

German-American Workshop Law and Behavior – Mediation

University of Tübingen, Germany

May 5-6, 2001

Report by Steffen Wesche

On May 5th and 6th, the Gruter Institute and the University of Tübingen, Germany jointly sponsored an interdisciplinary German-American workshop on mediation. The meeting was an outgrowth of the ongoing collaboration of the University of Tübingen and the Gruter Institute on topics of dispute resolution. Mediation, or the method of conflict resolution by negotiation with the help of a third party, has recently attracted an academic and practical interest in Germany. There are parallels with the U.S., where mediation, together with other forms of Alternative Dispute Resolution (ADR), has been the focus of intensive research and practice for over 20 years. During the conference, 19 participants from both Germany and the U.S. discussed the psychological, economic, behavioral, anthropological, and legal background of mediation. Special emphasis was laid upon future areas of research, and some promising initiatives were presented and discussed.

Fritjof Haft (Law, Tübingen, and Institute for Law and Behavior) welcomed the participants in the guesthouse of the University in the lovely small town of Tübingen.

Doug Yarn (Law, Georgia State, and Gruter Institute Research Fellow) opened the first section by presenting on his Consortium for Negotiation and Conflict Resolution. The consortium covers both academic research and mediation service and training, and has developed an impressive range of activities throughout Georgia. Yarn's colleague from GSU, Ray Lanier, later described his experience introducing the states of Central Europe to the ideas of arbitration in his paper "Transnational Comparative Dispute Resolution Program."

Günter Bierbrauer (Social Psychology, Osnabrück), showed in his talk that preferences for persuasion and negotiation are interculturally constant, and that procedural justice is universally considered to be an important component of conflict resolution. This is true, he explained, in both individualistic and collectivistic societies, although one might have expected individualistic societies to be prone to open litigiousness.

Marianne Hassler (Neurobiology, Tübingen) then presented on the Center for Conflict Management at the University of Tübingen. In action from 2002, it will function similarly to Yarn's Consortium, as an academically based service center in conflict resolution. It is, again, an interdisciplinary enterprise, with psychologists, ethnologists and linguists collaborating. After lunch, Major Fred Krawchuk (American Army in Germany) invited the participants to join exercises based on work by Richard Heckler. Krawchuk made us feel how different ways of conflict resolution have their roots deep within the human body, and how changing the awareness of one's own body can influence our attitude towards other people and ourselves. David Barnes (Law, Seton Hall) spoke on economic implications of alternative dispute resolution, raising the question of whether ADR should be subject to market competition with

other forms of conflict handling, and whether a market for dispute resolution is likely to be competitive at all.

Erin O'Hara (Law, Vanderbilt) reminded the participants of a simple but often very effective form of conflict resolution: apology. She analyzed how apology could be given a role in traditional conflict resolution.

Steffen Wesche (Law, Tübingen) presented a comparative study on the legal institutionalization of mediation in Germany and the U.S. He talked about the factors responsible for the development of court-connected mediation, distinguishing universal human (behavioral) factors from contingent (economic, societal, legal) drivers and resistors.

On the second day of the workshop, Wolfgang Fikentscher (Law, Gruter Institute) shared his thoughts about three problems: mediation in close-knit societies; power and dependency on power as possible obstacles to mediation; and third party effects of mediation. Fikentscher presented these as open questions, thereby making room for an intensified discussion over future research in mediation. Fritjof Haft proposed the following areas of research, which he inferred from the presentations during the conference: power imbalances; role of third parties; psychology of mediation; intercultural conflict resolution; institutionalization and legal framework of mediation; education and training; and economic implications.

Gruter Institute support of collaboration between German and American scholars continued at the annual Squaw Valley Conference (see report on page 1). Margaret Gruter warmly welcomes this opportunity because, as she believes, by combining the interdisciplinary knowledge of many experts and transatlantic experiences the behavioral underpinnings of conflict resolution can be explored and, eventually, suggestions for changing the law can be made.