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HAROLD NEWMAN'S CLOUDY CRYSTAL BALL

"When you steal from one author, it's plagiarism; if you steal from many, it's research."

Wilson Mizner (1876-1933)

"Wilson Mizner was being witty and not, I think, serious. Certainly I don't share the view expressed in the comment quoted above. Nevertheless, since my column of June 1974 in which I criticized some of the learned journals and magazines in the labor relations field because I believe many of their articles to be virtually unreadable, I have been charged by some panel members, particularly among the academics, with being opposed to research. *Corpo di Dio!* That is certainly untrue. Without research we can only masticate over and over, the theories and beliefs of others and then spew them out again. Without research in labor relations or any other profession for that matter, there can be no underpinning for practicing or improving the art. My cry was against the poor quality of much of the research in our field. The editors of some of our most respected publications would, I am afraid, publish an article on how many negotiators in a given area are lantern-jawed, if the author included a regression analysis and some statistical tables. However, it should be noted that some publications, for example, Monthly Labor Review and the ILR Review, have a consistently high quality. The poverty of much of the research that I see in published articles, graduate dissertations, etc., is cloaked with impressive graphs and tables but the paucity of scholarship and meaning shows through nevertheless.

"There are, however, always very good and useful research projects and some are very impressive indeed. I take pride in the fact that we encouraged and assisted the work of Kenneth Kressel and published his excellent work on mediation¹ through ALMA. Now, Professor Thomas Kochan of the New York State School of Industrial and Labor Relations at Cornell University has decided, like Ken Kressel, that mediation like alchemy and astrology, has mysteries unplumbed and will proceed to look for answers. Tom (who is a member of our panels), is preparing an in-depth study of the effectiveness of mediation under a compulsory arbitration statute (Taylor Law police-fire amendment). Tom will not be replotting the furrows already made by Jim Stern in Wisconsin² and Chuck Rehmus in Michigan.³ Let me quote from Professor Kochan on his conceptual framework to guide the approach to research in mediation when as he points out, there is a 'Catch-22' situation. 'We have little empirical research because there is little theory; there is little theory because many observers believe there are no systematic patterns to the practice of mediation, and finally, we can point to no systematic patterns of behavior or determinants of the effectiveness of mediation because we have little empirical research.' Tom Kochan has some interesting and innovative proposals for responding to the dilemma posed and his conceptual framework to guide the approach to the research seems to me to be very useful and valid. It is too lengthy to reprint here but I would share with you Kochan on the Effectiveness of Mediation.

¹Kenneth Kressel, "Labor Mediation: An Exploratory Survey," Association of Labor Mediation Agencies, Fall 1971.

²James L. Stern, "Final Offer Arbitration - Initial Experience in Wisconsin," Monthly Labor Review, September 1974, pp. 39-43.

³Charles M. Rehmus, "Is a 'Final Offer' Ever Final?" Monthly Labor Review, September 1974, pp. 43-45.

"Mediation can be defined very simply as efforts by a neutral third party to get the direct participants (unions and employers in collective bargaining context) to reach a voluntary agreement. Since we are studying mediation within collective bargaining in public employment in this project, we will further differentiate between mediation and factfinding. Since the ultimate objective of mediation is to get the parties to reach an agreement, we might define the ultimate criterion of effectiveness or success of mediation as whether or not the intervention achieves this goal, i.e., whether or not a settlement is actually reached through mediation. However, almost every practitioner in the area would argue that this is a deficient measure of effectiveness (Kressel, 1972). While some of these arguments may simply be rationalizations, most of them reflect the underlying realization that some types of conflicts or impasses are more responsive to mediation than others. What is confused here, however, is the problem of separating out the effectiveness of the mediator and the strategy and tactics used to deal with a particular conflict situation from the effectiveness of the process as a means of bringing about an agreement. When we focus on the latter question, some of the difficulties are overcome since we can then go beyond the behavior of the mediator or his personal characteristics. Other variables must also be taken into account (which are often less controllable by the mediator) to explain the types of conflict situations in which mediation is likely to be most effective. Thus, the concept of the effectiveness of mediation must be more broadly defined than the effectiveness of the mediator.

"In addition to the ultimate measure of effectiveness, i.e., whether or not a settlement was reached through the mediation intervention, we may wish to view the process of reaching the agreement as a more continuous narrowing process in which the parties start with a large number of differences between them and narrow them down until none are left unresolved and the total agreement is reached. Consequently, an additional measure of effectiveness might be the proportion of issues that were resolved during the mediation process. It is also possible to make progress in bringing a dispute closer to an ultimate settlement even though no issues are actually resolved. Some progress occurs if the parties can narrow the differences on the issues that remain open. Often this is talked about as inducing movement off the positions previously held by the parties. This movement may only be 'tacit' movement, i.e., implied but unstated change in positions or open or 'public' change in positions. Consequently, another partial measure of effectiveness in mediation could be the degree of movement (again either tacit or actual) toward agreement the parties make during the mediation intervention. Undoubtedly other measures of the effectiveness of mediation can be suggested and hopefully will be suggested by those involved in the early stages of this project. (This means anyone who has had enough stamina to read this paper up to this point!) At this time, the four measures outlined above will be considered as effectiveness criterion, namely; (1) settlement or no settlement; (2) proportion of issues open at the outset of mediation that are resolved during mediation; (3) actual movement of the parties off the positions held at the outset of mediation, and; (4) tacit movement off the positions held at the outset of mediation."

"We shall hear more of this project in the ensuing months and panel mediators will be asked to cooperate in the study. Obviously, Kressel and Kochan are only two of the individuals who have done or are doing valuable research in our field. Finally, we might wish to recall the words of the Russian scientist Pavlov. 'In your work and in your research there must always be passion.' We do not lack for passion when we are with the clashing advocates. Passion in research?"