

## Interpersonal Mediation



Beth just got turned down by Carlos, the mechanic. She had asked Carlos to plan on working a couple of overtime hours this coming Thursday and Friday evenings. Beth's nose was a bit bent out of joint. She wondered if Carlos did not yield to her because she was too kind when she asked. Or, because she was a woman. Or, because Carlos was envious that she got the supervisory position for which both had competed. Carlos was uncomfortable with the interaction, too.

If Carlos had no clue that Beth was upset, would this scene still constitute interpersonal conflict? Perhaps. The seeds of conflict are planted when disharmony is *felt within* any one of the participants. Next time Beth approaches Carlos she may change her approach.

She may be more abrupt, leading Carlos to wonder if Beth got up on the wrong side of the bed. Carlos may then, in turn, react negatively to Beth, thus escalating the conflict. Individuals sometimes encounter stress and negative emotion out of an interaction—whether or not they ever confront each other about their feelings.

In this chapter we will offer an overview of Party-Directed Mediation (PDM) for situations where people like Carlos and Beth come to you for a solution. (Chapter 18 focuses on how we can deal with our own disagreements.) PDM is an approach I developed in farm enterprises; one that is ideal for working through conflicts of an *interpersonal* nature.



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Wherever choices exist there is potential for disagreement. Such differences, when handled properly, can result in richer, more effective, creative solutions and interaction. But alas, it is difficult to consistently turn differences into opportunities. When disagreement is poorly dealt with, the outcome can be contention.

The two pillars of *Party-Directed Mediation* (PDM) are: (1) a pre-caucus—a preliminary, separate meeting between the mediator and each of the parties prior to the joint session (sometimes called pre-mediation) and (2) a joint session in which parties speak directly to each other rather than through the mediator. Both of these supporting pillars are somewhat controversial.

Much of what I say about PDM also applies to the Negotiated Performance Appraisal (NPA, Chapter 7), especially when there are conflicts between supervisors and subordinates.

The aims of the *pre-caucus* are to: (1) permit parties to vent freely and reduce negative emotions and (2) teach contenders to communicate and negotiate more effectively. Armed with

these skills, parties are more likely to arrive at satisfying and enduring outcomes.

The initial focus of the pre-caucus is to attend to each party through *empathic listening* (Chapter 15). Through the process the mediator hardly speaks, but lets the affected persons feel accompanied while they share their conflict narratives. Although the neutral's role is that of an attentive listener who does not interrupt, we ought not think the mediator is distracted or detached from the process.

In the second phase of the pre-caucus, mediators prepare disputants for the joint session. To be ready, individuals must: (1) be *emotionally equipped* to deal with their adversaries and (2) have acquired some of the tools for effective *interpersonal negotiation*.

As people become capable negotiators, they can handle discord more effectively. When brought to the table, differences in perspective present opportunities to find more elegant, satisfying, and lasting solutions.

When the contenders arrive at the *joint session*, they speak directly to each other with minimal third-party interference. By sitting at quite a *distance* from the disputants, mediators underscore their own reduced role in the joint session dialogue.

Some situations may call for a different conflict resolution strategy, as it may not be psychologically safe to bring parties together for a face-to-face confrontation. During the pre-caucus an experienced mediator can gauge if it is prudent to proceed into the joint session.

The application of PDM principles, then, depends on the degree to which: (1) the case lends itself to them and (2) the contenders wish to acquire the requisite interpersonal negotiation skills.

Some cases—as in certain restorative justice programs—call for months of preparation before parties come together for a joint session in which they face and speak directly to each other. Yet, other situations are solved by the parties themselves after a friend lends an ear to one or both, allowing them to gain the necessary confidence to approach each other on their own.

People tend to sort out most of their differences *without* a mediator. It is not surprising that individuals who have been listened to and coached in a pre-caucus may go on to resolve their dispute without a mediated joint session. Certainly, one of the objectives of PDM is to help people resolve future differences without outside help. At times, however, the assistance of a mediator is crucial.

Empowerment is not automatically the only, or the best, mediation style. For instance, a year and a half after one of my sabbaticals in Chile, I received a threatening letter from a collection agency on behalf of the car insurance enterprise I had utilized. I was accused of not paying my last installment. Unfortunately, I had long since discarded proof of payment. This was the first and only note forwarded to me. It was difficult to deal with this situation from so far away.

I was relieved when one of my brothers, who lives in Chile, contacted the insurance agency and mediated between us. I hardly knew the people involved and had no interest in mutual validation, transformative opportunities, or the like. I simply wanted the problem to go away without having to pay twice. Also, not everyone wishes to have a greater hand in solving their own disputes.

I know mediators who are very gifted at seeing solutions that the affected parties simply cannot perceive. These skilled practitioners are able to discern potential agreements, know exactly when to speak, find the right tone of voice to use, recognize when humor would be helpful, and get people to agree.

There are other types of disputes, especially those of an interpersonal nature—involving people who will continue to live with each other, work together, or interact *after* the mediator leaves—that can greatly benefit from a style that empowers each disputant. This is where PDM can play a key role.

The PDM model is particularly useful in the resolution of deep-seated interpersonal discord as well as multicultural or ethnic clashes.

## COACHING INDIVIDUALS

Negative emotions can be dissipated as the parties feel heard during the pre-caucus phases of PDM. While the mediator's empathic listening (Chapter 15) is crucial to preparing disputants for the joint session, it is rarely sufficient. The mediator can play an active role by coaching individuals through some additional preparatory steps. The pre-caucus, then, is also a good time to:

- Prepare a list of topics to discuss
- Create distance from contentious feelings
- Validate identity projections
- Permit positive feelings
- Challenge blind spots
- Practice through role-plays
- Improve communication skills

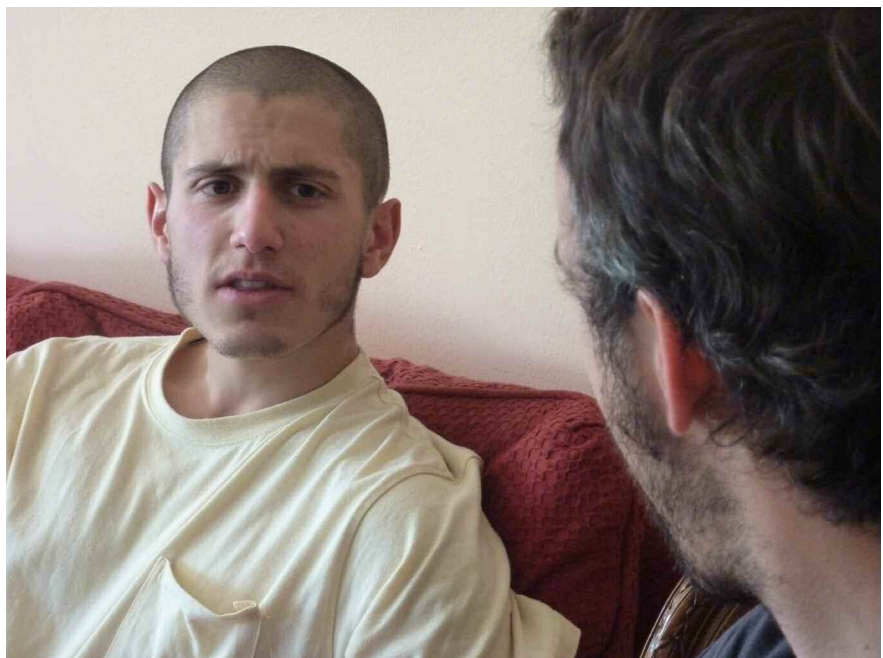
### Prepare a List of Topics to Discuss

As mediators listen during the pre-caucuses, they also take notes. Each topic of concern brought up by the parties is recorded. The topics often overlap considerably. These lists are a vital springboard for the joint session dialogue. Even sensitive matters need to be jotted down unless a party requests otherwise. At times the disputants cannot imagine how certain sensitive

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*Once a person has the support of a friend he may feel justified in his behavior and not try to put as much energy into solving the conflict.*

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topics could be addressed without offending. Mediators can offer coaching that will help the opposing parties work through language that might be used to broach a topic in the joint sessions.

### **Create Distance from Contentious Feelings**

There seems to be a pattern in entrenched interpersonal conflict: each contender is overly distracted with the stress of the dispute, has difficulty sleeping, and is generally thinking of bailing out (of the farm enterprise, workplace, marriage, friendship). Individuals may be in denial about the negative effects of contention in their lives.

One farm manager claimed that he became angry and exploded but that his resentment was short-lived. He asserted that he did not hold grudges, no matter how disagreeable the encounter. Further into the pre-caucus, however, this manager admitted that a recent confrontation made him so furious that he was ill for a couple of days.

Mediators can help the participants visualize life without the tension created by destructive contention. John Winslade and Gerald Monk, in *Narrative Mediation*, argue that while people are theoretically free to say what they wish in a conversation, parties often feel their responses are influenced by the remarks of others. They see themselves entrapped within the conflict cycle.<sup>1</sup> Certainly, the results of numerous social psychology studies show that people often react in predictable ways to specific situations.

The authors of *Narrative Mediation* ask the parties how they might have felt forced by the dispute to do or say regrettable things. Or how the conflict affected them negatively in other ways. By placing the blame on the clash itself, mediators allow the disputants to save face and slowly distance themselves from the conflict-saturated story. Parties can detach themselves from the dispute long enough to consider if they want to keep feeding their negative feelings for each other.<sup>1</sup>

The authors of *Crucial Conversations* contend that we are adept

at creating negative stories in milliseconds. As we entertain these narratives, they are likely to grow more clever and complex. Every emotional outburst, the authors argue, is preceded by such a story. Finally, they suggest that we are particularly adept at creating *victim* and *villain* narratives, and while sometimes we may indeed be innocent victims, all too often we are blind to our own contributions to the difficulties at hand.<sup>2</sup> (Because people often blame victims in a number of settings, it is worth underscoring that emotional, verbal, financial, sexual, physical, and other types of abuse do exist. When victims are blamed for these events, it is as if they are being re-subjected to the abuse.)

These teachings revolving around self-talk have been proposed since much earlier times: “People are disturbed not by things but by the view which they take of them” was an observation of the ancient philosopher Epictetus in the *Enchiridion*.<sup>3</sup> More recently, psychologist Albert Ellis taught, “You largely feel the way you think and you can change your thinking and thereby change your feeling.”<sup>4</sup>

Others argue that our initial responses to stimuli have a physiological basis related to the amygdala, insula, limbic system, and sympathetic nervous system. Some of these physiological responses are hard-wired; others learned.

Upon encountering danger, one individual may experience high arousal, whereas someone else may be oblivious to the same stimulus. The same person on different occasions may have widely divergent reactions to the same stimulus. Our life narratives or stored narratives, as well as fatigue, hunger, and a host of other conditions, affects our initial reactions.

Regardless of the evolving science on how we initially react to situations, the vital point is that once our emotions have been triggered there is much we can do to modulate them and reestablish positive connections with people. We can *respond*, rather than simply *react*, as we learn to: (1) slow down our breathing pattern and (2) modify our

defensive, self-defeating, and self-justifying narratives.

Part of the role of the mediator is to help parties recognize the function that self-justifying and defensive stories play. Neutrals also help parties look for alternative narratives—those that permit the existence of motives that are less hideous, and perhaps even honorable.

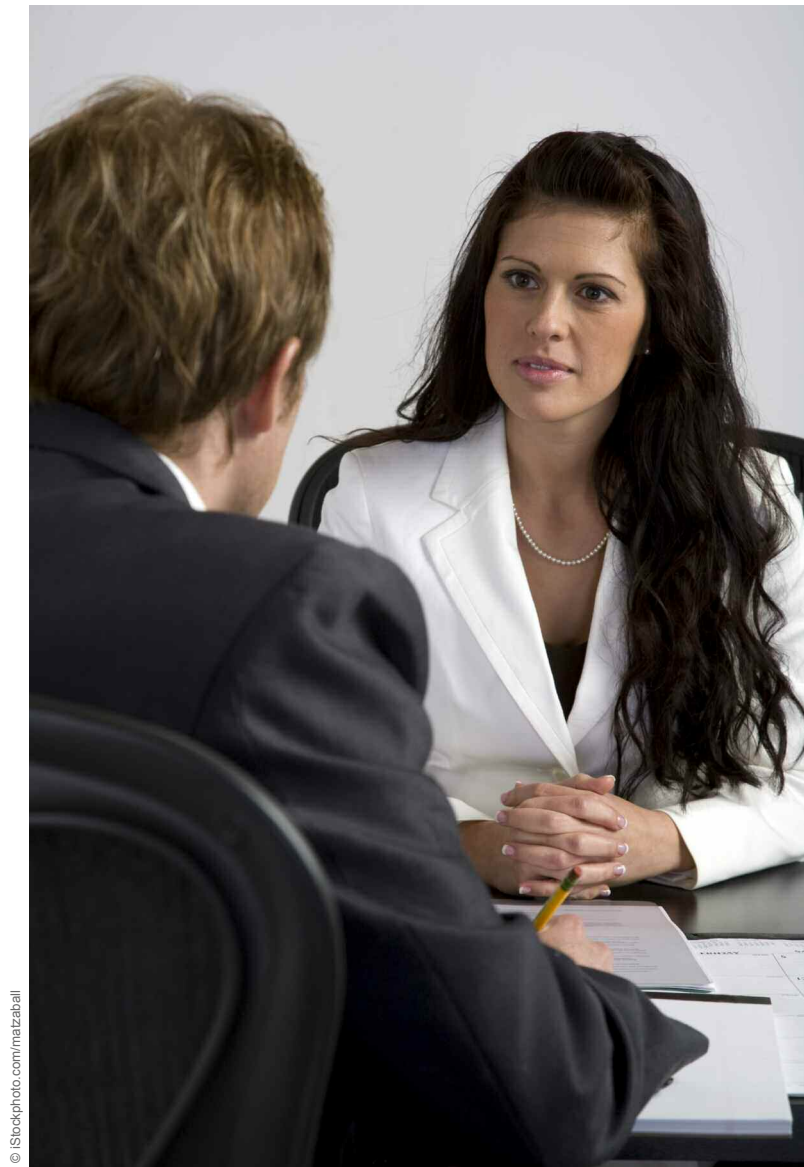
Some years ago, I attended a soccer referee meeting in which my supervisor pointed out problems that referees needed to avoid. I became defensive. I remembered very well what had happened during the game in question. In my opinion, I had made the right call. I raised my hand and began to defend my decision to give a red card. The supervisor calmly responded, “Gregorio, we weren’t talking about you.”

It was not the referee director who made me upset, but rather the story I told myself to justify my behavior. The very fact that I felt compelled to create such a story should have been a warning to me. The story permitted me to entertain defensive emotions, which resulted in my negative behavior: justifying myself at the meeting when no one was attacking and thus running away at “the sound of a leaf falling from the tree.”<sup>5</sup>

### Validate Identity Projections

Individuals attempt to cultivate an identity of how they like to be seen by others. One person may see herself as an intellectual; another may see himself as an outdoorsman, a scholar, a rebel, an athlete, a cowboy, or a free thinker. Such identity labels are part of a complex set of traits that a person might value. These labels answer the question, “Deep inside, who are you?”

An important part of mindful interpersonal communication, explains Stella Ting-Toomey, is the mutual validation of such *identity projections*, through a process of *identity negotiation*. Ting-Toomey suggests that people tend to build bonds with those who seem supportive of the identity they attempt to project.<sup>6</sup> Undoubtedly, such mutual validation builds psychological intimacy.



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Charles T. Brown and Charles Van Riper explain the broader concept this way: “Acceptance [requires] listening to the other to sense how he wishes to be heard. This confirms him and thus he tends to confirm us, and thus we are led to further self-confirmation. Self-acceptance and acceptance of the other are therefore interactive.”<sup>7</sup>

Those involved in significant interpersonal conflict may go as far as denying each other their most valued identity characteristics. When individuals have built a relationship at least partially based on identity validations, it is not uncommon for one or both parties to want to take back such affirmations.

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*During the pre-caucus, mediators note the issues that need to be addressed by the parties during the joint session.*

For instance, one associate built her relationship with another by telling her that she was artistic. The affirmation was greatly valued by the recipient. Over the years, these two women continued to strengthen their friendship. After a contentious disagreement, the artist was told she really did not have much creative and artistic ability. And the women were not even fighting about art when the comment was made.

People who have felt hurt or manipulated in the past may be slow to accept identity validations from others. Intermediaries help disputants exchange at least a small, tentative measure of validation.

Lack of validation normally plays a pivotal role in interpersonal conflict. Some of the most hurtful experiences are attacks on self-image or valued identity. They may take the form of a refusal to use the contender's name or to speak, greet, or look at the other person. When confronted about their passive aggression, the offender might say that there is nothing wrong. "I don't say anything bad to her. I simply don't look at her or speak with her. She just doesn't exist for me."

Individuals also project the personal qualities they wish to attain (e.g., generosity, equanimity). When people's weaknesses are exposed they may reason that it is not worth trying to pretend anymore. Because friends, colleagues, and loved ones are more likely to have seen these weaknesses, the person may first stop pretending with family, close friends, and associates at work.

Pride—especially when our weaknesses have been exposed—makes it hard for us to recognize our errors and take the necessary steps to rectify our behavior. When parties have crossed the line and stopped trying, a key mediator role is help them shift attitudes, put their best foot forward, cross back, and thus get a second chance at a relationship.

It is not easy to cross back. Some people prefer to show improvement through actions rather than words. Yet both are required: verbal acknowledgement *and* changed behavior. A fundamental step, then, is

for the party to *announce* planned behavioral changes—no matter how positive the changed conduct—lest these changes be misunderstood.

A milker who had been involved in a contentious relationship voluntarily began to make what he thought were positive transformations. When they did not seem to make a difference, he tried other adjustments. Despite good intentions, he never communicated the reasons for these changes to his co-worker. During the pre-caucus, the other party explained that this individual seemed somewhat neurotic and fickle, changing personalities from day to day.

### Permit Positive Feelings

In the process of meeting with the disputants, the mediator can make a more informed determination as to whether to proceed with PDM, or use a more conventional style of mediation.

Under certain circumstances, more harm than good can result from permitting opponents to speak directly to each other. It is not the purpose of mediation simply to provide a safe place for contenders to exchange insults. Before deciding to proceed to the joint session the parties must experience some hope—an olive branch buried within the anger, frustration, and despair.

In *The Promise of Mediation*, the authors suggest that mediators watch for and recognize *transformative opportunities*.<sup>8</sup> That is, mediators should be alert for any sort of compliment, kind word, show of understanding, apology, or acceptance of an apology. Transformative comments help the disputants validate each other.

Contenders probably have had unproductive exchanges in the past. Each player has taken the role of *victim* or *aggressor*—or most likely, has alternated between both. Each probably owes an apology to the other. Learning how to apologize and accept an apology are essential interpersonal negotiation skills (Chapter 18).

During a pre-caucus a grower, almost as an aside, had something positive to say about his farm manager: "One thing I really value about the farm



manager is that he shows pride in his work—something I really admired in my father.” The mediator suggested that the grower share these kind thoughts in the joint session, but was turned down. This challenge had been extended in a gentle way, permitting the grower to retain control. During the joint session the grower did compliment the farm manager despite his earlier refusal to consider doing so.

While a number of factors can affect the success of a mediated joint session, perhaps none is as telling as asking what one of the parties values in the other. The mediator asks this question during the pre-caucus *after* the participants have had a chance to vent their frustrations. Individuals are more apt to see the good in their opponents after they feel understood by the mediator. It is not uncommon for the contenders to raise these positive issues on their own. The intermediary may ask permission to share these details with the other parties.

From a psychological perspective, this matter is of surpassing importance.

People involved in contentious interpersonal conflicts not only fail to validate each other but also tend to discount their adversaries and strip from them any vestiges of humanity. Failing to find a positive quality in another is a reflection of this phenomenon. Individuals who have such negative feelings must give themselves *permission* to allow others a measure of humanity. Without some degree of mutual respect, PDM is destined to disappoint.

In the absence of this tiny light of hope, there is no point in proceeding to a joint session. And it is not enough to say that the other person “is always on time,” “drives a nice pickup,” “is attractive,” or “doesn’t smell.” If there is nothing of significance that one person can value about the other, more harm than good can come out of the joint session.

Mediators often notice that one person tends to be nobler in terms of affirming the other. Years ago, I asked a party for the positive characteristics of

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*The pre-caucus consists of a separate meeting between the mediator and each of the stakeholders, before the stakeholders are ever brought together into a joint session. Because people, especially those who are involved in conflict, have such a high need to be understood before they can focus on the needs of others, this session is fundamental to an eventual positive outcome.*

his antagonist. When he claimed there was none, I shared the affirming remarks that had been made about him. I was surprised by his second refusal to find anything of value in the opponent, especially after hearing something so positive about himself. Most people want to appear reasonable before the mediator.

“Well, if there is nothing positive you can say about the other person, there is no purpose in attempting a joint session,” I explained. I suggested a short break after which we could sit down and look at the alternatives. When we returned, the taciturn party had prepared, to my shock, a long list of positive attributes about the other disputant.

Since then, I have come to recognize that if a party seems to have nothing affirming to say about another, it might mean that I have not listened sufficiently. Such a person may require several pre-caucuses before she is ready for the joint session. Some conflicts have spanned decades. Is it reasonable to think that after one listening session longtime adversaries will be ready to dialogue?

It is essential, before moving into a joint session, for each party to have something positive and validating to say about the other.

### Challenge Blind Spots

Psychologists speak of *blind spots* as information individuals may not know about themselves. As a youngster, no

one told me I was a terrible singer. When I found out, I was surprised. Now, I joke that I got rich because people paid me *not* to sing. Blind spots prevent us from seeing our own faults. We do not always notice how our actions may be contributing to difficulties in our lives and relationships.

Conflict tends to enlarge our blind spots and reduce our ability to think rationally and creatively. People involved in disputes also tend to make false attributions. Contenders often excuse their own negative behavior, yet ascribe the worst motives for others' actions. As long as blind spots exist, we tend to blame everyone but ourselves for our predicaments.

During the mediation process, each party will face plenty of difficulties. Contenders will have to confront blind spots beginning with the pre-caucus. Disputants will often recognize some of their own faults if the mediator has listened with empathy.

Furthermore, there is a certain amount of *psychological thawing*<sup>9</sup> that takes place when people are willing to see other possibilities. To use another metaphor, while they may not open the window blinds all the way, they begin to crack them and let some light in. As a result, after the pre-caucus the parties often begin to soften their stances towards each other.

Given enough time, such as in some types of therapy, people can begin to discover additional blind spots without having them pointed out. Traditional mediation seldom affords such opportunities. More complex PDM tends to be carried out over a longer period of time, and the time factor seems to work in favor of softening obdurate stances through *positive fermentation*.

Just as in mediation, there are different approaches to therapy. Despite the similarities between some types of therapy and mediation, these forms of intervention are not the same.<sup>10</sup> Therapists have specialized training and longer periods of time to work with clients. Blind spots may have to be considered sooner in mediation than in therapy.

*As effective as mediation can be, under certain circumstances more harm than good can result from bringing parties together. The purpose of mediation is not to simply provide a safe place for stakeholders to exchange insults!*





So, what does it mean to challenge a blind spot? According to Gerard Egan, “At its simplest, confrontation is an invitation to examine some form of behavior that seems self-defeating, harmful to others, or both, and to change the behavior if it is found to be so.”<sup>11</sup> Not everyone can challenge these blind spots. A listener must earn the right to do so,<sup>12</sup> by showing empathy and true concern.

A note of caution is in order before speaking further about challenging blind spots. Mediators must guard against feelings of *psychological transference* and *countertransference*. For instance, one of the parties may remind the mediator of someone—or a trying situation—from his past. If issues of transference can be troublesome in psychotherapy, they also can affect the mediation process. It is all too easy for mediators to permit life experiences to taint their efforts and unduly affect their neutrality.

Only after the disputant feels heard can a mediator introduce challenges. Under no circumstances should a person be challenged so the intermediary can feel better. Nor should the challenge be based on feelings of resentment the neutral might be harboring. On the contrary, a mediator should only challenge a person for whom she has positive regard. Furthermore, mediators must be willing to accompany the party through the painful process of examining dysfunctional behaviors.<sup>13</sup>

An example of a challenge is to ask a person to explore possible reasons why others react negatively to her. Another example—as discussed in the previous sub-section—involves challenging one participant to share positive qualities possessed by the other.

Egan suggests that it helps to “deliver challenges tentatively, as hunches.”<sup>14</sup> I call this using a *miniature hammer* rather than the industrial sledgehammer. Gentle challenges invite reflection; overbearing ones, defensiveness. The power of the miniature hammer is that it does not remove responsibility from the party involved in the dispute. In contrast, the industrial-size hammer is likely to act as

a punishment in itself, permitting a person to discount the challenge as well as the challenger. People who have been effectively challenged may respond right away, after a few hours, or even months later. Elapsing time allows for positive fermentation.

During an NPA pre-caucus, Paula, a top manager at a horse training facility, expressed frustration that one of the managers who reported to her, Lázaro, seemed to have trouble relating to women. After being heard, Paula requested that the mediators *not* broach the topic with Lázaro. Instead, she agreed to do so herself. With the assistance of the intermediaries who instructed her to back off at the first sign of resistance, she role-played a very soft, miniature hammer approach.

This case was co-mediated by a woman and a man and would require several pre-caucuses. During a follow-up, Paula reported that her attempt to speak to Lázaro about this sensitive topic was unsuccessful. His resistance was immediate so Paula dropped the subject.

During one of the subsequent pre-caucuses, the female mediator was able to very gently challenge Lázaro by indirectly touching on the topic. His stance had softened and he began to speak about the challenges he faced in transitioning to working for a woman. This permitted for more positive feelings on this subject to ferment over time.

Finally, after some months had elapsed, the day of the joint session arrived. A group of international visitors and NPA practitioners from Chile—mostly men—joined the mediation team. A final pre-caucus with each party was carried out before lunch. The topic of sexism was openly discussed with Lázaro.

During the joint session, where all the mediators sat at one end of the conference room and played an insignificant role, Paula and Lázaro had a wonderful conversation about many topics. At one moment, Lázaro began to speak to Paula about how difficult it was for him to transition into having a female supervisor.

One of the international visitors wanted to help Lázaro save face. He interrupted to say, “Lázaro, you really don’t mean to say that you treated your



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*An apology with a comma or a but is not a true apology, but merely a statement of justification. Opportunities for mutual recognition exist when participants take the time to apologize for past affronts or misunderstandings.*

supervisor differently because she was a woman—it was just because you had a conflict with her, right?”

Lázaro turned to address him and explained that, indeed, the issue of Paula’s gender had been at the core of his problem. Then, turning to Paula, Lázaro offered a sincere, heartfelt apology. This is an example of how the tiniest of hammers was used throughout the process. As the joint session was concluding, Lázaro again turned to the mediators and with a broad smile said, “I won’t be needing you anymore, as I now feel I can talk to Paula about *anything!*”

A positive negotiation technique, when seeking to challenge, is to ask permission to pose a question.<sup>15</sup> The mediator, by using this strategy, lets the party know that the matter requires deep thinking and is not easy to answer.

Let us look at another challenge that considers some of the techniques we have been discussing. Sara and her boss, Nick, have been involved in a dispute that has taken on major proportions. Among other things, Nick has complained that Sara is constantly threatening to leave the farm enterprise. The first time Sara used this tactic, Nick worked hard to please her. Now he feels great resentment towards Sara. Threats—both direct and veiled—tend to reduce a party’s negotiating power.

Nick greatly values Sara’s work, but he has reached the point where he would

rather see Sara leave the farm business than be exposed to her constant threats. This might be a blind spot for Sara. Though she might vent her anger at length, it is doubtful she would ever realize—in spite of having an empathic listener—the dysfunctional nature of using threats as a negotiating tactic. Nick has given the mediator permission to share his concerns with Sara. We pick up the conversation after the mediator has listened to Sara for some time. It is not the first time Sara mentions that she would like to find another job.

“I’m so tired of working here, and I’ve told Nick that perhaps I should look for another job,” Sara explains with a tone that betrays both resignation and angst.

Instead of directly reproving Sara for her use of threats, the mediator may acknowledge Sara’s frustration and eventually broach the issue of negotiation techniques.

“Sara, may I share a negotiation concept with you?”

“Of course!”

“Part of my role is to prepare parties to face each other by helping them improve their negotiation skills. We can often obtain better results if we know how to frame the matter at hand. Finding the right language so others will be receptive to what we say.”

“Mmm.”

“People may stop listening when we use certain approaches. Nick told me—and he gave permission for me to share this with you—that he tunes you out . . . when you threaten to quit. Threats are a hot button for him.”

“But, then how do I let him know I’m so frustrated?”

“Wonderful! That is precisely what we want to do. It is so important that you can express the stress and frustration you’re feeling. We don’t want to minimize these annoyances, such as when Nick asks everyone for advice except you.”

“Yes, that and other things.”

“Would you like to spend a little time together finding just the right language to use so Nick is more likely to listen? So he doesn’t become so defensive?”

The mediator has not given Sara any reason to believe she favors Nick's perspective in the overall conflict. She is simply inviting Sara to present her perspective in a clearer, more effective, and less threatening fashion. Once Sara comprehends that she must merely replace the unproductive tactic with a more positive one, the mediator (or a co-mediator) can role play Nick while Sara practices alternative ways of expressing her views. Together, they can try different approaches and find one that Sara feels good about and meets her needs.

The mediator, as a careful listener, will often pick up on potentially problematic communication during the pre-caucus—even when not alerted by the other party. The neutral, then, also prepares parties to challenge each other during the joint session.

Regrettably, there are times when the third party needs to step in during the joint session. This is not the ideal, as the actors lose face and it may give the appearance of mediator partiality. Of course, there are ways that the neutral can intervene without overly altering the process, but it certainly is not as elegant as when the individuals can dialogue without interference.

### Practice through Role-Plays

Role-plays are powerful pre-caucus tools. After listening to a young woman, I asked her to imagine she was now talking to a co-worker with whom she had been involved in several unpleasant exchanges. As she told her story before the role-play, her tone of voice was relaxed and friendly. As soon as she pretended that she was speaking to her colleague, her comportment changed dramatically. Her body language, the tension in her voice, and the rough words that she spoke surprised me. The transformation was alarming, but it permitted me to offer some helpful suggestions.

At one enterprise, a farm manager's angry outbursts were well known. Martin had minimized the seriousness of his problem. A co-mediator played the role of the other contender. "Martin,"

she began. "When you get angry at me, shout at me, and use profanity, I feel very bad."

"Well, I'm so sorry I used bad language and was angry at you," Martin began nicely. "But . . ." And then Martin started to excuse himself and place conditions on controlling his anger. I interrupted. "An apology with a qualifier or a 'but' is not a true apology; it is merely a statement of justification," I explained.

In total frustration Martin turned to me, raised his voice, and said, "Look, everyone has his style. Some people deal with disagreement this way, others, that way. I'm an expert on intimidation. If I can't use intimidation, what can I do so I don't get run over? Am I supposed to just sit here and tell the other guy how nice he is and not bring up any of the areas of disagreement?"

As previously mentioned, one of the purposes of the pre-caucus is to coach individuals on how to effectively present their perspectives. So, I calmly responded to his anxious query, "I am so glad you asked, Martin. That's why I'm here."

When mediators have done their work during the pre-caucuses, the joint sessions can be very positive. Martin's case was one of the most difficult I had encountered at the time. Yet, once in the joint session the two managers did most of the talking. They were extremely cordial, attentive, and amicable, showing understanding for each other. I had no need to interrupt as they negotiated other than to ask for clarification in noting what they had agreed on. Although these individuals did not completely solve their dispute on that occasion, they continued to make progress after the mediator left.

After empathic listening, I believe that role-playing is the most vital tool to improve the mediation process. It affords parties the opportunity to practice both sharing information and challenging differences while receiving feedback on how to better communicate—feedback which ideally is given in the privacy of the pre-caucus so parties can save face while mediators retain the appearance of neutrality.

*It is good to talk about the past. A discussion of past behaviors is essential to analyze patterns of conflict and help participants find constructive ways of handling future disagreements. Without understanding the past, it is hard to prepare for the future. At some point, however, the focus of discussion turns to that of future behaviors, rather than past injuries.*

Through these simulations, neutrals can also detect *leakage* of negative feelings and ascertain if the parties are ready for the joint session.

In addition, role-plays can be recorded and the parties are then able to see themselves and analyze their own dysfunctional behavior. The positive impact of these recordings is often very powerful. Being involved in a role-play is invaluable, and a recording can provide additional understanding. In a recording we see the situation more realistically—like the difference between observing ourselves in a mirror and in a photo.

### Very Difficult Cases

The PDM approach, as I mentioned, is designed to handle the most complex cases, including those that have lasted decades. Sometimes the rivals have such vitriolic feelings toward each other that little progress seems to be made in the pre-caucuses.

At some point mediators may want to encourage participants—especially in cases where parties have stopped talking and have little contact—to send each other letters. I am suggesting old-fashioned letters, with *stamps!* (The stamps need to be chosen with care so as not to give unintended messages.) The idea of utilizing letters is to avoid quick, dysfunctional interchanges. Maybe the antagonists are still not ready for the joint session but they can talk about certain topics in a positive way. They can share little transformative moments that will move the protracted process along.

It is not a matter of eliminating or replacing the joint session, but rather accelerating positive fermentation. It is necessary to wait until the parties are ready to see some good in each other, or to apologize. Before mediators make this suggestion, I believe they must have achieved a high level of mutual trust with each party.



The mediator can invite one of the disputants to write first and let the other party know to expect a letter. Throughout the letter-exchange process the mediator lends an empathic ear to the parties and also asks to review their responses before letters are sent off. Because of the nature of the protracted conflict, opponents are likely to read many unintended negative messages into the letters, even when they are written with care. While the mediator offers comments and suggestions, in the end, the parties must take ownership of their own letters.

With extremely difficult conflicts, as the moment of participating in a joint session approaches, painful feelings often resurge. It is worth reminding participants ahead of time that this is a normal part of the process.

### Improve Communication Skills

Coaching and modeling effective interaction styles is an ongoing task for the mediator. The objective is to enhance the interpersonal negotiation skills of the parties involved.

The lack of effective negotiation skills is often the culprit when people experience interpersonal conflicts. Chapter 18, “Interpersonal Negotiation Skills,” we have said, is a primer on the subject.

People are more likely to identify dysfunctional communication styles in others than in themselves. If we are involved in a conflict, we can take better advantage of these tools by introspectively considering if there are behaviors we can improve in *ourselves*.

## THE JOINT SESSION

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The mediator has now listened to and coached the parties and has determined they are ready for the joint session. No matter how well disputants have been prepared through the pre-caucuses, they are likely to be anxious at the idea of confronting their adversaries. Along the way, each party has had to traverse a thorny path—and deal with feelings of discouragement, fear, and frustration.

The joint session should take place in a location that is neutral and private, without phones or other interruptions. A comfortable setting will also help reduce tensions. Furthermore, it is vital to allow sufficient time for the parties to fully engage in dialogue.

Next, we will examine matters related to:

- Seating arrangement
- Opening the mediation
- Getting the dialogue started
- Agreements

### Seating Arrangement

A practical aspect that is extremely influential in PDM is the seating arrangement: the two parties sit facing each other in a position that promotes good *eye contact*. This is powerful medicine for mutual understanding. In more traditional mediation the disputants sit facing the neutral rather than each other. The not-so-subtle message is that the third party is there to solve the case, or worse, to act as a judge.

It is well known that eye contact tends to increase aggression among disputants. Yet, once parties have begun the trajectory towards reconciliation through the process of pre-caucusing, eye contact in the joint session can help soften feelings of aversion. It serves to remind people of the positive affect they might have felt for each other at one time, though they have now relegated such feelings to their subconscious. The parties are ready to begin to see each other as real people.

One option is to seat the parties at a table. This allows for a personal safety zone providing the comfort of a physical barrier between contenders. The ideal is a long rectangular table. The parties sit across from each other at one end of the table while the mediator sits at the other end, far away from them (Figure 19–1).

Another alternative is to use a set of comfortable armchairs and do without the table. The chairs should be placed at a distance that permits sufficient personal space between the parties. I usually place the chairs somewhat farther apart than is probably required.

Parties often choose to move closer on their own. The mediator may, at times, be surprised by the close proximity chosen by the disputants.

In PDM the neutral sits far enough away that the parties must turn their heads if they wish to make eye contact with the mediator. This way, it is not easy for the disputants to check whether they have “scored points” or to enlist the mediator’s support. If parties do turn toward the mediator, the neutral can encourage them to address each other instead. This seating arrangement—in which adversaries face each other rather than the mediator—underscores the message that parties are there to *talk to each other*. It constitutes the second pillar of the PDM approach (the pre-caucus being the first).

### Opening the Mediation

The day of the joint session, one of the parties will likely arrive before the other. The mediator may invite individuals to sit down and make themselves comfortable, but remains

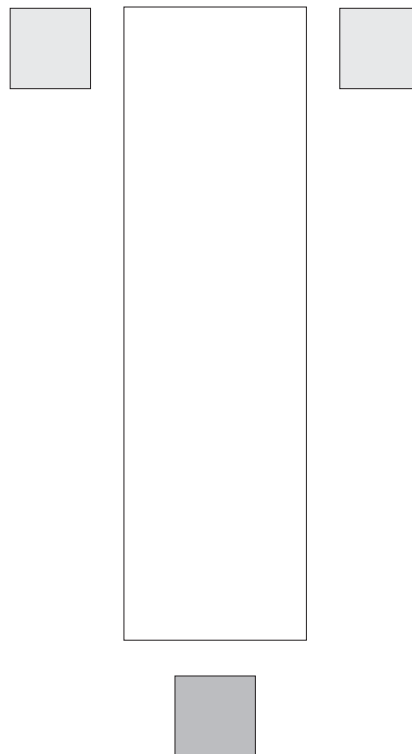


FIGURE 19-1

*Seating arrangement for mediation.*

standing until both parties have arrived. This detail sends a clear message to the last person to arrive—that the joint session has not started without her.<sup>16</sup>

If permission to do so has been previously secured, the mediator may wish to share the positive attributes raised about each contender by the other party during the pre-caucuses. Taking time to do so helps break the ice and reminds the disputants that there is hope.

This is *not* the time, however, to ask the parties to share these positive comments about each other. Disputants are seldom psychologically ready to begin with affirmations. Likewise, during the joint session the mediator may underscore transformative comments that come up naturally but generally does *not* ask contenders to share such validating comments about each other. Doing so weakens the value of transformative discourse. It may appear as if the mediator is:

(1) manipulating contenders to say something nice about each other or (2) discounting the many unresolved issues that have brought the parties into the dispute. Instead, participants will make their own validating comments when they are ready, without any prompting.

The mediator may wish to remind individuals that they can take breaks, ask to caucus with the neutral, or phone a stakeholder at any time. My experience is that effective pre-caucusing greatly reduces the need for such interruptions. In fact, as of this writing, I have not yet had, or needed, a caucus once a joint session began. Even so, it is important for parties to know this small lifesaver is available if needed. It is yet one more way to emphasize that participants have much control over the process.

### Getting the Dialogue Started

After any additional introductory comments from the mediator, the time has come to turn over the reins to the parties. Mediators can explain that they will bring up topics—from the lists developed during the pre-caucuses—and



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ask one party or the other to expand on the subjects and thus begin a dialogue.

Although the mediator may pick the first topic, one option is to permit the parties to continue the conversation from there. Either way, the mediator ensures all issues are exhausted before the joint session is over. The neutral will easily note when parties move evasively from one subject to another as a defensive or offensive tactic.

At times, an individual will have expressed a great desire to apologize to the other party about some matter, and this also may be a good starting place. What is essential is to balance the players' opportunities to speak and address issues of importance to them.

Successfully dealing with any issue under contention (e.g., the offering and accepting of an apology or reaching an agreement on how to deal with a future difficulty) can be very energizing and give the participants the confidence they need to face other challenges.

The mediator does not present or summarize the difficulty itself, but only triggers a memory: "Mei, could you please explain to Hua the matter of the letter you found on your desk?"

Mei shares with Hua—hopefully briefly—her concerns about the letter and gives Hua the opportunity to react. That is, Mei uses the *seven word* approach introduced in Chapter 18. When both have finished the conversation on this matter, the mediator may invite Hua to tell Mei about a specific worry brought up in her pre-caucus.

When the parties are doing a good job of managing their own topics and coming up with sustainable resolutions, mediators have little to contribute other than the comfort of their presence. Neutrals also note any agreements or concerns that might need to be revisited, such as patterns of troubling interaction between the parties. These may include such things as negative gestures,

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*While a number of factors can affect the success of a mediated joint session, perhaps none is as telling as asking contenders what they value in the other.*

*The supervisor as an arbiter may listen to complaints but, at the end, will make a judgment that the employees are expected to follow. It helps for a supervisor to be slow in taking on the role of an arbiter.*

confrontational body language, manipulative comments, or some of the other dysfunctional communication patterns we saw in Chapter 18.

While the ideal in PDM is for the disputants to speak to each other with as little interruption as possible, there are times when the mediator must intervene and help parties overcome dysfunctional communication styles or deal with power imbalances.

The seriousness of communication infractions, as well as differences in neutrals' styles, will dictate the frequency and degree of mediator intervention. Time spent role-playing and developing negotiating skills in the pre-caucus will result in a smoother joint session.

At times, it may be tempting to ignore an area of concern brought up during a pre-caucus. What happens

when one of the parties wants to share something with the mediator, but does not want this subject to come up during the joint session? This type of situation is quite common in NPAs, and may also arise during PDMs.

Mediators need to respect the rights of the parties not to bring up certain topics. However, one of the neutral's most important roles is to help individuals learn how to share sensitive issues in a way that does not come across as offensive. Also, it is worthwhile for both disputants to prepare themselves—even if they are not sure if they want to address an issue—as topics may well be raised by either party during the joint session.

Some years ago a seminar participant raised his hand and mentioned that there happened to be two individuals attending the workshop who were involved in a long-term contentious relationship at work. Class participants requested that we incorporate the case into the seminar. The contenders, Keith and James, agreed to have the workshop participants play the mediator role with my help.

James was sent out of the conference room while the seminar participants and I listened to Keith. Once this pre-caucus was concluded, we reversed the process.

Incidentally, empathic listening seems to have a stronger effect when there is a larger audience. For instance, affected parties may feel more intensely understood when they are heard by co-mediators. In a workshop like this, when many participants are listening empathically, these positive feelings are multiplied. Put yet another way, it may take shorter periods of time to feel heard when there are multiple attentive listeners.

During his pre-caucus, Keith explained that James had cheated his farm employer by adding two hours of overtime to his timecard. Keith, as a way of showing what an honorable person he was, told us he had never mentioned any of this overtime mischief to his boss.

The joint session proceeded very well, with both disputants speaking to







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each other and solving the difficulties that had been raised. The parties were about ready to finish, so I had to decide whether to have them discuss the honesty issue. Inspired by Robert Baruch Bush and Joseph Folger's *transformative* approach to helping contenders apologize or share feelings of regard for each other, and these authors' belief that it is more important to have disputants come to a better understanding of each other than merely find short-lived agreement,<sup>17</sup> I ventured to bring up the subject. I was taking a risk.

James explained to Keith that indeed he had worked the two extra hours at a different farm location *before* Keith arrived. Had they not cleared up this issue of integrity, it is doubtful their newfound harmony would have endured.

It is good to talk about the past. It can help unravel patterns of conflict and provide transformative opportunities. Without understanding the past, it is hard to prepare for the future. At some

point, however, the focus must turn to dealing with future behaviors rather than nursing past injuries. PDM normally permits disputants to naturally transition from speaking about the past to discussing mutual understanding and required changes for the future.

### Agreements

The mediator needs to be especially sensitive to signs that one or both parties are capitulating just to move on—or out of the mistaken idea that they are pleasing the neutral. Such conduct can often be noted in the tone of voice and body language of the contenders, but not always. Mediators may ask parties some pointed questions about their agreements, encourage specificity, and challenge agreements that seem weak and unlikely to endure.

When dealing with more difficult situations, part of the role of the mediator is to keep the parties from becoming overly discouraged. This can be done periodically by talking about

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*Conflict tends to enlarge our blind spots and reduce our ability to think rationally and creatively.*

the progress that has already been achieved.

In Chapter 18, we referred to the Harvard Negotiation Project approach introduced by Roger Fisher and William Ury in their seminal work, *Getting to Yes*.<sup>18</sup> These scholars suggest that by concentrating on *positions* (i.e., proposed solutions) parties accentuate their disagreements. When, instead, people focus on the *needs* and *fears* behind their stated positions, they are more likely to find mutually acceptable solutions that address the needs of all involved. Resolutions based on this approach are not only more acceptable to the parties, but they are also more likely to be long-lasting. When the light goes on, disputants realize that it is not a zero-sum game in which one person must lose for the other to win.

I prefer to begin by having parties present their initial positions, which allows them to feel understood and

retain a sense of control over the process. Mediators can move parties: (1) from stating their positions or stances, (2) to understanding each other’s unmet needs and fears, and finally (3) to discussing possible solutions. It helps to have disputants tentatively summarize, to the best of their abilities, the unmet needs and fears of the other. A structured way to clarify positions versus needs is outlined in Sidebar 19–1.

Contenders often discount each other by refusing to acknowledge that the other party has a need worth considering. Years ago I conducted a communication seminar hosted by a large farm enterprise. Without realizing it, I selected two individuals to role-play a hypothetical conflict that turned out to be all too real. The mediation scenario used a more traditional approach without any pre-caucusing.

**SIDEBAR 19–1**

**Positions vs. Needs in Conflict Management**

<b>Position A</b>	<b>Position B</b>
<ul style="list-style-type: none"> <li>• Need A–1</li> <li>• Need A–2</li> </ul>	<ul style="list-style-type: none"> <li>• Need B–1</li> <li>• Need B–2</li> <li>• Need B–3</li> </ul>
<ul style="list-style-type: none"> <li>• Fear A–1</li> <li>• Fear A–2</li> </ul>	<ul style="list-style-type: none"> <li>• Fear B–1</li> </ul>

1. Parties divide a paper, chalkboard, or wipe board into four sections as shown below.
2. Parties seek to understand and record each other’s *position* (i.e., stance).
3. Parties are free to restate, modify, or further clarify their own positions at any time.
4. Parties then seek to understand and record each other’s *needs*. Taking the time to ask effective questions of each other is an important part of reaching such understanding.

5. Parties brainstorm ways of fulfilling the needs of both contenders in a non-evaluative form. In some cases, solutions may not be obvious at once, and disputants may want to sleep on it. For brainstorming to be effective, possible solutions should not be evaluated at the time, and even outlandish and extreme solutions need to be entertained. Only later, in Steps 6 and 7, are these solutions examined for positive and negative factors.

6. Parties are asked to resist devising resolutions in which they no longer are required to interact with each other. To avoid each other takes little creativity and is seldom the best solution. Instead, participants need to seek creative, synergetic solutions.

7. Tentative co-authored agreements are evaluated and refined in light of potential obstacles.

8. Agreements—including a possible co-authored position—are recorded.

9. Parties consent to evaluate results at predetermined intervals.

10. Agreements are fine-tuned as needed and other challenges are addressed together.

The head cook was asked to recognize, in his own words, that the field foreman needed meals to arrive in a timely fashion. Yet the cook could not focus away from the fact that meals were being wasted each day.

“You see, it’s his fault because . . .”

“We’re not talking about faults at this time. Instead, we just want you to state the perspective of the field foreman,” I interrupted.

“Well, you see, he thinks he can get away with . . .”

The cook had to be stopped repeatedly. It was difficult for him to state (and thus validate) the other party’s honorable needs.

An intermediate step—one that might have helped smooth the transition between a solely internal focus and stating the other party’s position—would have been to encourage participants to ask nonjudgmental, fact-finding questions of each other.<sup>19</sup>

Once the cook stopped evading the process and described the position of the field foreman, and the foreman did the same for the cook, they quickly came to a clever solution that benefited everyone and saved the farm corporation money. They decided that the field foreman would call the cook with an exact meal count for the day. This way, the cook would have fewer meals to prepare and thus would be able to produce them faster.

Sometimes negotiation is attempted but people’s needs are incompatible. This may be especially so when no distinction can be made between *needs* and *positions*. When negotiation has failed, for whatever reasons, mandate may require that the dispute be resolved through arbitration or the courts. Bush and Folger suggest that if a door is left open for continued conversation, and if individual empowerment and mutual recognition have taken place, then mediation was not a failure. Much more of a failure, they convincingly argue, is for a mediator to be so focused on having parties come to an agreement that the resolution is forced, reducing the chances that it will be long-lasting.<sup>20</sup>

John Forester suggests that even

when there are deep value differences, and basic needs are incompatible, parties may come to an understanding on peripheral issues. Despite disagreements parties may recognize some common goals.<sup>21</sup> For instance, each spouse may have profound religious convictions that are incompatible with those of the other (e.g., values they wish to instill in their children) yet come to an accord on how to live with such variances in such a way as to minimize harm to their offspring.

## MEDIATION OF HIERARCHICAL CONFLICTS

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NPA *facilitation* (to improve productivity, Chapter 7) and *mediation* (to solve hierarchical conflict) have much in common. Here we will discuss some additional points for using the NPA as a mediation model.

One of the most difficult types of conflicts are those between a supervisor and a subordinate. One of the responsibilities of the neutral in mediation is to balance power levels between the parties. But that is precisely the reason why many farm supervisors avoid mediation as a tool for solving conflicts with their subordinates. And that is also why subordinates fear retaliation after mediation.

In one early NPA case a subordinate said her boss cruelly got back at her after the mediation. When the pre-caucuses have been conducted correctly, supervisors have no reason to lose face before subordinates—or feel that they have been disrespected. If retaliation can be a factor in NPAs, it is even more problematic in traditional mediation. Supervisors may be tempted to abuse their authority to solve problems; subordinates may retaliate through subterfuge.

Over the years we have taken important steps to refine the NPA model so as to *preserve* hierarchical power differences while at the same time encouraging effective dialogue between supervisors and subordinates.

### Hierarchical Power

One of NPA's greatest contributions, as we said, is that it promotes conversation without altering hierarchical power differences. Differences in authority rightly existed before the intervention—and should continue to exist after it.

Whether or not there are relational issues to be discussed, the NPA process is carried out in the context of increasing communication and productivity. In the process, both parties have the opportunity to discover blind spots.

When the model is used to resolve hierarchical interpersonal conflict the third party must master both NPA- and PDM-related concepts. If mediation between peers is difficult, hierarchical mediation is even more challenging. As in any type of mediation or facilitation, important benefits are achieved by involving an *external* neutral.

When the NPA is used as a *hierarchical mediation model* it does not matter at what level within the organization it is used.

As with PDM, there may be situations that require more than one pre-caucus. It is the neutral's responsibility to analyze the feasibility of moving the parties from the pre-caucuses to the joint session. Allowing a lapse of time between the pre-caucuses and the joint session can also help the individuals deal with complex feelings, especially if there is discord or resentment—and also encourage the fermentation of positive feelings. The ideal, when the parties are well prepared and the case merits it, is for minimal facilitator intervention during the joint session. If that was important in PDM, it is even more vital in the NPA.

### Flexibility

Sometimes a mediator knows there is a dispute between the supervisor and the subordinate. Or, an NPA facilitator may detect feelings of resentment and contention only upon meeting with one of the parties in a pre-caucus. At the earliest hint of these feelings, the mediator will want to drop the

discussion of lists to focus on empathic listening.

The mediator who tries to direct the conversation toward the lists prematurely, without letting the involved parties fully vent, will end up losing more time—and worse yet, losing control—in the joint session. Even when it seems the parties have gotten their strong feelings off their chests, the mediator will want to remain attentive to possible leakage of negative sentiments as the parties role-play or discuss issues. Additional pre-caucuses may be needed.

When hierarchical differences between parties are not well established, sensitive situations can arise. For example, a dairy farmer may not have clarified the role of group leader among several milkers who work as a team. In such circumstances, the mediator can speak with the supervisor and together they can decide if a PDM or an NPA process would better suit the parties' needs.

In a very contentious dispute between the parties it may be better to forgo the traditional introduction of the process by the supervisor and have the mediator take time during the pre-caucus to explain how the NPA will be conducted. Once again, this is something that can be decided jointly by the supervisor and the mediator. What must be avoided is a volatile situation that might explode during the introductory meeting.

As in PDM, the neutral will listen with empathy and not move forward into the joint session until both parties are capable of recognizing something of value in each other.

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## SUMMARY

PDM is a mediation approach for dealing with deep-seated interpersonal conflict. After some of the emotional stress is dissipated, mediators can continue to help the disputants prepare for the joint session. Listening with empathy is a powerful tool to help reduce negative emotions. But there are other techniques that also help create a sense of distance between the contenders and the dispute.

By providing tools for better communication, a mediator can help the parties see more clearly and recognize their own faults and their contributions to the conflict. With good measures of tact and gentleness, neutrals can help disputants begin to see blind spots in their communication styles and negotiation tactics.

The mediator also listens to each party with the idea of eventually teaching the person how to express viewpoints in the best positive light. Only after individuals are able to: (1) distance themselves sufficiently from the conflict to see the positive in their contenders, (2) effectively put forth their own ideas, and (3) listen attentively and analytically to other points of view, will the parties be empowered to negotiate successfully in the joint session. When there is doubt about the parties' readiness to negotiate successfully, holding another set of pre-caucuses may save time in the long run.

One of the functions of the mediator in the pre-caucus is to help disputants capture the essence of their conflict by making a list of issues that need to be addressed during the joint session.

When the participants are well prepared, the mediator is unlikely to be required to take an overly active role in the joint session. Neutrals may need to coach individuals on how to formulate questions, ask for clarification, reflect on what has been said, properly frame ideas, avoid defensiveness, and adequately challenge others. Much of this is done through role-plays.

In the joint session, the mediator or the parties may introduce topics of conversation. The key is that all the topics are discussed, even sensitive ones. If the pre-caucuses have been effective, the mediator's interruptions may be minimal, with parties taking responsibility for dealing with the past as well as making decisions about future behaviors. The skills gained through the process will help individuals deal with future conflicts without the aid of a mediator.

Because it preserves differences in authority, the NPA is an excellent mechanism for preventing hierarchical

conflicts as well as addressing them. It is important to revert to empathic listening whenever frustrations are high, rather than push the parties through the process of making lists.

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