

# NEWS MEDIA AS MEDIATORS

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Journalism thrives on conflict.<sup>1</sup> As a classic “news value,” one characteristic that makes an event newsworthy, conflict gives news stories an important and inherently interesting plot element.<sup>2</sup> As a result, the normal routines of reporters and editors tend to emphasize extreme voices<sup>3</sup> and combative themes.<sup>4</sup> Such an emphasis may make news stories “more likely to escalate a conflict than to pacify it.”<sup>5</sup>

Even so, journalism has had some legendary excursions into conflict resolution. On November 14, 1977, CBS News anchor Walter Cronkite conducted separate, pointed interviews with Egyptian President Anwar Sadat and Israeli Prime Minister Menachem Begin, which led directly to Sadat’s historic visit to Jerusalem.<sup>6</sup> In 1985, Ted Koppel hosted the first formal conversation between representatives of the African National Congress and supporters of South Africa’s apartheid system on a series of broadcasts

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<sup>1</sup> HERBERT GANS, *DECIDING WHAT’S NEWS: A STUDY OF CBS EVENING NEWS, NBC NIGHTLY NEWS, NEWSWEEK AND TIME* 53 (1980) (“American news media have always emphasized stories of social disorder, both at home and abroad.”); accord GADI WOLFSFELD, *MEDIA AND THE PATH TO PEACE* 9 (2004) (“[c]onflict and violence are the mainstays of the news industry, whereas stories about peace are few and far between.”).

<sup>2</sup> See FRED FEDLER, JOHN R. BENDER, LUCINDA DAVENPORT & MICHAEL W. DRAGER, *REPORTING FOR THE MEDIA* 130 (2005) (“[t]he tension between the subjects creates the conflict that often makes a story dramatic and interesting to read.”); accord JAMES GLEN STOVALL, *JOURNALISM: WHO, WHAT, WHEN, WHERE, WHY AND HOW* 7 (2005) (“[c]onflict is one of the journalist’s favorite news values because it generally ensures that there is an interesting story to write.”).

<sup>3</sup> WOLFSFELD, *supra* note 1, at 20; GANS, *supra* note 1, at 295 (“[j]ournalists, by highlighting, often exaggerate the extent and intensity of disorder”).

<sup>4</sup> PROJECT FOR EXCELLENCE IN JOURNALISM, *FRAMING THE NEWS: THE TRIGGERS, FRAMES AND MESSAGES IN NEWSPAPER COVERAGE* (1999).

<sup>5</sup> WOLFSFELD, *supra* note 1, at 19; but see GANS *supra* note 1, at 295 (arguing that the journalists’ exaggerating of disorder is balanced by their exaggerating of the effectiveness of attempts to restore order.)

<sup>6</sup> Eytan Gilboa, *Media Broker Diplomacy: When Journalists Become Mediators*, 22 *CRITICAL STUD. IN MASS COMM* 99, 104–05 (2005).

of ABC's *Nightline*.<sup>7</sup> In 1988, another series of *Nightline* broadcasts brought the government of Israel and the Palestine Liberation Organization onto the same stage for the first time.

Such examples are striking against the backdrop of more typical news reports. The contrast has prompted calls for further exploration of journalism's peacemaking potential,<sup>8</sup> a subject that has received little attention in research.<sup>9</sup> An emerging group of journalism scholars and practitioners, sharing a desire to use that potential more broadly,<sup>10</sup> have initiated or facilitated experimental projects<sup>11</sup> that draw on conflict resolution techniques to create what is variously called "peace journalism,"<sup>12</sup> "conflict sensitive journalism,"<sup>13</sup> and "media intervention."<sup>14</sup> For ease of reference, this paper will refer to this collection of related approaches as *peace journalism*. The term is not an oxymoron, according to at least one advocate in the movement. Canadian journalist Ross Howard<sup>15</sup> argues that conflict resolution is, instead, a natural extension of news gathering and reporting: "A reliable, diverse and independent news media has an almost innate potential for contributing to conflict resolution. It functions as a channel of communication that counteracts misperceptions. It frames and analyzes the conflict, identifies the interests, defuses mistrust, provides safe emotional outlets, and more."<sup>16</sup>

This paper explores journalism as a potential method of conflict resolution. Part I compares the norms and practices of jour-

<sup>7</sup> B. Kirtz, *Should Journalists Be Crusaders?* 85 QUILL 4, 10 (1997).

<sup>8</sup> EUROPEAN CENTRE FOR CONFLICT PREVENTION, *THE POWER OF THE MEDIA: A HANDBOOK FOR PEACEBUILDERS* 15 (Ross Howard, Francis Rolt, Hans van de Veen & Juliette Verhoven, eds., 2003) ("[t]here clearly is a need for a problem-solving, peacebuilding approach to journalism.").

<sup>9</sup> WOLFSFELD, *supra* note 1, at 8 ("[s]earching through hundreds of studies on peace building and conflict resolution, it is difficult to find even a passing reference to the press.").

<sup>10</sup> ROBERT KARL MANOFF, UNITED STATES INSTITUTE OF PEACE, *THE MEDIA'S ROLE IN PREVENTING AND MODERATING CONFLICT* (1997), available at <http://www.usip.org/virtualdiplomacy/publications/papers/manoff.html>.

<sup>11</sup> These international initiatives often target societies where conflict is recent, is ongoing or is seen as developing. For descriptions of a number of these media projects, see generally EUROPEAN CENTRE FOR CONFLICT PREVENTION, *supra* note 8.

<sup>12</sup> Annabel McGoldrick & Jake Lynch, *Peace Journalism: How To Do It?* (Transcend 2000), available at <http://www.transcend.org/pj.shtml>.

<sup>13</sup> ROSS HOWARD, INSTITUTE FOR MEDIA, POLICY AND CIVIL SOCIETY, *CONFLICT SENSITIVE JOURNALISM* (2003), available at <http://www.impact.org/files/mediaprograms/Handbook>.

<sup>14</sup> See EUROPEAN CENTRE FOR CONFLICT PREVENTION, *supra* note 8.

<sup>15</sup> Howard was the project director for the Institute of Media, Policy and Civil Society, a Canadian charitable organization.

<sup>16</sup> ROSS HOWARD, INSTITUTE FOR MEDIA, POLICY AND CIVIL SOCIETY, *AN OPERATIONAL FRAMEWORK FOR MEDIA AND PEACEBUILDING* 3-4 (2002).

nalism to those of facilitative mediation. Part II draws additional parallels between some aspects of journalism and two other forms of dispute resolution: transformative mediation and adjudication. Part III suggests some areas for encouragement and some areas for caution as peace journalists import conflict resolution techniques into news reporting and writing.

## I. JOURNALISM AND FACILITATIVE MEDIATION

By *journalism* this paper means the reporting and writing practices of the news media insofar as they attempt to present an unbiased and accurate account of current conflicts to a broad audience by interviewing and writing about the parties engaged in those conflicts. This definition includes live, joint interviews that reporters sometimes conduct when two or more opposing parties are present. It also includes the less direct process that reporters use when they interview the parties separately. In either situation, parties receive information from each other, generally at the same time that the information is being disseminated to the public.<sup>17</sup> By *facilitative mediation*, this paper means that method of neutral third-party intervention in which the neutral assists the parties' negotiation without evaluating their positions or interests, and without predicting their relative strength or making proposals.<sup>18</sup>

### A. Listening to Conflict as a Neutral

The news reporter – like the mediator – routinely listens to opposing sides in a dispute and does so with the intention of remaining neutral. In meeting these two initial requirements of mediation,<sup>19</sup> reporters sometimes help to resolve conflicts by providing a communication link between opposing sides, enabling one side to see the other, not as an evil force, but as “an actor with goals and

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<sup>17</sup> This is a broader look at journalism's mediation role than some researchers take. Gilboa, for example, considers that journalists are mediating “only when they debate with the leaders involved in conflicts, represent the positions of their government, suggest specific proposals for negotiation, or conduct ‘bridging.’” Gilboa, *supra* note 6, at 101.

<sup>18</sup> See Leonard Riskin, *Mediator Orientation, Strategies and Techniques*, 12 ALTERNATIVES 111, 111-114 (1994).

<sup>19</sup> JOSEPH B. STULBERG, *TAKING CHARGE/MANAGING CONFLICT* 8 (1987).

strategies, who acts and reacts.”<sup>20</sup> A classic example of a communication link that played a vital role in conflict resolution occurred during India’s campaign for independence. Mahatma Gandhi had believed that massive nonviolent demonstrations against British rule would succeed by directly changing the hearts of the colonial leaders.<sup>21</sup> Instead the colonial leaders’ response was brutal. Demonstrators eventually accomplished their goal indirectly, through the first-hand news reports of Webb Miller. Miller’s United Press stories<sup>22</sup> stirred the outrage of larger audiences in the West.<sup>23</sup> In more recent conflicts, where simple observation by a third party might put disputants on “good behavior,”<sup>24</sup> the news media have brought the added strength of their link to wider public opinion. During the Balkan conflicts, for example, the mere presence of television cameras reportedly prevented large-scale killings on a number of occasions.<sup>25</sup>

In a sense, the journalist is thrust unintentionally into this potential mediating role. The reporter may not notice, since many aspects of that role are familiar and overlap the journalism job description. A mediator serves as a host and chair, bringing parties together.<sup>26</sup> A mediator serves as a referee during discussions.<sup>27</sup> A

<sup>20</sup> See JOHAN GALTUNG, J. & R.C. VINCENT, *GLOBAL GLASNOST: TOWARD A NEW WORLD INFORMATION AND COMMUNICATION ORDER* 126 (1992).

<sup>21</sup> BRIAN MARTIN AND WENDY VARNEY, *NONVIOLENCE SPEAKS: COMMUNICATING AGAINST REPRESSION* 138–142 (2003).

<sup>22</sup> GANDHI’S SALT MARCH. CIVIL DISOBEDIENCE CAMPAIGN. WEBB MILLER’S ACCOUNT, [http://www.galileolibrary.com/history/history\\_page\\_166.htm](http://www.galileolibrary.com/history/history_page_166.htm)

Suddenly, at a word of command, scores of native police rushed upon the advancing marchers and rained blows on their heads with their steel-shod lathis. Not one of the marchers even raised an arm to fend off the blows. They went down like ten-pins. From where I stood I heard the sickening whacks of the clubs on unprotected skulls. . . . Those struck down fell sprawling, unconscious or writhing in pain with fractured skulls or broken shoulders. In two or three minutes the ground was quilted with bodies. . . . The survivors without breaking ranks silently and doggedly marched on until struck down. . . . Then another column formed. . . . They marched slowly toward the police.

*Id.*

<sup>23</sup> MARTIN & VARNEY, *supra* note 21, at 140.

<sup>24</sup> Lon L. Fuller, *Mediation – Its Forms and Functions*, 44 S. CAL. L. REV. 305, 307-309 (1971).

<sup>25</sup> See Ross Howard, *Media and Peacekeeping: Mapping the Possibilities*, Paper Presented at the Conference of the Working Group on Civil Society of the Geneva Centre for the Democratic Control of Armed Forces in Budapest (Feb. 6-9, 2003), available at [http://www.dcarf.ch/civsoc/ev\\_budapest\\_030206\\_Howard.pdf](http://www.dcarf.ch/civsoc/ev_budapest_030206_Howard.pdf) (“[t]he presence of the international media was what was most effective, reflecting the fact that while local norms of humane conduct had broken down there were international standards to be reckoned with, and potential consequences to be avoided.”).

<sup>26</sup> See CARRIE J. MENKEL-MEADOW, LELA PORTER LOVE, ANDREA KUPFER SCHNEIDER & JEAN R. STERNLIGHT, *DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL* 266 (2005).

mediator communicates, translates, extracts information, and serves as an agent of reality and a watchdog over the integrity of the process.<sup>28</sup> All of these roles could easily describe Cronkite, Koppel, and any number of journalists engaged in their daily work.<sup>29</sup> However, the journalist is different from the mediator in some important ways as well, as this paper will show. One of these is apparent at the start.

### B. Initiating the Process

An early question for a mediator is, “Who are the parties?” In mediation, the parties most often are known to each other, advocate distinctly clashing positions and appear to have the ability to frustrate each other’s interests.<sup>30</sup> In mediation, the identification of parties begins when the complainant initiates the process and names a respondent. In news coverage, however, it is the *neutral* who initiates the process. The journalist decides what conflict to cover, what angle to take, and which parties to interview. It is possible that parties will not know each other until the reporter brings them into the news story.

That makes the journalist a kind of free-lance mediator with the enviable ability to select interviewees from among the potential parties and to engage them, rather than waiting to be engaged by disputing parties. This arrangement has the potential to further the resolution of a conflict by empowering the neutral to seek out even unwilling parties, eliciting their narratives,<sup>31</sup> possibly softening their images of each other,<sup>32</sup> and even compelling communication between them. For example, in the aftermath of the Rwandan genocide, government and rebel leaders refused to be interviewed together on radio. Reporters at Voice of America’s headquarters in Washington, D.C., responded by asking both sides the same list of

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<sup>27</sup> See *id.*

<sup>28</sup> See *id.* at 266–67.

<sup>29</sup> See, e.g., STOVALL, *supra* note 2, at 19–20; DAVIS MERITT & MAXWELL MCCOMBS, *THE TWO W’S OF JOURNALISM: THE WHY AND WHAT OF PUBLIC AFFAIRS REPORTING* 85 (2004).

<sup>30</sup> See STULBERG, *supra* note 19, at 44.

<sup>31</sup> The importance of eliciting parties’ stories is further developed in Lela Love, *Training Mediators to Listen: Deconstructing Dialogue and Constructing Understanding, Agendas, and Agreements*, 38 *FAM. & CONCILIATION. CTS. REV.* 27 (2000) and in Carrie J. Menkel-Meadow, *Remembrance of Things Past? The Relationship of Past to Future in Pursuing Justice in Mediation*, 5 *CARDOZO J. OF CONFLICT RESOL.* 97–115 (2004).

<sup>32</sup> WOLFSFELD, *supra* note 3, at 14.

questions and then inter-cutting the interviews to let Rwandan listeners compare the answers. The result, a dissatisfying kind of parallel talk by the opponents, propelled both of them to agree to future joint interviews. Each wanted to be able to respond to the other's claims.<sup>33</sup>

However, the reporter's ability to select parties can also be problematic in the context of conflict resolution. In looking for conflict, the reporter tends to seek extreme points of view. Therefore, in order to get the spotlight, weaker parties sometimes use a strategy of espousing those extreme views.<sup>34</sup> The result can be a skewed dialogue.

In addition, the reporter's standard practice of seeking balance by pairing opposing interviews falls into the trap of presuming that a dispute has only two sides. News coverage, instead of enlarging public perceptions, may limit the public's understanding by failing to show the complexities of a polycentric problem<sup>35</sup> and by obscuring opportunities for creative solutions.<sup>36</sup>

Furthermore, reporters' selections of stories and interviews are guided by their assumptions about audience interest, so newsroom attention typically rushes to a sudden and significant political event – and then is distracted by another.<sup>37</sup> News coverage rarely offers parties the sustained engagement that can be essential to resolving conflicts.<sup>38</sup> An unresolved dispute is often abandoned as yesterday's news.

### C. Arranging a Neutral Setting

Mediation requires a time and place conducive to talking.<sup>39</sup> A standard rule is to provide each party a specific, equal spot in the room and to place the mediator equidistant from them and closest

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<sup>33</sup> Carol Pauli, *Voice of America as an Example of Peace Journalism*, (unpublished paper presented to the Association for Education in Journalism and Mass Communication, August 2005) (on file with author).

<sup>34</sup> WOLFSFELD, *supra* note 1, at 13.

<sup>35</sup> See Lon L. Fuller, *The Forms and Limits of Adjudication*, in *THE PRINCIPLES OF SOCIAL ORDER: SELECTED ESSAYS OF LON L. FULLER* (Kenneth I. Winston ed., rev. ed. 2001).

<sup>36</sup> See WOLFSFELD, *supra* note 3, at 21 (“[t]his practice makes it extremely difficult for citizens to even consider political ideas that are located outside this space.”).

<sup>37</sup> See WOLFSFELD, *supra* note 3, at 31.

<sup>38</sup> Jannie Botes, Assistant Professor, Program on Negotiations and Conflict Management, University of Baltimore, interview with the organization Beyond Intractability (2003), available at <http://www.beyondintractability.org/audio/10119>.

<sup>39</sup> See STULBERG, *supra* note 19, at 59.

to the door.<sup>40</sup> The journalist, too, creates conditions to promote participation and communication. As an extreme example, to persuade Israel and the PLO to share a stage in 1988, *Nightline* agreed to erect a symbolic wall between the two sides.<sup>41</sup> Parties refused to speak directly to each other but were able to have a conversation by directing their comments to Koppel.<sup>42</sup>

This example has less dramatic parallels in everyday news reporting. Even when interviews are done separately, journalism has a unique ability to provide safe and equitable virtual spaces for any number of parties by placing them on the pages of a newspaper<sup>43</sup> or in the airtime of a news broadcast. Television in particular allows people to talk to each other publicly even when physically distant or politically barred from contact.<sup>44</sup> In the case of Sadat and Begin, for example, Cronkite conducted separate satellite interviews and then created a shared space by broadcasting them on a split screen so that audiences saw the two leaders simultaneously.<sup>45</sup> In an asynchronous manner during the 1990-91 Gulf War, CNN interviews allowed President George H.W. Bush and Iraq's President Saddam Hussein to hear and respond to each other's statements<sup>46</sup> in a process quickly nicknamed "teleplomacy."<sup>47</sup> Journalism's ability to host its own kind of mediation enables it to

<sup>40</sup> See *id.* at 62 (the mediator's seat near the door offers a quiet way to discourage withdrawal by one or both parties when a mediation becomes difficult. Journalism has a "gatekeeping" role, also, but its emphasis is on keeping undesired parties and issues *out* of the discussion).

<sup>41</sup> See Johannes (Jannie) Botes, *Public Affairs Television and Third Party Roles: The Nightline Debates in South Africa (1985) and Israel (1988)*, 10 PEACE AND CONFLICT STUD. 1, 12 (2003).

<sup>42</sup> See *id.*

<sup>43</sup> Newspapers are a kind of cultural safe space, offering readers a sense of cognitive control over the random events of the day. During the 1945 newspaper strike in New York City, researcher Bernard Berelson found that readers shared a "ritualistic" attachment to the newspaper as a source of "serenity." MICHAEL SCHUDSON, *THE SOCIOLOGY OF NEWS* 170-71 (2003) (citing Bernard Berelson, *What Missing the Newspaper Means*, in COMMUNICATION RESEARCH 1948-49, 35-47 (Paul Lazarsfeld & Frank Stanton eds., 1949)).

<sup>44</sup> See Botes, *supra* note 41, at 11

When parties are legally banned from meeting together . . . or when one or the other refuse to appear in the same room, satellite technology can bring them into the same 'electronic room' or onto the same screen. This allows them to communicate via the moderator, or directly with the moderator, while saving face by not being in the same location.

*Id.*

<sup>45</sup> See Gilboa, *supra* note 6, at 102.

<sup>46</sup> Tanya Glaser, *Television and Conflict*, 11 CONFLICT RESOL. NOTES 26, 26-27 (Sept. 1993), available at <http://www.crinfo.org/articlesummary/10057>.

<sup>47</sup> See Gilboa, *supra* note 6, at 100 ("[d]uring the 1990-91 Gulf conflict, one Washington Post columnist used the term 'teleplomacy' to describe the interviews that television news anchors conducted with Saddam Hussein.").

bridge the distance between enemy camps<sup>48</sup> and bring parties together even when official mediation efforts have failed or formal contacts have been impossible.<sup>49</sup> The news media's neutral space contributes to what former Israeli Foreign Minister Abba Eban characterized as a "new diplomacy."<sup>50</sup>

#### D. Accumulating Information

Both the mediator and the journalist accumulate information primarily by questioning the involved parties. Here, again, their approaches are similar. An analysis of the 1985 *Nightline* programs on South Africa and the 1988 programs on Israel found that Koppel used mediation techniques such as asking challenging questions, seeking explanations and checking reality.<sup>51</sup> The observation is not surprising, since these are intuitive techniques of journalism as well.<sup>52</sup> The reporter, like the mediator, is an attentive listener and is especially alert to issues. The reporter, however, understands the term *issue* in its ordinary sense, as an important topic for debate or discussion,<sup>53</sup> rather than as a term of art.<sup>54</sup>

In several ways, newsgathering also differs from the information gathering process of mediation. One difference is the neutral's mode of listening. The mediator makes use of "active listening," sometimes summarizing and reflecting back on his or her under-

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<sup>48</sup> See WOLFSFELD, *supra* note 3, at 226 ("[t]he ultimate power of the media to influence the course of a conflict is rooted in the fact that antagonists are almost always kept in separate caves.").

<sup>49</sup> See Botes, *supra* note 41, at 4–5 (pointing out that each series of *Nightline* programs provided an opportunity for a government to talk directly to an out-party at just the time when tensions were erupting into conflict. "In 1985, South Africa experienced civil unrest following the formation of the tri-cameral parliament that excluded blacks from political power. Similarly, in December 1987, the Israeli-occupied territories of Gaza and the West Bank orchestrated the 'intifada,' a stone-throwing uprising of the Palestinian youth. . .").

<sup>50</sup> Gilboa, *supra* note 6, at 100.

<sup>51</sup> Botes, *supra* note 41, at 8.

<sup>52</sup> Journalism textbooks tend to present such techniques as variations on open- and closed-ended questions. Compare STULBERG, *supra* note 19, at 75–80 with MELVIN MENCHER, MELVIN MENCHER'S NEWS REPORTING AND WRITING 299–303 (2006) and FEDLER, *supra* note 2, at 274–77.

<sup>53</sup> See NEW OXFORD AMERICAN DICTIONARY 901 (Elizabeth J. Jewell & Frank Abate, eds., 2001).

<sup>54</sup> STULBERG, *supra* note 19, at 81–85 ("[a]n issue is a matter, practice or action that enhances, frustrates, alters, or in some way adversely affects some person's interests, goals or needs.").

standing of a party's thoughts and asking for confirmation.<sup>55</sup> In contrast, a reporter typically hears and notes a party's reply to a question and then simply asks another question.<sup>56</sup>

Another important difference is the lack of privacy granted to a news interview. While the mediator closes the doors and promises a confidential conversation,<sup>57</sup> the journalist inherently invites a large "unseen public"<sup>58</sup> to listen. Even when conducted individually, news interview talk is "consequential talk, talk for which the speaker will be held publicly responsible."<sup>59</sup> For the reporter, accumulating information may be hindered by this invisibly present audience. If there are facts that parties are willing to share only with each other, the reporter is less likely to learn of them than the mediator. However, the audience can also strengthen the reporter's hand in getting answers to questions. Parties seeking wider support know that the reporter controls their access to the public<sup>60</sup> and thus have an added incentive to cooperate. It was the size and power of their audiences<sup>61</sup> that gave Cronkite and Koppel the leverage to bring high-level disputing parties together to answer difficult questions.

### E. Framing Issues

The facilitative mediator is charged with managing a conversation between disputing parties "in a way that does not simply reinforce their differences."<sup>62</sup> To do this, the mediator typically reframes points of disagreement in nonjudgmental terms and suggests an agenda for discussion that is designed to optimize the

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<sup>55</sup> See Gary Friedman & Jack Himmelstein, *The Loop of Understanding*, in MENKEL-MEADOW ET AL, *supra* note 26, at 335-338.

<sup>56</sup> MICHAEL SCHUDSON, *THE POWER OF NEWS 75* (1995) ("[t]he normal sequence of turns in the news interview is (1) question (2) reply and (3) next question.").

<sup>57</sup> Stulberg points out that public mediation is possible in some disputes, and he even notes that an audience might have a salutary effect on the process. He notes, however, that his position on this point is controversial. STULBERG, *supra* note 19, at 161-63.

<sup>58</sup> SCHUDSON, *supra* note 56, at 75.

<sup>59</sup> *Id.*

<sup>60</sup> See *id.* ("[t]he reporter's dependence on the words and views of the interviewee for his or her reputation, or even livelihood, is balanced against the interviewee's vulnerability to public exposure or need for public recognition controlled by the journalist. Each party exercises leverage potentially damaging to the other.").

<sup>61</sup> See *id.*

<sup>62</sup> STULBERG, *supra* note 19, at 81.

chances of resolving the dispute.<sup>63</sup> Such an exercise would be alien to journalism. To the extent that the reporter has an agenda for conducting an interview, it is calculated to extract information<sup>64</sup> to share with the public, not to assist the parties. Furthermore, the reporter rarely rephrases a party's statements. The newsroom places a high value on capturing the party's exact words, even if those words are combative and especially if they are vivid or particularly apt.<sup>65</sup>

The reporter generally frames issues later, after the interview, in the process of writing or telling the story. Here, the contrast to the neutral framing of mediation is stark. An analysis of seven newspapers over a two-month period found that thirty percent of front-page stories used combative narrative frames. That is, they told stories in terms of conflicts, winners and losers, or revelations of wrongdoing.<sup>66</sup> Peace journalism proponents charge that the regular use of conflict-oriented frames can "inflame the political atmosphere,"<sup>67</sup> robbing popular narratives of nuance and ambivalence.<sup>68</sup> Furthermore, the existence of combative pre-set frames in the minds of reporters may encourage them to cover the events that most easily fit that mold. This mindset may cause an under-reporting of the news from a community's "mediating institutions," such as churches and amateur sports leagues, for example, where people make connections and resolve differences.<sup>69</sup>

For the reporter, unlike the mediator, the framing task is usually not deliberate. The journalist makes choices that are often unintentional and unconscious,<sup>70</sup> relying on what sociologist Michael Schudson describes as nothing more than "little tacit theories."<sup>71</sup> Daniel Hallin suggests that when thinking about their stories, reporters shift spontaneously among three "spheres," defined by the topics of news stories. In the "sphere of consensus" are stories about motherhood and apple pie, about which reporters do not feel

<sup>63</sup> *Id.*

<sup>64</sup> See generally STOVALL, *supra* note 2, at 157–63; MERITT & MCCOMBS, *supra* note 29.

<sup>65</sup> STOVALL, *supra* note 2, at 230.

<sup>66</sup> PROJECT FOR EXCELLENCE IN JOURNALISM & PRINCETON SURVEY RESEARCH ASSOCIATES, FRAMING THE NEWS: THE TRIGGERS, FRAMES AND MESSAGES IN NEWSPAPER COVERAGE (Aug. 5, 1999), available at <http://www.journalism.org/node/445>.

<sup>67</sup> WOLFSFELD, *supra* note 1, at 19.

<sup>68</sup> See JAMES FALLOWS, BREAKING THE NEWS: HOW THE MEDIA UNDERMINE AMERICAN DEMOCRACY (1996).

<sup>69</sup> *Id.* at 246.

<sup>70</sup> SCHUDSON, *supra* note 43, at 37.

<sup>71</sup> *Id.*

compelled to present opposing views.<sup>72</sup> The second sphere, the “sphere of legitimate controversy,” includes such news as election stories and debates. In this sphere, reporters adhere to the norms of neutrality and balance.<sup>73</sup> Beyond these, Hallin suggests, is the third sphere, occupied by ideas considered by society and journalists as unworthy of being heard<sup>74</sup> and therefore undeserving of balanced coverage. For example, an allegation of witchcraft would probably fall into this sphere.<sup>75</sup> Schudson observes, “[i]t is as if journalists were unconsciously multilingual, code-switching from neutral interpreters to guardians of social consensus and back again without missing a beat.”<sup>76</sup>

### F. Generating Movement

Resolving a conflict requires some movement by one or more parties. The mediator consciously tries to generate this movement, but the journalist avoids it. A cardinal principle of journalism is to report news, not make news. Koppel, the ABC News anchor, insisted that he was not trying to play a mediating role in his *Nightline* conversations.<sup>77</sup> Cronkite also downplayed his role in bringing Sadat and Begin together, at least initially.<sup>78</sup> Yet, whether or not they want to, journalists may generate movement as a by-product of their normal interviewing practices. Researchers classifying Koppel’s conversational strategies according to a list of 100 mediation techniques, found that he “stroked” opposing parties, oriented them toward the future, used humor, pointed out shared positions, performed “reality checks,” and warned of the consequences of their negative behavior.<sup>79</sup> In addition, in his broadcast on South Africa, Koppel used favorable terms to introduce the anti-

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<sup>72</sup> DANIEL HALLIN, *WE KEEP AMERICA ON TOP OF THE WORLD: TELEVISION JOURNALISM AND THE PUBLIC SPHERE* 53–54 (1994).

<sup>73</sup> *Id.* at 54.

<sup>74</sup> *Id.*

<sup>75</sup> In contrast, mediations in New York City handle accusations and denials of witchcraft with some regularity. Such an accusation was an issue in the author’s first mediation as a student in the Cardozo Mediation Clinic, conducted at the Safe Horizon center in Brooklyn.

<sup>76</sup> SCHUDSON, *supra* note 43, at 186.

<sup>77</sup> See Botes, *supra* note 41, at 14 (“[i]n spite of Koppel’s protestations to the contrary during these programs, based on this list of his mediatory tactics he appears to be facilitating a negotiation between the parties on his programs.”).

<sup>78</sup> WALTER CRONKITE, *A REPORTER’S LIFE* 354 (1996) (cited by Gilboa, *supra* note 6, at 105).

<sup>79</sup> Botes, *supra* note 41, at 8.

apartheid leader Bishop Desmond Tutu, thus empowering the out-party.<sup>80</sup> In his broadcasts on the Middle East, he employed face-saving several times on behalf of the PLO.<sup>81</sup> Cronkite's satellite exchanges, although much briefer, also followed lines familiar to mediators, as in the following excerpt regarding the prospect of Sadat visiting Jerusalem:

News interview

Sadat: I'm just waiting for the proper invitation.

Cronkite: You must get something directly from Mr. Begin, not through the press?

Sadat: Right. Right.

Cronkite: And how would that be transmitted . . . since you do not have diplomatic relations with Israel?"

Sadat: Why not through our mutual friend, the Americans. . . ?

Cronkite: If you get that formal invitation, how soon are you prepared to go?

Sadat: . . . in the earliest time possible.

Cronkite: . . . say within a week?

Sadat: You can say that, yes. . .<sup>82</sup>

Mediation term

Issue

Rephrasing to clarify

Reality test/option development

Proposal

Clarification

Clarification

Sadat's historic trip to Jerusalem did take place within a week, and Cronkite eventually acknowledged that his broadcast probably played a role because it "speeded up the process, brought it into the open, removed a lot of possibly obstructionist middlemen, and made it difficult for principals to renege on their very public agreement."<sup>83</sup>

<sup>80</sup> *Id.* at 10.

<sup>81</sup> *Id.* at 11.

<sup>82</sup> *Transcript of the Interviews with Sadat and Begin*, N.Y. TIMES, NOV. 15, 1977, at A2.

<sup>83</sup> WALTER CRONKITE, *supra* note 78.

### G. Using a Caucus

A facilitative mediator sometimes meets in a confidential session, or caucus, with individual parties in order to elicit confidential information. The use of separate sessions provides a safe space for exploring ideas and protects a party while the mediator asks difficult questions or points out flaws in the party's arguments.<sup>84</sup> For the journalist, separate interviews are normally not private in the same sense. For a reporter, what parallels the mediator's caucus would be an off-the-record interview, in which a journalist promises confidentiality. Like any news interview strategy, confidentiality aims at eliciting more information. It usually does so by withholding the name of a particularly vulnerable party from publication so as to protect him or her from such harms as retaliation or public embarrassment, which might otherwise be obstacles to the reporter's gaining information.

In some respects, the types of confidentiality offered by the reporter and the mediator are mirror images of each other. In mediation, the parties are already known, but their information is kept secret by the mediator. In journalism, a party's information is usually published, but the party's identity is kept secret. In mediation, an individual conversation is presumed to be confidential unless a party authorizes sharing information.<sup>85</sup> In journalism, an individual conversation is presumed on the record unless specially marked.<sup>86</sup> In both settings, confidentiality is seen to serve a purpose worthy of legal protection. The mediator is under a duty not to tell a trial court the statements heard in the mediation. Most states provide some evidentiary privilege allowing a reporter to protect the identity of a source in order to keep a promise of anonymity.<sup>87</sup>

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<sup>84</sup> See STULBERG, *supra* note 19, at 107–112.

<sup>85</sup> See *id.*

<sup>86</sup> See SCHUDSON, *supra* note 56, at 75.

<sup>87</sup> ROBERT TRAGER, JOSEPH A. RUSSOMANNA & SUSAN DENTE ROSS, *THE LAW OF JOURNALISM AND MASS COMMUNICATION* (2007).

## H. Resolving the Dispute

The mediator's ultimate hope – resolving the dispute<sup>88</sup> – is not shared by the journalist. The reporter's primary aim is to inform,<sup>89</sup> leaving any next steps to parties and the public.<sup>90</sup> Yet the contrast between mediator and reporter is not as clear-cut as it might seem initially. In mediation, resolution is not guaranteed, and a mediation that does not resolve all of the issues is not considered to have failed.<sup>91</sup> Furthermore, resolution is broadly defined. Mediations that succeed may have diametrically opposed results. For example they may heal relationships or end them.<sup>92</sup> For the mediator, the primary function of the process is to reorient parties to each other and bring issues into the open.<sup>93</sup> At the same time, the traditional journalist's detachment from the outcome of a news interview is not an absolute standard. In times of civil conflict, reporters have been known to put away their cameras when it appeared that their presence was creating more violence. Likewise, in planning his Israel-PLO program, Koppel later wrote that he worried that he might make matters worse.<sup>94</sup> Traditionalists in journalism insist that reporters must not risk their objectivity by worrying about the practical results of their stories or by taking part in designing solutions.<sup>95</sup> Yet newspapers that have actively sought resolution to community conflicts have been among those to win the Pulitzer Prize for exactly those efforts.<sup>96</sup>

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<sup>88</sup> STULBERG, *supra* note 19, at 123.

<sup>89</sup> Botes, *supra* note 41, at 16 (“[w]hile journalists . . . perform [facilitative] roles in dealing with two sides of a conflict, they perform them relatively unconsciously and invariably without taking any responsibility for bringing the parties closer to any form of resolution.”).

<sup>90</sup> For many years the Columbia University Graduate School of Journalism used the motto of the legendary publisher, Joseph Pulitzer: “That the people shall know.” DONALD READ SHANOR, 28 NEWS FROM ABROAD (2003).

<sup>91</sup> STULBERG, *supra* note 19, at 133.

<sup>92</sup> Fuller, *supra* note 35.

<sup>93</sup> *Id.*

<sup>94</sup> Koppel worried that his Israel show might do harm. “not only could there be violence, and there could be people killed, maybe, but on top of that we would be the cause of it all.” Botes, *supra* note 41, at 12 (quoting TED KOPPEL & KYLE GIBSON, NIGHTLINE: HISTORY IN THE MAKING AND THE MAKING OF TELEVISION 96 (1996)).

<sup>95</sup> Carol Marin, Chicago television news reporter and anchor, cited in HOWARD GARDNER, MIHALY CZIKSZENTMIHALYI & WILLIAM DAMON, GOOD WORK: WHEN EXCELLENCE AND ETHICS MEET 202 (Basic Books 2001) (“[o]nce we become proactive on the solution side, we risk corrupting our own desire to tell the truth if our solutions fail.”).

<sup>96</sup> Manoff, *supra* note 10, at 3

The Akron Beacon Journal's Race Relations Project . . . solicited the participation of community groups around the city . . . organized meetings, collected 22,000 citizen pledges to work for racial harmony, and even hired professional facilitators. . . It is

## II. OTHER PROCESSES TO EXPLORE

On several points, where journalism differs markedly from facilitative mediation, it has a surprising resemblance to two very dissimilar forms of dispute resolution, transformative mediation and adjudication.

### A. Transformative Mediation

Transformative mediation aims to resolve conflicts by focusing on the communication between the parties and helping each to achieve a greater degree of clarity about the self and a greater degree of responsiveness toward the other.<sup>97</sup> This calls for several strategies that are different from those of the facilitative mediator but similar to those of the journalist. One is that the transformative mediator avoids neutrally reframing issues, preferring to reflect back to both parties the words and emotions that they have conveyed themselves. For the transformative mediator, to frame an issue is not to rephrase it, but to highlight it, inviting parties to “consider the implications or questions that follow from a statement one of them has made.”<sup>98</sup> This unflinching adherence to the parties’ own words is strikingly similar to journalists’ attempts to accurately quote sources in stories.

A second similarity is that, even more than the facilitative mediator, the transformative mediator places all responsibility for the outcome of a conflict on the parties. Transformative mediators “consciously reject feelings of responsibility for generating agreements, solving the parties’ problem, healing the parties, or bringing about reconciliation between them.”<sup>99</sup> This determined detachment from the outcome also is true to the norms of journalism. Transformative mediators do, however, feel responsible for setting a context that supports the parties’ own efforts to communicate and make decisions.<sup>100</sup>

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striking to note that the newspaper’s actions in clearly overstepping the profession’s nominal models of journalistic detachment were rewarded with a Pulitzer Prize.

*Id.*

<sup>97</sup> Joseph P. Folger & Baruch Bush, *Transformative Mediation and Third-Party Intervention: Ten Hallmarks of a Transformative Approach to Practice*, 13 *MEDIATION Q.* 263, 264–67 (1996).

<sup>98</sup> *Id.* at 267.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

Journalism and transformative mediation are at opposite extremes on some other points. For example, the degree of control that the journalist exercises over an interview is typically high, while the transformative mediator purposely turns the process over to the parties.

## B. Adjudication

One important difference between journalists and mediators is that they have different goals. While mediation aims to assist in resolving conflicts, journalism aims to gather and communicate accurate information. The pursuit of truth is a goal that journalism shares with adjudication, where the trier of fact determines which of the parties' competing narratives it believes.

Journalism also differs from mediation in its lack of privacy. Although mediation may be possible in public, journalism is public by its very nature. This is another quality that news media share with adjudication. Both journalists and judges take their authority – formally or informally – from the public. The journalist even has some ability to force parties to the table. The journalist's version of a subpoena is a phone call to a party saying that an opponent will be quoted in the next day's newspaper or broadcast. In that context, the reluctant party often accepts the invitation to be interviewed too. Both courtroom and newsroom know the pitfalls of publicity. For example, while the presence of an audience puts some parties on their best behavior, it causes others to posture, subverting the truth-finding purpose. In both arenas, the priorities of officials – reporters or lawyers – may tend to polarize the debate.

Another striking similarity between journalism and adjudication is in the requirement of the courtroom and the tendency of the newsroom to fit varied human stories into a limited set of predetermined frames. In law, the process is conscious, and the frame is the formal cause of action.<sup>101</sup> In journalism, the framing process is more intuitive and less exact, but it still tends to impose a win-lose relationship on the parties and to limit the way parties can hear each other and the way the public perceives them.

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<sup>101</sup> Menkel-Meadow et al., *supra* note 26, at 270.

### C. More Areas for Investigation

In exploring the peacemaking potential of journalism, other forms of dispute resolution may bear investigation. In some ways, the journalist is like the neutral in a mini-trial, who orchestrates an abbreviated presentation of a dispute for officials, who ultimately negotiate and decide its outcome.<sup>102</sup> In the case of the journalist, the dispute is not private but public, and the decision-makers are not company CEOs but members of the public, some of whom may vote or otherwise take an active role on the issue in question. In other ways, the journalist is like an ombudsman, someone who is part of a government or organization but maintains a degree of independence and is designated to pursue grievances on behalf of out-parties.<sup>103</sup> Although reporters are not public officials or corporate executives, they enjoy, in the community power structure, a real place from which to register grievances on behalf of weaker out-parties.

### III. AREAS OF PROMISE AND CAUTION

Proponents of peace journalism advocate an array of changes in news reporting and writing practices. One such proponent aims at journalism's underlying goal and recommends that reporters abandon their claim of total disengagement from the consequences of their work. These advocates urge that reporters should try, at least, to "do no harm"<sup>104</sup> or should even consider taking action rather than merely watching as tragedies unfold.<sup>105</sup> Another set of suggestions aims at the way reporters go about their work. Among them are the following: Reporters should take care to include moderate, even ambivalent, voices in their stories and should ask questions designed to find areas of agreement, not just disagreement; and reporters should become more conscious of their framing of stories in order to avoid a reflexive, combative approach and

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<sup>102</sup> *Id.* at 619-20.

<sup>103</sup> Howard Gadlin, *The Ombudsman: What's in a Name?*, 16 *NEGOT. J.* 37, 37-43 (2000).

<sup>104</sup> They should refrain from practices that raise the level of hate, distrust, and violence between communities WOLFSFELD, *supra* note 3, at 8.

<sup>105</sup> "BBC correspondent Martin Bell . . . was distressed by the early stages of the ethnic cleansing in 1994-95. In his view the West stood idly by because the media reported the slaughter with all the objectivity of reporting on a football match." Howard, *supra* note 25, at 7.

should consider expanding the range of interpretive frames that they use.<sup>106</sup>

In deciding how – and whether – conflict resolution techniques may be put to use in the news media, it may be wise to follow Lon Fuller’s example and first examine the moralities of the processes in question. While “the morality of mediation lies in optimum settlement,”<sup>107</sup> the morality of journalism would seem to lie in public truth-telling, holding a mirror up to society.<sup>108</sup> If this is the case, then journalism fails when it distorts the mirror by focusing on the most extreme voices, constricting people’s stories into a limited set of frames, or making unconscious pre-judgments about what is and is not an area of legitimate debate. To the extent that the techniques of facilitative mediation can heighten the awareness and expand the tools of reporters, those techniques can promote both peace-making and journalistic integrity.

However, to aim consciously at any result – even the noble result of a resolved dispute – may pose a risk to both the truth-telling aim of journalism and its prospects for helping parties reach their own settlements. Unlike facilitative mediation, journalism is a public activity that, at points, has a level of power approaching that of adjudication, capable even of pro-actively seeking out conflicts to bring into its process. Given this free-wheeling power, journalism may be exercising an important balancing restraint, even if unintentionally, when it leaves outcomes up to the parties and the public. This suggests that peace journalism advocates may find helpful insights by further exploring the goals and techniques of transformative mediation. Its disengagement from the outcomes of mediation fits the stance of the journalist. Its emphasis on clarity and responsiveness may provide a good orientation for an accurate and useful journalistic mirror.

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<sup>106</sup> Their recommendations overlap and reinforce each other. See generally EUROPEAN CENTRE FOR CONFLICT PREVENTION, *supra* note 8; Howard, *supra* note 16; and McGoldrick & Lynch, *supra* note 12.

<sup>107</sup> Lon Fuller, *Collective Bargaining and the Arbitrator*, 1963 WIS. L. REV. 3, 23–24, 26.

<sup>108</sup> THE SOCIETY OF PROFESSIONAL JOURNALISTS’ CODE OF ETHICS, available at [www.spj.org/ethics\\_code.asp](http://www.spj.org/ethics_code.asp), begins with its most extensive section, “Seek Truth and Report It.” Its first point is that “[j]ournalists should be honest, fair and courageous in gathering, reporting and interpreting information.” *Id.*