

# **2017 ADR Institute: Is Your Dispute Resolution Safe? Issues to Consider in Mediation and Other ADR Processes**

*Friday, Nov. 3, 2017*



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# Speaker Biographies

**Stephen C. Kotev, MA**, is a Washington, DC based conflict resolution consultant offering mediation, leadership coaching, negotiation and facilitation services, and training and somatic education to private and government clients. He holds a Master's Degree from George Mason University's School for Conflict Analysis and Resolution and certificates in leadership coaching and conflict coaching from Georgetown University and Dr. Tricia Jones of Conflict Coaching Matters LLC. Mr. Kotev is Chair of the Association for Conflict Resolution Taskforce on Safety in ADR and holds rank in the Japanese martial art of Aikido and Brazilian Jiu-Jitsu. He specializes in training conflict resolvers on how to maintain their calm in the most stressful of situations and teaches graduate and undergraduate courses on this topic as an Adjunct Professor for George Mason University's School for Conflict Analysis and Resolution.

**Laura Bassein, JD**, currently works for UNM School of Law, Institute of Public Law. Ms. Bassein serves as a Commissioner on the Supreme Court ADR Commission and teaches mediation courses at the law school. Formerly, Ms. Bassein worked for the Administrative Office of the Courts (AOC), serving as the AOC point of contact for domestic violence, sexual assault and stalking issues and as the statewide coordinator for the Children's Court Mediation Program. Previously, Ms. Bassein served for several years as Program Manager/Mediator for the Pro Se Mediation Program in the Second Judicial District Court in Albuquerque. Earlier in her career, Ms. Bassein worked in the Michigan Supreme Court's Office of Dispute Resolution managing various statewide mediation programs. For many years, Ms. Bassein has served as a trainer nationally and internationally in conflict resolution, mediation, a wide array of advanced ADR topics, and various legal topics including those related to domestic violence. Ms. Bassein earned her JD in 1986 from the University of Colorado and practiced law in both the private and public sectors for many years before turning toward ADR work.

Is Your ADR Safe? Reducing the  
Risk of Violence Before, During  
and After Sessions

**Is Your Dispute Resolution Safe?**

**Issues to Consider in Mediation and  
Other ADR Processes**

Presented By  
Laura Bassein and Stephen Kotev

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Domestic Violence Expert for New  
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Corinne Wolfe Center for Child and  
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Adjunct Faculty, Mediation Courses •  
New Mexico Supreme Court ADR  
Commissioner



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Conflict Resolution Consultant  
offering mediation, negotiation,  
conflict coaching, and facilitation  
services, training,  
and somatic education



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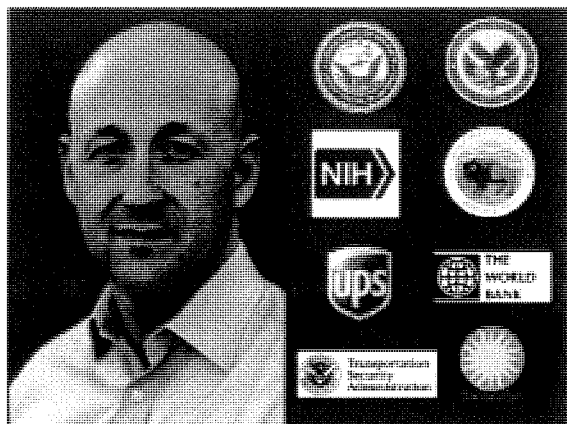
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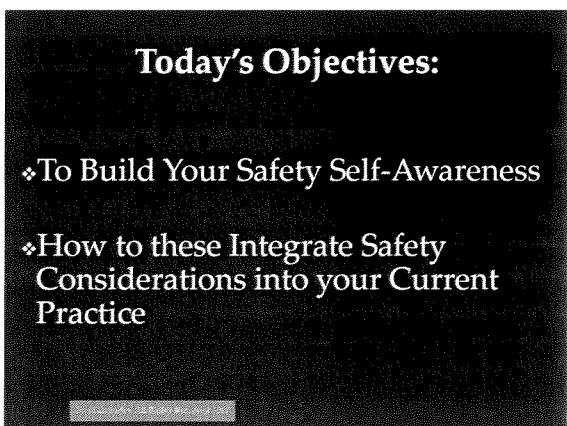
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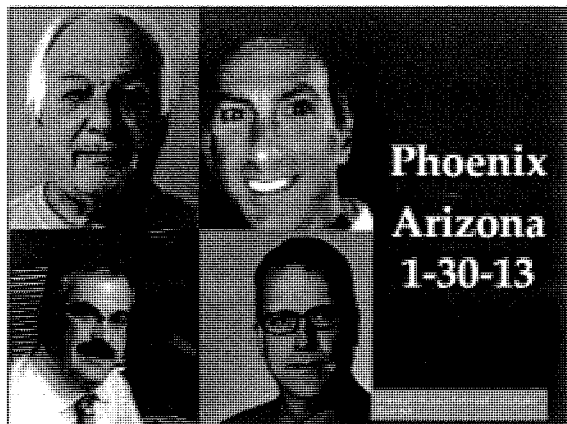
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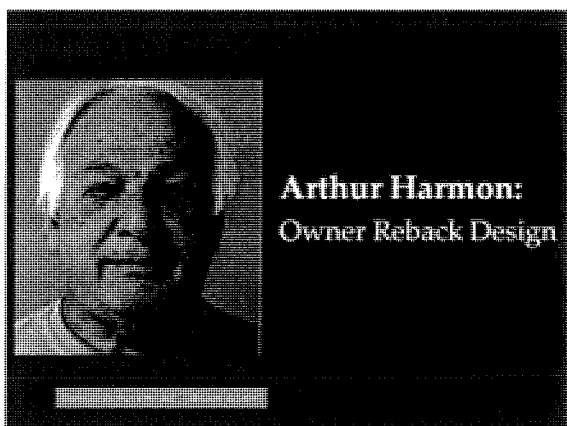
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**Ira Schwartz:**

- ❖ Mediator/Attorney
- ❖ Appointed Judge Pro Tempore by the Arizona Superior Court

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**Clarification:**

The Purpose of this Presentation is Not to Second-Guess or Criticize the Actions of Mr. Schwartz

Merely to Illustrate the Details of a Violent Incident that Occurred Following an ADR Process

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Excerpts Taken From the Phoenix Police Interview of Ira Schwartz:



On January 30, 2013, Schwarz Had Been Conducting a Settlement Conference, for a Civil Breach of Contract Lawsuit

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Schwartz Initially met Separately with  
Hummels and his Clients to Introduce Himself  
and Told Them About the Protocol for the  
Conference

Schwartz then met with Separately Harmon  
and his Family

As his Introduction began, Harmon  
Interrupted Schwartz and Jumped Right into  
Talking About the Lawsuit

CONFIDENTIAL AND PRIVILEGED

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Schwartz then Proceeded to go Back and  
Forth Between the Parties Approximately  
Three Times Seeking a Resolution

CONFIDENTIAL AND PRIVILEGED

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It Was Quickly Clear No Resolution  
Could Be Reached

The Meeting Was Concluded  
50 minutes after it Began

CONFIDENTIAL AND PRIVILEGED

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At No Point During  
the Settlement Conference were the Parties Ever  
in the Same Room Together

And their Departures were Staggered with  
Harmon Departing First

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In the Building Lobby, Harmon  
Shot and Killed Singer and Hummels  
and then Fled the Scene

After Evading the Police,  
Hummels was Found on the Following Day  
after Eventually Committing Suicide

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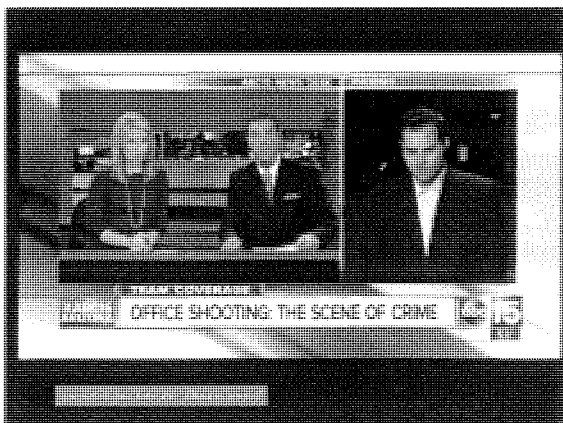
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Schwartz Was Never  
Alarmed by Arthur Harmon's Behavior  
During the Settlement Conference

Nor Were Any of the Other Participants

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Please Raise Your Hand If You:

- Act as a Neutral/Mediator
- Have Been a Mediator for Less Than 5 Years
- 5-10 Years?
- Over 10 Years?

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Please Raise Your Hand If You:

Have Ever Been Involved in a  
Violent Incident That Took Place  
Before, During or After an ADR  
Process?

- Before?
- During?
- After?

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**What did the Association  
for Conflict Resolution do?**

**Established the Taskforce  
on Safety in ADR**

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**Members of the Taskforce:**

- ❖ Active Duty and Retired  
FBI Crisis Negotiators
- ❖ Professional Mediators
- ❖ Judges
- ❖ Court Administrators

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**Taskforce Product**

- ❖ **ADR Safety Planning:  
Recommended Guidance**
- ❖ **Now Available to the  
Public**

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We Work in a Constellation of Capacities



So Please Keep That  
in Perspective as We Proceed

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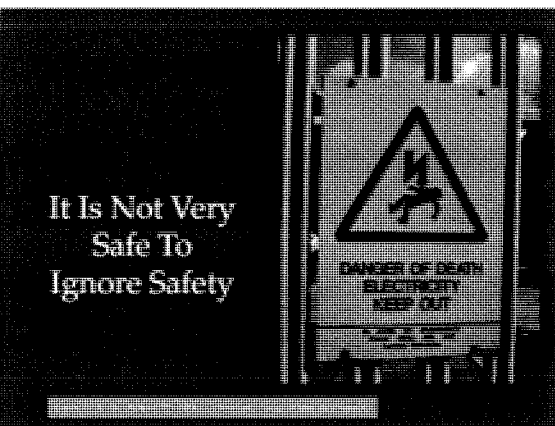
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It Is Not Very  
Safe To  
Ignore Safety



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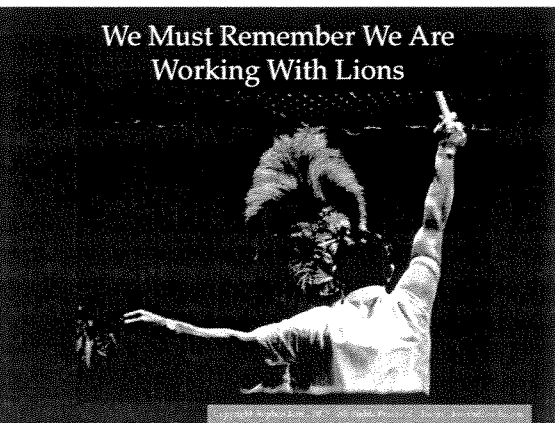
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We Must Remember We Are  
Working With Lions



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**We Are Hired To Be Optimists**

**I Am Not Asking You To  
Embrace Pessimism**

**Just Don't Be Naïve About  
The World You Live In**



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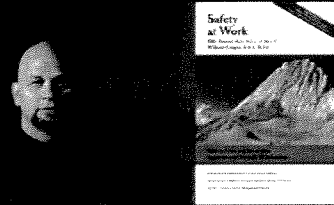
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**Threat Assessment Factors**



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**These Recommendations are a  
'list of ingredients' and not a 'recipe'**



**You must customize your actions for  
your own specific circumstances**



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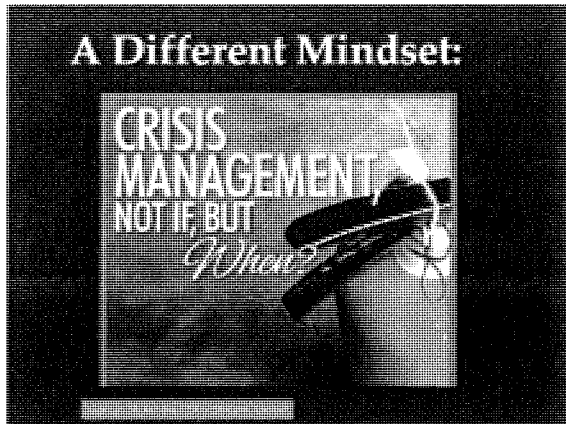
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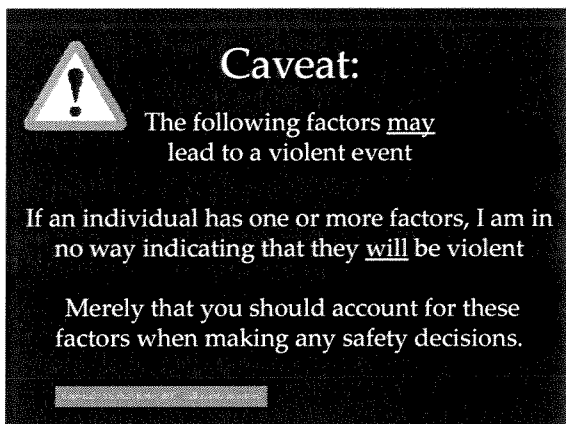
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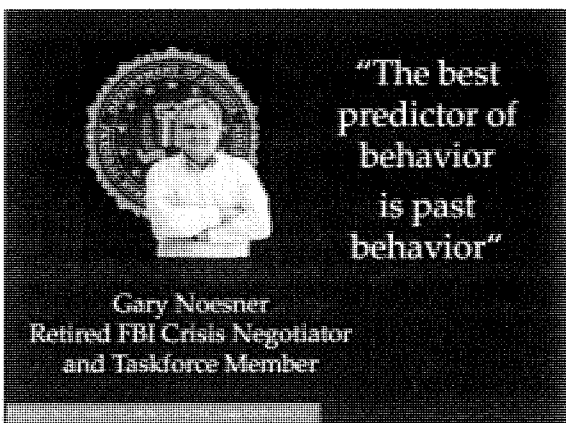
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**Past History of Violence:**

Violence Can Naturally Occur.  
It Can also be a Trained Behavior

The More it is Trained, the Easier It Can  
be Used as a Problem-Solving Strategy

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**History of Bullying or Intimidation:**

This is the Psychological Counterpart of  
Physical Violence

Bullying and Intimidation May Reveal  
Itself During any Phase of an ADR Process

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**Possession of Weapons,  
Fascination with Weapons, or Past  
History of Weapon Use:**

Be Concerned When the Individual Has  
a History of Brandishing  
or Using Weapons

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**And A Fascination with Weaponry and  
Discusses Their Use in Menacing Terms**



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**Past History of Physical Abuse or  
the Witnessing of Physical Abuse  
or Violence:**

Beyond a History of Personal  
Victimization, It is Particularly  
Traumatic to have Witnessed the  
Abuse of a Family Member

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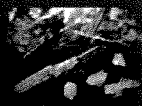
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**Excessive Use of  
Intoxicating Substances:**



Can be Disinhibiting to Both Impulse  
Control and Moral Sensibilities

Intoxicants Act as Solvents, Dissolving the  
Internal Barriers that Hold us Back from  
our Base Desires

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### Other factors not discussed today:

- Head Injury
- Dementia
- Prior Arrest
- Low Frustration Tolerance
- Recent Stressors and Loss
- Physical Pain or Discomfort
- The Individual has Already Given Up
- Severe Psychopathological Symptoms
- A Feeling of Victimization and Grievance
- Interactional Factors Between Aggressor and Victim
- Religious and Cultural Clashes
- Post-Traumatic Stress Disorder

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**Do Not Let the Abnormal  
Become Normal**

**If You Do You Short-Circuit  
Your Instinctual Defenses and  
Open Yourself to Greater Harm**

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### Physical Site Safety

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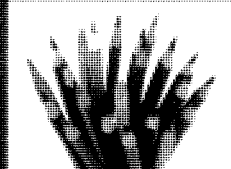
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**Any Object on your Desk or in  
Your Office Can Become a Weapon:**

Pens, Pencils, Staplers, Power Cords and  
Other Office Equipment can be Used as  
a Weapon



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Picture Frames, Bookends, Awards, and  
Other Items Can Easily be Removed and  
Used as Weapons



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Strive to Create a "Sterile Weapon  
Environment" by Keeping Meeting  
Locations Free of Such Items

Ideally, Your Office Should Have a  
Minimum of  
Furniture and Clutter

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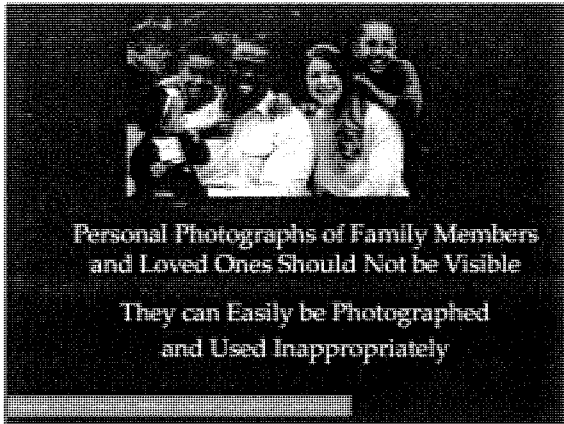
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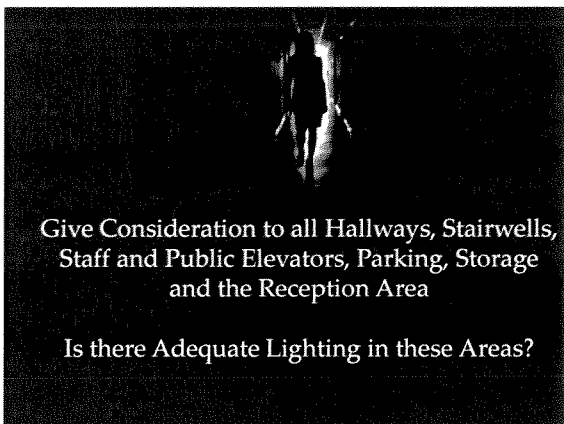
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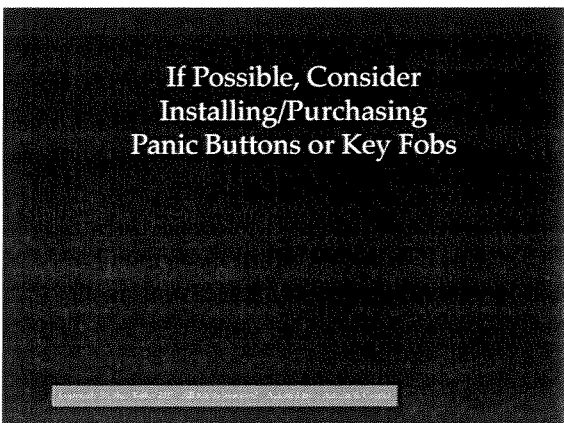
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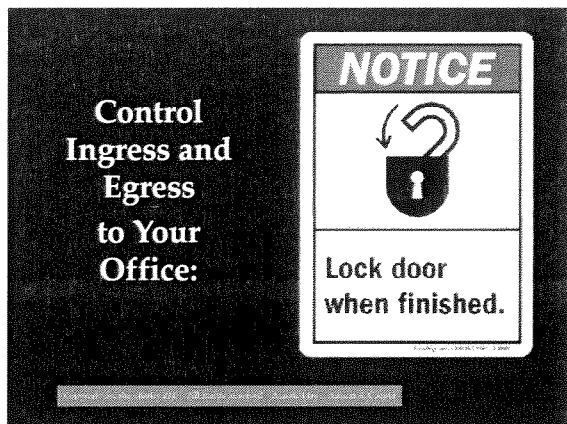
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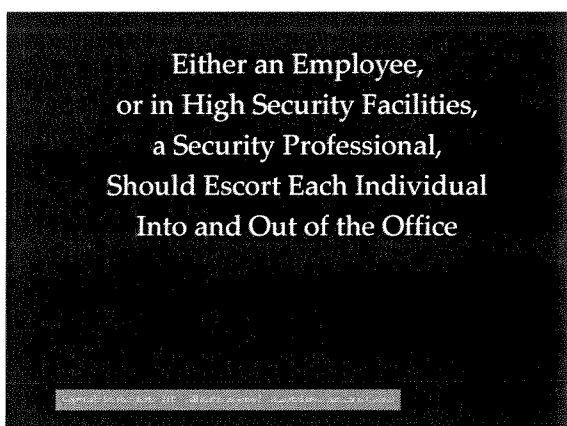
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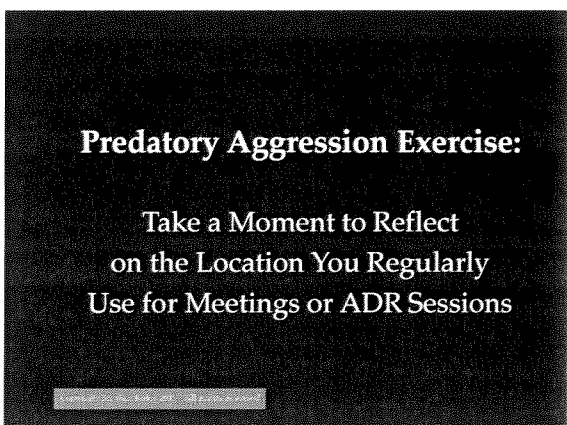
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**If You Were an Aggressive or Violent Individual, How Would You Perceive This Room?**

- What is the Quickest Way in and out?
- What is the Least Visible Entrance?
- Most Visible?
- How Easy is it to Avoid Security Cameras and other Precautions?

Write Your Answers in Your Notes

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**What About in This Room?**

- What is the Quickest way in and out?
- What is the Least Visible Entrance?
- Most Visible?
- How Easy is it to Avoid Security Cameras and Other Precautions?

Take a Moment to Consider this Privately and then We Will Discuss it as a Group

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**Weapon(s) of Opportunity Exercise:**

Revisit Again The Location You Regularly Use for Meetings or Mediations

- ❖ What Could Be Used as a Weapon of Opportunity at Your Location?

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### What About in This Room?

- ❖ What Could Be Used as a Weapon of Opportunity in this Room?

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### Communication for Emergencies:




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### Develop an Emergency Code Word:

- ❖ Determine the Meaning of the Code Word
- ❖ Determine Who Should Know this Code Word
- ❖ Outline What Actions Should be Taken Once the Code Word has Been Given

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**911, Poison Control, Child Protective Services, and Mental Health Professionals Who Can Place Severely Mentally Ill People in a Hospital** *(if you deal with this population)*

Should all Be Programed Into Your Office and Cell Phone and Posted Near Each Telephone

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**Use a Land Line, Whenever Possible, to Call for Emergency Assistance:**

- ❖ This Allows For Immediate Transmission of Your Current Location

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**Regularly Drill Implementing Your Emergency Communication Plan:**

- ❖ There Must be Consistent Training in Using Code Words so that All Staff Members' Reactions to Them are as Immediate as if they Heard a Police Siren

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## Create Your Own Safety Plan:

Please Take Out  
Your Handout Entitled:

Create Your Own Safety Plan

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Use the Worksheet Provided to Draw  
the Layout of a Location You Would  
Typically Use to Convene a Mediation  
or Meeting

Use the Following Factors to Create  
Your Own Personalized Safety Plan

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1. Identify the Safest Ways to Enter and Exit your Location
2. Identify Immediate 'Safe Places' Within Your Location
3. Consider Table Placement and Your Own Personal Positioning Relative to the Exit
  - a. Position Yourself to Have Quick Access to the Nearest Exit
4. Indicate Likely Hiding Spaces that Aggressive Individuals Could Use at This Location
5. If You Were to Call a Caucus, Where Would you Send the Participants?
  - a. Are There Any Safety Issues with Your Proposed Location?
  - b. How Would You Get to and From that Location?

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On Your Worksheet , Create Your Own  
Personalized Emergency Communication  
Plan:

- ❖ What is Your Emergency Code Word?
- ❖ What is the Meaning of this  
Code Word?
- ❖ Who Should Know this Code Word?
- ❖ Outline What Actions Should be taken  
Once the Code Word has Been Given

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Please Take a few Minutes To  
Complete This Section of the  
Worksheet

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Who You Are Is Who You  
Bring Into The Room



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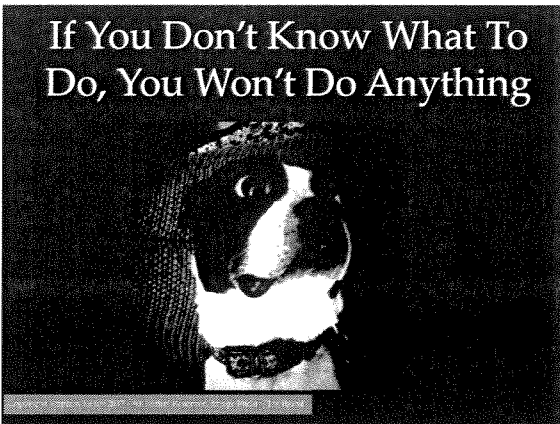
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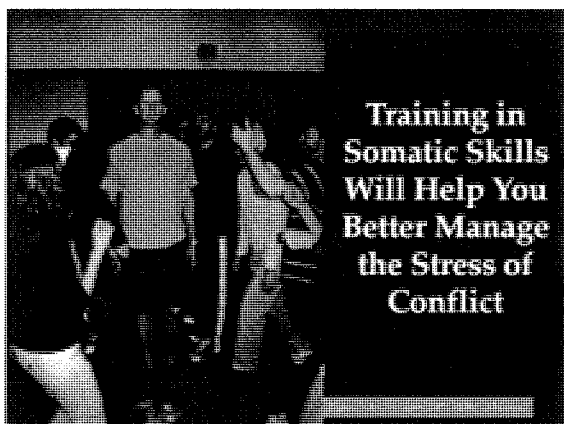
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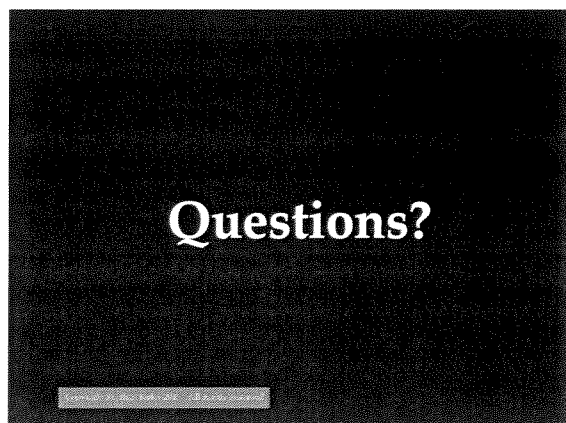
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**Is Your Dispute Resolution Safe?**

**Issues to Consider in Mediation and  
Other ADR Processes**

Presented By

Laura Bassein - <http://lawschool.unm.edu/ipl/>

and Stephen Kotev - [www.StephenKotev.com](http://www.StephenKotev.com)

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## **Create Your Own Safety Plan:**

Use the following criteria to create your own personalized safety plan in the space provided below.

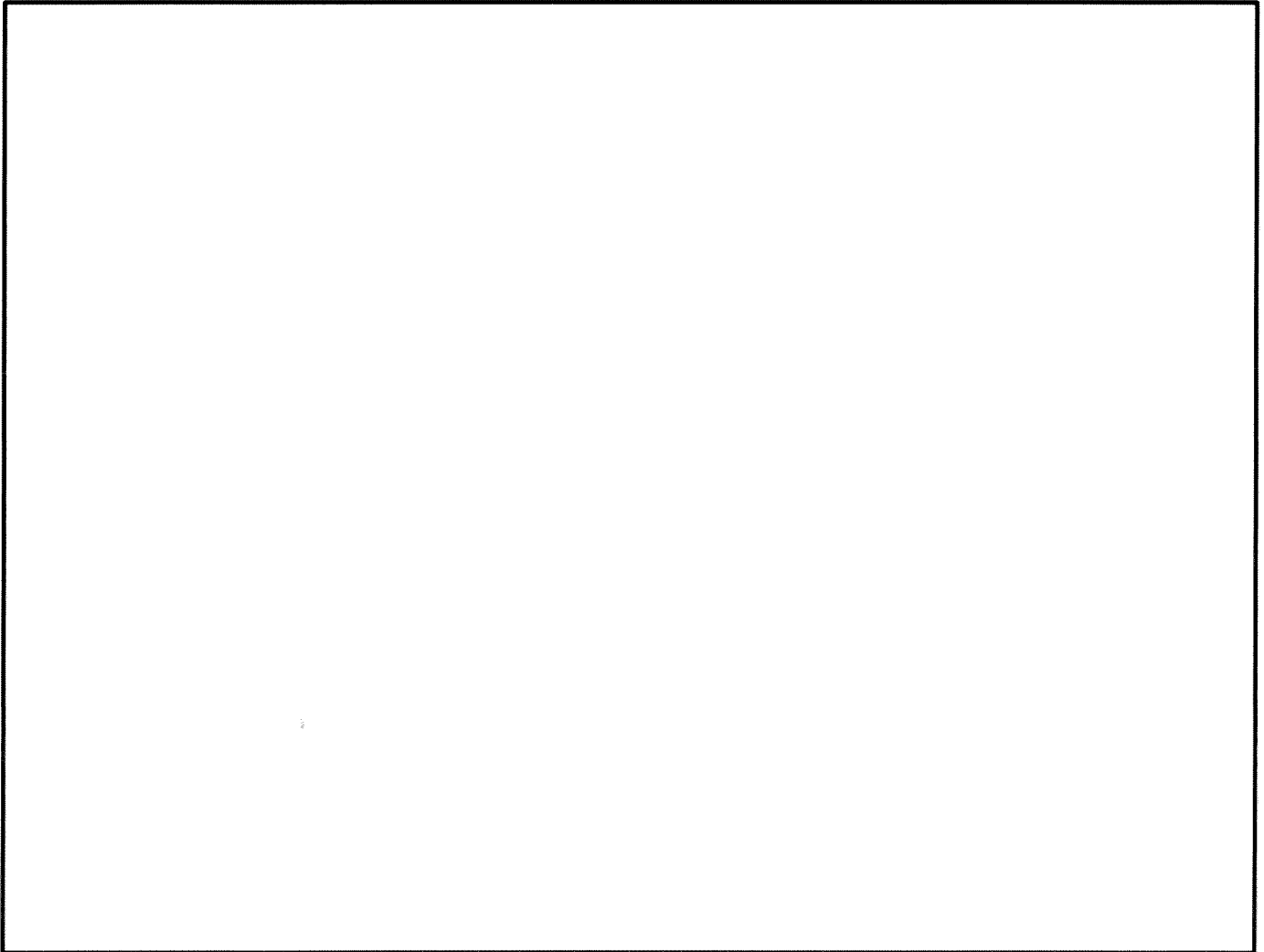
### **Physical Site Safety Considerations:**

- If security personnel are available, be sure to co-create and coordinate your safety plan with them.
- Determine relative safety of location/building
- Control ingress and egress of the location if possible
  - Security doors must remain locked to be effective
  - Are individuals allowed access to the building unescorted?
- Identify the safest ways to enter and exit your location
- Identify immediate 'safe places' within your location
- Be aware of who is in your building/location
- Outside of your meeting room, give consideration to all hallways, stairwells, staff and public elevators, parking and storage areas, and the reception area
  - Is there adequate lighting in the hallways, stairwells, and parking areas?
  - Are there adequate lines-of-sight to determine who is entering the reception area?
  - Identify any likely hiding spaces that aggressive individuals could use at this location
- Consider table placement and your own personal positioning relative to the exit
  - Position yourself to have quick access to the nearest exit
- Create a 'sterile weapon environment' in your meeting room
  - Meeting rooms should remain free of extraneous clutter, office equipment, and furniture, leaving the room free of many potential weapons such as:
    - Pens, pencils, staplers, paper punches, and other office equipment, picture frames, white boards, flip charts, and cork boards
      - Consider safety in addition to aesthetics when purchasing office furniture
- If you were to call a caucus, where would you send the participants?
  - Are there any safety issues with your proposed location?
  - What about getting to and from that location?
- Regularly drill implementing your safety plan



**Use the space provided below to draw the layout of a location you would typically use to convene a mediation or meeting. Use the factors listed below to create your own personalized safety plan.**

1. Identify the safest ways to enter and exit your location
2. Identify immediate 'safe places' within your location
3. Consider table placement and your own personal positioning relative to the exit
  - a. Position yourself to have quick access to the nearest exit
4. Indicate likely hiding spaces that aggressive individuals could use at this location
5. If you were to call a caucus, where would you send the participants?
  - a. Are there any safety issues with your proposed location?
  - b. How would you get to and from that location?

A large, empty rectangular box with a black border, intended for drawing a layout of a location for mediation or meeting. The box is currently blank.

## **Develop and Emergency Communication Plan**

- Post emergency numbers
  - Emergency numbers - including 9-1-1, poison control, child protective services, and mental health professionals who, in your state, are responsible to place severely mentally ill people in a hospital (if you deal with this population) - should all be programed into your office/personal phone system and posted near each telephone
  - Use a land line, whenever possible, to call for emergency assistance
    - This allows for immediate transmission of your current location
      - Confirm the address of your location so you can quickly provide it to law enforcement when requested
- Develop an emergency code word
  - Determine the meaning of the code word
  - Determine who should know this code word
  - Outline what actions should be taken once the code word has been given
- Regularly drill implementing your emergency communication plan
  - There must be consistent training in using code words so that all staff members' reactions to them are as immediate as they would be if they heard a police siren.

**In the space provided below, create your own personalized emergency communication plan that will answer the following questions:**

1. What is your emergency code word?
  - a. What is the meaning of this code word?
  - b. Who should know this code word?
  - c. Outline what actions should be taken once the code word has been given

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## **Association for Conflict Resolution Taskforce on Safety in ADR ADR Safety Planning: Recommended Guidance**

### **I. Introduction**

#### **A. Purpose of the Taskforce**

The Association for Conflict Resolution (ACR) Taskforce on Safety in Alternative Dispute Resolution (ADR) has drafted the ADR Safety Planning: Recommended Guidance<sup>1</sup> hereafter known as the “recommendations” to promote the safety of practitioners and participants in ADR processes. The Recommendations are intended to encourage and assist practitioners and ADR provider organizations when considering, planning for, and implementing safety procedures in all ADR processes they conduct.

Put another way, they are intended to reduce the likelihood of violent altercations in and around ADR processes, and to address them if they occur. The Recommendations are not intended to address other potentially dangerous events, such as severe weather, fire, etc. Any safety protocols you establish should be coordinated with the policies for these other situations.

#### **B. How these Recommendations Should Be Used**

When drafting these Recommendations, the Taskforce defined ADR practice widely so these Recommendations might speak to the widest possible audience. It is hoped that this guidance will resonate with practitioners who work in many areas of alternative dispute resolution (ADR) and encourage them to develop specific appropriate procedures for their own processes. These recommendations should not be perceived as the final word on safety but as initial guidance and an invitation to a larger conversation on an often neglected subject.

These Recommendations should be viewed as more of a “list of ingredients” than a “recipe for practice.” There is no single combination that will be right for all circumstances or even for every case handled by an individual practitioner.

The ingredients/recommendations can be used by individual practitioners, provider organizations, practice areas within the ADR field, and the ADR field as a whole. The Recommendations are not addressed to participants in ADR processes.

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<sup>1</sup> ACR and the Taskforce members disclaims liability for any personal injury, property, or other damages of any nature whatsoever, whether special, indirect, consequential, or compensatory, directly or indirectly resulting from the publication, use of, or reliance on this document. In issuing and making this document available, ACR and this Taskforce’s members are not undertaking to render professional or other services for or on behalf of any person or entity. Anyone using this document should rely on his or her own independent judgment or, as appropriate, seek the advice of a competent professional in determining the exercise of reasonable care in any given circumstance.



1. Individuals

ADR practitioners can use these Recommendations to shape their safety procedures. When doing so, it is particularly important that individual practitioners ensure that those working with them or in their vicinity, e.g., support staff and colleagues, are part of their safety procedures.

2. Provider Organizations

“Provider organization” is defined broadly here. It may include anything from court staff conducting child custody mediations inside a courthouse, to a community mediation program with volunteer mediators operating in a storefront, to a group of private neutrals arbitrating high-dollar-value litigation in a downtown office building.

3. ADR Practice Areas

Some areas of ADR practice have given more thought to safety than others. For example, practitioners who work with family cases know that domestic violence that occurred during a marriage may spill over into the divorce process. As the Taskforce considered examples of violence related to other types of ADR cases, the Recommendations were designed to be applicable to as many situations as possible.

4. The ADR Field

The Taskforce encourages national, regional and local conflict resolution and ADR member organizations to pursue this topic further. More study by academics who are interested in the field could add to the usefulness of this endeavor.

The Recommendations<sup>2</sup> are designed to address physical safety, not psychological or emotional safety. It is possible, however, that participants’ increased sense of psychological or emotional safety will reduce the chance of something unsafe occurring.

### C. How the Taskforce Developed these Recommendations

This Taskforce was established<sup>3</sup> in response to violent incidents that took place after ADR processes in 2013, specifically, a horrific incident that occurred after a mediation in Phoenix, Arizona that ended in a double murder and suicide. These incidents highlighted the pressing need for further investigation into how to properly prepare for and hopefully avoid similar future incidents.

One of the early steps in the work of the Taskforce was to reach out to ADR practitioners to solicit examples of incidents that became or almost became physically violent before, during, or after an ADR process. We collected information from numerous news media sources, over two

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<sup>2</sup> The following recommendations are comprised of information gathered from professionals in the field of ADR, crisis negotiations, security and workplace violence. Many of the specific recommendations are derived from the works of Ellis Amdur, and the initial work done on this topic by Nancy Yeend for the Florida court system, as well as conversations with former FBI crisis negotiator and Taskforce advisor Greg Noesner.

<sup>3</sup> The members of the Taskforce would like to specifically commend Stephen Kotev and Corey Schlegel for their effort on this Taskforce. Their dedication and contributions to our mission are deeply appreciated. The countless hours and deep commitment to our mission were instrumental to the success of this Taskforce.

dozen ADR practitioners, including screening protocols in family cases with a history of domestic abuse, which were then reviewed, compiled and analyzed.

When analyzing these incidents, one trend emerged. Not surprisingly, family, divorce and domestic violence cases had more incidents of violence and potential violence than other areas of practice.

## **II. Recommendations**

Whether you are using these Recommendations as an ADR practitioner or an organization that provides ADR services, there are three general areas to consider. First, what are your overall safety protocols? Second, how do you deal with individual disputants? Third, what do you do in the case of actual violence or threat of violence? Understanding these factors is essential to properly assessing your exposure to risk. It is also instrumental to determine the most appropriate course of action for your practice and the population with whom you work. Please utilize the following provided resources to create an individualized plan that meets your own specific needs and requirements.

These Recommendations encourage you to be aware of safety issues, plan for how to reduce the chances of violence occurring, and respond when something happens or threatens to happen. But no amount of planning will substitute for each individual's gut sense of when something seems "off."

The human body has an innate sense of conveying danger. Our research highlights a necessity to honor your instincts on safety. If something does not look or feel right, do not ignore that sensation. Do not let the abnormal become normal. If you do, you short-circuit your instinctual defenses and open yourself and others to greater harm. Stay aware and stay safe.

Understanding escalation and aggression in the context of culture is also necessary to properly modulate this instinctual sense of danger. Our own cultural norms deeply influence how we communicate and interpret violent intentions. Additionally, mental health issues can sometimes be painted as culture and vice versa. Practitioners must first identify our own assumptions of what aggression and escalation look like within our own culture. Then we must work to identify how this is expressed among the parties with whom we work. Just as it is imperative to understand different styles of communication, we must also seek to understand the expectations and expressions of aggression and escalation in others. Gaining this cultural competency will help modulate our instinctual defenses and improve our understanding of our parties. Recognizing and understanding different patterns of communication may assist the mediator in early identification of potential risks.

### **A. Overall Safety Protocols**

The essential ingredient to create a safe ADR setting is a safety plan. A safety plan is a list of procedures to follow to maintain a safe work environment. These procedures can be tailored to specific needs of a work environment and customized to meet needs of staff and clients. Ideally,

safety plans are developed by management with input from staff as appropriate. Plans should be explained to all staff members and reviewed regularly for maintenance and updates.

The benefit of a safety plan is that potential aggressors will see fewer opportunities to attack, find fewer pretexts to justify an attack in their mind, and see little chance of success in carrying out an attack. These benefits depend on whether you have properly executed your safety plan. In the event you are working, before 9:00 am and or after 5:00 pm, make sure you have a colleague close by who is aware of your work schedule.

#### Basic Elements of a Safety Plan:

##### I. Site Safety

- a. Determine relative safety of location/building.
- b. Identify the safest ways to enter and exit your location.
- c. Control ingress and egress of the location if possible. Ideally:
  - i. The door leading from the reception area into your office should remain locked at all times.
  - ii. Someone, either an employee, or in high security facilities, a security professional should escort each individual into and out of the office.
  - iii. Never allow an individual to wander unescorted through the office.
  - iv. Be aware of who is in your building/location.
- d. Establish a “no weapons” policy. Consider what you want to do in special circumstances such as public safety personnel in uniform.
- e. If working with potentially violent individuals:
  - i. Alert staff to the possibility of an emergency and have intervention procedures in place.
  - ii. Set up the room to ensure there is an escape route.
  - iii. Be prepared to call law enforcement for assistance.
  - iv. If there is any concern of violence notify law enforcement before the meeting starts, so a unit can either be in position or on patrol nearby.
- f. Security doors remain locked to be effective.
  - i. Do not allow security doors to remain unlocked. Altering this designation lessens the effectiveness of your security plan.
- g. Outside of your ADR room, give consideration to hallways, stairwells, staff and public elevators, parking and storage areas, and the reception area.
  - i. Ensure adequate lighting in the hallways, stairwells, and parking areas

- ii. Ensure adequate lines-of-sight to determine who is entering the reception area
  - iii. Identify any likely hiding spaces that aggressive individuals could use.
- h. Map out your exit strategy.
  - i. Know your exits and alternative exits.
  - ii. Identify 'safe places' within your location, such as an office or other room with a door that can be locked. Think about whether windows might make those in the office visible in an unsafe way.
  - iii. Depending on your location, there may already be predestinated 'shelter-in-place' areas that can be used for tornado or other similar dangers. These locations may be useful to either avoid or detain aggressive individuals.
- i. If security personnel are available, be sure to co-create and coordinate your safety plan with them.
- j. Have a phone inside the ADR meeting space.
- k. Develop an emergency code word.
  - i. Determine the meaning of the code word
  - ii. Determine who should know this code word
  - iii. Outline what actions should be taken once the code word has been given.
- l. If possible, consider installing/purchasing panic buttons or key fobs. Conduct regular drills to ensure that devices actually work and that designated staff members or security personnel respond properly.
- m. Consider communication for emergencies:
  - i. Use a land line, whenever possible, to call for emergency assistance
  - ii. 911, poison control, child protective services, and mental health professionals who are responsible to place severely mentally ill people in hospital should be programed into all office/personal phone systems and posted near each telephone.
- n. Ensure everyone in your office knows and can implement the safety plan:
  - i. Teach new hires about the safety plan
  - ii. Regularly drill implementing your safety plan
  - iv. There must be consistent training so that all staff members' reactions are as immediate as they would be if they heard a police siren.

## 2. ADR Meeting Location Safety

- a. Consider table placement and your own personal positioning relative to the exit. Generally, you should sit so that it is easiest for you to exit the room to seek help.
- b. Create a 'sterile weapon environment' in your ADR rooms.
  - i. Meeting rooms should remain free of extraneous clutter, office equipment, and furniture, leaving the room free of many potential weapons such as: staplers, paper punches, ceramic mugs, and extra pens and pencils.
  - ii. Consider safety in addition to aesthetics when purchasing office furniture. Ornate glass lamps may be pleasing to the eye, but could easily be turned into a weapon. Consider more practical items that pose less threat when outfitting your meeting location.
- c. Consider who should be present in the room.
- d. If you were to call a caucus, determine where you would send the participants.
  - i. Are there safety issues with your proposed location?
  - ii. How will the participants get to and from that location?
  - iii. Having a room available for caucus or separate meetings will reduce the number of times you will need to shuffle the participants back and forth between a single room.

If you meet with participants in your personal office space, consider the following:

- a. There should be a minimum of furniture and clutter.
- b. Any object on your desk or in your office can become a weapon, including, pens, pencils, letter openers, staplers, and other office equipment.
- c. Personal photographs of family members and loved ones should not be able to be viewed by individuals. With current cellphone technology they can easily be imaged and used inappropriately.
- d. Picture frames, corkboards, and other items can easily be removed from walls and also used as weapons.
- e. Lamps, light furniture, and chairs can also be used as weapons.

### **B. Working with Individual Disputants**

Some areas of ADR practice, such as family mediation, have long accepted the need to screen participants prior to ADR processes. This serves to identify parties who may not be able represent their own interests due to factors such as domestic abuse or substance abuse. ADR practitioners and organizations in other areas of ADR can learn from family protocols and adapt them to their own areas of practice.



## 1. Implement Screening and Intake Procedures to Assess Potential for Violence

Consider drafting a series of follow-up questions that could be added to your existing intake and screening protocols and asked during the intake process. These questions would be tailored to your own unique needs and requirements. These Recommendations can serve as guidelines for your creation of these protocols. You should continue to do your screening as you have, following best practices, and supplement them with these Recommendations.

## 2. Common Threat Assessment Factors for Screening and/or Intake

These factors are primarily presented to build awareness of potential factors that may lead to violence. The Taskforce does not assume, and you should not assume, that presence of these factors will definitively result in violence, merely that they could contribute to a violent incident.

Consider the following threat assessment factors when designing intake and screening processes:

### a. Past history of impulsive behavior

A participants' past history of impulsive behavior is a major indicator of potential violence. Warning signs include excessive expressions of anger and hostile reactions or threats with little provocation. Or, as Taskforce member and retired FBI Crisis Negotiator succinctly states, "The best predictor of behavior is past behavior."

### b. Past history of violence, bullying or intimidation

Violence can be a source of power that is either innately channeled or deliberately cultivated. For some, violence is an efficient means to get what they want. It can enhance feelings of power and control over others and become a common response to confrontation or challenge.

Bullying is the psychological counterpart to physical violence. Participants' use of bullying and intimidation may be revealed during any phase of an ADR process.

### c. Prior arrest

Any arrest is a heightened risk factor even if it was for a non-violent crime. The individual may be terrified or outraged at the idea of being arrested again or having more contact with law enforcement or other authorities. With the prevalence of physical and sexual assault within correctional institutions, the non-violent arrestee may have come out a very different person than they went in. The possibility of incarceration could trigger feeling of resentment and fear of re-victimization, depending on the circumstances.

### d. Possession of weapons, fascination with weapons, or past history of weapon use

With the ease of access to firearms and other weapons, any prior history or fascination with weapons should be serious cause for concern. This behavior can also be accompanied by a known history of brandishing or using weapons and vocalization of fantasizing about weapons in a pathological manner.

e. Past history of physical abuse or the witnessing of physical abuse or violence

Beyond a history of personal victimization, it is particularly traumatic to have witnessed the abuse of a family member. Abuse victims often hate their own weakness, and begin hating weakness in others as well. Once this occurs, it is natural for some to begin victimizing what they hate: the weak

f. Head injury, dementia, and/or Post Traumatic Stress Disorder (PTSD)

A history of head injury and/or dementia may lead to participants' to a loss of impulse control. Without this control violence or aggression may become more prevalent.

Those affected by PTSD, can become easily panicked and resort to survival instincts. Smells, more than any other sense, seem to be tied directly to memory and are particularly likely to trigger the Fight-or-Flight response. Crowds, traffic, and fireworks can also trigger episodes and should be taken into consideration when engaging with this population.

g. Fear of attack or invasion of personal space

Be conscious of others in close proximity who express paranoia or fear as they can become increasingly agitated or stressed. Such individuals may lash out in defensive violence if they sense their personal space has been compromised. This distance is unique to each individual and is informed by their culture and past history. Be sure to account for these factors when assessing similar situations.

h. Low frustration tolerances

Individuals who experience low tolerance for frustration may have an inability or unwillingness to tolerate limit setting, such as the introduction or enforcement of ground rules. Excessive impatience or significant emotional outbursts can also accompany this behavior.

i. Recent stressors and loss

Bereavement, separation, divorce, job loss, incarceration, or similar circumstances can contribute to violent thoughts and actions. Specifically, loss of status, esteem, property, relationship, or children can trigger feelings of anger, frustration, victimization, righteousness, and vengeance. This sense of loss often triggers powerful emotions of anger and sadness. If individual exhibits this behavior,

seriously consider the likelihood that violence could ensue if addressing loss during a session.

j. A feeling of victimization and grievance

People who feel victimized by a situation and/or other individuals may regard their current predicament as someone else's fault. Certain individuals may feel victimized by society in general or against 'the company,' 'the country' etc. They regard their current predicament as someone else's fault and maintain this attitude no matter what evidence is presented to the contrary. Appropriate consideration should be given to the safety for those who may 'represent' these oppressors, since they may become an available target of aggression

k. Excessive use of intoxicating substances

Use of intoxicating substances can erode impulse control and dampen or repress moral sensibilities that would normally inhibit violence. (Also see severe psychopathological symptoms.)

l. Physical pain or discomfort

Chronic pain and illness can make people feel frustrated and/or desperate. The pain can erode patience and cloud thoughts. Powerful painkillers are often prescribed to help cope with these diagnoses and can also be a factor in behavior and decision-making.

m. The individual has already given up

Individuals who have already given up may expect the interaction during a session to be difficult or absolutely negative. Their response to a conflict might be, 'Nothing will help. If I'm aggressive, at least I can make my mark on the world or on you. What have I got to lose?'

n. Severe psychopathological symptoms

Severe psychopathological symptoms include but are not limited to the following: rapid mood swings, hallucinations, mania, and history of predatory or manipulative behavior. Rapid mood swings may lead to unpredictable behavior and/or responses. Hallucinations include auditory hallucinations, which may tell the individual to do something violent. If someone experiences hearing voices during a session, ask what those voices are saying to gather more information regarding potential for violent behavior. Mania is a heightened state of extreme excitement, typified by rapid speech, grandiose thinking, very poor judgment, and impulsive behavior. Mania is commonly seen in bipolar/manic depression, methamphetamine, cocaine, and some alcohol use. History of predatory or manipulative behavior may reemerge during high-conflict situations.

Please note: Threat assessment recommendations presented in the previous section were synthesized from information presented in Ellis Amdur's book "Safety at Work," see references, and personal communication between Stephen Kotev and former FBI crisis negotiator Gary Noesner.

### 3. Additional intake/screening/caucus questions

These questions can be used at any time to supplement intake/screening/other inquiries regarding potential violence. They can be integrated into existing screening processes or use during a caucus to further determine the likelihood of violence.

- a. Is there an order of protection in place, for example, a court requirement that one of you stay away from the other?
- b. Have you ever been arrested for assault?
- c. How about for fighting with someone?
- d. Have you ever been involved in a protective order (i.e. restraining order)? Either as a witness, petitioner or defendant?
- e. Have you ever sought police protection?
- f. Has anyone ever sought to place an order of protection (or whatever other relevant term is appropriate) against you?
- g. When was the last time you had to physically defend yourself?
- h. What do you do when someone really makes you angry?
- i. What kind of thing would someone say that would make you mad?
- j. If you got mad at someone, what would you do?
- k. If you did get mad, how could I help you calm down?

### C. What to Do in Case of Actual or Threatened Violence

ADR practitioners continuously assess the behavior of parties and their ability to participate safely in the process. Just as the ADR practitioner is responsible overall for the environment in any ADR process, so it is of the utmost importance that the ADR practitioner continues in this role and remains calm and competent during any violent or potentially violent situations.

While you should remain courteous and respectful to the extent possible, you should cease your neutral role and become directive. Your primary focus should shift from resolving the dispute to ensuring safety of all involved. For some ADR practitioners, especially some mediators, this shift of mindset can be difficult. Thinking through your response and practicing it with a colleague, before you are in a dangerous situation, will leave you better prepared should the real situation arise.

Your first decision is whether you can stop the violent or potentially violent situation. Trust your instincts. Don't hesitate to terminate the session if you feel you are at risk. Seek additional support and/or postpone the session if you need time to do additional research.

If you believe you can stop the violence before it erupts, you may want to consider:

1. Stand up
2. Gain the attention of the participants
3. Give a command to the aggressive participant to disengage and return to their seat.
4. Separate the participants. You will probably want to leave the more violent participant in the ADR room and escort the other out of the room. If you do, be sure to inform a colleague or security officer of the potential threat remaining in the room.
5. Terminate the session with participants separated. Do not bring them back into the room together.
6. Stagger the exit of the participants. Give the threatened participant/s the opportunity to leave first. Ensure that all participants have access to transportation. If both participants took public transportation or shared transportation, consider how to avoid further contact between the participants.
7. You may choose to escort them to their transportation, or ask a colleague to do so.

If you are not able to stop the violence or believe you are unable to do so, you may want to consider:

1. Do not physically confront a violent person.
2. Get out of the room.
3. Enlist another person to assist you in separating the participants.
4. Follow the steps above.

Whether or not you are able to control the violence, you may want to consider:

1. Decide whether to contact the authorities
2. In the event there is physical contact (e.g., biting, hitting, spitting, slapping, throwing liquids), call the police.
3. Call other emergency services, such as ambulance, if needed.

#### **IV. Conclusion**

These recommendations are designed to help ADR practitioners and programs identify potential safety concerns and develop safety plans to reduce the risk of violence and address any violent altercations that may occur in their ADR processes. Each practice and program is unique and will require its own individualized safety plan. These recommendations may be used as a guide or starting spot to help inform practitioners and programs as they consider ways to better protect the safety of the practitioners and participants in their practices.

Safety is essential in all types of ADR. The Taskforce encourages practitioners and programs to continue and expand the discussion of ways to promote safety in all ADR processes.



### **Disclaimer**

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## Appendix I

### Resources

- 1.) "101 California Street Shooting" – Wikipedia. Retrieved from [http://en.wikipedia.org/wiki/101\\_California\\_Street\\_shooting](http://en.wikipedia.org/wiki/101_California_Street_shooting)
- 2.) "Appendix C: Model Mediation Screening Tool" - Women's Law Project. Retrieved from [http://www.womenslawproject.org/resources/Bench\\_appendixC.pdf](http://www.womenslawproject.org/resources/Bench_appendixC.pdf)
- 3.) "Designing a Mediation Safety Plan". By Nancy Yeend & Carol Borunda. Retrieved from [http://jud18.flcourts.org/gen\\_public/adr/The%20Resolution%20Report/April%202008/r\\_mediation\\_safety%20\\_article\\_Apr08.shtml](http://jud18.flcourts.org/gen_public/adr/The%20Resolution%20Report/April%202008/r_mediation_safety%20_article_Apr08.shtml)
- 4.) "Domestic Abuse Issues for Mediators and Other Professionals". By The Supreme Court of Ohio, Dispute Resolution Section, 2014 edition.
- 5.) "Family Mediation: Screening for Domestic Abuse". By Alison E. Gerencser, Florida State Law Review. Retrieved from <http://www.law.fsu.edu/journals/lawreview/issues/231/gerencse.html>
- 6.) "Fatal Shooting After Mediation Leaves Lawyer and Client Dead". By ABA Journal. Retrieved from [http://www.abajournal.com/news/article/lawyer\\_shot\\_client\\_executive\\_killed\\_after\\_mediation\\_session\\_with\\_suspected](http://www.abajournal.com/news/article/lawyer_shot_client_executive_killed_after_mediation_session_with_suspected)
- 7.) "Man Who Killed His Wife Gets Life Term". By Inside Bay Area. Retrieved from [http://www.insidebayarea.com/sanmateocountytimes/localnews/ci\\_3627153](http://www.insidebayarea.com/sanmateocountytimes/localnews/ci_3627153)
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- 9.) "Multnomah County Family Court Services Domestic Violence Protocol." Retrieved from <https://www.yumpu.com/en/document/view/18657470/domestic-violence-protocol-oregon-judicial-departmen>
- 10.) "N.C. Domestic Violence Best Practices Guide for District Court Judges ". By North Carolina Courts. Retrieved from <http://www.nccourts.org/Citizens/CPrograms/Victims/Documents/DVBestPracticesGuide.pdf>
- 11.) "Safety at Work." By Ellis Amdur and William Cooper. Retrieved from <http://edgework.info/buy-books-for-law-enforcement.html>

12.) AAA/ABA/ACR Model Standards of Conduct for Mediators. Retrieved from [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/dispute\\_resolution/model\\_standards\\_conduct\\_april2007.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/model_standards_conduct_april2007.authcheckdam.pdf)

13.) Safety Screening in Family Mediation” A Discussion Paper, British Columbia Mediator Roster Society. Retrieved from [http://www.mediatebc.com/PDFs/1-23-Resources-\(For-Mediators\)/Screening\\_Family\\_Paper.aspx](http://www.mediatebc.com/PDFs/1-23-Resources-(For-Mediators)/Screening_Family_Paper.aspx)



## Appendix II

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*(Affiliations are for identification only and  
do not indicate endorsement of these Recommendations.)*

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# The Mediation Domestic Violence Intersection: Safety and More

## ***The Mediation Domestic Violence Intersection: Safety and More***

**Annual New Mexico State Bar ADR Institute**

November 3, 2017

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### **Learning Objectives**

After this session, participants will be able to:

1. Recognize the importance of physical safety concerns in domestic violence situations;
2. Identify safety considerations beyond physical safety; and
3. Pinpoint additional areas of inquiry regarding mediation (or not) where domestic violence might be a component.

### **To mediate or not to mediate....**

*So is it really ok to mediate if domestic violence has occurred/is occurring between parties in mediation?*

1. Some say "absolutely never."
2. Some say "sure it's ok."
3. Some say "sometimes, if we proceed with awareness and caution."

**We're looking for: safe and informed choices by parties and professionals**

*Perhaps the most 'definitive' thing that can be said is "it depends....."*

### Key questions...

- Is it SAFE to mediate? (including consideration of repercussions post-mediation)
- Do ALL parties have the capacity to voluntarily: 1) participate in mediation and 2) enter into and carry out an agreement?

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### Getting on the Same Page

- What is mediation?
- What is Intimate Partner Violence/Domestic Violence?

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### Mediation

- For today's purposes, mediation means any negotiation with the assistance of a 3<sup>rd</sup> party neutral, where the neutral does not have the authority to impose a resolution, and includes what's often called settlement facilitation in NM.
- "Mediation means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute."

Uniform Mediation Act, National Conference of Commissioners on Uniform State Laws; See also, NM Mediation Procedures Act, §44-7B-2, NMSA

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## Mediation

Under the MPA (§§44-7B-1 through 44-7B-6, NMSA):

- “‘mediator’ means an individual who: (1) holds the individual's self out as a mediator and who conducts a mediation; (2) the mediation parties agree to use as a mediator and who conducts a mediation; (3) is designated by a mediation program as a mediator and who conducts a mediation.....”
- mediation communications are confidential.
- a number of exceptions to confidentiality exist.

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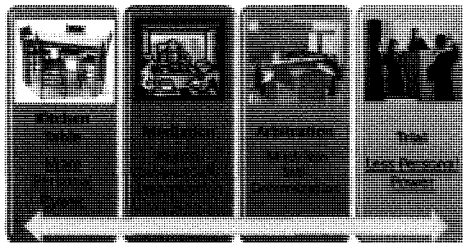
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## Dispute Resolution Options




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## ‘Classic’ Domestic Violence (DV)

Behavioral definition:

Classic domestic violence involves a **pattern** of abusive or coercive behavior used to control an intimate partner.

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## Intimate Partner Violence (IPV)

IPV (also known as domestic abuse or domestic violence) is a **continuum** of behaviors in which one intimate partner uses:

- Physical Violence,
- Coercion,
- Threats,
- Intimidation,
- Isolation, or
- Emotional, sexual, or economic abuse

to control the other intimate partner.

*Screening for Intimate Partner Violence in Mediation, Kelly Browe Olson, Dispute Resolution Magazine, Fall 2013, pp.25-29.*

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## Domestic Abuse – Legal Definition

--New Mexico Civil Example

Domestic Abuse means an **incident**:

1. of stalking or sexual assault whether committed by a household member or not;
2. by a household member against another household member consisting of or resulting in:
  - physical harm;
  - severe emotional distress;
  - bodily injury or assault;
  - a threat causing imminent fear of bodily injury by any household member;
  - criminal trespass;
  - criminal damage to property;
  - repeatedly driving by a residence or work place;
  - telephone harassment;
  - harassment; or
  - harm or threatened harm to children as set forth in this paragraph.....

*§40-13-2(D), NMSA (NM Family Violence Protection Act).*

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## Domestic Abuse – Legal Definition

--New Mexico Criminal Example

The NM Crimes Against Household Members Act defines 'household member' and then enumerates **incident**-based crimes:

- Assault against a household member
- Aggravated assault against a household member
- Assault against a household member with intent to commit a violent felony
- Battery against a household member
- Aggravated battery against a household member
- Criminal damage to property of a household member
- Deprivation of property of a household member

*§§30-3-10 through -18, NMSA.*

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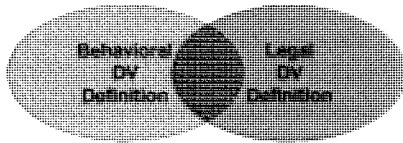
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### Behavioral DV Definition/Legal DV Definition *How do they relate?*




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### DV Differentiation

- Intimate Terrorism  
-individual is violent and controlling; partner is not
- Situational Couple Violence  
-although individual is violent, neither partner is both violent and controlling
- Violent Resistance  
-partner is violent and controlling; individual is violent, but not controlling
- Mutual Violent Resistance (rare)  
-both individual and partner are violent and controlling

*A Typology of Domestic Violence by Michael P. Johnson, © 2008*

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### Nebraska—Bridging the Definition Gulf *--incidents and patterns*

**Parenting Act Definitions** ..... "(8) Domestic intimate partner abuse means an act of abuse ... and a pattern or history of abuse evidenced by one or more of the following acts: Physical or sexual assault, threats of physical assault or sexual assault, stalking, harassment, mental cruelty, emotional abuse, intimidation, isolation, economic abuse, or coercion against any current or past intimate partner; or an abuser using a child to establish or maintain power and control over any current or past intimate partner, and, when they contribute to the coercion or intimidation of an intimate partner, acts of child abuse or neglect or threats of such acts, cruel mistreatment or cruel neglect of an animal ...; or threats of such acts, and other acts of abuse, assault, or harassment, or threats of such acts against other family or household members...."

... Nebraska Revised Statute 43-2922

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### Nebraska—Bridging the Definition Gulf

--more comprehensive definitions

**Parenting Act Definitions** "... (9) **Economic abuse** means causing or attempting to cause an individual to be financially dependent by maintaining total control over the individual's financial resources, including, but not limited to,

- withholding access to money or credit cards,
- forbidding attendance at school or employment,
- stealing from or defrauding of money or assets,
- exploiting the victim's resources for personal gain of the abuser, or
- withholding physical resources such as food, clothing, necessary medications, or shelter...."

-- Nebraska Revised Statute 43-2922

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### Nebraska—Bridging the Definition Gulf

--more comprehensive definitions

**Parenting Act Definitions** "... (10) **Emotional abuse** means a pattern of acts, threats of acts, or coercive tactics, including, but not limited to,

- threatening or intimidating to gain compliance,
- destruction of the victim's personal property or threats to do so,
- violence to an animal or object in the presence of the victim as a way to instill fear,
- yelling, screaming, name-calling, shaming, mocking, or criticizing the victim,
- possessiveness, or
- isolation from friends and family.

Emotional abuse can be verbal or nonverbal...."

-- Nebraska Revised Statute 43-2922

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### NM Law @ Intersection of DV-Mediation

"When custody is contested, the court:

shall refer that issue to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend mediation unless the court specifically finds:

--the following three conditions are satisfied:

- the mediator has substantial training concerning the effects of domestic violence or child abuse on victims;
- a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering from an imbalance of power as a result of the alleged domestic violence; and
- the mediation process contains appropriate provisions and conditions to protect against an imbalance of power between the parties resulting from the alleged domestic violence or child abuse; or

--in the case of domestic violence involving parents, the parent who is or alleges to be the victim requests mediation and the mediator is informed of the alleged domestic violence." §40-4-8(B)(1), NMSA.

Note: This statute includes yet another different DV definition.

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### NM Law @ Intersection of DV-Mediation

From the *Family Violence Protection Act*:

"If any other domestic action is pending between the petitioner and the respondent, the parties shall not be compelled to mediate any aspect of the case arising from the Family Violence Protection Act unless the court finds that appropriate safeguards exist to protect each of the parties and that both parties can fairly mediate with such safeguards." §40-13-3(D), NMSA.

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### Fundamental Mediation Principles

*"If confidentiality is the **heart** of mediation, self-determination is its **soul**."*

J. Cohen, CONVENING FOR ENHANCED SELF-DETERMINATION AND ACCESS TO THE PROCESS, 18 *The Texas Mediator*, No. 2, Summer 2003.

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### Party Self-Determination

"A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome...."

Model Standards of Conduct for Mediators, Standard I: Self-Determination (2005) - Jointly developed by the ABA, AAA, and ACR  
[http://www.americanbar.org/content/dam/aba/migrated/dispute/documents/model\\_standards\\_conduct\\_april2007.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/dispute/documents/model_standards_conduct_april2007.authcheckdam.pdf)

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### Model Standards of Conduct for Mediators

#### -- Party Capacity/Competency

"A mediator shall conduct a mediation ... in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, party **competency** and mutual respect among all participants.....

10. If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the party's **capacity** to comprehend, participate and exercise self-determination."

*Model Standards of Conduct for Mediators, Standard VI, Quality of the Process (2005).*

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### Model Standards of Practice for Family & Divorce Mediation

#### -- Party Capacity

"A family mediator shall facilitate the participants' understanding of what mediation is and assess their **capacity** to mediate before the participants reach an agreement to mediate....

9. The family mediator should be alert to the **capacity** and willingness of the participants to mediate before proceeding with the mediation and throughout the process. A mediator should not agree to conduct the mediation if the mediator reasonably believes one or more of the participants is unable or unwilling to participate."

*Model Standards of Practice for Family and Divorce Mediation, Standard III, developed by Symposium on Standards of Practice Aug 2000 - [www.afcnet.org/ResourceCenter/PracticeGuidelinesandStandards](http://www.afcnet.org/ResourceCenter/PracticeGuidelinesandStandards)*

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### Capacity to Mediate/Legal Capacity

"... An adjudication of **legal incapacity** is not necessarily determinative of **capacity to mediate**...."

"For example, a resident of a nursing home who is legally incapacitated may have disputes with a roommate about space or TV, or with staff about eating or dressing schedules. This person may have the **capacity** to participate in mediation regarding these issues. Also, persons may be under limited guardianships. For instance a person could have a guardian (sometimes called a conservator) for financial decisions, but not for health care or personal decisions, and so this person could participate in a mediation about health care treatment."

*ADA Mediation Guidelines, 2000 - Cardozo Journal of Conflict Resolution, [cardozoajcr.com/ADA%20Mediation%20Guide.pdf](http://cardozoajcr.com/ADA%20Mediation%20Guide.pdf)*

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### Returning to the domestic violence arena.....

-- impact on party capacity?

"The Story of Rachel: The Complex Relationship Between Battered Women and the Systems They Turn to for Help"

Praxis International, [www.praxisinternational.org](http://www.praxisinternational.org).



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### To mediate or not to mediate....

*So is it really ok to mediate if domestic violence has occurred/ is occurring between parties in mediation?*

1. Some say "absolutely never."
2. Some say "sure it's ok."
3. Some say "sometimes, if we proceed with awareness and caution."

*Q: What do you say?*

*A: \_\_\_\_\_*

*Perhaps the most 'definitive' thing that can be said is "it depends....."*

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### Let's be crystal clear ....

"[T]he issue of the violence itself will never be mediated...., though conditions designed to preclude violence may be appropriate for discussion. Additionally, the cessation of violence shall not be predicated on the behavior of the victim of violence."

*--from a California DV Protocol for a Dependency Mediation Program*

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### Back to the key questions...

- Is it SAFE to mediate? (including consideration of repercussions post-mediation)
- Do ALL parties have the capacity to voluntarily: 1) participate in mediation and 2) enter into and carry out an agreement?
- Does the referrer/requester have some sense that the parties are likely to benefit from mediation (e.g., resolve some or all of the issues, clarify or narrow the issues, improve communication, etc.)?

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### The Pivotal Question: How do you 'know' if there is DV?

- Screening for DV provides a mechanism to begin to gain greater understanding of the dynamics in a particular situation.
- Screening must take place:
  - Whether you want to attempt to eliminate all DV cases from mediation; or
  - If you think it may be appropriate to mediate in some situations involving DV.
- Screening is NOT a rote process; thoughtful case by case assessment is required.
- Screening is just the beginning.....

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### So what is actually learned during screening?

- ☐ If disclosure of DV occurs, it may be that the particular situation involves DV.
- ☐ If disclosure of DV does not occur:
  - ☐ The situation may still involve DV
  - ☐ The situation may not involve DV
- ☐ Screening allows the possible identification of a case that does involve DV; screening does not provide certainty that a case does **NOT** involve DV.
- ☐ Screening is never complete – it's a process not an event:
  - ☐ Screeners must be able to hold multiple truths simultaneously.
  - ☐ Screening must be a continuous ongoing process.
  - ☐ Thoughtful screening is nuanced and complex.

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**Beyond Screening: What could happen with the information learned?—an improved & expanded sequence\***

*\*This concept is conceived of and more fully explained in N. Ver Steegh, G. Davis and L. Frederick, "Look Before You Leap: Court System Thg of Family Law Cases Involving Intimate Partner Violence", 95 Marquette Law Review 955 (2012) <http://scholarship.law.marquette.edu/mlr/vol95/iss3/11/>*

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**Case Types: Returning to the Physical Safety Question**

What kinds of case types might involve physical safety issues?

- ✓ ACR Safety Planning Guidance, p. 3 -- "Not surprisingly, family, divorce and domestic violence cases had more incidents of violence and potential violence than other areas of practice."
- ✓ What are considered "family" cases?

✓ What kind of case was the 2013 Phoenix case?

✓ What other kinds of mediated cases might involve violence?

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**Choices to Resolve Disputes**

- Litigation
- Mediation
- Direct conversation/negotiation (no 3<sup>rd</sup> party):
  - between (expert?) attorneys (parties represented)
  - one party represented/one party not represented
  - parties self-represented (no attorneys)
- Other

"MAY YOUR CHOICES REFLECT YOUR HOPES, NOT YOUR FEARS"

*- Nelson Mandela*

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## Contact Information

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# Screening for Intimate Partner Violence in Mediation

By Kelly Browe Olson

**M**ost mediators are aware that intimate partner violence affects parties' abilities to make informed, independent decisions. Many, however, do not know how to identify distinctive types of intimate partner violence and how it can impact a party's ability to negotiate and mediate effectively.

Screening parties for intimate partner violence (IPV) before mediation is a necessity in any case where the parties have had a close personal relationship. Certain types of IPV are directly correlated with fear, control, and power imbalances and can lead to safety, process, and outcome problems in mediation. Effective screening allows mediators to identify cases in which safety and control issues preclude mediation or require the use of additional safeguards. It also provides an opportunity for parties to consider whether they will be able to negotiate effectively with each other.

This article discusses the importance of screening for IPV; suggests who should screen, when screening should happen, and how it should be done; and presents some new screening instruments. The few existing studies on screening in mediation have found that many screeners do not talk to parties individually, ask appropriate questions, or spend enough time on the process. Even when IPV was identified as an issue in a pre-interview questionnaire, some screeners failed to ask any questions about the parties' relationship.

All programs should require effective screening for IPV before mediation, and if the parties choose to mediate, screening for IPV should continue throughout the process.

## The Impact of IPV in Mediation

IPV, also known as domestic abuse or domestic violence, is a continuum of behaviors in which one intimate partner uses physical violence, coercion, threats, intimidation, isolation, or emotional, sexual, or economic abuse to control the other.<sup>1</sup>

Domestic violence also happens in multi-generational familial relationships and between adults and teens who have never been intimate. While some survivors of IPV are male, this article will use the female pronoun when referencing survivors of IPV because studies continue to show that the vast majority of survivors are female.<sup>2</sup>

Research has identified some important divergences in both IPV typologies and their impacts on parties' ability to negotiate or participate in mediation. There are multiple typologies, but for this article I will focus on two extremes that sociologist Michael P. Johnson and others have identified: coercive controlling violence and situational couple violence.<sup>3</sup> Coercive controlling violence (CCV) is a pattern of abuse that includes intimidation, coercion, and control, coupled with physical violence. Perpetrators of CCV establish ongoing patterns of power and control over their partners. This pattern often limits the survivor's ability to negotiate, even when the perpetrator isn't in the same room. Even skilled and experienced mediators should not attempt to mediate cases that involve CCV. Another typology is situational couple violence (SCV), which is related to anger, rather than fear or power, and is less likely to escalate and recur than coercive controlling violence.<sup>4</sup> With appropriate safeguards, many experts believe that parties with a history of SCV are capable of mediating their disputes.<sup>5</sup> The different levels of control, coercion, fear, and violence

The few existing studies on screening in mediation have found that many screeners do not talk to parties individually, ask appropriate questions, or spend enough time on the process.

present within these two typologies – not to mention the other typologies – illustrate the importance of screening participants for multiple relationship issues, not just for physical violence.

Some mediators believe that they can easily identify survivors and perpetrators of IPV, but studies have shown that most professionals are mistaken in this belief.<sup>6</sup> The media depictions of uneducated women of lower socioeconomic status with hidden bruises who are abused by powerful, menacing dominant men are not representative. IPV survivors and offenders are members of all classes, races, ethnicities, and religions. Each survivor has a distinct story, and each handles her experience differently.

### **The Importance of IPV Screening**

State laws on IPV and mediation vary greatly. In some states, mediation is not allowed in any case in which an order of protection has been issued. In other states, mediation is mandated in family cases whether or not instances of abuse have been reported or documented. Court programs, screeners, and mediators are often uncertain about what IPV is and how to handle cases where it is an issue. Training and consistent use of screening protocols will help minimize the confusion about IPV and about which cases should be excluded from mediation or conducted only with specific safeguards.

Studies in one jurisdiction identified IPV in more than 50 percent of its domestic relations cases;<sup>7</sup> another study in another location found IPV indicators in more than 90 percent of that jurisdiction's domestic relations cases.<sup>8</sup> Despite the frequency with which it appears, however, mediators habitually fail to recognize IPV. One study found that mediators missed IPV, as self-identified by the parties, in more than 25 percent of their IPV cases, even after additional training.<sup>9</sup> In a California Family Court study of cases in a mandatory mediation program, IPV was reported by at least one parent in 76 percent of the 2,500 cases.<sup>10</sup>

In medical and therapeutic professional studies, researchers have found that IPV was frequently under-reported or completely missed unless there was a direct screening assessment with patients.<sup>11</sup>

To ensure that mediation is not used as a tool to manipulate and re-victimize a former partner, screeners need to look closely at the aggressor's and the survivor's descriptions of their relationship. Empirical findings from a large study on custody mediation suggest that coercive controlling behavior must be measured in the screening

process.<sup>12</sup> While a restraining order should be a clear indicator that an in-depth screening process is required, the presence or absence of a restraining order is not enough information. Screeners need to examine all cases for fear and control issues, listen to the parties' individual concerns and goals, and help all the parties make informed choices about their dispute resolution process.<sup>13</sup>

### **Allowing Parties to Make an Informed Choice**

Screening provides an opportunity for parties to make an informed choice about the processes available to resolve their case and whether mediation is their best option. A screening process with specific questions about each party's ability to negotiate with the other will help both parties think about decision-making in their relationship. A skillful screener who is mindful of how severely IPV, especially coercive controlling violence, can affect one party's ability to participate fully will help a survivor decide whether she is ready, willing, and able to negotiate for herself.

Domestic violence specialists have long been concerned about the emphasis mediation puts on collaboration. For example, absent screening, if an IPV survivor is unwilling to discuss visitation or other arrangements

directly with the other party, a mediator could perceive the survivor as unreasonable and unsupportive of the other parent's relationship with the child. The survivor could give in to the other party's

**Some mediators believe that they can easily identify survivors and perpetrators of IPV, but studies have shown that most professionals are mistaken in this belief.**

demands out of fear. On the other hand, the mediator could perceive the abuser to be reasonable, understanding, and interested in a good parenting relationship – when what he is really wants is to control the other parent.

For some IPV survivors, being able to mediate and have a voice in the outcome of their case is empowering. Some advocates who originally preferred litigation have become disillusioned by the court system and now suggest that with safeguards, mediation and other private processes may provide more safety or control for their clients.<sup>14</sup> A research study showed that some women with a history of domestic violence preferred mediation and were happier with their results than similarly situated women who went through litigation.<sup>15</sup> Indeed, some IPV survivors find mediation provides more opportunities to be heard and to make visitation plans that offer more detail and more safety than court-ordered plans. Each domestic relations case is unique; a one-size-fits-all solution will not work, especially in cases involving IPV.

Screening not only protects clients; it protects mediators and others. In a relationship where IPV is a factor, separation is frequently the time when violence is most likely to occur or escalate. Making financial or household arrangements to leave, seeking legal assistance, and particularly the act of leaving threaten a batterer's sense of power and control. Everyone who comes in contact with a potential batterer needs to know this. Parties and screeners need to know about IPV to be able to decide whether and how to proceed with mediation or seek an alternative form of resolution.

## **The Screening Process**

### *Who Should Screen*

Court programs, mediation programs, individual attorneys, and mediators should all thoroughly screen their cases for IPV.<sup>16</sup> Before mediation begins, screeners should determine whether the case is inappropriate for mediation, appropriate for mediation with specific safeguards, or appropriate for general mediation. Parties often fail to raise IPV concerns with attorneys, so although some attorneys do adequately screen their clients, mediators should not assume that lawyers have asked the right questions or prepared the parties for their roles in the mediation process.

### *When to Screen*

Screening is not a one-time event. While trained court or program personnel should conduct a thorough screening of the parties before a case is assigned to mediation, this isn't always feasible. Furthermore, IPV may develop or worsen at separation, so the mediator should conduct ongoing screening as the mediation process evolves. As parties become comfortable with their attorneys or mediator, they may also choose to reveal more about the IPV in their relationship and their concerns about negotiating with the other party.

### *What Types of Cases*

Screening for IPV should not be limited to traditional domestic relations cases. It is equally important in cases involving never-married couples, same-sex couples who are married or in civil partnerships or unions, in adult guardianship cases, child protection, and other cases where multiple family members are involved or where there are intimate relationships between the parties. This includes small claims and civil cases between family members or long-term roommates. There are increasing numbers of pro se parties filing cases in domestic relations and multiple other areas of law. When parties appear pro

## **Five Things You Need to Know about Intimate Partner Violence and Mediation**

**1.** Every mediation program should incorporate an ongoing standardized screening protocol.

**2.** Screening should be done with each party separately, preferably in person, before and throughout the mediation process.

**3.** There is no typical survivor. IPV survivors and offenders are members of all socioeconomic classes, races, ethnicities, and religions. Each survivor has a distinct experience.

**4.** Intimate Partner Violence can include psychological, emotional, and physical abuse. When deciding whether to proceed with mediation, screeners should look for patterns of fear, coercion, and control, not just orders of protection or physical harm.

**5.** Most parties, even those represented by lawyers, have not been asked about IPV issues in their relationship or been adequately prepared for their role in the mediation process.

se, it is more critical than ever to have effective screening processes in place.

### *Screening Tools and Techniques*

Screening a case should involve a variety of tools and techniques, including written questionnaires, background checks, clinical observations, and in-person interviews. A separate in-person interview helps build rapport and lead to a thorough understanding of the issues facing a particular family. Screeners should reflect on what the parties say and don't say, their facial expressions, tone, behavior while the other party is speaking, and willingness to express their needs. Screening questions should be detailed enough to elicit discussion about the many types of violence that can be present in a relationship. Uniform screening instruments help provide quality and consistency.

**A screening process with specific questions about each party's ability to negotiate with the other will help both parties think about decision-making in their relationship.**

To assess power and control dynamics, psychologist Joan Kelly and sociologist Michael P. Johnson suggest, screening instruments must have questions that "identify not only intensity of conflict, frequency, recency, severity, and perpetrator(s) of violence, but also patterns of control, emotional abuse and intimidation, context of violence, extent of injuries, criminal records, and

## Resources

### **ABA Commission on Domestic and Sexual Violence (general information)**

[http://www.americanbar.org/groups/domestic\\_violence/resources.html](http://www.americanbar.org/groups/domestic_violence/resources.html)

### **ABA Commission on Domestic and Sexual Violence (chart on Mediation in Family Law Matters Where DV is Present)**

*Mediation in Family Law Matters Where DV is Present*  
[http://www.americanbar.org/content/dam/aba/migrated/domviol/docs/mediation\\_january\\_2008.pdf](http://www.americanbar.org/content/dam/aba/migrated/domviol/docs/mediation_january_2008.pdf)

### **National Domestic Violence Hotline**

1-800-799-SAFE (7233), 1-800-787-3224 TTY, or [www.ndvh.org](http://www.ndvh.org)

### **National Coalition Against Domestic Violence**

[www.ncadv.org](http://www.ncadv.org)

### **National Sexual Violence Resource Center**

[www.nsvrc.org](http://www.nsvrc.org)

### **Center for Disease Control: Intimate Partner Violence**

<http://www.cdc.gov/violenceprevention/intimatepartnerviolence/index.html>

### **Futures Without Violence**

<http://www.futureswithoutviolence.org/>

### **State of Michigan**

#### ***Domestic Violence Screening for Referral to Mediation***

<http://courts.mi.gov/Administration/SCAO/Forms/court-forms/alternativedisputeresolution/mc282.pdf>

#### ***Domestic Violence Screening Training for Mediators***

<http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/Domestic%20Violence%20Screening%20Training%20for%20Mediators.pdf>

### **Relationship Behavior Rating Scale-Revised (RBRS-r)**

<http://dx.doi.org/10.1080/10502556.2012.743830>

### **The Mediator's Assessment of Safety Issues and Concerns (MASIC)**

<http://courtadr.org/library/view.php?ID=5798>

Although some attorneys do adequately screen their clients, mediators should not assume that lawyers have asked the right questions or prepared the parties for their roles in the mediation process.

assessment of fear."<sup>17</sup> Screeners need to build trust and raise these issues in a manner that allows parties to respond thoughtfully and not feel judged or re-victimized.

Examples of general questions that may help a screener determine whether someone will be able to negotiate effectively include:

How are decisions about money made?

What activities do you engage in outside the home?

Describe the relationship your children have with your partner.

What is the worst thing your partner will say about you?

One study on IPV in mediation noted that wording matters and found that explicit questions led to answers that broader questions missed.<sup>18</sup> Standardized interviews should include questions about safety, control, fear, and the parties' perceived ability to negotiate with each other.

An important consideration in screening is what to do with the information. It should never be used to diagnose someone, label complex situations, minimize danger, or assess a party's ability to parent. The information should be used only to determine whether mediation or another dispute resolution process is appropriate and if someone has or should have concerns about safety. If there are safety concerns, the screener should provide appropriate resources and safeguards for the parties, whether or not a mediation will take place.

Screening isn't just important in domestic relations cases or in legal cases. Parties in many different types of situations who are frustrated by the administrative or court processes may act out in violent ways. When judges or administrators order parties to mediation or settlement conferences, it may be perceived as a threat or as justice delayed or denied. Employers should work with their human resource administrators to encourage screening parties for potential violence before referring them to resolution processes. There may be patterns of long-term abuse similar to IPV or the referral process itself may trigger acts of violence. In January 2013, a lawyer and his client were shot and killed by the plaintiff outside their court-ordered settlement conference. The plaintiff, who

had a history of anger issues, left in the middle of the session and waited for his victims outside. Screening may not have been able to prevent this tragedy, but screening all parties for control, coercion, and violence will help raise awareness of anger and frustration and could help reduce the number of such incidents.

### Screening Instruments

Screening instruments should be focused on risk assessment, be gender neutral in choice of language, and include questions for each partner about both partners' violence. Studies have shown that questionnaires alone are not as effective as a combined written and verbal interview or conversation.

The Michigan Supreme Court has posted a series of helpful online tools to help court personnel and mediators identify and work with parties experiencing domestic violence. These include DV training for mediators and multiple examples of screening tools.

The list of resources on the previous page includes two thorough screening tools recently developed for family mediation: the Relationship Behavior Rating Scale-Revised (RBRS-r) and the Mediator's Assessment of Safety Issues and Concerns (MASIC).

### Conclusion

While screening is a daunting task, it is also an essential one. If coercive controlling violence is not a factor and the parties want to mediate, if they are capable of negotiating safely and effectively, mediation should proceed with safeguards and ongoing screening. If the parties or mediator have any doubt about coercion, safety, or effectiveness, mediation should not proceed and screeners must be prepared to prevent or stop mediation.

Mediators and attorneys should seek out IPV training, know the court rules in their jurisdictions, and use standardized screening instruments to ensure the mediation process is safe and effective. More research must be conducted on screening instruments and on the impact of different types of IPV on mediation outcomes. Courts, programs, and mediators need to be vigilant and protect their parties and themselves from dangerous coercion and potential tragedy. ♦

### Endnotes

1 Joan Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions*, 46 FAM. CT. REV. 476 (2008).

2 The terms "victim" and "survivor" are both used to describe parties who are in or have been through an abusive relationship.

"Survivor" is used more often when a party has recognized the abuse and has left the relationship. While the parties discussed here may still be in their relationship, "survivor" is used here throughout the article to describe someone who is or has been in a relationship where she was subject to IPV.

3 Kelly & Johnson, *supra* note 1, at 476.

4 *Id.*

5 *Id.*

6 Connie J. A. Beck, J. Michael Menke & Aurelio Jose Figueredo, *Validation of a Measure of Intimate Partner Abuse (Relationship Behavior Rating Scale-Revised) Using Item Response Theory Analysis*, 55 J. DIVORCE & REMARRIAGE 54 (2013).

7 R.H. Ballard, Amy Holtzworth-Munroe, Amy Applegate & Connie Beck, *Detecting Intimate Partner Violence in Family and Divorce Mediation: A Randomized Trial of Intimate Partner Violence Screening*, 17 PSYCHOL. PUB. POLY & L. 241 (2011).

8 Kelly & Johnson, *supra* note 1, at 476.

9 Amy Holtzworth-Munroe, Connie Beck & Amy Applegate, *The Mediator's Assessment of Safety Issues and Concerns (MASIC): A Screening Interview*

*for Intimate Partner Violence and Abuse Available in the Public Domain*, 48 FAM. CT. REV. 646 (2010).

10 *Id.*

11 Beck et al., *supra* note 6, at 54.

12 Connie J. A. Beck & Chitra Raghavan, *Intimate Partner Abuse Screening in Custody Mediation: The Importance of Assessing Coercive Control*, 48 FAM. CT. REV. 555 (2010).

13 Nancy Ver Steegh, *Yes, No, and Maybe: Informed Decision Making About Divorce Mediation in the Presence of Domestic Violence*, 9 WM. & MARY J. WOMEN & L. 145, 147 (2003).

14 Amy Holtzworth-Munroe et al., *supra* note 9, at 646.

15 Kelly & Johnson, *supra* note 1, at 476.

16 Nancy Ver Steegh, Gabrielle Davis & Loretta Frederick, *Look Before You Leap: Court System Triage of Family Law Cases Involving Intimate Partner Violence*, 95 MARQ. L. REV. 955 (2012).

17 Kelly & Johnson, *supra* note 1, at 476.

18 Amy Holtzworth-Munroe et al., *supra* note 9, at 646.



Kelly Browe Olson is the Director of the Clinical Programs at the William H. Bowen School of Law at the University of Arkansas. She has taught Family Law, Family Mediation and Mediation Seminars, Alternative Dispute Resolution, and Domestic Violence courses. She can be reached at [kbolson@ualr.edu](mailto:kbolson@ualr.edu).

## This image shows a full page of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page, typical of notebook paper. There are no margins, text, or other markings on the page.

Breakout Session

Beyond Fight or Flight: Practical  
Skills for High Stress Conflicts

**PRACTICAL  
SKILLS FOR HIGH  
STRESS  
CONFLICTS**

*Presented by Stephen Kotev*

[www.StephenKotev.com](http://www.StephenKotev.com)

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**LEARNING OBJECTIVES**

- *To build awareness and skill around how your body responds to stressful situations*
- *To give you practical insights on how to better manage your Fight-or-Flight response*

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**A LITTLE ABOUT YOU**

- *Please:*
  - *Introduce Yourself?*
  - *Why Are You Here?*
  - *What Do You Want To Learn Today?*

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**PLEASE RAISE YOUR HAND IF:**

You are former Military, Law Enforcement or a First Responder?

You have experience with martial arts?

You have experience with movement arts like ballet, dance or yoga?

You are a life-long athlete?

You meditate regularly?

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**WHEN DEALING WITH HIGH EMOTION CONFLICTS OUR TRAINING TELLS US TO**



**BUT DOES NOT TEACH US HOW TO ACCOMPLISH THIS**

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**CONFLICT DOESN'T CARE!**



**YOUR PROBLEMS WON'T WAIT TILL YOU ARE PREPARED!**

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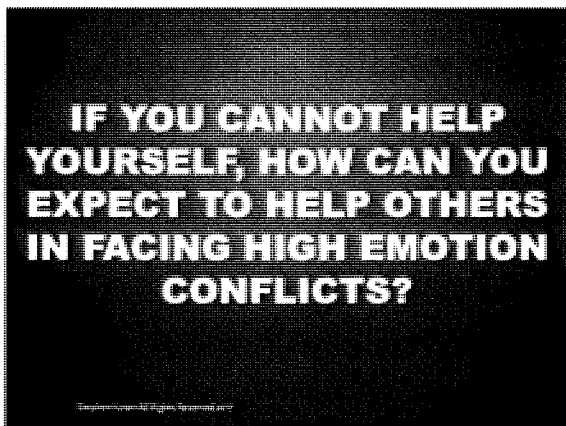
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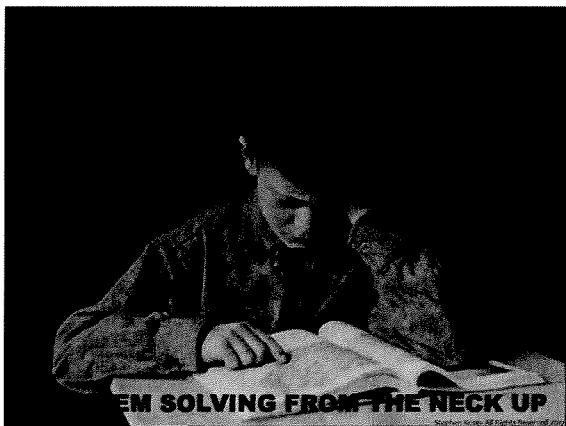
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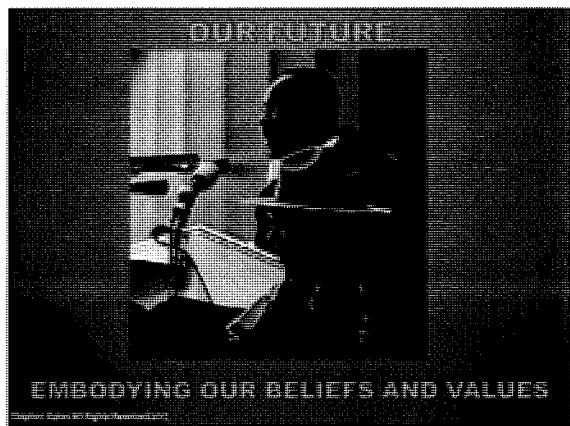
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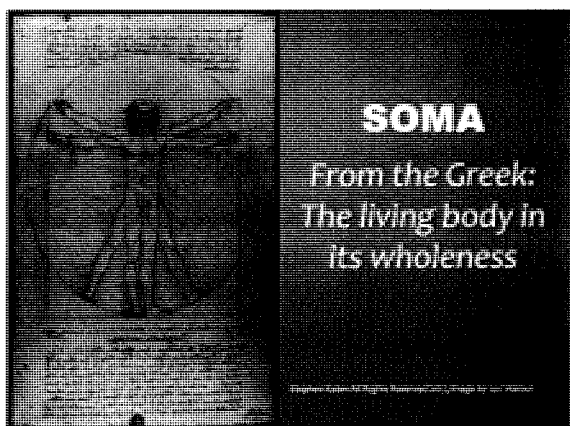
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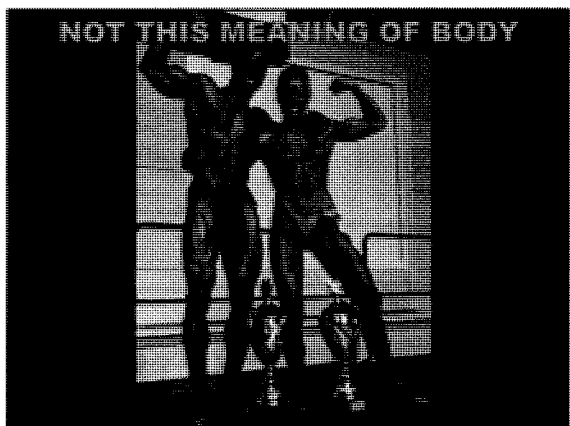
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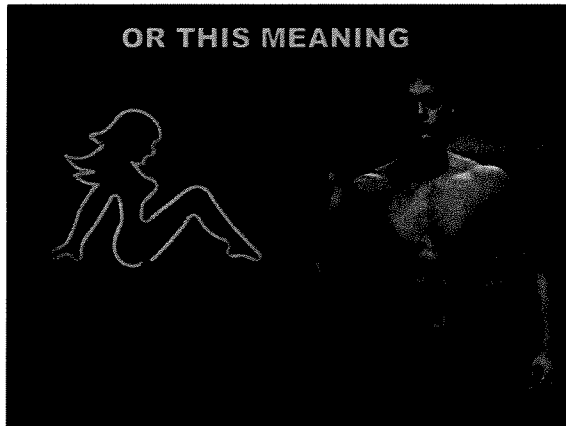
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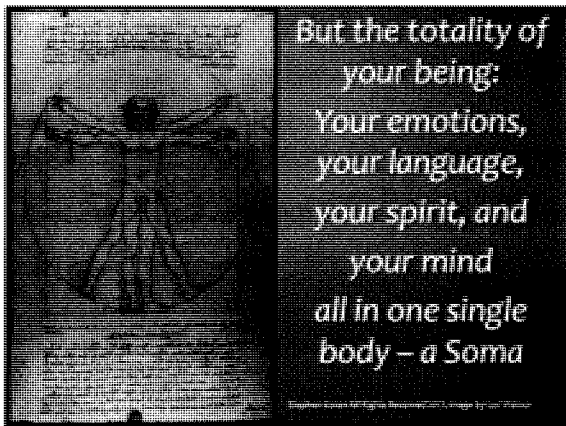
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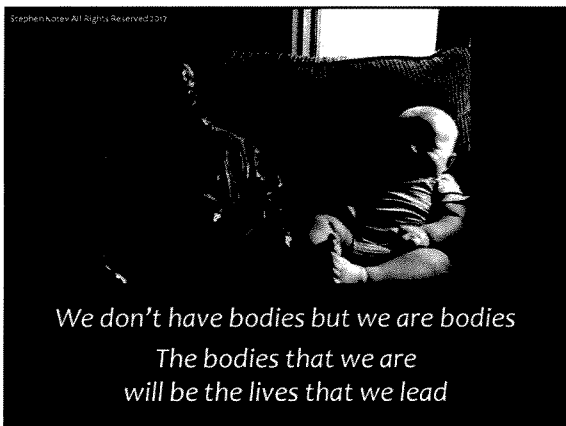
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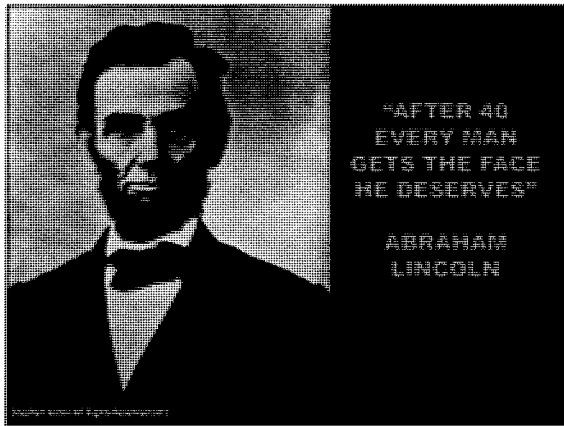
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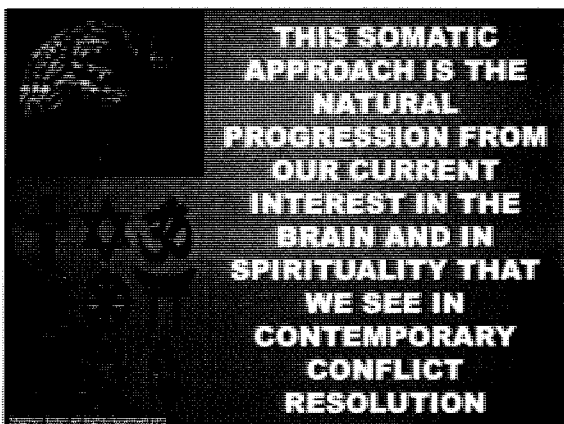
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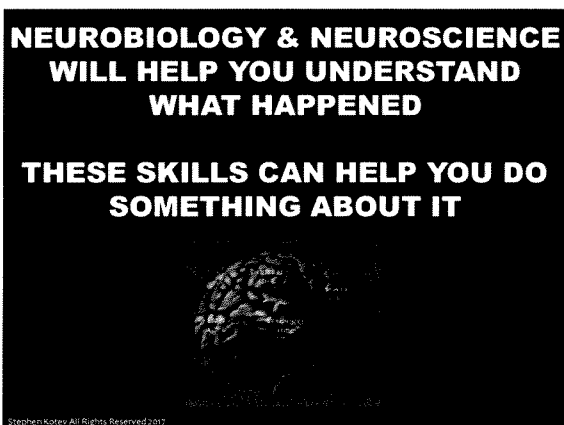
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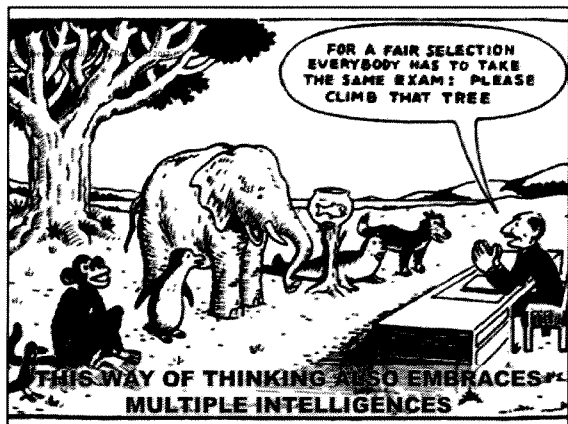
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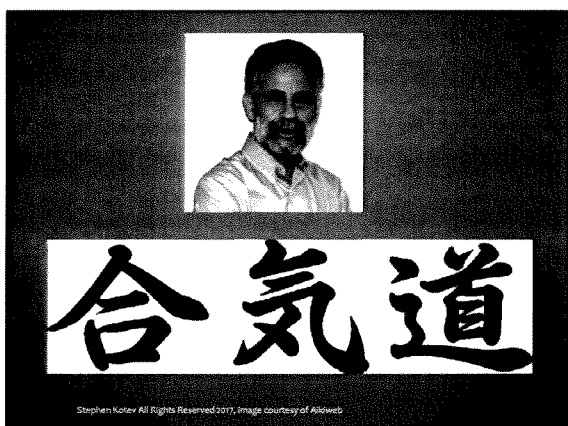
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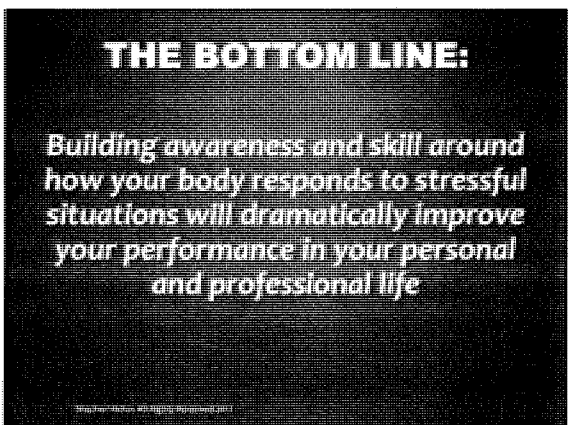
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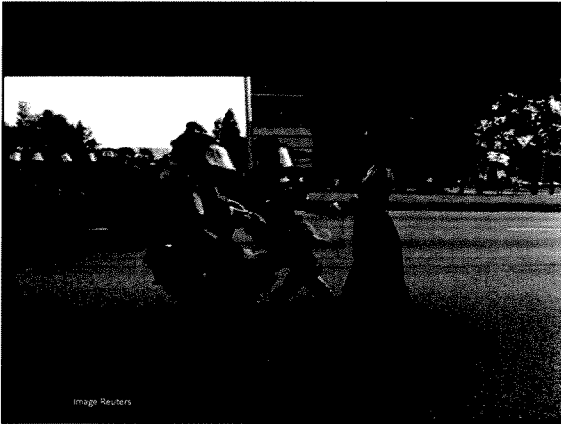
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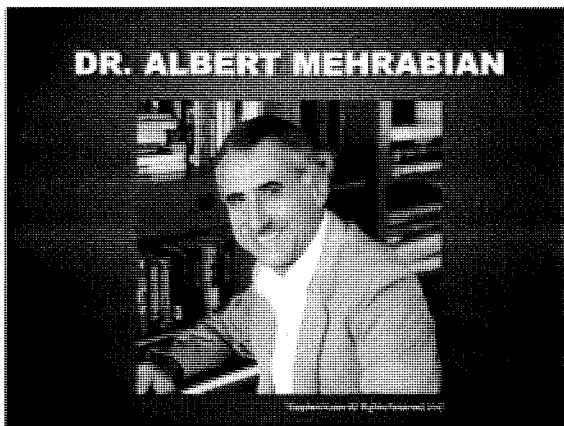
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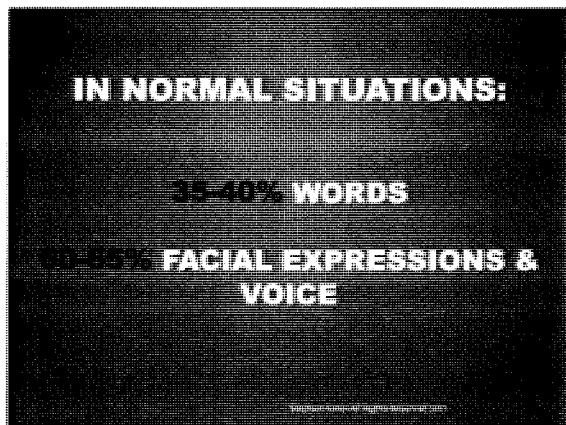
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**IN HIGH CONFLICT SITUATIONS:**

**WORDS**

**VOICE – (WHAT DOES IT SOUND  
LIKE AND HOW ARE YOU USING IT)**

**FACIAL EXPRESSION – (AND IN  
THE BODY)**

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**THE FIRST STEP  
TOWARD MASTERY  
IS TO BUILD  
AWARENESS**

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**MASLOW'S HIERARCHY  
OF LEARNING**

Embodied	Skilled
Aware	Skilled
Aware	Unskilled
Unaware	Unskilled

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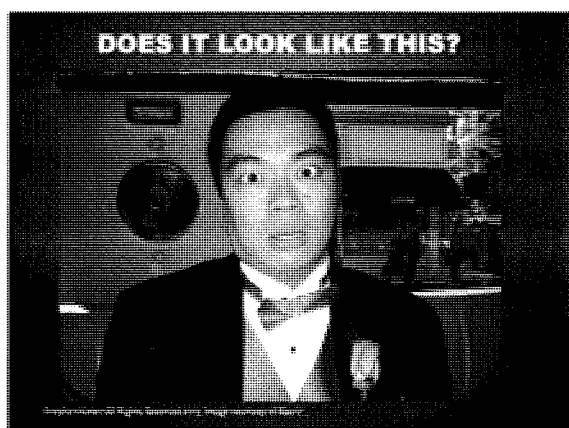
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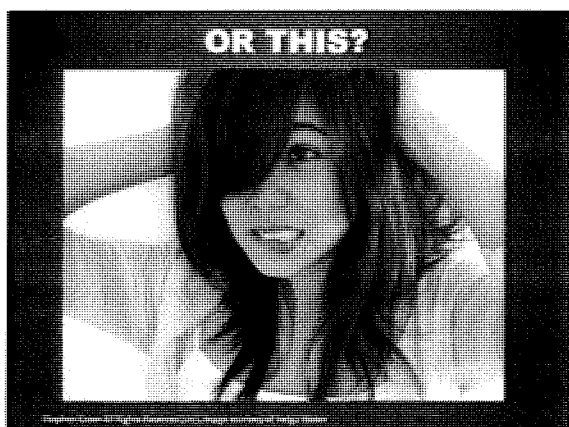
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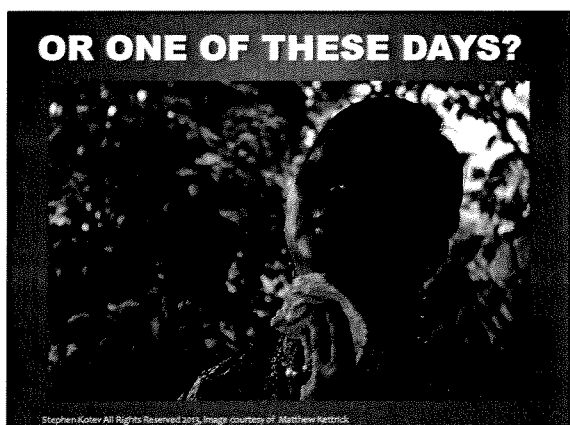
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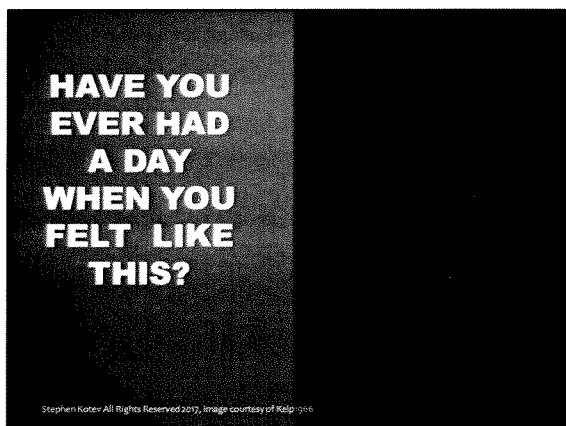
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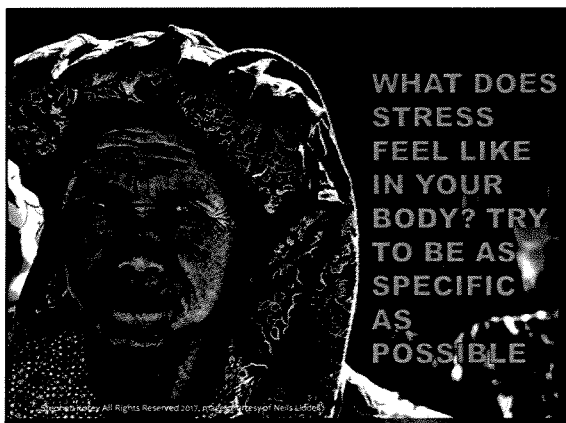
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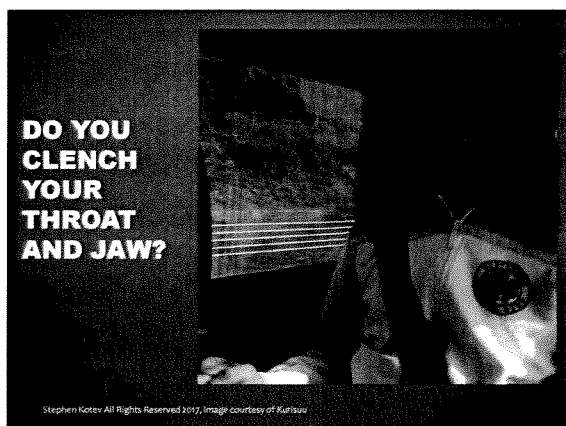
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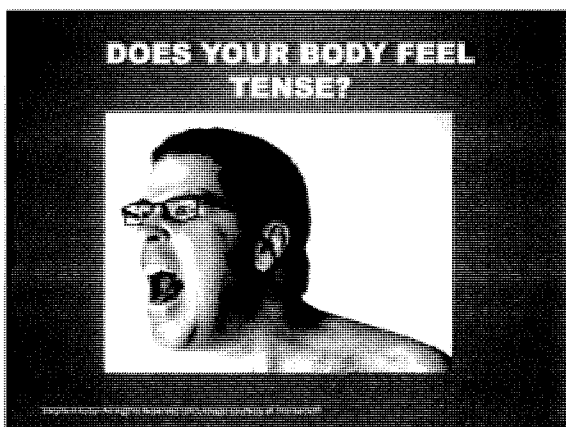
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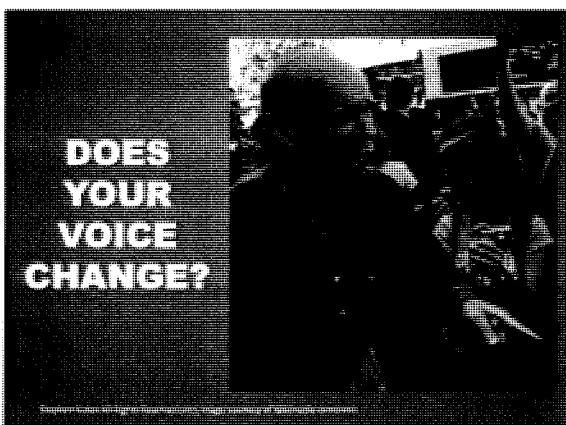
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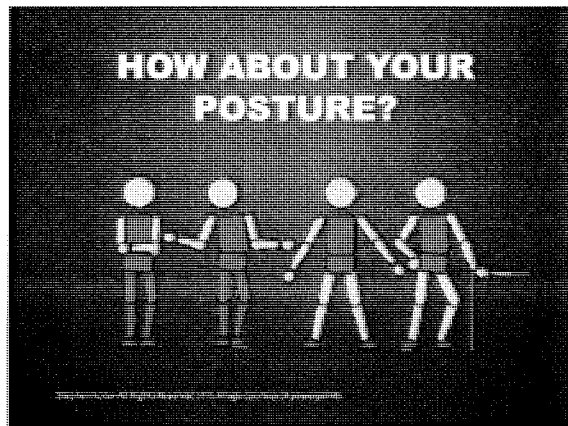
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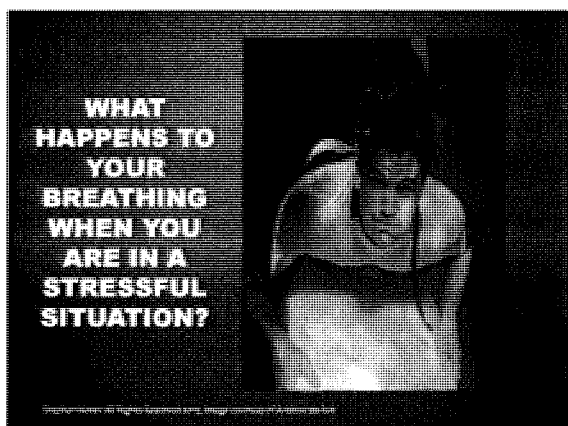
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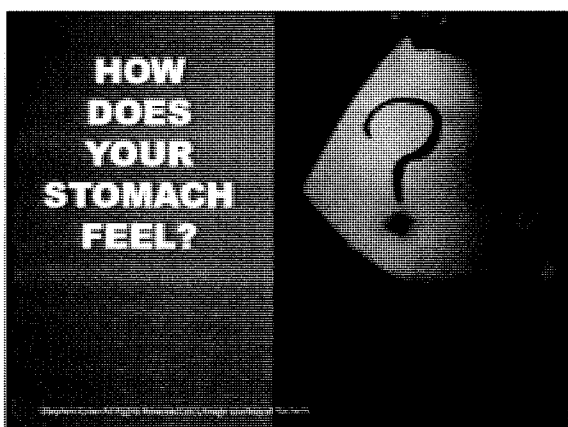
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## DOES YOUR BODY JUST SHUT DOWN?



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## COMMON PHYSIOLOGICAL RESPONSES TO STRESS

- ❖ Contraction
- ❖ Clenching of your jaw or tightening of your shoulders/change in posture
- ❖ Fluctuations in body temperature (hot/cold)
- ❖ Tunnel vision or blurred vision

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- ❖ Limpness
- ❖ Increased heart rate
- ❖ Stomach upset
- ❖ Shortness of breath, hold breath, hyperventilate/change in vocal tone
- ❖ Triggers the Fight-or-Flight Response

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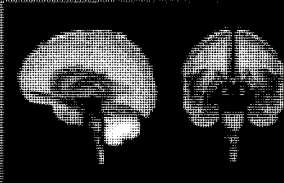
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**NEGATIVE EFFECTS OF THE FIGHT-OR-FLIGHT RESPONSE ON THE BRAIN**

The midbrain, also known as the 'reptilian' part of the brain takes over and your forebrain literally shuts down

With your forebrain shutdown you are prevented from using your ability to negotiate and think creatively—effectively all of your problem solving skills

Your ability to use language and reason is also compromised



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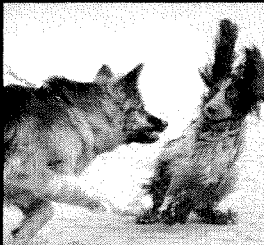
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**STAY FOCUSED**



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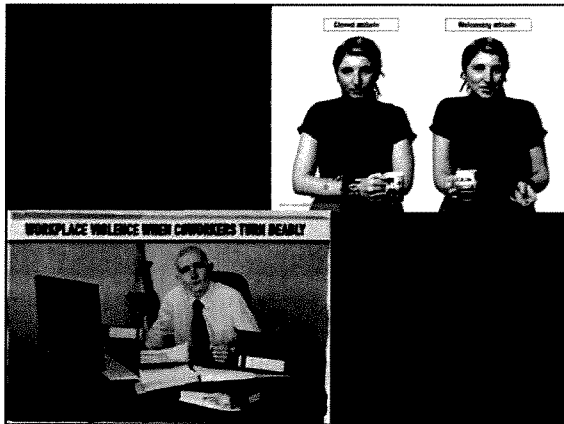
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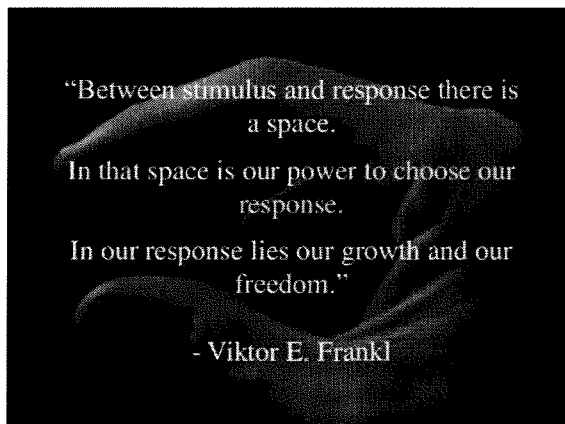
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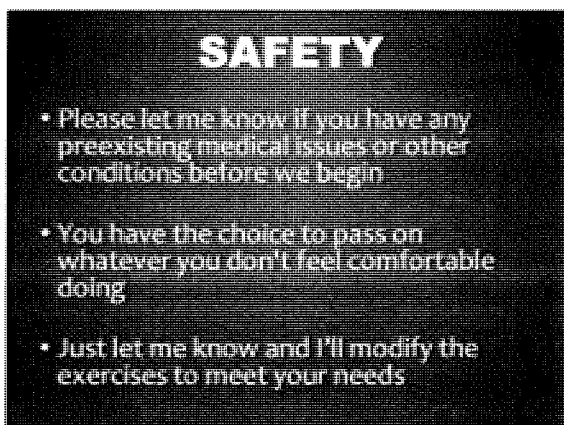
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## GENERAL ADVICE

- The purpose of these exercises is to expose your partner to stress
- You are doing a good job if you stress your partner out
- If you are too nice, they won't learn anything
- Just give them enough so they have something to work with
- Don't ruin their day or make it too easy on them

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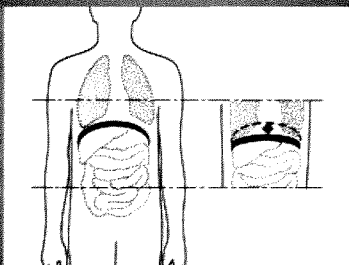
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## INTRODUCTION TO BELLY BREATHING



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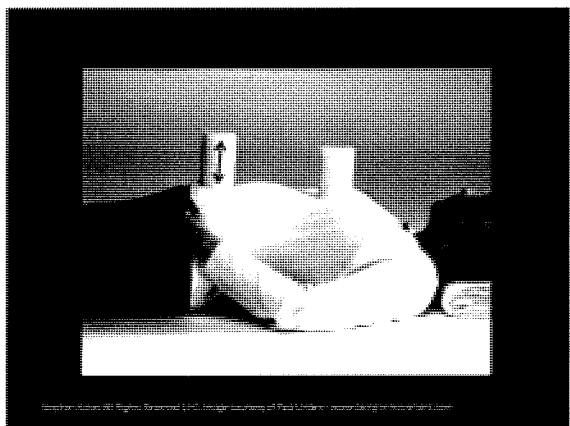
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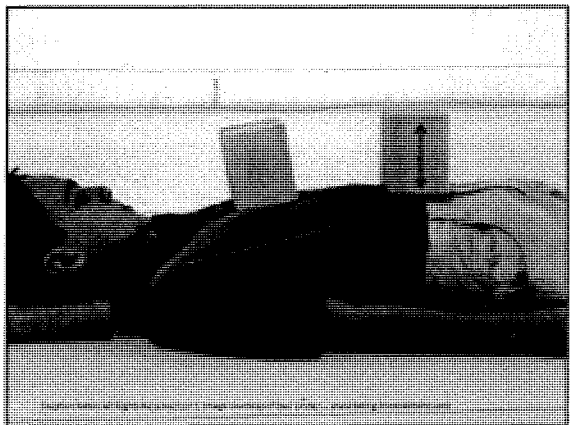
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- ❖ Please stand if you are able
- ❖ Allow your feet to be shoulder width apart
- ❖ Locate your belly button
- ❖ Place two fingers below your belly button – In the Japanese martial arts, this is called your hara or the center of your body
- ❖ Leave your fingers over your hara and practice breathing from this location
- ❖ As you inhale, feel your fingers and hand move away from your spine as your belly fills with air. As you exhale, feel your fingers and hand move toward your spine as your belly contracts in exhalation. Imagine a balloon inflating and deflating

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**FEEL YOUR HAND MOVING AWAY FROM YOUR SPINE AS BREATH ENTERS YOUR BODY**




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**PLEASE RETURN TO YOUR PARTNERS**




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**WHAT DID YOU NOTICE?  
AND WHAT WAS THE  
DIFFERENCE THE SECOND  
TIME AROUND?**

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### **SOMATIC CHECKLIST**

- ✓ Breathing
  - ❖ Shortness of breath, hold breath, hyperventilate
- ✓ Contraction
  - ❖ Posture
    - Clenching of your jaw or tightening of your shoulders

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- ✓ Vision
  - ❖ Tunnel vision or blurred vision
- ✓ Heart Rate
- ✓ Body temperature
  - ❖ Hot/Cold
- ✓ Limpness
- ✓ Upset Stomach
- ✓ Vocal tone/inflection

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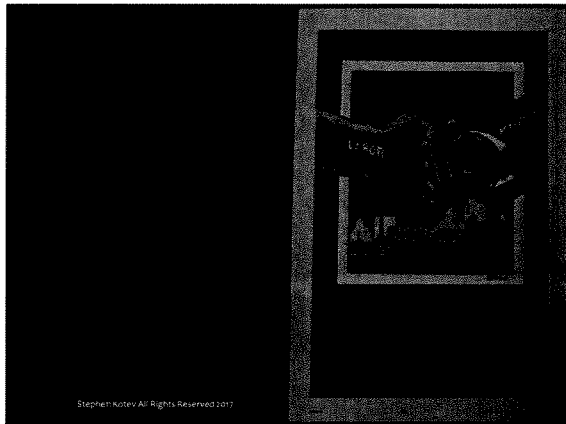
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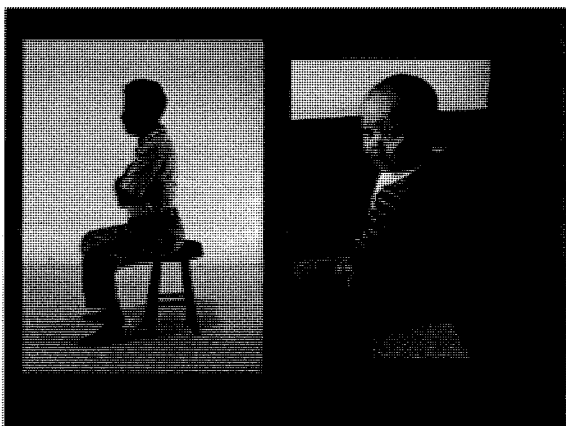
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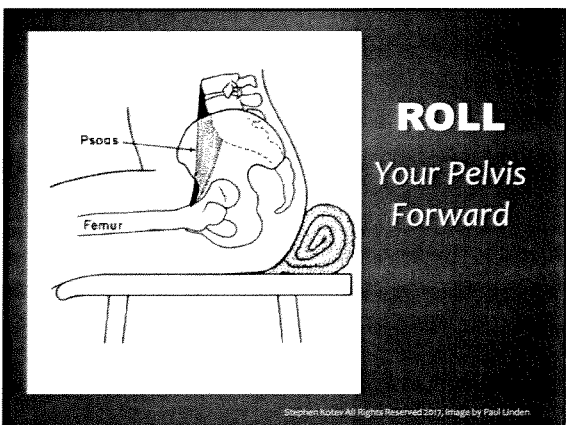
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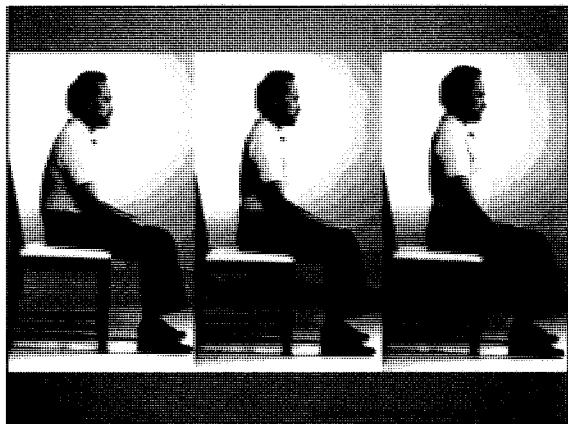
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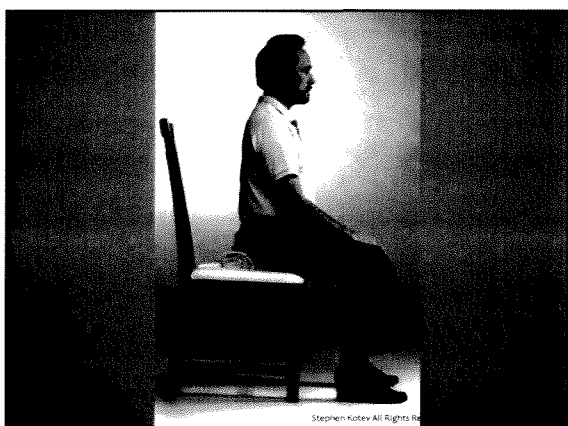
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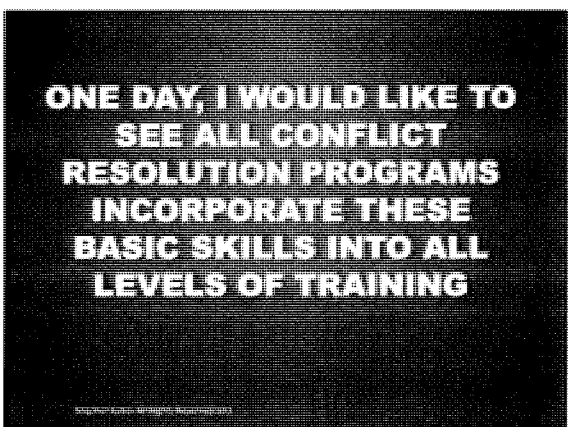
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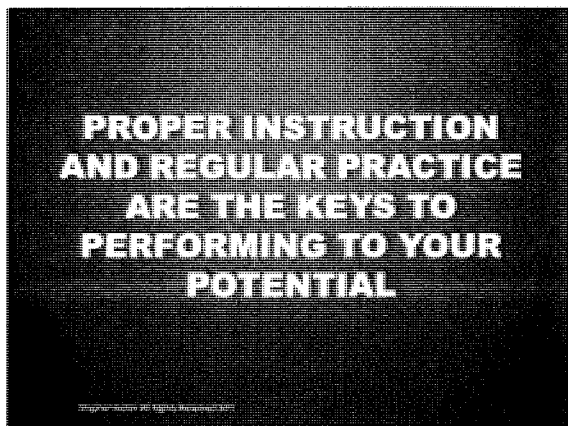
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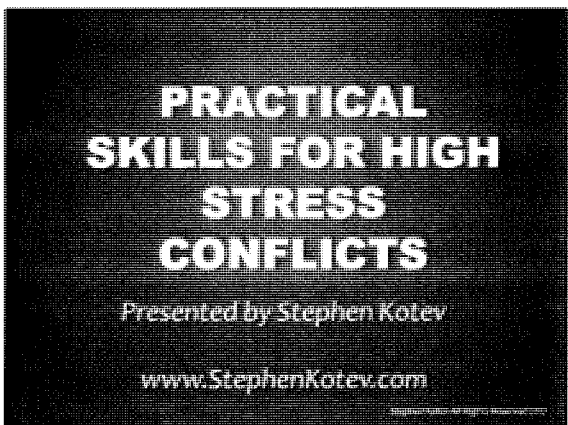
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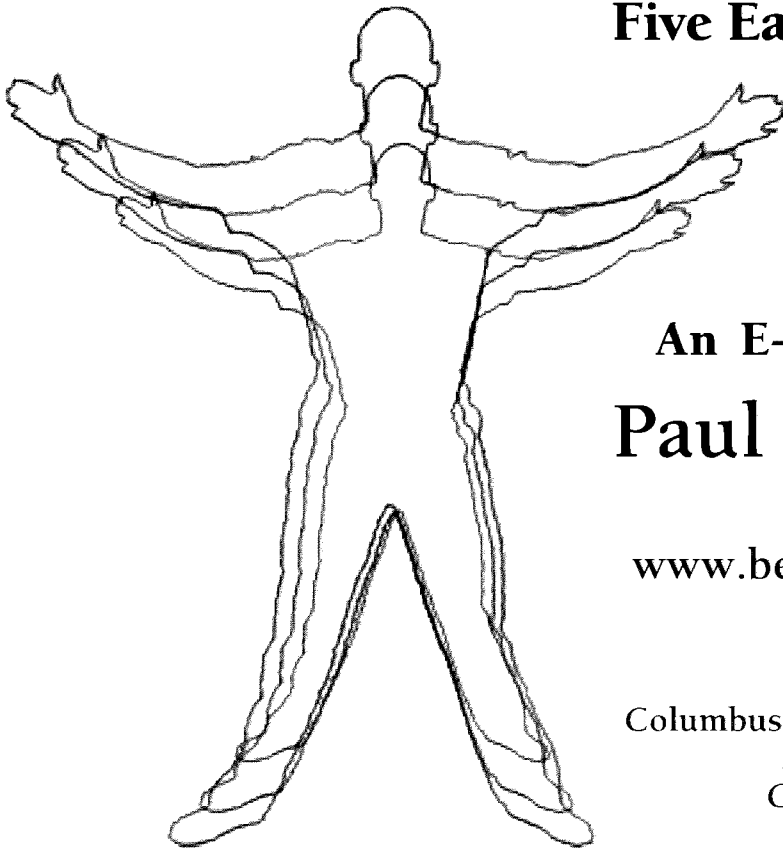
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# **REACH OUT**

**Body Awareness Training  
For Peacemaking—  
Five Easy Lessons**



**An E-Book by  
Paul Linden, Ph.D.**

[www.being-in-movement.com](http://www.being-in-movement.com)

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Body Awareness Training for Peacemaking—Five Easy Lessons  
by Paul Linden, PhD

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*Biography*  
*Service Mark*  
*Source Identification*  
*Workshops and Questions*

My hope is that this book will contribute to the development of a peaceful world. Please feel free to make copies of this book or refer people to my website to download the e-book for free.

# INTRODUCTION

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A number of years ago, when my son was in the fifth grade, my wife and I taught four hours of embodied peacemaking to each class in the school. The school already had a very nice program of conflict resolution and peer mediation, but it was all verbal and conceptual. It had to do with thinking and talking, and the body was left out of the equation.

We started from the idea that peaceful words don't work well when they are delivered by someone in a physical state of fight-or-flight arousal. That arousal says in non-verbal ways "*threat, danger, fight, run!*" And that non-verbal message will undermine the peaceful words.

We taught the children a simple, systematic way of putting the body into a state of relaxed alertness. It is an integrated state of awareness, power and kindness. In that state, you don't feel afraid of, angry at, or alienated from an attacker (or from yourself). In that state, you have the ability to speak words of peace from a peaceful place, a place which is strong and dignified, which commands respect and encourages friendship.

On the last day of school, I went to help my son clear out his locker. As I was walking up to my son's room, a little boy plucked at my sleeve and stopped me on the stairs.

"Mr. Linden," he said. "Remember teaching us the Soft Tummy exercise?"

I remembered the class he had been in.

"Well, I was out on the playground, and an older kid came over. He was mean, and he wanted to steal my ball. I softened my breathing and I opened my body, and I said to him, 'I don't want to fight with you. Why don't we play with my ball together?' And so we played, and we didn't fight."

That was an example of body-based peacemaking.

## WHY THE BODY?

Why focus on the body? It is very common to believe that conflict and peace are fundamentally mental, emotional and spiritual in nature. However, rather than seeing conflict and peace from a purely psycho-spiritual perspective, it is important to understand the crucial role the body plays.

To begin with, it is important to distinguish two different senses of "conflict." *Conflict* can refer to either the topic of a dispute or to the feelings that almost always accompany disputes. The two are separable. Generally, disputes are carried out in a spirit of distrust, competitiveness, fear, and anger, which leads to escalation and the generation of new disputes. However, it would be possible to have a dispute while feeling calm and respectful. That would lead to the most effective resolution of the dispute.

Conflict, as it is usually experienced, includes fear and anger. When people are afraid or angry, they lash out and try to hurt the people who make them feel afraid or angry. Conflict resolution and peacemaking must start with controlling the emotions of fear and anger and go on from there to cultivating feelings of cooperation and harmony.

The difficulty is that emotions are very difficult to control or cultivate when you think of them as mental events. But when emotions are looked at as body processes, that makes them more concrete and simpler to identify and manage.

Working with the body is particularly effective because the body is tangible and observable. In this book, you will work with movement experiments which represent conflict in scaled down, safe forms. That way you will have the time and opportunity to study conflict and practice peaceful responses to it.

The process will involve noticing and feeling moment-by-moment what is happening in your body as it responds to the challenges in the movement experiments. You will learn to improve postural alignment, stability, and mobility as a pathway toward focused alertness, power, and love. Then you will practice using this state of mindbody wholeness as a foundation for responding peacefully to the challenges in the movement experiments.

It is important to remember that peacemaking is not an intellectual insight or commitment. It is an embodied process of responding to challenges in a physically peaceful manner. It takes practice to overcome old response patterns and cultivate a new, better habit.

Of course, the real use of the process is in responding to the challenges and confrontations that daily life brings. Through this book you will learn practical skills, and you will benefit more than you can imagine by applying embodied peacemaking in your life.

## **IN A NUTSHELL**

The process you will be learning can be stated simply and briefly. The essence of conflict is physical contraction, and the essence of embodied peacemaking is the deliberate replacement of contraction with expansion.

Fear, anger, distrust, egotism, jealousy, greed, deceitfulness, and other negative feelings involve compression of the breath, muscles and posture. Compression creates physical weakness and instability. It creates narrow perception and narrow thinking.

Kindness, sensitivity, generosity, truthfulness, assertiveness and other positive feelings involve openness and freedom in the breath, muscles and posture. Openness creates sensitivity, power, and compassion. It creates open perception and open thinking.

By doing the exercises in this book, you will learn how to detect compression and replace it with openness. That will lift you out of the fight-or-flight physiology and place you in a mindbody state conducive to peacemaking.

## **BODY & MORALITY**

There is an interesting difference between ending conflict and starting peace. Peace is far more than merely the absence of conflict. All conflicts eventually end, one way or the other, but new conflicts arise. Peace is the condition in which conflicts are dealt with and resolved in respectful, life-affirming ways. Peace is not the absence of conflict. Given the complexity of the world, that is an impossibility. Peace is the situation in which people have tools for resolving conflict in non-destructive, productive ways.

Peace must be based on peacefulness, which is a body state. Our bodies are designed to function in a loving, empowered way. Fear and anger are weakening to the body and the whole self. Actions that are built on the feelings of fear and anger will create, escalate, and perpetuate conflict. I would say that peacefulness is the essence of moral behavior.

Morality is not some abstraction imposed from without. Morality is built into the very structure of the body. Morality comes from an integrated body state of power and love. Embodied peacemaking is an expression of the fundamental moral structure of the body. The method of peacemaking described in this book is not based on philosophy and beliefs but simply on how the human body works.

## **BEING IN MOVEMENT®**

Embodied peacemaking is perhaps the most important application of the body awareness training method I have created. That method, which I have developed over the last thirty years, is called Being In Movement® mindbody training. BIM has its roots in Aikido, a non-violent Japanese martial art which focuses on the ethics of self-protection. In BIM, by developing easily teachable body awareness skills, I have made simple, explicit and precise what is complex, difficult and only implicit in the art of Aikido.

Whether I am teaching movement efficiency for golfers, performance anxiety reduction for violinists, injury prevention skills for computer users, trauma recovery for sexual abuse survivors, burnout prevention for psychotherapists, or conflict resolution and peacemaking, I focus on body awareness as a path to efficacy. The specific details are very different for each application, but the foundation is the same.

BIM is a detailed examination of the interaction of intention, posture, movement, feelings, action, and social justice. There is a lot more material I have worked with that would apply to the topic of embodied peacemaking, but I decided to include in this book only the core work so that people could learn and use it as easily and quickly as possible.

If you would like further information about embodied peacemaking or other applications of BIM, you can take a look at my website, [www.being-in-movement.com](http://www.being-in-movement.com). I also have published two books which explain the body process I use. The first is *Comfort at Your Computer: Body Awareness Training for Pain-Free Computer Use*. The second is an e-book, *Winning is Healing: Body Awareness and Empowerment for Abuse Survivors*. People interested in conflict resolution and peacemaking would be particularly interested in *Winning is Healing*. Though its specific topic is trauma recovery, it is an extensive and detailed examination of how to create the mindbody state of inner peace and outer efficacy.

## USING THIS BOOK

I wrote this book because we need a powerful yet simple way of moving the world toward peace. I hope that people will use this book as a workbook to teach skills of body-based peacemaking in schools, businesses, houses of worship, mental health facilities, prisons, and so on.

Some of the exercises require that people work with partners or groups. It might be helpful to choose one or more leaders, who will be responsible for reading and teaching the exercises. They can also time the exercises and suggest when people should switch roles or switch partners.

Each lesson in the book will take between half an hour and an hour to teach, depending on how many people are part of the class and how much time is taken for discussion. All five lessons can be taught in one workshop of two to four hours in length. The lessons build on each other and go over the same material in many different ways. They offer enough practice to convert the process from an idea to a physical habit.

However, if you are pressed for time, the first lesson can stand on its own as a complete and sufficient experience of embodied peacemaking.

The method of embodied conflict resolution that I have developed is simple enough for children and works just as well for adults. It's specific and concrete.

This book will provide you with a simple roadmap for embodied peacemaking. You can use the book as a series of lesson plans to develop conflict resolution and peacemaking skills for use in situations from marital discord, to social disagreements, to business negotiation. Embodied peacemaking can be applied to small-scale interpersonal friction or to international conflict.

You may wish to learn the skills for improving your own life, or you may wish to use the book as a foundation for teaching others how to improve their lives. You may wish to teach adults or children. The human body and the skills of self-awareness and empowerment are the same across the board.

I have, of course, written the book and described the exercises in the language and cognitive style appropriate for adults. I have included not only the exercises but some discussion of the underlying social and theoretical meaning of the exercises.

When I teach children, I make the situation simpler and more play-oriented. I leave out the complexity of the theoretical material, and simplify the directions for the exercises. When working with children, it's important to have fun yourself. If you're having fun teaching, they'll have fun learning.

## **SAFETY**

In this book, you will study conflict. You will role play mock conflicts. Without that, there would be nothing to study and nothing to practice. But conflict is by its very nature uncomfortable and scary, so a safety contract is needed.

The safety contract is that you are the one in charge. If you wish to stop an exercise, by all means do so. If you wish to slow it down, then do so. No explanations needed. You can simply tell your partner what you need, and they should do it.

Beyond the innately disturbing nature of conflict, the exercises will bring you into contact with your own body and your own responses. I would like to suggest a caution. On the one hand, coming home to your body is very empowering and healing. On the other hand, if you have experienced trauma such as child abuse or rape, or trauma such as a car crash or the recent loss of a loved one, you may find that increasing your awareness of your body leads you to greater awareness of unhealed pain and anger—which could be overwhelming. If you think this caution may apply to you, then perhaps it would be wise to find a psychotherapist or somatic educator to help you work with your body and your inner pain.



# LESSON 1

## SOFT BELLY

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How can we get a practical handle on what conflict is and what its physical effects are? When I am faced with a puzzle, I try to create a movement experiment, a small-scale laboratory version of a big, real-life event. What we need to begin the investigation is a small piece of violence. If it is safe and small-scale, it will not cause unbearable stress, and it will be safe enough to study. But it must be real enough to arouse a response in you, or it will be not be worth studying.

### THROWING TISSUES

This experiment will help you discover how you respond to conflict. For this exercise, you will need a partner. Ask your partner to stand about six or eight feet away (about two meters) from you and throw balled up tissues at you.

Well, as violence goes, being attacked with a tissue is really pretty minimal. For most people this attack is tolerable. Most people find that this mostly symbolic gesture does arouse some fear, but since the “attack” is minimal, so is the fear. When you have a minimal attack, you can afford to take your time to study it and learn about your responses to it.

Calibration is important. The exercise must be matched to the student. I once worked with an ex-Green Beret. As you can imagine, having tissues thrown at him didn’t bother him at all. I had to increase the stimulus intensity *a lot* until we found an attack that was interesting for him to examine. In working with people who don’t feel much, it is often necessary to increase the stimulus intensity so that they get a response large enough for them to notice. I might wet the tissue so it hits with a soggy and palpable thud. Or I might throw pillows instead of tissues. I wouldn’t throw a stone, but I might surprise someone by picking up a stone and pretending that I was going to throw it.

On the other hand, I often have people tell me that even throwing a tissue at them feels too intrusive and violent. In that case, standing back farther so that the tissue doesn’t reach them, makes the “attack” even more minimal. Or it may be necessary to do just the movement of throwing the tissue without a tissue at all. Perhaps turning around and throwing the tissue in the wrong direction will help. Or just talking about throwing a tissue, but not moving to do so at all.

The point is to adjust the intensity of the “violence” in this exercise so that it is tolerable and safe for you to examine. For most people that means revising the attack downward in intensity.

You get the point, I'm sure. The "attack" must be intense enough to arouse some response but so minimal that you will feel safe in examining it.

Once you have chosen your preferred attack, have your partner attack you and notice what happens in response to the attack. What do you feel? What do you do? What do you want to do?

There are a number of common reactions to the attack with the tissue. People being hit often experience surprise or fear. They may feel invaded and invalidated. Frequently they tense themselves to resist the strike and the feelings it produces. Some people giggle uncontrollably or treat the attack as a game. Many people get angry and wish to hit back. People may freeze in panic, and some people go into a state of shock or dissociation.

Most people talk about feelings and mental states. They are surprised, angry, afraid and so on. They want to escape or fight back. However, a very different way of paying attention to yourself is possible.

Notice the details of your muscle tone, breathing, body alignment, and the rhythms and qualities of movement. Where in your body do you feel significant changes? What are you feeling in those locations? Rather than speaking in mental terms—about feelings, thoughts and emotions—it can be very productive to speak in body-based language. By paying attention to the physical details of your responses, you will begin to see more deeply into the ways you handle conflict. And learning to notice what you do is the first step in changing and improving what you do.

Notice what you do in your throat, belly and pelvis. What happens in your chest and back? Notice what you do in your face and head. Notice what you do with your arms/hands and legs/feet. What happens to your breathing? Is there anything else to pay attention to?

Most people realize that they tighten up when they are attacked. They may clench their shoulders or harden their chests. They most likely tense or stop their breathing. They may lean back or lean forward, but it is a tense movement. Sometimes this tension is fear, and people shrink away from the attack. Sometimes this tension is anger, and people lean forward and wish to hit back. Do you do any of these things? Do you also do something else?

Many people find that they get limp as a response to being hit. Their breathing and muscles sag; or they look away and space out, simply waiting for the hitting to be over. They may feel their awareness shrink down to a point or slide away into the distance. Many people find that they experience both rigidity and limpness simultaneously in different areas of the body.

Some people find the role of the attacker far more difficult than the role of the victim, but we will focus on the responses to the role of person being attacked. However, one idea might make the attacker role easier for you. It will help to remember that your attack is a gift to your partner. By being concerned and benevolent enough to attack your partner, you are allowing them the opportunity to develop self-awareness skills. Without your gracious

cooperation, they would not be able to learn these skills, and when they faced real challenges in their lives they would be completely unprepared.

The common denominator in responses of tensing or getting limp is the process of getting smaller. Fear and anger narrow us physically, mentally, emotionally, and spiritually. However, softening the body is the antidote to contraction.

### **RELAXING YOUR BELLY**

Get up for a moment and walk around. What does your belly feel like? Do you suck in your gut? Many people hold their bellies tense and sucked in. If you do, how does that affect your breathing?

How do you feel about your belly? Many people are ashamed of their bellies and try to hide them or make them look smaller.

In order to increase your awareness of how you hold the core of your body, consciously tighten your belly, anal sphincter and genitals and then walk around. Really grip those muscles hard. How does that affect your movement? Notice how stiff and strained this makes your legs, hips and lower back and your movement as a whole. Notice how restricted it makes your breathing.

By the way, as you try this exercise, notice whether your clothes are comfortably loose. If they are tight, there will be a constant pressure on your body. Your muscles will actually tense up and fight the pressure, whether you notice it or not, and it will be hard to relax your belly. As a general rule, in relaxation and in everything else that will be discussed in this book, it will help to wear clothes that are as comfortable as possible.

Now, stand and alternate tightening your belly and relaxing it. When you relax it, let it plop out. Next try releasing your belly—without doing a preliminary tightening. Whatever is your normal way of holding your belly, just let it plop down. Along with softening your belly, for greater relaxation, consciously allow your genital and anal muscles to relax. Was there tension to release even when you had not consciously tensed your belly? What does it feel like to let your belly relax fully?

Most people experience a noticeable release even when they had not first tightened their bellies consciously, and they realize from this that they had been unconsciously holding themselves tight and that they probably do so most of the time.

Try walking around again with your belly soft. How does that feel? Most people experience greater ease, fluidity, and solidity in their walk. And that is how walking should be—not tense and constricted. (Occasionally, people who are very stiff will experience discomfort when they relax their abdominal muscles. That is generally because they didn't relax the rest of their body when

they relaxed their belly. If you are feeling such discomfort, as you relax and free up the rest of your body, you will feel more and more comfortable.)

Almost always when I teach adults about relaxing the belly and letting it plop out, I must spend time combating the notion that sucking in the gut looks better. (Young children don't have this concern.) People very quickly feel for themselves that they breathe and move more easily when they let their bellies out, but often they feel fat and sloppy. They feel embarrassed to go out in public looking relaxed and balanced. For many people it takes a good deal of practice to feel comfortable with being comfortable.

Many people identify beauty and power with tension and constriction. Our culture places trimness before us as the ideal of beauty, but if you look under the skin of that idea, *trimness* turns out to be another name for *tension*.

Think about it for a moment. When do we normally and naturally suck in our gut? When something startles us! Tensing and sucking in the belly is part of the fear/startle response. Isn't it strange that we are all encouraged to live in a permanent fear/startle pattern?

Holding tension in any area of your body makes your entire body uncomfortable, but the muscles in the belly, anus and genitals are especially important. They are the core of the body and the center of movement and balance. Holding tension in these body areas makes it impossible to relax and move freely, strongly and comfortably.

Sucking in your gut creates tension and weakness throughout the body. If you bring that commitment to tension with you to the task of discovering how to respond to conflict peacefully, you will be taking two steps back and one step forward. In order to become peaceful, you need to be willing to feel how your body operates and do what will make you truly relaxed and comfortable.

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The next place to go in practicing the skill of embodied peacemaking is breathing. Breathing is an interesting activity. It is something which is normally involuntary and automatic but which can be easily controlled consciously. By breathing during fight-or-flight situations in a manner that is involved in rest, you can actually keep your mind and body relaxed and alert and ready to deal with the problems confronting you. The purpose for relaxing your belly was to prepare you for relaxing your breathing.

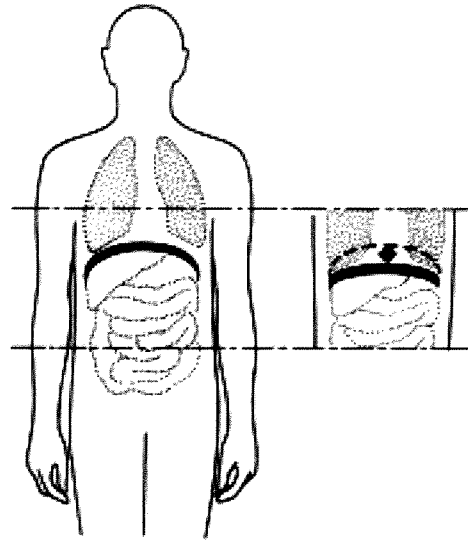
Before you learn the following breathing and relaxation exercise, you need to understand how breathing actually works. The key fact is that the lungs don't do the movements of breathing. The lungs are passive sacks that allow contact between the blood and the air so that oxygen can be taken in and carbon dioxide released.

The diaphragm muscle is the mover in the action of breathing. It is a dome-shaped muscle that stretches across the chest, and it functions like a piston. When it pulls down, air is sucked into the lungs, and when it relaxes and

goes back up, air is expelled. Below the diaphragm is the stomach, liver and intestines, and that all has to go somewhere when the diaphragm pushes down. Flesh, being most water, is incompressible, so it can't be squeezed smaller. It can't move up because the diaphragm is there. It also can't move down because below are the pelvis and the web of muscles that comprises the floor of the pelvis.

When the diaphragm pushes down, everything below is displaced outward, primarily to the front where the abdominal muscles can allow movement (but to some extent to the sides and back since the rib cage allows some movement there as well). This is how infants breathe, and it is the anatomically natural way to breathe, but it is not how most adults breathe.

I wonder whether this tension-filled way of breathing is related to the prevalence of conflict in our world. The fear-startle response is the body's response to emergencies, but people who get stuck in the fear-startle response will treat everything that comes their way as a threat and respond to it in the spirit of conflict. Learning to relax your breathing is important in preventing and breaking out of fight-or-flight arousal.



*Action of the diaphragm*

### **BELLY BREATHING**

Stand up. Now, put your hand on your belly and notice whether you suck in your belly or let it expand when you inhale. Then touch your low back, and touch your chest. Do they expand when you inhale?

Let your belly relax, and keep it relaxed as you inhale. Let the air fall gently down into your tummy as you breathe in, and let your tummy expand. (Of course the *air* stays in your lungs, but this image will help you feel the *movement* all the way down through your body.) Your belly should be the focal point of your breathing, but it is important to let your chest and back also swell gently as you inhale.

Compressing your belly as you inhale rigidifies your chest and back and creates a lot of tension in your body. However, if you have gotten used to sucking in your gut as you inhale, breathing in a more relaxed, comfortable manner will feel strange. It may be so unfamiliar that you will feel uncomfortable breathing comfortably.

If expanding and inhaling is difficult, at first you may have to deliberately push your belly out as you inhale just to get the rhythm. Later you can give up this extra effort.

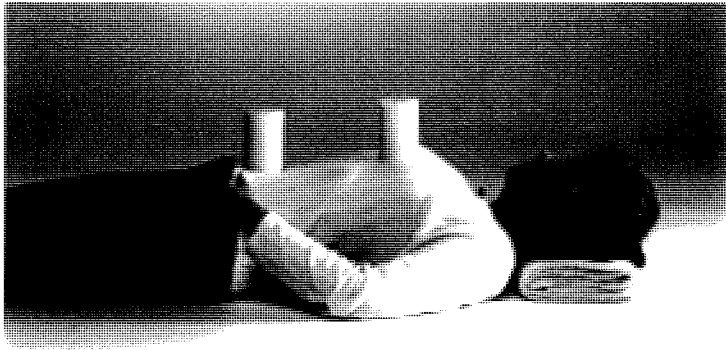
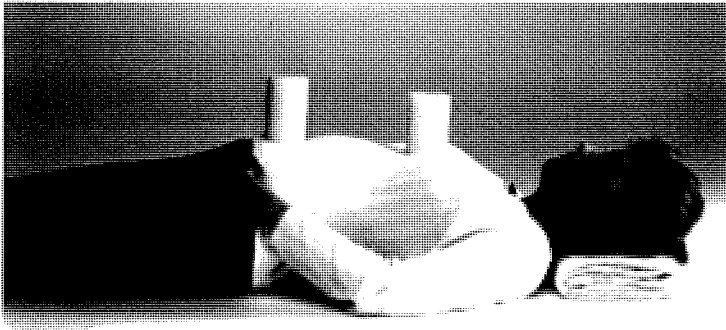
Some people find it very hard to figure out how to either expand or push out their bellies. A way to help with this is to lie down on your back, with pillows under your head and knees, put a fist sized stone (or something similar) on your belly just below your belly button, and concentrate on raising the stone by inhaling.

Once you have found out how to expand while inhaling, try standing and breathing in through your nose and out through your mouth. Don't purse your lips when you exhale, but rather soften your lips and open your mouth gently. Let your whole torso relax and open, so that the air comes in and falls gently down to your pelvis.

Breathing in through your nose and out through your mouth is useful for two reasons. It makes the absolutely ordinary process of breathing into something new, which helps you stay focused on it. Also, it is a bridge between an inner and an outer focus. Normally you breathe out through your mouth only when you are talking or expending physical effort. Both those tasks are directed outward into the world. This breathing exercise focuses on what you are doing inside your body, but its purpose is to cultivate an inward relaxation which will allow effective functioning out in the world.

Ideally you should relax your belly and breathe from there all the time. However, breathing in through your nose and out through your mouth is just an exercise. In daily life, you should breathe normally, in and out through your nose.

Try walking around as you breathe from your belly. How does that movement feel? Most people feel that their movement is more relaxed, grounded and graceful.

*Chest breathing**Belly breathing*

Applying newly acquired knowledge is important. When you apply new information and experience success in applying it, that engraves it in your brain. We remember what works, and we will apply in the future what we've experienced success with in the past. So let's use this new way of breathing in a conflict situation.

**THROWING TISSUES II**

Let's go back to the tissue attack. It will be the same exercise but there will be one difference: as your partner throws the tissues at you, use what you have just learned about softening your tummy and focusing your breathing in the core of your body. Relax your belly, and regardless of what your partner may do with the tissues, keep your tummy soft and your breathing steady.

What do you notice? How do you feel? What difference does softening your tummy make?

Most people notice that they receive the attack very differently when they keep their breathing soft. The attack no longer seems so threatening. They don't react with constriction, fear or anger. Most people experience that when they stay soft, they don't dislike the attacker but can maintain a spirit of calmness. The attack becomes just an event to deal with.

In other words, softening the belly takes a lot of the emotion out of being attacked. It reduces the attack to an event to be dealt with. And it gives the defender the calmness and presence of mind that will allow her/her to find constructive and peaceful ways of responding to the conflict.

One way to begin breaking free from the mental constriction involved in conflict is to focus on core muscles and loosen them. Once you can remember to remember to loosen your belly and breathe from there, you have begun the process of embodied peacemaking.



## LESSON 2

### LOVE

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Most of the world's conflict resolution efforts are focused on negotiating the external conditions for resolving conflicts, but inner feelings of fear, anger and distrust bubble up to undermine the agreements about external conditions. Obviously, work on external issues is necessary and important, but in this book we are focusing on the inner work.

Is the inner condition of harmony and good will a physiological or a psychospiritual phenomenon? Well, it's both, of course. I prefer to think of the words "mind" and "body" as being two different language systems. One points at and refers to the *experience* of being a living human being. And the other points at and refers to the physical *object* which a human being is. But just as we can say "the table" or "la table" or "der Tisch" in English, French, and German and yet refer to the same one table, so we can speak about body, mind or spirit and yet be referring to only one thing. In this book we are focusing on physical work as a means of creating psychospiritual change.

This lesson will focus on the process of love or kindness as way of softening the body. However, a particular issue that often arises as people begin learning to use softness has to do with strength, power, and boundaries. Doesn't softening your core make you weak? Isn't strength hard? Don't you need to be tough to keep people from intruding? This next exercise will address that issue.

#### **YOUR SPOT**

Pick a spot on the floor, and stand on that spot. Ask your partner to push you off. Your job is to stay on your spot and not get pushed off.

Before the exercise gets too crazy, let's put some limits on what this means. Have your partner push you with the palms of both hands, on your chest or shoulders. The push should be a gradual shove not a sudden blow. The push should be reasonably strong but not unreasonably hard, in other words, neither limp nor brutal.

What do you do to maintain your position and your balance? What do you do with your breathing and posture? Most people brace themselves for the impact. They stiffen up and try to resist the push. Get as tough and hard as you can and brace yourself to withstand the shove. Does that work? Most people find that it doesn't

Now, try it again, but this time relax. Remember, that doesn't mean getting limp and spaced out. Let your belly soften. Breathe calmly in through your nose and out through your mouth. Be soft yet focused when you are shoved. What does that do?

Most people find that when they release their bellies, they feel heavier on the ground. They feel more solid and massive, and they can resist. They also feel flexible enough to adjust to the push and can dissipate and redirect its force by subtly yielding to the push. Most people find it much easier to stay on their spot by getting soft.

Often people feel that anger is a source of strength. Try getting angry and using that energy to resist the shove. What happens?

Most people find that anger, which is a form of bracing, actually weakens them. If you wish to be strong enough to stand your ground, you will have to give up your anger.

Of course it doesn't feel so *manly* and impressive to be soft. Still, would you rather feel good about being tough and strong—while being defeated? Or would it be acceptable to feel calm and ordinary—and through this discover your power and your safety? I think the choice is obvious.

Though bracing feels like strength, it is really just a compacted form of weakness. Bracing (or efforting) is the process of applying your strength to your own body rather than to objects in the environment. When you brace, you feel your strength because you are using it against yourself. Bracing reduces your effectiveness. True strength will feel much less obvious.

I am not saying that people should suppress their anger or that anger and other “negative” emotions are bad. They are natural, legitimate responses of the organism to invasion, and it can be productive to feel and study your hurt and hurtful feelings when you have time to do so. In a situation of conflict, however, you cannot afford to be angry. You will move and think best when you are relaxed and focused.

It's simple. Our culture suggests that hardness and toughness are strong, but that is wrong. Hardness seems like the obvious way to be strong and resist threats, but as you experienced just now, it doesn't work.

The search for power through toughness is, I think, part of what perpetuates conflict and violence. People who have been hurt, and who feel weak and fearful, try to get strong enough to fight back and hurt the people who have hurt them. This certainly is not the way to create peace.

Real strength is soft, considerate, and gentle. Softness is the key to both peace and strength.

### EYEBROW POWER

Stand in a stride stance (one foot in front of the other) and resist when your partner pushes on your chest. As in the last exercise, make it a safe and gradual push, not a sudden impact. Relax your belly and your breathing, lean forward a bit into the push, and resist it. Most likely, you will be hard to push.

Now make one small change. Raise your eyebrows while you resist your partner. Almost certainly you will now be easily pushed back. Why?

When would a person ordinarily raise her eyebrows? When she's startled or afraid. And what other body actions would she perform when her eyebrows went up? Most likely she would lean back. It's the fear/startle response.

So when you raised your eyebrows, your body figured you must have been startled or afraid, and it fired off the rest of the reflex package. When your body goes into the fear/startle response pattern, your posture gets weak. Clearly, fear is physical as well as mental, and fear weakens you.

Go back to Soft Belly Breathing, and try resisting your partner's push. When you deliberately put your body into a stable postural pattern, it inhibits the emotions of fear.

## **HATRED**

Try doing the same chest push as in the last exercise. Breathe, open your body, and resist your partner's push.

As you do, imagine someone who is a constant source of irritation and obstruction—perhaps a boss who constantly belittles you, or a co-worker who always shirks his own work but tries to take credit for work you have done. You have tried everything you can think of to resolve the situation, but the jerk just makes fun of you for trying. Let yourself feel irritation and resentment. Even hatred.

What happens in your body? What do you do in your breathing? In your chest and your posture as a whole? Can you resist the push? Probably not.

Negative feelings such as fear and anger produce constriction, hardness and imbalance in your breathing, chest, face, and the rest of your body. Acting from the physical state of hatred makes movement cramped and graceless. It makes action weak.

In other words, both fear and anger will weaken you. Making peace demands a lot of inner strength. Weakness is no basis for peace, and for that reason both fear and anger must be avoided.

What do these exercises on the weakening effects of fear and anger suggest? Simply that the body does not function well in states of fear and anger. On the contrary, the body functions best in the integrated state of love and power—as we shall see. We are designed to function in a loving way. Fear and hatred are weakening to the Self. Ethics is not some abstraction imposed from without. Ethics is built into the very structure of the body.

**SOFT FACE**

Make a really angry face. Glare with your eyes, and scowl with your face.

Make a really scared face. Open your eyes wide, and make a silent scream with your mouth.

Feel your tongue, throat, lips and jaw. Notice how your forehead, eyelids, and cheeks feel. Notice how tight and twisted your face feels. Probably the rest of your body gets tight too.

Now, let your face relax. Let your jaw relax. Soften your tongue and throat. Let your cheeks, eyelids and forehead rest. Let your mouth hang gently open a bit. How does that make you feel? Probably quieter and more relaxed.

Along with your face, you can let your eyes relax too. Pick something to look at. Make sure not to stare hard, but let your eyes get loose and soft. Make sure not to stop blinking when you look at your target point. Without moving your eyes, notice what is on each side of your target point. Notice what is above and below your target point.

When you get angry and afraid, you get tunnel vision. You stare at the one thing that is upsetting you, and it takes over your awareness. If you let your face and eyes get soft, you will be able to see more of what is around you, and you will feel calm rather than upset.

**SMILING HEART**

Everyone has something or someone—perhaps a friend, a lover, a child, a flower, a work of art—something that when they think of it makes their heart smile.

Stand with your eyes closed, and spend a few moments thinking about whatever it is that makes your heart smile. What happens in your body? How is your chest affected? What happens to your breathing? What sensations do you feel flowing through you?

Most people experience a softening and warmth in their chest, a freeing up in their entire body, and a sense of expansiveness.

During a conflict, you can try to remember that a loving feeling is something *you do*. It is a choice, an action on your part. It isn't a response to your attacker, who, after all, is acting very unloving toward you. But if you can feel and act loving toward your attacker, that is the beginning of breaking through the wall of threat and establishing peaceful contact.

All the lessons in this book share a common structure. You learn something that helps you bring your body into a state of peace, and then we create a conflict within which you can practice maintaining that peace. So here comes another conflict.

**NOSES**

In this exercise, rather than hurling tissues, your partner will yell insults at you. Being on the receiving end of a loud yell, and an insult, is often very stressful, and that will give you the opportunity to use the Belly Breathing, Soft Face, and Smiling Heart techniques to preserve your equanimity.

Remember to calibrate the attack. You have the right and the obligation to decide for yourself what level of attack would be difficult enough for you to derive benefit from the practice but not so difficult that you would not be able to succeed.

When I work with children, I usually lean in close and yell, "YOU HAVE TOO MANY NOSES!!!" Most kids will giggle at the stupidity of the "attack," but at the same time they will respond with some fear to the loud voice on the part of an adult. By using this silly "attack," I get to attack while at the same instant showing that this is really not an attack at all.

You could have your partner loudly yell things like "slimeball" or "jerk." Or you could have her yell a bit more quietly and choose things like "frog face" or "monkey brains."

What did you do when your partner yelled at you? Could you remember to soften your body and open your heart? Was that easy, or did it take effort?

## LESSON 3

# POWER

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Power is an important step in the development of peace, and this is rather surprising to most people. Love creates a softness in body, perception and movement. Power creates stability, which is a prerequisite for the vulnerable softening of love. Of course, softness is a prerequisite for the flexible, wise use of power.

Power and love, contrary to the model that our culture uses, really are inseparable. In fact, they are the same. Love without power is limp and ineffective, and power without love is rigid and harsh. In either case, love or power is diminished to the point where it becomes just a shadow and not true power or love at all. Power is the foundation for the ability to love, and love is the foundation for wise use of power. This is not mere philosophy but is simply a shorthand method of stating that the body and the self must be soft and receptive as well as integrated and strong in order to function well.

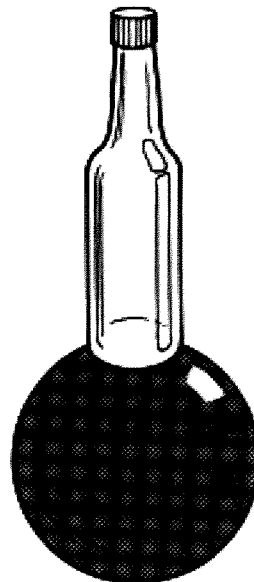
Love is soft and power is bright, but both are about openness and freedom. The physical state of power/love is also an emotional and spiritual state, and in this state, people will indeed feel peaceful and act in genuinely peaceful ways.

Power is the foundation for ethical, compassionate and *effective* behavior. Without a certain measure of power, compassion will be weak and incapable.

In this lesson, we will deal with postural stability and strength as a foundation for the softness and openness that we have practiced so far.

However, body use for empowered and effective movement is a complex topic, perhaps more complex than the themes of the other lessons. I'm including this lesson because the book would not be complete or balanced without it, but this lesson only scratches the surface. Still, experiencing the basics of embodied power will help you understand that peacemaking must be grounded on an integrated state of softness and strength.

Let's start our consideration of power by examining how you balance your spinal column on your pelvis. It is very much like balancing a bottle upright on a bowling ball. Your spinal column is like a bottle, and your



pelvis is like a bowling ball. If the bottle is placed just exactly right on the bowling ball, it will balance and stay upright. However, once it is balanced, if the bowling ball rolls underneath it, the bottle will fall off the ball. Your spinal column, of course cannot fall off your pelvis. However, if your pelvis rotates forward, your back will be dragged forward into a swaybacked position; and if your pelvis rotates backward, your back will be dragged backward into a slumped position.



*Pelvis rolled back,  
chest collapsed,  
slumped posture.*

*Pelvis balanced,  
chest open,  
centered posture.*

*Pelvis rolled forward,  
back & chest tense,  
swaybacked posture.*

### **PELVIC ROTATION**

There is a simple exercise which will help you feel how your pelvis and spinal column operate together to provide postural support. Find a firm chair with a flat, level seat. Some chairs have bucket-shaped or very soft seats or seats that slant back. However, in order to do this exercise, you will need to be sitting in a chair that offers neutral support. If your chair is too soft and cushy or forces you to lean way back, it won't work. If you don't have a chair with a flat, level seat pan, you can use an ordinary chair with a minimal tilt or bucket—such as a library chair or a cafeteria chair. Simply fill in the rear edge of the seat pan with folded towels to create a flat and level surface to sit on.

Sit without leaning against the back support, and try slumping down and sitting up straight. By *slumping*, I mean a movement in which you let your body collapse downward. Your shoulders go down but not very much forward. Some people, when they are asked to slump, will bend forward from the waist and drop their head down toward their knees, but that is not what I mean.

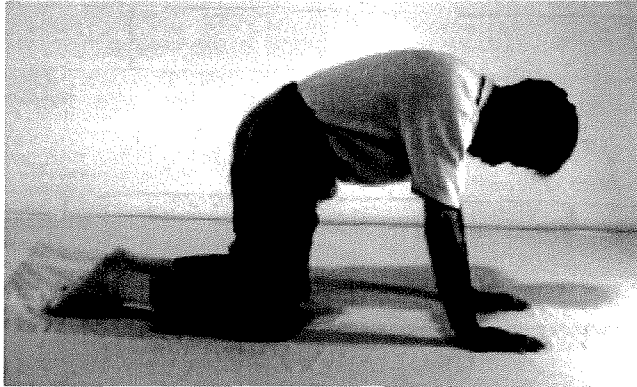
Notice that when you slump, your pelvis rotates backward. The stack of vertebrae has no foundation on which to rest, and it curves and slumps down. (The pelvis can be thought of as a bowl which contains the guts, and “backward” is the direction in which the bowl would rotate to spill out the guts behind the body.) Notice that when you roll your pelvis forward, your body moves up out of the slump to an erect sitting posture. And if you continue rolling your pelvis forward past the point of erect posture, your back arches into a swayback position.

Contrary to what most people believe, straightening up from a slump is accomplished by rolling the pelvis forward not by throwing the shoulders back or by straightening the back. If you aren’t sure about this, slump and feel how your pelvis rolls back. Now, without moving your pelvis at all, try to sit up by moving your shoulders. It can’t be done.

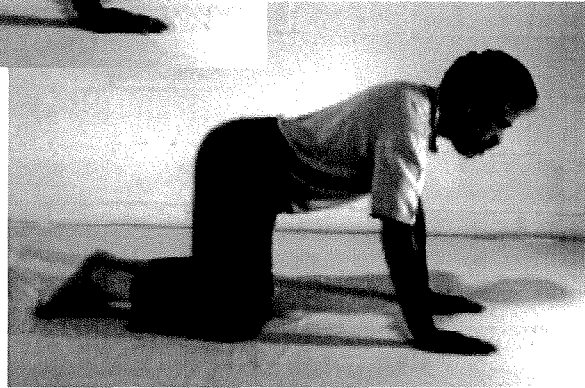
Try rolling your pelvis forward to sit up out of the slump, and simultaneously puff out your chest and throw your shoulders back. Notice that movements of your shoulders, chest or back are extra movements, which use muscles unnecessarily and waste energy.

Some people find it difficult to do the movement of pelvic rotation while sitting, but practicing it in another position can be easier. Get down onto all fours, standing on your hands and knees, with your arms and legs pretty much vertical (but not locked) and straight underneath you. Now, gently arch your back, letting it sag down into a swayback position—like a horse that has had too many heavy riders. And then hump your back up—like an angry cat. Move slowly and gently back and forth from the arched to the humped position, feeling how your pelvis rolls and your spinal column follows the rolling. Once you have felt the movement clearly, try it again in the sitting position.



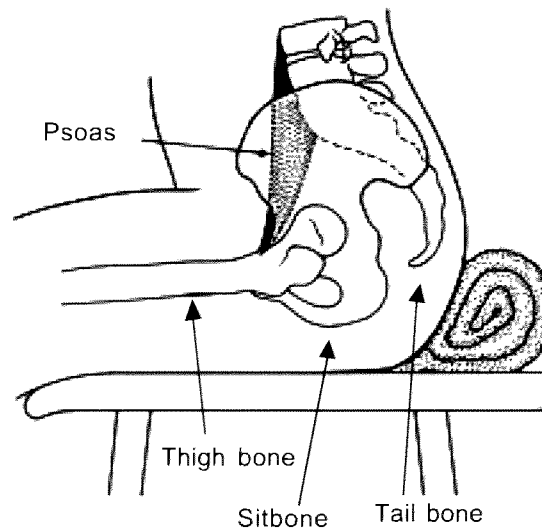


*Pelvis rolled  
backward (top)  
and forward  
(bottom).*



There are two very different sets of muscles which will rotate your pelvis forward. Using one set produces strain and imbalance in your body, and using the other produces balance, power and ease. To understand this, consider that there are basically two ways to tip a bowl forward—lifting the rear edge or lowering the front edge. Which edge of the bowl moves determines where the axis of rotation is, and which edge of the pelvis is the focus of movement determines whether pelvic rotation will be an easy movement or a strain.

Most people sit up “straight” by arching their backs. This is done by using the muscles along the surface of the back to pull up on the rear edge of the pelvis. However, it creates tension and discomfort, and this is why everyone will sit up “straight” for a minute when exhorted to and then give it up as uncomfortable. The most effective and comfortable way of rotating your pelvis forward involves using two



muscles deep in the core of the body rather than muscles along the surface of the back. Those muscles are the psoas (pronounced *so-as*) and the iliacus (*ih-lye-ah-kus*). These deep, internal muscles, which lie right alongside each other, drop the front edge of the pelvis and create a very strong and comfortable physical organization of the pelvis and spinal column.

### INGUINAL SITTING

How can you find this new way of moving your pelvis? Sit toward the front edge of a firm flat chair, with your back not touching the backrest. (Or if you are comfortable kneeling, you can kneel on the floor, with your buttocks on your heels). Keep your knees spread comfortably apart, your feet flat on the ground and your lower legs perpendicular to the ground, not tucked underneath you or stretched way out in front.

Just for contrast, start by moving the wrong way, lifting from the back of your pelvis. Roll your pelvis forward by arching your back and lifting your back pockets up toward your shoulders. Notice that the movement takes place in your back around your waist. Notice also how tense this makes your lower back. Most people will tend to pull their shoulder blades down as well as their back pockets up, and this will spread the tension up through the whole back.

Now, let's find the better way. Slump down. The new movement will be very low in your body, coming from deep in your pelvis, around your hip sockets, where the inguinal fold is. The hip sockets are where the thighbone joins the pelvis. What we usually call the "hip" is the crest of the pelvic bone, by our waist.

Notice that when you sit slumped your pubic symphysis (the bone just above your genitals in the front of your pelvis) points upwards. Roll your pelvis forward by moving your pubic symphysis forward and down so that it points toward the floor. It is important to keep your knees and feet apart as you try to find the proper way of rotating your pelvis. Most people find that rolling the pubic symphysis toward the floor brings them effortlessly up into a balanced sitting posture.

When the pelvis is balanced the body leans just a bit forward—almost putting the body into the stable configuration of a pyramid. Roll your pelvis to sit up and then lean a bit backward. What does that do? Most people will feel that moving off the line of balance creates tension in their backs and breathing. When you were a kid, did you try to balance your spoon on the lip of your cereal bowl at breakfast? Balancing on your pelvis is just like that. If you find exactly the right weight placement, the balance will be easy, and if you move off that placement, you won't be balanced.

You will know you are doing the movement right when you move easily into an erect sitting posture. Your back and shoulders will not be actively

engaged in muscular work but will move in a soft and relaxed way, simply as a result of the pelvic rotation.

This new way of sitting places the bones of the pelvis and spinal column in the architecturally optimal alignment. The weight of the body is on a vertical line through the head and torso. It goes squarely through the sitbones into the chair. (Your *sitbones* are the ischial tuberosities, the two pointy bones in your bottom that press into whatever you sit on. If you aren't sure where your sitbones are, sit for a while on a flat concrete surface, and you will certainly begin to notice the hard bones pressing into the hard concrete.)

I try not to use the word *straight* about the body. I prefer the word *vertical*. Sitting or standing *straight* has connotations of being tense, held in, in a military posture. Letting yourself be vertical is a comfortable and relaxed way of being in your body. Being vertical has an upward opening and lengthening feeling to it, like a flower growing toward the sun, with its roots joining the earth. The vertical orientation allows your body's weight to fall squarely onto the support surface below your body, and that weight reflects off the support surface to lengthen your body gently upward—rather than sagging or slumping.

*Vertical* does not mean *straight* like a ruler. In a simple sitting or standing position, the body is vertical when all the body's normal curves average out so that the skeleton directs the body's weight straight into the ground. There is a bit of forward lean in proper vertical sitting (as shown in the photograph of the balanced pelvis on page 20). Sitting with just a bit of forward lean moves the body's weight forward along the thigh away from the rear edge of the body. Bringing the center of gravity forward delivers the body's weight into the ground in a more stable and balanced way.

Stability is not just for fun or because it feels good. A stable use of the body's support structure is the foundation for the development of psychological and spiritual power.

### **CHEST PUSH**

Are you a pushover? What is your immediate response when I ask that question? Do you get limp and feel "Yes". Or do you get rigid and feel "NO!"

Let's try an experiment in resisting and not resisting. Your partner's job will be to push on your chest, and your job will be to maintain your sitting posture and not be pushed over backward. (Women can have their partners push on their shoulders.) Sit toward the front of a flat, neutral chair, without leaning back against the backrest.

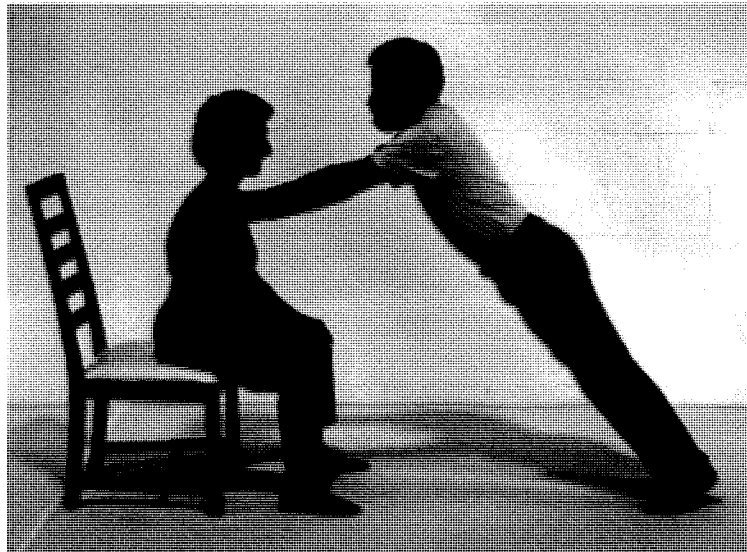
First, sit up *straight*, like a model of "social correctness." Suck in your gut and throw back your shoulders. Have your partner push on your chest with

a steady pressure but not with extreme force. In this sitting posture, can you resist the pressure? Unless you are massive and strong, probably not.

Now, slump down, and then come up to a good sitting posture by rolling your pelvis forward in the proper way. (By the way, the psoas and iliacus muscles have very little sensation. You won't feel them when you use them. You will just feel balanced and strong.) Relax your belly and breathe. Soften and open your genitals and anus. Keep your legs about shoulder width apart. Have your partner push again. If you are sitting correctly, you will feel the pressure of the push get deflected from a line going back through your chest into a line moving diagonally down and back. The pressure will actually press you into the chair and stabilize your posture, and you will feel that you are not working very hard to achieve the stability. Of course, there are limits to how much pressure you can absorb. Your partner should be reasonable and not push too hard. In the photo below, I am leaning my whole weight onto my partner, but most people should start off with less pressure.

Just for another comparison, sit properly and change just one thing. Bring your legs together. What happens? Most people get tipped back immediately. Why? Sitting with the legs together rotates the pelvis a bit backward and creates tension and weakness in the breathing and lower back. Moving your legs apart arches the lower back a bit and makes it easier to position the pelvis properly for strength.

For another comparison, sit properly, and then squeeze your anus or your throat. Again, most people become weak and get tipped back easily. These are examples of how constricting creates weakness and opening produces strength and stability.



Many women have a feeling that spreading their legs is a sexual invitation or makes them sexually available. Our culture commands women to sit with their legs together. That is the lady-like way to sit, and many women feel that sitting with open knees is a man's way of sitting. Unfortunately, rather than making a person less vulnerable, sitting with the legs pressed together makes her more vulnerable. Sitting with your legs together is weak and uncomfortable and makes you a pushover. Literally.

For women, wearing short skirts may make it uncomfortable to open the knees, and wearing tight skirts may make it impossible to do so, but you can wear pants or full, long skirts and open your knees comfortably apart. And while I'm on the topic of clothes, women are also expected to wear pointy-toed shoes or, even worse, high heels. They also constrict your feet and make comfort and power impossible. Men's shoes and formal suits are just as constricting. Pay attention to what you wear, and see if your clothes are interfering with the development of a peaceful body.

If you haven't been able to accomplish this strong way of sitting just from the few exercises given above, don't despair. Some people have such strong and unconscious habits of body constriction that they need more practice, and perhaps individualized instruction, to overcome their habitual patterns.

What is it like to sit stably and be able to resist the pressure? Most people feel it is effortlessly strong, powerful yet without *resistance against*. That was why I characterized the exercise as being about resisting and not resisting. It is about resistance in the sense of applying power and not being pushed back. It is about not resisting in the sense that the physical power and mental focus are not about antagonism or fighting against. A cliff does not resist the power of the waves. It simply sits, secure in its own strong identity, and the waves crash against it and fall back. When people sit properly, they experience a similar feeling in this Chest Push exercise. They don't *fight against* but simply sit with a sense of powerful presence.

This way of handling a pressure or a threat is non-oppositional and non-violent, and it is a firm foundation for peacemaking.

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Besides sitting, the other activity we spend a lot of time doing is walking, so let's examine that. Making walking a meditation on ease and stability allows you to use your everyday walking as a practice of peacemaking. How you walk is an indicator of your basic philosophy of acting in the world. There is a way of walking that allows you to bring the feeling of strength and stability into mobility.

**FEET WALKING**

What is your image of walking? Try walking and noticing how you walk. How do your legs and feet make your body move forward across the floor? Do this barefoot so you can feel your feet without the interference and restriction of shoes. How do you carry your body's weight? Do you lean forward, hang behind yourself, or balance yourself in the middle of your stride? Focus on your right foot as you walk. How does your foot touch the floor? Do you bang your heel into the ground or land softly? How does the weight move from your heel to your toes? How and when during your stride does your foot exert force on the floor to move you forward?

Many people feel that they swing their leg forward, and the weight of the leg drags their body forward. Some people feel that they put their foot on the floor out in front of them and then pull themselves forward with it. Some people feel that when their foot is behind them, they shove themselves forward with it. Which is the most efficient way of walking?

Imagining that you are out walking shortly after a rain can provide some clues. Walk around, and try leaping over some imaginary puddles. You will have to use a long, low jump. How do you do that? Jump with your left foot forward, and notice the moment just before your right foot leaves the floor. Where is your weight, and what does your right foot do? To jump well, your weight must be moving forward. If you lean back, you won't get any distance in your jump. At the moment you jump, your right leg is out behind you, your toes are bent, and the ball of your foot is touching the floor. At that moment, you are applying a distinct rearward shove to the floor with the ball of your foot. Your left foot is up in the air in front of you, coming down toward the ground. The rearward shove is what moves you forward.

Leaping over puddles is a somewhat exaggerated movement, but you can use the same backward push in a smaller way in ordinary walking, and this is the most efficient manner of walking.

Try walking and focusing on this. Keep your weight balanced between your legs—even when one is up in the air. Push back with each foot when it is behind you. This action is an efficient, coordinated way of using the pelvis and legs to put power into the backward thrust which will create a forward movement.

Remember your basic physics. Every action creates an equal and opposite reaction. When you move forward, there must be a force exerted backward. However, in order to push straight backward, you would need a leg sticking out straight behind, and it could push only on walls and trees and so on. In reality, when your leg is behind you, it is on a slant, so its thrust is on a slant. You push off from the ball of your rear foot, pushing in a backward/down direction. Try walking while paying attention to this process. With each step, press down and back with the ball of your back foot. Feel how the back/down energy of the foot reflects off the floor into a forward/up movement of the body.



People generally experience that when they walk with this awareness of the down/back thrust of the feet, they have a ground to stand on and a foundation for themselves. The upward energy opens their posture upward. Their walk becomes more erect, clearer and more energetic. The forward energy makes them walk forward more quickly, lightly and gracefully.

When people conceive of walking as falling down onto their forward foot rather than rising off their back foot, they sag and fall down as they walk. When they pull themselves forward with the front foot, they compress and shrink. Feeling the back/down thrust leads to a way of moving that is mechanically more efficient and powerful, and it is also much more psychologically confident and alert. It is this *alert confidence* which is important in peacemaking. With this mindbody state as a foundation, it is much easier to feel peaceful in the midst of a conflict.

**WALKING THE GAUNTLET**

For this exercise, you'll need a group of at least eight or ten people. Have them divide into two equal groups and form two lines about three or four feet (one meter or a bit more) apart. The two lines should face each other, leaving a path between them.

Your job is to walk the length of the path between the lines, keeping your belly soft, your breathing full, and your face and eyes soft, and your heart open. In particular, keep your walk energized and alert, smooth and balanced.

Their job is to distract you. They can throw towels at you, yell at you, pretend to trip you, or anything else that is obnoxious and irritating—but safe. The people should be sure not to touch your face, or trip you, or do anything which could lead to any injury.

How is it? Can you keep from feeling threatened and fearful and/or angry?

Give each person a chance to try this exercise.



## LESSON 4

### FOCUS

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In the last two lessons, we will move from the more obvious level of breathing and body mechanics to a subtler level of practice. This will involve appropriate intentionality as a foundation for effective action. Intentionality is the process whereby a willed decision to perform an action creates the muscular responses for executing the action. Underlying the physical process of contraction is the *intentional* process of contraction, and these last two lessons will focus on how to construct intentionally an open and peaceful body state.

#### WANTING A PENCIL

Put a pencil on the floor, and then stand about ten feet away. Stand up comfortably. Look at the pencil. Oh, I forgot to tell you, this is a magic pencil. With this pencil, anything you can write will come true. You could have a swimming pool filled with chocolate ice cream. You could have twenty hot sports cars. You get the idea. Wouldn't you love to go over and get that pencil?

When I work with children, I usually use the image of a big, hot, delicious pizza sitting on a table. That is more motivating to them than a magic pencil. If you'd rather, you can use the image of pizza yourself. Or anything else that strikes your fancy.

Build up within yourself a feeling that it is a wonderful pencil and you would really like to have it. Actually *intend* to go over and get the pencil. You have seen little kids visibly *wanting* to go get a toy. It must be that kind of authentic wanting. You must feel it in your body.

It is important to be clear about what wanting the pencil means. "Wanting" is not the same as "going." Don't actually walk over and get the pencil. Focus instead on the *feeling* of wanting to go over.

It is also important not to become stiff and rigid. When I say not to actually go get the pencil, I don't mean that you have to make your body absolutely motionless. Don't freeze up and physically prevent your body from moving in order to focus on wanting to move. Just let your body experience the wanting and react to it naturally and spontaneously—without actually walking over to the pencil.

Another difficulty in this experiment is that "wanting" does not mean merely *thinking about* getting the pencil. There is, for example, a difference between thinking about loving someone and actually feeling love for them. *Thinking about* is more of a disconnected intellectual picture, but *feeling* is something you do with your "heart" and your body. Relax, be natural, and create an authentic feeling in your mindbody of desire and intention to walk

over and get the pencil. Most people can create this feeling when they focus on it, though many need some personal instruction to figure out how to do it.

What happens when you stand and focus on wanting the pencil? Take some time to let the feeling build. Once you establish this feeling, you will probably feel yourself “involuntarily” tipping toward the pencil. For most people, this movement will be a small drift toward the pencil, perhaps an eighth of an inch (about a third of a centimeter) or so, though some people will actually move quite a bit. Most people will feel as though the pencil were a magnet gently drawing them towards it. (Some people will have other responses, and they generally have to do with whether they feel they can move toward what they want.)

This is the process that I call *intentional projection*.

What does it mean that you leaned toward the pencil or the pizza? It means that wanting with your mind immediately makes your muscles move. So watching how your muscles work is a way of looking inside your mind.

When you have an image of a movement and intend to execute the movement, your brain sends nerve impulses to the muscles which will do the movement. The muscles can act with a range of force, from a barely perceptible tensing to an all-out clenching. However, even below the range of what is barely perceptible to most people, there is still physical activity, the faintest stirrings of the muscles. You could call these faint, normally imperceptible tensings “micromovements.”

The importance of this process of intentional projection is that paying attention to it offers a subtle method of discerning the faint beginnings of contraction and a powerful method of replacing the constriction of conflict with the expansiveness of peace.

### **REACHING FOR THE PENCIL**

In this exercise, your job is to want the pencil and maintain that focus in spite of whatever may happen. However, we’re going to express the desire for the pencil in a slightly different way. Look at the pencil. Then raise your arm, and reach out toward the pencil to touch it.

In this exercise, your partner will provide some distractions. What kind of distractions? Well, one distraction would be to simply stand in front of you and block your line of sight toward the pencil. Does that make your focus waver? Your partner could stand in front of the pencil and dance, or sing, or tell bad jokes. Does that make the distraction worse?

To focus your concentration, remember to soften your belly and breathe in through your nose and out through your mouth. And at the same time that you focus inward on your body, focus outward on trying to reach and touch the pencil.

A more distracting distraction would be for your partner to tap you on various parts of your body or even try to tickle you.

What does it take to enable you to maintain focus? It is important not to ignore the distraction. If there is a conflict, you have to deal with it, but it is equally important not to let the distraction overwhelm you.

### **REACHING FOR PIZZA**

Imagine that there are two delicious slices of pizza floating in the air, out in front of you and a bit to the side, one to your right and one to your left. Reach out with your arms toward both slices at the same time. Can you focus on what is going on within your body as well as on two different objects outside of you?

Now, let's provide a challenge. As it happens, your partner was out in her garden last night, picking slugs off lettuce plants, and she saved all the slugs. As you reach out toward both slices of pizza, have your partner stand in front of you and rub a handful of slugs in your face. What do you do when your partner does that? What happens to your breathing? Does your posture change? Do you stay relaxed and alert? Do you tense up and pull away? Or something else? What do you do in your face, in your body as a whole? Does your concentration on reaching outward for the two pizza slices waver? Or can you keep your breathing and your body stable and clear, maintain your concentration, and not get sucked into conflictual thinking?

The imaginary slugs coupled with the real physical intrusion of the touch almost always makes people very squeamish and uncomfortable. Most people who do this exercise pull away, grimace, tense up, and restrict their breathing.

As your partner rubs the slugs into your face, consciously and deliberately relax your belly. Relax your tongue and throat, and let your pelvic floor muscles (the muscles around your genitals and anus) relax as well. In addition, breathe in through your nose and out through your mouth, focusing your breathing into your belly. Choose to keep your breathing soft, steady and continuous. Open your heart. Feel your legs and feet contacting the floor. How does all that affect the way you respond and how you reach for the pizza?

Most people find that an intrusion which was very uncomfortable at first becomes quite trivial when they maintain their focus and relaxation. Most people find that when they can open their bodies, they can much more easily maintain their focus on the two slices of pizza.

Just for comparison, try tensing your breathing, throat and pelvic musculature as preparation for having the slugs rubbed in your face. Most people experience that not only brings back the discomfort but greatly

increases it. It also destroys the focus on the pizza. Most of the discomfort that you experienced in having the slugs rubbed in your face, you created yourself through your dislike of the intrusion. Of course there is a certain real physical sensation because you are, indeed, being touched, but most of the discomfort was added on top of that bare minimum.

In the next lesson, you will learn a breathing exercise that is very valuable as a practice for softening, widening, and stabilizing your body on the intentional level. However, as preparation for that exercise, this lesson will teach a simpler breathing exercise and a way of maintaining postural comfort during both the breathing exercises.

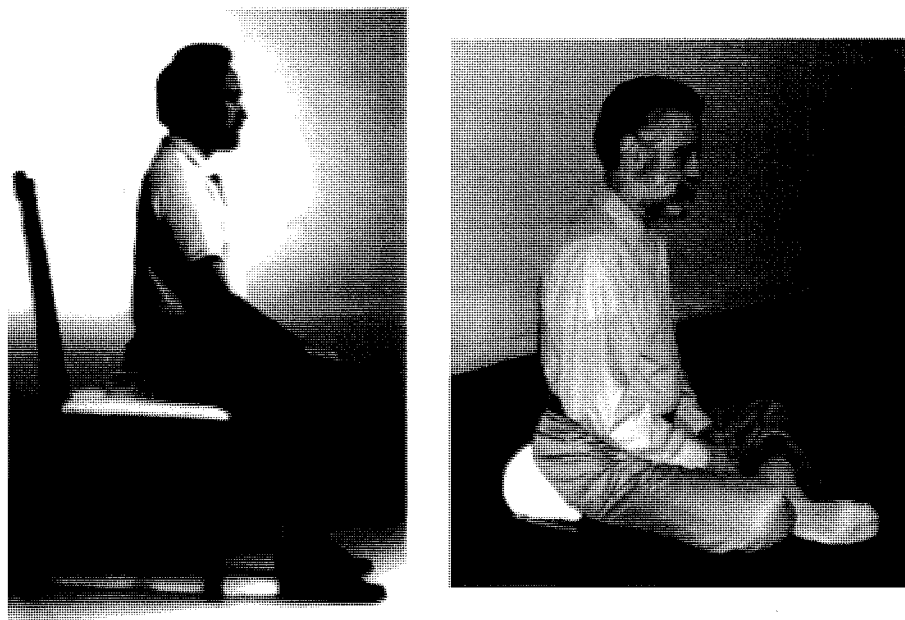
### **TOWEL SITTING**

There is a simple way of supporting the pelvis and back that will make sitting much easier and more comfortable, in the following breathing exercise as well as in daily life activities. You will need a bath towel for this. If it is really large and thick, it won't work. And likewise, if it is thin and skimpy, it won't work. Take an ordinary bath towel and fold it in half widthwise. Then fold it in half lengthwise. Then roll it up, not too tight and hard, but also not too loose.

You can sit either on a chair or cross-legged on the floor. If you are sitting cross-legged, the most comfortable position will be to have both your ankles on the floor one in front of the other, rather than one on top of the other or one ankle crossed over the other. If you have one ankle atop the other, one hip will be higher and your posture will not be balanced.

Sit with your pelvis rolled forward into alignment. Now lean forward and get your weight off your sitbones. Raise your sitbones off the chair or floor a few inches, put the towel roll underneath your tailbone, and then sit back down onto the towel roll. It is important that the towel be positioned under your tailbone not under your sitbones. Your sitbones must still rest on the surface you are sitting on.

Then come back to your vertical sitting posture. If you have the towel positioned right, you will feel your tailbone resting on it and the towel supporting your whole spinal column and torso. Most people feel lighter, taller and freer when they sit with a towel roll for support. They feel that the effort they usually expend on holding their bodies up simply isn't needed.



This towel roll is so comfortable because it stabilizes the pelvis and supports the spinal column. When you sit down, the two sitbones are all that contact the surface of the chair, and that is an essentially unstable arrangement. The pelvis is essentially a two legged stool, and it tends to roll back. It takes muscular effort to hold the pelvis in position, and people usually use the back muscles to hold the pelvis in position. Those are the wrong muscles, and they tire quickly. In trying to reduce the effort, people slump until their bodies hang stably on their ligaments. A better way to create stability is to use the psoas and iliacus muscles to hold the pelvis in position. Better still is using those muscles to position the pelvis properly and then filling in the gap between the tailbone and the chair surface with a towel wedge (as shown above and in the drawing in Lesson 3). This in effect provides a third leg for the stool and reduces the work even the right muscles need to do. (For more information on efficient sitting, you could take a look at my book, *Comfort at Your Computer*.)

You need to be able to find the stable, vertical posture through your own body actions, but once you know how to create a balanced sitting posture on your own, you can use a towel roll to support yourself in this posture. This stable and relaxed posture is a foundation for calmness under pressure and effective responses to conflict. And an excellent way to practice this calm stability is through an extension of the Belly Breathing exercise.

**BASIC BREATHING EXERCISE**

Sit on a chair with your feet flat on the floor, or sit cross-legged on the floor. Use a towel roll for pelvic support. (Kneeling, sitting on your heels, is also a good sitting position. It puts the heels under your tailbone and creates the same upright sitting posture. Some people may prefer this kneeling posture for the breathing exercise.)

With your eyes gently closed, breathe in through your nose and out through your mouth. As you breathe in, let your belly expand gently. Focus your awareness on the feeling of drawing your breath/awareness down into your body core. Don't rigidify your chest and upper back when you inhale, but let them expand in a gentle, spontaneous way as well. You should feel that the inhalation starts in your belly and expands through your body into your back and chest as well. As you exhale, it will be almost like a sigh. The air will fall out of your mouth. Make sure to let your lips and jaw relax open. Don't purse your lips and blow.

Don't force your breath. Breathe in your natural rhythm without trying to hold the breath or control its timing.

If you feel that your breathing gets softer and calmer during the exercise, then you are moving in the right direction. If you feel uncomfortable, perhaps that you aren't getting enough air, then you are holding tension somewhere in your body. If you are learning about this on your own from this book, without an experienced teacher to go to for help, then you will have to figure out the tension pattern on your own. The best way to proceed is just to relax and let yourself be uncomfortable. Don't push the exercise, but do it for a few minutes at a time until you happen to notice where the tension is that is interfering. If it remains uncomfortable, don't feel that you have to keep on working with the exercise.

You may wish to do this breathing exercise for only a few minutes at a time until you get used to it. As you continue working with it, you may wish to do it for twenty minutes or more, once or twice a day. If you do this exercise for a few minutes every day, you will build up clear habits of keeping your body relaxed and powerful, and that will be very helpful in handling and resolving conflict. As you continue to play with this exercise, you will find that a few breaths done this way in the midst of some stressful situation will calm you down and help you react to conflict in new and more perceptive ways.

## LESSON 5

# SPACIOUSNESS

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The process of embodied peacemaking is about becoming aware of how we constrict when we are threatened and how to open the body instead. On one level, the opposite of contracting is softening, and that is what we have worked with so far. Softening is helpful and effective, but it is just a beginning.

A more powerful opposite of contraction is expansion. This last lesson will focus on how to become spacious and expansive inside your body and how to reach out gently and alertly into the world around you.

In this lesson, we will focus specifically on creating internal space as a foundation for effective action in external space.

### SIX DIRECTIONS REACHING

Stand up with your feet about shoulder width apart and your hands down by your side. Notice that you are standing on the soles of your feet. Where is the center of the earth? Way down below you. With the soles of your feet, reach down into the earth. Don't just visualize or think about reaching down, but actually sense in your body and through your feet a reaching toward the middle of the earth. Stay with that sensation/action for a moment.

Let go of reaching down. Now, with the top of your head and shoulders reach upward to feel the sky. This should be a very gentle action, an intention or micromovement without any strain.

Try reaching forward with the whole front surface of your body. And then reach back behind you with the whole back surface of your body.

Reach out to the right with the right side of your body. And then reach out to the left with the left side of your body.

You could reach toward the horizon, or you could find something closer to focus on, as close as you need for it to be a clear sensing process for you. You are probably doing this exercise indoors, so you could reach below the floor and above the ceiling, and out to the walls. Or you could reach out into the air six or eight inches (about fifteen centimeters), if that is easier for you to sense.

Now, do all the directions together. Reach down and up, left and right, and forward and back.

How does that feel? Most people experience this as spacious and energizing. You don't have to shrink. You can take up space.

You can practice the Six Directions Reaching exercise as you walk around during your daily activities. That will help you practice being more present and more alive. In particular, you can add the Six Directions Reaching

to the Feet Walking process to create a vigorous, energetic way of moving through your world.

You can also use the Six Directions Reaching to help you maintain your inner spaciousness when you feel threatened. That will help you respond with more clarity and strength.

The Six Directions Reaching exercise can obviously be used during daily life activities and during conflicts. This next exercise is better, however, as a sitting practice to strengthen your contact with the six directions and inner spaciousness.

### **SIX DIRECTIONS BREATHING**

You will use the same sitting posture and the same breathing process as in the Basic Breathing exercise, but you here you will add to that a way of “aiming” your breath as you exhale. In the Six Directions Breathing exercise, you exhale in different directions through your body, which generates micromovements and changes your overall way of holding your body. By practicing intending to open your body radiantly outward in a number of directions, you will develop the habit of keeping your body opened and balanced.

Sit quietly in the upright posture, using a towel roll for support. You can sit on a chair away from the backrest or sit on the floor with your legs folded. Shut your eyes. Inhale gently through your nose, and let your belly expand gently as you do. The movement of inhaling should be focused in the core of your body just below your navel, though of course your chest and back will expand gently as well. Then exhale through your mouth, relaxing your mouth and throat.

As you exhale, imagine that you are gently blowing the air down your spinal column, out your bottom, to a spot six or eight inches (about fifteen centimeters) below you.

Don't just think about this or picture it in your mind, but actually *feel* it in your body, *do* it in your body. Watch out for tipping your head up and rolling your eyes up toward the ceiling as you imagine the path the air takes down through your body. When people look upward, they are usually engaging in an abstract visual process of imagination rather than an embodied sensation process of imagination. Exhale down for half a dozen or so breaths.

Then change the direction. Imagine/feel that you are exhaling up your spinal column, out the top of your head, to a spot six or eight inches above you. Breathe gently. Don't purse your lips and blow, but just open your mouth, relax your throat, and let the air come out.

After you have done about half a dozen breaths, then breathe out of your right side toward a spot about six inches to your right. Next breathe out of your left side. Then breathe to your rear out of your back, and next breathe forward out of the pit of your belly and the front of your body.



For the last breath, exhale in all six directions at once, down and up, left and right, forward and back.

Exhaling a number of times in one direction gives you enough time to really feel how to aim your breath in that direction. However, once you have practiced this whole sequence and felt how it works, there is a more balanced way of doing the exercise. If you feel ready for it, instead of exhaling in one direction for half a dozen breaths or so, exhale once in each direction and go through all the breaths in a seven breath cycle. Always start with the down direction because that is a way of stabilizing the body. Then exhale up. After that it isn't important in what order you do the horizontal pairs, but exhale into the right and left directions and the backward and forward directions. Then for the seventh breath, exhale in all six directions. And then start the cycle over. You can do this exercise for a minute or ten minutes, or for whatever is comfortable and enjoyable for you.

Once you practice this exercise and gain skill with the breathing, you will find it productive to aim your breath farther away. Experiment with how far you can focus your breath and notice what happens as you aim your breath farther and farther out.

You could also experiment with exhaling in lines between the six cardinal directions. Or you could experiment with exhaling the feeling of love. If you let the exercise talk to you, it will show you a lot of possibilities.

This exercise is a way of practicing maintaining an open, even, symmetrical awareness of your whole body and the space around you. Most people, when they first start working with this exercise, experience that there are areas of their body or directions of their breath that are not clear for them. Any dim spot in the feeling of your body's field of attention is an area of reduced body awareness and reduced vigor. Finding gaps in your field of awareness and breathing life back into them is a way of remembering to live fully in your body. More than that, it is a way of contacting the feeling of living fully in the world. This exercise offers a way of practicing relaxing, balancing and empowering your whole body all at once. It would be well worth putting a few minutes into doing this exercise every day.

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There is an exercise that I often use to help people practice staying calm and loving under extreme pressure. However, I must warn you that this exercise involves experiencing intense but non-injurious pain. This is logically the same as all the challenges you've practiced with so far, but it is more intense. As you experience the pain, pay attention to your body, notice the elements of constriction and asymmetry, and then use all your tools of breathing, postural

balance and intentional projection to create the open state we have been working on. And most importantly, remember to look at your “enemy” with a warm heart.

Remember, if you don’t feel it is appropriate for you to do this exercise, don’t do it. Use your skills in relaxed stability and simply tell your partner you don’t wish to do it. Also, remember that your partner may not be emotionally ready to deal with causing you pain. In that case, he should use his skills to set good boundaries, and you should find a another partner to do this exercise with.

Before we jump into the exercise, there is an issue to deal with. Many people find themselves unable to hurt anyone. The word “hurt” is ambiguous. We often don’t distinguish between two senses of the word, that is, “cause pain” or “cause injury”. I’m not asking you to injure your partner. That would not be appropriate or productive. I am asking you to cause her pain so that she can learn how to get strong enough to deal with it. This is a respectful, cooperative learning situation. You are providing your partner with the gift of a challenge to study and practice with.

### **PAIN CONTROL**

By pressing into a nerve point, your partner can generate intense, non-injurious pain that stops as soon as s/he releases the pressure. (It is non-injurious, but occasionally someone will develop a bruise from the pressure.) This is a considerably greater challenge than merely having “slugs” rubbed in your face.

Have your partner pinch the web of muscle between your thumb and first finger. Make sure your partner has short fingernails or he will punch little holes in your skin. Have him pinch by digging the tips of his thumb and first finger hard into that soft area. If he is doing it right, it will be very painful. (Some people have very high pain thresholds and will feel no pain from this. There are more painful nerve points, but how to use them is hard to describe so you will have to make do with this.)



*How to  
pinch.*

What do you do when you feel the pain? Most people jump right out of their skins when they feel the sharp pain. Notice your breathing, your facial expressions, and your posture. Most people inhale suddenly, tense their shoulders and try to pull away from the pain.

Now, simultaneously open your body by reaching out in all six directions and open your heart. When you are in the state of loving power, have your partner pinch you again. Stay focused on keeping your breathing calm and expansive and your heart open. Keep your eyes open and continue to pay attention to what your partner is doing, but respond to it from the state of soft breath and open heart. What happens this time? Most people find that the pain is vastly decreased. It becomes a simple event that they can handle. Most people find that they don't feel distressed by or antagonistic toward their partner. Many people even feel very loving toward the person causing the pain.

Just for a comparison, have your partner pinch your hand again, and this time hate her and hate the pain she is causing you. What happens? Most people find that when they approach the challenge in a state of hatred, the pain is far more intense and they are far less able to handle it well. In addition, many people find themselves feeling an urge to hurt their attacker.

It is interesting that at first most people's awareness is totally dominated by the *experience* of pain and they don't have any awareness at all of their physical responses. When people breathe, relax, and anchor themselves, they can begin to notice what they do and feel. When people utilize their new skills in relaxation, postural alignment, and generation of power and love, they experience that the pain is really not that bad and that they can handle it. They also realize that much of the pain they experience in their lives is a result of their oppositional way of receiving life's challenges and not inherently part of the challenge itself.

It is the tension and constriction that people adopt to handle the conflicts they face that actually makes them vulnerable. And it is being willing to become vulnerable—in the sense of soft and available—in the face of a conflict that truly enables people to handle the threat. This openness can be accomplished through the bodily integration of power and love.

### **SPEAKING PEACEFULLY**

Obviously being calm isn't enough when someone acts in an antagonistic manner. You can't just stand there meditating. You have to *do something!*

The simplest thing to do is to speak about the conflict and possible solutions to it. For greatest effectiveness, you must speak calmly and lovingly, but also strongly and assertively. You must address the conflict with truth and

clarity. (Sometimes, of course, it might be better to deal with the conflict indirectly or even ignore it altogether, but even then you should do so lovingly and spaciously.)

Have your partner stand in front of you, close. Too close. In your face. And yell at you. It could be stupid, for example, “You have too many noses.” Or it could be commonplace, “Why the hell didn’t you turn in the damn report on time?” Or it could be vicious, for example, “kike,” “nigger,” or “queer.”

Receiving a strong attack offers you the opportunity for some real practice—if it isn’t overwhelming. Remember to do only what is appropriate for you.

Relax your belly, stabilize your posture, open your heart, breathe outward, and maintain your spaciousness. Now think of something to say, and say it.

When you are confronted by someone in a conflict, it is helpful to respond in such a way as to lure your attacker into opening their body. This may not always be possible, but when it is, it certainly is helpful in creating peace.

The first step in helping your attacker feel calmer and more open is simply keeping your own body open. That way you won’t look like an enemy. That way your voice will be calm and gentle, and you won’t sound like an enemy.

The second step in helping your antagonist feel calmer is choosing words and ideas that will not alienate your attacker but that will make him feel respected and heard. Keeping your body open will maximize your ability to conceptualize the conflict in non-oppositional, non-aggressive ways. You will be able to think about the conflict not as a conflict but as an early stage in the development of cooperation and harmony.

You may find it helpful to respond from a “yes, and” approach rather than from a “no, but” position. “Yes, I receive and understand what you’re saying, and I would also like to add an extra point for your consideration.” Instead of, “No, I don’t think much of your point, but my point is much better.” “Yes, and” is conceptually open, in much the same way you have learned to open and soften your body in these five lessons. It will encourage physical softening and conceptual opening in your attacker. This kind of verbal/conceptual openness is the beginning of the more common verbally-based approach to conflict resolution.

The point of all the body awareness work has been to get you to a place where you could be peaceful in the midst of a conflict. If you aren’t peaceful, then it will be difficult or impossible to create peace. If you are peaceful in yourself, not only will you look and act like a friend rather than an enemy, which will defuse the antagonism, but you will also be more able to think on your feet and come up with a response that would resolve the issues under dispute in constructive and life-affirming ways.

# HEALING THE WORLD

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The specific topic of this book is the application of body awareness to conflict resolution and peacemaking. The broader topic of this book is how to heal the world.

We really could get together and solve most of the world's problems fairly easily—if we could get together at all. The problems are certainly real. Hunger, poverty, disease, societal breakdown, war, environmental destruction. But underlying the problems themselves are the emotions of fear and anger. These emotions make us unable to think clearly and cooperate effectively.

Wouldn't it be nice if the understanding of the physical basis of fear and anger were widespread, and when people in a conflict were starting to feel fear and anger, they would all know to take a body awareness break?

Fear and anger are internal body processes and as such can be replaced by the body state of integrated power and love. Creating the body state of power and love is a way of replacing destructive feelings with life-affirming feelings. This is a state of embodied integrity.

A person acting from the state of integrity will feel and take account of the existence of the world around him or her and act in ways that are peaceful, ethical and constructive. Greater sensitivity to, empathy with, and compassion for oneself includes being sensitive to the condition and needs and feelings of the people around you, the animals and plants around you, and the soil, water and air as well. It means feeling yourself as part of the web of life rather than separate from it.

All of the work in this book proceeds from the perspective that the human body is designed to live and function in love and power. Our bodies are built for life, for creation. The negative feelings which are so often part of conflict saps energy better spent in creativity. Violence is worship of death and destruction. This work is about the physiological underpinnings of peace. It is about reclaiming the body for life.

If you are working on healing your own fear and anger, you are really working on saving the whole world. If you are helping others become more peaceful, you are really working on saving not just the people you work with but the entire world. It's worth doing.

## BIOGRAPHY

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PAUL LINDEN is a somatic educator and martial artist, co-founder of the Columbus Center for Movement Studies, and the developer of Being In Movement® mindbody training. He holds a B.A. in Philosophy and a Ph.D. in Physical Education, is an authorized instructor of the Feldenkrais Method® of somatic education, and holds a fifth degree black belt in Aikido as well as a first degree black belt in Karate. His work involves the application of body and movement awareness education to such topics as stress management,



conflict resolution, performance enhancement, and trauma recovery. He is the author of *Comfort at Your Computer: Body Awareness Training for Pain-Free Computer Use* and the e-book *Winning is Healing: Body Awareness and Empowerment for Abuse Survivors*.

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## WORKSHOPS & QUESTIONS

If you would like information about having me conduct a conflict resolution and peacemaking workshop, or if you would like more extensive training in how to teach embodied peacemaking, please contact:

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Information on professional certification in BIM and on a variety of BIM workshops is available at my website.

For questions concerning this book or the embodied peacemaking process, please feel free to contact me. Also, if you have interesting stories about your use of the embodied peacemaking process, I'd like to hear them.

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Breakout Session

Domestic Violence Cases, To  
Mediate or Not: Building Your  
Skills

[illegible]

# Ethical Implications Regarding Safety and More in Mediation

## ETHICAL IMPLICATIONS REGARDING 'SAFETY AND MORE' IN MEDIATION

Annual New Mexico State Bar ADR Institute  
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### Ethics Session Objectives

- Investigate mediator ethical/other obligations, including the *Model Standards of Conduct for Mediators*.
- Scrutinize attorney ethical/other obligations, including the *New Mexico Rules of Professional Conduct*.
- Recognize the competing and complementary ethical demands on mediators and attorneys.

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### Mediation – what is it again?

Mediation means:

- any negotiation
- with the assistance of a 3rd party neutral
- where the neutral does not have the authority to impose a resolution.

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## Mediation – the legal definition

Under *New Mexico's Mediation Procedures Act (MPA)*  
"mediation" means a process in which a mediator:

- (1) facilitates communication and negotiation between mediation parties to assist them in reaching an agreement regarding their dispute; or
- (2) promotes reconciliation, settlement or understanding between and among parties." §44-7B-2 NMSA

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## Mediation – Confidentiality under MPA

- "Except as otherwise provided in the Mediation Procedures Act or by applicable judicial court rules, all mediation communications are confidential, and not subject to disclosure and shall not be used as evidence in any proceeding." §44-7B-4 NMSA
- Mediation communication "means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing or reconvening a mediation or retaining a mediator...." §44-7B-2 NMSA

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## Mediation – Selected MPA Confidentiality Exceptions

"Mediation communications are not confidential pursuant to the Mediation Procedures Act if they:

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- (3) threaten or lead to actual violence in the mediation;
- (4) reveal the intent of a mediation party to commit a felony or inflict bodily harm to the mediation party's self or another person;...." §44-7B-5.A. NMSA

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## Ethics Requirements -- Mediators

*Model Standards of Conduct for Mediators (2005) –*  
[www.americanbar.org/content/dam/aba/migrated/2011\\_build/dispute\\_resolution/model\\_standards\\_conduct\\_april2007\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/model_standards_conduct_april2007_authcheckdam.pdf)

How do these standards apply to New Mexico mediators?

- Mandatory?
- A standard of care?

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## Other Sample Ethics Guidelines for Mediators

- **Model Standards of Practice for Family and Divorce Mediation** (2000) - [www.americanbar.org/content/dam/aba/migrated/family/reports/mediation\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/family/reports/mediation_authcheckdam.pdf)
- **National Standards for Court Connected Mediation Programs** (1993) - <https://www.aboutrsi.org/library/national-standards-for-court-connected-mediation-programs>
- **Guidelines for Child Protection Mediation** (2012) - [www.afccnet.org/ResourceCenter/PracticeGuidelinesandStandards](http://www.afccnet.org/ResourceCenter/PracticeGuidelinesandStandards)



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## Model Standards of Conduct for Mediators – Std. V. Confidentiality

"A. A mediator shall maintain the confidentiality of all information obtained by the mediator in mediation, unless otherwise agreed to by the parties or required by applicable law...."

"2. A mediator should not communicate to any non-participant information about how the parties acted in the mediation. A mediator may report, if required, whether parties appeared at a scheduled mediation and whether or not the parties reached a resolution...."

[www.americanbar.org/content/dam/aba/migrated/2011\\_build/dispute\\_resolution/model\\_standards\\_conduct\\_april2007\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/model_standards_conduct_april2007_authcheckdam.pdf)

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**Model Standards of Practice for Family and Divorce Mediation – Standard VII Confidentiality**

"A family mediator shall maintain the confidentiality of all information acquired in the mediation process, unless the mediator is permitted or required to reveal the information by law or agreement of the participants....."

"B. Prior to undertaking the mediation, the mediator should inform the participants of the limitations of confidentiality, such as statutorily, judicially or ethically mandated reporting.

C. As permitted by law, the mediator shall disclose a participant's threat of suicide or violence against any person to the threatened person and the appropriate authorities if the mediator believes such threat is likely to be acted upon ....."

*Excerpt Model Standards of Practice for Family and Divorce Mediation developed by Symposium on Standards of Practice Aug 2000.*

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**Mediator Standards of Conduct — Michigan Standard V.D. Confidentiality**

"If a mediator, as authorized by law, court rule, or professional code of ethics, reveals information acquired in the mediation process, the mediator **should consider the safety of persons at risk of physical harm** by the release."

*Michigan Supreme Court Mediator Standards of Conduct (2013)  
[courts.mi.gov/Administration/SCAO/Resources/Documents/standards/odr/Mediator%20Standards%20of%20Conduct%202.1.13.pdf#search=%22mediator%20standards%202013%22](https://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/odr/Mediator%20Standards%20of%20Conduct%202.1.13.pdf#search=%22mediator%20standards%202013%22)*

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*"If confidentiality is the **heart** of mediation, self-determination is its **soul**."*

*J. Cohen, CONVENING FOR ENHANCED SELF-DETERMINATION AND ACCESS TO THE PROCESS, 18 The Texas Mediator, No 2, Summer 2003.*

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## Model Standards of Conduct for Mediators – Std. I. Self-Determination

"A. A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome...."

"2. A mediator cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where appropriate, a mediator should make the parties aware of the importance of consulting other professionals to help them make informed choices."

[www.americanbar.org/content/dam/aba/migrated/2011\\_build/dispute\\_resolution/model\\_standards\\_conduct\\_april2007.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/model_standards_conduct_april2007.authcheckdam.pdf)

## Mediator Standards of Practice – Standard VI, Quality of the Process

### Domestic Violence (General)

"If a mediator is made aware of domestic abuse or violence among the parties, the mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation."

*Model Standards of Conduct for Mediators (2005) – Standard VI.B.*

## Model Standards of Practice for Family/Divorce Mediation

**Standard X: A family mediator shall recognize a family situation involving domestic abuse and take appropriate steps to shape the mediation process accordingly.**

- A. As used in these Standards, domestic abuse includes domestic violence as defined by applicable state law and issues of control and intimidation.
- B. A mediator shall not undertake a mediation in which the family situation has been assessed to involve domestic abuse without appropriate and adequate training.
- C. Some cases are not suitable for mediation because of **safety**, control or intimidation issues. A mediator should make a reasonable effort to screen for the existence of domestic abuse prior to entering into an agreement to mediate. The mediator should continue to assess for domestic abuse throughout the mediation process.

*Excerpt Model Standards of Practice for Family and Divorce Mediation developed by Symposium on Standards of Practice Aug 2000*

### Model Standards of Practice for Family/Divorce Mediation

*Standard X Continued—*

D. If domestic abuse appears to be present the mediator shall consider taking measures to insure the safety of participants and the mediator including, among others:

- establishing appropriate security arrangements;
- holding separate sessions with the participants even without the agreement of all participants;
- allowing a friend, representative, advocate, counsel or attorney to attend the mediation sessions;
- encouraging the participants to be represented by an attorney, counsel or an advocate throughout the mediation process;
- referring the participants to appropriate community resources;
- suspending or terminating the mediation sessions, with appropriate steps to protect the safety of the participants.

### National Standards for Court-Connected Mediation Programs\*

• Standard 4.2.c: The following considerations may militate against the suitability of referring cases to mediation: ... when a party or parties are not able to negotiate effectively themselves or with assistance of counsel. (*Commentary specifically mentions DV.*)

• Standard 5.2: Courts may use a variety of mechanisms to select cases for mandatory referral to mediation. Any mechanism chosen should provide for: individual assessment of each case to determine its appropriateness for mediation, which takes into account the parties' relative knowledge, experience and resources. (*Commentary specifically mentions DV.*)

\* <https://www.aboutrsi.org/library/national-standards-for-court-connected-mediation-programs> – Joint project of the Center for Dispute Settlement and the Institute for Judicial Administration, funded by State Justice Institute.

### National Standards for Court-Connected Mediation Programs\*

• Standard 11.1: Courts should institute appropriate provisions to permit parties to opt out of mediation. Courts should also consider modifying mediation procedures in certain types of cases to accommodate special needs, such as cases involving domestic violence. Special protocols should be developed to deal with domestic violence cases.

• Standard 11.3: Courts should not systematically exclude anyone from the mediation process. Lawyers never should be excluded if the parties want them present. (*Commentary specifically mentions DV.*)

\* <https://www.aboutrsi.org/library/national-standards-for-court-connected-mediation-programs> – Joint project of the Center for Dispute Settlement and the Institute for Judicial Administration, funded by State Justice Institute.

### National Child Protection Mediation Standards\*

In jurisdictions where mediation is mandated or permitted, the juvenile court should refer parties to mediation in child maltreatment cases involving allegations of domestic violence only when:

- a. mediators are trained thoroughly in the dynamics of domestic and family violence, including child maltreatment, as well as trained in the dynamics of substance abuse, basic psychology and family systems theory, the developmental needs of children, the workings of the local child protection and juvenile court systems, local domestic violence services, and other local community resources;
- b. the mediation program provides specialized procedures designed to protect victims of domestic violence from intimidation by alleged perpetrators and to correct power imbalances created by the violence with interventions, including the performance of differential assessments of the domestic violence issue, the offering of individual—as opposed to conjoint—sessions for the victim and alleged perpetrator so that they never have direct contact with each other, and permitting the victim to have an advocate in attendance throughout the process;

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### National Child Protection Mediation Standards, Continued\*

- c. the mediation process also provides for the participation of victim and child advocates, the child protection agency, other interested family members and individuals, as well as all involved attorneys and GALs or CASAs, to reinforce further the balance of power and ensure that the rights of the participants are protected in the search for a resolution that focuses upon the safety and best interest of the child and the safety of all family members;
- d. mediators are vigilant when involved in discussions concerning the factual basis of the abuse of the child or victim-parent in order to prevent victim blaming and/or collusion with the batterer's denial, minimization, or discounting of the significance of the violence or abuse.

\*Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice, 1999 (The Green Book) Recommendations from The National Council of Juvenile and Family Court Judges Family Violence Department, **RECOMMENDATION 48** — <https://www.redvpcp.org/the-greenbook.html>

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### The Multi-Faceted Role of Attorneys

NM Rules of Professional Conduct – Preamble: “.... As a representative of clients, a lawyer performs various functions.

- As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications.
- As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system.
- As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others.
- As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others....”

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## The Attorney as Advisor

- **Rule 16-201 -- Advisor.** "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation."
- **Commentary.** "... Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 16-104 ... to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation...."

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## Role of Attorneys in Mediation

"In general ... the attorney's role tends more to legal advice before and after the mediation session, to advice and coaching during the mediation, and less to advocacy than the attorney's traditional role in trial-type proceedings."

National Standards for Court Connected Mediation Programs (1993)  
<https://www.abourtsi.org/library/national-standards-for-court-connected-mediation-programs>

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## Attorney – Client Confidentiality – Rule 16-106

"A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by [other provisions] of this rule."

"A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to prevent reasonably certain death or substantial bodily harm...."

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Attorney – Client ‘Self-Determination’ -- Rule 16-102

"A. **Client's decisions.** ... a lawyer shall abide by a client's decisions concerning the objectives of representation and ... shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter...."

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Collaborative Practice – Rule 1-128.10  
Coercive or Violent Relationship

"A. **Reasonable inquiry.** Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a coercive or violent relationship with another prospective party.

"B. **Continuing assessment.** Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party."

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Collaborative Practice – **NOT** adopted by NM from the uniform rules – Uniform Rule 15(c)

"(c) If a collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer may not begin or continue a collaborative law process unless:

(1) the party or the prospective party requests beginning or continuing a process; and

(2) the collaborative lawyer **reasonably believes that the safety of the party or prospective party can be protected** adequately during a process."

Uniform Collaborative Law Rules, 2010.  
<http://www.uniformlaws.org/Act.aspx?title=Collaborative%20Law%20Act>

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### Model Standards of Conduct for Mediators – Std. VI. Quality of the Process

"A. A mediator shall conduct a mediation in accordance with these Standards and in a manner that promotes ... [a list of things including] **safety**...."

"C. If a mediator believes that participant conduct, including that of the mediator, jeopardizes conducting a mediation consistent with these Standards, a mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation."

[www.americanbar.org/content/dam/aba/migrated/2011\\_build/dispute\\_resolution/model\\_standards\\_conduct\\_april2007\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/model_standards_conduct_april2007_authcheckdam.pdf)

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### Standards of Practice for Professional Family Mediators – Standard IX Domestic Violence

"Mediators should screen for domestic abuse, prior to commencing mediation and throughout the process, to determine whether or not there is current and/or on-going fear of abuse or harm. If, in the face of such fear, a participant voluntarily chooses to engage in mediation, the mediator shall establish special protocols that **attempt to ensure the safety of the parties on arrival and departure and throughout the mediation process**

"Mediators **shall attempt to maintain the mediation process as a safe environment** in which to conduct discussions. In order to allow all parties an opportunity to **safely** and fully participate in the mediation, the mediator **shall actively address and actively manage any threatening or intimidating behavior by one party towards the other**."

Standards of Practice for Professional Family Mediators, adopted by Academy of Professional Family Mediators in 2014. <https://apfmmet.org/standards-practice-professional-family-mediators/>

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### Child Protection Mediation Guidelines

#### Section 3.4 A Safe Process:

Child Protection Mediation "must not compromise the safety of participants or non-participants who may be affected by the mediation process or outcome before, during or after the mediation session."

Guidelines for Child Protection Mediation (2012) - [www.afccnet.org/ResourceCenter/PracticeGuidelinesandStandards](http://www.afccnet.org/ResourceCenter/PracticeGuidelinesandStandards)

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## Child Protection Mediation Guidelines

### 5.4 Mediation: Safety and Capacity.... 5.4.1 Safety Considerations

Child Protection Mediation "programs should develop clear protocols that are designed to protect everyone's safety. When screening for safety concerns, programs should seek to identify what, if any, accommodations can be offered to enable an individual to participate or whether mediation should take place. Consideration should be given to where ... sessions can be safely conducted. When mediation is conducted in less secure facilities, assessment protocols may need to be more comprehensive."

Guidelines for Child Protection Mediation (2012) - [www.afccnet.org/ResourceCenter/PracticeGuidelinesandStandards](http://www.afccnet.org/ResourceCenter/PracticeGuidelinesandStandards)

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## Mediator Standards of Conduct—Michigan Standard VI. Safety of Mediation

"... reasonable efforts shall be made throughout the mediation process to screen for the presence of an impediment that would make mediation physically or emotionally unsafe for any participant, or that would impede the achievement of a voluntary and safe resolution of issues. Examples of impediments to the mediation process include

- domestic abuse;
- neglect or abuse of a child;
- status as a protected individual or vulnerable adult;
- mental illness or other mental impairment; and
- inability to understand or communicate in the language in which mediation will be conducted."

Michigan Supreme Court Mediator Standards of Conduct (2013) [courts.mi.gov/Administration/SCAO/Resources/Documents/standards/odr/Mediator%20Standards%20of%20Conduct%202.1.13.pdf#search=%22mediator%20standards%202013%22](http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/odr/Mediator%20Standards%20of%20Conduct%202.1.13.pdf#search=%22mediator%20standards%202013%22)

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## Mediator Standards of Conduct—Michigan Standard VI. Safety of Mediation, cont.

"1. In general, 'reasonable efforts' may include meeting separately with the parties prior to a joint session or administering screening tools.

2. In domestic relations cases, 'reasonable efforts' should include meeting separately with the parties prior to a joint session and administering the 'Mediator Screening Protocol' for domestic violence, published by the State Court Administrative Office."

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**Mediator Standards of Conduct—Michigan  
Standard VI. Safety of Mediation, cont.**

"3. If an impediment to mediation exists and cannot be overcome by accommodations that specifically mitigate it, the mediation process should not be continued unless:

- a. After being provided with information about the mediation process, a party at risk freely requests mediation or gives informed consent to it;
- b. The mediator has training, knowledge, or experience to address the impediment;
- c. The mediator has discussed with the party at risk whether an attorney, advocate, or other support person should attend the mediation; and
- d. The mediator has assessed that a party can determine and safely convey and advocate for his or her needs and interests without coercion, fear of violence, or other repercussions or consequences that would put the party at risk."

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***Next Steps: Building on Your Safety Plan***

Now that we're at day's end, what else will you add to your safety plan:

- ☐
- ☐
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*Thank you!!*

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## **Standard VI. Safety of Mediation**

- A. Consistent with applicable statutes, court rules, and protocols, reasonable efforts shall be made throughout the mediation process to screen for the presence of an impediment that would make mediation physically or emotionally unsafe for any participant, or that would impede the achievement of a voluntary and safe resolution of issues. Examples of impediments to the mediation process include: domestic abuse; neglect or abuse of a child; status as a protected individual or vulnerable adult; mental illness or other mental impairment; and inability to understand or communicate in the language in which mediation will be conducted.
1. In general, “reasonable efforts” may include meeting separately with the parties prior to a joint session or administering screening tools.
  2. In domestic relations cases, “reasonable efforts” should include meeting separately with the parties prior to a joint session and administering the “Mediator Screening Protocol” for domestic violence, published by the State Court Administrative Office.
  3. If an impediment to mediation exists and cannot be overcome by accommodations that specifically mitigate it, the mediation process should not be continued unless:
    - a. After being provided with information about the mediation process, a party at risk freely requests mediation or gives informed consent to it;
    - b. The mediator has training, knowledge, or experience to address the impediment;
    - c. The mediator has discussed with the party at risk whether an attorney, advocate, or other support person should attend the mediation; and
    - d. The mediator has assessed that a party can determine and safely convey and advocate for his or her needs and interests without coercion, fear of violence, or other repercussions or consequences that would put the party at risk.
- B. Where it appears that minor children or vulnerable adults may be affected by an agreement, a mediator should encourage participants to consider their safety.

[illegible]