

# University of Pittsburgh School of Law

## Independent Study Legal Writing Requirement

### A Suggested Adventure-Based Program for Resolving a Relationship-Based Disputes

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## I. Abstract

Interest-based negotiation and mediation serve an important role in solving disputes amicably without many of the adverse side effects of more competitive, adversarial processes of litigation, arbitration, and positional bargaining. If parties to a dispute want to continue a relationship with one another after settling their dispute, they would be wise to engage in a cooperative, problem-solving approach. However, issues which accompany an escalated conflict and issues within the relationship between the parties may impede this process. An adventure-based program specifically designed to work in the dispute resolution context could address some of these issues and assist the parties with reaching a long-lasting, comprehensive settlement.

## II. Introduction

Among various other benefits such as saving money and taking cases off of overcrowded dockets, alternative dispute resolution systems can solve legal disputes while also placing the parties in a position where they can maintain an amicable relationship with one another despite their present differences. Whether the process is arbitration, negotiation, mediation, or some hybrid of the three, the alternatives offered by the field create less long-term animosity than if the dispute were litigated.

If an interest-based, cooperative, problem-solving approach is utilized – as opposed to the adversarial approaches of competitive negotiation or arbitration – the prospects of maintaining a post-settlement relationship are particularly encouraging. However, in order to succeed in such a process, the parties must be able to identify their interests, communicate them to one another, and sincerely treat each other's positions as sincere and valid. If not, then the process is likely to produce a settlement that ignores issues that are important to the parties or no settlement at all. If the parties to the dispute have a close, personal relationship, there is a strong possibility that personal issues and feelings will be intertwined with the financial and/or legal issues in the case. It is also possible that the legal dispute is a mere symptom of more complicated dysfunctions within the relationship itself. Such circumstances impede the problem-solving process as neither the mediator/negotiators nor the parties themselves may understand completely what the two sides are fighting about. This complication is further exacerbated when one considers that most parties do not seek outside assistance with resolving a dispute unless and until the dispute has escalated to the point where they do not know how to solve the problem themselves. When conflicts escalate to this point, changes and transformations such as a proliferation of issues and the development of hostile goals and attitudes have most likely taken place. In other words, the parties are expected to engage in cooperative, conciliatory talks at a point in their relationship when they are the least capable of doing so.

The field of adventure-based learning (or adventure-based programming) offers one possible solution to the above situation. As a field that has provided assistance to wayward teens, struggling families, and under-productive corporate teams, adventure-based programming can

provide a procedure to complement the dispute-resolution process by allowing the parties to explore and strengthen the elements of their personal relationship while simultaneously clarifying their professional, financial, and legal interests. This paper proposes such a procedure.

Part III of this text will provide some background information on both adventure-based programming and dispute resolution principles and theories with particular emphasis on the interest-based problem-solving process and the barriers to resolution that are intensified by the existence of a strong personal relationship between the parties.

Part IV argues that an adventure-based program can reverse many of the negative changes attributed to an escalated, ongoing conflict and explores several adventure-based programming principles and techniques that would serve this end. It concludes by suggesting a specific model that uses these principles and techniques in a dispute-resolution context.

### III Background

#### **A. Adventure-Based Learning/Adventure-Based Programming**

There is no one definition that accurately describes an adventure-based program. It is a broad field that serves a diverse group of clients. Indeed, not only is there no common definition, there is also no common name. Adventure-based programs go under the names of wilderness therapy, ropes course, challenge course, experiential education, ecopsychology, nature-guided therapy, outdoor experiential training, wilderness experience program, and adventure therapy.<sup>1</sup>

The above terms describe programs that are doctrinally similar yet may look quite different on the surface. A wilderness therapy program, for instance, will most often consist of expeditioning, where small groups under the direction of trained guides hike, canoe, raft, etc., from camp to camp.<sup>2</sup> Expeditioning leads groups deep into remote wilderness for days or even weeks at a time, providing participants with time to think and reflect in a peaceful, picturesque location far removed from the distractions of work, family, popular culture, and bad habits such as drinking, poor eating/exercise routines, and drug use.<sup>3</sup> Participants frequently develop a sense of both personal and team accomplishment for completing a physically and emotionally rigorous program, and they often report increased levels of self-esteem, trust, cooperation and other positive consequences.<sup>4</sup>

In contrast, a ropes course/challenge course is a set of stationary elements and obstacles, which require participants to cooperate, communicate, and confront individual fears in order to

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<sup>1</sup> Keith C. Russell, *What is Wilderness Therapy?* 24(2) *Journal of Experiential Education*, 70 (Fall 2001); Brad Lee Thompson, *Training in the Great Outdoors*, 28(5) *Training* 46 (May 1991); Almut Beringer, *Toward an Ecological Paradigm in Adventure Programming*, 27(1) *Journal of Experiential Education*, 51 (2004).

<sup>2</sup> Russell, *supra* note 1, at 73.

<sup>3</sup> Thompson, *supra* note 1, at 46

<sup>4</sup> Jennifer Davis-Berman and Dene S. Berman, *Wilderness Therapy: Foundations, Theory and Research*, 73 Kendall Hunt (1994).

complete.<sup>5</sup> In a low-ropes course, the obstacles are low to the ground and there is a greater emphasis on communication and problem solving. A high-ropes course contains elements such as climbing walls, zip lines, tight ropes etc., and participants must work together, communicate, and trust one another in an environment where stress, anxiety, and adrenaline levels are elevated due a high level of perceived risk.<sup>6</sup> Participants will employ ropes, harnesses, and helmets so that the actual risk of injury is quite low. Typically, participants spend only a day or two working on a challenge course/ropes course.

As described below, although different in form, therapeutic wilderness therapy and challenge courses possess similar theoretical underpinnings and desired outcomes despite the disparity in their names and processes. For simplicity's sake, this paper will use the terms adventure-based learning and adventure-based programming as a broad umbrella under which all adventure/wilderness-based programs will fall. It will attempt to identify theories and practices from several different types of adventure-based programs and assimilate them into a set of tools that can be used in the dispute-resolution context with the assistance of a skilled facilitator.

To an extent, the wide-variety of terms employed to describe adventure-based programs reflects the diversity of individuals that participate in adventure-based programs and the variety of reasons for doing so. The majority of adventure-based programs are targeted toward adolescents. In the late 1960s and early 1970s, adventure-based learning gained popularity as an alternative to incarceration for delinquent adolescent boys.<sup>7</sup> As programs such as Outward Bound, National Outdoor Leadership School and Student Conservation Association flourished, they began serving a broader client base, which included male and female adolescents and young adults from various socio-economic backgrounds.<sup>8</sup> Adventure-based programming was seen to benefit both troubled inner-city youth as well as privileged college freshmen.

In the late 70s and early 80s, adventure based programs began catering to corporate management teams seeking to improve teamwork, trust, creativity, leadership, and overall morale.<sup>9</sup> The influx of corporate clients such as Citibank, Southern Bell,<sup>10</sup> Hewlett-Packard, Pfizer, and Liberty Mutual<sup>11</sup> brought some mainstream legitimacy to a non-traditional field. It also created a lucrative market.

Today, literature sings the praises of adventure-based learning for its traditional client base (young adults, adolescents and corporate teams) as well as a wide range of other clients with more specific objectives such as survivors of rape and incest, mid-life urbanites who feel disconnected

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<sup>5</sup> Thompson, *supra* note 1; Michael McCord, *Outward Bound-type Training Improves Business Habits*, N.H. Business Review, 16 (Jan. 18-Feb. 10 2000).

<sup>6</sup> *Id.*

<sup>7</sup> Davis-Berman and Berman, *supra* note 4, at 77 and 91.

<sup>8</sup> *Id.* at 90-104.

<sup>9</sup> Thompson, *supra* note 1, at 46; Davis-Berman and Berman, *supra* note 4, at 102-103.

<sup>10</sup> Thompson *supra* note 1, at 46.

<sup>11</sup> McCord *supra* note 5 at 16.

from nature and Vietnam veterans suffering from post-traumatic stress syndrome.<sup>12</sup> As the client base has grown, so have the types of activities and the places they are performed. The “traditional” activities of adventure-based programs such as hiking, rock climbing and canoeing in wilderness areas such as Utah and Colorado now include activities such as sailing, surfing, and dog sledding, and adventure-based programs exist in nearly every imaginable environment such as the Central American Rainforest, the Scottish Highlands and the Australian Outback.

Despite the current disparity in names, participants, and locations, nearly all adventure-based programs have a common ancestral linkage to the theories and practices of the German educator Dr. Kurt Hahn, the founder of Outward Bound.<sup>13</sup> Hahn started the first Outward Bound program on the coast of Wales in 1941.<sup>14</sup> Upon learning of a ship owner’s observation that older sailors tend to fare better than their younger, fitter counterparts when lost at sea, Hahn deduced that in order to survive such dire circumstances, mental toughness and maturity were as important as physical strength and stamina.<sup>15</sup> Hence, his original 21-day program was targeted toward young seaman, and the name Outward Bound was derived to invoke connotations of a ship leaving port and going out to sea.<sup>16</sup> With the educational philosophy that experience is the best teacher of all, Hahn developed a curriculum that emphasized active participation in an environment where pro-social behaviors such as trust, cooperation, and teamwork are reinforced by social necessity, rather than an arbitrarily determined, forcibly imposed code of morals and ethics.<sup>17</sup>

Outward Bound quickly spread to throughout Europe and the rest of the world.<sup>18</sup> The first Outward Bound program opened in the United States in 1962, and with Outward Bound’s success came many related programs that still espouse the teachings of Hahn despite their different approaches and clientele.<sup>19</sup>

## **B. Relationship-Based Disputes: Reconciling Personal and Professional Interests**

When a client retains the services of a dispute resolution professional, the obvious initial inquiry is what dispute resolution mechanism will best serve the client’s needs?<sup>20</sup> In making this

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<sup>12</sup> Richard O. Kimball and Stephen B. Bacon, *The Wilderness Challenge Model*, 10(3) *Journal of Experiential Education*, 4 (1987) in Michael A. Gass (ed.), *Adventure Therapy* Kendall Hunt (1993).

<sup>13</sup> Russell, *supra* note 1, at 71.

<sup>14</sup> Robert L. Fischer and E. B. Attah, *City Kids in the Wilderness: A Pilot-Test of Outward Bound for Foster Care Group Home Youth*, 24(2) *Journal of Experiential Education*, 109 (Fall 2001).

<sup>15</sup> Richard O. Kimball and Stephen B. Bacon, *The Wilderness Challenge Model*, 10(3) *Journal of Experiential Education*, 4 (1987) in Michael A. Gass (ed.), *Adventure Therapy* Kendall Hunt (1993); Russell, *supra* note 1.

<sup>16</sup> Kimball and Bacon, *supra* note 15; Thompson, *supra* note 1, at 46.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Bennett G. Picker, *Mediation Practice Guide: A Handbook for Resolving Business Disputes*, 2<sup>nd</sup> ed., 16 American Bar Association Section of Dispute Resolution, (2003).

determination, one must evaluate, *inter alia*, whether the client hopes to continue a relationship with the other party(ies) to the dispute after the dispute has been resolved.<sup>21</sup>

At the most general level, relationships exist between all parties who seek the assistance of a litigator, negotiator, mediator, or arbitrator. Husbands and wives; patients and doctors; landlords and tenants: all are typical parties to a dispute and all can be said to be in a relationship with one another. However, the term relationship-based dispute imagines something different than any of the above examples. The relationships above can be considered as either mostly personal with some legally recognized rights and obligations (i.e. husband-wife), or mostly legal/professional with some elements of a personal nature (i.e. doctor-patient). Relationship-based dispute, instead, refers to a dispute over legally recognized rights or obligations that arise in the context of an existing personal relationship. Typical examples would include family members who enter into a joint business venture or, similarly, business partners who have developed a strong friendship after years of working together.

For many relationships, the existence of a legal dispute effectively ends the relationship, or – in the case of marriage at least – the relationship has already ended and a legal proceeding is needed to bring the relationship to its formal conclusion. Although it is conceivable to preserve a relationship that is primarily professional, one is more likely to simultaneously end the relationship and settle the dispute. Rarely does one wish to continue business with someone who has committed some type of perceived wrong. One can merely find a new doctor, new apartment, or new supplier, and whatever personal feelings once existed between the parties are easily terminated. Indeed, divorcing yourself from any personal feelings toward your adversary enables you to more zealously advocate for your legal position.<sup>22</sup>

Relationship-based disputes, however, bring an added level of complexity to dispute resolution. Although the parties feel strongly about their legal rights, they also have strong feelings about their adversary. As a result, it may be difficult for an outside third party – or even the parties themselves – to determine whether the dispute is damaging the relationship or whether the already damaged relationship is creating the dispute.

Mediator Bennett G. Picker describes the added level complexity in one such relationship-based dispute. In recalling a shareholder dispute that took place in a closely held, family-owned corporation, he notes that the “mediator was able to recognize that long-standing jealousies and other family issues played as large a role in the dispute as the business and legal issues.”<sup>23</sup>

The example from the Picker text nicely fits the relationship based dispute mold. It is important to note, however, that I do not intend an unduly restrictive interpretation of the term. The relationship between the parties does not need to be on par to that which exists among immediate

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<sup>21</sup> *Id.* at 17.

<sup>22</sup> Dean G. Pruitt and Sung Hee Kim, *Social Conflict: Escalation, Stalemate, and Settlement*, 3<sup>rd</sup> ed., 111-112, McGraw- Hill (2004).

<sup>23</sup> Picker, *supra* note 20, at 106-107.

family members. The key factors are: (1) a dispute; (2) a desire or need to maintain the relationship; and (3) interwoven business and personal interests that complicate the conflict resolution process.

### **i. An Interest-Based, Non-Adversarial Approach**

In the majority of disputes that arise in the context of an existing relationship between the disputants, non-adjudicative, interest-based dispute resolution procedures are best suited to preserve, repair, and perhaps even enhance, the relationship.<sup>24</sup>

Indeed, viewed in its most romanticized, theoretical viewpoint, ADR can take a dispute that may result in lengthy, costly, and public litigation and transform it into a conciliatory process where the disputants privately reveal their true interests, wants, needs (and, yes, even feelings and emotions) to come to a true resolution. Although the actual result no doubt frequently falls short of the ideal, it is easy to see why disputants who happen to be friends, family members, long-term business associates, etc., would prefer interest-based problem solving to adjudicative line drawing. After all, when one's name appears opposite the other on the cover page of a civil complaint, it is safe to assume that the relationship between the two is pretty much over.

In order to transform a dispute from win-loss, adversarial adjudicating to win-win, cooperative problem solving, the disputants must communicate their interests to one another.<sup>25</sup> As everyone's hopes and aspirations are placed on the bargaining table (with the assistance of their negotiators and/or a neutral mediator) parties can exchange creative ideas and solutions en route to finding a "mutually acceptable agreement."<sup>26</sup> According to Pruitt and Kim, the goal of such a process is to find an "integrative solution... that reconciles (that is, integrates) the interests of" the parties.<sup>27</sup>

Scholars assert that integrative solutions – in contrast to the negotiated compromises of positional bargaining or the win-loss decisions of adversarial adjudication – are more apt to produce long-lasting agreements that truly resolve rather than just settle a dispute. From the standpoint of relationship-based disputes, an integrative solution will not only preserve, but also strengthen the underlying relationship,<sup>28</sup> and will address both business interests (property, money, etc.) and personal interests (recurring negative feelings, emotions and behaviors within the relationship).

### **ii. The Necessary Components of Integrative Problem Solving**

Creating integrative solutions that reconciles the interests of all parties does not come without considerable work and creativity. The effectiveness of the problem-solving process depends upon the existence of several circumstances that must exist at different points throughout the process.

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<sup>24</sup> Andrew W. McThenia and Thomas L Shaffer, *For Reconciliation*, 94 Yale L.J., 1660, 1664 (1985).

<sup>25</sup> Pruitt and Kim, *supra* note 22, at 200; Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA Law Review, 754 (1984).

<sup>26</sup> Pruitt and Kim, *supra*, at 189.

<sup>27</sup> *Id.* at, 192.

<sup>28</sup> *Id.* at 193.

How the following circumstances are created by a dispute resolution professional differs according to his/her relationship to the parties; namely, is he/she an advocate in an interest-based negotiation or a neutral mediator. However, as integrative problem solving is practiced by mediators and negotiators alike, the following issues are concerns for both even though their reasons for and means of dealing with them may vary according to the role they play in the resolution.

### ***An Ability to Analyze Interests***

An initial step of the problem-solving process requires an assessment of the parties' needs and interests.<sup>29</sup> A skilled problem solver should not assume what a "hypothetical" person would want if placed in the client's position, but, rather, must engage her client in an in-depth dialogue to determine the client's actual needs by actively listening and asking probing questions.<sup>30</sup> Such an inquiry must include both the tangible, ostensible needs such as money and property as well as less obvious, intangible needs such as a desire to feel vindicated and other psychological needs.

This process can be termed an analysis of the parties' interests and underlying interests. It is necessary in order to comprehensively advocate for a client and to identify common ground between the disputants. If done correctly a mediator/negotiator can offer solutions that reconcile the parties' underlying interests even if on the surface their immediate interests are at odds. However, in order to offer such solutions, it is obviously necessary to first identify these interests. The difficulty extracting interests increases as they become farther removed from the surface, and the process is further complicated if parties themselves are unaware of their true motivations and interests or intentionally hide them.<sup>31</sup> Identifying as many interests as possible, therefore, requires a good deal of patience and energy.

### ***Trust***

The importance of trust in relationship-based dispute resolution is two-fold. Firstly, during the problem-solving process, it is important for parties to trust one-another if they are to have a dialogue where they feel free to speak openly and frankly about their interests, feelings, needs, and concerns.<sup>32</sup> As discussed above, a skilled problem solver should be able to elicit this information from the parties, but it is of little use to the negotiator/mediator if distrust prevents the parties from revealing their interests to each other. In a relationship context, trust becomes increasingly important if the disputants are to speak openly about their underlying interests. As these interests often involve psychological needs rather than economic or fairness concerns, individuals often must trust each other a great deal in order to "open up" to one another.

To borrow one academic's example of an employee asking his boss for a raise, the employee may

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<sup>29</sup> Menkel-Meadow, *supra* note 25, at 801.

<sup>30</sup> *Id.* at 801.

<sup>31</sup> Pruitt and Kim, *supra* note 25, at 200; Christopher W. Moore, *The Mediation Process, Practical Strategies for Resolving Conflict*, 2<sup>nd</sup> ed., 234, Jossey-Bass (1996).

<sup>32</sup> Gary Goodpaster, *A Guide to Negotiation and Mediation*, 23, Transnational Publishers (1997).

be comfortable with articulating a need for more money.<sup>33</sup> However, if his true interest is the psychological need of not wanting to feel undervalued in the company, the employee would need to trust his boss enough to disclose this vulnerable feeling. If this need is never disclosed, the negotiation will be unduly restricted to the economic interests of the parties and a true reconciliation may never occur. Furthermore, as silence begets mistrust, if the parties are not disclosing information to one another, mistrust grows and a cooperative process can slip into a competitive one.<sup>34</sup> Of course merely having the trust to disclose interests is not enough. The parties also must trust that the information that is being disclosed is truthful and that the other party will follow through on implementing proposed solutions.<sup>35</sup>

Secondly, after the parties have reached a substantive agreement, trust is important if such an agreement will pass the test of time. Remember, the aim of integrative problem solving is to build long-lasting comprehensive agreements rather than quick-fix compromises. If the parties' relationship is rife with mistrust, a settled dispute may only give rise to later disputes over different substantive issues.

### ***Cooperation and Communication***

If parties to a dispute have agreed to engage in integrative problem solving, a spirit of cooperation presumably exists between the disputants. In a relationship-based dispute, the parties both want to resolve the dispute and preserve the relationship. This "interdependence among goals"<sup>36</sup> increases the likelihood that successful problem solving will occur. However, a cooperative intent itself is often not enough to create a successful resolution; the parties also need to exhibit cooperative behavior while engaged in problem solving.<sup>37</sup> Cooperative behavior includes empathizing, refraining from making personal attacks, taking responsibility for past wrongs, and a willingness to forgive one another.<sup>38</sup>

The manner in which the disputants communicate with one another is a particularly important cooperative behavior in interest-based problem solving.<sup>39</sup> The process of identifying interests, wants and needs is of little use if the parties cannot communicate these interests to each other in a manner in which they will hear and understand each other. Communication problems cannot only impede the negotiation/mediation, but also escalate the original conflict from which the dispute has arisen.<sup>40</sup>

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<sup>33</sup> *Id.* at 93.

<sup>34</sup> *Id.* at 23, 77.

<sup>35</sup> David W. Johnson, Roger T. Johnson and Dean Tjosvold, *Constructive Controversy, The Value of Intellectual Opposition*, in Morton Deutsch and Peter T. Coleman (eds.) *The Handbook of Conflict Resolution, Theory and Practice*, 65, 81 Jossy-Bass (2000).

<sup>36</sup> Morton Deutsch, *Cooperation and Competition*, in Morton Deutsch and Peter T. Coleman (eds.) *The Handbook of Conflict Resolution, Theory and Practice*, 21,24 Jossy-Bass (2000).

<sup>37</sup> *Id.* at 32.

<sup>38</sup> *Id.* at 32-33.

<sup>39</sup> Moore, *supra* note 31, at 182.

<sup>40</sup> Robert M. Krauss and Ezequiel Morsella, *Communication and Conflict*, in Deutsch and Coleman (eds.), *supra* note 36, at 141.

### iii. Barriers to Effective Dispute Resolution

As stated above, the most effective approach to solving relationship-based disputes while also preserving the underlying relationship is interest-based problem solving that attempts to build an integrative solution, reconciling as many of the disputants interests as possible. In order to engage in such a process requires the existence of several circumstances including the ability to identify interests and underlying interests and a level of trust, cooperation and communication between the disputants.

However, when a client seeks the services of a third-party dispute-resolution professional, she usually does so only after initial attempts to solve the dispute independently have failed. As summarized by one scholar:

[E]very lawsuit, begins with a dispute, a disagreement, an argument, a misunderstanding. The parties collide at an intersection; the goods are not delivered on time; the spouse is unfaithful; the trusted employee leaves and starts a competing business. The relationship has deteriorated. The parties find it difficult to communicate, and it is at this point, often the emotional peak of the dispute, that lawyers are contacted.<sup>41</sup>

Similarly, Pruitt and Kim identify four conditions that cause an independent third party to enter a dispute: (1) The parties are motivated to escape the conflict because their conflict resolution tactics are too costly or risky; (2) the parties have hopes of resolving the dispute amicably; (3) cultural norms encourage third-party intervention; and (4) they cannot or will not solve the problem autonomously.<sup>42</sup> When a third party does get involved, the parties are often far removed from being cooperative, trusting individuals that are ready to engage in constructive problem solving. Conversely:

Positions are far apart, and they tend toward rigidity because of hostility.... Communication may be cut off or so strained that they cannot negotiate effectively. Moreover, even in moderately escalated conflicts, the parties may lack the objectivity, trust and/or creativity to work their way out the pit they have jointly engineered – not because they don't want to, but because they don't know how.<sup>43</sup>

Whether retained to act as a mediator or a negotiator, a dispute resolution professional is likely to inherit a dispute in which issues have proliferated, hostilities have escalated, and cooperative behaviors have disappeared. In other words, negotiators and mediators deal in escalated conflict. Escalation refers to the incremental increase in both the severity of tactics employed by the parties and the overall intensity of the conflict as a whole.<sup>44</sup>

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<sup>41</sup> John R. Van Winkle, *Mediation, A Path Back for the Lost Lawyer*, 2 American Bar Association (2001).

<sup>42</sup> Pruitt and Kim, *supra* note 31, at 230.

<sup>43</sup> *Id.* at 226.

<sup>44</sup> *Id.* at 88-89.

In the early stages of a conflict, when parties first recognize incompatible interests and aspirations,<sup>45</sup> they employ various “contentious tactics” – behaviors that one hopes will convince, manipulate, frighten, etc., the other into yielding to one’s own aspirations.<sup>46</sup>

As a conflict escalates – because neither party is yielding to the other – the parties tend to use gradually harsher contentious tactics.<sup>47</sup> The gradual change in tactics from gentle to harsh is one of five transformations that generally accompany conflict escalation.<sup>48</sup> The other transformations are:

- Issue proliferation: As the conflict escalates, the parties find more issues to which they find themselves on opposite sides.
- General intolerance: What often begins as a specific dispute over a specific thing grows into a general dislike and intolerance of the opposing party.
- Hostile goals: Parties often begin with a goal of merely doing well. As the conflict escalates, this can change to a desire to “win” and eventually fester into a desire to harm the other party.
- More participants: As the conflict grows in size and intensity, people associated with the disputants tend to “take sides” with one side or the other.<sup>49</sup>

The structural change model of conflict escalation explains the above transformations that take place in a typical escalating conflict.<sup>50</sup> Structural change refers to the changes in the disputant’s behavior and attitude toward one another as they become further entrenched in an escalated conflict. Of particular importance to relationship-based disputes are psychological changes that take place in the individual disputants. Psychological changes refer to interrelated changes in emotions, attitudes, and perceptions, all of which have a strong effect on behavior.<sup>51</sup>

Emotional changes are familiar to anyone who experiences conflict and are likely to include emotions such as blame, anger, image threats, and fear. As conflict escalates and parties react to each other’s chosen tactics, the disputants will, naturally, blame each other and become angry at one another.<sup>52</sup> Neither party is willing to admit fault so they instead blame one another. The parties see each other’s behavior as unreasonable and each other’s positions as illegitimate; the common reaction to such a situation is anger and or fear. Additionally, individuals are likely to feel threats to their image. They fear the dispute – and in particular the tactics being employed against them – makes them look weak, powerless, incompetent, etc.<sup>53</sup>

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<sup>45</sup> *Id.* at 15-16.

<sup>46</sup> *Id.* at 63.

<sup>47</sup> *Id.* at 89-90.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 89-91

<sup>50</sup> *Id.* at 101.

<sup>51</sup> *Id.* at 102-103.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 104

Emotional changes are of obvious concern for the mediator/negotiator during the problem-solving process. In relationship-based disputes, however, changes in attitudes, perceptions and goals are particularly troublesome because they “tend to outlast the conflict in which they were developed and affect the *relationship* between the parties” by encouraging future conflicts or creating perceived conflicts at times when there actually is none.<sup>54</sup> Therefore, even if a settlement is reached in regard to the specific dispute, hostile attitudes, perceptions and goals decrease the chances that the settlement will pass the test of time and preserve the existing relationship between the parties.

In summation, when parties to a relationship-based dispute wish to solve the dispute in a manner that will preserve their existing relationship, an interest-based cooperative to the negotiation/mediation best serves this dual objective. To engage in such a process, the parties must be able to identify their needs and interests, trust each other and communicate and cooperate with one another. However, by the time a dispute has reached a dispute-resolution professional, the conflict between the two parties is likely to have escalated to a point where significant structural changes hinder the likelihood of a fruitful problem-solving process that creates a long-lasting, integrative solution.

Dispute resolution literature is rife with theory and technique on how to best handle these barriers to resolution. As a complement to the existing ideas on how to best handle these barriers to resolution, Part IV of this text will attempt to build an adventure-based programming model specific to the dispute resolution process.

#### **IV. An Adventure-Based Programming Model for Resolving Relationship-Based Disputes**

Part III(A) of this text began with a brief description and overview of adventure-based programming and its growing use in areas such as youth counseling, personal development, and corporate team-building. In Part IV, I argue that adventure-based programming can assist in the challenge of bringing about a successful resolution while also preserving, repairing, and strengthening the relationship between the parties. I propose three possible instances where an adventure-based program could be utilized in the dispute-resolution process: (1) When the parties are not psychologically prepared to engage in constructive problem solving; (2) When the problem-solving process has reached an impasse and (3) When there is a settlement, but the likelihood of a long-lasting agreement is in doubt. I then address what specific goals an adventure-based program would serve and outline the specific adventure-based learning principles and techniques that serve to meet those goals. I conclude by developing a model adventure-based program to be used in the dispute-resolution context.

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<sup>54</sup> *Id.* at 105 (emphasis in original).

### **A. When to use an adventure-based program**

An adventure-based program can be viewed as an intervention: something that stops a destructive process from meeting its inevitable fate. Most are familiar with the intervention process in the context of drug and alcohol addiction. Friends and family attempt to step in and save an individual from his own destructive behaviors.

In the dispute resolution context, the intervention will probably be initiated from the parties themselves, perhaps at the suggestion of a concerned third party who is involved in mediating or negotiating a settlement. The intent of the intervention is to save the parties' relationship from the destructive forces attributed to a protracted conflict. Before this intervention can occur, the parties will need to recognize the losing struggle in which they are engaged and the likely result of continuing down the same path.<sup>55</sup> The following are three likely circumstances in the problem-solving process during which the parties may come to this realization.

**1) Prior to engaging in a cooperative problem solving:** Before cooperative problem solving begins, the parties must first be able to ascertain their interests and be willing to share this information with each other. If the parties have been involved in a protracted, escalated conflict, they may not be cognitively or psychologically ready to undertake this task. Issues may have proliferated to the point where the parties themselves do not know exactly what they are fighting about or what they want out of the conflict. Similarly, hostile attitudes, perceptions, and goals may make it difficult for the parties to communicate with and trust one another. In such circumstances, it is doubtful that problem solving efforts will succeed. It is even possible to further escalate the conflict and damage the relationship.

**2) When problem-solving efforts have reached an impasse:** Even if the parties appear to be psychologically prepared prior to problem solving, it is possible for them to reach an impasse during the problem solving process. Mediators are obviously trained in various impasse-breaking techniques, but when these techniques fail to succeed the only alternative is a competitive, adversarial approach to the dispute.<sup>56</sup> This is not an attractive alternative if the parties want to preserve their existing relationship.

**3) After a settlement has been reached:** Settlement may seem to indicate that all is well with the parties and their troubles are behind them. However, it is possible to reach a settlement over the substantive areas of a dispute while not addressing the underlying problems from which the dispute arose. In such a circumstance, it is likely that future disputes will take over where this one has left off. A variation of this circumstance could also occur in the context of a transactional – as opposed to a dispute – settlement, as many of the problems incurred through adversarial dispute settlement are also present in adversarial transactional bargaining.<sup>57</sup>

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<sup>55</sup> Pruitt and Kim, *supra* note 25, at 230.

<sup>56</sup> Picker, *supra* note 20, at 63.

<sup>57</sup> Menkel-Meadow, *supra* note 25, at 766. An example of this would be a negotiated “strategic alliance.” The parties have had a somewhat adversarial relationship during the negotiation, but once the deal is struck they are expected to act as allies. If the negotiation process has created hard feelings between the

## **B. Goals and process of an adventure-based program**

In Part III(B) I outlined some necessary circumstances that must exist if parties are to engage in a constructive, integrative problem-solving process and explained several changes that take place during typical conflict escalation. These changes – such as issue proliferation and the development of hostile attitudes – work against successful resolution.

The goal of an adventure-based program will be to reverse some of these changes, thereby increasing the chances of reaching a comprehensive, long-lasting resolution. To do so, a program will have the dual aim of both improving the relationship between the parties while also providing the individual disputants with insight into their own personalities and behaviors and conflict in general. Obviously these twin goals are interrelated; the strength of any relationship is greatly influenced by the personalities and behaviors of the individuals comprising the relationship. Therefore, most programs aimed at improving relationships use an interpersonal therapy approach, which teaches problem solving skills and identifies destructive behavioral patterns that increase the likelihood of conflict and tension.<sup>58</sup> This form of relationship therapy can be crucial to successful conflict resolution either before beginning a negotiation/mediation or after reaching a substantive agreement.<sup>59</sup> Most people associate interpersonal therapy with marriage counseling; however, different forms of relationship therapy exist for other relationships damaged by conflict such as parent-child relationships and co-worker relationships.<sup>60</sup>

Similar to interpersonal therapy, interactive conflict resolution workshops are gaining popularity as a tool for resolving inter-group conflicts.<sup>61</sup> Interactive conflict resolution allows representatives from all sides of an inter-group conflict to engage in face-to-face meetings and learn about each other, their specific conflict, and conflict in general.<sup>62</sup> The ability to generate creative, multifaceted agreements increases as individuals gain more insight into the needs and aspirations of the other parties and are able to evaluate their own positions from another's perspective.<sup>63</sup>

It is in the shadows of these two related approaches to dispute resolution that adventure-based programming can serve as a valuable tool in the problem solving process. When parties to a relationship-based dispute seek the help of an adventure-based program, the adventure-based programming facilitator can design a program that will attempt to repair the relationship between the parties, educate the individuals about conflict and conflict resolution, and enable the disputants to learn more about themselves and each other.

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parties, the “team-spirit” could be compromised.

<sup>58</sup> Pruitt and Kim, *supra* note 25, at 250.

<sup>59</sup> *Id.* at 249.

<sup>60</sup> *Id.* at 250.

<sup>61</sup> *Id.*

<sup>62</sup> Ronald J. Fisher, *Interactive Conflict Resolution*, 8 Syracuse University Press (1997).

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

The specific goals of any particular adventure-based program will vary depending upon the point in the problem-solving process when the intervention occurs and the particular needs of the parties. For instance, a dispute that is referred to an adventure-based program before the problem-solving process begins (A(1) above) may have a greater focus on reducing hostilities between the parties and building trust and communication. If settlement has already been reached, (A(3) above) there may be a greater focus on reconciling negative feelings and teaching the parties conflict resolution skills so they are better equipped to resolve future conflicts on their own. In general, an adventure-based program will work to do any (or all) of the following:

- Relationship issues
  - Improve trust and communication
  - Create camaraderie among the participants
  - Create among the participants a better understanding of one another
  - Create a better understanding of the specific dispute and conflict in general
  - Reduce tension and hostility
- Individual issues
  - Improve poor conflict resolution skills
  - Take responsibility for personal role in past problems
  - Self-realization, self-efficacy, etc.
    - Bad habits (i.e. passive-aggressive reaction to conflict, consistently devaluing another's interest or opinion (reactive devaluation))
    - Increased confidence, sense of accomplishment, etc.
    - Personal "triggers"
  - Increased energy, optimism, and self-esteem

In order to understand how an adventure based program can achieve these goals, it is necessary to first examine some of the common principles and practices among existing adventure and wilderness programs. The following is a brief description of different concepts, theories and practices within adventure-based learning that serve to meet the aforementioned goals.

### ***The Wilderness Environment***

The location of an adventure-based program is perhaps the single most conspicuous difference that distinguishes it from more traditional therapeutic programs. Rather than taking place in an office, adventure-based programming occurs in the outdoors. Aside from being necessary to delivering an adventure-based program, the natural environment serves other important functions.

Of particular importance is the restorative function of the natural environment.<sup>64</sup> Being in a natural environment tends to reduce the stress, mental fatigue, boredom, and monotony of everyday life.<sup>65</sup> The participants must learn new skills in order to live and navigate in the outdoors, which helps form a common identity among the participants which in turn fosters trust,

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<sup>64</sup> Jennifer Davis-Berman and Dene S. Berman, *Wilderness Therapy: Foundations, Theory and Research*, 114 Kendall Hunt (1994).

<sup>65</sup> *Id.* at 114.

cooperation and camaraderie.<sup>66</sup> The participants are far-removed from everyday distractions such as entertainment, peer influences and drugs/alcohol, so they are forced to focus on the reasons why they chose to participate in the program.<sup>67</sup> Furthermore, the wilderness is a surrounding with which the participants are for the most part unfamiliar. This unfamiliarity can decrease the negative effects associated with participants' pessimistic expectations or preconceived notions.<sup>68</sup>

Other less-traditional, adventure based programs, such as nature-guided therapy and ecotherapy, recognize that human beings are instinctively drawn to nature, but the necessities of modern life creates a society that is increasingly disconnected with the natural world.<sup>69</sup> These types of programs attempt to reconnect people with nature so they may gain a greater sense of calm, understanding, and perspective over their lives.

Additionally, the rigors of living in the natural world while having a limited but highly nutritional food supply increases physical fitness. The increase in exercise serves as an outlet for aggression and anxiety and improves one's confidence and self-image.<sup>70</sup> Many programs label this the "cleansing phase" of an adventure-based program, where participants rid themselves of adverse outside influences that inhibit personal growth.<sup>71</sup>

A more colloquial explanation – and the one I prefer – of nature's role in an adventure-based program is that when people are taken out of a sterile office and placed in the forest, desert, mountains, etc., good things tend to happen.

### ***Challenge and Perception of Risk***

As one of the tenants of adventure-based programming is education by participation,<sup>72</sup> clients actively participate in physically, mentally, and emotionally challenging activities. This has the capability of changing their views on their potential and existing capabilities as individuals and/or as members of a team.<sup>73</sup>

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<sup>66</sup> *Id.* at 116

<sup>67</sup> John Miles, Ph. D., *Wilderness As Healing Place*, 10(3) *Journal of Experiential Education*, 4 (1987) in Michael A. Gass (ed.), *Adventure Therapy* Kendall Hunt (1993).

<sup>68</sup> Michael A. Gass, Ph. D., *Foundations of Adventure Therapy*, in Michael A. Gass (ed.), *Adventure Therapy*, 6 Kendall Hunt (1993).

<sup>69</sup> Carin Gorrell, *Nature's Path to Inner Peace*, *Psychology Today*, 62,64 (July/August 2001); Almut Beringer, *Toward an Ecological Paradigm in Adventure Programming*, 27(1) *Journal of Experiential Education*, 51, 62 (2004).

<sup>70</sup> Kimball and Bacon, *supra* note 12 at 37. Miles, *supra* note 67, at 52.

<sup>71</sup> Russell, *supra* note 1, at 75.

<sup>72</sup> Gass, *supra* note 68, at 4-5.

<sup>73</sup> Jim Sibthorp and Skye Arthur-Banning, *Developing Life Effectiveness Through Adventure Education: The Roles of Participant Expectations, Perceptions of Empowerment, and Learning Relevance*, 27(1) *Journal of Experiential Education*, 32, 35-36.

Adventure programs often contain a series of incrementally difficult challenges.<sup>74</sup> The challenge ahead of the participants – i.e. a long-grueling hike in an unfamiliar environment – is intended to create self-doubt, doubt that is eliminated upon the successful completion of the task. As the tasks increase in difficulty, the doubt and anxiety is slowly replaced by confidence as participants come to realize they are capable of much more than what they previously gave themselves credit.

Similarly, there is a focus on removing participants from their “comfort zones.”<sup>75</sup> This is often accomplished by creating activities that are high in perceived risk. The high ropes course is the prototypical example. Participants often view the course with fear and apprehension even though they are safely attached to ropes and harnesses. They must concentrate and communicate when their stress and anxiety levels are substantially elevated. As participants are drawn out of their comfort zones and succeed in an apparently risky environment, they are encouraged to take other risks in their lives,<sup>76</sup> including emotional risks such as trusting someone by being open in honest with them.

Overcoming fears, obstacles, and challenges has particular importance in the areas of self-esteem, self-efficacy, life effectiveness, and locus of control.<sup>77</sup> These terms all refer to the idea of changing one’s perspective on one’s own potential and capabilities. When participants accomplish something they previously told themselves they could not accomplish – i.e. living in the wilderness for an extended period of time – they begin to approach future obstacles with increased feelings of confidence. This can transfer into feelings of personal empowerment and give people motivation and confidence to change their lives.<sup>78</sup>

### ***Natural Consequences***

The use of natural consequences to reinforce positive behaviors and penalize negative behaviors is a fundamental theory in adventure-based learning.<sup>79</sup> A natural consequence refers to the immediate and direct feedback that the natural environment provides in circumstances where individuals battle the elements in a struggle for warmth, comfort, nourishment, etc. It is to be distinguished from the unnatural consequences with which most people are accustomed. Rather than arbitrary penalties imposed from an authority figure, natural consequences are the direct and probable outcomes of one’s behavior.<sup>80</sup> One academic distinguishes the consequences that befall a disorganized child in the wilderness context from those he might be accustomed to in his home environment:

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<sup>74</sup> Russell, *supra* note 1 at 71.

<sup>75</sup> Reldan S. Nader, Psy. D., *Therapeutic Process of Change*, in Michael A. Gass (ed.), *Adventure Therapy* 57, 64 Kendall Hunt (1993).

<sup>76</sup> *Id.* at 68.

<sup>77</sup> Davis-Berman and Berman, *supra* note 64, at 118-121.

<sup>78</sup> Sibthorp, *supra* note 73, at 35-36

<sup>79</sup> Kimball and Bacon, *supra* note 70, at 26; Russell, *supra* note 1, at 74.

<sup>80</sup> Kimball and Bacon, *supra*.

In base camp, wilderness leaders also suggest that participants organize their belongings so that for example, your rain poncho, toilet paper, snacks and water are easily accessible. Reinforcement is immediate and direct the first time it rains, you have to go to the bathroom, need a snack or are thirsty.<sup>81</sup>

Although this example illustrates the effectiveness of natural consequences in relation to behaviors typically associated with an adolescent, the concept can be easily transferred to adult behaviors. As living and navigating through the wilderness or scaling a sheer cliff requires teamwork, communication, and trust, participants in an adventure-based program must be able to communicate and trust one another. The extent to which they are able to do so will be directly reflected in their level of comfort and success.

### ***The Use of Metaphor***

Closely related to the concept of natural consequences is the use of metaphor. As the wilderness environment provides instant, direct feedback for both positive and negative behaviors, it is crucial to link or transfer these natural consequences with “real life” consequences.<sup>82</sup> For example, in completing a wilderness trek, participants will encounter elements within their control (i.e. their interactions with one another) and elements outside of their control (i.e. the weather). A typical life metaphor in such a circumstance would be to illustrate that all families, businesses, friendships, etc. experience rainy days; however, it is crucial not to allow things outside of our control to affect the things that are, such as treating each other with mutual respect, regardless of the gloomy forecast.

### ***Group Process***

Although all of the above-mentioned practices and techniques benefit the participants on an individual level, one must keep in mind that adventure-based learning is a group process.<sup>83</sup> And since this article is focused on repairing faulty relationships, the group process of adventure-based learning is of particular importance, because the parties to a relationship-based dispute will recognize the benefits of an adventure-based program along with their “adversaries.”

Working together as a group in an adventure-based program requires participants to reconcile their individual needs with the needs of the group in an environment where resources are scarce and stress levels are elevated.<sup>84</sup> In these circumstances, conflict is inevitable, and the participants’ reactions to conflict can be evaluated based on their impact on the rest of the group.<sup>85</sup>

In addition to this diagnostic function, the group process also serves a trust-building function. Completing an adventure program requires teamwork, and participants depend on one another to meet each other’s individual and group needs; as one person struggles to portage a 70-pound

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<sup>81</sup> Davis-Berman and Berman, *supra* note 77, at 119.

<sup>82</sup> Russell, *supra* note 1, at 75.

<sup>83</sup> Gass, *supra* note 68, at 8; Russell, *supra*.

<sup>84</sup> Kimball and Bacon, *supra* note 70, at 21.

<sup>85</sup> Gass, *supra* note 68, at 8.

canoe over rocky terrain, his/her cohort is lugging all of their gear in an overstuffed dry bag. This mutual dependence builds trust,<sup>86</sup> as participants draw upon their individual strengths and work to exhaustion for the benefit of the entire group. The daily grind brings group accomplishments, and the group begins to function as a cohesive unit in a demanding environment. The increased group cohesion and trust fosters emotional trust, and participants start to reveal more about themselves.<sup>87</sup>

### ***Facilitator's Role***

Some of the benefits of an adventure based program will occur naturally without any outside assistance, but recognizing maximized gains from an adventure-based program requires the skill of the facilitator/leader. The individual who leads an adventure program assumes a leadership position that is directly related to his/her ability to live – seemingly effortlessly – in the wilderness environment.<sup>88</sup> Whether the activity is rock-climbing, kayaking, or hiking, the facilitator is the expert. Participants must listen and learn from this individual in order to feel safe and competent, as they are thrust into a foreign, intimidating environment.

The facilitator must take advantage of this inherent credibility. As the participants are accustomed to taking the leader's advice in the areas of technical know-how, they will be more inclined to listen to him/her on other matters.<sup>89</sup> At times, the trip leader will deliver a pre-planned, formal curriculum of workshops and activities that are specifically designed to meet the needs of the participants. However, a truly skilled facilitator will be on constant watch for a "teachable moment," when something arises – a conflict, a victory, a setback – and the facilitator takes full advantage of metaphor, natural consequences, and group process to relate the incident back to an issue that the participants need to work on in their "real lives." Adventure-based learning is an educational process, and it is the facilitator's job to ensure the participants have a meaningful experience, by making the connections from the adventure-based experience to situations in real life.

Ideally, the participants will eventually make these connections independently with only subtle direction from the facilitator. Therefore, the facilitator must exercise his/her best discretion on how and when to teach the participants, lest he/she come off as being trite or condescending. It is crucial to build a general rapport with the clients before delving into sensitive subjects, and the facilitator relies a good deal on instinct and past experience to determine when the participants are ripe for learning.<sup>90</sup> Some times this moment is after a group triumph and the facilitator takes advantage of high spirits to learn what, exactly, happened; "what worked?" However, at other times the facilitator may intentionally create situations where conflict is inevitable in order to observe the conflict and later dissect it to help individuals understand their positive and negative reactions, habits, and behaviors during a conflict.

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<sup>86</sup> Kimball and Bacon, *supra* note 70, at 22.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 32.

<sup>89</sup> *Id.*

<sup>90</sup> Kimball and Bacon, *supra* note 70, at 33.

### **C. A Suggested Adventure-Based Program for Resolving a Relationship-Based Disputes**

In part II(B) of this work, I argue that an adventure-based program could assist with the dispute-resolution process by reversing some of the adverse structural changes that accompany prolonged conflict. Such a program would place interpersonal therapy and interactive conflict resolution in the adventure-based programming context in order to repair the relationship between the parties, educate the individuals about conflict and conflict resolution, and enable the disputants to learn more about themselves and each other. This section will propose such a model.

It should first be noted that no generic adventure-based program will satisfy the needs of all clients that it is intended to serve. Rather, most programs have a general model upon which they operate, but alter the base model to conform to the individual needs of the participants.

Therefore, this model will do the same. It will assume a general adventure-based program that will be altered on a case-by-case basis. As described in Attachment 1, the basic model that I will work with consists of a five day canoeing expedition combined with a one-day “finishing” session of rock-climbing.

In order to alter this basic model, it will be necessary to conduct a comprehensive needs and goals assessment on the parties to the dispute in order to maximize the positive outcomes of the program.<sup>91</sup> The needs and goals assessment will be completed by the adventure-based program’s staff, and will be based on information provided to the program by the dispute-resolution professional(s) who are working with the clients and questionnaires that are completed by the clients. The following is a description of the type of information that will be needed.<sup>92</sup>

#### **Information provided by the referral from the third party**

- **Client’s biography:** Basic information such as age, sex, profession, education, marital status, etc.<sup>93</sup>
- **Narrative of the Dispute:** This will focus on the specific dispute that the parties are trying to resolve. It will focus on the business/financial relationship between the parties and the particular thing they are in conflict over. It will also include the results of previous negotiation/mediation sessions (if any) with particular emphasis on the parties’ behaviors and attitudes (i.e. are they hostile or amicable toward one another; do they raise their voice, make threats or engage in other coercive/manipulative behavior)
- **Narrative of the Relationship:** How the parties know each other and how long they have known one another. The extent to which the relationship has deteriorated. Are

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<sup>91</sup> In Wilderness Therapy, a needs and goals assessment would be called an individual treatment plan. I am using the term needs and goals analysis because the term treatment plan is more closely associated with the clinical, mental-health context. See Davis-Berman and Berman, *supra* note 64, at 145. However, the ends served by the individual treatment plan and needs and goals assessment remain the same.

<sup>92</sup> Davis-Berman and Berman, *supra* note 64, at 138-156.

<sup>93</sup> *Id.* at 154-156.

they on speaking terms? Do they both seem equally committed to preserving the relationship?

#### **Information provided by the clients via a questionnaire**

- **Physical:** How often they exercise. Height and weight. Allergies and medications. (This will most likely be supplemented by a doctor's physical).<sup>94</sup>
- **Previous Outdoor Skills and Experience:** This will include proficiency (i.e. on a scale from one to five) of various outdoor skills such as rock climbing, hiking, knot-tying, etc. It will also include outdoor activities in which they have previously engaged with what frequency they have done so. Finally, clients may include any gear that they own and wish to bring in order to save costs in outfitting them.
- **Fears and Apprehensions:** This will include the client's comfort level (again on a graduated scale) with certain situations such as a fear of heights, water/swimming, or the wilderness in general.
- **Food preferences:** In order to plan what food items should be packed based on likes/dislikes, diet restrictions, and religion concerns.<sup>95</sup>

The above information is not intended to be exhaustive. The information gathered will be used to determine how the trip should change in order to tailor to the clients' specific needs. The types of changes that may occur include the following.

- **Mode of transportation:** The proposed model suggests canoeing as the primary component of the wilderness trip. This choice is based on two facts: (1) Paddling and portaging a canoe requires cooperation, communication, and teamwork. A lack of these circumstances may cause the canoe to drift of course, spin in circles, tip over, and otherwise create undue exertion and frustration. (2) A proper balance must be struck between physical exertion and having enough energy to devote to workshops and activities.<sup>96</sup> It is rather simple to alter a canoe trip based on physical fitness levels. However, if the clients are in top physical condition or already have a good deal of canoeing experience, then the choice of canoeing might not present enough of a challenge. Conversely, if a client cannot swim or has an intense fear of being on the water, then canoeing would be more of a distraction than a challenge.
- **Length of trip:** Cost and availability concerns will dictate how long the trip will be. If the clients are particularly excited about and committed to the process, then the 5-day trip can be extended without much impact on overall cost. A more likely scenario is that cost and availability will necessitate a shorter trip. A trip of less than 5 days would probably need to be supplemented with other adventure-based activities prior to the trip by – perhaps – attending a weekend session on a ropes course a week or so prior to the trip. A trip of less than 3 days is not advisable.<sup>97</sup>

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<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 148

<sup>96</sup> *Id.* at 149.

<sup>97</sup> *Id.*

- **Trip location:** Where exactly the trip is located (on a river, on lakes) will need to correspond to the needs of the client. Also health considerations need to be taken into concern in order to plan for emergency evacuations due to health reasons. If the participant's health is a concern, a location that is somewhat accessible by car may be necessary.<sup>98</sup>
- **Workshops:** The model suggests several workshops in which the participants will take part during the trip. These are suggestions that may be altered. If the trip is an extended one, then more workshops can be completed. Also, if the participants are of varying sexes or ethnic/religious backgrounds, then a workshop on cross-cultural communication may be an attractive addition.
- **“Finishing” activity:** The model includes a one-day polishing activity of rock-climbing. Again, this may need to be changed based on the clients' comfort and physical fitness levels. However, it is important to keep in mind that this final challenge is intended to be intimidating and uncomfortable but not to the extent that it is a distraction.

### *Expected Outcomes*

At the trips conclusion, the participants should have built a certain degree of trust and understanding between one another. The extended time alone has allowed them to get to know each other on a deeper level, and the shared accomplishments and triumphs have created a sense of optimism and hope for their future.

Additionally, they should have gained a greater insight into their own personalities and broadened their interpersonal skills. They are better able to identify and communicate their interests and underlying interests, and are in a better position to listen to and evaluate, and validate their adversary's position. The dispute between them may seem more manageable, and they should better understand how it escalated to the point that it threatened their relationship and how to prevent future conflicts from reaching that same point.

### **V. Summary and Conclusions**

In relationship-based disputes, there is no true resolution without a focus on the relationship. By definition, an integrative solution reconciles as many of the disputants interests as possible. If we ignore damage to the relationship, destructive behavioral patterns, or the real likelihood of a long-lasting agreement, we are in effect ignoring a significant portion of the clients' interests.

The model adventure-based program suggested in this work provides a vehicle for addressing these interests. In addition to repairing the relationship, an adventure-based program would serve to clarify the clients' legal and financial issues by enabling them to determine when they are holding onto a position because it is in their best legal or financial interest, or when they are trying to “even the score” for some type of ongoing resentment that is mostly personal in nature.

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

Furthermore, when the parties return to the bargaining table in either the current or future disputes, they will be better equipped to handle the situation amicably due to increased trust, camaraderie, and communication skills.

Of course an adventure-based program will not work for every relationship-based dispute. The parties will need to have either an affinity toward the outdoors or a general adventurous spirit to be interested in such a program. However, if the proper disputants are carefully matched to specifically designed adventure-based programs, the potential for reaching creative, long-lasting resolutions is limited only by the effort and sincerity that the participants put into the process and their willingness to confront and change their counterproductive habits, behaviors, and attitudes.

## Attachment 1

A proposed adventure passed program for relationship-based dispute resolution<sup>99</sup>

**Pre-Trip Planning:**<sup>100</sup> Referral information will be gathered and reviewed. The program will contact the clients in order to discuss logistical information, payment, and disseminate all basic information.

**Pre-Trip Conference:**<sup>101</sup> Weeks or days before the trip, the trip facilitator and the trip participants will meet to discuss the trip. They will create goals for the trip and also create a participation agreement, which will include basic rules and expectations for the trip. The participation agreement will be a product of the participants themselves (with suggestions from

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<sup>99</sup> Derived from: Richard O. Kimball and Stephen B. Bacon, *The Wilderness Challenge Model*, 10(3) *Journal of Experiential Education*, 4 (1987) in Michael A. Gass (ed.), *Adventure Therapy* Kendall Hunt (1993); Jennifer Davis-Berman and Dene S. Berman, *Wilderness Therapy: Foundations, Theory and Research*, Kendall Hunt (1994); Keith C. Russell, *What is Wilderness Therapy?* 24(2) *Journal of Experiential Education*, 70 (Fall 2001).

<sup>100</sup> See Kimball and Bacon, *supra*, note 1 at 15; Davis-Berman and Berman, *supra*, note 1 at 147.

<sup>101</sup> Davis-Berman and Berman, *supra*, note 1, at 157.

the facilitator) so it will be flexible to accommodate their needs, and they are all invested in the agreement since it is their own product. It will include matters such as whether or not the participants will bring cell-phones or similar items in order to ensure a proper level of attention to the task at hand. Since the clients are involved in a dispute that has legal consequences, the agreement might include a requirement to refrain from speaking about any substantive issues during the trip, and to focus on the issues surrounding the underlying relationship.

**Day 1:**<sup>102</sup> The participants and the facilitator meet at a pre-designated point. The facilitator will give instructions on basic canoeing skills, such as how to paddle/portage the canoe, how to pack the dry bags, and compliance with rules, regulations, and ethics in the natural area where the trip will take place. The group will then load the canoes and paddle to the first camp, where they will receive more instruction in areas such as cooking, orienteering, and setting up camp. The group will work together to prepare its first meal, create shelter, clean, and sleep.

**Day 2:** The group will receive instruction on breaking camp, and will then proceed to do so, after cooking and cleaning. The day's paddle will be more strenuous than the first. At mid-day or after reaching camp, the group will take part in the first workshop.

**Suggested Workshop:** Communication & Trust – the facilitator will deliver a pre-planned interpersonal workshop that focuses on good communication skills. Topics such as active listening, non-verbal communication, and the use of non-accusatorial language will be discussed. The workshop will also discuss different types of trust and how trust is earned and lost. There will be a particular emphasis on the relationship between trust and communication.

**Day 3:** Again, the group will eat breakfast and break camp, and the day's paddle and portage will be more strenuous and challenging than that of the previous day. The trip guide/facilitator will step back and allow the participants to organize meals and setting up the camp. The group will complete another interpersonal workshop.

**Suggested Workshop:** Conflict & Escalation – Topics to discuss will include conditions that encourage conflict, contentious tactics, transformations, and structural changes.

**Day 4:** Again, the group will eat breakfast and break camp, and the day's paddle and portage will be more strenuous and challenging than that of the previous day. The participants will basically make all of the day's leadership decisions. The group will complete another workshop.

**Suggested Workshop:** Common Narrative<sup>103</sup> – The participants will first separately prepare a narrative of their relationship with one another. The narrative will include past conflicts and triumphs as well as some basic information on the dispute in which they are currently embroiled. They will then compare their narratives and reconcile differences

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<sup>102</sup> Kimball and Bacon, *supra*, note 1 at 15

<sup>103</sup> Dean G. Pruitt and Sung Hee Kim, *Social Conflict: Escalation, Stalemate, and Settlement*, 3<sup>rd</sup> ed., McGraw-Hill, 202 (2004).

between the different versions to construct a common narrative of their relationship and their current dispute.

**Day 5:** The group will paddle to the take out point. It will be the longest and most challenging paddle of the trip. The group will set up its final camp and conduct its final workshop.

**Suggested Workshop:** Conflict Resolution – The workshop will focus on the relationship between trust and communication in resolving conflict. There will be a particular emphasis on identifying, communicating and validating interests and underlying interests.

**Day 6:** The group will break camp for the final time and transition to the rock-climbing site. They will get technical and safety information. They will then set individual and mutual goals for the experience and assist each other with completing these goals. The climb serves as both a concluding challenge and a ceremonial “rite of passage<sup>104</sup>” to conclude to the trip.

**Transition:** The facilitator will have one final meeting with the group. The participants will evaluate their performance based upon the goals and other criteria set forth in the participation agreement. The facilitator will note the successes and triumphs of the trip, making full use of metaphors to encourage the participants to apply their new skills and knowledge to solving their dispute.

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<sup>104</sup> Russell, *supra* note 1 at 74.