professional life. Parts of the town have a hippie feel to them, and, when "surf's up," the beach is dappled with able-bodied men and women who locate their passion, not in a lab or computer terminal, but atop a cresting wave.

Still, San Diego is anything but a laid-back Margaritaville. Underneath a thin patina of Southern California cool, commercial energy abounds. The early 1990's cut in military spending led San Diego's defense-oriented industries to retrofit their operations to accommodate commercial applications. Today, San Diego is on the cutting edge of a number of commercial ventures, including telecommunications, electronics, and software. Home to the third largest concentration of biotech firms in the nation,[4] and identified

[4] *See* Bradley Fikes, *Survey: County is Third in Biotech Concentration,* N. County Times (Nov. 12, 2000), *available at* http://www.nctimes.net/news/111200/ll.html.

by Forbes as the "best place for business and careers,"[5] San Diego also ranks as the 20th largest agricultural producer in the nation.[6]

The social capital of a region must be robust to power this sort of prosperity, and the resort-like backdrop does not blunt the competitive and entrepreneurial instincts of many who settle here. This veiled, but intensely competitive aspect of the San Diegan character must be grasped in order to understand the local mediation community and its evolution.

THE DEVELOPMENT AND EVOLUTION OF DISPUTE RESOLUTION IN SAN DIEGO: A PROMINENT COMMUNITY CENTER, WELL-ESTABLISHED PRIVATE PROVIDERS AND A WIDELY–USED COURT MEDIATION PROGRAM

Mediation in San Diego got off the ground in the early eighties with the establishment of the Golden Hill Mediation Center,[7] the community organization that would later develop into the nationally known, full-service San Diego Mediation Center ("SDMC").[8] Supported by the San Diego County Bar,[9] a number of forward-thinking judges, and the University of San Diego Law Center,[10] the SDMC began to establish a presence both as a venue for community peace-making and as an alternative forum for the resolution of small claims and Superior Court cases. The SDMC received a substantial financial stimulus from the Dispute Resolution Programs

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5 *See Best Places*, FORBES (May 9, 2002), *available at* http://www.forbes.com/2002/05/09/bestplaces.html.

6 *See* San Diego Regional Chamber of Commerce, *at* http://www.sdchamber.org/visitor/econ.html (last modified Jan. 23, 2004).

7 For general information on the Golden Hill Mediation Center, *see* Lynne Carrier, *Mediation's Maven*, SAN DIEGO METRO. MAG. (Mar. 1998), *at* http://www.sandiegometro.com/1998/mar/coverstory.html.

8 The San Diego Mediation Center is a full-service alternative dispute resolution provider operating as a private, non-profit corporation. It manages over 2,500 cases annually and serves clients from private industry, the courts, the community and local governments. Established in 1983, SDMC is recognized nationwide as a pioneer in expanding a traditional community mediation program into a broad-based provider of ADR services, trainings, and customized programs.

9 The San Diego Bar Association was established in 1899 to further the principles of professionalism, collegiality, and integrity. *See* San Diego Bar Association, *at* http://www.sdcba.org (last visited Jan. 22, 2004).

10 The University of San Diego Legal Research Center is *available at* http://www.sandiego.edu/lrc (last visited Jan. 22, 2004).

Act,[11] which authorized San Diego County to increase court-filing fees and allocate the surcharge to fund countywide ADR programs. Although the funds are available through a competitive bidding process, only one other local organization has had the network and community penetration to respond credibly to the county's interest in mediation outreach. Consequently, over a long period, the SDMC has been the primary beneficiary of this funding, winning 50% to 100% of the grant awards in the competitive bidding process held every third year.

Aided by county funding but directed masterfully by a visionary leader, the SDMC almost single-handedly put mediation on the San Diego map throughout the 80's and early 90's. Adroit at exploiting market opportunities, the SDMC expanded from its modest origins into a variety of dispute venues, including civil harassment, parent/child, special education, housing, workplace, disability, law enforcement, and divorce. Additionally, the SDMC became known as "the place" to obtain mediation training, ultimately taking its successful educational modules on the road nationally and internationally.[12] The transformation of a struggling community center from Golden Hill into a powerful player, both locally and nationally, is a success story on many levels.

Our discussions suggested, however, that the SDMC's early success has imposed some cost upon the collaborative ethos that characterized its (and mediation's) founding origins. Though it was the brainchild of judges and lawyers, as well as community activists, SDMC relied heavily on non-lawyer volunteers. Some of our colleagues in our discussions felt that this institutional fact of life created its own dynamic, as it then appeared necessary to protect this lay base, and to ensure that lawyers did not "take over" or freeze out other professional groups — hardly an unreasonable fear, given the experience in some other jurisdictions. The SDMC, apparently at least partly for this reason, adopted a variety of strong stands on questions ranging from what constitutes appropriate mediator strategies to what sort of professional entry-level standards should be implemented. The discussion revealed that there has been some *sotto voce* concern in the professional community about some of these stands. Although not everyone trained or

11 *See* California Dispute Resolution Programs Act, Stats 1986, ch. 1313, SB 2064 (1986), *available at* http://www.dca.ca.gov/legal/dpra_statutes.htm (last visited Jan. 22, 2004).

12 Information on the SDMC's Training Institute, *available at* http://www.sdmediate.com/htdocs/training/index.html (last visited Jan. 22, 2004).

mentored by SDMC agreed with these stances, the dominance of a single provider group, together with a desire to be considered part of the party faithful, and to share in the rising tide that would lift all boats, encouraged would-be questioners to remain silent.

Thus while the group all agreed that the SDMC had played an important role in raising mediation's profile in San Diego, some suggested that its prominent role in the community generated both positive and negative effects. Some individual practitioners felt shut out because they were not part of the SDMC infrastructure, and bemoaned the perception that SDMC is "the" ADR provider in town, rather than simply the largest of many. Others, who had been trained by and received sporadic work from the Center, felt constrained in their ability to develop their own practices. They worried that openly competing with the SDMC would be viewed as biting the hand that feeds them and, while remaining loyal, they seemed to feel a bit stymied by this situation.

The SDMC staff, on the other hand, saw themselves as merely one of many players in the community. In the perspective of our colleagues who were SDMC staff, some degree of resentment among mediators was inevitable as the natural reaction that struggling individuals feel for a firmly established "player." Indeed, one staff member ventured a matching concern, a feeling that the SDMC struggles a bit with an inferiority complex because the tough cases tend to go to the former-litigators, ex-judges, and magistrates (revealingly described as the "men") who are active in private mediation practice. One full-time private mediator attested to the growth of a thriving private mediation "bar," opining that the SDMC's role in the community was often overstated, particularly when measured by the sometimes significant amounts at issue in privately mediated cases, as well as mediator compensation.

Virtually the entire group acknowledged tensions between SDMC, the local bar, and some segments of the legal academy. These tensions stem partly from the SDMC's penetration into realms traditionally occupied by the legal profession and from its original insistence that all disputes could be mediated by non-lawyers, regardless of subject matter. Elements of the local bar resisted the SDMC's claim that dispute resolvers could handle conflicts implicating legal rights without substantive legal knowledge, and objected to the SDMC's practice as the "unauthorized practice of law perpetrated on a large scale." The SDMC, in turn, was inclined to see attorney resistance in terms of protectionism. When attorneys were finally won over to the idea of mediation,

and began signing up for trainings and seeking certification, the SDMC worried that an attorney takeover was imminent and became more insistent in its call for facilitative practice and its criticism of evaluative tactics.

The competition that has emerged in San Diego, in the "marketplace of ideas" has been, to a great extent, salutary. The SDMC, as an expositor of the traditional facilitative model, has done an admirable job maintaining its intellectual market share against the encroachments of legally trained mediators who tend to adopt a more directive, evaluative style. Indeed, one discussant, an expatriate familiar with mediation trends abroad, cast the SDMC in a rather heroic role, working to stem a larger tide within the United States (perhaps driven by typically American concerns for efficiency), which he saw as refashioning mediation into a slightly gussied-up judicial settlement conference.

That attorneys, and increasingly, attorney-mediators have, in the past, felt that SDMC did not "get" the importance of legal rights and that SDMC has felt that lawyers did not "get" mediation's therapeutic potential simply reflects the deep ideological commitments that animate both camps. On a national level, the facilitative/evaluative debate has been useful in eliminating false dichotomies and highlighting possible synergies. Further intellectual jousting between unlike-minded colleagues is sure to yield similar benefits.

Local competition for dispute streams has yielded more awkward results. Contributors to the discussion who had cut their dispute resolution teeth elsewhere commented that San Diego mediators seemed to have a strong sense that there was not enough work to go around and, perhaps in consequence, business discussions were inhibited and conducted warily even though greater discussion about who was doing what and where would likely redound to the entire community's benefit. Additionally, some law schools that have attempted to forge links with SDMC to provide educational experiences for aspiring lawyers have seen the SDMC as unwilling to pool resources in an effort to provide law students the same experiential opportunities made available to community volunteers.[13] This, of course, sets up a continuing conflict with the

[13] While the SDMC is a popular internship spot for individual students, no formal programmatic relationship exists with two of the three law schools in town, in part, because no agreement has been reached by which law students would obtain the experiential opportunities necessary to make their academic learning concrete.

legal community, and squanders opportunities to enlist the next generation of lawyers into more problem-solving approaches.

The lawyer/nonlawyer tension was rendered more complex by the development of a pilot court mediation program,[14] which, in the last ten years, has grown up alongside the pre-existing SDMC and private sector activities. In 1994, San Diego became one of several counties in California to participate in a mandatory mediation pilot program.[15] Under this program, judges were authorized to order cases valued at $50,000 or less to mediation, and the court would pay mediators on the court's roster $150 for up to four hours of mediation. Six years later, San Diego became one of four California counties chosen to participate in an expanded assessment of the benefits of early mediation in civil cases. Under the program, the $50,000 bar was lifted and cases of all configurations and complexity could be ordered to mandatory mediation. In recognition of the increased challenge posed by these cases, the court quadrupled the compensation available to mediators from a maximum of $150 to as much as $600 a case. The resulting caseload was significant. From 2000 to 2002, approximately 8,000 civil cases were referred to mediation for handling by the approximately 160 lawyer and lay mediators who were listed on the court's roster.

This program boosted the already expanding awareness in San Diego's legal community of mediation's value as an aid to settlement. At the same time, it surfaced conflicting values and expectations that, but for the court program, might have remained underground. Mediators trained in what some characterize as the "facilitative orthodoxy" of the SDMC encountered attorneys and clients looking for more directive mediator behavior than SDMC teaches.[16] Repeat players from the insurance industry came to view court-mandated mediation as a judicial procedure that was desirable only if it generated settlement without consuming too much adjustor or attorney billable time. Consequently, this consumer base has, in some cases, come to expect a pared-down, just-

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14 An outline of the pilot court mediation program is *available at* http://www.sandiego.courts.ca.gov/superior/courts/adr.html (last visited Jan. 22, 2004).

15 *See* CCP § 1775.

16 One discussant speculated that a number of factors led mediators to pare down their interventions to the bare and bare-knuckled minimum: a court-imposed low, hourly rate of pay combined with a high number of administrative hassles, including postponements, late-notice cancellations, and supposed bad faith participation by some parties who would not attend absent a court order. It is noteworthy that, under these pressures, some court mediators chose to completely eliminate the introduction and joint session from the mediation process.

the-facts, fifty-minute process. These clients apparently saw rapport and consensus-building efforts as wasteful exercises that detracted from the "real work," defined as "bottom line" exploration and arm-twisting in caucus. Similarly, attorneys seeking evaluation and option-generation were frustrated when mediators focused on emotional and relational issues, while mediators trained to encourage rapport-building and "ventilation" felt rushed and bulldozed by attorneys who waited with visible impatience for the neutral to quit focusing on party feelings and "get to the point." The disjunction between client expectations and mediator assumptions led some SDMC mediators to lie fallow on the rosters while mediators with more directive styles had increasingly full dance-cards.[17] The court program has thus arguably demonstrated that, in a competitive environment where mediation suppliers offer a wide array of style and expertise, ideological purity will be overtaken by the demands of the market.

The exigencies of state funding are now introducing a new twist: It is no secret that state and local budgets are hurting all over, and California's budget woes are on the state's usual epic scale. The court pilot program has been one of the budget casualties.[18] Simultaneously, the SDMC has come under (relatively) new leadership. The San Diego mediation community is thus entering an "exciting" period, both of instability and of possible reconfiguration. Although we could see in our discussion (and in other contacts beyond) the newer generation of mediators looking with some gratitude upon the SDMC and the court program for raising mediation's profile among lawyers, business professionals, and community groups, that generation appears ready to play a larger role in shaping both mediation practice and discourse in the years to come. Most of the group articulated a strong desire to inculcate a greater atmosphere of openness and to establish norms of sharing and collaboration, even when dealing with sensitive matters such as business sources and referrals. Thus, our group seemed delighted to have the opportunity for self-examination and reflection at the

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[17] One long-time member of the SDMC pointed out that 60% of SDMC's superior court panelists are attorneys, and, though trained in facilitative techniques, it is likely that some draw on their ability to evaluate likely court outcomes when they engage in "reality-testing" with the parties. It may be that the market pressures so visible in the selection procedures for court-connected mediation may have pushed these mediators trained in the facilitative method to modify their approaches when selected for court cases.

[18] The pilot program has been replaced by voluntary, party-paid mediation. *See generally* Mediation Program Changes, *available at* http://www.sandiego.courts.ca.gov/superior/online/press/pr20030408.html (Apr. 8, 2003).

Moveable Feast dinner. They expressed great interest in follow-up discussions, to be held, perhaps, under the auspices of: the local ACR chapter;[19] the law schools; or on other neutral ground.

WHICH SECTORS OF DISPUTE RESOLUTION ARE GROWING AND WHICH ARE CONTRACTING?

Mediation in San Diego was seen as growing in various pockets. Unsurprisingly, court-annexed mediation was mentioned as a growth industry, though discussants acknowledged that it was unclear whether litigants would continue to flock to mediation when demand for that service was no longer propped up by court order and artificially depressed compensation schedules. The modest success of a new program established in the probate court does, however, suggest that San Diego attorneys and clients will continue to use mediation on a voluntary basis, even when they must themselves bear market costs. It would appear that private mediation continues to attract a steady share of the dispute resolution market, as evidenced by the growing number of private mediators whose sole source of income is mediation and related dispute resolution services.

Some among the group noted that expectations for growth in certain arenas are not being met, in part because the expectations are unrealistic, and in part because further education is required. One family mediator suggested that family law judges, in contrast to judges in other courts, remained relatively uninformed. Another suggested that the existence of a highly evaluative public mediation program sent mixed, and often negative, messages to the San Diego community about divorce mediation's core functions and values. The "mediation" program run by Family Court Services,[20] it was argued, more closely resembles a med-arb[21] process

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19 The Association for Conflict Resolution (ACR) is a professional organization dedicated to enhancing the practice and public understanding of conflict resolution. ACR represents and serves a diverse national and international audience that includes more than 6,000 mediators, arbitrators, facilitators, educators, and others involved in the field of conflict resolution and collaborative decision-making.

20 Family Court Services provides mediation and investigation in Domestic Court cases when separating or divorcing parents cannot agree on a child sharing plan. Information about the program is *available at* http://www.sandiego.courts.ca.gov/superior/courts/fcs.html (last visited Apr. 8, 2003).

21 Med-arb differs from traditional mediation in that it gives the mediator the power to decide the matter for the parties if they are unable to do so themselves. Med-arb also differs from traditional arbitration because the mediator's role extends past that of serving

in which social workers elicit the custody and visitation preferences of divorcing parents and, if agreement cannot be secured within an hour, mediators must report their findings to the judge. "This program gives family mediation in San Diego a bad name," we heard, "and has a generally chilling effect on practice growth in this area." Some thought that changing the name of this program might signal that family mediation in the private sector was a different animal and might help family mediators establish a greater presence.

One person identified the San Diego school system as an under-tapped source of disputes. Others commented on the paradox that San Diego housed a number of large and conflict-ridden health-care organizations, but that those organizations had been resistant to use alternative dispute resolution mechanisms. However, no one seemed to know why.

WHO GETS SERVED AND WHO GETS TO SERVE?

A number of our colleagues were eager to address these questions. In the context of San Diego's heterogeneous and culturally diverse population, discussants speculated that mediation has a built-in cultural bias that leads to ethnically disparate usage. One table group theorized that the standard mediation model is very much drawn from the dominant culture in the U.S.; mediators of both facilitative and evaluative orientation assume that disputants have the ability to confront each other face to face, and that they are able to approach conflict from an analytical and ratiocinative vantage point. Certain cultures, some theorized, do not view conflict as a clash of individual rights, but rather as a perversion of community norms. This perversion, they hold, cannot be cured absent community involvement. Furthermore, it was felt that some cultures prefer more muted and avoidant treatment of conflict. In those cultures, representatives, rather than the disputants themselves, might be called together for a veiled discussion of the problem. Unfortunately, the model our field has been selling is insufficiently attentive to those concerns. Some cultures, our group suggested, might reject the notion that the emotional component of a dispute can be addressed and resolved in mediation's preliminary stages, opening up space for what might be satirized as a desiccated

only as a private judge. The mediator's decision is typically as binding as an arbitrator's decision, but the mediator first does everything possible to assist the parties in reaching an acceptable solution.

discussion of BATNA and WATNA[22] costs and benefits. The notion that an emotional dispute can run its course toward a rationally deliberative settlement might seem artificial or unrealistic for cultures of a more affective — as opposed to openly intellectual — cast. Some of our colleagues also imagined that in San Diego, ADR is linked, in the minds of many, to the courts or governmental entities. That linkage might keep some communities, especially recent immigrants, from seeking ADR services.

San Diego enjoys an active commercial relationship with Mexico so we questioned why the mediation community has not, despite numerous attempts, been able to establish links with kindred spirits south of the border.[23] Factors seen as encouraging collaboration and growth include: the complexity of the jurisdictional issues complicating judicial consideration of Mexican/U.S. trading disputes, the efficiencies generated by the ability to circumvent venue and choice-of-law uncertainties in an informal setting, and the desire of trading partners to retain existing relationships. Factors that might be slowing exchange with our southern neighbor include: internecine identity struggles within the San Diego community that consume energy that might be directed outward; socioeconomic factors that render disputants in Mexico less likely to claim entitlements, and the lack of opportunity for alternative dispute resolution enthusiasts in both communities to meet and share ideas.

WHAT CHECKS AND SAFEGUARDS EXIST IN THIS COMMUNITY TO ENSURE QUALITY IN DISPUTE RESOLUTION?

San Diego, like many communities, presents a patchwork quilt on the subject of quality control. Certain programs, like the military's in-house mediation program, require their mediators have specified hours of training and defined numbers of cases under their belts.[24] Mediators seeking entry onto the Superior Court's roster, similarly, must have undergone thirty hours of training and

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22 Best Alternative to a Negotiated Agreement, and Worst, respectively.

23 General information about the commercial relationship San Diego shares with Mexico is *available at* http://www.crossborderbusiness.com/ExecTourDocuments/0308-TourInfo Packet-sec.pdf (last visited Jan. 22, 2004).

24 *But see* Christopher Honeyman, et al., *How Can We Teach So It Takes*? 20 CONFLICT RESOL. Q. 429 (2003) (challenging the notion that a forty-hour or similar course can ever be a satisfactory basis for training mediators). *See also* Deborah M. Kolb and Jonathan E. Kolb, *All the Mediators in the Garden," 9* NEGOT. J. 335 (1993).

have mediated eight cases. Yet, while data is kept to evaluate the success of the Court Pilot Program, mediator evaluations are not used to disqualify or otherwise penalize mediators who receive poor marks by the parties. Rather, user complaints generated by repeat players will simply suggest that the parties select another mediator for the next dispute.

The SDMC has a private credentialing program that requires candidates to obtain 32 hours of training and attest to having mediated eight cases.[25] Additionally, SDMC requires its applicants to co-mediate at least eight cases under the auspices of an experienced volunteer or staffer, and at the end of this training regimen, the applicant must mediate a simulated "case" while being evaluated by a trained grader. The performance-based exam assesses the applicant's competence in a number of areas.[26] If the applicant passes the test, he/she receives a credential; if the grade is sub-par, the applicant receives feedback and is offered an opportunity to take the test again under similar conditions. The credentialing program, with its stress on process as opposed to subject-matter expertise, was designed to pre-empt regulation or credentialing initiatives that might freeze out nonlawyers. Ironically, given most community centers' focus on maintaining open access to the field, the SDMC credentialing program remains the most stringent gatekeeping measure, in that it is the only qualifying initiative in the community that requires that applicants actually mediate under a grader's watchful eye. In seeking to preempt harsher measures, the credentialing program has the potential to be the process that puts applicants through the most paces.[27]

Our group was untroubled by the lack of uniform standards. When talk turned to licensing or mandatory credentialing, many expressed skepticism that mediation's diversity could be preserved

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25 Developed in 1993, the curriculum of the San Diego Mediation Center ("SDMC") Mediator Credential to some extent reflected the best national research then available on mediator standards, as well as the collective experience of SDMC as a long-standing mediation trainer and provider. To receive the Mediator Credential, an individual must demonstrate competency in conducting the mediation process according to identified strategies, skills and techniques. Specifics on the program *available at* http://www.sdmediate.com/htdocs/training/Credentialing.html

26 The grading criteria, as well as two other sets of grading criteria that express somewhat different values, have been published in CHRISTOPHER HONEYMAN, PERFORMANCE-BASED ASSESSMENT: A METHODOLOGY, FOR USE IN SELECTING,TRAINING AND EVALUATING MEDIATORS (Test Design Project, 1995). Initially published by the National Institute for Dispute Resolution, Washington, DC, this has been republished electronically *at* www.convenor.com/madison/performa.htm (last visited Jan. 22, 2004).

27 *See id*.

and encouraged by a one-size-fits-all regulatory scheme. As one table group noted, different cases require different types of intervention: "a divorce case where there are no children is very different than a divorce case with children because of the need for a continuing relationship between the parties. . ."

After rejecting the viability of universally applicable regulatory structures, some of our numbers returned to the market as the unseen hand that would reward excellence and rebuke incompetence. Others, however, questioned the efficacy of the market, given widespread consumer ignorance about mediation suppliers and given the various advantages that large, well-established providers enjoy. Some felt that the market would function more effectively as a spur to excellence if government funds were distributed in smaller chunks to a larger number of providers, thereby fostering the sort of healthy competition that exists in other industries.

The vexing question, "how does a quality control mechanism account for the necessary heterogeneity of practice that different dispute contexts require?" at first sight might seem a challenge to the orthodoxy of a prominent provider that has enjoyed — and provided for others' successes that are remarkable by most mediation community's standards. But we felt that, squarely faced, this problem and its parallels discussed above ought to be susceptible to the energy and dedication already shown by the San Diego mediation community. We would like to thank our colleagues for putting some long-simmering issues on the table, and we hope the forthright discussion this engendered will kick-start some "next generation" thinking about what the San Diego Mediation Center, the private sector, and the courts might do next.