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THE PSYCHOLOGY OF CONFLICT: MEDIATING IN A DIVERSE WORLD
By
Samantha Skabelund*

I. INTRODUCTION

Paul Randolph,¹ a lawyer in the United Kingdom,² wrote *The Psychology of Conflict: Mediating in a Diverse World*.³ Randolph wrote the book to give an account of how philosophy and psychology⁴ can beneficially influence mediators, whether they be attorneys, police officers, or other individuals acting as the middle man during conflict resolution.⁵ The book's goal is to reduce the skepticism many individuals feel about the use of psychology in a legal setting, particularly for reaching settlement agreements. Randolph guides the reader through a brief history on the philosophy of Existentialism, then through how Existentialism and psychology are intertwined. Ultimately, he applies the two theories to mediation and explains how mediation can be more successful by applying knowledge of philosophy and psychology.

While the book provides a clear explanation of philosophy and psychology's influence on mediation for both those who are knowledgeable and unfamiliar with mediation, the book lacks internal citations⁶ to support the multiple claims about psychology,⁷ which distracts the reader from ascertaining whether the stated "fact" is merely Randolph's opinion or one largely held "true" in the field of psychology. The lack of citations can be categorized into a common psychological principle known as *post hoc* fallacy. *Post hoc* fallacy occurs when someone determines X caused Y because X came before Y.⁸ For example, an individual may go to a new, popular restaurant and fall ill the

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¹ Paul Randolph is a barrister and accredited mediator in the United Kingdom. He started his career as a litigator but later turned to mediation. He works at Regent University London, specifically with the course on Mediation Skills. He has led many successful mediations and is a member of multiple European-based mediation groups and the International Bar Association (IBA) (PAUL RANDOLPH, *THE PSYCHOLOGY OF CONFLICT: MEDIATING IN A DIVERSE WORLD* viii-ix (2016)).

² *See id.*

³ PAUL RANDOLPH, *THE PSYCHOLOGY OF CONFLICT: MEDIATING IN A DIVERSE WORLD* (2016).

⁴ *Id.* at xvii. Randolph did not include philosophy in the book's title but philosophy intertwines throughout the book's chapters.

⁵ *Id.* at xviii.

⁶ *See, e.g., infra* Section IV and notes 44-45.

⁷ *See infra* Section II.

⁸ *See, e.g.,* Christopher M. Layne et. al., *Causal Reasoning Skills Training for Mental Health Practitioners: Promoting Sound Clinical Judgment in Evidence-based Practice*, 8.4 TRAINING & EDUC. IN PROF. PSYCHOL. 292, 293-94 (2014).

next day. The individual concludes he fell ill because of the restaurant's food, never returns, and ignores any other possibility that may explain his illness. In the realm of psychology, *post hoc* fallacies run rampant, particularly when there is nothing to support a correlation of the two actions.⁹ Randolph's book does provide wonderful insight into what *might* influence mediation and *could* help mediators in their quest for successful conflict resolution; however, the lack of reliable sources supporting his claims makes it difficult to know if Randolph is stating a fact or merely making a personal observation.

II. OVERVIEW

The Psychology of Conflict contains ten chapters, each of which is divided into smaller subsections. Randolph's first chapter delves into Existentialism, a philosophical school of thought, and explains how Existentialism is pertinent to mediation and psychology.¹⁰ The subsequent chapters focus on psychology and mediation with Existentialism woven throughout. Randolph's fluid writing style and clear illustrations¹¹ of various principles throughout the book makes it easy for the reader to follow along and understand the connections he makes to unite the three subjects. Randolph combines the three topics in a way that an individual with little or no knowledge of any of the subjects would be able to understand Randolph's goal is to help mediators prepare for unforeseen mediation circumstances and how to handle them appropriately.

While each chapter generally discusses mediation in some way, it is often mentioned vaguely or sporadically throughout the chapter. The periodic references prevent the reader from knowing if the chapter will provide a key application of mediation. Because of the inconsistent references to mediation, each chapter requires the reader to deduce how mediation relates to the chapter.¹² The reader is not given a detailed analysis of the book and the previous chapters' relation to mediation until chapter eight.¹³ A brief thesis at the beginning of the chapter may provide a simple solution. This would not complicate the book's format but could sharpen the reader's focus and allow the reader to glean more information from each chapter. Furthermore, while there is a bibliography at the end of the book, the references are rarely cited in the text of the book, leaving the reader with the responsibility of sorting how each reference connects to the claims made throughout the book.¹⁴

⁹ See discussion *infra* Section VIII.

¹⁰ RANDOLPH, *supra* note 3, at 1-26.

¹¹ See, e.g., *id.* at 70 (providing an example of a family argument upsetting a child who storms off to illustrate how exiting a conflict that damages an individual's self-esteem is a type coping mechanism).

¹² *But see id.* at 89. Randolph starts the chapter by relating the subject matter, interpersonal relationships, to the mediator and explaining how the chapter will directly relate to mediation within the first paragraph. The chapter provides a clear direction to the reader who is then able to read the chapter and understand the progression and purpose of its inclusion in the book.

¹³ *Id.* at 115-47.

¹⁴ *Id.* at 191-92.

III. EXISTENTIALISM – ITS RELEVANCE TO CONFLICT AND DISPUTE RESOLUTION

Chapter one explores the development and theory behind Existentialism in a successful attempt to succinctly explain a philosophy discussed in many writings that are largely beyond the comprehension of a reader who has not extensively studied Existentialism.¹⁵ The essence of Existentialism¹⁶ is exploring how the individual copes with the various circumstances of life through acting of his or her free will.¹⁷ While there are many schools of thought in philosophy, Randolph focuses exclusively on Existentialism, which reduces the confusion a reader may encounter with the combination of philosophy, psychology, and mediation.

Randolph focuses on many of the key philosophers who influenced the development of Existentialism. First, Randolph discusses Soren Kierkegaard,¹⁸ who theorized that “objective truths” do not exist; rather, only an individual’s evaluation and decision on what is a “truth” exists.¹⁹ Therefore, truths are only what an individual has decided is true and are not universal.²⁰ Randolph then explains how a mediator could use such understanding for the parties involved to explore what each party believes to be a truth and to empathize with such truths.²¹

Randolph then discusses Edmund Husserl.²² Husserl examined how individuals create assumptions about the world and are unable to see an item, situation, or event as it truly is due to these assumptions.²³ A mediator may be able to more successfully mediate by attempting to pause these assumptions and, therefore, see the situation in its true form.²⁴

Heidegger is the third, and perhaps the most influential, philosopher Randolph introduces.²⁵ Heidegger’s contribution came through an analysis of time: Heidegger

¹⁵ See RANDOLPH, *supra* note 3, at 2.

¹⁶ See generally KEVIN AHO, EXISTENTIALISM: AN INTRODUCTION (2014).

¹⁷ RANDOLPH, *supra* note 3 at 5.

¹⁸ See generally SOREN KIERKEGAARD, THE CONCEPTS OF ANXIETY: A SIMPLE PSYCHOLOGICALLY ORIENTED DELIBERATION IN VIEW OF THE DOGMATIC PROBLEM OF HEREDITARY SIN (Alastair Hannay trans., Liveright 2014) (1844).

¹⁹ See RANDOLPH, *supra* note 3, at 7-8.

²⁰ *Id.*

²¹ *Id.* at 9.

²² *Id.*

²³ *Id.* at 10.

²⁴ RANDOLPH, *supra* note 3, at 10-11.

²⁵ *Id.* at 13.

theorized that time is conceptualized by experiences rather than through linear progression.²⁶ For example, a bored schoolchild may watch the clock and feel as though each technical minute lasted an hour while the same child may feel a technical minute at an amusement park was merely a second. Parties in mediation may feel similarly about the experiences that brought them to mediation; although the time the parties spent together in the events that lead to mediation may not amount to much the parties may feel the time amounts to something longer and feel as though a large portion of their time was wasted.²⁷

Randolph then discusses philosopher Merleau-Ponty who largely studied individual perceptions or feelings and how those feelings influence an individual's reactions in various settings.²⁸ For instance, a stomach churning may cause an individual to conclude that a specific situation is unsafe and that an escape is necessary. A mediator should try to observe the parties' perceptions, particularly ones that make them feel negatively, to understand the shifting current of the mediation and try to create positive reinforcement.²⁹

Lastly, Randolph addresses Jean Paul Sartre, who theorized that individuals are created purely through personal choices.³⁰ However, when individuals rely on others' opinions of themselves, their sense of self balances upon the other's opinion. In mediation, when an individual may be attacked for their actions, reliance on such judgments as a determination of self may create highly stressful situations where the individual may feel that his or her self-identity has been attacked.³¹

The chapter's flow is continuous and builds from the first paragraph. Yet, a sentence within the first paragraph provides a shocking revelation to the reader: "[A]ll human beings, irrespective of their birthplace or the environment in which they were nurtured, share a clear majority of identical characteristics and qualities."³² Such a sweeping statement may quickly set the reader on edge, wondering how nature seems to have so clearly overpowered nurture.³³ Does the application of Existentialism truly reach beyond all cultural spheres and apply to everyone? A quick examination of the positions of the philosophers discussed in the book might support answering "no" to the latter

²⁶ RANDOLPH, *supra* note 3, at 13.

²⁷ *Id.*

²⁸ *Id.* at 18.

²⁹ *Id.* at 19.

³⁰ *Id.* at 22.

³¹ See RANDOLPH, *supra* note 3, at 23. Randolph does not directly state how Sartre's ideas apply to mediation but, through his description, implies a connection.

³² *Id.* at 1. Randolph implies that the "characteristics and qualities" humans share the ideas and theories established in Existentialism but never specifically defines what characteristics and qualities we all share.

³³ See generally Charles L. McLafferty, Jr., *Examining Unproven Assumptions of Galton's Nature-Nurture Paradigm*, 61.2 AM. PSYCHOLOGIST 177 (2006) (explaining the nature versus nurture theory in psychology analyzes how an individual develops into the "self." Self-development under this theory either comes innately or from upbringing.).

question. For example, each philosopher cited in the book came from a Western country.³⁴ The book briefly discusses a South African philosophical theory called Ubuntu,³⁵ but ignores any other connections with Existentialism throughout other cultures in the world.³⁶ So while the book's claims may be applicable in Western cultures, and perhaps in South Africa, the application may not extend as far as Randolph implies. Lastly, a broad statement like the one above may cause the reader to question the credibility of the remainder of the book.

IV. THE ROLE OF THE MEDIATOR – A PSYCHOLOGICAL PERSPECTIVE

If someone were to pick up this book and knew nothing of mediation, the reader would likely find many answers to their questions in chapter two. First, Randolph explains the purpose of mediators. Many may wonder how bringing in a stranger to the situation is beneficial. Randolph explains that a mediator's ideal purpose is to gently nudge one or both parties into slightly different stances so a settlement may be reached.³⁷ By subtly prodding the parties to new ideas faintly askew from the original stance, a mediator helps guide the dispute into an arena that may allow for a resolution.³⁸ The mediator's role is to help create a comfortable atmosphere and not adopt the role of an adult explaining to child how the parties are being illogical.³⁹ Randolph carefully explains how each party will believe their view of the situation to be the truthful, correct view, which references Kierkegaard's philosophy.⁴⁰ Randolph then implies a mediator must approach the situation

³⁴ See e.g., Soren Kierkegaard, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (July 8, 2016), <https://plato.stanford.edu/entries/kierkegaard/> (referencing Kierkegaard's Danish nationality); Martin Heidegger, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Oct. 12, 2011), <https://plato.stanford.edu/entries/heidegger/> (stating Heidegger was born in Germany); Edmund Husserl, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Nov. 1, 2016), <https://plato.stanford.edu/entries/husserl/#LifWor> (referencing his birthplace as modern day Czech Republic and a large German influence in his education); Maurice Merleau-Ponty, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Sept. 14, 2016), <https://plato.stanford.edu/entries/merleau-ponty/> (stating Merleau-Ponty's nationality as French); Jean-Paul Sartre, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Dec. 5, 2011), <https://plato.stanford.edu/entries/sartre/> (implying Sartre's French nationality throughout the entry).

³⁵ RANDOLPH, *supra* note 3, at 23-24 (“This traditional African philosophy approximates extraordinarily closely to Existentialism and the ideas of Heidegger. It emphasizes man's common humanity; the connectedness and interdependence of man as a human being.”).

³⁶ See EDWARD W. SAID, ORIENTALISM 107 (Vintage, 25th Anniversary ed. 1979) (“[T]o apply psychology and mechanics of Western political institutions to Asian or Arab situations is pure Walt Disney.”) (citing HARRY LEVIN, THE GATES OF HORN: A STUDY OF FIVE FRENCH REALISTS 285 (1963)).

³⁷ RANDOLPH, *supra* note 3, at 28 (suggesting that a mediator may offer small changes in the party's expectations, such as slightly reducing the amount of money demanded, to help the parties ease into a settlement agreement rather than hold firm to their initial expectations.).

³⁸ RANDOLPH, *supra* note 3, at 28.

³⁹ *Id.* at 30-31.

⁴⁰ *Id.* at 29-32.

not in an attempt to show the parties the objective truth. Rather, a mediator should use the subjective truths to connect with the parties for a, hopefully, more successful mediation.⁴¹

Randolph explains that the mediator is there to help the parties realize what commonalities they may actually have with one another.⁴² Parties may have an ultimate goal, such as finalizing a divorce proceeding, but may differ on the steps needed to actualize the goal.⁴³ The mediator will need to gain the confidences of the parties to facilitate a negotiation where the parties will listen to suggestions from the mediator,⁴⁴ albeit gentle suggestions, to avoid offending the parties and their closely held “truths.”

At the end of the chapter, Randolph states, “[t]he ability . . . to create trust and rapport is rarely intuitive . . . [but] is the product of intense and meticulous training.”⁴⁵ He then provides great insight as to what mediators should do and what type of characteristics the mediator should possess.⁴⁶ Yet, even with the suggested “to-dos” and “should-dos” the reader is left with little guidance about how to gain accomplish those goals. Here, Randolph could have included suggestions⁴⁷ of how to start implementing his recommendations through changes in everyday habits and drills which would push the book from merely interesting but applicable to the reader.

Upon finishing the chapter, the reader may feel quite informed on the purpose of a mediator and what methods to start applying to conflicting parties. Yet, through a holistic review of the chapter, the reader may necessarily ask if the statements made throughout the chapter as fact are actually facts. As stated previously, the book lacks sufficient citations for the claims it makes;⁴⁸ chapter two if the first chapter where the lack of citations truly leaves the reader in doubt about the claims made in the book.

Unsubstantiated claims in psychology often bring confusion because they can appear to be true but other facts may ultimately contradict them. For example, one statement could be “that individuals with many acquaintances are more confident than those with few acquaintances.” Those who read that may instantly believe the statement is true by reasoning that those with confidence be less wary of people’s opinions and, therefore talk to more people. The opposite statement, though, “that individuals with many acquaintances are less confident than those with few acquaintances,” may likewise be believed as true. Again, someone may justify the statement by rationalizing that less-

⁴¹ See RANDOLPH, *supra* note 3, at 31-32 (applying the “truths” to various people in the mediation, including attorneys, but never directly stating the beneficial use of such knowledge).

⁴² See *id.* at 33-34.

⁴³ *Id.* at 33-34.

⁴⁴ *Id.* at 35-37.

⁴⁵ *Id.* at 37.

⁴⁶ See RANDOLPH, *supra* note 3, at 38.

⁴⁷ See generally MICHAEL D. LANG & ALISON TAYLOR, MAKING A MEDIATOR: DEVELOPING ARTISTRY IN PRACTICE (2000). The reader may benefit from a citation such as the one listed here. The citation provides information on how to implement the knowledge provided throughout the book.

⁴⁸ See discussion *supra* Section I and note 6.

confident people surround themselves with many people to appear confident or copy those around them. Both statements cannot be true. Multiple published studies can help establish which statement is the norm and, therefore, a general standard to follow. Therefore, if Randolph uses sources to support the many claims throughout the chapter, the reader will be able to determine that the book provides a studied norm and not a generalized statement that sounds true.⁴⁹

V. EMOTIONS

Chapter three explores the world of emotion with the thesis that emotions are a key aspect in explaining the actions and decisions individuals make throughout life.⁵⁰ Randolph states that to successfully mediate, a mediator needs to understand emotions and the influence they will have throughout the proceedings.⁵¹ In his initial analysis, Randolph returns to Sartre and explores Sartre's theory of emotional categorization, which posits that emotions are either reflective or unreflective.⁵² Unreflective emotions are immediate reactions to surroundings, or in other words, emotions that are not reflected upon before feeling.⁵³ For example, a teacher whose student just threw up on his desk may instantly feel disgust without much consideration, making disgust an unreflective emotion. Conversely, reflective emotions are consciously considered thoughts which result in an emotion. The teacher may, for example, feel guilt for feeling disgusted when a student is clearly ill and needs attention. The guilt is a reflection upon the situation and thereby exists within the teacher. In mediation, a party may not know the origin of their emotion, such as disgust or anger. Randolph suggests when a mediator recognizes the parties' change in emotion the mediator can "explore and investigate" to understand why the parties' reacted that way and understand what each party values.⁵⁴

Overall, emotions, particularly the unreflective emotions felt during the mediation, are what may control the entire process. Randolph suggests that conflicts persist because of emotion and that if pure logic, which lacks emotion, were to rule, then the conflict would end naturally with the most logical solution.⁵⁵ As suggested in chapter two, though, the

⁴⁹ See generally Peter T. Coleman et al., *Putting the Peaces Together: A Situated Model of Mediation*, 26.2 INT'L J. OF CONFLICT RESOL 145 (2015) (exploring the various factors in mediation that affect the process and outcome. This citation is merely one example of the type of citation that supports the claims within the chapter and would benefit the reader.).

⁵⁰ RANDOLPH, *supra* note 3, at 44.

⁵¹ *Id.*

⁵² *Id.* at 44-45.

⁵³ *Id.*

⁵⁴ *Id.* at 49; see discussion *infra* Section VII.

⁵⁵ RANDOLPH, *supra* note 3, at 50-51.

mediator cannot rely on logic to resolve the conflict.⁵⁶ Therefore, the mediator may “investigate the emotions that have already surfaced and have been revealed,” to understand how the parties are experiencing the situation.⁵⁷ Emotions can dictate how each party is going to react to various compromises throughout the mediation.⁵⁸ Randolph explains why emotions may dictate the parties’ decision through what he calls “amygdala hijacking.”⁵⁹ When under a large amount of stress, a portion of the brain, the amygdala, takes over to ensure the individual leaves unscathed⁶⁰ by provoking a fight, flight or freeze response.⁶¹

The chapter ends abruptly without relating how the knowledge of amygdala hijacking could potentially help the mediator do anything other than expect the worst.⁶² There are publications that provide information on how to handle an amygdala hijacking which support Randolph’s claims and would explain how a mediator could potential handle such a situation.⁶³ The repetitive feeling of “expecting the worst” prevailed throughout the entire chapter. Each discussed emotion involved confrontational emotions, which may be common in mediation. Without further citations or discussion to support why only confrontations emotions were evaluated, the reader is left wondering how non-confrontational emotions can affect mediation. For instance, if an individual is despondent throughout the mediation and willing to concede on nearly every point, the chapter provides no clues on how to handle such an individual. What of an individual who is inexplicably jovial? Would there be a way for the mediator to create a situation where an amygdala hijacking is not likely to occur and the parties may remain relatively calm?⁶⁴ Furthermore, what does a mediator do if the party freezes and is unable to make any decisions throughout the mediation? The reader is left with these questions and nothing to suggest answers may be found in the subsequent chapters.

⁵⁶ See discussion *supra* Section IV.

⁵⁷ RANDOLPH, *supra* note 3, at 49.

⁵⁸ *Id.* at 52.

⁵⁹ *Id.* at 54-55.

⁶⁰ *Id.*

⁶¹ See generally Tsachi Ein-Dor et. al., *Attachment Insecurities and the Processing of Threat-related Information: Studying the Schemas Involved in Insecure People’s Coping Strategies*, 101.1 J. OF PERSONALITY & SOC. PSYCHOL. 78 (2011).

⁶² See RANDOLPH, *supra* note 3, at 56-57.

⁶³ See Daniel Goleman, *Don’t Let a Bully Boss Affect Your Mental Health*, DANIEL GOLEMAN (Feb. 20, 2016), <http://www.danielgoleman.info/dont-let-a-bully-boss-affect-your-mental-health/>.

⁶⁴ See generally Roger Walsh, *What is Wisdom? Cross-Cultural and Cross-Disciplinary Syntheses*, 19.3 REV. OF GEN. PSYCHOL. 278 (2015) (intersecting emotions, Existentialism, wisdom, cross-cultural differences, virtue, and interdisciplinary research into one paper. This article in another source that could have supported or provided further information to help the reader apply the information provided in the chapter.).

VI. SELF-ESTEEM

Eeyore, a character from Winnie-the-Pooh, is famous for his droning attitude toward life and may be categorized as having a low self-esteem.⁶⁵ While self-esteem is often mentioned in casual conversation, chapter four explores what self-esteem truly means and how it influences decisions. The chapter starts by implicitly referencing Sartre.⁶⁶ An individual's desire to be seen positively by others and self-esteem, or an overall view of self, can dictate the daily decisions an individual may make.⁶⁷ Randolph goes so far as to claim that although mediators may "emphasize that they are entirely neutral . . . the parties will nevertheless endeavor constantly to secure the mediator's approval" because their potential high self-esteem hinges upon the mediator believing the party's side is the better position of the two.⁶⁸ Indeed, self-esteem's fragile nature makes it susceptible to damage when individuals, who believe their actions bear no fault, are harshly criticized for such actions and may feel humiliated.⁶⁹ Likewise, self-esteem's delicate nature exists not only in an individual, but in a community setting, as well.⁷⁰ Communities, or community-like organizations, may feel humiliation when they are harshly criticized in an action they believed to be neutral, or even wholesome.

To retain a sense of dignity throughout the mediation and avoid humiliation, the parties will need to feel as though they, as individuals, have value, have been treated with respect, and that they have not relinquished total control to the other party.⁷¹ Individuals or communities may measure their self-esteem based on their treatment by others.⁷² Therefore, when entering mediation, the parties' self-esteem will be determined by how they are treated by the other parties and the mediator.⁷³ When individuals feel their self-esteem lowering due to an "unnecessary" attack they will do their best to assert or regain control over the situation.⁷⁴ Yelling, biting comments, interruptions, walk-outs, and other similar actions may occur when the parties feel threatened and want to regain previously

⁶⁵ See, e.g., *Do You Suffer from the Eeyore Syndrome?*, ANYTIME FITNESS BLOG (Nov. 8, 2012), <http://blog.anytimefitness.com/395013-do-you-suffer-from-the-eyore-syndrome/> (last visited May 2, 2017).

⁶⁶ RANDOLPH, *supra* note 3, at 59; see discussion *supra* p. 4.

⁶⁷ *Id.* at 60-61.

⁶⁸ *Id.* at 63.

⁶⁹ *Id.* at 64.

⁷⁰ *Id.* at 65-66.

⁷¹ RANDOLPH, *supra* note 3, at 66-67, 72-73.

⁷² *Id.*, at 67.

⁷³ See *id.* at 66-68.

⁷⁴ *Id.* at 69.

perceived value and respect from others.⁷⁵ For many, mediation is akin to walking into an unknown situation; this can result in a perceived loss of control and heightened anxiety, which combine together for the parties' desire to retain control so as to prevent an attack on their self-esteem.⁷⁶

Chapter four ends strongly by providing keen insight into strategies the parties may take to ensure their self-esteem is not damaged and some strategies the mediator may employ to ensure more success in mediation. Randolph explains that, to protect their self-esteem, the parties may (1) fight over the venue of the mediation in an attempt to have an "on-the-court-advantage;" (2) avoid presenting their argument first; (3) be reluctant to reveal information; and (4) ensure they are the last party to "win" an aspect of the dispute.⁷⁷ Lastly, a mediator may do well to have the parties realize the other side also has feelings.⁷⁸ This may help temper the parties' full attempt to resist any compromise.⁷⁹ Therefore, if a party concedes to a request from the opposing party, the concession may not feel like an attack to self-esteem but a reasonable course given the circumstance.⁸⁰

Although chapter four ends strongly, the chapter does not fully analyze self-esteem. First, Randolph states that self-esteem is continually adjusting.⁸¹ So, if there are moments of vulnerability, there can also be moments of confidence to the point of cockiness.⁸² The chapter focuses solely on parties feeling humiliated and feeling their self-esteem was being attacked. Yet, one or more parties may enter a situation with a "high" self-esteem and a perception of having done nothing wrong, and perhaps may be completely unwilling to negotiate because of such confidence in their "truth." The reaction from this party may be dramatically different from the party who does feel their self-esteem under attack. Thus, the reader is left wondering what other situations may arise due to self-esteem that are not explored in the chapter, or even briefly mentioned.

The chapter's greatest flaw may be its topic: self-esteem. Self-esteem is used in psychology as a holistic measure of self-worth or individual value.⁸³ Yet, another term in psychology, self-efficacy, may be more appropriate for the book's overall subject matter. Self-efficacy is an individual's measure of their performance of a specific task and is often

⁷⁵ RANDOLPH, *supra* note 3, at 69-70.

⁷⁶ *Id.* at 70-74.

⁷⁷ *Id.* at 74-75.

⁷⁸ *Id.* at 75-76.

⁷⁹ *Id.* at 75-76.

⁸⁰ *See* RANDOLPH, *supra* note 3, at 76.

⁸¹ *Id.* at 60.

⁸² *Id.* at 60-62.

⁸³ *See, e.g.,* Kendra Cherry, *What is Self Esteem?*, VERYWELL: PSYCHOLOGY (Aug. 31, 2016), <https://www.verywell.com/what-is-self-esteem-2795868>.

closely related to an individual's self-esteem.⁸⁴ For example, an individual's measure on his ability as a teacher would be self-efficacy, but self-esteem would be his overarching measure of self in all aspects of his life. Therefore, in mediation, the parties' overall self-esteem may be affected, but their self-efficacy in a specific area may be affected more than their self-esteem and could readily explain variations in the parties' reactions during mediation. If a plumber is accused of "shoddy" work done on an office building which results in mediation, the plumber's self-efficacy is based on his ability to perform as a plumber. The building manager, representing the business that contracted the plumber, may feel a more communal self-efficacy for the business and the loss of money they incurred from the poor plumbing. Therefore, each party may react differently to various demands. The mediator, armed with the knowledge that each party may have drastically different reactions, may be able to better judge how to approach each party. For example, the mediator may need to ensure the plumber does not feel attacked in his ability to perform his job, and the manager does not feel the business is being manipulated through spending money on an underqualified plumber.⁸⁵

Furthermore, the mediator may be able to foresee some of the connection between the self-efficacy and self-esteem of the parties. The plumber may have a large amount of his business and personal finances invested in the costs and labor of plumbing the building which may cause the situation to be personal and reach into more than one aspect of his life. The business, though, may have multiple buildings and the poor work in one building likely does not affect the company's overall self-esteem, but merely their self-efficacy in ability to hire plumbers. The mediator, therefore, will go into the situation expecting the plumber to feel more readily attacked than the manager, and be able to adjust accordingly, and expect what will likely be "the worst" from each party.⁸⁶

While chapter four is perhaps one of the strongest chapters in providing relatable examples to apply the information about self-esteem, at least one example may not be entirely accurate. Randolph gives an example about how individuals become bullies.⁸⁷ He states that bullies are individuals with low self-esteem who try to belittle others to assert control, which helps give them a temporary sense of dominance (and feeling a rise in the bullies' self-esteem).⁸⁸ The issue with this example is that it may not be true, as some studies suggest that bullies may have high or low self-esteem,⁸⁹ which undermines the beneficial nature of the example. If the book is relying on incomplete definitions that may exclude important aspects of the truth, the reader may be left with information and ideas

⁸⁴ See generally Antonella D'Amico & Maurizio Cardaci, *Relations Among Perceived Self-Efficacy, Self-Esteem, and School Achievement*, 92.3 PSYCHOL. REP. 745 (2003).

⁸⁵ Randolph does not discuss self-efficacy. Therefore, the example provided is not Randolph's creation.

⁸⁶ See discussion *supra* Section V.

⁸⁷ RANDOLPH, *supra* note 3, at 74.

⁸⁸ *Id.*

⁸⁹ See generally Phillip C. Rodkin, Dorothy L. Espelage, & Laura D. Hanish, *A Relational Framework for Understanding Bullying: Developmental Antecedents and Outcomes*, 70.4 (2015) (finding that bullies can have high and low self-esteem depending on the various categories of bullies).

on how to handle mediation that may not be entirely accurate. Ultimately, the reader may go into mediation and expect one scenario based on the book's examples and find a completely different situation unfolding and be unsure of what to do.

VII. VALUES, SEDIMENTATIONS AND POLARITIES

“[C]hoose you this day whom ye will serve . . . but as for me and my house, we will serve the Lord.”⁹⁰ An individual with strong religious values may enter mediation with a firm mindset on how their religious beliefs will guide their decisions throughout the mediation. Such mindsets, as explored in chapter five, can reveal various approaches a mediator may take during mediation.⁹¹ First, an individual's personal value system will be associated with the individual's self-esteem.⁹² How individuals determine if they are being shown respect may depend upon their values and, in turn, dictate the reaction the individual may deem necessary to diminish a threat to their values.⁹³ For example, a party may have a strong value on speaking softly in any situation. In the face of confrontation, therefore, the party may simply walk-out to show control, diminishing the threat rather than breaking his or her value system by yelling. The mediator, then, should attempt to learn and understand the various parties' values, knowing the values allows the mediator to “work with [those values], rather than against them.”⁹⁴

Another mindset an individual may have is what Randolph calls “sedimentations.” Sedimentations are values that become so entrenched in the individual that they will not compromise if it requires changing their sedimentations.⁹⁵ The adage, that “you can't teach an old dog new tricks,” is an example of a sedimentation that states an older individual is unlikely to learn and adapt to new values. If a mediator can detect which values have become sedimentations for the parties, the mediator may be able to set boundaries in their attempts to lightly maneuver the party into a different stance.⁹⁶ By avoiding collision with the parties' sedimentations, the mediator shows the parties respect and allows the mediation to continue when the opposing party questions the other party's strict values in mediation.⁹⁷

Next, the chapter examines polarities: when an individual prefers something in a particular manner, they may have an aversion to the opposite.⁹⁸ One of the examples

⁹⁰ *Joshua* 24:15 (King James).

⁹¹ See RANDOLPH, *supra* note 3, at 77.

⁹² *Id.*

⁹³ See *id.* at 79.

⁹⁴ *Id.* at 79.

⁹⁵ *Id.* at 80-81.

⁹⁶ RANDOLPH, *supra* note 3, at 81.

⁹⁷ See *id.* at 82.

⁹⁸ See *id.* at 82-83.

mentioned above is a party who valued speaking softly. The polarity of that would be that the party likely abhors yelling. Polarities provide the mediator with another tool of measurement during mediation; the parties' polarities set a scale of what they will and will not accept. The mediator can recognize the boundaries in place by learning such polarities before offending the parties by attempting to cross such boundaries.⁹⁹

Often, people's mindsets can be contradictory and create ambiguities. For example, a person may believe stealing is wrong yet does not believe there is an issue with downloading pirated music online.¹⁰⁰ Such ambiguities in values and polarities may cause the mediation to stall due to an inability to move forward without consciously rejecting either a value or polarity.¹⁰¹ Mediators have the unique opportunity to compare those ambiguities to help the party realize that the two values or polarities cannot coexist.¹⁰² The mediator may then be able to help the party realize which value or polarity is more important (or perhaps which is a sedimentation) and help the party reach a compromise on the less important value or polarity to ensure the mediation does not remain stalled.¹⁰³ After learning of each party's values, sedimentations, and polarities, the mediator may find the parties share some common mindsets. By exposing these mindsets to each party and establishing common grounds, feelings and antagonism to the other party may diminish and, likewise, help mediation progress.¹⁰⁴

The chapter clearly explains what the mediator should know and understand about the parties to help the mediation stay within boundaries comfortable for each party and prevent standstills from either party. Yet, the chapter does not delve into *how* the reader can discover an individual's values, sedimentations, and polarities. From first glance, the reader may feel the mediator is required to develop a personal friendship with the parties due to the level of intimate knowledge that seems required to learn the parties' values, sediments and polarities. Yet, the first time the mediator may meet any of the parties is the day of mediation.¹⁰⁵ There seem to be few options for the mediator other than to stumble around hoping values, sedimentations, and polarities magically express themselves early in the mediation so the mediator can use the knowledge throughout the remaining discussions. Again, the reader could greatly benefit from reference to current studies that

⁹⁹ RANDOLPH, *supra* note 3, at 83.

¹⁰⁰ Marc Chernoff, *8 Popular Contradictions People Make in Life*, MARC & ANGEL HACK LIFE, <http://www.marcandangel.com/2007/07/18/8-popular-contradictions-people-make-in-life/>.

¹⁰¹ *See* RANDOLPH, *supra* note 3, at 84-85.

¹⁰² *Id.* at 84.

¹⁰³ *Id.* at 85.

¹⁰⁴ *Id.* at 87.

¹⁰⁵ Gregorio Billikopf, *Pre-caucusing and Pre-mediation*, UNIVERSITY OF CALIFORNIA (June 26, 2009), <https://nature.berkeley.edu/ucce50/ag-labor/7article/article06.htm>. Billikopf explains the controversial nature of meeting with parties before the actual mediation but suggests that it may be beneficial; *see* discussion *infra* Section X.

suggest methods and strategies for individuals to gauge other's values and understand which values are more firm, or sedimentations.¹⁰⁶

VIII. INTERPERSONAL RELATIONSHIPS AND THE NEED TO BE HEARD

In the famous musical *Chicago*, the husband of the main character is greatly underappreciated and feels invisible, particularly from his wife.¹⁰⁷ Indeed, his only solo during the musical states:

And even without clucking like a hen
Everyone gets noticed, now and then
Unless, of course, that person it should be
Invisible, inconsequential me

Cellophane, Mister Cellophane
Should have been my name, Mister Cellophane
'Cause you can look right through me
Walk right by me and never know I'm there¹⁰⁸

The feelings the character expresses in his song are not unusual feelings for individuals to experience throughout life. Chapter six examines the psychological impact on individuals when they believe what they say is ignored.¹⁰⁹ Because Existentialists think the individual is created through personal decisions, the individual has a desire to express who he or she has become, which parallels with the desire to be heard.¹¹⁰ When others show an interest in what an individual says, the individual feels liked, appreciated and better about himself or herself.¹¹¹ During a conflict, if individuals feel their concerns are heard and respected, the likelihood of a conflict continuing decreases.¹¹² Throughout mediation the mediator will hear many different opinions and should practice "non-judgmental acceptance," or not criticizing but merely actively recognizing a different

¹⁰⁶ See generally Bridget R. Dunnavant & Heidi M. Levitt, *The Development of Wisdom in Judicial Decision-Making*, 43.1 THE HUMANISTIC PSYCHOLOGIST 1 (2015) (explaining what steps judges take to evaluate various values when deciding on their holdings.).

¹⁰⁷ CHICAGO (Miramax Films 2002).

¹⁰⁸ GOOGLE PLAY MUSIC, *Mister Cellophane*, https://play.google.com/music/preview/Tdx7vdr3jfjpi53vtuokbgzlb?lyrics=1&utm_source=google&utm_medium=search&utm_campaign=lyrics&pcampaignid=kplyrics&u=0# (last visited Oct. 4, 2016).

¹⁰⁹ RANDOLPH, *supra* note 3, at 92.

¹¹⁰ *Id.*

¹¹¹ See *id.* at 93.

¹¹² See *id.* at 94-95.

view.¹¹³ Therefore, even if the mediator does not agree with the parties' opinions, the parties feel heard and safe, decreasing the likelihood of a potential threat the parties may feel against their self-esteem.¹¹⁴

Again, the largest problem found within the chapter is the lack of citations to support the "need to be heard."¹¹⁵ While Randolph's description appears to fit in well with mediation, additional support is needed. Studies do exist, though, that may support his claims and make them stronger and provided further insight that would help the reader determine how to listen in a way that truly enables the parties to feel as though the mediator is actively listening to what they say.¹¹⁶ Randolph's clear writing style allows readers to easily engage in the text.

Lastly, the chapter briefly discusses interpersonal relationships. Randolph explains what may be signs of weak and strong relationships: weak relationships may be exhibited when partners worry about injuring the relationship and therefore "tip-toe" around each other's feelings and avoid conflict. Strong relationships, be they romantic, friendships, or even in the workplace, involve partners who reserve no qualms to fully express their emotions even to the extent of verbal abuse "without . . . concern that the relationship will end as a result."¹¹⁷ At first blush, these statements may appear logical. Yet, without citations and studies supporting these statements, stating the reverse allows the reader to feel such conclusions are likewise logical.¹¹⁸ A weak relationship could result where the partners are not reserved in verbally abusing the other because respect no longer exists in the relationship and the partners no longer care if they are together or apart. A strong relationship could be where the partners rarely engage in conflict but calmly discuss issues and ensure demeaning comments are avoided to prevent hurt feelings. Which statements are true remains unknown to the reader due to the lack of citations to support the claims. This is a prime example of the *post hoc* fallacy.¹¹⁹ Or, if all the claims are true in various circumstances, the value the two examples provided in the chapter have in assisting the reader in understanding interpersonal relationships remains unclear.

¹¹³ RANDOLPH, *supra* note 3, at 96.

¹¹⁴ *Id.* at 97.

¹¹⁵ *Id.* at 191-92. The bibliography only cites entire books or articles, none of which provide the reader with any indication that the "need to be heard" is discussed.

¹¹⁶ See generally Debra Davis et. al., *Priming States of Mind Can Affect Disclosure of Threatening Self-Information: Effects of Self-Affirmation, Morality, Salience, and Attachment Orientations*, 40.4 LAW & HUM. BEHAV. 351 (2016) (studying effective methods to persuade individuals in interviews to disclose potentially negative information about themselves).

¹¹⁷ RANDOLPH, *supra* note 3, at 90.

¹¹⁸ See discussion *supra* p. 7.

¹¹⁹ See discussion *supra* Section I.

IX. PERCEPTIONS, ASSUMPTIONS AND BIASES

Chapter seven explains how individuals make sense of the world around them through assumptions based on past experiences.¹²⁰ A crooked picture on a wall may cause an individual to believe a small earthquake caused the picture to become askew; another may think that someone accidentally brushed the frame with a shoulder as they entered the doorway next to the frame. Each of these are perceptions based on the individuals' personal life experiences and unique to the individual. The first may have grown up in an earthquake-prone area and naturally assumed that crooked picture frames were the result of earthquakes. Likewise, the other individual's experiences in life may have resulted in his or her perceptions about the frame.¹²¹

Mediators have the great ability to take individuals' perceptions about the world around them and help nudge the party toward a new perception.¹²² One party may be stuck in his or her assumptions about the other party based on the events leading up to the mediation; therefore, they may believe the other party to be untrustworthy.¹²³ To illustrate, imagine the opposing parties are siblings and a dispute arose over distributing their parents' estate. The older sister may perceive her younger brother as irresponsible and does not wish him to have any control over the remaining bank accounts because of a past addiction with gambling. The younger brother, though, may look at his sister and remember how poorly she treated her parents' house and the assets inside the house while they were growing up, and does not think she should have any access to the heirlooms remaining in their parents' home. The mediator is faced with the task of helping both siblings tweak, or even completely dissipate, their perceptions and work toward an amiable resolution.¹²⁴

Yet, in attempting to shift the perceptions and assumptions, the mediator may run into biases the parties' may have formed.¹²⁵ Biases can come in the form of creating teams to which people belong, an "either-you're-against-us-or-with-us" mentality.¹²⁶ In the movie, *School of Rock*, Jack Black's character teaches students at the school he "works" at about "the man" teaching them: "[T]he man ruined the ozone, and he's burning down the Amazon and he kidnapped Shamu and put her in a chlorine tank, okay! And there used to be a way to stick it to the man; it was called rock 'n roll."¹²⁷

The dichotomy of "the man" and those who "stick it to the man" is a foundation for bias creation. If someone is against "the man", those who appear to represent "the man"

¹²⁰ RANDOLPH, *supra* note 3, at 101.

¹²¹ *See id.* at 101-02.

¹²² *See id.* at 101.

¹²³ *Id.* at 105.

¹²⁴ *Id.* at 105-07.

¹²⁵ *See* RANDOLPH, *supra* note 3, at 107-08.

¹²⁶ *Id.* at 107.

¹²⁷ THE SCHOOL OF ROCK (Paramount Pictures 2003).

in some way are instantly disliked, perhaps through no fault of their own.¹²⁸ Therefore, life experiences seen through the influential eyes of self-esteem,¹²⁹ values,¹³⁰ and individual truths¹³¹ all contribute to the individual biases the parties may have in mediation. The mediator, confronted with a life of combined judgments and thoughts from the parties, may feel the need to overcome many biases. Randolph, though, suggests that a settlement does not require a complete about-face but that the mediator helping the party realize the compromise is “good enough” or satisfactory to reach a settlement.¹³²

Chapter seven is a great assimilation of many of the previous chapters. It effectively teaches a mediator how to use this knowledge to ensure a settlement, rather than reaching no solution. However, knowledge can only be assimilated if it exists. As noted earlier, many of the previous chapters do not show the reader *how* they can determine the values, truths, and self-esteem of the parties. When teaching someone how to make a birthday cake, a general instruction “take the cake, apply the frosting, and write the honoree’s name on top” will not suffice. Instead, the instructions need to include how to make the cake and frosting, tools needed to apply frosting, and what to use to write the name on top of the cake. Providing details to the reader so they can properly blend the information in the previous chapters and understand the perceptions and biases of the parties. If not, an insufficient mediation may occur where one or both parties leave confused by the mediator’s words and actions, though they were mere attempts to deduce the information provided in the book.

X. PRACTICAL APPLICATION OF PSYCHOLOGY IN THE MEDIATION PROCESS

Chapter eight applies psychology directly to the mediation process to help the reader, as a future mediator, successfully maneuver various situations that may arise.¹³³ The parties may enter mediation with the perceptions that mediation will be chaotic or the other party may enter with potentially harmful goals to vindicate, seek revenge, or humiliate, rather than merely resolve the issue.¹³⁴ Randolph suggests that mediators may need to guide the parties to introspection so these motivations may be “recognized and addressed” before the actual mediation process begins.¹³⁵ If the mediation begins with the parties focused on their retaliatory goals, rather than reaching a comfortable medium, the

¹²⁸ See RANDOLPH, *supra* note 3, at 108.

¹²⁹ *Id.* at 109-10.

¹³⁰ *Id.* at 112.

¹³¹ *Id.* at 107.

¹³² *Id.* at 114.

¹³³ RANDOLPH, *supra* note 3, at 115.

¹³⁴ *Id.* at 115-17.

¹³⁵ *Id.* at 120.

mediation may be over before it begins. The time spent on helping the parties create new goals for the mediation may usurp the mediation time and leave the parties ending mediation without a settlement.¹³⁶ If the parties enter mediation already having addressed their potential need for revenge and value the need for a solution, the mediation may have better results for obtaining a settlement.¹³⁷

Another important psychological step the mediator may take is through pre-mediation contact and venue selection.¹³⁸ When contacting the parties for initial information about the upcoming mediation, the mediator has an opportunity to create a feeling of trust between the party and the mediator.¹³⁹ Through attentive responses to questions concerning the procedural aspects of the mediation, the mediator can make the parties “overcome . . . anxieties and fears.”¹⁴⁰ Likewise, the mediator can further ensure the parties feel safe by inspecting the room before mediation to ensure the parties have “a safe and comfortable environment for the process.”¹⁴¹ With a safe environment, parties are less likely to enter the situation with their “guards up” or with the potential of additional irritations, such as feeling they will be overheard because of thin walls, that will distract from the mediation process.¹⁴²

During the actual mediation process, the mediator should establish “ground rules” that convey what behaviors will be allowed during mediation and consistently enforce these rules.¹⁴³ Rules provide the parties with the means of determining how the mediator will react in various situations, thereby diminishing uncertainty.¹⁴⁴ For instance, the mediator should establish a rule determining when he or she will call for pauses during the mediation if emotions become too tense. Therefore, the parties will never bear the responsibility of requesting a break because the other side has become too hostile.¹⁴⁵ With rules, the mediator can establish how the mediation will proceed, who will talk first, how each side will be given the opportunity to speak, and the mediator should explain why the mediator chose the order and specific procedures, so each party can understand and not feel jilted if not allowed or forced to present their argument first.¹⁴⁶ The mediator should

¹³⁶ RANDOLPH, *supra* note 3, at 120.

¹³⁷ *Id.*

¹³⁸ *Id.* at 120, 123.

¹³⁹ *See id.* at 121.

¹⁴⁰ *Id.* at 123.

¹⁴¹ RANDOLPH, *supra* note 3, at 123-24. (Randolph discusses how the mediator can ensure the room is “safe and comfortable” if the room is properly ventilated, has good lighting, large enough to fit the parties, and soundproof.)

¹⁴² *Id.* at 123-24.

¹⁴³ *Id.* at 133, 135.

¹⁴⁴ *Id.* at 133.

¹⁴⁵ *Id.* at 133.

enforce the rules in an empathetic manner, so as not to humiliate and belittle a party's self-esteem which may cause a party to distrust the mediator.¹⁴⁷ Gentle, empathetic application of rules can help show that the mediator understands why a party is having an emotional outburst and continually disrupting the other party. If the parties feel the mediator is attempting to help the discussion continue, rather than choosing a side, they are less likely to lose trust in the mediation process.¹⁴⁸

The mediator should be in control of three components of mediation: walk-outs, taking notes, and the actual settlement agreement.¹⁴⁹ When a party decides to leave abruptly, the mediator is faced with the situation of losing that party's trust.¹⁵⁰ The mediator should follow the party, allow anyone accompanying the party to follow as well, and discuss the situation with the disgruntled party.¹⁵¹ The mediator should comfort the party and address any attacks on self-esteem that occurred in the mediation to help the party feel ready to enter the room again. This allows the mediator to continue conducting the mediation.¹⁵² Randolph then discusses note taking.¹⁵³ Overall, he suggests that the mediator should avoid taking notes because the parties' biases and truths may cause them to believe the mediator is writing negative comments about them.¹⁵⁴ If a mediator does need to take notes, the mediator should tell the parties what he or she is writing to preserve transparency.¹⁵⁵ Lastly, mediators should allow for the proper amount of time to draft the settlement agreement, ensuring all the appropriate provisions are included.¹⁵⁶

Randolph suggests that joint mediation, or mediation when both parties are in the same room throughout the mediation process, is the most desirable format for mediation. He discusses the benefits,¹⁵⁷ potential disadvantages¹⁵⁸ and method of preparation for joint

¹⁴⁶ RANDOLPH, *supra* note 3, at 134-35. Parties may not want to go first to not tip their hand.

¹⁴⁷ *Id.* at 137.

¹⁴⁸ *Id.* at 138.

¹⁴⁹ *Id.* at 138-147.

¹⁵⁰ *Id.* at 139-40.

¹⁵¹ RANDOLPH, *supra* note 3, at 139.

¹⁵² *Id.* at 140.

¹⁵³ *Id.* at 140.

¹⁵⁴ *Id.* at 141.

¹⁵⁵ *Id.* at 141.

¹⁵⁶ RANDOLPH, *supra* note 3, at 145-47.

¹⁵⁷ *Id.* at 125-26 (stating benefits will include both sides feeling fully engaged in the process and the parties seeing the attorneys converse in a jovial manner. Randolph states these benefits will allow the parties to be more easily persuaded to mold their perceptions).

¹⁵⁸ *Id.* at 126-27 (providing disadvantages such as unpredictability of party behavior and the parties being anxious about being in the same room).

sessions. The discussion on joint sessions, though, leaves the reader slightly lost as to if it is truly beneficial, and why “[t]he benefits . . . will nearly always outweigh any disadvantages.”¹⁵⁹ The reader is merely told to “do what he or she is there do to: mediate”¹⁶⁰ without much guidance as to why mediating in a potentially contentious environment by joint mediation is better than mediating in multiple rooms.

Again, as in other chapters, the lack of citations makes it difficult for the reader to apply the information provided in the chapter. The reader is not given much insight to consider what will create a safe environment for the parties beyond general statements,¹⁶¹ and *why* those characteristics would make parties feel comfortable. By providing studies, or even firsthand accounts, that have examine what helps individuals feel safe in confrontation, the chapter’s conclusions may have been strongly supported. Because none were given, the reader must take the claims at face value without further support. Lastly, no studies or other suggestions are given in this chapter that discuss *applying* psychology to mediation. Randolph’s experience with mediation is extensive, but perhaps a compilation of mediators’ experiences could further support and make the chapter applicable to the reader.¹⁶²

XI. PSYCHOLOGY IN DIFFERING MODELS OF MEDIATION

Chapter nine offers the reader a unique opportunity to explore various types of conflict in mediation and the unique psychological aspects of each type of mediation.¹⁶³ Each evaluation of the type of mediation¹⁶⁴ throughout the chapter discusses the types of people the reader should expect at the mediation and their various psychological states. For example, in an employment dispute, a mediator’s need to assert control may be higher than in other situations because the outcome may wholly change one, or both, of the parties’ earning capacities.¹⁶⁵ As such, one party may quickly become agitated when accused of various wrongdoings when he or she feels that he or she did nothing wrong.¹⁶⁶ Likewise, in family mediation the mediator may need to anticipate more assumptions and perceptions

¹⁵⁹ RANDOLPH, *supra* note 3, at 126.

¹⁶⁰ *Id.* at 128.

¹⁶¹ *See id.* at 124 (stating the room should be ventilated and secure so as not to be easily overheard).

¹⁶² *See generally* Janice Yvette Watson, *Getting to the Heart of the Conflict: Mediator Perceptions of the Process of Mediation* (1997) (unpublished Ph.D. dissertation, University of Minnesota) (on file with ProQuest Dissertations & Theses A&I).

¹⁶³ RANDOLPH, *supra* note 3, at 150.

¹⁶⁴ *Id.* at 150-176 (discussing multiple types of mediation that focus of specific types of disputes, including: commercial, family, employment and workplace, community, neighbor, environmental, and restorative justice disputes).

¹⁶⁵ *Id.* at 164.

¹⁶⁶ *Id.*

than in other types of mediation.¹⁶⁷ In a divorce, the parties are more likely to have outside influence from family members that may cause them to shift their assumptions and perceptions more drastically than people in commercial mediation may.¹⁶⁸

While the chapter does have more citations,¹⁶⁹ the chapter does not include the helpful examples seen in previous chapters. The anecdotes in earlier chapters that helped the reader comprehend the various topics were strangely absent in a chapter that could be ripe with appropriate examples. Randolph could have strengthened the introductions of different mediation situations by providing specific examples which could benefit the chapter greatly to help the reader understand how the mediations may vary because of the type of dispute involved.

XII. THE FUTURE OF PSYCHOLOGY IN DISPUTE RESOLUTION

In the classic novel *Jane Eyre* a fortune teller visits the characters at Thornfield and offers to tell the characters their fortunes.¹⁷⁰ Many of the characters are eager to discover their future and rush in to meet with her and are astonished to hear the details she knows about each of them, particularly the skeptical Jane Eyre.¹⁷¹ Throughout Jane's time with the woman, though, it becomes apparent that the fortune teller is someone who knows the characters quite well and would be able to predict their fortunes based on the character's planned future interactions with the others.¹⁷² Within the realm of mediation, Randolph's extensive experience in mediation gives way to him to predicting what the future of mediation may hold. His experience with mediation is clear as the chapter progresses and various ideas are raised to address the future of mediation.

First, he states the need for individuals to more readily accept mediation to be rather than instantly relying on litigation as their dispute resolution tactic.¹⁷³ People know, to an extent, what to expect with litigation. Randolph claims that because of this knowledge, people unfortunately choose litigation over mediation,¹⁷⁴ even though litigation is generally more expensive, lengthy, and has negative health effects.¹⁷⁵ One way to create

¹⁶⁷ See RANDOLPH, *supra* note 3, at 158.

¹⁶⁸ See *id.* at 159.

¹⁶⁹ See *id.* at 155-57 (citing multiple sources for family mediation procedures).

¹⁷⁰ CHARLOTTE BRONTË, *JANE EYRE* 222 (Stevie Davies ed., reprint 2008) (1847).

¹⁷¹ *Id.* at 222-23.

¹⁷² *Id.* at 234.

¹⁷³ RANDOLPH, *supra* note 3, at 177-78.

¹⁷⁴ *Id.* at 180.

¹⁷⁵ *Id.* at 178-79. Randolph states litigation affects the health of those involved but provides not support nor examples for his claims.

further interest and raise awareness of mediation may be through regulation.¹⁷⁶ If individuals who are reluctant to select mediation know that mediators are trustworthy and competent, their hesitation may dissipate.¹⁷⁷ Second, perhaps the future of mediation will be found in online dispute resolution.¹⁷⁸ Technology's expanse into the modern world allows people to meet more readily and decreases legal costs.¹⁷⁹ Training people in mediation Randolph claims may be another aspect of the future of mediation.¹⁸⁰ Randolph claims that although the world has plenty of mediators,¹⁸¹ Randolph states that the skills that a trained mediator will learn will help individuals understand how to handle personal confrontation and reduce potential litigious situations.¹⁸² Fourthly, Randolph explores various styles used in mediation. Through different styles, different aspects of conflict could be addressed, if the conflict is arising out of a changing relationship between the parties, then transformative mediation may be more helpful than the other styles or mediation that do not necessarily take on any distinct style.¹⁸³ Lastly, Randolph suggests that a mediator, educated in the various cultures of both parties, may be able to help settlements occur more readily and avoid offending other cultures.¹⁸⁴

The chapter leaves an air of incompleteness. For example, how could a change of perception about litigation start? If regulations are the way to pique interest, how would the regulations come into effect? If interest and knowledge of mediation is currently low, effective regulation may not be feasible until interest starts to increase, not the other way around as Randolph suggests. Has mediation shown positive results around the world or mostly in western countries? Randolph's focus on a western philosophy in a western country does not naturally lead to worldwide applicability. The chapter shows great potential for mediation, but does nothing to help expand the reader's knowledge if the potential is viable. What recent changes have occurred that would lead Randolph to think these changes are possible?

XIII. CONCLUSION

Paul Randolph's book, *The Psychology of Conflict: Mediating in a Diverse World* is a phenomenal book for both novice and seasoned mediators. The insight provided

¹⁷⁶ RANDOLPH, *supra* note 3, at 188-89.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 181.

¹⁷⁹ *Id.* Randolph does not specifically state what type of legal costs would decrease through expanding technology.

¹⁸⁰ *Id.* at 183.

¹⁸¹ RANDOLPH, *supra* note 3, at 183.

¹⁸² *Id.*

¹⁸³ *Id.* at 186.

¹⁸⁴ *Id.* at 188.

throughout the book can greatly benefit individuals going into a conflict with the knowledge that they may be the middle man. Randolph bravely addresses philosophy and its vital role with psychology and dispute resolution, neatly tying the three subjects together in a clear, concise manner that allows the reader to follow his train of thought quite easily. The topics of psychology range greatly from emotions to the biases an individual may experience during mediation, presenting vast amounts of information to the reader.

The largest downfalls of the book are the lack of citations to support the various claims and guidance on how to use the newly obtained knowledge. The reader gains vital knowledge but is unaware if individuals truly react the way Randolph claims, or if someone else, with experience like Randolph's, may claim the opposite. Additionally, when Randolph does provide great advice, how to use that advice is often overlooked. Throughout the book there are multiple opportunities to provide information on *how* the reader could implement the knowledge into their mediation sessions (whether legal or not) yet were ignored. The book's relatively short length of 190-pages left room for Randolph to add a few more details and not create a volume too massive for the average person to consider reading.