This mediation how-to manual brings together the collective wisdom of two of the field's most renowned founders, John Michael Haynes and Larry Sun Fong. The book not only covers a range of mediation cases, but also uniquely provides feedback from the clients as they reflect on the sessions and report on what worked best for them.

Beginning with a review of the theoretical underpinnings of the Haynes model of mediation, the book then presents six case studies with each demonstrating one or more of the organizing principles of mediation. The sessions examined reflect the different mediation areas currently being practiced—business, employment, neighborhood, adoption, education, and family.

The book goes beyond simply reporting what mediators experience as it shares the insights and motivations of Fong and Haynes. This well-rounded approach includes the exploration of the clients' thoughts, helping readers to incorporate successful organizing principles into their own mediation practices.

"This book explains the true humanistic nature of mediation: its respect for the individual, and its belief in the individual's ability to reason, understand, and approach a problem with sensitivity and good faith. If one sees mediation as a process through which the mediator helps to induce the... self-interest, then this book will be an invaluable resource in succeeding in that process. This is a superb manual and a worthy tribute both to the work of John Michael Haynes and to the field of mediation."

— Diane Legomsky, Brown County Community Mediation Center, Inc.

JOHN MICHAEL HAYNES (1932–1999) was President of Haynes Mediation Training Institute, Founding President of the Academy of Family Mediators, and served as a consultant to court systems throughout the world. He appeared on numerous national television shows and authored several books, including The Fundamentals of Family Mediation, also published by SUNY Press.

GRETCHEN L. HAYNES, now retired, was Director of the Writing Center and Assistant Professor of English at Queensborough Community College, City University of New York.

LARRY SUN FONG is a psychologist in private practice, a chartered mediator, and a registered family mediator.

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Positive Conflict Management

John Michael Haynes
Gretchen L. Haynes
Larry Sun Fong

State University of New York Press
Dedicated to John Michael Haynes
1932–1999

He shared his insights, his skills, his life.
Few who had the opportunity to observe John Haynes mediate disputes would deny his artistry. His elegant presence, accented by bow tie and the British accent, and supported by subtle hand motions, were suggestive of a shaman drawing out evil spirits. For many people in the throes of conflict, his reassuring demeanor elicited a calming effect. There was a well-developed sense of theater about John Haynes as he drew from the lead actors—the parties—their best performances. He knew how to reach behind a person's defensive posturing and constructively release the closeted fears that held them in check. He would be the first to admit that he was playing a role, yet there was nothing disingenuous; the compassion he displayed for people mired in disputes was authentic. His professional background and intellectual focus as a professor of social work concerned with social policy and labor-management issues and before that as a political speechwriter, prepared the way for the mediation work for which he would become known. That “calling” came about by chance in 1976 when friends entangled in a divorce at the literal and proverbial courtroom door, requested his moderating assistance. They apparently saw in him what many others would see in the years to follow, his innate ability to foster a balanced and thoughtful atmosphere in which to negotiate a workable settlement.

Haynes, and a small handful of others around the country, recognized the need and value of mediation and was prepared to seize the opportunity to mold it into a functional and marketable form. With his characteristic discipline and
energy, mediation became the topic of his doctoral dissertation and his first book, *Divorce Mediation*, in 1981. Like many artists and scientists who have forged different trails before him, he did not set out to discover a new paradigm of managing disputes, but was ready to be a midwife of sorts to the changes that were occurring in our culture and recognize the need for a shift. The timing was right and he capitalized on one of those rare opportunities to ride the natural energy of that force.

Without risk of overstatement, Haynes’s work can be compared with that of Jackson Pollock, the now recognized brilliant abstract artist of the mid-twentieth century. Pollock’s seemingly haphazard drip paintings were initially castigated and the artist dismissed with the abrupt moniker of “Jack the Dripper.” But Pollock persisted and countered that, “[m]y rhythms are concerned with nature.” Most compellingly, some fifty years later, scientific analysis by some physicists have concluded that “Pollock’s drip paintings are full of nature’s fractals—irregular geometric patterns that turn up in clouds, waves, lightning, coastlines, trees and even the human body.” Pollock, of course, had no inkling that he was engaging fractal patterns that would foreshadow quantum chaos theory (Richard P. Taylor, *The Oregonian*, “Science and Spontaneity,” Richard L. Hill, p. B1, March 7, 2001). Similarly, Haynes’s method taps into and moderates the natural rhythm of conflict. And he, too, without knowing a lot about the whys and the wherefores, offers a pure form of practice that anticipates the formulation of important theory in the field of conflict management. While he was not subjected to ridicule, it is too easily forgotten that when Haynes began to formally practice and teach mediation in the mid-1970s, the field was seen as little more than a passing fad.

John Haynes was not a theorist. While he did describe techniques and suggested strategies in his many books, his work did not delve into abstract theory. He was, however, the epitome of an intuitive practitioner; he did what he did by “tacit knowing,” sensing how and when to intervene as opposed to acting by rote prescription. Ironically, he may have contributed more to theory than many theorists. Few practitioners display the natural ability to offer a model of practice from which good theory can be effectively extrapolated. Just as artists study human models to grasp human form, musculature and expression, mediation theorists should study Haynes’s approach. His style reveals one of the most well-developed and purest sampling of mediation practice and principles to be found. He combined a highly developed intuitive sense with a clear analytical structure, wrapped in a passionate commitment to the belief that people in conflict must be respected and given every opportunity to make their own decisions. With the strong moral groundings of his Quaker background, he lived his beliefs through his work by resisting the ever-present temptations to pass judgment or render opinion. He maintained an unwavering focus on the process of managing disputes and the process was the expression of his values. How he practiced facilitating other peoples’ negotiations as a mediator was pure enough that it required no extraneous adornment. His style did not require preambles about the value of collaboration, inquiries into peoples’ motivations, or the presumption of setting
rules for communication. His empathy for people trying to make sense of diffi-
cult situations was self evident in his demeanor and bearing.

John masterfully harnessed and constructively redirected the energy of the
conflict. Without suppressing or avoiding the conflict, he shaped the direction of
the discussion. He could not demand respect or impose his authority because he
did not work for a court, judge, or any other organization. He derived his con-
siderable power directly from the parties. His most powerful technique was the
use of his own vulnerability. He never assumed he could or should attempt to
persuade, cajole, or otherwise convince anyone of anything; therein was the
source of his power and effectiveness.

Formulating a theory of mediation is problematic from the outset. As one of
many modes of conflict management, mediation may not require or benefit from
a distinct theory of practice. Unlike traditional professions that are each
grounded in distinct theoretical systems that provide a clarified vision of the
field, mediation cannot as easily remain a separate discipline. Whereas theories
of jurisprudence inform legal practice, and theories of human behavior focus a
variety of therapeutic modalities, mediation practice requires the integration of
the knowledge bases and theories from multiple disciplines. The emphasis is less
on new or different knowledge and more on the systemic, reconfiguration of
what is already known. Mediation practice requires a thorough grounding in con-

lict theory, communications theory, learning theory, systems theory, political
theory, legal theory, as well as principles of social psychology, biology, economics,
history, anthropology, philosophy, and theology. As such, mediation is a uniquely
modern profession that demands a departure from the traditional thinking
frames that hold the established professions in place.

For most professional practitioners, abstract theory is an afterthought. No
criticism is intended; the realities and requirements of daily practice leave little
time for reflection. In some ways that is useful; too much theory without ground-
ing in practical experience can be constraining and unnecessarily press a practi-
tioner to fit into a set form of practice without due deliberation. On the other
hand, without some theoretical buoy, a practitioner might feel adrift. In the
resulting void, personal beliefs, convictions or ideologies are often confused with
theory or the practitioner latches on to a passing theory because it seems to make
sense or is politically expedient. For instance, many want to believe that people
are basically good at heart and are thus drawn to describing themselves as col-

aborative mediators. Others who are more skeptical are attracted to theories that
reflect that view and support a more harsh or competitive approach to practice.
Often, like newborn ducklings imprinted to follow and act like the first live fig-
ure they see, be it duck or dog, mediators appear to carry the approach and the-
ory, such as it may be, of their first training experience and trainer.

Most novice practitioners have a jumble of techniques and skills to manage
conflict that have been gathered and influenced by a variety of scattered sources
in addition to their mediation training. Just some of those are: their conven-
tional wisdom about what does or does not work; political necessity and the


requirements of pleasing the referral source; the dispute context, be it a family-divorce or business dispute; their professional training and experience as lawyer, judge, counselor, businessperson, clergy, accountant, or other professional background; and, perhaps most important, personality and other personal factors such as age, gender, religion, race, and cultural and ethnic background.

Theories are not true or false; they are rather, useful or not useful. Generally, a good theory is drawn from observation and experience—from the bottom up. Once developed, the theory is turned over and taught from the top down. It is at this critical point that theories are most at risk. If presented or taken as true, then the same theory that can be conceptually useful, can quickly become an inflexible standard of rectitude by which practitioners’ competency is judged. If the degree of devotion required by theory adherents is particularly strong, others might be intimidated and experience distortion and force fitted into the theory.

While most practitioners want to know what works, a less frequently asked question is Why? And, if a particular technique does not work, what alternatives are available? This is where theory offers the ability to practice more by design and systematic reflection and less by chance.

While an overarching theory of mediation practice may not be functional or necessary, the field cannot develop, and practitioners limit their effectiveness without theoretical reflection. Those who disdain theory and pretend that being an eclectic practitioner who does whatever works is sufficient, do so at their peril. Theory is at core, the process of conceptualizing and organizing our hypotheses about what are effective strategies and techniques, and developing a systematic approach to thinking about how we practice. Mindful of the risks of overtheorizing, the failure to engage theory endangers practice competency.

In the end, it comes down to an idea that was central to John Haynes’s approach to practice—respect for the parties. The mediators’ participation in other peoples’ personal conflicts is too often thought of as a favor to them, when it is really an honor and compliment to be invited. The extent to which a mediator is allowed to aid and facilitate other peoples’ negotiation, especially in difficult circumstances, is in part a testament to their level of trust. To earn that trust, the least professional practitioners ought to do before entering other peoples’ conflicts is examine their own feelings and responses to negotiation, biases, prejudices, and preconceived beliefs about the sources of conflict. Reflecting on theory requires that kind of consideration—What is the mediator trying to do and why? Only in that context does the “how” one does mediation become important. As good as John Haynes was, he would be the first to say that mediators should not try to imitate him. It is unlikely that anyone could or can. No strategy or technique works all the time or in every context. The critical difference between a plodding novice and a sophisticated professional practitioner is the determination to be reflective and the hesitancy to become locked into any particular approach. In the end, the most important lesson to be learned from John Haynes is from the example he set for intellectual rigor and passionate commitment to the effective management of issues and disputes.
The present book was written with Dr. Larry Fong who studied with John Haynes, was mentored by him and became a valued friend as well as colleague. Together they explored the nature of mediation as they trained other mediators. Much of Haynes’s technique, as will be clear in this book and all of his others, centers on the questioning process. John and Larry both hesitate to make statements which often call for rebuttal, and prefer instead to ask questions which ask for reflection. Not surprisingly, the same practice skills that serve mediators well in managing disputes are useful as we think about theories of practice.

Just as Jackson Pollock was accused of making art look like child’s play, John Haynes made mediation look deceptively easy. In one sense, he has done those of us who follow him a disservice; he has allowed us to believe that his natural manner of managing conflict can be accomplished without concerted effort, disciplined determination, careful preparation, and thoughtful reflection. That was Haynes’s artistry, to make a hard task look so natural and easy.
This book has been a long time in the making, with many diversions along the way and ultimately the death of the principle author, John Haynes. The two remaining authors have completed the work, relying on our many conversations with him, an intimate knowledge of how John worked, and how he thought about the problems of mediation.

John often quoted a saying: “There is nothing so practical as a good theory.” He was regularly challenged to come up with a theory of mediation that would stand out side, and along side, the theories of therapy and the law. Such a theory would predict outcomes of behavior with some accuracy and could be used to test practice for its quality. John sought to derive his theory from the careful recording of interactions and objective analysis of the contents. He saw mediation as the third leg of the stool, of equal value with, often deriving theory from the therapy and law, but ultimately independent of both. Thus he sought to keep a mediation theory pure; that is, while acknowledging their influences, separate from either therapy or law. Many of the theoretical principles used in this book were strongly influenced by systemic thinking about problems and conflicts in everyday lives. These principles started to be enunciated most clearly in 1993 when John and Larry presented a workshop together in Dublin, Ireland. John’s ideas grew out of reflections on his practice that led to theory, also drawing on the systemic principles of Luigi Boscolo of the Milan school, and other systemic thinkers.

In using transcripts of sessions, we are able to examine the actual words spoken in a session, and reflect on the thought processes of the moment to better understand what was happening and how we can use this knowledge to produce better mediation practice. We attempt a dispassionate observation of the interactions, but in such an exercise, our professional choices must influence what we choose to comment on. In the previous case study book (Mediating Divorce, 1989), other readers came up with interpretations quite different from the authors’ of the same material. We can only state that this is how it seemed to us at the time, and that upon reflection, other interpretations are plausible (and may even be more accurate). We welcome the present readers’ interaction with the text; from it and the continuing dialogue among mediators will grow the theory
that we all seek. Videotapes, from which these transcripts are taken, have been shown widely and elicit a variety of comments. In training, they make learning more exciting, and show how important it is to stay within the realm of the clients, meeting their needs on their own terms.

These cases are drawn from several fields of mediation “beyond divorce,” including business, employment, community, family, and school. They reflect the broad base that mediation has achieved in recent years, and will appeal to mediators in all fields of conflict resolution. The lessons are not limited; for example, from the adoption case, we see how the participants’ dynamics play a crucial role in the outcome of a session. We can use this insight, even though we never mediate an adoption case ourselves.

We acknowledge and thank Alice Fucigna who, with tireless and painstaking efforts, transcribed the videotapes of John’s sessions. It was not always possible to hear every word, and those lapses are noted in the text, along with the Uh-hums and Hmmms. The texts have been edited only to the extent of eliminating repetitions, but everything else is included—verbal warts and all.

Also, acknowledgment and thanks go to Roxanne Nordlund, who transcribed the videotapes of Larry’s mediations. Like Alice Fucigna, she spent hours listening to the tapes before transcribing them. She had to listen to the words and context to make sure that the transcripts are close to what the clients actually stated. Watching a videotape, listening to the words and then typing them into transcript is not an easy task. Also Doreen Donison, who is Larry’s secretary, reviewed the transcripts to make sure they were reflective of what everyone was saying. We are indebted to Robert D. Benjamin, M.S.W., J.D., who took time to read and consider the manuscript in its broader implications. He has added his own perspective in the Foreword.

The words of Orissa E. Arend, M.S.W, B.C.S.W., a mediator who trained with John and practices in New Orleans, seem appropriate here. “John Haynes, you taught me that the problem is the problem, not the person; that the truth matters less than how we see it; that guilt and judgment have no place in problem solving; that a mediator or a parent can provide structure for a problem-solving process without directive interference; and that we are all in this together. You went out before the New Year came in, but I’m here to report . . . that we are living today in a future with a difference. And this is only the beginning. You can say, ‘I told you so.’”

John’s practice of mediation was deeply rooted in his moral sense from his Quaker faith. It came more from the heart than from the head. The analysis came afterward, looking for the principles, the threads that came together to make the tapestry. When he said, “I think both of you are feeling . . .” it was instinctive rather than calculated. He felt people’s pain and confusion and responded to it as directly as he could to show them a way toward hope. But he also wanted to rise to the challenge of sharing what he did with others, to make his practice replicable. Otherwise, it died with him. That is why this book became important: to try one more time to find the patterns, extract the principles, and share the
process. Whether this rises to the level of “theory” remains to be seen. That task may have to wait for someone less involved in the ground-level experience.

Larry’s mediation practice, as in many ways with other mediators, grew from his own roots. Larry is a second-generation-born Chinese Canadian, and he still carries many of the traditions of his culture in his everyday life. His practice was always oriented toward the notion that mediation was more of a cognitive event than an affective one, thus distinguishing the difference between mediation and psychotherapy. His mediation practice culminated through his experiences as a schoolteacher, supervisor of Child Protection and Family Court Services, as well as a psychologist. Part of Larry’s practice included arbitration, and his work in the psycholegal practice made mediation even more important as another way to resolve conflicts that increased respect, dignity, and face for all disputants involved. His and John’s travels throughout the world reflected that human beings have many of the same kinds of feelings, thoughts, concerns, and disputes as their neighbors in another country. The present transcripts and videotapes focus on an important area not yet touched on—disputes outside of family. The videotapes on which the chapters are based are also available.

A word about language: we recognize the importance of nonsexist language in mediation. Where appropriate, we have used the plural of pronouns to avoid the “he or she” quandary. However, in speaking of the mediators in the cases, we have used the masculine since both are men. We hope the reader will make the necessary adjustment in his or her thinking.

This book, then, is offered as another step in the process of professionalizing mediation. It is not meant as a prescription for all mediators, or all mediation. John always started his training sessions with the comment, “You will find much of this useful. You will find some of it not useful at this time. And some of it will seem off the wall. So take what is useful to you now, and maybe more will become useful in the future. And some of it you will never use at all. That’s all right.” We distinguish our insights from that of the role of the mediator-as-technician, who is told there is only one right way to think about mediation. Professionals in all fields make important decisions because they have the ability and discretion to do so.

Gretchen L. Haynes
Northport, New York, U.S.A.

Larry S. Fong
Calgary, Alberta, Canada
Principles of Broad-Based Mediation Practice

This book allows the reader to watch mediators at work. It is designed to ensure that mediator trainers, those who conduct mediation, or those new to the field of mediation can, with relative ease, envision two well-known mediators. It allows the readers to have insight into what was going on the minds of John Haynes and Larry Fong during their mediation sessions. We have chosen six cases from a range of mediation fields to demonstrate what we believe to be the core mediation-specific strategies. In addition, we have identified a number of generic principles that are not necessarily specific to one particular field of mediation. We seek to learn from the broad base of mediation. Thus we are trying to extract some theory from our practice because we believe that as theory informs practice, practice can also inform theory.

As mediation evolves from a practical exercise to a professional practice, we need to agree on a set of theoretical principles. Michael Lang, a leading mediation trainer, comments that without such an understanding, mediators are “skilled mechanics trying out one tool after another.” Thus, he maintains, without a theoretical underpinning, they do not consider the reasons behind their actions, or the consequences, nor can they adequately evaluate their success or failure. They have no way of learning from their experience, or passing on their understanding to others. Theory, Lang concludes, “provides both a foundation for our work and a way to understand the nature of the process we are managing. It gives the practitioner a foundation upon which to base an assessment of a conflict situation and to design an appropriate intervention” (Michael Lang, “Becoming Reflective Practitioners,” Consensus, MIT-Harvard Public Disputes Program, 1996; reprinted, Mediation Information Resources Center, Eugene, OR, 1999).
As knowledge in the field of mediation matures, professional mediators seek ways of understanding, explaining, and reflecting on what they do. This can be stated as an *If–Then* hypotheses to predict participants’ behavior in a given situation. Hypotheses are tested and if found to be false, they can be revised or discarded. If found to be “not false” enough times, they become the benchmark by which to evaluate the success in the given situation, and to pass on the successful models to aspiring practitioners.

Hypotheses serve as the cornerstone of mediation planning to ensure that there is order in the mediation. Hypotheses are tested constantly by measuring expectations against feedback from the clients. From the feedback come even more questions. However, hypotheses are never true, only useful or not useful. The mediator must be sure that the hypotheses they derive are useful in providing insight into the clients’ problems. John Haynes has coined the phrase “Mediation is the management of other peoples’ negotiations.” Thus the mediator needs the best guess (another definition of hypothesis) about what to expect as the negotiations take place.

While it may be too soon to lay claim to a unified mediation field theory, we hope to stimulate analytical thinking in this direction. Thus this book is meant to focus the readers’ thinking about their thinking. It is important that this book become a living document that endures throughout time rather than one that crystallizes thought of one mediator over another. Let us examine how theories are formed.

Theory can develop in two ways. (1) Deductively, we create an interpretative framework to explain a particular process or interaction. For example, we can predict that pure water will react differently to salt water with regard to freezing temperatures. We test this hypothesis repeatedly to confirm or falsify it. If pure water continually freezes before salt water, we cannot be sure it will never freeze after salt water. But we can predict, with some certainty that the next time, it will continue to freeze first. (2) Inductively, theory is developed through close scrutiny of individual interactions to discover the organizing principles that are empirically grounded in practice. In our example above, we would observe that ponds freeze before the ocean bays and form a hypothesis about the temperature at which water freezes: salt water freezes at a lower temperature because of the salt.

The authors have developed their practice of mediation with reference to theories derived from many sources. Now in writing this book, we rely primarily on the second, inductive, process to identify a conceptual model applicable to all contexts of mediation: family, business, education, environmental, medical, and others not yet established.

Michael Benjamin and Howard H. Irving further distinguish between different levels of theories.

Level one refers to formal theory, which in the exact sciences [such as physics] involves the systematic relationship between axioms, assumptions, propositions and hypotheses. The requirements at this level are so
strict that no theory in the social sciences can meet them. Level two refers to semiformal models. Here, the technical requirements are less stringent, involving models that display the relationship between specific factors from which hypotheses may be deduced [that is, can be tested and found to be false]. . . . Level three refers to exploratory models, which discuss the relationship between an incomplete set of factors and propose no testable hypotheses. Finally, level four refers to atheoretical practice models—the so-called how-to-do-it models [purely descriptions]—that are based on a wealth of experience but make no theoretical claims as such. (Mediation Quarterly, vol. 16, no. 1, Fall 1998)

We trace the evolution of our thought about mediation from level four toward level two over the last twenty-four years as John Haynes sought to explain his practice in numerous articles and the previous three books. His thought evolved since 1976 when he began to conceptualize the model. “Divorce Mediator: A New Social Work Role,” (Social Work, vol. 23 (1), Jan. 1978) was published, and the result has since been termed the Haynes Model of Mediation, most clearly elaborated in The Fundamentals of Family Mediation (State University of New York Press, 1994). The model suggests that mediation is a process of identifiable steps or stages and the role of the mediator is the manager of other people’s negotiations, so that the mediator controls the process and the clients must control the content. The goal is an agreement negotiated by the participants that satisfies the needs of all involved. Mediation is an exercise in problem solving; these definitions are central to the Haynes conceptual model.

In addition, Larry Fong has explained how his practice revolves around the importance of asking small questions that become larger within the context of mediation. Questions, neutrality, hypothesizing, and strategizing all form the hallmark of his mediation, ensuring that the clients have full, participative, and comprehensive understanding of what their problem is and how to resolve it. Through temporal questions and the use of reflective questions, the interview of the clients becomes the intervention. The questions are meant to be provocative through personal reflection. Thus through such a method of questioning, clients can better change their attitudes and behaviors to meet their problems mutually and respectfully.

The present task is to examine our practice, to develop testable hypotheses about what we do, throw out what proves unproductive, and further refine the hypotheses. It is a slow and often unrewarding process, and perhaps a better theory will come eventually from the academics, who approach the task by the deductive method. But until that day, we will do the best we can.

Michael Williams, in a private communication, adds this note to the search:

I wonder not so much about theory as about theorising. I think at this stage in the evolution of mediation, we can say some things seem to work most of the time, some seem to work some of the time, and others don't
seem to work at all. I think we can also say that if you call yourself a mediator, there are things you should not do, because they’re unethical. I’m not convinced that we can develop a universal theory of mediation. Every year for the last four or five, I’ve been saying, “The essence of mediation is . . .” And ended the sentence differently each year.

I think examining what happened in a given mediation enables us to see patterns and from those to devise models. Any model that emerges from that examination may be useful because it can be applied to other mediation, or give us ideas that we can use in other mediations. But there isn’t a universal model, applicable in all cases. Mediation is an art, not a science. (January 2000)

Dorothy Della Noce, writing in Mediation Quarterly (vol. 15, no. 2, Winter 1997), outlines her suggestions for constructing a successful conceptual model. We find these ideas helpful in formulating our current thinking about moving from the working model to a level-two theory (Benjamin & Irving). In developing this model to date, the present authors have drawn on established theories in other fields, notably communications theory and the power of metaphors in shaping meaning; on negotiation theory and various theories of conflict and conflict resolution; and elements of systemic family therapy. How these theories have influenced the model is spelled out in Mediating Divorce (Haynes & Haynes, Jossey-Bass, 1989). It has been our concern to take what is useful from these fields to construct an integrated model that is clearly distinguished from them, and particularly from the fields of both law and therapy. We believe that mediation is distinct in its practice and goals, and should entertain a discreet theory.

With this in mind in the present work, we have made explicit the “purposes and contours of the proposed model . . . [so that] the practitioner can choose to accept or reject the model on the basis of how it accords with his or her view of mediation, conflict, people, and the world” (Della Noce, p. 139). Certain themes run through all the cases, and we have identified the terminology that seems to fit. While each situation is different, yet the patterns emerge and eventually can be identified as organizing principles.

If this results in a discreet theory, then these principles can be applied to different cases to predict outcomes, to define, and therefore evaluate the “success” of the process. The cases presented here involve a single session, the first, and as such few result in agreements per se. Rather, we can see how the parties shift from their opening, antagonistic positions into more thoughtful, cooperative behavior. “Success” as measured here is the ability of all the parties to continue in the dialogue. In one case, Sexual Harassment, success comes in the form of an agreement. In another, Open Adoption, the three parties agree to draw up their ideas to become part of a final written agreement. But these are not the only measure of success. The second Fong mediation ends with the two sets of parents able to see the others’ point of view for the first time. The other three Haynes’s cases illustrate different outcomes: after intense struggle, the clients are able to listen to each other
and agree that cooperation, growing from pursuit of their mutual self-interest, is their best course of action. The actual agreements will emerge out of the cooperation. Mediation, we believe, is a long-term process and each session reflects small steps toward eventual “success.” We might say that the success of a session is unknown until the clients show up for the following session!

The purpose of this chapter is to introduce those organizing principles of mediation that we believe occur in all of our work. Central to the process is the notion that the clients must own the content of the discussion and the ultimate agreement. Some of these principles and strategies have been described elsewhere, and we will briefly discuss them here. Then we discuss more thoroughly the new ideas we have developed from our work for this book. In the following chapters we have carefully annotated the transcripts of our work. Where useful, we have added those nonverbal behaviors that help the reader to understand what is happening in the session.

Let us define two of the terms used here. Organizing principles, as stated above, are the bases from which theory is constructed. Strategies are the actions the mediator takes, based on the organizing principles.

**THE PROCESS OF MEDIATION**

Clients come to mediation with a presenting story that almost always has the same three components. The details of the stories are unique but the structure of the story is almost always governed by these three components.

The first is their personal and exclusive version of the events that led them to mediation. Each participant gives a version in a way that demonstrates how good that person is. It is a statement of innocence. The second part of the story is the complaint against the other[s], which demonstrates how bad the other person is. Each story usually maximizes gain and minimized loss to themselves. It is a statement of responsibility. The third part of the presenting story is the teller’s definition of the problem. The problem definition has the same characteristic as the complaint. Each person’s problem can only be solved by a change in the behavior of the other party. Each person feels that the change must come from the other. The person who defines the problem usually has the ready-made solution.

We can see from this that, no matter how much information the mediator gives to the clients before they come to mediation and repeats in the opening few minutes, the clients do not see a mediator sitting in front them, but a judge. They each want the mediator to judge them well and to judge the other badly.

This creates an interesting problem for the mediator who must now convince the clients that he is a mediator not a judge, and that he is not available for judgment. While shifting the clients from the role of judicial consumers to mediation clients, the mediator must also attempt to help the clients develop a new mutual and neutral definition of the problem to be solved in the mediation. The mediator cannot be helpful to the clients by helping them find solutions to disparate
problem definitions. If the mediator focuses on one of the presented problem definitions, it will cause consternation in the other client[s]. If the mediator persists in focusing the clients on the search for a solution to one client’s problem definition, then the other client[s] will leave the mediation. It is our opinion from providing consultation to many practicing mediators that this is the most common reason for clients to drop out of mediation.

Thus the early task of the mediator is to help the clients discard their individual definitions of the problem and pursue a new, mutual problem definition (MPD) that, when solved, benefits everyone. In multiparty mediation the difficulty is compounded, since each participant must agree to the new problem definition. You will see a good example of this issue in the case mediated by Larry Fong between disputing neighbors trying to protect their children.

As the manager of the negotiations, the mediator uses some generic strategies to help the clients arrive at a common definition of the problem. They are mutualizing, normalizing, maintaining a future focus with an additional focus on what the clients want rather than what they do not want, and summarizing the useful information the clients provide while ignoring the unuseful. Let us look at each of these generic strategies.

**Mutualizing**

The mediator continually points out the mutuality of the clients’ positions. Whether it is as business partners or as parents, mediation clients share many concerns and interests. However, in the argument, each usually tries to show that only their story is the useful one, and only their problem is the one worth solving. Each time one client makes an exclusive claim, the mediator reminds the client that both points of view are valid. In the Bagels chapter the mediator uses the metaphor of the goose that lays the golden eggs to remind the clients of their mutual interest in protecting the joint business. We have identified other uses of the mutualizing strategy throughout the book.

**Normalizing**

Most clients have difficulty explaining to themselves why they are in mediation. Their life has experienced many conflicts and most of them have been settled without the help of a third party. Therefore, the clients must justify to themselves why they are in mediation now. It seems that most satisfy themselves with the idea that their dispute is abnormal, or more common, that the behavior of the other parties to the dispute is abnormal. Assuring the clients that their situation is normal helps them accept that it is also solvable. As they give up the idea that the behavior of the others is abnormal, they also move toward creating a problem-solving environment. They can relax, knowing that things are normal and therefore, in this experience, solvable.
Maintaining a Future Focus

Most clients want to talk about the past, yet the past contains the problem. The solution lies in the future. (See Table.) Therefore, the mediator can only mediate in the future tense. Talking about the past is not mediation since it is either judgment—trying to decide who is right and wrong from the past—or therapy—helping the clients understand their past. We believe that mediation can help people find new, hopeful, and mutually respectful futures without settling all of the past issues. In mediation, the concern about the past changes as a result of creating a different future, rather than reaching an understanding of the past. In fact, much of the research today on positive psychology is future focused.

The Past and Future in Mediation

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The second part of maintaining a future focus is finding out what the clients want. Most clients are highly articulate about what they do not want and equally reticent about what they do want. However, the mediator is only useful to the clients in helping them to determine what they do want in the future and then helping decide how they can get what they want. It is difficult for the mediator to help clients not get what they do not want, which is what clients expect if the mediator dwells with them in the past.

In reading these cases you will note how we always try to open the session in the present tense and then move into the future tense as quickly as possible. Much of our mediation training focuses on how to help clients find a future that is different from the past. Most clients will tell mediators they want a future that is hopeful and quite different from what they have been through (the past). But they do not know how to get there from here. Contrast that to the present legal system that makes decisions about the future based on the past. Mediation is more about focusing on the future to decide what is best for the future. If one asks clients what they thought of the past, especially disputants, their descriptions of the past are of sorrow, regret, and anxiety. When one asks them about the future their themes are of hope, a future without the same problem, or a whole
host of words and feelings associated with “moving on.” The future is always perceived differently, especially if there has to be an ongoing relationship.

A notable exception reported here is the case of Open Adoption, in which the mediator recognizes that the natural mother and the adoptive parents have had constructive discussions in the past. Therefore, he decides to refer to the successful past as a way to bridge the gap they now face. The strategy illustrates the power of the past to influence attitudes and behavior in the present, and lead to a solution for the future.

Summarizing

When the clients enter mediation, they will experience a conversation about their problem that is different from the conversation they will have with another professional about the same problem. For example, clients taking the problem to a lawyer will have a conversation about their rights and how they can exercise those rights while blocking the other’s rights. The same problem taken to a therapist will, depending on the theory of the therapist, focus on helping the clients see how a better understanding of the past prepares them for a different future. The focus will be on the behavior of the individual and the dynamics of the participants. In mediation, the focus is on reaching a negotiated settlement.

What, then, determines the direction that the conversation takes about the same problem in these different professional settings? It is the parts of the story that the professional focuses on. For example, the typical attorney, on hearing the clients’ stories, determines the right and wrong of the case and the legal rights of each of the parties. The therapist determines the dynamic problem and begins working on that. The mediator determines what needs to be negotiated. He does this by asking questions and making comments about those aspects of the story that will lead to negotiations. He avoids the unuseful parts of the story, which we define as including those parts relating to the clients’ legal rights or their emotions. The areas of useful conversation in mediation are about the data, the goals of the clients, and their strategies.

The mediator maintains a focus on these and summarizes back to the clients any information they provide that falls within these three areas. As the mediator summarizes back to the clients the useful aspects of their stories, they tend to focus on what they perceive is the important information to the mediator. They tend to focus on goals and the future as the sessions proceeds, if their goals and the future are central to the mediator’s summary and subsequent questions. In another way of thinking about this, the mediator dis-attends to the unuseful and attends to the useful parts of the conversation. The clients respond to his or her attention to their goals, which makes for a useful conversation. You will see clearly how this works in the transcripts.

If clients indicate that they need to focus on the legal aspects of their experience, then the mediator should refer them to a legal specialist. In the same way,
if one or more clients indicate that emotions are interfering with the mediation, they should have the help of a therapist, outside the mediation framework. This is not to say mediators should be unsympathetic to emotional states. It simply says that clients come to mediation to find solutions to specific problems and that is the primary task of the mediator.

**THE ORGANIZING PRINCIPLES OF BROAD-BASED MEDIATION**

In addition to the ideas discussed above we believe that we can identify a core of organizing principles that are demonstrated in our work. These are present in all types of mediation and regardless of the profession of origin of the mediator. We can describe our vision of mediation in three categories. There is first the structure (data collection and display, hypothesis development and testing, et cetera). There are the generic strategies that we use as we move through the stages of the structure. Finally there are the organizing principles that provide the “Aha!” in our analysis of what happened in a session. Once we are aware of their power in advancing or obstructing a session, we become more focused and efficient in our practice.

- Working with the presenting and the metastories
- Choosing the client to ask first
- Choosing the central issue (also called identifying the underlying problem)
- Making process versus content suggestions
- Teaching clients negotiating skills
- Maintaining and shifting roles in mediation
- Using language to create shifts safely
- Developing a future with a difference

These principles are present to some degree in every mediation. Once they are understood, the mediator can use them to generate hypotheses to be tested in each session to understand what is going on, to predict what will happen next, and to gauge the success of the activities. In the following discussion, various principles are highlighted in the various cases. One case may illustrate two or more principles and the commentary at the end of each chapter analyzes the principles fully. Here, we simply draw the reader’s attention to the various examples.

**Working with the Presenting and the Metastories**

We believe that mediation is all about storytelling. It opens with each client’s presenting story. It continues as the mediator helps the clients develop a mutual story about their problem. While doing this, the story moves from a blaming, past-focus to a cooperating, future-focus that leads to an agreement embodying a future with a difference for all involved.
In addition to the presenting stories clients also have metastories, an often unrecognized mental superstructure, which controls the way they think about the world and life’s problems. The metastory is the basic motivating force or filter through which the clients view every situation.

For example, a client may believe that “the world is a minefield.” In this case he will filter all experiences through this metaphor and it will shape an essentially suspicious nature that will view new ideas as potential mines. Another family might operate under a “circle the wagons” metaphor and defend itself against the outside world. In this family, loyalty under pressure is essential and family members are judged, in large measure, by how loyal they are to the family in a crisis. Independent thinking becomes dangerous since it might lead the independent thinker to desert the family. In chapters 4 and 5, we meet the McDougal family who live according to a clear metaphor about how to parent that is shared by the adults but is being challenged by their only child. The family metaphor circumscribes the mediator’s behavior since he can only act while not violating or directly challenging it. Rather, the mediator works with the parents’ metastory and assists in creating an environment of change in the family within the confines of the metaphor. The task is the same for all mediation clients.

This does not mean that the mediator takes a therapeutic stance by dealing with the metaphor, even though the particular metaphor might be dysfunctional to the family. The metaphor establishes the parameters that bound the presenting story and define the direction and amount of movement that can take place.

In the Parent-Teacher case we see two clashing metaphors. The teacher’s is that professional teachers know what is best for the pupils. The mother’s is that good mothers protect their children. In that chapter you will see that movement is defined by these two metastories and limits the way in which the mediator can help shape a problem definition for the clients. The two families in Neighbors, chapter 4, have similar metastories about how to be good parents and these lead to conflict between the adults as well as the teenagers. The mediator honors the stories in working with the families. Thus the metastory dictates the process as well as the content.

In chapter 2 we meet Ross and Dan, two businessmen who are in dispute about whether and how to modernize their factory. Each of them is governed by a different life meta story that constrains the mediation and governs the direction of any movement in the presenting stories toward solutions. These cases will be helpful in understanding how the mediator deals with life metaphors.

Choosing the Client to Ask First

When the mediator meets with the clients for the first time he must decide on the level of formality—Will he use first names? In addition, he must make a choice as to who speaks first. To whom does the mediator direct the first question in the mediation? This decision is very important and influences the rest of the session.
We can divide the problem into two factors. The first is to think about the clients as the *complainer* and the *defender*. That is, one person is filing a complaint about the other, or whose story is essentially a complaint about the activity of the other client. Our sense is that it is useful to start with the person who is filing the complaint. If the mediator starts with the defending person, they have no story from which to work and, therefore, are in the position of only being able to deny the existence of a problem. This puts them in a confusing position and adds to the ire of the complainer.

The pitfalls of the latter approach are illustrated in the Sexual Harassment chapter. The mediator directs his first question to the professor (the defender) who can only deny any problem and, in order to make a case, attacks the motives of the complaining student. The mediator quickly turns to the student for data and develops the essential story of the mediation. When the professor’s turn comes a second time he has a story to work from and his behavior is less an offense, but still more so than if he had not been asked to go first. Thus do we learn from our mistakes.

In the Adoption chapter, the mediator focuses some of the initial questions on the birth mother. In this mediation there is the apparent “two against one” problem where there are two adoptive parents and the natural mother. The mediator wants to make sure that the original storyteller (the natural mother) has the ability to start off. Her story is the first “natural” story as it is she who gave birth and allowed for her son to be adopted. Later, the mediator sees her story as a theme of a “gift or giving.”

In all mediation, the tenor of the talks is determined in the first minutes of the session. While the mediator cannot expect, and should not try, to eliminate conflict from the session except through a negotiated agreement, he can make the session more productive by structuring the order of the storytelling so that the one who replies has something to reply to at the beginning. When doing this, the mediator must also be aware that the replier is forced to pay attention to the complainer’s story, thus giving greater credence to the other’s position. If the mediator fails to pay attention to this paradox, the person going second in the storytelling order is put at a disadvantage.

Let us see how this works. Imagine a session: A opens with his story. Assume the mediator interrupts with a summary after one minute and then invites B to speak. B will begin by refuting A’s story for one half of the time and then proceed to tell his story. Again the mediator interrupts after one minute, summarizes and turns the dialogue back to A. A begins by refuting B’s story for one quarter of the time and adds to his own story for the balance of the minute, thus making it stronger. When B’s turn comes again, he has a stronger A story to refute and so spends another one half of his time refuting and half adding to his own story. You can see now that in the first four minutes of the session, we have spent three minutes hearing A’s story and only one minute hearing B’s story.

The mediator can help alleviate this problem by (1) keeping the imbalance in mind, and (2) noting to the clients that he has not bought A’s story over B’s.
This lessens B’s need to convince the mediator that A is wrong. Finally, (3) the mediator can maintain a focus on the mutuality of their situation by the way he summarizes the two stories.

The second factor relates the issue of gatekeeping. We make the case in the Parent-Teen chapter that each family has a gatekeeper who must be deferred to in order to gain entry into the family. Gatekeeping is also present in most multiparty disputes.

A gatekeeper is the person in the group informally designated to handle initial contact with the outside world, and to protect the group from harmful intrusion. If the mediator begins with an undirected question (a question asked to the group as whole rather than an individual), the gatekeeper will usually respond first. The mediator notes this role and honors it because the gatekeeper can determine whether the mediator is admitted to the secrets of the group. In these cases, Mrs. McDougal [Parent-Teen] is clearly in this role.

In business settings the gatekeeper is the usually the most senior person present. If the mediator opens with a directed question to a junior person, it places the junior in a difficult position since that person cannot answer the question adequately until the gatekeeper acknowledges the mediator. At the same time the gatekeeper is annoyed at being ignored.

In multiparty mediations where an overt hierarchy does not exist, such as in neighborhood disputes, the mediator should attempt to open with a non-directed question aimed at one of the contending parties so as to allow the leader (gatekeeper) of each group to emerge organically. When the group has identified the one responsible, this helps the mediator in identifying the spokespeople in the room and suggests who the mediator should focus on as the negotiations get underway.

You will see the mediators using different techniques in deciding who goes first. Some of these will be helpful to you in deciding how you open a session.

Choosing the Central Issue

Most people come to mediation in response to a perceived crisis in a relationship. The problem may be long standing, but a specific event transforms the nagging, uncomfortable situation into a crisis demanding action. For example, in the Parent-Teen case, the family has experienced a developing problem as the rift between the parents and son grows wider. However, a call from the school counselor turns the simmering situation into a crisis demanding attention, so the family seeks mediation. The crisis essentially defines the problem for the family and shapes the presenting story. In this case, “the son’s behavior.” However, as mediators, we know that laying the problem on one person (what in therapy is called the identified patient) will only result in a deadlock. However, we can not totally ignore the presenting story since we would have to jump to a conclusion as to what the central issue really is.
The mediation literature refers to the “underlying story,” which is different from the metastory described above. Some mediators recommend that they should try to reveal the underlying story. However, when do mediators know when they have reached the underlying story. If we think of the stories as being like onions, then how many layers do we peel away before we reach the right layer, and how do we know that if we peel a little (or a lot) deeper we would find the “true” underlying story?

When therapists look beneath the presenting story, they will stop peeling the onion at the point they find an underlying story that matches their theory of human behavior and therapy. This explains why a therapist with an object relations theory can be as helpful as a family systems therapist to a client with the same presenting story.

The central issue is a subset under the problem definition, which can be seen as a general statement with branches. Often the problem definition contains three or more subissues, any one of which could be negotiated.

In a mediation, we begin with general questions to elicit responses about the presenting problem. By summarizing back the useful information, and ignoring the unuseful data, we begin to see the outlines of the various issues. We must sift the data in our minds to determine where to turn first to seek a mutual problem definition about these issues. Often more aspects of the problem emerge as the session progresses, or wholly new issues may surface. At some point, the mediator achieves a mutual problem definition and must then decide which of the subset of issues to pursue toward the eventual agreement. A classic example of getting to the central issue lies in the case of Tom and Pat reported in Mediating Divorce. The mediator helped the clients formulate the presenting issues into a problem statement. But agreement eluded the session until the issue of the mother’s fears could emerge and be dealt with. The mediator must remain flexible in testing the hypothesis about what the central issue is, and not become wedded to a particular issue if an agreement is to emerge.

In the present cases, we see the problem clearly in another aspect of the Parent-Teacher chapter. Each woman puts forward her own definition of the problem and lays claim to a central issue—in stark contrast to the other’s claim. The mediator cannot begin with either issue without losing the participation of the other party. He must try to focus their attention on the problems of the child as primary, regardless of how the problems arose in the first place. Only then can he select one of the subissues, in this case the homework, as the one to work on.

In the Bagels case, we see how a proliferation of issues can be baffling to the mediator. Dan enlarges the issue, adds new dimensions, and shifts focus so frequently, that Ross simply denies any issue at all, other than Dan’s attitude. The mediator would have to shift his hypothesis to meet each new expansion or diversion. It is hard to focus the partners on their mutual self-interest or come up with a mutual problem definition in such circumstances. But this must be done before any issue can be addressed successfully.
The organizing principle demonstrated here is the pitfall awaiting mediators as they decide which is the central issue. In any session, the mediator is constantly constructing hypotheses about the range of issues and testing them in the early interactions. The strategy of summarizing allows the mediator to focus on the goal of the mutual problem definition and lets the central issue emerge out of the hypothesis testing. If the mediator selects a central issue but the parties do not agree that it is central, they will balk in one way or another and stymie the session. Hypothesis formation and testing are discussed in greater detail in the authors’ book *Mediating Divorce* (1989).

Process Versus Content Suggestions

Reading the transcripts or viewing the videotapes, it may seem that a mediation session is a free-for-all with no structure. *Fundamentals* (1994) describes at length the structure underlying the mediation process. Mediators set limits from the very beginning as they gather and display the data. Sometimes these are in the form of process interruptions to limit the thrust of the client. The purpose is first to establish a safe environment for the parties to explore their goals, test alternatives and take risks. As the mediation develops, they make further suggestions about the nature of bargaining and how to set up the final agreement. All of these must be about the process, not the content of the negotiations.

The second purpose of process suggestions or interruptions, in the Haynes Model, is to let the parties know they have not entered a therapeutic or a legal conversation. While mediators may deal with emotional or legal issues, it is not the goal of the session and they will refer clients with strong needs in either of these areas. As the present cases demonstrate, there is ample opportunity for a mediator to shift into the profession of origin for therapists or lawyers. When clients are unable to focus on their own self-interest because they have therapeutic or legal issues, mediators should make an appropriate referral and wait until the client is ready to continue mediation. Or they may learn that the referral was the best course of action.

The third purpose is to focus the parties on their presenting stories, to bring back wandering comments, and discard the useless data. The goal is to hone each presenting story into an eventual story that is mutual, for that is where the mutual problem definition lies. As we saw in the discussion of finding the Central Issue, this process may influence the content. By signaling that some data is useful and other data is not, the mediator indicates the direction of the MPD. But the mediator cannot force a direction that the parties reject. They will balk, find ways to undermine the session, or not return the next time. The Parent-Teacher case demonstrates just how powerful parties can be in frustrating the mediator in trying to reach the MPD.

Similarly, the mediator may make suggestions as to what data the clients need in order to make a decision. This might also require advice on how to obtain
the information. A clear example is in the Adoption chapter, when the mediator helps the clients understand what information is missing and how to locate it. In a sense, this is also part of helping them negotiate. While the mediator does not tell the client what or how to negotiate, since that is content control, he does intervene actively to make them knowledgeable about what they are negotiating, as part of the process control.

Another example of process suggestion is in the Bagels chapter when the mediator suggests how the partners might gather more information and think about the problem differently. These suggestions are, again, about how to go about the task, not what to agree to.

Teaching Clients Negotiating Skills

Mediation is the management of other people’s negotiations. We believe that simple statement describes mediation better than any other we know. Mediation is all about helping people to negotiate a settlement of their dispute. The outcome of every successful mediation is some kind of a negotiated settlement. However, few people come to mediation with good negotiating skills.

Thus, the mediator must work with clients to help them improve their skills. First the mediator must determine whether the participants’ negotiating strategies are consonant with their goals. Too often people engage in negotiating strategies without realizing that these tend to undermine their goals. For example, if a parent complains about a teen’s room and the teen does not clean it up, the parent is likely to complain again. The complaint is ignored and soon the parent is nagging even though nagging has been shown to be an useless strategy in getting the teen to clean his room.

This behavior is then repeated in the mediation with the parent nagging at the teen. The mediator must help the parent find and develop alternative and more useful strategies for dealing with the conflict. On the other hand, the teen is also unlikely to know how to negotiate. In the absence of negotiating skills most people resort to threats and counterthreats. Obviously, if the teen is threatening the parents, it is unlikely that he will be able to influence them positively toward agreement on his goals. We see good examples of this problem and the mediator’s strategy to teach the family members some useful negotiating skills in the Parent-Teen chapter.

In a business situation, the mediator often encounters partners with very different negotiating skills. These differences can be productive when dealing with the world outside of the business, when the parties can choose which is the best person to negotiate with the outside. However, the different styles and skills can be destructive to the partners’ relationship when these interfere with their ability to problem solve within the organization.

We are of the opinion that many disputes in mediation are more about how people argue than what they argue about. Our experience leads us to pay close
attention to the how of the argument since, if we can improve the way people deal with the conflict and the strategies they use to reach their goals, the easier it is for them to resolve the what of the argument.

In the Bagels chapter the two businessmen have very different negotiating styles. The mediator observes the differences and determines whether one partner has an advantage over the other as a result of the individual negotiating behavior. There is a standoff in the sense that one partner has a strategy of enlarging the conflict, overdemanding and constantly complaining. The other partner takes the position that there is no conflict; therefore, there is nothing to resolve. As long as both hold on to these key strategies, agreement is very difficult to reach. We will be able to observe how the mediator deals with the clients’ differing negotiating styles.

In the Parent-Teacher chapter, a similar problem presents itself. The conflict is as much about how the clients discuss the problem as the problem itself. Each has different strategies that tend to block the other’s possible movement. The case is further complicated by the roles each of them adopts. We discuss the role problem below. The mediator’s task in this case is to help the clients find more useful negotiating strategies within a general mutualizing framework that will lead them to see each other as partners rather than adversaries.

In both the Adoption and Neighbors cases, all the parties are novices with no negotiating experience and need the help of the mediator to understand how and when to bargain. Sometimes their “bargaining” takes the form of informal exchanges, more like a conversation, and all the mediator needs to do is provide a safe environment for them to explore and close the gap between their initial positions. At other times, he needs to restrain the participants from premature bargaining before they have all the information they need to negotiate in their best interests. These cases show the mediator as the manager of other people’s negotiations.

In five of the six cases reported here, teaching negotiating skills played a role in the deliberations. Only Sexual Harassment did not entail it since the parties were not actually negotiating their dispute, but exploring alternatives to the present predicament.

Maintaining and Shifting Roles in Mediation

When clients enter mediation, they adopt roles. In most situations these roles are appropriate to the task. However, there are times when a client adopts the wrong role for the task. For example, a major problem in custody disputes in divorce is when the clients are in their spouse roles while talking about their children. When discussing children they should be in their parental roles. The spouse roles contain most of the hurt and disappointment of the marriage. As a hurt spouse, it is hard for a parent to respond in the best interests of the child when talking about the future parenting of the children. Productive discussions will be between the clients as mother and father, not as husband and wife.
When people adopt a role in an interaction, they can only maintain that role as long as the other actors in the field support that role. If one client wants to play the role of hurt wife rather than caring mother, she can only do so as long as both the father and the mediator accept her spouse rather than mother role. If the mediator only relates and replies to her as the mother rather than the wife, it is very difficult for her to sustain the wife role even though the husband responds and joins her in the spouse role. This is because the mediator, at the same time that he responds to the wife as mother, responds to the man only as the father and not as the husband. The man, too, will find it difficult to sustain the spouse role.

This is a powerful idea that gives the mediator an important tool for helping clients to be in the most productive problem-solving environment. Because the clients cannot sustain a role unless they have the cooperation of the mediator, the mediator has considerable influence as to the roles of the clients.

Let us look at Bagels again for examples. Dan, one of the partners, continually falls into a victim, “poor me, I’m hard done by” role rather than the role of adult business partner. The mediator recognizes that no agreement will be reached if Dan is in this role, and so frequently denies support for the “poor me” role and relates to him as an adult business partner. At times this strategy works, as Dan is moved from victim to partner by the mediator’s behavior. He quickly slips back into the more comfortable “poor me” role, but is pulled back into the adult role by the mediator. There is a continual shift from productive to unproductive roles in this session. Ultimately, a deal will be struck only when both partners are in their adult partner roles and are using equally productive negotiating strategies.

We can see how clients slip from one role to another in the Neighbors case, and the ways the mediator helps them focus on the most useful role for the task. There are two couples who constitute four adults, parents, friends, and neighbors. As parents they are protective. As neighbors they are in conflict. As adults they can be role responsible models. As former friends, they can rebuild the relationship between them. The mediator develops a hypothesis on how to resolve the multilevel conflict and what roles are best suited to the solution.

In another case, the teacher and parent demonstrate a fascinating aspect of roles—the invasion of roles by one participant of the other. The mother gives educational advice to the teacher who retaliates with how to be a good mother. Whether conscious or not, defensive or offensive, these interactions increase the complexity of the mediation. No movement toward a mutual problem definition can occur until the mediator focuses on the invasions and gets the two women to acknowledge the power of their attitudes toward one another. The chapter commentary analyzes these dynamics fully.

Using Language to Create Shifts Safely

Most people will only make shifts in their negotiating position if they feel safe, and if they can save face while making the move. Mediators may think of saving
face as an oriental requirement. However, our experience shows that it is universal. People need to save face all of the time. Thus the mediator assists in creating an environment in which people can adopt shifts in their thinking, and then articulate them safely.

This process involves protecting clients while they are making concessions and preventing the other from gloating over the concession. It also requires the mediator to think about how a shift can be phrased in a way that enhances the ability of the client to make movement safely. In the Sexual Harassment case, the mediator develops two key constructs that make it possible for the clients to move. The first is the idea that each person has “boundaries” that should not be violated. This concept is accepted by the woman student. The mediator then develops a corollary concept that the male professor “inadvertently” crossed those boundaries.

With this new language, the parties are able to move toward defining the problem differently and mutually. The student’s integrity is maintained and the professor has some space in which to acknowledge his behavior without accepting blame, and to provide assurances of nonrecurrence. Note in this case that the mediator is not suggesting how to resolve the dispute, but helping to create an environment in which the parties can be free to discover an acceptable, mutual solution.

Similarly in the chapters on Adoption and the Parents as Neighbors, the common theme is keeping the clients talking with each other. Although initial positions are set, the mediator, through reflective questions, draws the clients out to make decisions that meet their interests and not their respective positions. Not all clients know how to do this. The mediator becomes an educator, not by telling them what to do, but through questions that are respectful, dignified, and without blame so clients gain insight into their interests that allows them to modify their positions. Those questions are one of intense curiosity. They are exploratory and not for the purposes of crystallization. The language the mediator chooses is active rather than passive, specific, and easy to understand.

Developing a Future with a Difference

As we stated in the discussion of generic strategies, people come to mediation with a future that is shaped by their pasts. Most clients only want to talk about the past. As noted earlier, negotiations can only be conducted in the future tense. The key form of question in mediation is a question about a future that is different from the future brought into the mediation. Thus using questions that are reflective, hypothetical, and future focused helps the clients understand that their problems in the past do not need to continue with the same intensity in their future. The mediator attempts to convey to the clients that they need to let go in the present to gain more control of their destiny in the future. The only useful dialogue about the past is when that past contains success. Then the mediator can help the parties to build on their successful experiences to overcome present difficulties.
You will see in each of these cases how we continually ask the clients to envision a new future. We do this by using questions that disconnect clients from past thinking and have them consider a future that is not encumbered by the past. For example, in a divorce case the wife complains that the husband has never cared for the daughter in the marriage. The mediator asks her, “Would you like him to be able to care for the daughter?” She replies, “He’s never done it in the past.” The mediator then asks, “Would you like him to be able to do it in the future?” This is a strategic question in that the wife cannot really say “No.” She would prefer to, but cannot. Then she must move to a point in the future when he could care for the daughter. When she finally answers that she would like him to be able to care, the mediator explores with her what the father would have to know and how he could attain that knowledge about caring for the daughter. The line of questions about the future promotes different thinking.

We can see examples of this type of question in every case in this book. It is a central tenet of mediation. The Parent-Teen dialogue ends with a strong plea to look at the changes coming for all of the family: What do the members want to happen in the future? What does each one need to do to achieve the desired changes? The Sexual Harassment case is predicated on maintaining a future working relationship between the professor and the student—once they examine and reject the implications of going their separate ways. The three Adoption parents build on their successful discussions in the past to bridge over their differences in the present. The Neighbors also have a history of cooperation and friendship. The mediator constantly asks questions that reinforce how they can build as successfully in the future.

Thus we see that the eight principles underlie the dynamics of each mediation session. We have isolated them and, in a sense, internalized the function of each so that we do not have to think about them in the middle of a session. For example, we make process interruptions and suggestions to help hold the focus and move the session along. Or we might think, “Now is a good time to teach some negotiating skills.” The more experience a mediator has, the more automatic will be the recourse to the principles in a session. Can they be taught to novice mediators? Of course. We were all novices once.

We invite the reader to study the six cases presented here in the light of these principles to discover, as we did, how they illuminate the outcomes of the sessions—and ultimately, of our practice.

Before we conclude, however, we would like to examine some questions mediators have raised about the particular mediation model that we have developed and follow in our practice and training.

We talk about mediator balance or neutrality and give examples of when we swing away from balance and how to get back into balance. This is a key element in every level of mediation, as addressed by Jimmy Carter, writing about the aftermath of Camp David II in the negotiations between Prime Minister Ehud Barak and Chairman Yasir Arafat. “An important principle in negotiations is for the mediator to maintain at least the semblance of neutrality. Accolades for one
side and condemnation of the other is always a political temptation after an unsuccessful effort, but this makes it very difficult to orchestrate future negotiation sessions where mutual confidence in the mediator is required" (New York Times, Aug. 6, 2000, Sect. 4, p. 15). While business and family mediators have less riding on their efforts than international mediators, the principle of neutrality is the same.

In recent years, debate has grown regarding how much direction a mediator should introduce into a session. We have stated repeatedly that we have no problem with the mediator directing the process of the negotiations, as long as the clients control the content. But, it is suggested, by focusing on one aspect of the conflict and ignoring others, the mediator does control the content. Let us test this hypothesis about the mediator’s power to direct the outcome. In time after time, we have found that if we leave out an aspect that is important to one or more clients, the mediation will not move forward. We must locate the missing piece by listening and assessing the dynamics of the interaction. Only then will the participants fully join the mediation process and move toward a mutually agreed on solution. Thus the clients do have control over content, regardless of how the mediator initially chooses the issues to address in the unfolding process.

Further, we hypothesize that the future holds the answer to the problem and, therefore, we do not dwell in the past. Is this directive? Yes. Does it sometimes impede the mediation? Yes. In those cases it becomes evident that the past must be given its due before the parties can address the present conflict and resolve it for the future. In such a case, the situation dictates an exception to the principle, but does not invalidate the principle for all other cases. There is a difference, however, between acknowledging events in the past, and trying to solve past problems before solving the present ones. We firmly believe in the minimalist approach to mediation. Do only that which is essential to keep the dialogue moving forward.

In a similar vein, we do not dwell on the emotions of the participants, and certainly do not invite emotional explorations. This is equally “directive” since some clients are clearly emotional about the conflict and would like to express themselves. This book illustrates cases where the emotional content overrides the negotiations and must be acknowledged. We invite the emotional expression, respond to it, and move the focus back to the task at hand. If the person continues to seek expression, and clearly is unable to negotiate in his or her best interest, then we will make a referral to a therapist who can provide the support needed. But this is an adjunct to mediation, not its focus or purpose.

We believe that anything that interferes with a person’s ability to negotiate in their best self-interest must be considered in mediation. This includes issues such as drug or alcohol dependence, spousal abuse, unbalanced power relationships, as well as those mentioned above. The mediator forms a hypothesis about the ability and willingness of the client to act in his or her best interest and tests it in the session. If the issue is blocking the client’s effectiveness, then referral to either legal or therapeutic resources is called for. The clients may choose to reen-
ter mediation once the issue is addressed, or may find that the referral better meets their needs. The key factor for the mediator is the **degree to which the issue impedes the mediation process**. No one should be denied the opportunity to mediate simply because one of the issues is present.

Another issue has been raised: caucusing. John Haynes initially used the strategy and recommended it in his first book, *Divorce Mediation* (1981). He later wished it had been written in disappearing ink because subsequent experience convinced him it was not helpful. He found that clients gave him information in private that they did not want aired in the joint sessions. He found himself in an untenable situation—bound by confidentiality but knowing data that would materially influence the course and outcome of the mediation. Without caucusing, clients continue to hold secrets, but he is not party to them.

Finally, we wish to address the criticism of “cookbook” mediation. The first sentence of *The Fundamentals of Family Mediation* (State University of New York Press, 1994) states: “This is a cook book for family mediators.” It is based on theories of negotiations and conflict and sets forth a step-by-step model. However, it is not intended as a *lock-step* model. As in any recipe, ingredients can be mixed in various order and amount without affecting the outcome. But the novice cook (mediator) needs a clear recipe from which to deviate as experience and competence grow. We demonstrate in the present case studies that steps can be skipped or repeated, that clients can get stuck at any point and need to go back, or to find a different path through the thicket. That’s okay. When we say mediators control process, we clearly do not mean to cut the clients to fit the model.

**CONCLUSION**

As mediation matures, it will become a profession in its own right, rather than a cluster of professions-of-origin. Courses and degrees are now offered by a growing number of respected colleges and universities. The literature is expanding. The horizon is widening to include mediation of many types under one broad organizational umbrella.

The search for a unified mediation field theory continues like the search for the Holy Grail. No one has yet articulated such an encompassing theory, but the challenge is alluring. To be the first. To get it right. Whether from the academic or the practice field, a theory will emerge one day. This book does not claim the prize, but only a step in the right direction. We hope this stimulates new and creative thinking from both sources.
Whenever the mediator enters a partnership business dispute, it is useful to keep in mind that the business is the goose that lays the golden egg. I introduce this concept early into the negotiations to anchor the participants in the reality that they should do nothing that endangers the profitability of the business. I use just that phrase in this case, a dispute involving two partners over whether to make a major investment to mechanize the production line.

Ross and Dan are joint partners in a bagel bakery. Dan handles the production and Ross the sales. Dan wants to mechanize the plant but Ross does not want to take on the debt involved in the mechanization. This would be a normal conflict of interests if each approached the case in the same way. But Dan uses an overworked, poor me approach that effectively dismisses Ross’s concerns and demands constant attention. In addition Dan has a set of predetermined strategies to bolster his claim. Dan enters the negotiations with a clear idea of the problem definition and with a clear set of ideas how to solve his problem definition. On the other hand, Ross does not have a specific position, simply opposition to any expansion. He responds with there is no problem as his approach. This puts him in a difficult situation of being an opposer in a process that favors the proposer. Because, if Ross only opposes, all of the discussion must be about Dan’s proposal and Ross’s opposition to it rather than about two competing plans.

This case demonstrates three typical problems:
1. The way in which participants to a dispute can be in conflict as much about how to talk about the conflict as the conflict itself.
3. How the session can be dominated by one person’s story and problem definition.
4. How negotiating strategies can prevent getting to a mutual problem definition.

Managing How the Participants Talk About the Conflict

It is easy for participants in a dispute to become so involved in how they argue about the conflict that they often lose sight of the conflict itself and, in this case, run the danger of damaging the business by not resolving the conflict. This situation is exacerbated by their criticizing cycle that always ends in a stalemate. One can sense that this is a historic pattern, not to be converted by the mediation. The mediator can avoid getting sucked into the process by ignoring the sniping and maintaining a task focus. He will only deal with the criticizing if he feels it substantially interferes with the process. Here, the mediator breaks this cycle by helping Ross to develop and articulate his own story that is proactive rather than reactive.

When one Story Dominates the Session

The problems discussed above all lead to another problem. Does the way in which the conflict is discussed favor Dan’s or Ross’s story? If one story ultimately dominates the session then the other participant’s position is undermined. Dan’s story appears to dominate in the early part of the session and the energies of the mediator and the partners appear to be more focused on solving Dan’s problem definition rather than creating a mutual definition of the problem. This seems to give Dan the greater power in the session. However, as the session proceeds, it becomes clearer that Ross actually has a great deal of power since his placid but unremitting denial of any problem causes Dan to become more shrill and to lose sight of his goal.

Ross has the real power, the power of denial. His position that there is no problem means that, therefore, he does not have to respond to Dan’s complaints. That makes Dan’s reaction even more unreasonable and more demanding. The mediator steps into a long-term relationship and style of interaction. This style of interaction explains why they are in mediation rather than solving the problem in the normal course of business discussions. The mediator cannot dictate a behavior change. Rather he must ameliorate the behavior so that a mutual problem definition can emerge and a productive discussion can ensue.

We see here another problem regarding the power of the first speaker, similar to that in the Harassment case. In this session Ross goes first and denies that any problem exists—other than Dan’s attitude. He claims business is okay, the
bottom line is okay, and all is well. This leaves Dan with the task of refuting that there is no problem and articulating what he sees as the problem—which he does by escalating the differences.

The mediator maintains an overall balance in the session by cutting through the two negotiating strategies: the *poor me* of Dan and the *no problem* of Ross. He focuses on the question of the cost/benefit ratio of mechanizing, without dealing directly with the issue of whether it should be done. The negotiating strategies prevent a move to a mutual problem definition

**Strategies Can Interfere with Goals**

The mediator forms an early hypothesis about the competing goals of each partner, verifies it, and begins to explore the implications. However, the discussion does not move toward a mutual problem definition. Consequently, the mediator needs a new hypothesis. The partners’ way of arguing and the dominance of Dan’s story prevent them from formulating a mutual problem definition. And as we have seen in other cases, parties cannot resolve their conflict until they can agree on the exact nature of that conflict. Their negotiating strategies get in their way.

The mediator’s new hypothesis is that Dan is pushing too hard—a forward thrust—and Ross is too laid back—negative thrust. The clients, left to themselves, would simply increase their existing postures. Dan would push harder and louder and Ross would resist more firmly albeit quietly. The implication of the mediator’s second hypothesis is that if Dan could slow down and stop pushing so hard, Ross would listen and respond more openly rather than having an automatic rejection.

The mediator implements this hypothesis by a two-pronged strategy of his own: power balancing to *reduce* Dan’s forward thrust (we must mechanize) and to *increase* Ross’s forward thrust (toward a statement of what he does want). When reading the transcript look for specific mediator moves that *reduce* Dan’s forward thrust and *increase* Ross’s forward thrust. Along the way, other issues surface, suggesting other hypotheses. The mediator must take note (mentally or actually) and decide whether to pursue these as the way to reach a mutual problem definition, or to put them aside as distractions to the main discussion. We believe that the issues themselves make the decision—major ones keep surfacing and demand to be dealt with. Minor ones do not recur, or are thrown in without force and recede.

**TRANSCRIPT AND ANNOTATIONS**

Mediator: Welcome Ross and Dan. You called the office last week asking for this appointment, and I wonder if you could tell me what it is you’d like me, as the mediator, to work on with you.
Ross: Well, we're both in business together. We've been about seven years together. We feel that business is going along very well. We've got a good bottom line; everything seems to be fine.¹ As far as I can see, we just aren't finding things working out to be compatible with a lot of thoughts we have. He's in production and I'm in sales. We find that things are going along; as I said, the bottom lines seems to be fine, I'm comfortable with it. He's seemingly putting a lot of pressure on me to want to expand and change things and feels that maybe I'm not pulling my weight. Of course I feel I am and we're just not getting along at the moment. Our families are affected by it.²

Dan: Yeah, Ross is very good at what he does, which is selling. Our bottom line is good, but I'm getting to the point where I really resent what's going on.³ We went into this venture as half partners, and I really feel that he spends a lot of time on the golf course selling, which is fine. But he's out there on the golf course selling and I'm in front of the ovens. It's just not equitable anymore.⁴

Mediator: Help me, the business is?⁵

Dan: Oh, we bake bagels.

Mediator: Bake bagels?

Dan: Yeah.

Mediator: Okay. And, (to Dan) you're in charge of the production of the bagels and, (to Ross) you're in charge of sales?⁶

Ross: That's right. We sell wholesale so that I'm directing to the stores and to the wholesalers.

Mediator: You both said the bottom line is okay.⁷ So help me . . .

Dan: Okay. You know what, as I said, I really feel that I'm working harder, a lot harder than Ross is. Basically, we earn the same amount of money, but Ross has this big expense account that he goes out and . . .⁸

Ross: You need the expenses.⁹

Dan: Yeah, well that's fair enough, but I'm the guy in front of the oven and you're the guy playing. (to the mediator) Ross is also telling me all the time that our labor cost is too high. So, to me, I figure that what we have to do is we've got to reinvest some money here and, quite honestly, we've got to mechanize them and automate them. I want to spend less time in front of the oven and have machines do the work. I also want to get out a little. And the only way we're going to get our labor cost down is by automating the plant.

When the mediator enters the system he is usually unaware who initiated the contact. However, if the noninitiator opens the session, it is usually with a generally vague statement denying the existence of the problem. This suggests
that it might be more useful to try to discover the initiator during the intake telephone interview so as to allow that person to speak first. This would save the time used by the noninitiator as the opening speaker to deny the problem.

1. Ross’s presentation indicates he is satisfied with the status quo. It also suggests that he is not the initiator of the mediation. His desire is to minimize the extent of the problem almost to the point of denial and to place the responsibility for the mediation (and also the problem) onto Dan. Note the use of “we” to reinforce satisfaction with the status quo. The statement that they have been together for seven years also indicates that the relationship should have solidified by now.

2. Ross also raises the issue of the families. The mediator will have to decide whether to pursue the familial relationships and risk becoming involved in a therapeutic relationship or to stay with the business issues.

3. Dan accepts ownership of the problem, and,

4. . . . adds more details and defines the problem as one of equity. This indicates he wants more than one-half since if he wanted one-half he would be demanding equality.

5. Although the mediator knows this information from the telephone interview, he uses the question to get the basic information onto the table with both of them present. This helps to avoid one person feeling that the caller has an edge with the mediator.

6. I clarify my understanding of the roles of the partners.

7. The mediator checks his perception as to what he believes they agree on. Understanding where the disputants agree helps the mediator to avoid asking questions or leading a discussion that might cause additional disagreements.

8. Before the mediator can complete his sentence, Dan interjects to strengthen his statement at 3. This may be the result of the lack of content summary by the mediator so that Dan may have felt he had not been heard.

9. In response, Ross defends his expenses as an essential part of the business. He responds seriously to Dan’s complaint and moves into the defensive. Dan does not disagree about the business expenses, but builds on his equity argument.

Ross: You see, the kind of money that he wants to spend right now, I’m just finding is more than what I want to see go back into it. ¹⁰

Dan: Well, no doubt, no doubt. You’re playing and I’m working . . .

Ross: I don’t call it playing. You’re out there, you’re with the customers. You’ve got to entertain them, you’ve got to be able to keep them on your side or our friends down the street will get the business.

Dan: Well that’s fair enough, but you know, the setup just isn’t equitable any more. ¹¹
Mediator: So let me see if I understand. You are in the business of baking and selling bagels.

Dan: Right.

Mediator: The bottom line is okay. (to Ross) You feel the labor costs are too high and could be brought down in some way. (to Dan) You feel that the selling costs are too high and could be brought down.

Dan: Well not even. I don't even feel that the selling costs are that high—everything is in line. I just want . . .

Ross: Well, you're here to complain about my expense account.

Dan: Well, I just don't feel that the division of labor is equitable and, you know, if part of my job happened to be playing golf or whatever, that would be great, but it's not that way. I'm not spending, you know, I'm at work and he's got a great job . . .

Ross: I've often . . .

Dan: He's at leisure.

Ross: I've often said that you should come along with me. You know, you should meet some of these customers.

Dan: Yeah, and then who puts out the bagels when I'm on the golf course?

Ross: We can do it on a day when we're caught up.

Mediator: Let me see if I can understand, Dan. Are you asking that you work less or are you asking that Dan work more?

Dan: Huh, you mean Ross.

Mediator: Ross. I beg your pardon. I'm sorry about that.

Dan: Well, what I think, I don't even—I think—probably what I'm asking is we've got to restructure the setup. And if I'm working the amount I'm working and he's working the amount he's working and playing the amount he's working, he's playing. Excuse me. I should really be compensated for that extra work, or we're going to have to reinvest and I think, I think that he should, he should kick in more than I do.

10. Ross stakes out his position in favor of the status quo—a powerful position that requires little argument to sustain it.

11. Again, Dan does not disagree with what Ross says, but reemphasizes his view of equity. When one party claims equity as their principle argument, it places the mediator in the dangerous position of becoming an arbitrator by dealing with and responding to the equity claim. The mediator must accept Dan's claim and feed it back to Ross without appearing to either support or reject the claim. That is for Ross to do. But Dan is also playing the victim role repeating his poor me refrain. Dan frames the issue that he is overwork-
ing and Ross is underworking and, in doing so, is using a double complaint to change the relationship. Therefore, the mediator must be sure that Ross’s story is heard, not simply his response to Dan’s attacks.

12. The mediator summarizes his understanding. Dan does not attack Ross’s cost while correcting the mediator’s summary. Summaries should include key elements of each participant’s story. When summarizing from both statements the mediator maintains a balance and respects and honors each position. Summaries can also be used to highlight agreement or, at times, disagreement. Clients carefully listen to the summaries noting what the mediator includes and excludes to be what he thinks is more or less important. In this way it becomes the engine of the session, keeping the conversation focused on the most useful issues.

13. Immediately after saying that the selling costs are in line, Dan wraps his goal in a different attack on Ross. By moving from the concrete and more easily verifiable, selling costs, to the less tangible question of who has the more attractive job, Dan complicates the issue and makes it less clear. The mediator works to keep the focus on the specific and resolvable issues rather than the general nonspecific claims that are not easily resolved.

14. A clarifying question that forces Dan to focus his position.

15. His reply indicates that either he is not clear as to his position or is not ready to reveal his goal. As Dan continues, he reveals a goal, and the focus shifts from time to money. As a negotiating strategy, he makes a proposal with a forced choice: Dan gets more income for the status quo, or Ross agrees to reinvest and to pay a larger share of the costs. The latter choice might also be a negotiating strategy intending to force Ross to accept the lesser of these two proposals, hoping that Ross will find the second choice more palatable and thus agree to it if he does not have to pay more than 50 percent. The mediator continually hypothesizes which statements are client goals and which are strategies.

Ross: You know, you’re working early in the day and your time is free later on in the afternoon.\[16\]

Dan: Early in the day, damn right, two in the morning is early.

Ross: Okay fine. Well I’m finishing up with a customer at midnight or something like that after a game of golf and then you’ve got to entertain ’em and take them to dinner and let them carry on.

Dan: That’s tough.

Ross: It’s tough on my body, I can tell you that. Sure, you know.

Mediator: Yeah. (to Dan) I’m sensing then that you would like to mechanize the production part . . .

Dan: Yeah.

Mediator: More than it’s currently mechanized.\[17\]
Dan: Yeah.

Mediator: Your concern, Ross, is that that’s an expensive proposition and you are not clear you’d want to invest that much.¹⁸

Ross: Well, that’s true. I mean I can understand from the point of view that certainly we could do better laborwise and we could bring our cost down and put more to the bottom line, you know, that’s part of my expense. I mean I don’t know that I’m fully prepared yet to take that on. I’m comfortable with where I am, my family is comfortable with it.¹⁹ That’s another side we’re bringing into this. Our families are fairly close.

Mediator: Uh-hum.

Ross: You know, my wife, his wife, our kids, his kids. We all get along but that’s starting to affect things too.²⁰

Mediator: Uh-hum.

Ross: I mean I’m getting static from my wife and I’m sure you are from Jane, too, you know what I mean.

Dan: Absolutely. I mean she feels very much the way I feel, except that she expresses it a lot louder.

Ross: Well . . .

Dan: . . . She doesn’t . . .

Ross: . . . I hear that every time I come home.

Mediator: So you’ve got a double issue here.

Ross: Oh yeah.

16. Ross gets caught in Dan’s argument and tries to defend equity. Dan is doing most of the talking and the mediator must encourage Ross to talk more and to articulate his goals. If he has benefit outcomes he will stay in the discussion rather than merely defend himself from Dan’s claims. One way of doing this is by clearly articulating the conflict, which forces Ross to speak more directly about his position. The mediator must be willing to step into the middle of the conflict and place it on the table so as to enable an honest discussion. By bringing it into the open, I engage Ross, letting him know that he has been heard.

17. I test a goal hypothesis and Dan verifies his is mechanization.

18. This checks the second part of the hypothesis, that Ross is unwilling to invest the required amount. It might be more useful to think of Ross as unwilling to assume that level of debt; it is the debt, not the investment that motivates Ross. The mediator now has a working goal hypothesis and he can begin to discover whether they have ideas for achieving their goals so that each can have what they want without an unreasonable cost to the other.

19. Ross sends another message favoring the status quo. This is an indicator that the mediator that may be moving a little too fast for Ross.
20. Ross raises the issue of the families. The mediator must decide at this point whether this is a strategy for avoiding the money issue, or it is a major issue. Even though it may be a major issue, I decide not to pursue the family issue believing that the business dispute is affecting the relationships rather than the family relationships affecting the business. With this hypothesis, I can leave the family issues aside secure that, if the business issue is settled, the family relationships will be restored.

Mediator: You want to keep the good social relationship as well as keep a good business relationship.21
Dan: Yes.
Ross: Well certainly. Yes, we recognize that. That’s why we’ve come to see somebody like yourself.
Dan: We were friends before we were partners.
Mediator: Uh-huh. All right.
Ross: I golfed then too, though.
Dan: Yeah but I wasn’t paying you to do it.
Ross: Huh, huh, huh.
Dan: I was only kidding.
Ross: Well, thanks.
Mediator: So what is it, Dan, that makes you resentful?22
Dan: Well basically that he’s out there in the open in the sun having fun and I’m in front of the oven and, well, hell, you know, I guess if being in front of the oven is what I did for leisure maybe I’d enjoy it.
Mediator: Uh-hum.
Dan: But I really feel that, yes, either I’ve got to have a whole lot more time off and be up in the mountains with my family doing whatever I want to do just to even up the situation and have that time to spend with my family.
Mediator: Would you be more comfortable if Ross didn’t play golf?23
Dan: Well depending what he was doing.
Ross: I’m maintaining our customers.
Dan: Well depending what he’s doing with his time, I guess.
Ross: We’ve got to maintain our customer relationships.
Dan: No, fair enough. Ross is good at what he does.24
Ross: Well, we have increased sales every year.
Dan: Yes.
Ross: I mean, it hasn’t been as if we’ve gone backwards.
Dan: That’s true, but, I just feel that for the compensation and for the fifty-fifty split I do more than fifty percent and I want to change that. Either I want to change that or I’m going to have to get out of the situation.  
Mediator: So your feeling is that you’re doing more than your half. 
Dan: Oh, I know it.

21. Note this summary is in positive and mutual terms. It reminds them of two main interests they share: protecting the social relationship and the business. While I link the social and business issues, I have decided not to pay too much attention to the social issues but to focus on the business ones. This is a deliberate decision based on two thoughts. The first is that if I spend time dealing with the social issues I may not be able to resolve them unless the other participants—the wives—are present. To bring them in would dramatically change the mediation. The second is that this is a business not a social problem. If I am wrong, then the social issues will emerge again. I will then be forced to make choices about how to deal with them. However, if this minor hypothesis is useful then the social issues will fade as we move toward the solution phase of the business problems.

22. This strategic question is designed to get the issue into the open. Does Dan have a grudge about Ross’s work or is it a strategy to attack him on what appears to be the more desirable aspect of his job? If it is a grudge, the mediator will need to deal with it by forcing a discussion of the difference. If it is a strategy, the mediator must find a way of delegitimizing the issue.

23. This is another strategic question. The partners have agreed that the golfing is part of the marketing/sales program of the company and successfully adds to the profit margin. I challenge Dan’s position because, if Ross did not play golf, sales might suffer. Dan has already said that Ross is good at sales and the bottom line—profits—are good. By asking Dan if he would be happier, in this context, I am also asking him if he would be happier if the marketing was not so effective? Obviously, he has a self-interest in maintaining a strong marketing program and, by using the golf as a strategy, he is undermining the business interests and therefore his self-interest. A strategic question is one to which the mediator knows the answer before asking it. Generally, strategic questions are not useful since they usually place one or both clients momentarily in an embarrassing position. In this case, I use the strategic question knowing that Dan will respond that he is happy with the marketing. This is part of my way of eliminating a client’s unuseful strategy while honoring and encouraging goal attainment through productive strategies.

24. Dan gives another positive comment to Ross. It is useful for the mediator to reinforce this type of behavior since it enhances the possibility of cooperation.

25. Here Dan restates an earlier complaint that he does more than one half of the work but only receives one half of the benefits. In doing so he repeats his dissatisfaction and introduces a threat. The mediator carefully ignores the
threat in his summary. By ignoring threats the mediator can downplay them. When a participant uses the threat as a strategy, he often overlooks the mediator’s lack of attention to the complaint. If, however, Dan pressed the point, the mediator would be forced to note it and honor it. When a client makes a threat it is useful for the mediator to ask himself two questions: (1) Is the threat consonant with the issue at hand. If not, the mediator can ignore it. (2) Can the threatener carry out the threat? The mediator can also ignore it if the answer is no.

Mediator: Okay. Ross, what’s your perception?

Ross: I don’t see it as that. I mean, I’m putting in as many hours as he’s putting in. And I’m there early in the morning and I’m doing the sales work. I’m making sure that the deliveries are ready for the drivers when they come in in the morning to take the product out. I go on from there; I make sure everything is done before I go and meet with the customer. It’s not always on the golf course; obviously you’ve got to have meetings with them in their offices and so on.

Mediator: Huh-hum.

Ross: But certainly the other side of it is something that has to be done. I mean you’ve got to keep that up.

Mediator: Okay. (to Dan) So how do we understand that in terms of what we’re talking about? You’d like to increase the mechanization?

Dan: Right.

Mediator: What kind of investment are we talking about?

Dan: We’re talking about seventy-five thousand dollars in total.

Ross: Wow.

Dan: And, and I guess it means that both of us are going to have to mortgage our houses to raise the capital somehow. But for me it’s, you know, it’s . . .

Ross: Oh, I’m not so sure I’m ready for that now.

Dan: We’ve got to keep up with the industry. I mean everybody else is mechanizing and if we don’t, well, I’ve just got to put in more hours in front of the oven, to . . .

Mediator: All right.

Dan: . . . to raise the same amount of dollars.

Mediator: What’s your current debt picture?

Ross: We’re clear. We’ve had a good bottom line and we have no, nothing outstanding right at the moment.

Mediator: All right.
Ross: I don't have a mortgage on my house and I really don't want to go back to having that. Again, I'm getting on, I don't really want it.31

26. I ask Ross for his perception to lessen the likelihood that Dan’s complaints will dominate the session. I have to work hard at getting Ross to speak and articulate his position and am in constant danger of having Dan’s story not only dominate but take over the session.

27. Ross’s response is essentially a defense against Dan’s charges rather than a positive statement linked to his own goals. This might be because Ross’s primary goal is to maintain the status quo, in which case he has no proposals to put forward. However, Dan’s unhappiness with the status quo constructs a problem for Ross that he must help to resolve.

28. Ross deals with that problem, noting that something must be done about Dan’s complaint. This allows the mediator to return to the data collection surrounding Dan’s proposal of mechanizing the plant.

29. Dan has thought through how to mechanize: by mortgaging the houses. Ross, who has not thought about it, must also deal with another piece of information he does not like: mortgaging his house. I need to continue working to keep Ross on a par with Dan because Dan has a strategy that is useful in terms of dominating the session but is not useful in terms of reaching a solution. He is pushing Ross into an uncompromising position.

30. Dan makes an argument that is in their joint interests: keeping up with the competition. However, he swamps the productive joint problem statement with his poor me victim strategy. Here the mediator is well advised to ignore the problem-saturated part of the story and focus on the future possibilities.

31. Ross reiterates his concern about remortgaging his house. I refine my hypothesis: Ross’s opposition to the proposed mechanization may be as much from how to pay for it as from whether to pay for it. If this hypothesis is useful, then moving the discussion into other ways of paying for the mechanization may prove useful.

Mediator: So help me understand. What would be the advantages and what would be the disadvantages of mechanizing?32

Dan: Well, the advantages would be that we could bring our labor costs down; we could produce more product with less labor, and it would also, for me, make my life a whole lot easier. And my lifestyle is being affected here to a great extent and for me that has value and worth and, quite honestly, I think a dollar figure has to be put to that, but . . .

Ross: The disadvantage, as he said, is we’re both going to have to mortgage our houses again and come up with more money.33

Dan: Yup. That’s business.
Ross: The dollars and cents for the equipment is seventy-five grand, but what else goes with it? You've got to install it, you're going to have electrical work, you're going to have plumbing, you're going to have all these other things that go with it.

Mediator: Yup.

Ross: Seventy-five thousand isn't going to do it, that's the equipment, and we're probably closer to eighty or a hundred thousand, something like that.

Mediator: Well Ross, from your perspective, as handling the sales, what would be the advantages of having the plant mechanized?²³

Ross: Well, we likely would be able to have more volume as he says, and it would lead to maybe more business that we could obtain. Right now I think that we've got the percentage of the market that we're going to get. It might be tougher to get that extra ten or fifteen or twenty percent, whatever we need to . . .

Mediator: Hum.

Ross: . . . to pay for it.

Dan: But it will also allow us to get into other varieties, which will . . .³⁵

Ross: Well . . .

Dan: You know that the way business is . . .

Ross: I don't think so.

Dan: . . . either we're going to increase our market share or we're going to lose our market share.

Ross: I know, but I don't think that the market's ready for different varieties right now. I mean we've got the varieties that are popular out there and we don't need any more.

Dan: Well quite frankly, I'm just, I'm fed up. I've had it.

Ross: You see, this is the way we end up every time. You know we sit down and talk about it and then well, "I'm fed up." We're not going to get it resolved that way and we know that.³⁶ We want to stay friends.

Mediator: So let's think about how we might get it resolved, right? If I understand correctly now, (to Ross) you're relatively comfortable with what's happening right now.

Ross: I am, yes, yes.

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³² As a step toward acting on the hypothesis regarding Ross's reluctance to remortgage, I turn the discussion back to the issue of mechanizing by asking both partners to identify its advantages and disadvantages. I ask it in this way since I anticipate that one will concentrate on the advantages
(Dan, the proposer) and one will focus on the disadvantages (Ross, the opposer). However, I anticipate that in the middle of the answering, they may also produce new ideas, either for or against the proposal. At this stage any new idea will be helpful.

33. Ross confirms my hypothesis that he is as concerned about the method of financing the mechanization as he is about paying for it. However, note that later in the session, it develops that the form of financing is not the major issue for Ross.

34. By asking Ross about the advantages I am asking him to think about the other side of the argument and to explore any possible positive aspects for him. At the same time I am creating dissonance. If he does find advantages in the idea of mechanizing, either his thinking about the mechanization must change or the advantages must be given up. If he chooses the former then he looks at the issue from a different and perhaps more productive perspective. While doing this the mediator must always remember that he is working to have the clients look at alternatives—not suggesting any particular one.

35. Dan jumps in to add another positive factor for mechanizing; this defeats the mediator’s intention of getting Ross more involved in thinking positively about the proposal because, by taking control of the positive aspects of mechanizing, Dan put Ross back into his original defense of the status quo.

36. Ross appeals to the mediator for help. This is a dangerous point for the mediator. On the one hand, I agree with Ross that Dan makes frequent threats that are not helpful. However, I cannot join Ross at this point and deal with Dan’s behavior since that would unbalance me. I only feel comfortable agreeing with one client over the other when I can balance it by siding, at the same time, with the other client on some other point.

At this point in the discussion, I am feeling increasingly frustrated by the slow pace created by the negotiating styles of the two partners. I am not sure if each style is a strategy or a personality characteristic. It really doesn’t matter, since either way, it is hindering the search for a mutual problem definition. I begin to devise a new hypothesis about their respective styles: Dan’s poor me, I work so hard and Ross’s everything’s going well, so there really isn’t a problem here, except Dan’s attitude. As long as Dan keeps pushing, Ross resists. I need to create an atmosphere in which Dan can let up his relentless wheedling, and Ross can acknowledge that there is a business problem (as compared to an attitude problem) that needs to be addressed.

Mediator: And (to Dan) you’re uncomfortable about what’s happening right now and if I understand, Dan, what you’re feeling is that it takes much too much energy and work and that you’re concerned with the long-term competitive stance of the company if you don’t mechanize.
Dan: Yes.

Mediator: And you see the mechanization as relieving you of some of the onerous part of what you believe your job to be. 38

Dan: Right.

Mediator: Is that right? Okay. And Ross, for you, if you wanted to change things at all, what would you want to do? I mean is there anything that you’d want to do? 39

Ross: Well I’d like to see him bring his labor rates down and things like that with some ability, so that we can get greater bottom line. I mean I can curtail my expenses slightly, but . . . 40

Dan: How can I bring my labor expenses down?

Ross: Well.

Dan: I mean everything is being done by hand and we’re working to put out the orders that you get.

Ross: Well I suppose, you know, I mean there’s got to be ways to be able to be more efficient through, through . . .

Dan: Yeah, I guess one of those ways is getting rid of one of the members of staff and then me putting in yet more hours. 41

Ross: I know, but we don’t have a shipper anymore. Huh, you know I’m doing that now, getting everything ready for the drivers in the morning.

Dan: Well, you know I . . .

Mediator: So, help me because when you said that you thought that we could cut the labor costs, I didn’t hear how that might be done. 42

Ross: Well I think through, through the efficiencies of working during the day. It would appear, you know, that we always have to have somebody come up and do the cleanup work after the fact. Certainly during the day, while they’re doing their thing, they could keep the place a little cleaner rather than making it as messy as . . .

Dan: Now I should not only bake, I should clean. 43

Ross: No, no, no, no.

Dan: Huh, huh, huh.

Ross: You just don’t make as much of a mess when you’re doing it.

37. The mediator acknowledges the conflict and reminds the parties of the need to find a resolution. I then articulate what I believe to be the essential positions of each partner. This lets each know that they have been heard and also helps them to focus on how to resolve their respective problems. Thus, this mediator comment also mutualizes the situation by identifying both sets of needs.
38. I then identify what I believe to be Dan’s solution to the problem. It is useful for the mediator to continually articulate the client’s goals as well as their definitions of the problem. It is easier to look for the solution rather than worrying about the problem. Having articulated Dan’s I will have to surface Ross’s goal in order to maintain a balance.

39. I turn to Ross, hoping he will make a positive statement about what he wants rather than continuing to reply to Dan’s positions. This is a strategic question designed to get Ross to talk for himself rather than against Dan. This could inadvertently enlarge the conflict by encouraging Ross to make an issue of something that irritates him but is unimportant. This could then result in a trade between a high priority for Dan (mechanizing) for a low priority for Ross. That would result in an unfair agreement that would probably not survive the week until the next session.

40. Ross makes a positive demand and tags on a defense against Dan’s complaint regarding the expenses. This is a typical problem of one person maintaining a consistent self-interest position that essentially attacks the other side and the second person spending most of his time responding to the first’s attacks rather than developing his own position clearly. One danger of this type of interaction is that it tends to reinforce Dan’s story and keep it as the focus of the session.

41. Dan deals with Ross’s position by adopting the victim role again and Ross joins him by pointing out that he, too, has more than one job in the company.

42. I try to pull them away from this unproductive discussion by asking a data-clarifying question designed to get Ross talking about his idea, that is, how might they cut costs in the plant. Note the use of “we” in which I become part of their system.

43. Dan undercutts Ross’s position by dropping into the victim role, which takes the process away from Ross and focuses it back on Dan’s needs and story.

Dan: Well, come on. This is, it isn’t practical at all.
Ross: Yeah the . . .
Mediator: What would be the outcome if you have to borrow a hundred thousand dollars?  
Ross: The outcome?
Mediator: Yeah.
Ross: Well the disadvantage is that I’m going to have to mortgage my house to come up with the money.
Mediator: Huh-hum.
Ross: We’re going to be faced with going into the market with new products that are unfounded, possibly, and have to determine which ones are good and bad and I have a problem with doing that. We can certainly take it to the customers and try it . . .
Mederator: Uh-hum.
Ross: You know that’s something that . . .
Mederator: Are we talking about new products or new varieties of bagels?
Ross: Well, new varieties are what Dan’s talking about.
Mederator: Like the blueberry bagels and the flavored bagels?
Dan: That’s right, whatever. Because we would be mechanized, it would give us time during the shift to fit in those new varieties.
Mederator: What do you do now?
Dan: We just do the basics.
Mederator: Yeah. All right.
Ross: And, and we’re doing very well at it.
Mederator: All right.
Ross: That’s going to put an onus back on me to be a provider of funds to pay that back down again. I’m at a point now where the house is paid off; I really don’t want to see us have to get back into that . . .46
Mederator: Huh-hum.
Ross: If we do borrow the money . . . I’m sure he has already looked into it, come up with the equipment that’ll assist in doing that . . .
Dan: Yeah, but you know the income doesn’t stay constant.
Ross: No, I recognize that.
Mederator: Yeah. Throw out some numbers. If you borrow from one way or another, the hundred thousand; what’s the current mortgage rate, if you use your houses as collateral?47

44. I try to break the dynamics and unfruitful process with another data question. Collecting more data is always useful in distracting the clients from unuseful conversations and focusing their attention back onto the process. Asking data questions in this section is my way of testing my hypothesis about reducing Dan’s complaining style and increasing Ross’ involvement in finding a definition of the problem he can accept.

45. Here Ross’s success as a salesman comes to the fore and he can see himself selling more bagels.

46. Ross continues to respond to a solution that Dan is proposing. He is not dealing with his definition of the problem, rather he is hooked into dealing with Dan’s. Obviously mortgaging the houses is not the only way of raising money. Therefore, the mediator thinks, “Does the picture change for Ross if the money can be raised without mortgaging his house?” Most of us think differently about house debt (the mortgage) and other forms
of debt. Is Ross objecting to the borrowing, or the method of borrowing? Most of the problems I appear to be having as a manager of the negotiations are due to Dan’s negotiating behavior that tends to enable him to dominate the negotiations. I must work hard to get Ross to speak more for himself to get a truer picture of his position. I need to get it onto the table so that he can come forward with his own ideas rather than respond all of the time to Dan’s. My concentration on this leads me to ignore Ross’s ability to control the conversation by stonewalling. As Ross stonewalls, Dan becomes more agitated and less able to focus on his self-interest. Note how this particular interaction leaves Ross the more powerful party to the negotiations.

47. Here I am about to collect data to focus on the practicality of Dan’s proposal. If the numbers are understood by both partners, perhaps one will change his position. It would be possible, if the data showed that a loan is practical, for Ross to change his position, or the data could show the idea to be impractical thus causing a change in Dan. Complete data will help us see if Dan’s proposal is to be taken seriously, if it is based on the economic realities of their position. The question might appear to support Dan’s position (to mortgage the homes), but that is only if the mediator has accepted what Dan has already said as proving his case. If the case still seems unsubstantiated, asking questions that cause more discussion about the proposal on a more solid database can be productive for both parties.

This raises another question: How does the mediator know when he has enough data? Collecting more data after the parties have agreed on a mutual definition of the problem can cause more conflict rather than less. It seems a useful rule of thumb to collect as much data as will allow the parties to develop a mutual definition of the problem, and no more.

Dan: If we use the houses? About eight and a half percent.
Mediator: About eight and a half percent. Okay. So your monthly payback is going to be over—what sort of a term mortgage would you take currently?
Ross: Well, I haven’t looked into it because I haven’t wanted to do it.
Mediator: Yeah, yeah.
Ross: (to Dan) What have you got?
Mediator: Well, if we run some numbers by you we might get a better handle on what it’s all about.
Dan: I haven’t looked at . . .
Mediator: Ten years, twenty years, fifteen years? 
Dan: Well, you know, I guess when you’re doing it for the business you’d probably do it over about ten years.
Mediator: Over ten years. Okay. So you’re probably looking then at about a . . .
Dan: About a thousand bucks a month I expect . . .
Mediator: . . . about fifteen hundred a month . . .
Dan: Sure.
Mediator: . . . payment, right?
Dan: Well, give or take, yeah. So that’s seven hundred and fifty bucks each, of which I think he should be paying a little more than I should. 49
Mediator: Let’s hold on about how much it is each for a moment and think about it in terms of the business perspective. If you made that investment, could the business pay a mortgage of fifteen hundred a month?
Dan: Yeah, if Ross was prepared to accept a little less.
Ross: Well it’s still going to be taxable benefit, you know. We’re going to have to pay taxes on that to run it through that way and you know we won’t be taking home nearly as much. You know we’ve become accustomed, both of us have, to the lifestyle that we lead, you know that.
Mediator: Well, I suppose, Ross, my question really was more directly to you, if you did this, could you in fact increase the sales by about two thousand a month? 50
Ross: If we could hit on a good variety or several good varieties possibly that’s where we could go. But, I mean, I can’t guarantee that. I don’t know that and I want to be comfortable before I go into this knowing that we could do it.

48. While Dan has not thought of a specific period, the mediator points out what the range could be so as to keep the detail part of the discussion moving. As the details emerge each has a better picture of what they are talking about and each can change positions based on the new data. At this point we have moved from a discussion of the principle to the details. There is no value in sticking with a discussion of the principle—whether to mechanize—unless the picture is fully understood by both parties. Even if they are both aware of all of the details, I find it useful to move from principle to details and back to the principle if the discussion on the issue—whether to mechanize—is not getting anywhere. Part of productive negotiations management is moving the parties between the global and specific, principle and details, to keep the participants interested and involved.

49. We now have the data: the cost is $750 per month for each of them (I am ignoring Dan’s claim that Ross should pay more since I believe it to be a negotiating strategy not a goal). They can now weigh whether it is reasonable and/or doable.

50. This question deliberately swings the power back to Ross. If the business takes on the $1,500 debt, “can you increase sales by $2,000 to cover this?”
Ross is now in charge of the data and, therefore, in a power position. He can comment on this aspect of the reality of Dan’s proposal and measure whether it would have a negative impact on their standards of living. This provides Ross with some positive rather than negative power, influencing the direction the negotiations are moving.

Ross: You know we would have to prove it to them.
Mediator: Okay.
Dan: Oh, you can’t, you can’t prove it without the machinery.
Ross: We’ve got to put something down to paper, if we’d have to come up with something like that. I can’t see getting into it, you know, that kind of money.
Dan: Well either we’re going to get into this further or I’m going to be getting out of it.51
Mediator: Okay, that’s . . .
Dan: I, you know,
Mediator: Well I’m not sure that’s helpful at this point, Dan, in terms of trying to think about how to make things work. That’s sort of thinking about how not to make them work. I like to think about how do you make them work and I’m wondering. I sense two things here. I sense that obviously everybody’s reluctant to take on debt, right? The wise person is reluctant to do it unless you really have to. You have a sense (to Dan) that you have a strong case for having to do it, and (to Ross) you’re not convinced about that.
Ross: That’s right.
Mediator: And then when you turn it upside down, you say okay if we did mortgage this and we had to come up with another two thousand a month to cover that mortgage, could the business do that? That’s sort of question number one. Question number two is; I sense you each tend to think about it more in terms of Ross’s money and Dan’s money, rather than the business’s money.52 My sense is that however you raise the money, if you think about it as business money, does it pay the loan back first and then pay you, so there’s essentially no change in your lifestyle?53

51. Possibly reacting to this power shift, Dan makes a threat. It is useful to recall that only powerless people threaten. Powerful people act. We make threats when we feel powerless to influence the interaction through normal social discourse. For example, if you are standing in line at the post office and they close the window for your line, you are left with a powerless sense and respond by threatening to do something—talk to your congressman, and so on. If you had an alternative, you would have the power to simply use a different service.
When a client makes a threat, it is useful for the mediator to think of ways to empower that person in relation to the event that has disempowered him. When this is done the mediator can attempt to find a way to increase the client’s power in that specific interaction as a way of reducing his or her need to restate or increase the threat. The task of the mediator is to create an environment where the threatener can back down without losing face. Thus, it is not useful to chastise clients about their use of threats.

In this situation I normalize the reluctance to take on debt and emphasize that Ross has not bought Dan’s case for taking on the debt. Now that Ross is positive—indeed, he may now have greater power in the relationship, it is time for the mediator to switch the discussion back to Dan to see whether he can shift his position, either with new proactive arguments or by reducing his demands.

52. This is an embedded suggestion. I hypothesize that each feels differently about the business’s money versus his own money. If I could get them to think for a while about the money as being the business’s asset each might shift in his perception as to how it is spent. This is an attempt to reframe the loan from a personal to a business expense. In doing this I also separate the problem from one of remortgaging their homes. It is interesting the way in which people will view the same amount of money differently depending on how it is defined. In this case I am testing to see whether Ross will view the expenditure differently if it involves the business rising the money rather than his having to increase his home mortgage.

53. I follow this with another embedded suggestion question: Can you spend the money on the mechanization, raise sales, and have the business pay the costs without impairing the current lifestyles of either partner? This is the second part of the attempt to separate the loan from their personal situations. With these two interventions I am asking them to think about the problem differently.

Dan: Well, perhaps we’d be able to raise that money without mortgaging our houses; maybe we could raise it attached to the assets of the business. 54

Mediator: Or, or . . .

Ross: We’d have to.

Mediator: . . . or at the moment, forget about how you raise it. 55

Dan: Um-hum.

Mediator: If you just thought about it, the question would be this: Is it possible to make an investment of that nature, for the business to be able to pay off that investment and not affect what you currently take out of the business. Is that possible? 56

Dan: I don’t know, and I think it might affect what we take out of the business.
Ross: Yeah.

Dan: If we’ve got all these other issues, we’ve got lifestyle issues. We’ve got, I’m at the crossroads of my life, and also we’ve got our families involved here. And the other thing you’ve got to remember is, when we do mechanize, we’re going to have a decreased labor cost so that is going to help with the debt servicing.\(^{57}\)

Ross: Possibly, possibly.

Dan: And I also recognize that, yeah, maybe for a while there is going to be a little less money for us.

Ross: Yes.

Dan: And quite honestly I’ll be happy to take a little less money, if my work conditions were substantially changed.

Ross: But then, on the other hand, you’re saying you’ll take less money but you want me to put up more money, so I’m going to be taking even less. You know, I mean . . .

Mediator: I’m sorry. Which way?

Ross: He’s saying that I’m not pulling my load so, therefore, I should either pay more towards this debt recovery . . .

Mediator: Is Dan saying that you’re not pulling your load or that (to Dan) you feel that you’re pulling an overload?

Dan: Yeah I guess, I don’t really have a problem with Ross working the way he works while he’s bringing in the sales. But what I resent is that physically I’ve put in a lot more and I feel that I’m, I’m working more than I should.

Mediator: Now would that be satisfied if in fact your mechanization lowered your labor needs? Would that satisfy, in a sense, would that enable you to lessen the load on you?\(^{58}\)

Dan: On myself personally? I believe it would. And that’s what I’m looking for.

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54. Dan immediately comes up with a solution rather than with a response to rethink. His solution is based only on having his plan implemented. If left unnoticed by the mediator, Dan’s response will push Ross back into a defensive posture against remortgaging his family home.

55. The mediator asks him to hold the answers to the wrong problem, that is, the answer to the problem as Dan articulated it rather than the problem as the mediator has rearticulated it. This is an example of the problems created when the mediator allows the client (Dan) to control how the problem might be resolved before agreeing on the mutual definition of the problem to be resolved.

56. The mediator brings the discussion back to the shift question raised earlier: Can you make this investment without impairing the current stan-
dards of living? This is also a mutual definition of the problem because, if the answer is yes, then the problem becomes one that both will want to resolve collaboratively.

57. Dan comes up with another positive reason adding to the idea that the mediator’s reframe of the problem might be realistic and practical: mechanization could result in decreased labor costs (a goal of Ross’s) thus making it more mutual.

59. Here, I am walking Dan through a change in his position. He is no longer arguing that Ross is underworking, only that he, Dan, is overworking. By making this shift I relieve some of the burden on Ross, thus changing the situation. I am now trying to ascertain whether this helps satisfy Dan’s sense of being overworked. We can look at ways to solve Dan’s problem without the solution being a cost to Ross. In order for Ross to take Dan’s position seriously he must first understand that he is not going to be asked to pay a disproportionate share of the costs, and second that if he shares in taking on the debt, it will indeed solve the problem. So far Dan has frequently changed his position and it would be easy for Ross to agree with one position only to find that Dan continues to complain. This happens when the negotiations resolve the wrong problem. That is, when the parties focus on a strategic position of one of them rather than the goals of both of them. So now I must work with Dan to get him to send messages to Ross identifying the prime concern and how resolving it would benefit Ross and end the conflict.

The interaction at this point illustrates the outcome of power balancing by the mediator. By increasing Ross’s positive input (his thrust), it has reduced Dan’s forward thrust. He still jumps ahead sometimes; old habits die hard. But because the mediator kept in sight the goal of reaching a mutual problem definition, and used power balancing to achieve it, both participants are now more able to move forward together.

Mediator: Okay. Now it would seem to me useful, then Dan, if you could explain to us how that would happen: how you would do that to lower the load for yourself . . .

Dan: A-hum.

Mediator: In this, in this situation.

Dan: Well even, given that our sales stay constant: we sell $x$ amount of bagels a day and after we mechanize we still sell $x$ amount, we can start our shift later. That means that I can come in at five in the morning instead of two in the morning. That means that I can get out at a reasonable time during the day as well and that the actual time of production will be lessened. Therefore, I have to spend less hours there.59

Mediator: Hum. Okay. What does the current workday look like?60

Dan: Right now?
Mediator: Yeah.

Dan: I’m starting at two in the morning and oftentimes I’m getting out at four in the afternoon And I’m . . .

Ross: I’m there at six and often I’m not home until seven or eight at night.

Dan: Right, but within your workday is a business lunch and you’re out on the golf course.

Mediator: Isn’t it time for you guys to begin to think about how you might organize the business so you could enjoy life a little bit more?

Dan: Well, this is what I’m proposing, surely. He’s enjoying his life.

Mediator: Well, you let Ross speak for him and you speak for you. I’m clear about how it’s not working . . .

Dan: Well, I, I . . .

Mediator: . . . for you. Let Ross tell me something about that.

Ross: Well, I am there in the morning, I’m physically doing the work and yes, I am out with the customers in the afternoon. I’m not saying that I’m not enjoying life with it. There are long hours away from the family, away from whatever else I might want to do.

Mediator: What would lower the tensions in your family?

Ross: Continuing to have no mortgage would certainly be wise. Not having any further debt.

Mediator: Yeah. (to Ross) What would lower the tensions— you said to me earlier that some of this stuff is spilling out into your family lives and the relationships.

Ross: Well, oh the . . .

Mediator: What would it take to lower those tensions?

Ross: I suppose not having his wife complaining to my wife constantly. You know, about the, the way I’m socializing . . .

Mediator: Okay.

Ross: . . . and that sort of thing.

59. Dan places some concrete goals on the table: start a little later, end a little earlier, and spend less overall time in production. These are measurable goals that are always easier to negotiate than generalized complaints or ideas.

60. So, I must turn to getting more specific details about the current situation to be able to project forward to a different future situation. That future must be more precisely defined so that Ross can respond to it clearly, knowing the costs and benefits to any agreement he reaches. Also clearly understanding that if they reach an agreement that is measurable, it will end
Dan’s complaint and enable them to return to the earlier balanced relationship. It is the mediator’s responsibility to get the details or specifics on to the table since once they are known and understood, the new clarity facilitates productive negotiations.

61. Dan responds with a whine in his voice and restates his complaint rather than offer useful new information. He returns to the victim poor me role, which I have been struggling to move him out of. It is useful for the mediator to hypothesize why Dan reverts to his earlier poor me posture. He may have felt his power ebbing and moved to strengthen his position by claiming to be the victim.

62. Ross responds defensively and we are back in the old relationship at a moment I anticipated moving forward. It is hard for the mediator, who is maintaining a clear focus on solving the problem, to deal with the clients when they slip from productive future-focus to an unproductive past, complaining focus. Yet that is normal client behavior in all negotiations. The task for the mediator is not to become annoyed by the behavior but to try to reintroduce the future focus.

63. The mediator addresses this comment to “you guys” even though at this stage he is experiencing Dan as being the difficult client. The problem for the mediator is that Dan’s behavior is generally useful for him since it puts Ross into a defensive position. But while the cycle helps advance Dan’s argument, it does not advance any mutual solution. I must make the situation mutual to keep Ross in the talks and remind Dan that Ross also has problems that need resolution.

64. Dan responds with agreement but tags on an attack on Ross.

65. The mediator cuts him off quickly and turns the conversation back to Ross who describes his day, pointing out the positive and negative aspects of it.

66. This is a high-risk line of questions from the mediator, but at the time, it seemed the most efficient way of getting and keeping Ross the focus of the conversation. Note how I avoided some traps that opened up along the way. Ross’s first response to what it would take to lower the tensions in his family was to reiterate his opposition to the mortgage debt. I ignored that response and asked him again what would lower the tensions inside his family. I think I am also attempting to balance the complaining by giving Ross an opportunity to talk about what was going wrong for him.

Mediator: All right.
Ross: You know that’s there and that’s what’s making it.
Mediator: Yeah. (turning to Dan): Dan, am I clear that if you could cut your workload down in comparison, if you could come in later, etcetera, that would ease your feeling about the relationship of what you do and what Ross does?

Dan: Oh certainly. And it would also decrease the pressure I’m getting from the home front. I’ve got my wife, you know, getting after me all the time.
because she sees Ross with all the leisure time that he has and she doesn’t have that time with me, and that’s creating a whole lot of tension at home.68

Mediator: Yeah.

Dan: And she says, “Oh what the heck, you earn the same money. How come you’re not off on the golf course?”

Mediator: It’s very hard for people outside the business to see, right? It’s really just as hard work in some ways.69

Dan: Sure, but when it’s your wife, you’ve got to put up with the stuff.

Mediator: Yeah.

Ross: My wife is saying the same—you know, why aren’t you home? . . .

Mediator: Rather than on the golf course?70

Dan: Perhaps you should take her golfing with you.

Ross: Oh well, if your wife could come in and help clean up. I mean that’s the same silliness.71

Mediator: Yeah.

Dan: Well, what would you rather do—clean or golf?

(Chuckles all around)72

Mediator: Let’s come back to the issue now, come back to the issue. Dan, are you clear? I think I’m hearing it but I really want to hear a bit more clarity, that if in fact the investment takes place that would lower your hours . . .

Dan: Huh hum.

Mediator: . . . aside from other productivity issues that you would not feel that you were doing inordinately more than Ross does?73

Dan: Right, right. It would not only lower my hours, it would lower our labor costs, which should satisfy some of what Ross is getting after me.

Mediator: Mmn.

Dan: You know, and . . .

67. Feeling a little more balanced, the mediator turns back to Dan and summarizes what he thinks Dan’s goals are and whether, in achieving those goals, his feelings about Ross will change.

68. Dan’s response is a typical mix of positive—yes things would change, followed by the negative—a reiteration of the complaints about Ross. To do this he uses his wife’s criticism, which also helps him balance Ross’s family concerns. Negotiations such as these are often games of chess, each party attempting to “check” the other. The mediator is responsible for assuring that neither is able to move the other into a “checkmate” situation, which would lead to a collapse of the talks.
69. The mediator's comment is designed to normalize Dan's wife's remarks while also suggesting a reason for not taking them seriously inside the business discussions, and also legitimating what Ross does.

When one client introduces someone who is not in room into the conversation, the mediator must try to keep that person out of the room. The third party cannot be questioned by the mediator, and thus, she can be made to say whatever Dan wants. Sometimes this strategy can be useful in having the third party articulate an idea that the client wants to get on to the table but is afraid to state openly. However, in most cases it is a strategy to strengthen a position by adding another party in support.

70. Here I deliberately complete Ross's sentence for him to demonstrate acknowledgment of his position. This acknowledgment also bolsters Ross's position by identifying golfing as work, which takes time away from the family. It has the effect of diminishing the impact of Dan's attacks in this area.

71. Ross responds sharply putting down Dan's position and pointing out its irrelevance to the discussion. His stance is, in part, enabled by the mediator's comment at 70.

72. Ross's sharp response appears to get to Dan a little, who turns to humor possibly in order to deflate the tension. If this is so, it would indicate that getting Ross to take tougher stands should result in Dan's taking more reasonable ones.

73. The mediator takes the discussion back to more productive ground and Dan's response includes a benefit for Ross or at least, in Dan's mind, a quid pro quo.

Mediator: I'm more interested in what you're getting after Ross on and so I'll talk to Ross about what he's getting after you on.74

Dan: What I'm getting after Ross on?
Mediator: Yeah.
Dan: Well I think that I work harder than he does.
Mediator: Okay. What I want to know is if it were mechanized . . .
Dan: I would work less.
Mediator: Would that complaint be eliminated?
Dan: I think it would go a long way to do that, yes.75
Mediator: Okay. When we say a long way, how far?76
Dan: Well, it's really impossible to project a hundred percent. I'm guessing that it would go most of the way to do it. But, until we're actually in it and running it and we know how many hours we are working . . .
Mediator: But if I were sitting in Ross's shoes, I'd want to know that if I go into something like this I wouldn't want to know that I might still get the thought that the golfing part of the business was somehow bad.77
Ross: See if he gets to have less hours, do I go and golf nine holes instead of eighteen? You know, I’ll be putting in the same hours and doing the shipping and getting things prepared and then meeting with the customers and going on to the golf course. So my hours are still going to be long.

Dan: I think what we’ve got to . . .

Mediator: Ross how would the mechanization reduce the need for you to act as the shipper?

Ross: If he picks up some of the load, but then we’re back to him . . .

Mediator: Hold, hold, hold.

Ross: No, but . . .

Mediator: What I want to know is: if you mechanize—in this, you see, I know nothing about your business. I can only ask questions.

Ross: Sure.

Mediator: But if you mechanize (to Dan) can you reduce your hours to a reasonable level that enables you to have a decent family life and (to Ross) could it also result in reducing the shipping part that you do?

Ross: Well, no.

Dan: No, I don’t think it would do that at all. No, I don’t think it would reduce his hours; he’s going to have to ship for sure. And if we’re lucky, he’s going to have to ship even more than he is right now because we’re going to be producing more. And the other thing that occurs to me is, of course, we don’t know a hundred percent how this is going to go. I think we’ve got to be prepared, down the road, six months down the road, to sit down again and say, “Hey Ross, you’re still working on an average, ten hours less a week than I am.” Therefore perhaps we’ve got to have some kind of formula in place whereby we’ll adjust our pay schedules.

74. The mediator interrupts Dan, sensing he might be moving in the wrong direction and asks an odd question since it is one that takes Dan into the direction the mediator did not want Dan to go in: Dan’s complaints about Ross. Obviously it would have been much more useful to ask a question that kept the discussion on the solutions that were emerging. This is an example of the mediator using a question for a strategic process management purpose, in this case to move away from something the mediator perceives as unproductive. It succeeds in redirecting the client, but in the wrong direction.

75. When Dan restates his complaint about overwork, the mediator uses it to return the dialogue to solutions and follows through on whether mechanization would end Dan’s complaints.

76. Dan states that it does in general terms so the mediator pushes for more specifics: How far? Dan’s statement that it would go a long way leaves him
room for maneuvering and it would be unwise for the mediator to let Ross make a deal based on a proposal that has a slight opening for either change or enlargement. It is important for the mediator not to allow a client to keep something back to use later in the negotiations if the other clients does not understand and believes that agreement at this point on these terms would end the problem. This is another example of mediator management of the negotiations.

77. Here I am articulating Ross's position with greater clarity than I believe Ross is so that Dan can also hear what Ross is saying. Clients are often able to hear the same thing from the mediator more clearly than from the other participant. At this point I am unbalanced because, in stating Ross's position I am also, in part, becoming his advocate by identifying myself with his goals. This kind of deliberate unbalance can only take place after the mediator has established a relationship with the parties.

78. Dan tries to enter the conversation but the mediator keeps him out with another question to Ross as to how he could benefit from the mechanization. I have a sense that it is important to get Ross's position more clearly understood in the room and that this can best be done by having Ross articulate it uninterrupted by Dan.

79. Despite the fact that he has been given a clear run by the mediator, Ross responds defensively to some of Dan's earlier attacks and the mediator quickly intervenes to prevent him from getting caught up in the old scenario. It is one of the basic rules of mediation to have clients speak for themselves about what they want for themselves in preference to what they do not want.

80. Another attempt to mutualize the benefits of mechanizing.

81. The mediator's attempt fails and Dan returns to a tougher bargaining position making new future demands on Ross. This might be an example of conflict expansion: a strategy of increasing the possibility of a future demand for Ross to take less money now. In this strategy Dan may be trying to make his current proposal to mechanize more desirable than the future threat. Or, Dan may be issuing a threat as an expression of his powerlessness in getting Ross to agree to his position to make the investment. In either case it is a negative strategy that only makes the talks more difficult.

Mediator: Or you'd have to work less.  
Dan: Yeah absolutely, yeah, and to me that would be, you know, probably that would be perfect because that would . . .

Ross: Well I can't see working more.

Dan: Well I'm not as young as I was five years ago.

Ross: Neither am I.

Mediator: (to Dan) The part you're describing to me is not that Ross is not working enough, but that you're working too much.
Dan: Absolutely and that is how I feel.

Mediator: In a sense, you have some control over that, don’t you?\(^{83}\)

Dan: If he would allow me to mechanize, then I have control over that, that’s right. No, I think Ross does a fine job in, in getting the sales and I would like to work a lot less and make the same amount of money. That would be fine.\(^{84}\)

Mediator: Okay. (to Ross) What would make you comfortable?\(^{85}\)

Ross: Well, I, I understand what he’s saying, you know, where I want to see the labor come down obviously, add more to the bottom line. And sure, if he can get away sooner, that’s fine, as long as we can keep the place up to the standard that we have now and the product standard is going to be the same. The thing I fear, I guess, with mechanizing is the fact that suddenly it’s made by machine rather than by hand. How do I know the quality is going to be as good? How am I going to be able to sell a lesser quality product? We’ve got that to worry about too.\(^{86}\)

Mediator: Mmm.

Dan: But you know you always go on about the bottom line, bottom line. To me if we’ve got to give away a few percentage points on the bottom line that might well be worth it if my lifestyle is enhanced. You know, it’s not all bottom line. For me, I’ve got a life to live too.\(^{87}\)

Mediator: Okay. I think to be helpful, it doesn’t need to be right now, but if you can define what a few percentage points are. At what point does the variation of the bottom line become unacceptable, at what point is it acceptable? You each need to think about that because, obviously, neither of you is saying to me “There’s no way I’m going to move off of exactly what we’re doing right now.” But I suspect, Ross, from your perspective that you’re concerned about how far all this might go.\(^{88}\)

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82. An imbedded suggestion that empowers Dan to think about how he controls the situation.

83. The mediator quickly turns the proposal around from an attack or demand on what Ross must do, to something Dan can do to solve the problem. It is not clear to me whether Dan actually does work longer or harder than Ross, but this knowledge is not important to the mediator, for to make such a decision I would have to make a judgment. At this moment, I only want to facilitate productive negotiations.

84. Dan responds to this empowerment with a change in tone—pleading—which indicates an acknowledgment of Ross’s power: “If he would allow me to mechanize,” and a follow-through compliment of the work Ross does.

85. I try to get an immediate response from Ross to this change in Dan’s negotiating behavior.
86. Ross’s reply is to raise another important issue that has not been discussed so far—a possible negative impact of mechanization. Given its lateness in the session it might also be a conflict expansion rather than a real issue.

87. We now see a shift in Dan’s position from an equitable to an equal division. He now talks of sustaining a small loss if it enhances his lifestyle. At this point he is not demanding more of Ross. This would indicate that his earlier position that Ross pay more was a strategy not a goal. It would appear that he jettisoned the strategy of Ross paying more, in part to answer Ross’s concern about the change in quality that may result from mechanization.

88. I leave them with an idea to think about—“What is an acceptable few percentage points?” As a mediator I am often asked why I do not get more details, for example, whether they can afford to mechanize. I avoid seeking this type of information because it puts me out of the role of mediator—facilitating the negotiations of the disputants—and places me in the role of judge—deciding whether they can or cannot afford to do some things. I am willing, and indeed do, ask questions of clarity to reality-test proposals either of them might make, but I constantly avoid trying to discover the truth of the matter. If the information is important, one client will usually raise it. The mediator must always ask questions out of curiosity, not as a means to evaluate.

Ross: Well, that’s right. I mean it could go a long way. If we end up with a poor quality product, sales can go down. Our overhead is going to be higher.

Mediator: Okay. Help me because I’m just an eater of bagels and I don’t know anything about producing them at all. I just assumed that everything was mechanized these days. What are your competitors doing? What’s going on in the field?[^89]

Dan: Oh, they’re being shipped in frozen from the east. Those guys are highly mechanized.

Ross: But the quality isn’t there and that’s why we’ve got the business that we’ve got—because we’ve got good quality.

Dan: Well the quality isn’t bad on some of those items and . . .

Mediator: Is your advantage the fact that you ship fresh, rather than frozen?

Ross: That’s right, we’re the only ones that . . .

Mediator: That they’re baked here and . . . Okay, all right.[^90] Now, are any of the other manufacturers in this area mechanized, not mechanized? What’s, the norm?

Dan: Yeah, we have a competitor, we have two competitors who are mechanized. And, you know, so far we’ve been able to keep our niche because we’ve got a particularly good quality product.

Ross: A better quality, I know that . . .
Dan: And that we, well, it’s all a matter of taste you know.
Ross: Well, stick up for our own product.
Mediator: That’s what quality is all about; it’s a matter of good taste.91
Ross: Sure.
Dan: There’s no accounting for taste.
Mediator: Dan, if you mechanized, and you’re the guy that knows production, can you sustain the current level of quality?92
Dan: You know, quite honestly the product will change somewhat. Mechanized product always changes, but I don’t see why we can’t have a really high-quality product.
Mediator: Okay.
Dan: It won’t be the same, it will be slightly different. I mean, we do know that.

89. The mediator does not claim competence when he does not have it. I do not need to know how bagels are made or marketed. I do need to know how to ask questions to focus the clients on their legitimate self-interests and focus on defining a mutual problem definition and mutual solutions. Indeed, by acknowledging the client’s expertise, they become more active helping the mediator understand the details of the context. Some would argue that the mediator should have expertise in the context of each mediation. This argument relegates the importance of the mediation skills to those of the context. This makes no sense, since the clients should always be the experts on their situation and the mediator should be the expert in managing the situation/negotiations.

90. On the other hand, the mediator cannot allow the situation where the clients’ expertise dominates the process. So, at times, I cut the client off when he is overusing his expertise and, as in this case strategically joining me. In this situation I have the information I need—they are the only purveyors of fresh bagels—and move ahead with other context-clarifying questions. The answers to these will enhance my mediation efficiency.

91. Dan’s negative tendency asserts itself again and I join Ross in being pro-company. I support the validity of their product since I believe it is important for the mediator to offset negativism and also to build a better relationship with the clients by being supportive of their company and its products.

92. I continue my search for clarifying information. However, note that in this question I attempt to restore some balance between Dan and myself by specifically acknowledging his expertise. In the previous two interchanges I had appeared more supportive of Ross and the form of this question helps me gather the data I need while restoring balance in my relationship with Dan.
Mediator: Will this be a change for the better, for the worse, or will it just be different without necessarily being any better or worse?

Dan: I think it’s a bit of both. The consistency will be better.

Mediator: Uh-hum.

Dan: You get everything, what do they say, cookie-cutter–like.

Mediator: Yeah.

Dan: They all come popping out the same but . . .

Ross: But isn't that something that we’re offering now? The product isn't like what our competitors are doing.

Dan: Right, but the problem is that if we keep on doing it the way that we’re doing it now, there’s a limit to what we can produce.

Ross: Why?

Dan: Because we’re doing it manually, and you know labor cost is high, and you are griping about the labor cost.

Ross: Ah, well.

Mediator: Yeah. When I go into my local bagel store in New York I can choose from twenty to twenty-five different bagels; my favorite is the cinnamon raisin bagel but you can get all kinds, strawberries, blueberries. Crazy.

Dan: How many million people do you have walking past that store everyday?

Mediator: Well, what I want to know is here. What’s the range, I mean what do people expect when they buy a bagel?

Dan: Well, the range is much less than you’ll get in the East.

Mediator: A-huh.

Dan: And I think it has it has a lot to do with a few things. One of them is that we don’t have the population here.

Mediator: Yep, uh-hum.

Dan: And the bagel has been around a lot longer on the East Coast. People are far more attuned and educated to it.

Mediator: Uh-hum.

Dan: It’s not here, it’s a tradition there.

Mediator: Uh-hum.

Ross: You don’t get as many flavors here as you have there. You have more traditionally the simple ones.

Mediator: Uh-huh.

Ross: Those are the ones that he does well at, at this point.

Mediator: Does your competition have more flavors than you? Less flavors than you?
A question about differences and sameness. The clients know the meaning of the differences; however, I don’t necessarily know and I also need to check to see whether Ross shares Dan’s understanding. So I ask Dan to define what he means by “slightly different.” It is useful for the mediator not to take anything for granted—particularly his understanding of a vague client statement. One major mediator task is to bring clarity to the conversation and to assure that the clarity is shared by all participants.

94. Dan’s description of the outcome of mechanization gives Ross new ammunition to counter the proposal, thus strengthening his position.

95. Dan is able to quickly the counter Ross’s new advantage by linking the mechanization back to reducing the labor costs—one of Ross’s goals. These two moves check each other in the negotiations game.

96. I try to bring the discussion back to getting a clearer context picture. One purpose of this line of questions is to explore whether it is possible to increase production through an increase in the product lines as well, or instead of, simply increasing the existing product lines.

97. Dan challenges the question with one of his own. This is partly his natural style of arguing but may also be a reaction to his feeling that I am leaning more toward Ross. It is not useful for the mediator to respond to this type of challenge by trying to explain his position because, if it is a natural style of answering, responding will only exacerbate the issue. If it is not a natural style but a reaction to Dan’s sensing an imbalance, it is better to move to rebalance rather than discuss the imbalance.

98. I respond by asking the databased question again, ignoring Dan’s response to me. There are times in the mediation session when a client’s response to a mediator’s question or comment appears to be an attack on the mediator, or the mediator experiences it as an attack. The best response is to go back to data and leave the emotion-laden “attack” alone.

99. Ross eases the tension with a friendly observation; at this point he is defending or supporting the mediator. That could cause a problem if Dan saw this as Ross triangulating with the mediator. In that case the mediator would respond with an intervention deflecting Ross’s support. However, in this instance, Dan did not appear to be affected by Ross’s comments.

100. Another question about a difference; the mediator is trying to establish whether there is any space for change that would not benefit the competitors. At this point it seems clear that the marketing advantage that Dan and Ross enjoy is that their product is freshly baked and sold the same day. At the same time, there appears to be a joint concern about developing a wider range of flavors. The mediator must explore this issue to determine the data needed before expanding options with the clients.

Ross: They attempt various flavors and promote and then drop and promote and drop other ones and so on and we’ve carried on with the traditional ones and we’ve done very well at it.
Mediator: Uh-hum.
Ross: I don't think we've got a problem from that point of view.¹⁰¹
Dan: We've done well, we both make good money. I'm just not happy with the division of labor.
Mediator: Or you're not happy about how much you do?
Dan: Yeah. Isn't that the same thing?
Mediator: Not necessarily, not necessarily, I think.¹⁰²
Ross: We both spend equal time away from the home.
Dan: Uh, yeah. Are we going to get into that again? Yeah, I don't spend it on the golf course.
Mediator: What does it take to resolve this problem? I mean, I don't quite understand, what is it . . .¹⁰³
Dan: Well, I would like a commitment from Ross that he's prepared to go along with the idea of mechanizing and that he's prepared to accept that I've put in substantially more labor into this operation right now.¹⁰⁴
Mediator: In return for that you're, what?¹⁰⁵
Dan: Well, if we can get it to the point where I feel it's an equitable situation workwise, I think then we can both carry on earning the same amount of money or taking out equal portions of money from the business.¹⁰⁶ You know other . . .
Ross: See you're always talking about the fact that you should take more, I should take less, and then you want to spend another hundred thousand dollars. I mean I can come along and say “Okay, fine.” If we're going to take the same amount of pay out, things like that, can you show me very clearly where we do put up this kind of money that we're going to see that sort of thing happen. And the sales are going to be able to stay up because the quality's going to be good.¹⁰⁷
Dan: Well I can look after the quality; you can look after the sales.¹⁰⁸
Ross: Well that's true.
Dan: You know there are no guarantees.¹⁰⁹
Mediator: (to Dan) You're the one who has the answer to that question just as Ross has the answer to the quantity question.¹¹⁰
Ross: Yeah.
Mediator: (to Ross) You know whether the market is expandable.
Ross: Well, we do see our competition coming in with the various flavors and so on and, and they keep pulling out new flavors and don't seem to be able to cotton onto any. Maybe we can turn around and come up with something that's going to be better. I think what we see coming in frozen doesn't compete with us at all, so . . .
101. Ross makes a favorable comment about Dan’s work.

102. Dan returns to his complaint, which the mediator redefines in line with his earlier efforts in a way that Dan is responsible for it.

103. With an edge of irritation in my voice, I try to bring the discussion back to a solution focus. The mediator can influence the clients with more than words. I also use intonation, body language, paying attention to or ignoring an idea as nonverbal ways of communication.

104. Dan defines the problem and makes some important shifts. He now wants the mechanization and acknowledgment of his workload. He has omitted reference to Ross’s workload and not asked for Ross to be responsible for a larger share of the cost of mechanizing.

105. Since Dan’s statement was clear and concise it seems it would be helpful if he could identify the quid pro quo of his proposal, that is, what is in it for Ross?

106. Dan’s response confirms that he is dropping his demand that Ross pay a larger share of the cost of mechanizing. Indeed, he is very clear that he has moved from an equitable to an equal demand with regard to money. However, this proposal only drops certain demands, which may have been strategic add-ons initially, rather than make any concession to Ross’s position. Now we must explore what Ross would need to be able to look at Dan’s new position more favorably.

107. Ross responds (rather heatedly) to Dan’s move (104) to bring back his equity argument. He then restates his position of equality, in effect saying to Dan now is the time to bury equity (106). At this point he wants an assurance that things will demonstrably improve if he agrees to mechanize. With the equity-equality issue dealt with, Ross for the first time, suggests he might agree to Dan’s mechanization proposal if Dan can give some assurance as to quality.

108. This compliment is an acknowledgment of their successful role sharing. Neither partner has denigrated the other’s abilities.

109. Dan adds a warning about “no guarantees” that is probably designed to strengthen his negotiating position. It is useful for the mediator to determine whether the warning is for him or for Ross. If the mediator feels the client is warning him, he must act to find and correct the cause of the warning.

110. The mediator reinforces the separation of power, sensing it is a good time to enhance the balance in the session.

Mediator: Uh-hum
Ross: you know, I think we’ve got the advantage there.
Mediator: Uh-hum
Ross: If we do mechanize and he does feel that we’re going to standardize and come up with every one looking exactly the same, I don’t see that being totally right . . .
Mediator: Uh-hum
Ross: . . . but, we'll sell it if we have to, that's what we're going to do. We'll find a way.111
Mediator: If you were, after some serious consideration, to agree to that kind of investment, what would you want in return? What would you want?112
Ross: I would want to eliminate the cost of the expenditure very quickly, from the view that I really don't want to see a whole lot of debt hanging over me too much longer.113
Mediator: Huh-hum
Ross: Five years, ten years, may be too long for me . . .
Mediator: All right.
Ross: . . . if we could do it sooner.
Mediator: Okay. What would happen if we did a little work between now and next week and tried to run some numbers through in several different ways and think about it in sort of different ways? Number one is what are the range of options of how to borrow the money. Second would be to borrow it and for how long?114
Ross: Uh-hum.
Mediator: Right. What's the advantage of short versus long? Okay. The third question would be what's a reasonable assumption of what you can do in terms of cutting the labor costs? What's a reasonable assumption?
Dan: In dollar figures?
Mediator: In dollar figures. And then what's another reasonable assumption in terms of how you might penetrate new markets and expand. What's reasonable? Always be on the conservative side in thinking about these numbers.

111. Ross reciprocates by indicating that he believes it is possible for Dan to succeed where the competitors have failed in bringing out new product lines that will sell in this market. Here, Ross reciprocates Dan's compliments with one of his own. The mediator notes this and is convinced that a solution is highly probable. With this much goodwill between the partners, it is unlikely that either will do anything that destroys the relationship.

112. Ross has made equal movement to Dan—perhaps a little more—so it is useful to ask him what his quid pro quo requirements are. If we can narrow the issues and have clarity from each as to what it will take to reach an agreement, then the session will have been very successful. We still might not reach agreement in one session; however, the groundwork will have been laid for a solution. During the period between this and the next session, each client could look at the specifics of the other's proposals and determine whether they are acceptable. If so, then the agreement could be
struck quickly. If not, they would at least be clear about the amount of difference between them and begin to negotiate over the specific differences with the knowledge of the direction any movement must take.

113. Ross responds positively and returns to an earlier concern—the duration of the debt. Earlier I hypothesized that the nature of the debt—a mortgage on their private homes—was key for Ross. As movement is taking place between Ross and Dan, I also sense that Ross is shifting his emphasis from opposing a home mortgage to the duration of a business loan. This leads to an evaluation of my hypothesis and an appropriate adjustment. He is concerned with the size and duration of the loan regardless of whether it is raised on the business or the house.

114. Here I am beginning to think about what needs to be done between now and the next session. I begin to make assignments. Before giving the specific tasks, I use language to create a framework of thinking. In this statement I stress “different.” I want them to think about their tasks in an environment of how things can be different: run the numbers “in different ways,” think about them “in different ways.” The clients will leave the session with the last theme in their minds. My theme for them is to think differently so as to save the golden goose.

Dan: True.

Mediator: If you have those numbers, then it would seem to me that you could be either more uncomfortable or more comfortable. I think you’d have a sense of being able to deal with this issue more clearly if you had a better idea of these various options. And make the estimates on the most conservative basis.

Ross: Uh-hum

Mediator: So I sense that each of you feels that if you mortgage your home it’s something you’re doing. Is there perhaps a way you could get the funding with the business doing it? And then that way it could also come off in a different, in a totally different way in the taxes than if you run it through the home mortgage . . .

Ross: A-hum

Mediator: . . . and you’ve got to take it back. If the business can do it directly, then you’ve got a whole different tax picture there. What is the difference, monetarily, between those two? What’s the difference between paying it off on a short five-year versus a ten-year? How much is it going to save on the production side, how much can it generate on the sales side? I think if you had all of those pictures, you could then take a look at this and say, “Okay, look, this is doable or this is not doable. Here I might be able to go with this but I can’t go with this.” And all the time, I think, keeping in mind that one of the things you really want to do is—you’ve got a golden goose here. And it would be crazy to kill the golden goose.
Ross: That’s what I’ve tried to tell him.\textsuperscript{119}
Mediator: It’s laying the golden eggs. You’ve got a golden goose.
Dan: I’m the goose.\textsuperscript{120}
Ross: Ah, you’re not.
Mediator: You’ve got a good bottom line, you’d be crazy to kill it. There’s
got to be a solution, there’s got to be a solution. Okay. But to find a solu-
tion, we’ve got to be creative. We’ve got to think about what are all of our
options and we’ve just outlined a bunch of them to examine. And my
suggestion to both of you is that you do that in the course of the next
week or two, however long it would take. Come in with reasonable
assumptions, agree on those assumptions before you come in if possible,
so we don’t have to argue about whether or not you can save five hun-
dred\textsuperscript{121} bucks a month on the labor costs or seven hundred a month. See
if you can agree on those before you come in; if you can’t, we can discuss
them here.\textsuperscript{122} Assess what the growth potential is and, do it all on a most
conservative basis so that you don’t overestimate; you don’t take anything
on in hope of some reality. You guys know that you can’t run a business
on hope: only on hard work and reality, right? Sweat and reality are the
two things that go together in good business.\textsuperscript{123}

115. I give Ross and Dan four clear assignments. This session has defined the
problem, helped each understand the other’s needs and cleared away
unuseful negotiating strategies. Now we must build on this emerging col-
laboration to work within a cooperative framework. One way of doing this
is to have all of the parties think about the same things—hopefully in the
same context—as a way of stimulating new and creative ideas. I make
process suggestions—that is, suggestions to move the process along. The
tasks are:

\begin{itemize}
  \item Figure out how to borrow the money (separating the house from the
        business mortgage)
  \item Figure out how long to carry a loan
  \item Estimate the labor cost reduction
  \item Estimate the sales from new market penetration.
\end{itemize}

116. I reinforce the idea of looking at the mortgage in a different way by empha-
sizing the tax consequences of running through the business versus the
individual houses. Here the mediator offers an additional process sugges-
tion as they gather new information.

117. I reiterate the tasks using slightly different language since at this stage of
the session all I want to do is to get the assignments clearly understood and
get agreement by both parties to do them. I frequently deliberately change
the language if I feel that the language used to discuss the problem has
become negatively laden. Shifts in language often help the clients to dis-
cuss an idea anew.
118. This is one of my favorite metaphors in business mediation since it speaks to their self-interest and it is a metaphor that warns them of the consequence of not coming to an agreement and indeed losing a significant source of income.

119. Ross takes the opportunity to triangulate by agreeing with me and blaming Dan for not understanding this point.

120. Dan returns to his victim role and changes the metaphor from the golden goose (positive) to the goose is cooked (negative). I do not want to end the session on this down note. I want them to take away the theme mentioned in note 114, since that is both a more productive and optimistic environment in which to think about the future without this problem.

121. So I ignore his metaphor transformation by reemphasizing the positive, “You’ve got a good bottom line; you’d be crazy to kill it,” and turn the conversation back to solution seeking. I also suggest that they make conservative estimates in the belief that the person wanting the change has a tendency to overestimate its benefits. This could have disastrous results if a plan is adopted on overestimated benefits. On the other hand, the person not wanting the change is likely to understate the benefits. However, if the plan is adopted on an underestimate and the benefits of change turn out to be larger than anticipated, no damage is done to the business.

122. Here I suggest they talk between themselves during the next period about the numbers. It is useful to make this type of suggestion since it frequently obviates an unnecessary argument in the session if they develop the numbers in isolation from each other and bring them to the session unchecked.

123. This is, on reflection, an odd statement. I think I was trying to warn them against the negative consequences of not reaching an agreement as another strategy to have them think positively during the forthcoming week using a metaphor each clearly understands and accepts.

Dan: Right

Mediator: If you guys do that then it seems to me we could look at it next week and try to explore (to Dan) how we could reduce your burden, right? (to Ross) How to make it possible that you don’t take on another burden, a financial, or psychological burden in the future.

Ross: Uh-hum.

Mediator: And how you can each begin to look at what each of you is doing in a different way and then how the spouses can be released from it too, so that you can revert back to the good days when you . . .

Ross: Sure.

Mediator: . . . when you were building the business.¹²⁴

Ross: And they were—they were real good. You know that.
Mediator: You’ve reached the normal plateau for businesses after seven or eight years.¹²⁵
Ross: Yeah.

Mediator: You get good growth, you get dedication to that growth. You’re now going to level out in a sense, taking a breather. And as you take a breather, you suddenly can see these problems. So if you do that in the course of the next week, then let’s get back together and see where we might go with it from there. Okay?
Dan: Perfect.
Ross: I’ll try it and see what happens, sure.
Mediator: Okay, okay.

¹²⁴ The mediator monologue closes with the possibility of a restored relationship and a return to the good old days.
¹²⁵ I close the session by normalizing their situation. This has two purposes. First, a normal problem can be resolved normally. Second, if their situation is normal, they are normal and, instead of blaming each other, they can simply look on the situation as causing the problem. By removing the individual from the problem, normalizing it and creating hope, the mediator sets the stage for a more productive intervening week of thinking by Ross and Dan.

**COMMENTARY**

In analyzing the dynamics of this session, we can see examples of the organizing principles, such as the metastory and roles, choosing the central issue, and the importance of a future focus. At the same time, we see the specific dynamics of the two men and the strategies the mediator uses to keep them on track and moving toward a solution. We will look first at the dynamics.

**Working with Competing Goals and Strategies**

Dan enters the negotiations with a clear goal: to get Ross to agree to mechanize the production line. In order to enhance his goal, his strategy is to add on a significant demand—he is working much harder than Ross, and therefore, Ross should pay more than 50 percent of the cost of the proposed mechanization.

This gives Ross two points to counter: (1) whether to mechanize and (2) how to avoid paying a larger share of the costs. Dan opens with a demand for an equitable (from his perspective) sharing of the costs. Ross believes that if the plan goes forward, any cost should be on an equal, fifty-fifty basis, the same basis as ownership of the business and all sharing to date. While he is engaged
in any discussions of the cost sharing, he is not defending his position against
the cost of mechanization itself, and is inexorably drawn into solving Dan’s
problem definition.

Dan’s other negotiating strategy is to offer not only the problem, but also a
specific solution—that they each mortgage their homes to pay for the mecha-
nization costs. Remortgaging his home is unpalatable to Ross; in part his oppo-
sition to the mechanization proposal is how it is financed. However, like the first
issue, while he is focused on how to finance, Ross’s opposition to whether to
mechanize is ignored and he is also drawn into the how to the detriment of his
whether position. His dilemma causes him to dig his heels in even further.

Process Issues

When I examined the session, I pondered the process issues. Dan’s story has dom-
inated the session, and by dominating it, has hampered the development of a
mutual problem definition that could lead to other options available to the busi-
ness. Further, as the session proceeds we can see that Ross is not powerless. His
simple position, “There is no problem,” blocks Dan’s story and offsets the fact that
Dan’s story tends to dominate the session. In effect, Ross’s behavior roils Dan and
keeps him in a complaining mode, which is not a successful negotiating stance.

The first step in the analysis is to identify the problems I have with the ses-
tion. They are:

1. Dan’s way of talking makes him aggressive in this situation, while Ross’s way
makes him passive-aggressive. Their styles of talking about the problem are
more time-consuming than the disagreement itself.
2. Dan’s story dominates the session.
3. The partners’ negotiating strategies effectively abort a search for a mutual
problem definition.

In reviewing the transcript, we can see how these three problems drag out
the session without moving it forward. My first hypothesis is about their goals,
particularly that Ross’s opposition is as much to the way the mechanization was
to be financed as it is to implementation itself (17 and 18). This hypothesis does
not show itself to be useful in moving the discussion toward a mutual problem
definition, however, and must be modified or put aside until later. I feel the frus-
tration of the partners’ way of talking about the conflict and begin to devise a new
hypothesis to deal with it (36). Based on the second hypothesis, I must counter
the partners’ negotiating styles by attempting power balancing: specifically by
reducing Dan’s forward thrust and increasing Ross’s forward thrust. We see this
process unfold gradually from 36 through 46. While the two partners have not
yet agreed on a mutual definition of the problem, they have at least begun to
examine various solutions to Dan’s problem of mechanization (see 58).
As Ross becomes more positively involved, Dan is able to let go of his complaint of working harder and, therefore, demanding that Ross pay more (with a few exceptions that seem more like sniping than real complaints). Tensions are lower as they focus on specifics of costs and quality. I will return to the first hypothesis much later (114) in the final wrap-up assignments. The puzzle of whether versus how will not be solved until the next session. But clearly, my hypothesis that the how is key dominates my summations. It will be validated, or not, in Ross's response the next session.

Examining the Organizing Principles in the case

This case presents far too many issues and I must decide which are central and which are peripheral. Along the way, I made note of other minor points that might have become hypotheses to be tested. One involved the family/social relations of these men. I did not pursue the line of questions, and it did not reassert itself until almost the end, a postscript to the discussion. If it had been a central issue, it would have reasserted itself with force at some point in the session. Another potential issue emerged at 52 regarding how each man thought about the money—personal or business. Again I noted it but did not pursue it. There was confusion in both their thinking, otherwise the question of remortgaging the houses would never have been advanced seriously. Whether this issue becomes central will be decided in their responses to my final instructions. We may need to explore it in the next session, but it should not sidetrack the already complicated dealings of the first session. Thus, we learn from this first session about the dynamics of the partners as well as the data of the case. We see how each partner expresses his unique view of life—his metastory—and how the role he assumes grows from this view. Dan sees the world out to get him and he plays the victim role “Oh, poor me.” Ross is out playing golf while poor Dan must sweat over the ovens. Ross, on the other hand, sees himself as just as hard working in a competitive world that needs a low-keyed response to keep ahead. One can imagine how he avoids conflict when a customer asks a loaded question.

After analyzing the dynamics of the first session, the task for the next session is to build on the momentum that was evident in the closing minutes. The mediator can think about more questions that will allow the partners to finally reach a mutual problem definition. I have deliberately used a shift in language, emphasizing “different” approaches and ways of looking at the problem (114 and 117). Such shifts can free up the clients’ thinking in the next sessions. The assignments given to the parties at the end of the first session are examples of process suggestions (114 and 115). I do not know the outcome in advance. They might further enhance the dominance of Dan’s story since they are all to do with mechanizing. On the other hand, they could result in a strengthening of Ross’s position once both men understand the detailed costs. When he has the specifics as to costs, Ross may be able to argue more clearly about the feasibility of Dan’s plan. Regardless of whether Ross
strengthens his position next week, I must work to create a situation in which they can agree on the mutual problem definition, thereby opening a discussion of other ideas—and those ideas must be balanced between the interests of Dan and Ross. Thus, the mediator would spend time in the intervening week thinking about what he could do differently in the next session.

Implementing the New Hypothesis

It is useful for mediators to keep the long view in mind. Rarely will a solution emerge in the first session. Instead it will provide insights—a road map—for progress in future sessions. If one hypothesis proves unuseful, the mediator formulates a new one to test. Thus in the next session of this case, it might be helpful to keep in mind the Money hypothesis. But it is not incumbent on the mediator to follow up each and every hypothesis that occurs to him. It is important to keep one's eye on the main chance—the mutual self-interest that must become evident. They will both keep golden goose in sight.

In the next session, one way to overcome the dominance of Dan's story is to help Ross create and sustain his own story. This can be done by developing a series of questions to Ross about what he wants for and from the business in the future. For example, “Thinking about how things will be two years from now, what would you like the business to be doing?” This type of *future-with-a-difference* question provides space for Ross to talk more about what he sees for himself and the business without having to defend himself.

Furthermore, Dan's negotiating strategy can be diminished by helping to make Ross a more efficient negotiator. I can minimize the effect of Dan's strategy by helping Ross to explore the consequences of accepting Dan's solution. I might, for example, diagram Dan's offer on the board in the following way: “Well, let's see what we are talking about here. Dan, if I understand correctly, you originally proposed that the business mechanize and that Ross pay more than half the cost. And now you are offering to withdraw the demand for a higher share of the cost if Ross agrees to the mechanization.” Once the diagram is on the flip chart, I could ask, “How does that look to each of you? Ross, how does it look to you?” These questions should highlight the lack of equity in Dan's proposal and cause Ross to take a firmer position regarding it.

A different way of treating my second hypothesis about Ross’s goal of not mechanizing is by testing it explicitly early in the next session. I could do this by expanding the discussion with reflective, future-focused questions such as: “Ross, from your perspective, are there other ways to resolve the labor problem besides having you do the shipping and coming in early in the morning?” This should open the way for Ross to make alternate suggestions. I might try asking Dan a similar question, “Dan, your main issue is that you are working too hard. If you found you could not raise the money to mechanize, what other ways could you reduce your workload?”
These question would, hopefully, develop alternative approaches. If neither question got other ideas on the table, the mediator might try a more direct question such as, “If you two could not reach an agreement on mechanizing the plant, would you want to look at other ways of solving the problem, such as hiring an additional person to help with the baking and shipping?” This question borders on content suggestion and must be used very carefully. If the partners could look at various alternatives, they could weigh the mutual cost/benefit ratio of increasing labor costs to solve the conflict.

Whichever of these strategies were followed by Dan and Ross, the result would be to shift away from Dan’s definition of the problem and proposed solution, and to help develop the space for alternative ideas to emerge through a more balanced discussion.

As you review this session, what ideas do you have for changing the direction of the talks at the next session?
Sexual harassment cases are generally employment related. Other employment issues include racial and ethnic discrimination; hazing; gay discrimination; and general equal payment, opportunity, and promotion cases. Less than 11 percent of the working population is unionized in the United States, so employers are forced to turn to other formal structures to settle interemployee disputes and management/employee differences when the cases, if unresolved, expose the employer to civil suits.

The first problem for the mediator handling such cases is how to be accepted by the participants to the dispute even though the mediator has been chosen and is paid by the employer. Both employees will fear that the mediator is indebted to the employer whose interests may not always be the same interest that the employee sees for himself.

The parties to the dispute will, therefore, have a healthy suspicion of the mediator that can only be overcome by the mediator’s behavior, demonstrating his balance. It does not appear to be particularly useful for the mediator to open with a statement of his balance or to suggest that he is neutral. Such an explanation simply highlights the employees’ fears but does not answer them. Probably the only way to allay these fears is for the mediator to be clear that the participants are free to leave the process at any time and that only they can reach an agreement. Supporting this is a clear statement that the mediator will maintain absolute confidentiality about everything that goes on in the room. With these
two clear statements the mediator prepares the way for his demonstrated behavior as the means for assuaging the parties’ fears. Once the mediator gets under way, his behavior should help the participants to trust him and the process.

**SIX BASIC TENETS OF MEDIATION**

In cases as sensitive as sexual harassment it is useful to define six basic tenets of mediation as they apply to a case such as this one.

1. The first is to remember that the mediator is the manager of the participants’ negotiations. The clients must settle the dispute and, in order to do so, they must negotiate.

2. The task of the mediator is to help the clients reach an agreement about their future relationship that is acceptable to both of them and enables each of them to get on with their careers. Mediation is to help them shape their futures, not settle the past.

3. Mediation, therefore, is not about finding the truth, since most disputes are about perceptions, not truth. If the mediator gets caught up in searching for the truth, he may well find it, but on discovering the truth, he will have changed his role from mediator to judge. He may discover the truth, but perhaps lose the clients.

4. The mediator also avoids determining right and wrong. In mediation there is no right or wrong, only differences. Each person is entitled to his or her different position without judgment by the mediator. Once the mediator considers a participant more right or more wrong, he has taken a position against the future interests of one of the parties and makes it more difficult to shape a balanced, mutual, and future-focused solution.

5. Mediation is about creating an environment in which new ideas for the future can be considered and the new ideas should protect the future interests of the parties.

6. In order to move toward solutions most people need to be able to save face in leaving a previously strongly held position. Thus a person who has denied the existence of a problem must be helped to save face as he or she moves from defining the problem to discovering the solution. It is the mediator’s responsibility to construct an environment in which face-saving is possible and to construct the actual face-saving strategies for each of the clients.

In this chapter we have a case involving an allegation of sexual harassment brought by a graduate student against a professor. The vice president for Academic Affairs has retained the mediator. A clause in the faculty/staff code of practice provides that when a complaint is made against a faculty/staff member, the parties may, if both agree, try mediation before taking the case to the next level. At this particular institution the case would go before a committee of the faculty
senate. The vice president offered the parties the opportunity to mediate and they both chose to use the process.

I knew nothing about the details of the case since it is my policy to learn the details from the participants, not a third party. In this way I am not influenced by the opinions of the referring person. This is particularly true when the referrer is a superior of the participants. In this case I must assume that the vice president has two goals in offering mediation. One is to help the participants reach an agreement on their own. The other might be that he prefers to keep the problem private and is more interested in having the matter settled than how it is settled. Thus, any information the vice president provides must be suspect and it is best for the mediator to decline to hear any information as a condition for taking the case.

Now let us examine one of the Organizing Principles illustrated in this case.

Deciding Who to Ask First

The first problem confronting me as I opened the case was to decide who should go first. I based my decision on my experience working with the Norwegian Ministry of Justice’s victim/offender mediation program. I have trained the managers of the forty mediation centers in Norway in what has become an outstanding national victim/offender program. In victim/offender mediation it is generally more useful to ask the offender to go first. This provides the offender with an opportunity to start on an admission and avoids having the victim start in what might be a “victim” role. This is possible because the offender in the program has been arrested for a specific crime and is not contesting his guilt.

In the university case, Irene made the allegation and I thought I would ask the professor to go first although he had not admitted any guilt. However, by asking him to go first, I put him in the awkward position of defending himself against an allegation that he completely denied. In this case it would have been better for the person making the accusation—Irene—to go first. Thus, we can see a possible weakness of knowing nothing about the case. However, it did not severely impact the process. When I turned to Irene to explain the allegation, I ran into another problem: how to limit the amount of time each participant gets in the opening part of the process.

When the participants to mediation arrive in the office they each have a story prepared for the mediator. The story is designed in three parts.

- A version of the facts that puts the teller in the best light
- A complaint about the other that puts the other in the worst possible light
- A definition of the problem that contains within it a solution that benefits the storyteller

Before any fruitful negotiations can take place, the mediator must help the clients establish a new, mutual problem definition (MPD) derived from their two very
different, indeed antithetical, initial stories. In addition to the problems presented by the construction of the story, the mediator also needs to pay attention to the amount of time each person speaks in the early part of the session. Normally I limit each participant to about thirty seconds before I interrupt with a summary and turn the platform over to the next participant. I do this because I know that whoever goes first has a unique advantage, which is that the first speaker uses the entire time allotted to present her case. The second speaker cannot trust that the mediator has remained uninfluenced by what the first speaker said and thus spends one half of his time telling his story and one-half answering the other person’s story. Thus in the first exchange 75 percent of the time is related to the first person’s story. If this imbalance continues, the first story will dominate the session and before long the conversation will turn to finding solutions to the first person’s problem definition. At this point the second speaker may lose faith in the process and may withdraw.

When I move to Irene to relate her story, she takes a long time to present it. I am in the difficult position of not having a sufficiently detailed story for Mark to respond to, so I continue with Irene as she spins her story, and keep Mark relatively quiet while she is doing this. When she is finished and I am comfortable that a significant portion of the story is on the table, I turn to Mark and must engage in a difficult strategy: letting him know that I have heard and understood what Irene has told me, while indicating that I am maintaining my balance by not necessarily accepting it.

As you read the transcript, look for the shifts that take place from the time each person has staked out the initial stories until they reach a mutual problem definition.

**TRANSCRIPT AND ANNOTATIONS**

Mediator: I want to welcome you, Mark and Irene. If I understand correctly, Irene, you have filed a harassment complaint against Professor Browne. And that, Mark, both you and Irene have had separate meetings with the academic vice president who has suggested you mediate this issue, on the understanding, of course, that it is voluntary and any agreements you reach must be mutual agreements. If you don’t reach an agreement you can proceed with the normal academic process for dealing with these matters. But my sense is that you’d both like to get this settled in a way that is acceptable to each of you. So, let me ask you, Mark, if you could tell me what is the basis of this.

Mark: Well, I really don’t know what the basis is. The whole thing is a bunch of unfounded nonsense and I really don’t know why we are here putting me in just an awful situation. Wild allegations being made and well, I think . . .

Irene: I’m just one of those crazy women, you’re a victim of some loony single mom.
Mediator: Irene, tell me what’s the basis for the allegation?5
Mark: A lot of paranoia. John, I think . . .6
Mediator: Hold it, let’s not describe what each other does. Let’s try to get into the facts. Irene, tell me what’s happening?7
Irene: I am a mature student in the environment faculty and I am in a special program that Professor Browne has. It is really to offer special services so that older people like myself who have families are able to go back to school. We get a little bit of extra help and some concessions around classes and homework. Initially Professor Browne was extremely helpful and attentive and I was very grateful. This is very, very important to me. I have no family to support me either emotionally or financially so that I worked very, very hard. I am so afraid that all of this is going to be jeopardized, all my dreams and all my children’s dreams because of this whole, I’ll say affair, because that’s what it feels like. The attention went from checking in with me about assignments, initially just in the hall after class, and later being invited back to his office.8 I wasn’t really sure why I had to go back to his office to talk about these things. He’d close the door and sit down beside me on this little love seat he has and, you know, sort of put his hand on my knee, and he’d say, “How’s it going,” and “Is there anything I can do?” I’m thinking this doesn’t feel right but I didn’t want to say anything because, you know, I needed someone very bright and the help that I get has done a lot for me. But then it turned into “Let’s go for a coffee and talk about these things,” and then “Let’s go to lunch.” I tried to come up with a lot of different excuses, but then I started to feel like I can’t keep saying no. If I keep saying no maybe he will pull back his help. Then, when it came down to dinner, taking me out to dinner and then moving to touching me, that was it.9 I thought, “No, I’m not crazy. This man is abusing his position and I’ve got to stop it because otherwise I’m going to end up throwing it all away and for what? For somebody who cannot, who is so inappropriate . . .”10

1. My opening statement stresses that they chose mediation, that it is voluntary, and the basic steps they took to reach mediation: (1) the complaint, (2) meeting with academic vice president, and (3) choosing mediation.
2. The mediator adds an optimistic note by mutualizing.
3. It is normal for the complainant to go first. However, this tends to reinforce the primacy of the complainant’s story. Asking the professor to go first does not solve the dilemma. He can only respond by dealing with Irene’s story (and therefore reinforcing it) or, as here, denying that any problem exists.
4. Mark concludes with an attack on Irene, reinforcing the inadvisability of asking the respondent to go first since he feels he must offer a justification of his denial of the problem by attacking her sanity. An unpropitious beginning.
5. The mediator uses a process interruption by switching to Irene for an answer while avoiding commenting on Mark’s attack. If the mediator deals with
attacks directly, he reinforces their content, encouraging the client to defend the attack, thus enlarging it.
6. However, Mark does not accept this diversion and continues his attack, inviting the mediator to join him.
7. I interrupt Mark's monologue and return to Irene. It is useful for the mediator to interrupt client monologues when they go on too long, repeat the same information, or seem likely to become an attack on the other. I tend to do this more in the early part of the session in order to establish process control.
8. Irene provides useful and positive information. She then describes the events as “an affair.” The mediator is about to interrupt her; however, she quickly returns to providing data so I let her proceed without interruption. While mediating I am constantly weighing whether the current dialogue is useful and all of my interventions are based on this assessment: cutting short unuseful monologues and promoting useful dialogue.
9. The story-telling problem is beginning to emerge. Mark spoke for about thirty seconds denying there is a problem. Irene has spoken for about two minutes, providing information and weaving her story, which is dominating the session. Yet, at this point I do not have a reason to interrupt Irene. If the mediation is to succeed I must also find a way of allowing Mark's story to develop organically.
10. Irene winds up for an attack on Mark, so the mediator uses the ending of the data presentation to intervene with a summary.

Mediator: Let me understand, Irene, if I could. You're in the program as a mature student.¹¹
Mark: I designed this program for these people . . . ¹²
Irene: Oh, so that should give you all kinds of liberties. ¹³
Mediator: And you noticed when you first joined the program that Mark was very helpful to you as an academic. Then you were at times invited back to the office to discuss and there you sat on a love seat, did you say? Literally, a two-seated couch?²¹
Irene: Yeah.
Mark: A regular couch.¹⁵
Irene: It's a two-seater couch—not a lot of room.
Mediator: Okay, so you sat on the couch and while discussing matters Mark would place his hand on your knee . . . ¹⁶
Irene: Yeah, well, asking me things like, “How was it going” and “Are you able to manage” and, you know, “It must be so burdensome having children to look after.” It's just, I thought, why is he, you know, that was too personal for me.
(to Mark) You know, I don't want to talk about those things with you.
Mediator: All right, so you need more clear boundaries about the kinds of things to be talked about.\textsuperscript{17}

11. The summary is in the form of a series of clarifying questions (11 and 14), which focus on the useful data she has presented. Note the items the mediator includes and excludes in his summary. Process interruptions are useful; they rarely encounter client annoyance at being interrupted because, to the clients, they are an indication the mediator has heard them. On the other hand, they set the direction of the next part of the conversation and send a message to both participants as to what the mediator thinks is important.

12. Mark interjects to offer a positive note about himself in an attempt to balance Irene's monologue.

13. Irene counters to negate the positive statement.

14. The mediator continues his summary noting Mark's helpfulness and attempts to clarify the seating arrangements. It was not useful for the mediator to use Irene's description of the couch as a "love seat" since this identifies the mediator with her story. The choice of mediator language can be very important, though hard to monitor in the press of the moment.

15. Mark asserts it is a regular couch and the mediator is in the middle of a dispute that is irrelevant to the mediation. It is not the couch that is important but what happened on the couch.

16. I escape from needing to find the truth by describing it as "the couch" without any further specifications. Instead I continue to try to clarify the data Irene has provided so far. Data clarification is important so that the conversation proceeds on shared understandings. It is also useful as a mediator strategy to take control of the direction of the conversation.

17. I introduce a definition, boundaries, to describe Irene's sensitivity about those subjects suitable for discussion with a professor. This terminology is neutral, thus adding a vocabulary that is not value-laden for discussing this sensitive issue. I find this term valuable later.

Irene: Absolutely. I just want to go to school. I want to get my degree.\textsuperscript{18}

Mediator: Then you said that Mark invited you to lunch.

Irene: Yes . . .

Mediator: . . . and then for dinner

Irene: . . . and for dinner.

Mediator: . . . and was there any other activity?

Irene: No, that was it. Then, after that, after going out to dinner, there was one incident where he was touching me, and I launched the complaint.

(Mark tries to break in)\textsuperscript{19}

Mediator: I'll get to you in just a second. Let me clarify one thing. When you say touching you, what does that mean?
Irene: Well, it first of all started with the hand on the knee and that didn’t seem right to me. But, I said to myself, okay, just don’t let this get in the way. But then he started putting his arm around my shoulder when he was beside me or, you know, sort of rubbing on the side of my arm. I mean, my friends don’t do that and I don’t even know this person. I never invited him into my life other than academically. He just pushed his way in.

Mediator: Okay, All right. I think I have a good understanding of that. Mark, what is your sense of all this?20

Mark: Well, my sense is she is absolutely paranoid. I mean, we have to understand that this . . .

Mediator: Excuse me, but don’t describe what you think she thinks, because that is not helpful. What would be helpful for me to understand would be how you’ve seen the relationship develop over the six months.21

Mark: Well, she’s just misinterpreting everything that takes place.

Mediator: Okay, that’s something that Irene did. How do you see this relationship?22

Mark: I don’t know. I helped to establish this particular program in the Department of the Environment for students like Irene who are somewhat disadvantaged. They have got children and other commitments. They can’t come full time. They come in on a part-time basis. But obviously, they have to keep up with the other students. This program requires putting additional work and time in, which I am prepared to commit. There are several students in the program. They come back to my office after classes and things. We go over their assignments; we spend time on them. Absolutely all there is to it. Some of the students I’ve taken out to lunch from time to time. Some of them are invited out to dinner. Others just sit in the office. Some discuss their paper or project over a dinner or coffee, something of that nature or whatever it might be. I had no indication from Irene that it was any problem to her. I don’t know what she’s talking about.23

18. Irene accepts the definition “absolutely,” indicating her comfort with a language shift that does not minimize her story.

19. Mark wants to break in to defend himself, but the mediator holds him out of the discussion until Irene clarifies what she means by “touching,” so that Mark has a specific rather than a general charge to answer. Disputes about specific things are easier to resolve than general complaints, which often have radically different meaning to each person. Here I am clarifying data. The difference between data and truth is that truth is a person’s perception of an event. The data describes an event and, therefore, the mediator can pursue the description safely.

20. We now have clarity as to the specific charges, and the mediator invites Mark back into the discussion. It is important for the mediator to engage the
other participants in the conversation as soon as he can to avoid one story from dominating the session. Note the mediator’s language “sense of all this,” which sends a message to Mark that I have not bought into everything Irene has said as another way of keeping myself balanced.

21. The mediator deflects Mark’s counterattacks, which would catch Mark in the web of Irene’s story. Rather, I invite him to describe how he has viewed the relationship. This is a past-focused question and could give him an opportunity to go into the past. The question at 22 is the more useful question since it provides Mark with the opportunity to think in current terms about the relationship.

22. I am interested in having Mark develop his own story rather than to answer Irene’s. This is a self-interest interruption. I interrupt Mark’s reply not to cut him off, but to redirect him to a more useful conversation. The mediator can be helpful in this way by not requiring the clients to reply to the other’s story but to add their own useful material. Note that Mark accepts this interruption because it is in his self-interest.

23. Mark now tells his story in which he normalizes his behavior toward Irene as typical of his relationship with all students. Notice that his version of the events coincides with Irene’s and a sense of mutuality is beginning to develop—obviously with different perceptions about the significance.

Irene: What are you going to say?
Mark: I never touched her knee that I know about.24
Irene: You know what, if you’re going to lie, we’re not going to get anywhere . . .
Mark: I come from a background where we’re perhaps more expressive. I grew up in Montreal and we use our hands a lot more and sometimes I touch a student like that. (touches Irene on the top of her arm) You see, I see a reaction here.25 I’ve never seen a reaction like that before. That’s all there is to it, there’s nothing more to it than that. I’m very concerned about this kind of thing because you see it puts me in a very difficult situation with . . .
Irene: It’s always you, isn’t it. No part about what it did to me.
Mark: . . . the kind of allegation going on. I’m a happily married man, I don’t need this kind of thing.
Irene: It’s not what the word is . . . you’re happily married. I don’t care about that . . .26
Mediator: Irene, let me ask you. You’ve been in the program for a while now. You’ve reported these experiences and how do you think other people in a similar situation to yourself in the past experienced . . .
Irene: . . . experienced Professor Browne?
Mediator: Yes.
24. A dispute breaks out whether Mark touched Irene’s knee. The mediator does not intervene since he does not attempt to determine truth in disputes but concentrates on each party’s perceptions. There are few real truths in life, particularly in relationships. Most people have a perception about their relationship and it is possible for people to live together forever with different perceptions. Determining the truth places the mediator in the role of a judge or a prosecutor, cross-examining a witness. It puts the clients at a disadvantage since they have no procedural safeguards to protect themselves from the mediator’s biases.

25. Mark tests the mediator and the situation by touching Irene’s shoulder. I choose to ignore this act since I saw it as a strategic diversion by Mark. The mediator needs to keep his eye on the ball at all times and not to become distracted by issues, behaviors, or both that are tangential to the main issue. Had this action effected Irene negatively, I would have intervened.

26. Mark and Irene banter about Mark’s marriage and the mediator ignores the issue, preferring to direct Irene to Mark’s earlier statement that his behavior is normal in the context of the university program. This is data gathering. While the information is helpful to the mediator in managing the negotiations, it is also often useful to the client. For example, when thinking about the general culture in the university, Irene may see Mark’s behavior as more or less usual. The mediator provides the question; the client provides the answer. The mediator, at all times, is trying to develop a climate in which the clients are looking at the issue from a range of perspectives. In most cases, each client has come to the mediation locked into a specific story and its perspective. The mediator helps them look at alternative perspectives of the same story.

Irene: I think it’s much more detached. There are others, women, mature women, in this program and he is much more detached. To my knowledge, they have never been out to lunch or to dinner with him if they have gone back to his office.

Mark: Well, you just don’t know. You just . . .

Irene: I’ve talked to them about this. I had to go and talk to somebody to see, you know, am I crazy or what? Is it me, do you think I’m being paranoid? Of course, I thought I was the one that was paranoid and the way he acts it just increases that. I feel like I’m getting dumped on and I’m the one, I mean, I’m the one who’s been hurt.27

Mediator: Okay, so you’re saying the relationship with Mark and yourself is different from the relationship he had with the other students.28

Irene: The others have commented on it; very snide, very lewd comments . . .

Mediator: Okay.

Irene: It’s also affected my relationships with my fellow students.
Mediator: All right. Mark, in all of these disputes there are always two perceptions and sometimes it is that we are not clear where each of us draws the lines about what may or may not happen.\textsuperscript{29} In your sense, as you review the development of the relationship between yourself and Irene, in reviewing that now, are there things that you would change?

Mark: Why, yes, I don’t think I ever want to be anywhere alone with her again with this kind of wild allegations.

Irene: So it’s me . . .

Mark: I mean, I’d rather be very careful about . . . . It makes it very difficult for her to continue in the program with this kind of stuff . . .\textsuperscript{30}

Irene: See, that’s the sort of subtle . . .\textsuperscript{31}

Mark: . . . I mean because, if she needs extra help, I’m not inclined to sort of spend that time with her alone anymore.

\textsuperscript{27} Mark and Irene break into another fight over the facts as to whether Mark did or did not treat other students this way. Again, we can see that such disputes are not useful mediation conversations. They lead the clients further apart and mediation is about bringing people closer together.

\textsuperscript{28} The mediator avoids the issue by summarizing the perception and avoiding taking sides as to the truth.

\textsuperscript{29} The mediator turns to Mark and assures him he is not buying Irene’s story carte blanc, “. . . there are always two perceptions . . . ” which acts to maintain his balance and reinforces the mediator’s view of the importance of perceptions over truth. This phrase does not denigrate Irene’s story. It simply indicates an equal value to Mark’s story. A statement that minimizes one client’s story over the other’s would be disastrous.

\textsuperscript{30} Mark makes an overt threat by suggesting a solution that requires change only by Irene and at great cost to her. The mediator measures threats before reacting to them to determine whether the threat comes from a sense of power or powerlessness. In general, threats come from power if the threatener has the ability to carry out the threat and the threat is consonant with the issue. Threats that cannot be carried out or those that have no relationship to the issue are signs of a participant’s sense of powerlessness. It is also useful to remember that powerful people tend not to make threats but to simply act. In this case I perceive that he may be able to carry out the threat but that even if he cannot, Irene believes that he can. Therefore I define it as a power play against her. When the mediator identifies the threat as a power play by one participant, he must act to limit the effectiveness of the threat as a way of maintaining a balance between the participants.

\textsuperscript{31} Irene tries to triangulate the mediator. This is a direct response to Mark’s threat. She is asking the mediator to protect her and the mediator must
respond positively. Thus, we measure all triangulation attempts against the intention and the consequences of not acting on the request. I will act a little later.

Irene: So, because I brought this complaint, now I don’t get the extra help that’s necessary?

Mark: See, I sat here just now and listened to her and I’m trying to explain and she doesn’t want to listen and she’s off on this wild tangent again. What I was trying to say is that it takes some private tuition for her to be able to maintain a position in this program and to keep up with the work. I’m very, very worried about these kinds of allegations—do you find—there’s no substance to it.

Mediator: Do you provide this private tuition to other students?

Mark: Oh yes. The other mature students, who just come part-time, they all get the private tuition. That’s the purpose of the program . . .

Mediator: . . . So one of the issues that we really need to sort out is how to be able to maintain the academic relationship between you two.

Mark: I don’t know whether we can unless I have some clue as to whether it could work because I’m very . . .

Mediator: I’m not sure you have a choice.

Mark: Well, I don’t know that I can continue with somebody who makes these wild allegations. There would have to be an independent third party there all the time to monitor it. It may be a lot safer.

Mediator: You may well set it up in that way. You may well set it up and decide that’s the best way to have it, so that there’s no misunderstanding on anybody’s part. Irene, I think you’d feel safer, and more comfortable in that situation. And, (to Mark) you’d feel safer and more comfortable.

Irene: I’m not leaving the program . . .

Mediator: . . . I think the question is (to Irene) you’re not leaving this program and, I assume, therefore, that the task today is to find a way that you can both stay in it and maintain a good academic relationship and to clarify what the boundaries are so that you’re not uncomfortable. And (to Mark) you’re not subject to charges.

32. Mark complains and invites the mediator to comment on Irene’s behavior. The mediator ignores the invitation.
33. Instead, the mediator gathers more data from Mark to help him place the information from Irene into a mutual context.
34. This mutualizing statement points out their long-term interests and lays the groundwork for thinking how neither interest needs to be sacrificed in the outcome.
35. Mark responds negatively with a power play, preferring to discuss the position he took at 30.

36. I deal with his power play by pointing out that (1) he does not have the ability to exclude Irene from the program, and (2) they have an interest in solving the problem to their mutual benefit. In doing this I balance the power between them on this issue.

37. Mark responds with a new idea regarding having a third party present. Having been robbed of the power play, he falls back onto a position of accepting Irene’s continued presence in the program.

38. Although this is early for such a proposal and might not be necessary when a full agreement is reached, the mediator accepts the validity of the proposal pointing out its mutual advantage in the hope that it will eliminate any more discussion of Irene’s leaving. In most instances, the mediator redirects the conversation away from a proposal that could lead to premature negotiating before all of the data has been developed and a mutual definition of the problem has been agreed to.

39. Irene has not been listening to the mediator’s summary. Rather she is still mulling over the professor’s threat. Participants often do not hear changes in the direction of the negotiations because they are caught up in an earlier statement. It is useful for the mediator to recognize that participants do not always move along at the same speed so as to avoid becoming annoyed with them when they miss important and useful shifts in the conversation.

40. By mutualizing the situation, the mediator clarifies that the threat no longer exists to alert Irene to the change in the negotiations.

Irene: I just want to be able to continue and to graduate and I don’t want to feel that I’ve been compromised now in the faculty. I don’t want him to take it out on me. I mean that’s another genuine concern, that he’s not going to give me the help I need, or he is going to penalize me in my grades and especially with these sarcastic remarks, or talk about me with other professors.

Mark: (to mediator) Would you like to have someone around like this, with these kinds of allegations against him?

Irene: You couldn’t have me around enough before. And you’re at fault . . .

Mark: . . . Are you going to try to work with somebody like this?

Irene: . . . No he doesn’t want me around.

Mark: . . . It makes it extremely difficult to continue.

Irene: You don’t want me around on my terms. You want me around on your terms. As long as you’re pulling the strings, as long as you can say we’re going to lunch.

Mediator: My assumption is that you should both be around on normal terms.

Irene: Yes.
Mark: I have nothing against that—I thought that’s what we were doing all along, you know. So she’s dreaming into this all kinds of wonderful things that she thinks, that didn’t exist at all.

Irene: Well, they weren’t wonderful, just for your information. That’s not my idea of a wonderful thing, having you put your big, fat hand on my knee . . .

Mark: I’ve never put my hand . . .

Mediator: Now let’s look at some of the things that really should not happen. We really should draw some clear boundary lines. No physical contact . . .

Mark: Absolutely. That’s all right, John. That’s fine by me . . .

Mediator: No physical contact, number one. No lunches, no dinners.

Mark: No friendship.

Irene: I never asked for your friendship.

Mediator: Other than academic friendship, no friendship. Cooperation is different. But let’s clearly distinguish between having an academic relationship and a social relationship.

40. Irene enlarges the conflict because she is still concerned with Mark’s threat and reminds the mediator of the inherent power imbalance between professor and student. When clients enlarge the conflict by adding new dimensions of the conflict or new issues to the conflict, it is usually because they are uncomfortable with the process at that moment. Here, Irene is not convinced the power play has been thwarted and protects against the mediator’s attempts to move on by adding a new dimension to the conflict.

42. Mark sees the problem between the mediator and Irene and attempts to triangulate the mediator.

43. The mediator interjects a mutualizing statement that keeps him out of their fight. Note how he deals with this by ignoring the content of the conversation.

44. Mark attempts to normalize the situation.

45. The participants return to their dispute over the truth of the “hand on the knee.”

46. The mediator moves away from the fight as to the truth with a suggestion of some guiding principles, using a “soft” term no physical contact, to diffuse the dispute.

47. Mark quickly joins the mediator, perhaps out of relief of not having to deal with the hand-on-knee issue. However, his quick adoption of the principles makes it difficult for Irene to do likewise without seeming to go along with Mark rather than the mediator. One way of helping Irene at this point might have been for the mediator to say directly to her, “And I suppose these principle I have delineated are also acceptable to you.” She could thus agree with the mediator rather than with Mark.

48. Mark’s “no friendship” statement could be seen as a threat to Irene. I watch Irene’s response and note that it does not seem to worry her. However, I cannot be sure.
49. Therefore, I do not ignore it, but rather summarize the statement into a mutual and more limited context. I restate it to mean cooperation and distinguish between academic and social friendships, reinforcing the boundary concept articulated earlier and removing it as a threat to Irene. It is amazing how much work a simple summary can do.

Irene: (to Mark) I don't think you know the difference.
Mediator: Let Mark speak for himself.
Mark: I’ve always had friendly relationships with all my students. I’ve always expressed an interest in their general well-being and made them feel comfortable and welcome to the university. And I’ve never, in all the years, the twenty years that I’ve been at the university, had anything like this. Ever.50
Irene: Nobody ever complained . . .
Mark: They didn’t have any need to complain.
Mediator: In life, each of us has different boundaries about what’s comfortable and what’s uncomfortable. Right? And some people have a boundary here (using his hands, the mediator draws a line), some people have a boundary here (mediator draws another line). One of the tasks that always seems necessary for the person in the power position is to understand that the boundaries are set by the others.51 It’s sometimes hard for us. (to Mark) As you know, I taught for many years at a university.52 Sometimes it’s hard for us in a power position on faculty to recognize that the boundaries should be set always by the most conservative person. I’m sensing here that one of the things that’s gone wrong is that, Irene, you have one set of boundaries, and, Mark, you have another set and they’ve been crossed. In crossing those two boundaries, Irene, you’ve become very uncomfortable. And that discomfort is interfering with your academic goals and your ability to pursue the academic goals.
Mark: What troubles me is, she’s suggesting far more into it than warranted . . .53
Mediator: Okay. But Mark, having heard now what happened, you’re uncomfortable.54 The vice president for Academic Affairs knows about this, right? At this moment, now, it’s not a public matter, but it could become a public matter and so that if you hold onto a position that only you decide, then it may well go to the next level.55 My sense is that you would both like to come out of this with a clear set of boundaries and an understanding of how to respect those boundaries, on the one hand, and maintain a good academic relationship in the future so you can be the best professor you want to be, and you can be the best graduate student you want to be.

50. Mark returns to a defensive mode. He is also developing a context for this situation by identifying it as idiosyncratic. This is probably the only defense
he sees open to him. At the same time, it makes the concept of boundaries more appealing to him as an explanation of what has happened.

51. The mediator delivers a monologue to clarify and solidify the boundaries issue partly to ease Mark's defensiveness and partly to try to make the nature and extent of the boundaries a mutual problem definition. I use my hands to reinforce the concepts I am articulating.

52. The mediator uses his own experience as a professor to enhance the validity of his comments about the power imbalance between students and faculty. I view this as an effective use of self.

53. Mark picks up on the mediator's monologue to suggest it proves his innocence. The mediator is not involved in guilt or innocence but in solutions and, therefore, continues his line of thought . . .

54. . . . to point out the cost to Mark of the problem, thus reminding him of his self-interest in solving the matter in mediation. It also signals to Irene that Mark has interests and weakness, which hopefully will help her adopt a realistic view of the power imbalance. That is, the power is not entirely one-sided in Mark's favor. She too has power in the situation which, once she recognizes, she will be able to exercise.

55. The mediator reinforces the idea of Mark's cost of not solving the problem to his and Irene's mutual satisfaction and returns to the boundary concept as the vehicle for moving toward an agreement. This might be viewed as a mediator threat to Mark. However, it does not fit my definition of a true threat—the ability of the maker to carry it out. Thus it is simply a way of alerting Mark to the possibility. It is thus a warning and it is appropriate for the mediator to warn clients of the possible consequences of their behavior and or positions. This gives them a chance to test their position against their goals. When doing this they can modify their positions to be consonant with their goals.

Mark: Well, the best I can be is if she just goes into another program. If she went into another program, we wouldn't have any more problems . . .

Irene: Humph, so it's my fault . . .

Mediator: (to Mark) And, it would be equally true that it could be solved if you left.

Irene: I'm prepared to go to the limit with this because I have more riding on this.

Mediator: Neither of you is going to the limit.

Mark: But there are other students who want to stay in the program with me. So I look at this, they would all suffer.

Mediator: You can have a relationship with them based on their boundaries. It may be different from the relationship you have with Irene based on her boundaries. It's perfectly okay to have different boundaries in differ-
ent relationships, with different people. But to be able understand that once we cross somebody’s boundaries, particularly in a power position that, unfortunately, it discombobulates them in many ways. My sense is that it is a boundary issue. Let me be very clear: beyond the touching or putting the arm around, has there been any other activity?60

Irene: No, I . . .

Mark: There you go, you see there isn’t . . .

Irene: Well, I think because I put a stop to it.

Mark: Well, because if it were more to it . . .

Irene: Well, I made a complaint . . .61

Mediator: If there were more to it, that would be a very different ball game. We wouldn’t be discussing the boundary issue.

Mark: She thinks there might have been more, that’s what she’s saying. But there’s never been anything to suggest that. I don’t think there’s any more to this.

Mediator: The question, Mark, is can you reconstruct your relationship with Irene around boundaries that are different?62

Mark: That depends on what those boundaries are, I suppose.63

56. Mark ignores the mediator’s message and instead, restates his idea that Irene should leave the program.

57. My response is designed to alleviate Irene’s need to respond, since I believe she will do so from a one-down position. I answer one client rather than seek an answer from the other when I believe the interaction would not be useful.

58. Now I must act to counter Irene’s threat to go to the limit, but my challenge is cut off by Mark’s claim that the other students are on his side.

59. I respond to this new position by returning to the boundary concept, pointing out how the boundaries are situational—thus relieving the guilt/innocence test of the dispute in the hope that this will make it easier for Mark to give up his threats.

60. The boundary concept normalizes the situation, and normal situations have more possibility of solution. This is one of the key mediator interventions, placing the matter into a context that is acceptable to both parties, in which neither loses face and at the same time provides the possibility of a mutual solution. Having clarified the boundary concept, the mediator checks with Irene to be sure that there is nothing more than what she had already described. This provides her with an opportunity to go with the boundaries or to change the problem definition if other issues exist that have not yet been articulated.

61. Mark and Irene drop back into bickering about the past.
62. The mediator challenges Mark, inviting him to look at a different view by asking a question about the future with a difference; it is a different future in which both participate. This can also provide face saving space for Mark by allowing him to reconstruct the future without deconstructing the past.

63. Mark’s reply, asking for clarification, indicates he is interested in following up on this idea. In all negotiations each party must be able to send signals to the other parties involved in the talks, indicating where movement might take place. It is important that the mediator identify these indicators as they are offered and follow up on them. It is not always possible to do so immediately, but then one can follow them up a little later.

Irene: Everything on his terms. He defines the problem. He sets the boundaries. I want just a strictly professional, academic relationship.

Mark: Then if you get invited to lunch, you say no.64

Irene: Well you know, it’s nice to know that . . .

Mediator: Just one second . . .

Irene: . . . that I have permission to say no because I didn’t feel like I had permission to say no. You know, I never got the opportunity to even entertain that possibility.

Mediator: Irene, as part of the boundaries . . .65

Mark: Sometimes you did say no.

Mediator: Where are the boundaries? Do you want the boundary to be that you are not invited, or do you want the boundary to be a clear understanding that you have the right to say no?66

Irene: No, I just don’t want any . . .

Mediator: Any. Okay.

Irene: No socializing.

Mediator: So, okay. Boundary number one is no touching, boundary number two is no lunch or supper.

Irene: No invitations.

Mediator: No invitations, okay. What other boundaries?

Irene: Just that we meet during regular academic hours whether it be in the morning during normal hours, not before everybody else gets there or after everybody else has gone home. We meet at a normal time to discuss whatever papers, whatever academic issues that I have.

Mediator: Forgive me, because I don’t understand. What is normal time?67

Irene: Well, I guess generally between ten o’clock and four o’clock, rather than coming in before everyone else arrives.
Mediator: So all your classes are daytime classes?
Irene: Yes.

Mediator: Oh, okay, I’m sorry. I was assuming that in the program you might have evening classes. Okay, so that academic appointments between you and the professor would be during the day . . .

64. Mark’s response is to blame Irene. The mediator believes the fight might escalate and that Mark will be relieved of answering the question at 62.
65. As Irene slips back into complaining about the past, the mediator nimbly reenters the conversation to turn it back into establishing clear boundaries in the future: a change in the dance routine to a direction that is more productive. The typical mediation session is somewhat like a dance that changes rhythm back and forth from a waltz to a fox trot. The mediator learns to change steps with the clients. Unless an argument results in a considerable expansion of the conflict, it is generally better to wait until the argument exhausts itself or there is a pause, before intervening to take control and redirecting the conversation.
66. The mediator ignores Mark’s intervention and maintains control of the conversation and keeps the boundary concept central to the conversation. I am convinced that an agreement lies in resolving the boundaries issue. Thus I keep my eye on that ball and do not let it slip away from me by following a different direction or a smaller ball. The mediator develops a keen sense of what is important and strategies for staying with the important or useful conversation.
67. Information comes out that the mediator is not aware of and he needs to clarify his understanding of the data: that is, are her course hours in the evening or the day. Data can emerge at all stages of the process and the mediator must clarify new data and integrate it into the process. I have described the mediation process as a series of steps. (See Fundamentals.)
   1. collect the data,
   2. clarify the data,
   3. develop the mutual problem definition,
   4. develop options to solve the problem and then,
   5. negotiate.

Thus we can say that here I am clarifying the new data although we are in the third step—developing the problem definition.

Irene: That’s right . . .
Mediator: . . . approximately ten to four.
Irene: Yes, that’s right.
Mark: That completely overlooks the purpose of the program which is that I’m putting extra time in to help these special students and that throughout
the day I don’t have time to put that time in. I have to put it in outside normal hours. That’s the only time I can do it. 68

Mediator: So you may have to negotiate that or you may have to sense that what time you have during the day would have to be allocated to Irene in terms of respecting those boundaries. 69

Mark: Well, there isn’t any more time in the day. That’s the problem. So you see if I’m going to put extra time in, I do out of my own good heart to help these students.

Mediator: Let’s . . .

Mark: I have to do it after normal hours.

Irene: That’s your job. I’m sorry, it’s not entirely out of your good heart.

Mediator: Let’s backtrack for a moment now. We agree no physical contact; we agree no lunches and we agree no suppers. 70

Irene: Yes.

Mediator: Now we’ve got a problem around when you can do academic counseling.

Irene: Or I’ll meet with another mature student. We can meet together if it’s absolutely impossible to meet during the day. I’ll meet with one of the other mature students and he can entertain our questions. 71

68. Mark joins the conversation to protest decisions he apparently feels are being made without him and asserts that he cannot meet Irene during the day. For the mediator it is not a question of whether clients can or cannot do something, it is a question of whether they want to do it. People often say they cannot do something when they really mean that they do not want to do it. Both of these clients are in a flexible environment that allows them to change things around if they want to. Therefore, I will pursue the issue of the hours and remind Mark of how his self-interest is protected by being flexible.

69. I remind Mark that his self-interest might require that he allocate time to Irene during the day for the foreseeable future.

70. I draw the conversation away from the time issue, which is a detail, back to the broader principle issues. Mark’s behavior in the conversation indicates that he is an inductive thinker who must consider all of the details prior to agreeing to the principle. On the other hand, deductive thinkers prefer to gain agreement on the principle and then fill in the details. I am a deductive thinker and must be very careful not to get into struggles with an inductive thinker over the process of the conversation. The general rule is for the mediator to honor and, if possible, adopt the participant’s thinking process.

71. Irene returns to Mark’s proposal to include another student in the off-hour discussions.
Mediator: (to Mark) Is that good with you?
Mark: Oh that’s fine. I don’t want to ever see her one on one again. Because it’s just impossible for me to keep up with these kind of wild allegations that come out of her.
Mediator: It is possible, Mark, if we recognize that different people need different relationships.
Mark: If somebody else is there, then that’s fine.
Irene: He doesn’t even respect the fact that I feel hurt by this. I still get the feeling that I am the crazy person. I’m still the one where it was all in my mind.
Mark: Well, I’m glad you feel that way because that’s where it is.
Irene: He takes no responsibility at all . . .
Mark: No . . .
Irene: And I don’t want this discussed with anybody else. I don’t want him talking to other professors about this. I don’t want him saying, “Watch out for that one.” I don’t want a reputation.
Mediator: I assume that goes for both of you.
Mark and Irene: Yes.
Mediator: I assume that what we talk about here is going to be confidential to both of you, and that you both are going to have enough savvy not to allow it to leak out all over the globe.
Mark: Well, it’s leaked all over the place; she’s already talked about this with students.
Irene: Hey, they’re the ones who brought it up. You’re the one who was leering . . .
Mediator: Let me come back to . . .
Irene: . . . you made it public.
Mark: People already know she’s made these allegations.
Mediator: Let me come back to a fundamental issue here. It’s a fundamental issue. (Pause) I think we all recognize that part of the problem that existed here is that (to Irene) you don’t like to have a relationship that you perceive to be a professional one to include touching, or to include out-of-normal hours or relationship interaction—dinners, lunches, et cetera. You, Mark, feel that’s okay, and that with some other students you have lunch with them.
Mark: I’m friendly with all my students.
Mediator: Now, the fundamental issue is this: Can you accept Irene’s right to draw those boundaries for herself about what’s comfortable for her? Does she have that right?
Mark: Oh, she certainly does, if she wants to.
72. Mark agrees, but then returns to an attack on Irene's sanity.

73. The mediator reminds Mark of his self-interest and of the situational nature of the boundaries. I believe Mark's understanding and acceptance of the situational nature of the boundaries gives him the required space to move toward a mutually acceptable solution. A criticism might be that it solved the situation for this student, but left him open to relate to other students in a bad way. However, mediation is not a vehicle for social change but a means of solving specific interpersonal disputes. Irene has the right to resolve her dispute without becoming a cause célèbre on campus and without becoming engaged in the larger issue of harassment.

74. Irene returns to her earlier concern that the issue is not discussed with other faculty and her career is not interfered with. This is a clear indication that she wants to solve her future and not make a policy stand. It is important for the mediator to listen to the client's needs and not to pursue his own agenda. I have always felt that the issue of workplace harassment is an important one that needs to be addressed on a policy level. However, mediation is not the arena for establishing policies—unless the clients ask the mediator to include that in the outcome of the mediation.

75. The mediator again makes the issue mutual and points out that they share the need to keep the issue as confidential as possible. Obviously both have talked to their peers and need to reach agreement not to take it further with their peers. In this sense they share a mutual interest in ending any public discussion of the issues.

76. The clients exchange countercharges and the mediator calls them back to the general principle on which an agreement is possible. Bickering will always take place in the mediation, and the mediator's primary tool for ending the bickering is to remind them of their self-interest.

77. The mediator uses the term “fundamental issue” and a firm tone of voice to catch their attention and focus on what he is saying rather than their next jab/reply to the other. Clients can, at times, become so involved in the conflict that they pay more attention to the other party than the mediator. When the mediator senses this, it is useful to change the inflection, tone, or volume of the voice to gain the clients’ attention to what he is saying.

78. The mediator asks this question to get a commitment from Mark to Irene that she has the right to her concerns. This is one of a series of steps or bridges that the mediator creates to achieve agreement. Once Mark agrees to the mediator’s request to legitimate Irene’s concerns, the professor will find it more difficult to dismiss them. At the same time, by not being able to dismiss the legitimacy of her having these concerns, he must also begin to engage in a process of dealing with them.

Mediator: Do you accept, then, that if you inadvertently cross those boundaries, that that would upset her?
Mark: Well, I suppose it would upset her. But then she should have established those boundaries, which she hasn’t done up to now and she’s just gone straight off on a tangent without establishing them. That’s my experience . . .

Irene: I never had a chance to establish them . . .

Mark: My concern is that if we continue this relationship . . .

Irene: There’s no relationship to continue . . .

Mark: . . . she’s going to go off again on another tangent somewhere and so that really concerns me. I want this thing at rest once and for all.

Mediator: Okay, let’s then go to my next point, which is, if you inadvertently cross those boundaries partly because you didn’t know that they existed, and that’s always a problem where there is a relationship of a more powerful person. One for example . . .

Mark: This is a fabrication . . .

Mediator: Let me just generate this other part. Can you see that it would be appropriate to express your concern of having done that inadvertently?

Mark: In what way? How do you mean?

Mediator: Do you think, given those facts, if those arguments are correct about the boundaries, et cetera, that it would be appropriate to apologize for inadvertently crossing those boundaries? (Long pause)

Mark: (to the mediator) Well, I should, I guess, if she’s got boundaries that are valid and she feels they’ve been crossed, I can accept that. That I not only regret it, but I’ve offended her unintentionally. I probably can deal with something of that nature.

Mediator: Would it be possible for you to say that directly to Irene, rather than to me?

Mark: I suppose so. (to Irene) If you’ve got boundaries that I don’t know about and I’ve crossed them, I guess I have a sense of regret that you feel that way, but . . .

79. The mediator introduces the term “inadvertently cross” to the conversation, which provides two face savers, inadvertent and the tense of cross, that is, not using the past tense, while at the same time asking Mark to recognize another right of Irene—to be upset at the crossing. This is a verbal bridge between the two positions, which is constructed by the mediator to provide Mark the means to cross over to a mutual definition that honors Irene’s position.

In a later discussion with the clients, Mark expressed the opinion that this was the defining moment of the mediation for him. He saw, for the first time in the session, the possibility of a solution to the problem that left his position intact. The bridge that the mediator created at this moment was, for Mark, the escape route from the conflict. He felt that the three earlier
questions: (1) Can you accept Irene’s right to establish boundaries, (2) Can you see that you inadvertently crossed those boundaries, and (3) Can you apologize, moved him “from my chair to Irene’s chair.” They put him in Irene’s place for long enough to create a shift in his position.

80. Mark attempts to shift responsibility (blame) to Irene who, in turn, rejects the move.

81. The mediator maintains his focus on boundaries, relieving Mark of hostile intent while emphasizing his earlier comments about the professor’s responsibilities in power imbalance situations.

82. This is a key moment in the session: Can Mark “express concern” on the basis of acting inadvertently, thus changing the relationship and opening the way to putting the incident behind them and as the first step toward an agreement for the future?

83. Given the tentativeness with which the apology is offered, the mediator asks Mark to give it directly to Irene. In addition, by making the apology directly to Irene rather than through the mediator, the relationship between professor and student has more chance of really happening.

84. Mark makes the apology and then, in an effort to further save face, attempts to hedge the regret. Clearly, he is having difficulty making the final move of accepting any responsibility for what happened.

Mediator: No buts—no conditions.85 Hold it, Mark. Irene, if in the future there is no physical contact, no lunches or dinners, and that if there’s a need for academic consultations, that another student would be participating in those consultations—you could benefit academically from that third mind in the room. Given Mark’s regret for what has happened, how comfortable are you now about being able to move on with your academic career?

Irene: That’s much more comfortable.86 And that means a lot to me, to have him say that he was responsible, to take some responsibility, so that I don’t feel like I’m just the nut. And knowing that at some level he respects me as a person and my right to move in the world, my world, as best I can . . . (At this point Irene begins to flood, and tears gently roll down her cheek.)

Mediator: Uh-hum . . .

Irene: And, that I do respect him as an academic a great deal and I don’t want to lose what I have. It means a lot to hear that he, I guess in his way, is sorry. That’s what I choose to hear.

Mediator: Uh-hum. . . . That was very courageous of you to take the action that you did.87 It’s very difficult for both of you because this is sort of a general gray area. But it is something that we are becoming increasingly aware of and it’s not always a question of right or wrong in absolute terms. But it is a question of being able to recognize the boundaries of each in a sense, and to be able to deal with those. In this particular case, it wasn’t very easily pos-
sible for either of you to deal with those boundaries in that way. Mark, if we have this agreement could we ... 88

Mark: That there is going to be a third person present? Is that what you mean by agreement? 89

85. The mediator quickly interrupts, lest the movement Mark has made is lost in the hedging.

86. At this point Irene begins to flood as tears well up in her eyes. The tears slowly flow out and down and she takes a tissue to wipe her eyes and face. Obviously the apology and the terms of the future are a great relief to her. In a later discussion with the client, she said that Mark’s statement at this point meant that he accepted her right to set boundaries. She was not so worried that the apology was hedged; she had been recognized. She then described the mediation as “a transformative experience.”

87. The mediator responds to Irene’s tears with a potentially dangerous comment regarding her courage in filing the complaint and manages to balance it with a mutual description of the situation.

88. The mediator moves to Mark to gain his agreement to the solutions discussed so far. I thought that he had noticed Irene’s response and would, in turn, soften his approach.

89. Mark returns to the issue of the third person as a way of shifting guilt and laying it back on Irene. Or, it might also have been a more innocent example of his inductive thinking process.

This is clearly the defining moment in the mediation session. The professor has accepted responsibility and acknowledged Irene’s right to set her own boundaries in her relationship with him. He has also acknowledged his regret that such a thing happened. This movement is the product of a series of questions, which slowly moved Mark from his chair to Irene’s where he could see the legitimacy of her position and claims. But it was also done with a language shift of “inadvertent,” which made the shift from his to Irene’s chair possible. It would probably not have been possible if the mediator had tried to make a determination as to Mark’s intentions in these interactions. The mediator could not become the judge and try to determine whether the event happened precisely as either of them related. Neither could he attempt to judge whether Mark’s behavior was predatory or not. We see here the importance of the mediator not becoming a judge and remaining balanced between the two stories so as to be able to work with the clients to find a mutually acceptable solution.

Mediator: Well, the agreement would be: no physical contact, no luncheon or dinner invitations, and that when an academic consultation is required, outside of the normal hours, that another student would participate. We would arrange that, not specifically; there has to be a monitor. But in fact it would be as a three-person consultation and the idea is to bounce ideas around.
Mark: Well, that might be problematical because sometimes we have to address a particular assignment that one student is doing here — but I need an independent, objective, an independent witness present to make sure that there are no suggestions, such as has been made here, of improper things taking place.

Mediator: My sense is this . . .

Mark: I want to protect myself.

Mediator: . . . my sense is that you don’t need an independent person to know how to behave appropriately. 90

Mark: No, I don’t need that. But I do need to make sure that if there are any more wild allegations made, that it can readily be seen that they are unfounded.

Mediator: But I think you’ve not heard what Irene just said to you. 91

Mark: I did. (He mumbles something.)

Irene: I didn’t hear what you just said either.

Mark: Well, perhaps you’d like to say it again . . .

Irene: I thought you acknowledged my right to put some boundaries around our relationship and to be able to feel I could have a relationship with you in an academic way and that you are important to me in that way. But when you say things like “wild allegations,” that just sort of made my stomach sink because to me they’re not wild allegations. That makes me think that a person is lying . . .

Mark: But I said that you have boundaries that I wasn’t aware about and I owe you a . . .

Irene: Don’t call them “wild allegations” . . .

Mark: I regret that I crossed some of them 92 but I don’t agree that some of the things you said took place took place. I don’t ever recall my having put my hand on your knee, for instance. You see, I call that a “wild allegation” if you make something out of . . .

Irene: Well, you’re the one who said that you unconsciously touch everybody so how would you even remember? You think that you have the right to unconsciously fling your hands about. How would you remember? That doesn’t make me a liar. That you don’t remember it doesn’t make me a liar. 93

90. The mediator tries to make it mutual by first challenging Mark’s need for protection. This is a paradox for Mark, since it would be difficult for him to deny the mediator’s comment.

91. The mediator returns to Irene’s earlier acceptance of Mark’s apology as a basis for agreement and directs Mark back to Irene. The implied criticism in this comment is not dangerous since it follows on the heels of the positive
paradoxical statement. The tone of voice is also important. Here, my voice is not accusatory but simply an observational tone.

92. Here again, Mark and Irene negotiate directly with each other and some real movement takes place. It is my experience that more movement takes place when the participants can deal directly with each other. When they are making these shifts in their positions through direct talks it is important for the mediator to stay outside of the conversation. Attempts to enlarge or clarify are too dangerous. The mediator should only enter the conversation if he sees the need to clarify a misunderstanding one has about what the other is saying. In this situation I would limit my intervention to a question, asking for clarity about the issue for me. That is, my intervention would be based on my need to get clarity, knowing that in helping me to understand the position, the parties will get clarity between themselves.

93. Irene makes two points in this statement. The first is a reinforcement of her version of the events. The second seeks a confirmation that she is not a liar or, as earlier stated, not crazy. The mediator pays attention to the second part indicating that she needs validation of her actions. But it is also interesting that her language provides an opening for movement forward. She is not engaging in a tit-for-tat argument of “Yes, you did,” “No, I didn’t.” Rather, she makes a very sophisticated distinction between their perceptions, noting that whether he remembers or not does not make her a liar. The mediator pays attention to these subtle shifts in the language of the clients. Irene’s shift is an indicator that she is moving to a new stage in the conversation. She is now indicating movement into a solution-seeking phase.

Mark: I don’t know what the incident was or when or where or anything, so how can I deal with it? (to mediator) You see, that’s why I need the independent person there to make sure that . . .

Mediator: Mark, you have a problem in the sense that I think we all recognize the boundary issue. We recognize the boundaries have been crossed. We also recognize that they were inadvertently crossed and in a sense I think that is what Irene is saying . . .

Mark: Does she recognize that now?

Mediator: That she’s nodding her head. If you watch her when I say that, she recognizes that you inadvertently crossed the boundaries. It seems to me if we are going to get a resolution, there always has to be an equal recognition that her feelings about the invasion of her boundaries were legitimate feelings. And that those are things that you would not have wanted to have done to her had you known that doing those things in this situation would have been uncomfortable.

Mark: That goes without saying. Of course, I wouldn’t have wanted to upset her or cause her discomfort. It was done entirely out of friendship, anything
that I did, from a feeling of friendship toward my students.\textsuperscript{96} I wasn’t intending anything I did to be upsetting. I understand now that she has boundaries and perhaps in a different place than some of the other students. I have no wish to cross those boundaries at all. But I just want to make sure that . . .

Mediator: Can you be honestly regretful of having crossed those boundaries?\textsuperscript{97}

Mark: Well, of course I am. I’m regretful that she’s upset.

Mediator: Can you go then to the next step in the sense of giving some way, of apologizing for that invasion?\textsuperscript{98}

Mark: (Directly to Irene) Well, I’m sorry if I crossed your boundaries but I didn’t know about them. What else can I say? I’m very, very leery of crossing them again inadvertently and being back in the same situation. This is what concerns me.\textsuperscript{99}

Mediator: Okay. But then what it means for you, I think, is two things, Mark. One is that you delineated some very clear things and those are rather simple.\textsuperscript{100} No physical contact, no invitations. Those I think are relatively simple. We suggested a third course of action that I think would make both of you more comfortable and will enable both of you to move forward academically and put all of this stuff behind both of you. It would be that if you have a consultation outside of the normal hours that you do it on a group basis.\textsuperscript{101}

Mark: Which is outside of just the normal hours?

Mediator: Outside of ten to four. . . .

Mark: In the absence of anybody else, this is going to be . . . (mumbles)

Mediator: Or you may feel that you would not—for a while, until you can get greater clarity about these things—you may not want to meet with Irene one-on-one behind a closed door. That’s okay. There are lots of other . . .

Mark: (to Irene) Is that okay with you?

Irene: Absolutely.\textsuperscript{102}

\textsuperscript{94} Mark returns to his attacks on Irene, claiming that the third person is needed because of her, and attempts to triangulate the mediator with the question and the subsequent plea, “You see . . .”

\textsuperscript{95} I note that Mark is back talking directly to me so I ask him to observe Irene and return the conversation back to the general agreement. It would be easy here for the mediator and Mark to engage in a conversation about what Irene is saying, which would place the mediator into one of two dangerous positions. The first would be to annoy Irene by being the subject of a conversation of two men. The other might be to annoy Mark by appearing to be representing Irene’s interests. The golden rule in mediation is to have the clients talk for themselves. So here, the mediator points out Irene’s accep-
tance of the inadvertent crossing of her boundaries and suggests a reciprocal move by Mark to accept her complaints as legitimate—from her perception.

96. Mark slowly articulates a clearer recognition of Irene's position. He is making a shift in his position and beginning to come to terms with making a direct apology. Obviously the next step of actually articulating an apology is going to be hard for him and he will probably need some assistance from the mediator to complete the shift.

97. The mediator helps Mark make the transition by using a strategic question. This question can only be asked when the mediator is very clear that the client is ready to use it to make the shift. If the mediator asks this type of question too early, it will be rejected by the client and make it more difficult later to achieve the shift.

98. With Mark's regret stated openly, the mediator can then ask another question designed to permit Mark to make the needed apology.

99. Mark's apology is somewhat hedged by his concern about a repeat of the situation. The mediator must decide whether to go with the apology as stated, or attempt to define it more clearly.

100. The mediator chooses to ignore the hedging, based in part on my observations of Irene, and details the agreements reached so far that are easily measurable.

101. The mediator lists the measurable outcomes that have been suggested so far. Notice, none of these ask for a change in beliefs but emphasize behavior. Specific behavioral changes will result in a subsequent belief change. Some mediators feel impelled to gain a belief system change. Such changes are very difficult to obtain and can lead to a breakdown of the mediation. By focusing on changes in behavior the mediator is less threatening to the client undergoing the change and more likely to succeed in helping both clients to reach an agreement.

102. The participants again negotiate directly and the mediator does not interfere. At this point Mark may feel more comfortable negotiating directly with Irene rather than going through the mediator. If this is so, it may be an indicator that the mediator is pushing him too hard. However, the best and most secure agreements come about from direct participant negotiations.

Mediator: There are lots of places you can meet publicly in an academic setting and still discuss academic things. Or alternatively you can begin to arrange the situation where more than one student is present during an academic discussion. I did that all the time because I always felt that one could generate more ideas with more exploration.

Mark: Can it be either a male student or a female student?

Mediator: Does it matter?

Sexual Harassment
Mark: I don’t know. Does it matter?
Mediator: Does it matter to you, Irene?
Irene: Well, I don’t know. I don’t think it matters.
Mark: Obviously somebody fairly independent.
Mediator: Why? That person doesn’t know they’re there for any reason
other than to participate in the academic discussion.
Irene: I don’t want them to know about it. They’re not there to be a
watchdog.104
Mediator: They’re not watching you (to Mark) and they’re not watching
Irene. They’re participating in an academic discussion.
Mark: But if later on I cross them inadvertently and she makes another
allegation, I want somebody to be able to say whether or not these things
happened or didn’t.
Mediator: You don’t need to alert people, to say “I want you to join in this
academic discussion so that if I am accused of some sort of harassment, you
can then prove that I didn’t.”
Mark: No, we don’t need to say that.
Mediator: No, we don’t need to say that, do we? What we need to say is
that we need (to Mark) for your comfort and (to Irene) for your comfort,
we need to have a third person there. You may review it jointly three or six
months from now.105 You may want to come back and talk to me about
three or six months down the pike in the sense of knowing that you don’t
need that any more. In which case you can move to the one on one. But in
the next period it would seem to me to be very useful to enlarge the num-
bers in the academic discussion from two to three or even four. For no
other purpose than to give you both a sense of comfort so that you’re not
worrying about the discussions we’ve had today when you discussing some
major environmental issue tomorrow.
Mark: How do we get over this looking business that she was talking
about, that I look at her in some strange way.106

103. The mediator again tries to make the presence of the other student acade-
amic and normal with the monitoring role as secondary. Here I am using
myself. Having been a professor working in a similar situation as Mark, I
know what is realistically possible in an academic setting. By making it
clear that I know the professor role, I can also prevent Mark from creating
a mystique about academic life. This might be a concern to Irene who
could worry that the mediator’s past academic role might influence his
behavior and sympathies as a mediator. Thus, a mediator can use self in this
way only after he has achieved a good relationship with both participants
and demonstrated the safety of his balance between them.
104. Irene voices a concern about her reputation and not wanting this issue to be spread around. The mediator normalizes the proposal as an academic matter rather than a monitoring one. Here I am using my knowledge of academia to speak to Irene's concerns without mentioning them directly and suggesting that this part of the agreement be viewed as a normal academic arrangement. This also helps Irene recognize my balance despite my background.

105. The mediator suggests a time frame for the additional students and further normalizes their presence. I then add that they can return to review the situation. This offer often lessens client anxiety about entering into an irrevocable agreement. It is easier for the clients to move toward agreements if they understand they can change them.

106. Mark returns to the issue of Irene's complaint that he “looks” at her. The mediator had not pursued this when Irene first raised it since it is rather vague. However, Mark obviously felt the need to address the issue.

Mediator: Oh, I think you have to be aware of it, number one. And you have to be aware, Irene, that it is not an attempt to cross the boundary. You both have to work at it. You've both got to have some shift in your perception about it. And if (to Mark) you're aware of it and therefore play it out differently in doing the lecture. And if (to Irene) you're aware about it and redefine it from leering to some other form, then it doesn't exist. I mean . . .

Irene: I mean I want to forget it, Professor Browne. I, I—

Mark: Uh. Uh . . .

Irene: I'm not going to go around looking for things.

Mark: Okay, well that’s what it seemed to me that you were sort of out to get me. I must say that’s how I perceived it at the start of . . .

Mediator: Does it seem that way now?

107. The mediator suggests how they can shift perceptions about a “look.” Knowing that it did exist in the past, both Mark and Irene will change as a result of the session, and each will see it differently in the future. Here I put the specific solution back into their futures with each making the necessary shifts to achieve results.

108. Irene makes a major move to bring the matter to closure. She sends a clear message about a future with a difference. She is signaling that if they can agree and bring this matter to closure here, there won't be a problem in the future. This is a significant message and it is imperative that the mediator ensures that Mark also hears and understands it. This is part of the role of the mediator as manager of the negotiations. When one client sends a message—even if coded—it is important that the mediator checks with other client to be sure they have received and understood the message. We do this for two reasons: (1) we want to be sure the other party has heard and
understood, and (2) having an open discussion of the movement by the message sender creates an environment that is receptive to more messages and shifts.

109. Mark shifts his position from “crazy” to “out to get me.”
110. The mediator asks if Mark has had a change of perception following this message and Mark indicates that he has. It is useful for the mediator to make the change public. It is helpful for the other participant to hear that one participant has indeed changed and for the sender to know the message has been received.

Mark: Well, no, I’ve got a bit more understanding. No, I had thought she was a nice student and she’s a good student. And now I have a lot of regret that this took place. But I understand now that what she’s saying has a lot more genuineness to it than I perceived it. I supposed that they were a lot of wild allegations and she was trying to get me for some reason, and I didn’t know why. So I understand now this boundary business, that it’s a . . .

Mediator: Well, all right.

Mark: . . . that it has been a (mumble) but hopefully she understands that there was nothing more intended by it than normal stuff. That it should have been taken at face value.\(^{111}\)

Mediator: Okay . . . let’s proceed under that general understanding, right. We know what the basic understandings are and we’re going to draw them rather sharply and may allow them to become a little blurred later on when everybody gets back to normal.

Mark: (to Irene) You want to come back and review this in six months?\(^{112}\)

Mediator: We don’t have to make that decision now but certainly my office is available to you.

Mark: And how are we going to deal with something if she feels that there’s a crossing over in the meantime?

Mediator: If you both agree, I will report to the vice president that you two have reached an agreement and that neither of you want it to go any further. That you’re both satisfied with the agreement and you want to get on with your academic lives.\(^{113}\)

Irene: Ahum . . . (to Mark) I must just tell you, I guess. I just need to feel that I can tell you . . .

Mark: Well, I’m comfortable with that. That if you tell me, then I am quite prepared to accept that.

Irene: . . . and you’ll not be offended or think less of me.\(^{114}\)

Mark: No, I have always thought highly of you and I’m sure I will do in the future, too. So I do want to know what troubles you so that we don’t do this inadvertently.\(^{115}\)
Mediator: (to Mark) You want to know and you’re willing to hear, and (to Irene) you are willing to say . . . Good. All right, so if you need me, you just give me a buzz and we can set an appointment, and if you don’t need me that’s perfectly okay also. You’ll decide that in terms of how it works out. Okay, right.

Irene: Thank you.

Mark: Thank you.

111. As Mark winds up for what appears to be another sortie into the past, the mediator intervenes to prevent it by using a process interruption.

112. Mark asks Irene about the possibility of another meeting six months in the future for review. This indicates his willingness to cooperate, and that he views their relationship in positive future terms.

113. The mediator misunderstands Mark’s question and states how he will act to bring the matter to closure within the system.

114. Irene understands Mark’s question and answers it. The participants engage in a useful conversation and demonstrate their understanding.

115. Mark reiterates his commitment to making the new arrangement work for both of them.

COMMENTARY

This case well illustrates two of the organizing principles, who speaks first and using language to make shifts. We will analyze these aspects in detail and examine the implications of minimum movement in negotiations.

The reader can see the problem the mediator has in inviting one or the other party to begin. Using my experience in Norway, I ask the professor (the one accused in the complaint). But he denies the complaint entirely and launches a counterattack by calling them “wild allegations.” My difficulties mount as the two stories develop in the first part of the session. Assisting the participants to reach a specific, rather than vague, description of the situation or events is difficult since the mediator is always in the danger of either helping one person develop the story or taking sides and becoming unbalanced by working too long or too hard on one definition of the problem. Thus, I am in danger of aligning with Irene while helping her clarify her charges since I am paying much more attention to her while getting the story clarified, as well as excluding Mark so that he does not have to answer a vague allegation, but a concrete one.

When I ask Irene to describe the problem to me she takes a long time as she develops her story. Since most of the information is useful, I have limited possibilities to turn the conversation over to Mark. Thus, her story becomes embedded in the session and I have to let Mark know that, although I listened to Irene for a long time, I am not captured by her story. When I say to him, “Mark, what
is your sense of all of this?” (20) I turn the conversation over to him with lan-
guage that does not accept her story, and with the sense that there is more space
for his version.

This reinforces my attempts at balance during Irene’s monologue. At first I
give them a process suggestion, asking them not to “describe what each other
does” (21). I direct the comment to both, not just to Mark. I also choose to fol-
low up on any positive aspects in one summary noting to Irene, “You’re in the
program as a mature student. And you noticed when you first joined the program
that Mark was very helpful to you as an academic.”

When it comes to Mark’s turn to tell the story I help him stay focused on
his self-interest by not being sidetracked into answering Irene, but rather in
telling his version (22). I have noticed that when I interrupt clients with a ques-
tion or comment that is in their self-interest to deal with, they are not offended
by the interruption.

In order to implement any change in the conversation I must develop in each
client trust in me and in the process. I build trust by listening and acknowledg-
ing each perception. Thus, I must give Irene considerable time in stating and
building her case. Mark is at a disadvantage at this stage of the process since he
can only argue that there is no problem, which prevents him from putting for-
ward a more pro-active argument. To help balance this, I carefully communicate
to Mark that I accept that he has an equally valid position.

This trust is solidified as it becomes clear to each client that I have not been
captured by the “truth” of the other. I do not challenge the truth or the rightness
of either client; neither do I challenge the validity of each person’s position. This
is probably one of the most difficult ideas for a new mediator to understand: there
is no right or wrong, no truth or falsehoods in mediation. There are simply
two different stories and two different perceptions, and each has equal claim to
the mediator. Once trust is established, the major shifts that take place in this
session come about due to a series of specific, deliberate mediator strategies. The
first is a general hypothesis about how to achieve a shift in their definitions of
the problem. I am constantly thinking, “What is a more useful way of stating
this?” as a way of helping me to develop a more mutual story about the problem.

I can test this hypothesis by creating language shifts that adequately describe
the situation from each client’s point of view while making the description more
open to change or solution. I am operating on a second, specific hypothesis that
movement toward both parties’ goal attainment can be achieved by changing the
descriptive elements of the two arguments. Irene’s he’s harassing me, and Mark’s
wild allegations without foundation, can be reframed to become less emotionally
loaded and more mutual. I identify Irene’s goal of maintaining clear boundaries
quite early in the session (17). She wants to separate the academic and social rela-
tionship. I return to the boundaries theme repeatedly (40, 46, 51, 60). Irene rec-
ognizes it immediately, but Mark is slow to accept that Irene has very different
boundaries than he does, and she has the right to insist on her set in their acad-
emic relationship. At 62, I challenge him directly to think of a future with a dif-
ference. Mark gradually incorporates the concept into his thinking, and is able to make a shift. Much later (79), I introduce the concept of *inadvertently* crossing the boundary to describe Mark's behavior. It provides the bridge he needs to leave his initial position.

We can see the specific language in this session that helped to cause the changes. It is a shift in language using soft versus hard words, and vague statements rather than sharp ones. The purpose of using such language is that each participant is able to accept the softer language and make more face-saving movement. Using vague rather than sharp language enables the participants to place their own construction around the meaning of the vague statement. Note that the vague statements are made while the movement is taking place. Once the movement has been made, I move to sharper, clearer, and more concise language to describe the actual agreements. Thus the shift from their two opposing stories and problem definitions to a mutual one is accomplished first by gaining the trust of both people and second through careful choice of language.

**Minimum Movement in Negotiations**

When the trust is built and I am moving toward shared language, I am able to engage in my next strategy based on the concept: What is the minimum movement required of each party to enable them to reach a mutual problem definition from which the agreement can come? The mediator continually hypothesizes the answer to this question. If the mediator focuses on the minimum movement, he is unlikely to escalate the dispute by exploring the outer regions of agreement. The weakness is that the agreement found within minimum movement might not be as creative as one to be found in those outer regions.

Within the limitations of the minimum movement concept, the mediator can create language that enables parties to move. Let us now analyze one particular statement that ideally demonstrates the use of soft versus hard language. When Irene accepts the construction of the problem as being boundary construction and maintenance, I ask Mark if he can accept Irene's right to draw her own boundaries (78). Next, I introduce the concept of *inadvertently crossing* the boundaries (79). It takes Mark a while to recognize the statement's usefulness and incorporate it into his mind-set. I restate the concept more fully (81) and ask Mark to act on it (82). Again I use soft language, “express your concern.” But sometimes the soft words must be spelled out, as in my comment that follows 82, when I have to specify “apologize.”

Let us now examine how language helps the mediator implement the minimum movement hypothesis. The term, *inadvertently*, is the mediator's and represents a word that can help bridge Mark's two positions and allow him to cross from his original “no problem” story to a mutual problem definition. Similarly, the term *boundaries* allows Irene to move off the more threatening term, *harassment*. Let’s diagram this movement toward the mutual problem definition.
From these starting points, it is unlikely that either could make the movement necessary to reach the other's problem definition. This is not a situation that lends itself to compromising on either of their two positions. However, constructing a third position that contains elements of both positions has a higher possibility of success.

Mediator’s wording that requires less movement by either client:

- **Mark**
  - No problem
  - She’s crazy
  - Wild accusations
  - Paranoia

- **Irene**
  - He’s harassing me
  - If I say “no” maybe he’ll pull back his help
  - Too personal
  - Abusing his position

positions require large movement:

- Large movement → MPD

From these starting points, it is unlikely that either could make the movement necessary to reach the other’s problem definition. This is not a situation that lends itself to compromising on either of their two positions. However, constructing a third position that contains elements of both positions has a higher possibility of success.

Mediator’s wording that requires less movement by either client:

- **Mark** → boundary crossing → **Irene**

In this case the mutual problem definition has more benefit to Irene than to Mark since it is closer to her position. Thus the mediator must help build the bridge that allows Mark to move the larger distance. Once again the bridge is language—introducing the word *inadvertent*. And further movement takes place with the addition of the second term.

- **Mark** → inadvertent boundary crossing ← **Irene**

The word *inadvertent* is key to providing Mark a safe way (bridge) of leaving his “no problem” position and acknowledging (while saving face) Irene’s right to set her own boundaries without his having to plead guilty to harassment. The right to establish the boundaries is an important victory for Irene since it gives back her control over her academic life. This combination provides the minimum movement needed. Once the discussion turns from “he did,” “she did,” the participants’ level of offensiveness and defensiveness drops significantly. So that at the end of the session Irene is able to acknowledge Mark’s academic value to her and assure that she is not “out to get him.” Mark can reciprocate that she is a good student. And so agreement begins to take place.
To be effective mediators must be nonjudgmental. It does not mean that mediators cannot have opinions, it simply means that they may not express those opinions in the mediation. When showing the video of this case, somebody asked me my opinion about sexual harassment. I replied, “As a mediator, I express no opinion. Thus the question is irrelevant regarding the mediation.” Obviously, if they asked me the same question as an individual in any other role, I would share with them a series of strongly held opinions about the matter. Mediators are only useful to the clients as long as they stay in the mediator role and stay focused on developing and resolving a mutual problem definition.

Finally, as in all our cases, the mediator turns to the future with a difference. Both professor and student can now envision a very different future from what they arrived with and projected. There is no formal agreement needed in this instance, rather a sigh of relief from all.
One objective of any mediation is to keep the conversation going. When talking and reasoning with one another stops, then serious difficulties such as impulsive responses or even physical altercations may arise. In this mediation, particular problems arise around the issue of loyalties of parents to their own children, yet being able as adults to model appropriate behaviors to their children. Prior to mediation, the parents became overinvolved and their discussions increased hostilities to the point that the fathers became physically aggressive with one another. The mediator must understand that there are many allegiances in the room, and honor them all. When clients are relatively silent, it is the mediator’s responsibility to create an atmosphere of safety and security in the room so they can speak to one another without retribution. The mediator, through the questions of curiosity and respect, increases the chances for cooperation, understanding, and reflection.

Two-Generation Conflict

Neighborhood disputes are among the most fractious concerns that arise. In this particular case, Joe, also is involved in another case (Parent Teen Mediation with John Haynes), has been fighting with Adam, his next-door neighbor, but previously his best friend. By studying the Parent Teen mediation, the reader can see
the full issues of parental loyalties to a child, yet the difficult perspective of teaching a child to accept responsibilities for his own actions. In the present case, Joe struck his friend, and Adam lost his front tooth. The fathers have also disputed and almost ended up in fisticuffs. There is a strong potential for legal action including remuneration for the cost of dental fees and as well possible charges of assault. With four individuals coming in front of the mediator, and both sides attempting to blame the other for their children’s woes, the mediator must be hypervigilant to the dynamics of either side. What if a married couple fights with one another? What if two of the same gender start fighting? What if two of the opposite gender start fighting? Which parent shall have the authority to speak for the couple? Will the messages be the same from each parent in their respective family? How will the parents speak for their children who are not present in the room? Do the parents have sole authority to speak for their teenage children?

In general, parents tend to protect and to embellish the good nature of their children. All children are special, innocent, and in this case, not to blame for their own misfortune. The mediator must be careful to honor the parents’ respective positions but point out the fallacy of their positions. Notice in the transcript how each parent, within his or her own story, attempts to ensure the safety of the story by externalizing blame, allowing for only one solution. It is often stated that the person who defines the limits of the story also defines the solution to the problem/story. It is known that the person who speaks first, especially if allowed to talk for a lengthy period of time, simply talks more about the same. The person who must respond must spend the greatest time rebutting, allowing for little new information to arise. In this particular case, the parents do give much information on the problem at hand. The mediator must ensure that each parent does not have to defend his or her “own stories” of the problems to date. All parents need to live safely within their own stories and the general story ought to be one that is a shared and safe story. The mediator must be aware of this and not allow one person’s story to be considered the most dominant. The mediator must look within the stories for the overriding common denominator. That denominator must be something both sides can agree to, and have little disagreement with. The reframing of the responses or stories must be equally palatable to both.

Hypotheses Generate Questions

The mediator’s hypotheses lead to the questions. Hypotheses are the start of every mediation. Hypotheses are neither good nor bad, they are simply useful or not useful. The mediator’s hypotheses generate more and more questions. Mediation becomes a voyage of discovery. The questions are extremely important because good mediators know that good questions provide insightful answers. A mediator can rarely be blamed for asking questions. Many clients know that good questions provide insight into their difficulties. A mediator asks questions because the clients are responsible for their own answers. This is one of the hall-
marks of mediation. Mediators are responsible for asking good questions that
effect change through the client’s answers. Mediators do not dispense advice
because it is expedient. They increase the opportunity of the clients solving their
own problems by asking task-oriented questions that provide options for clients
in an environment of safety. The mediator works to create a mutual story that
emerges from the different stories. The reframed story must be one equally safe
for everyone in the mediation. The mediator, in the questioning, must be
methodologically sound in the pursuit of allowing clients to acknowledge that
the problem was theirs, is theirs, and when resolved, is truly their resolution.

The mediator attempts to be goal oriented with questions. He follows sev-
eral important principles:

1. That the language is as respectful and positive as can be
2. That the language is oriented to what is to be done, not entirely focusing on
   what was done (future focus more than past focus)
3. That the language can be visually or behaviorally represented; that is, do the
   clients have a different vision and know what to do to make things better?
4. That the language is active (doing something)
5. That the language is immediately within the realm of being resolved; that is,
   the task is relatively easy to carry out
6. That the language is not too far into the future or remotely possible (increases
   opportunities for change when change is incremental)
7. That the language is specific, concrete, and easy to understand
8. That the language can easily identify that the clients can maintain their
   resolve or find a solution on their own

As you read the transcripts, and watch the videotape on the Neighborhood
dispute, look for the language used by the mediator, and see what additional
questions you might have asked. When the mediator asked questions, which
questions made a difference to you as the reader?

**TRANSCRIPT AND ANNOTATIONS**

Mediator: The Andersons and the McDougals. I don’t have a lot of infor-
mation about why you’re here today. But, just so I get your names correct,
might I start with the Andersons first, so I can call you, what would you like
to be called by?1

Mrs. Anderson: Cynthia Anderson.
Mr. Anderson: And I’m Brian.
Mediator: The McDougals?
Mrs. McDougal: I’m Katherine McDougal.
Mr. McDougal: I’m Ron McDougal.
Mediator: I have the skimpiest of details of why you are here today. Are you related to each other? Can you give me a hint? 2

Brian: We’re neighbors.

Mediator: I understand. What I’d like to do then, is get in a nutshell what seems to be the problem today, and I’m just going to let you give me an idea where we lie today and then I’m just going to cut you off because I have many more questions to ask of you. 3 Could I let the McDougals commence first? I don’t know which, Ron or Katherine, who might want to give me a nutshell problem, what’s going on?

Katherine: Well, perhaps you should start here.

Ron: Well, we were asked if we would come here for mediation. Our lawyer suggested it. We said okay, because we really want this situation cleared up. Basically, the Andersons have threatened us. Through their lawyer, they’ve sent a letter indicating that we are to pay some expenses for their son, Adam, who was in a fight with our son, Joe. We went back to our lawyer when we got this letter and said, look, this is unreasonable. Adam was the one that started the fight and in fact, earlier, a couple of weeks ago in the school yard, he attacked Joe and Joe was . . . 4

Mediator: So, what we have here is a situation where there are lawyers involved, there is your son that is involved with their son. And you’re neighbors. I haven’t heard so far that you’ve ended up in a fight, it’s your boys that have ended up in a fight. Am I right so far? 5

1. Because mediators may have little information as to who is in front of you, and who are couples and who are not, try to use first names so you can call on them personally. First names are also more personal than surnames.

2. Try to establish, in the shortest description possible, what the problem is. See who speaks for the couple. You will develop a hypothesis for what is happening as the interview continues.

3. Decisions have to be made in multiparty mediations. The mediator has no way of knowing if these are four different people thinking differently or two couples, or any combination or permutation thereof. Also by indicating that the mediator needs more information and is on a voyage of discovery, the clients know, to some extent, what is happening. Note that the mediator has indicated that if the discussion is unproductive, he will “move on.” The mediator’s focus is to hear stories of both “sameness and differences,” but only through knowing what is different can the mediator assist these parties.

4. The first half of the answer is informative and useful, the second half is perceptual and blaming. Allowing clients to ascribe blame can be troublesome. Also, if you let one set of parents talk too long, the second set of parents will spend most of their time in rebuttal and provide limited information that is new.
5. The summary should demonstrate the mediator’s understanding of the problem and be generally palatable and not threatening to the clients. I use neutral language, “involved,” to let them know I have heard but have not accepted Ron's version of the story.

Ron: I went over after Joe and Adam had gone at each other in the school yard and Joe’s knee was hurt. I went over to the Anderson’s just to see what was going on and to tell them to keep their son under some sort of control. He can't go around beating up on kids like that. I was just standing at the front door and Brian threatened me. He said if I didn’t get off the property he would beat the shit out of me. And I just don’t stand for that kind of thing.

Mediator: So, it’s good that you guys came here today to try to resolve this before it escalates even further from what I can see. 6

Ron: It seems it’s gone pretty far, to have a guy threaten you.

Mediator: Might I check with the McDougals to gain their impression of the problem to date?

Katherine: We’re the McDougals. And our son is Joe. And they’re the Andersons. Andersons have got Adam, who is their son.

Cynthia: I think we’d like to be compensated for the dental expenses that have been incurred as a result of their son, Joe. Breaking our son’s tooth is going to cost an awful lot of money. I don’t think that we should have to be responsible to pay for it when their son inflicted the damages on our son.

Brian: The McDougals don’t seem to be willing to take any responsibility for Joey’s actions. We’ve talked to Adam, we tried to get the story straight. They seem to think it’s all Adam’s fault. He comes home with a tooth missing and now we’ve been to a dentist and it will be thousands of dollars. We think that we should be compensated for the bills we’re looking at. And it’s going to be ongoing, it doesn’t just end there.

6. Normalization of escalation of problems is important. The clients must feel they are doing the civilized and conscionable thing—to talk and try to resolve this. Their act of coming here is one of responsibility. The word guys comes from the hypothesis that this dispute may also be more generalized between the two males.

7. So far, Ron has dominated the session and his story is unchallenged. I must invite the other family to enter with their story so that they will not feel ignored.

8. It’s always confusing with four parties in the room. A mistake is made—move on.

9. The Andersons call the McDougal's son two different names, one more boyish than the other. Now each family has put forward its story, each blaming the other. The mediator hears the first reference to the money issue at this
point. I want to avoid any suggestion of laying blame or leaning toward one solution over the other. I need more information before I can construct a hypothesis about where the eventual solution might lie. Is this a description of the problem? The mediator needs to encapsulate the problem differently than “who is to blame.” The mediator needs more information. Remember—whoever describes, through their story, what the problem is, really defines which solution must occur. To stay away from this dichotomy—move on to more fact finding.

Mediator: Let me ask this question. Where did this altercation occur? You’re neighbors, did it occur at your home? Did it occur . . . ? Where?
Ron: Between our two sons?
Mediator: Yes.
Katherine: Well, there have been two altercations.
Mediator: Did they both occur at the same place, somewhere else? You know the details much more than I do.10
Ron: The earlier one was at the school yard.
Mediator: Okay, one happened at a school yard. And the one where someone lost their tooth?
Cynthia: That was on the way to school as well. The boys were walking and Joe just went up and hit Adam.11
Mediator: How long have you been neighbors? How long have you lived side by side?212
Katherine: We were in the neighborhood first, we moved into the neighborhood about fourteen years ago when our houses were built. And I’m not quite sure when the Andersons came.
Cynthia: It wasn’t too long after that and actually we were at one time quite good friends and used to socialize back and forth.13
Mediator: So, if you’re there fourteen years, how long might you be?
Brian: Probably, maybe nine or ten years.
Mediator: I just want to go backwards a little bit. In the years that you’ve been neighbors together has anything like this ever arisen?14
Brian: Not to this degree.15
Katherine: Our kids used to play together, they were in each other’s houses all the time, they were good friends.
Mediator: So we had Adam and Joey in both houses back and forth and you’ve been neighbors beside each other for at least a decade with no major problems. When you had problems in the past, I assume you had some, how did you resolve them then?216
10. One question may lead to many others—there needs to be more information so the mediator can better understand how to readdress the focused and personal problems and make them more mutual problems.

11. Adam’s mother echoes the charge of the other parent in describing an unprovoked attack. I can now see the emerging metastory of each family is basically the same: parents protect the safety and honor of their son.

12. I ask a process interruption question to break the cycle of blaming. I want to redirect the conversation and I need to learn how long these neighbors have known each other. Do they have a history of success or failures? The mediator is still on a voyage of discovery and fact finding.

13. The mediator now knows there is some success and mutuality between the neighbors.

14. The mediator tries to find a time in the neighbor’s lives when their stories, by which they live, are as similar as possible.

15. The mediator can utilize this statement and mutualize the present problem as being anomalous. Think of all the questions that can come from this one statement.

16. Now I know both families were friends and both children were friends. My first hypothesis is being formed: to bring these neighbors from a history of success, to a solution for success in their social relationship. Consequently, I choose not to follow up at this time the remark regarding payment for the dental work.

Cynthia: The children resolved them. There were never any extensive problems that required adults to be involved in any of their problems.

Mediator: So up until now, the boys have been fairly responsible and worked things out themselves.

Brian: The boys don’t seem to be getting along, we’re trying to find out the reason why. The McDougals in my opinion don’t think that Joey is responsible for any of the conflict that is going on between our two sons.

Mediator: I just wanted to ask a few more questions about how it was in the past and then we’re going to jump right to the present circumstances. So, here you are together for a decade as neighbors. When you, as neighbors, had difficulties with each other, how did you resolve your personal difficulties? I know some neighbors, for example, have to build a fence. Did you have to build a fence between each other?

Cynthia: No, we’ve never had any problems.

Katherine: The fence was already there.

Brian: My wife would talk to Ron’s wife to resolve something or maybe Ron and I would sit down and talk about something, but nothing this big has ever come up before.
Mediator: So, in the past, each one of you has had a relationship with each other in an effort to resolve difficulties before they got too severe? Am I on the right track?  

Katherine: There really weren’t any difficulties; we got along quite well. It’s just been in the last while that the friendship that our sons had, which we certainly were really pleased about, started to deteriorate and Joey would come home and say he is just not willing, and not going to be around Adam anymore and didn’t like Adam’s friends. He really was, I think, at first quite disappointed that Adam wasn’t as good a friend with him any more as he had hoped he would be staying.

17. The question of the past provides information of success. That success question is brought to the present. Later on the mediator will bring past and present to the future where the solutions lie. In many mediations, I would not dwell so much on the past because that is where the problems lie. In this case, however, the opposite is true. The past represents success and can be the basis for a successful future once the present difficulties are overcome.

18. Brian’s part of the story is meant to demonstrate how good he is and how unreasonable the McDougals are. This is typical of the early storytelling in mediation.

19. The neighbors, through the mediator’s questions and summaries, need to be reminded of their successful past and their ability to resolve past problems. The mediator tries to remedy the problems through past successes. I ask a question that both parties can agree to. I have added to my hypothesis that I do not need to establish a mutual problem statement at this time, since it would be about the dental bill (the Anderson’s presenting problem). Instead I want to focus on the parents’ social relationship and establish a mutual statement about that. My further hypothesis is that if the adults’ relations can be reestablished, the money issue will be much easier to resolve.

20. The question brings forth the information that there has been success between genders. There is the acknowledgment that they were able to resolve their problems in the past, but nothing this big before.

21. I summarize to emphasize what the neighbors have stated. It highlights their success.

22. Now it is clear that the neighbors had few difficulties until their sons started to dispute. Part of my hypothesis was that the parents, in an effort to posture for their children, were drawn into the dispute. Perhaps the dispute is about “standing up for our son” instead of a neighbor dispute. It may be a clash between the two similar metastories.

Mediator: How old are these boys?
Katherine: Fourteen.
Mediator: So, really since about age four, for a decade, they’ve been friends with each other. Would it be fair to say that what we see today is an anomaly? That it’s so unusual; that it’s very confusing for all of you parents?23

Ron: It never happened before.

Katherine: We’ve never had this problem with any of our neighbors. We’ve always been on good terms with everyone, we’re in a cul-de-sac, everybody knows everyone else. We like it there.24

Mediator: I meant with the boys. The fighting they’ve had is something that’s very foreign to all of you?

Katherine: It’s all new, just since the beginning of the school year, maybe a little bit during the holidays.

Mediator: Would it be fair to say that the difficulties you have as neighbors are also anomalous? You’ve been together for a decade. This is something new.

Cynthia: I think up until the boys began having a problem, we had been good friends and once the friendship started to disintegrate between the boys, then it started to become a problem amongst the adults.

Mediator: I’m a little confused about this part. I’ve heard both sets of parents say that nothing really happened until the difficulties with the relationship that the boys have. I didn’t hear you say that you have difficulties with each other; I hear that you have difficulties with the way your boys interact with each other. Am I off track?25

Katherine: We were just really surprised when we wanted to try and clear things up with Brian and Cynthia that they took this really negative approach to us and became so, I can only say, abusive. We were completely taken off guard and then when we got a lawyer’s letter from them, this is just not something that, we’ve heard that it happens to other people, but we’re very reasonable . . .

23. Again, the mediator emphasizes the time-honored relationship of success, and portrays the dispute as an anomaly—something that’s unusual versus the norm.

24. The good nature and goodwill is now shared to include the other neighbors. This is part of the story building: “See how good we are? It must be the Andersons who are to blame for all this.”

25. Taking a one-down position of curiosity, the mediator asks how this could happen? By using the question of curiosity the parents are invited to speak more about this problem. I want to separate the two parts of the problem that have emerged: that of the parents’ relationship and that of the two boys.

Brian: We have to back up here, I think. We approached Ron and Katherine about the costs we have to incur with the dental work and we felt that we shouldn’t have to incur all of it. Well, they said it’s all our son’s fault, he
was the cause of it and they're not going to be responsible for one cent. So I think from there things just escalated and us kind of hitting each other head on and saying, no, it's not our son's fault, it's yours. To me, we're the ones being penalized here for having to go through this expense, and they refuse to pay for it, so I think we felt we had no choice. To get a lawyer.

Cynthia: We couldn't get any action.

Mediator: Since these can be adult problems, I'm also worried about how your boys might be penalized with this kind of relationship that they had over a decade. Ten years of being buddies, friends, and it's on the verge of being lost. And I'm even more intrigued by . . .

Katherine: They've been fighting, they've been fighting now . . .

Mediator: For ten years?

Katherine: No, for the last, probably, four to six months. This is just the last straw. They've been fighting, they've been not getting along, they've been apparently fighting at school because we've been in to school to see the counselors and we were asked to talk to the school principal. We've had notes home. They're not fighting with other kids. They're fighting with each other. This came as a real surprise to us.

Cynthia: We've certainly talked to Adam about it and Adam says that he has tried to approach Joe and tried to talk about it and see if they could resolve their differences, but Joe just keeps goading him on and keeps going after him and making him feel miserable.

26. There are always downsides when matters are not resolved. In a “WATNA” or Worst Alternative to a Negotiated Agreement, the mediator talks about the boys being penalized for this youthful mishap. It invites the parents to attempt to take the adult role back and save the boys’ relationship. It asks the parents to resolve their dispute for the boys’ overall well-being.

27. Now I realize the dispute has been occurring over some period of time and both sets of parents were frustrated over the difficulty at the time.

Mediator: I want to get back to the question about, how is it that after ten years that this has arisen to such an extent where lawyers are involved, the boys are hurting each other, which must hurt you both as parents? How is it that you think that you can’t resolve it when you've had such a success in the past of living together so peacefully? I'm just a little confused.

Cynthia: Well, as Brian said, we tried to resolve it, we tried to talk to them and see if they would be willing to pay for the cost of the dental damage that was incurred and they just denied all that. They didn't want to have anything to do with paying that and then we felt when we tried to talk to them and they wouldn't be willing to do that, that then we were going to have to seek another manner of obtaining the damages to pay for it.
Mediator: So, it must be frustrating for parents like you, who were able to talk to each other, two moms to each other, two dads to each other, and now you’ve had to hire lawyers who speak on your behalf. That doesn’t seem like . . .

Brian: It’s not something we looked forward to doing. We talked about it a lot. We in the past have been good friends, we socialized, had dinners together, went out, and played tennis. It was not easy, it’s not something that we all of a sudden decided to make a break. The issue with the sons became such an important problem to us and we felt we were not getting anywhere trying to resolve it.

Mediator: Katherine, you were going to say something?

Katherine: No, sorry, I’ve changed my mind.

Mediator: One of the things that I always look at—and I certainly want to discuss today—is about any kind of harm to either of your children. What I want to look at is also, even if the matter was resolved in court, who knows which way it would go? That’s why you hire lawyers. And a judge makes a decision. How would that affect your relationship living next to each other?

Cynthia: It would be very uncomfortable, it’s very uncomfortable right now. It’s really difficult, even to drive out of your driveway and you drive past them and the hair on the back of my neck goes up. Every time I see them I’m annoyed. If I see their car . . .

Mediator: Did you ever think you would feel that way about your neighbors?

Cynthia: No.
Brian: Never. We talked about moving, we've been there for nine or ten years. We don't want to move. 33

Katherine: We certainly aren't going to move, we've been there longer.

Cynthia: Why should we have to move?

Mediator: Let's not talk about who has to move. I'm just concerned about the relationship that you would have should you both choose to live next door as neighbors. What are your general thoughts? 34

Katherine: Well, I'm really sorry that it has come to this because I had a great deal of affection and respect for both Cynthia and Brian. I mean, we would trust our son with them if we went away, they left their son with us if they were away for a weekend. It was a wonderful relationship. And I certainly am very sad that it has come to this, I don't like it all. I get so upset every time I even think about it.

Mediator: What would happen, Katherine, let's just use a what-if scenario, you went to court and a judge found in your neighbors' favor? How would that affect you living next to your neighbors? 35

Katherine: I mean, we'd have to do whatever the court decided. We'd have to go along with that. But it certainly would make it very difficult because we just don't have that kind of money to simply go and pay for their son's tooth to be fixed, particularly when it wasn't Joey's fault. I mean, there were two kids involved.

32. The mediator now knows how difficult it is for the neighbors to be angry. Being angry takes much energy, which is probably exhausting. This is another reflective question aimed at understanding their relationship.

33. The mediator knows that the neighbors will have to live side by side and if they can't resolve this problem, there will be even more heightened anxiety. Regardless of the outcome of this dispute, they will have to live close by for a long time.

34. I mutualize an emotionally charged situation by indicating their worst fears about moving will not be realized.

35. The mediator returns to the worst-case scenario. I want all four of them to visualize life after a court decision. This is a form of reality testing.

Mediator: How would that affect you first of all, living next to your neighbors; and the second one, we won't talk about the monetary issue here yet. 36 I just want to know, in the worst-case scenario, you have to look at a worst-case scenario because if you ask a court to make a decision, at least one set of parents here isn't going to be very happy. I'm just wondering, what's it going to be like if you choose to live where you want to live and you try to resolve it legally? What will it be like?
Brian: We’ll probably be fighting all the time, I guess. Which I don’t think all of us want. We do have a history here, of being neighbors and friends for a long time. I didn’t really want to come here today, but my wife thought that this might be an answer to the problem. But, since we don’t want to move . . .

Mediator: How about you, Katherine?

Katherine: Oh, I would find it terribly uncomfortable and very distressing because I can’t see how we would be able to improve things and get back to where we were before or even close to it.

Mediator: From what I can see right now, both of you, both sets of parents, acknowledge that a worst-case scenario doesn’t serve any of you. I’m trying to think of other alternatives you might have.

Ron: I don’t think we want to keep fighting all the time.

Brian: That would be really hard to live with.

Mediator: I’m going to guess that a worst-case scenario about your sons having the same kind of relationship that you might have if there is a worst case scenario, would also be equally as bad. So I’m trying to think, if that’s the worst-case scenario, then I’m getting the feeling that the only resolution that you might have would be in this room.

36. All my inquiries have confirmed my first hypothesis about not following up on the presenting problem and instead choosing their relationship as the central issue to be resolved. However, I want to let them know I have not forgotten the money issue.

37. Brian further confirms my hypothesis. He also reveals that he is a reluctant participant in the mediation. This illustrates the complicated dynamics of multiparty mediation. A mediator can never assume a united front between a couple.

38. Now that the mediator knows what they don’t want, he can help them find what they do want.

39. Originally I separated the conflict of the adults from that of the boys. Now I reintroduce them into an already complicated picture. But I feel we are moving toward a resolution and want all six to be participants in the mediation outcome.

Cynthia: Well, I guess that’s why we’re here and it certainly seems important, I think, to find out why the boys have been fighting and see if they can resolve the problem. Because even if we resolve the problem amongst us, I think that it’s not going to help if the boys don’t resolve the problem. I don’t really understand why they weren’t here or why they aren’t involved in any of this as well.

Mediator: Probably because I think parents make decisions for their children and that’s why you’re here as moms and dads first. This is a very complex
issue and you’re going to try and do your best here. It might be possible for
the boys later, but right now things are in, maybe a pecking order. Moms and
dads are here to try to figure out what to do. You guys hired a lawyer. You
got involved this way. So, let’s try to work it out this way first. Let me ask
about this. The first incident that occurred was in the school yard? Is that
correct? And is this where the tooth incident occurred, the damage?
Ron: No, that was the second time.

Katherine: The first time our son Joey came home from school, after school,
with his pants torn and his knee ripped up.
Ron: Blood coming out of it.

Katherine: He was a real mess and he told us that he had been on his way
home from school, he hadn’t yet left the school yard, when Adam just came
up and hit him, out of the blue, called him a whole bunch of names. They
got into a fight and the next thing, they were both on the ground and he was
all ripped up.
Cynthia: We know it wasn’t out of the blue.

Brian: Something happened in the school that was carried out onto the play-
ground and they got into a fight. Now that was the first time. They’re
teenagers, they’ll fight. Then it just escalated.

Mediator: But these teenagers have never fought before?
Katherine: Well, they have probably traded the odd insult.

Mediator: Not where this kind of damage has occurred?
Katherine: No, not when there has been that kind of hard feeling afterward.

Mediator: Let me ask, now, how did you, as parents, try to resolve that one?
Ron: That’s when I went over to the Andersons and wanted to know what
was going on. Why was Adam attacking Joey? And to tell them about the
damage to Joey’s knee. He was all cut up and everything and I guess our tem-
ners got the best of us and that’s when Brian told me to get off the property.

Brian: Well, Ron took the approach right away that it was Adam’s fault,
which got my dander up, and as opposed to saying, well, our boys got in a
fight and how can we help to stop this. That’s what made me angry and
started us on this feud.

Mediator: So, I understand things were said in anger, so it was maybe the
wrong time to talk about it. But I don’t get the feeling from you that it’s
wrong to talk about it. I get the feeling it’s the wrong time to talk about it.
Do you know what I mean?

Katherine: Well, it needed to be talked about. It really needed to be talked
about. Perhaps you’re right. Perhaps we started talking about it when we
were really angry and upset.
Mediator: Because I see you guys talking about it now as if you are neighbors.
Ron: We were pretty angry at one another at the time and . . .
Katherine: We still are.
Mediator: When you care about your children as much as you do, you would be a little hot. So, it was not resolved then, is that what we’re saying? This one incident, it left you with a bad taste in your mouth, both sides?

40. The mediator places the parents back in the role of authority to resolve their own problems. I use the language of calling them parents instead of neighbors to reinforce their roles. Now it is time to turn the focus on the teenagers and their relationship.

41. The mediator tries to clarify that it is all right to talk about problems but some times are better than others to initiate sensitive discussions. Thus this clarification is necessary to let the parents know it was not if it was all right to talk about the problem, but when.

Katherine: We weren’t going to go back and give Brian an opportunity to carry out his threats. I mean, we’re very peaceful people, we don’t try to deal with issues by beating each other up.
Mediator: For ten years both of you neighbors have been really peaceful, from what I can see. This second incident now occurs after this incident where there has been a bad taste left in your mouth, and now someone has lost some teeth, there’s been damage.
Cynthia: Our son. Front tooth.
Mediator: So now we can see some escalating problems. I would be even more fearful what would happen after today when you left. What would happen if there were more difficulties when you left here, if you found out that your boys ended up in a huge fight and they both got hurt?
Ron: We went to our lawyer about this. We were going to request him to get a restraining order so that Adam would not have any contact with Joey.
Mediator: I want to know what you would do as parents. I want to know, for your children, what would you do? What would you say to them? I know you can go to your lawyers any time. I want to know what would you do if you walked out today and found that your boys were bloody and hurt, they had a huge fight on the lawn, right between your properties. What would you do?
Brian: I’m concerned about my son’s safety. Especially after what happened the last time.
Katherine: So are we.
Brian: Somebody hit our son.
Cynthia: We want to know why this keeps occurring.
Mediator: I’m concerned now that you seem at a loss for what to do if your children, your child, would end up in a fight with your neighbor.

42. This is another reflective question aimed at helping them visualize what would happen to the boys if they can’t resolve their adult differences. Indeed this is a future question with a hypothesis problem.

43. Again, the adults are reminded of their important role as parents. I ask what wisdom they would impart to their children in case the boys have another fight. I want to get them thinking about their parental responsibility beyond seeking a legal remedy. What else could they do to help their sons?

Katherine: I guess we’ve been trying to keep them apart, because obviously when they’re together it doesn’t work. But short of having to move to another neighborhood, they go to the same school. I’m not particularly interested in moving Joey out of school at this time of the year and finding another school for him.

Mediator: I get the feeling from both of you that moving out of the neighborhood is not an option. We can put that one to rest. I get the feeling from both of you that you want to work this out but you’re just confused as to how two boys who could be the best of friends could end up like this. And secondly, how you both, as parents, could have ended up like this, also? Are we on the right track? The third one is, what are we going to do about some damage that has been done to one boy? And, remember, this is physical damage that has occurred, but I’m wondering also what we can do about the damage that has resulted in this kind of relationship that has ruptured these young boys’ relationship. What kind of friendship do you want for these young boys when they’re fifteen, sixteen, seventeen, eighteen, long after this incident is gone? What kind of relationship in the next four or five years do you want for yourselves as neighbors long after this is resolved? However it might be resolved. What would the picture look like, and if the picture is to look rosy, what needs to be done today to ensure that cool heads will prevail?

Ron: I’d like the boys to have the same kind of relationship they had for almost ten years; they were buddies, they did everything together. That would be my hope for them.

44. The mediator provides the base for future movement. He summarizes the points so far prior to moving on with more questions. He partializes the problem into three immediate problems. He then anticipates a future problem if this matter is not resolved. These future oriented questions conclude with a task-oriented question: Once you have determined what kind of future you want, what do each of you have to do right now to reach that future? This is a key intervention in the mediation session.
Brian: The boys aren’t talking to one another right now and we’ve taken the approach that rather than have another fight, just don’t talk to Joey. Avoid him at school, come home. But we also realize, and we’re trying to be realistic, they see each other every day at school. They’re going to be involved in things together and I think the same thing is going to happen again. So we have to find out how the two sons can get together on this.45

Mediator: So, maybe for Cynthia, some of her initial ideas when we talked at the first of the session about getting the boys in here, that sounds like that would be a good idea. Patching up their relationship as much as patching yours.46

Katherine: I would object to their being here if what we’re going to talk about is damages and compensation and who is responsible for what. Because I don’t think that’s part of what they should be involved in. But I think it would be a great idea, at some point, if it was possible to give them an opportunity to talk with someone like yourself and sort out their issues. Because I’m sure we don’t really know what’s going on. And they’re not about to tell us. They’ll tell us something, but not everything.

Mediator: And that’s an excellent point. Remember what I said at the initial part of the mediation that parents make adult decisions for their children. Money and compensation are adult issues. I think that both of you have talked about patching this relationship for your children. We didn’t talk about their discussing adult issues and resolving it themselves. We talked about you doing that. So I think that’s an excellent point.47

Cynthia: How would you envision it, then, in terms of involving the boys?

45. Brian responds to my question with a look into the future if they do nothing and suggests that the parents must take the initiative to help their children. He echoes Ron’s hope for a better future for them.
46. I remind them of Cynthia’s earlier question and turn it into a suggestion to involve the two teenagers in the mediation.
47. Now the parents are ready to engage in their parenting roles. The issue of compensation is to be parental rather than child negotiated. At the same time, they have all embraced the concept of involving the boys in the mediation of the relationship issue.

Mediator: (To Cynthia) I think that the feeling I get from you, as a mom, and Katherine, as a mom, and both dads here, is that you’re worried about your children, your child, having a good relationship with the other child. Knowing that you two want to live next to each other. But we didn’t talk about compensatory issues, we talked about relationship issues. We still need to talk about what to do about the financial issues which lie between you, and there are other legal issues right now. Maybe we could put the children aside right now for that.48 We’ve just got a few minutes left, and I want to ask you some
more questions. The monetary issue, do you have a dental plan or something? You said there were monetary issues here. For the loss of a tooth.

Brian: No, we don’t have a dental plan. That would probably help to ease our anxiety over this. It’s not a $50 or $100 item. This is a lot of money. We really don’t have that right now, but Adam’s teeth are something very important, it has to be done. I just have a bad taste left in my mouth if we have to bear the cost of all this, when Adam was hit by somebody else and there doesn’t seem, on our part, to be any responsibility coming from the other side.

Cynthia: You know what it does to self-esteem to have his front tooth broken.

Mediator: (To the McDougals) What would have happened if the reverse would have been true? If Joey would have been struck? What would you have wanted as parents? Anything different?49

Ron: (pause) Well, we do have dental coverage. So that issue we could probably handle. There is still the underlying issue of why this kind of thing is happening. As Cynthia is saying, what is the background of these kids beating up on each other?50

48. I feel the atmosphere is now right to return to the cost issue. The four have expressed their commitment to work on the relationship, both for themselves, and for the teenagers. In the few minutes left, I want to see what movement is possible on the issue that brought them to mediation.

49. This is a key question. I ask the McDougals, the defensive parents, to put themselves in the place of the other parents. It is another reflective question. When you watch the video of the session, notice how long it takes Ron to answer the question.

50. Ron avoids the implications of the question and returns to the earlier issue of the boys fighting. Notice how he invokes his neighbor’s wife for added authority in the change of focus.

Mediator: I think we can look for that later. If I saw the boys, I would try to find out, or someone else could, another professional. But I would like to know, what would happen if the reverse would have been true, in identical circumstances, if you didn’t have a dental plan either, and it’s really tough.51

Ron: We do have a dental plan.

Mediator: Exactly. What would have happened if you had not had a dental plan, much like your neighbors? I’m just trying to figure out here, what would have happened there? What would you have wanted?52

Katherine: I certainly would have wanted to approach Brian and Cynthia and see whether perhaps they would be willing to contribute something toward the cost. The more I think about what’s been happening there, the more I realize that it could just as easily have been Joe’s tooth that was knocked out because this wasn’t just a single punch. From what I hear and
from the stories that the other kids have talked about when they came in and had a soda at our house was that these guys were involved in fisticuffs, an all-outer, and they were letting everything rip. It could just as easily have been Adam punching Joe’s tooth out as the other way around. Putting it like that, I guess, yeah, I would have wanted, at least would have hoped that Brian and Cynthia would see that as possible.53

Mediator: So as neighbors, it’s interesting as close as you are, you still think alike. You’re very much in tune with each other, how you feel about the other neighbor, and vice versa. But I’m not sure whether it’s appropriate to talk about compensation right now when you need to think about it some more. I knew what your positions were before you came in and I’m in a habit of allowing people to think a little bit more, about what they can do to work together in a neighborly fashion, as well as for the boys, without feeling pressure about making a decision here today.54

51. A mediator must always wonder why a client does not answer a direct question. When I ask a hypothetical question, the one who answers then takes responsibility for the answer. Some people don’t want, or are not yet ready, to be held responsible, and therefore do not answer.
52. Since I have not received an answer to my hypothetical question, I ask it for a third time.
53. Katherine responds. She is able to put herself in her neighbors’ place. She acknowledges the complexity of the situation, and while not admitting any fault, she can sympathize with Brian and Cynthia.
54. I give positive feedback to all four adults. But given the time available, I do not suggest that they enter negotiations now. The mediator must judge the readiness of the parties to begin bargaining once they have reached a mutual problem definition. Premature bargaining by one can drive the other(s) deeper into their positions. Katherine seems to have made more movement than Ron. I want them to have time to talk things over away from the mediation. It sometimes happens that in the intervening time, the parties come to an agreement without having to return to formal mediation. Often that can be the best resolution to this type of dispute between neighbors.

Ron: I’d like to be able to talk it over with Katherine again, I don’t want to feel sort of steamrollered into something I’m not comfortable with.55
Katherine: I guess my fear is, again, if we do want to start talking about it and Brian threatens Ron again, that really scared me. Because I thought if the boys get into fisticuffs, that’s what fourteen-year-olds do, but it’s not appropriate for adult men to fight about something like that.

Mediator: Why don’t we ask the dads here what they’re prepared to do for each other to ensure that what happened in the past, that one incident, doesn’t happen again?56
Ron: Well, if Brian won’t threaten me physically, I’d be happy to sit down and discuss this with him.

Brian: I know I lost my temper. I should not be threatening people. Ron’s approach made me very, very angry.

Mediator: So, what would you be prepared to do? I’m not quite sure.57

Brian: Even though I was angry, I don’t deny saying those things. I would never carry them out. I would not use any physical violence. I just had a knee-jerk reaction.

Mediator: In the short term, then, for both of you, cool heads will prevail?

Brian: I would say so.

Mediator: Are we in fear of the moms getting involved here? Do we need to say anything about that? It sounds like it was only the dads that were involved in this?

Cynthia: For me, it’s just a very uncomfortable situation.

Mediator: Safety. For neighbors. Now, how about your children? Do you think the same message should be said to your children to ensure, just for the interim, that cool heads will prevail? What messages do you have to give Joe and Adam?

55. Ron confirms my hypothesis about premature bargaining by signaling that we are moving too fast for him. His metaphor of the steamroller is a powerful one. He needs time to think and talk it over before he commits himself to anything.

56. The fathers were disputing—much like their sons—and so I ask what they could do to ensure the safety of their children and respect for each other.

57. This is a quid pro quo question. In negotiations you give a little, and expect the other side to return something. I am asking for an explicit statement from each of them. I am not asking for bargaining on the issue itself, but just for the short run, what they can do to reduce the tensions between them.

Ron: I was going to ask you that. What do we say to Joey when we go home about his relationship?

Mediator: I don’t know Joey and I don’t know Adam. You do.58

Cynthia: But maybe the fact if the fathers can at least agree, that maybe we can convey that message to the boys for starters, that they’ve agreed to keep a cool head. And maybe the boys likewise could try to do that, so that we show that the parents are at least starting to do that?59

Mediator: Model for them a little bit?

Brian: Well, I think it’s not going to help to have our sons’ problems resolved if they perceive the two dads being angry at one another and fighting, so that is important.60
Mediator: So, why don’t we leave it until then. Let’s see how you resolve it between your boys and yourselves and what I’d like to do then is to book another appointment for you and see how things are going in the future. How’s that?

All: Okay. I agree to that. Great. Thank you.

58. Ron asks for guidance and I throw the ball back into his court. I want him to be responsible for his answer, and his son.
59. Cynthia answers and reaffirms the “cool heads” message. She is explicit about the parents modeling for the boys.
60. Brian concurs with his wife and affirms his resolve to help the boys.

The session ends with general agreement to work on the problems separately and together, and to involve the teenagers in what seems helpful.

**COMMENTARY**

This case demonstrates a number of the organizing principles mentioned in the opening chapter. First is that the *metastories* of each family are remarkably similar and, therefore, increase their competition. Both sets of parents believe that the role of parents is to protect their children—to the degree that the fathers are in danger of harassing each other. Both mothers defend the action of their sons regardless of evidence of negative behavior. The mediator cannot go against this dual metastory but must work within its framework to find a story that both families can work with.

The metastories place each person into a particular *role*—here primarily as protective parents. But, as we have seen, an individual can have many different roles—in this case parent, spouse, and neighbor. I keep this in mind as I gather the data and begin to formulate my hypothesis. I see that it is important to keep these four in their adult, parent roles to be an authority for their sons’ behavior and responsible for their own (26, 40, 43, 47). As neighbors, they can fight and cut off their previous friendship. But if I can keep them in their parent roles, they are reminded that they are role models for their sons, and the chances of resolving the conflict improve.

Exploring the Past in Order to Repair the Present

Based on their stories, I begin to question the past to find the extent of past cooperation in problem solving and find a positive story (19, 20). Thus I decide to pursue the past success to see what positive future is possible, and choose in the early part of the session not to pursue the presenting problem of who is responsible for the fight and, therefore, Adam’s dental costs. I work from the hypothesis that...
repairing the adult relationship is the best route to a settlement of the problem of the boys (28). Shortly thereafter (32), the issue of moving erupts, and I calmly dismiss it, returning their attention to the prospect of living as neighbors in an adult relationship. A mediator always has an array of issues to focus on while building toward the mutual problem definition and must choose carefully to build successfully. That is where hypothesizing comes in—to make an educated guess about the problem and then test it. If the mediator is way off track, the participants will soon indicate their restlessness and the mediator will have to reassess the hypothesis.

The breakthrough comes in asking the defensive parents, the McDougals, to think about the situation as if they were the injured parties (49, 51, 52). It is a way of developing a future with a difference. This exercise is harder for the husband than for the wife, but it provides the empathy necessary to cause a shift in their perceptions. However, both sets of parents indicate that it is too early to begin negotiating over actually splitting the dental costs. It is tempting for the mediator to try to move toward a total solution. But premature negotiations can cause a later relapse and lost ground. Thus, I must help them hold back their negotiations.

Throughout the session, I have used language similar to the parents. I have been respectful, even when I had to interrupt and redirect a conversation. The parties will accept my questions when they can see the benefit in moving the process forward. Toward the end, I move to a future focus: What they can do in small steps to repair the damage to their adult relationship and, by implication, that of the boys.

It has taken the whole session just to come to terms of an adult accommodation and the mediator is justified in allowing the two families to talk the situation over privately before meeting to negotiate a monetary solution. It may be that a joint session is needed with the parents and the boys to work on finding an accommodation for the teenagers. Or they might be present for that part and excused while the adults negotiate the monetary part of an agreement. Both patience and flexibility are essential for success. And faith in the process that tells the mediator that the parties are the ones best able to find a solution, once they can see their own interests, and those of the others involved.

In the next case we meet the McDougals again, this time with their son, Joe. Using the insights gained from the present case, the reader can anticipate some of the problems the family presents and strategies the mediator can use to help them.
The next case revisits the McDougal family, this time with Joe as the focus. John Haynes is the mediator and, as with many cases, does not know the details of the previous session with Larry Fong. As you study the transcript, put aside any judgments you may have reached about Joe’s relationship to his family.

**GENERAL ISSUES WHEN WORKING WITH FAMILIES**

When a family enters mediation, the first problem facing the mediator is how to gain admission. Most families have one person informally designated to speak to the outside world. That person is the *gatekeeper*. In most societies the gatekeeper is the mother. She is the one who interacts about family matters with all contacts outside of the family. She is the one who decides whether the mediator is to be trusted, to be admitted into the secrets of the family, and she is the one who generally decides what is to be revealed to the outsider.

In this case the mediator is aware of gaining access and, therefore, opens this session with a directed question to the mother in the belief that she is the gatekeeper. If the mediator is uncertain, he asks an open, undirected question to see who answers. Inevitably the answerer will be the gatekeeper. The early part of the session often appears lopsided because the mediator must pay special attention to the gatekeeper in order to be admitted into the family. Moving to the teen too
quickly may be cut off by an interjection on the part of the gatekeeper. Rarely does the teen challenge this role. The teen usually enters the conversation only after the gatekeeper has indicated to the family that it is acceptable to proceed with the mediation. As the session proceeds, the mediator continues to watch the gatekeeper carefully because she is usually also the guardian of the family values and, even though the family is in crisis about those values, the mediator undermines or challenges them at his own risk.

The second problem in working with families is that all of the family members feel powerless. The parents feel powerless about controlling the teenager. Indeed, if they felt in control there would be no mediation. It is the possibility that the teen can always do something worse as the crisis escalates that keeps the parents feeling powerless. The teen feels powerless in dealing with the parents. Most do not understand the power of the threat that they can do worse. Instead they feel that the parents have all of the power and see themselves as powerless pawns. In addition, their lack of experience in negotiating often prevents them from using the power they do have productively.

Thus, one task of the mediator is to develop strategies to empower all the members of the family. This can be done by empowering one or more members around a specific issue, or by disempowering one member of the family who knowingly exercises power to the detriment of the others. The mediator constantly watches to see how each participant views the power balance: where they feel powerless, what fears this generates, and where they feel powerful. (See Haynes, “Power Balancing,” in Folberg & Milne, eds., Divorce Mediation: Theory and Practice, Guilford Press, NY, 1988.) The teen can often be empowered in productive areas so that the need for unproductive power struggles is diminished. The parents can be helped to see how, by letting go on one issue, they can insist on conformity on another, perhaps more important item.

The third issue is how the mediator deals with the fact that most people who enter mediation do so because they lack negotiating skills. Indeed, if people had negotiating skills it is unlikely that they would need mediation. This issue is further exacerbated by the fact that most teens do not have the life experience on which to base rudimentary negotiating skills. The mediator must spend time in the session teaching the participants how to negotiate in their legitimate self-interest. This often involves power balancing by increasing the teen’s negotiating ability.

The fourth major issue is the difficulty all mediators have in dealing with intergenerational disputes: they all touch on the mediator’s life experiences and, therefore, biases. In general, older mediators, particularly those who have had experience raising teens, are likely to drop out of the mediator role and into the parent role in response to some of the teen’s behavior. Younger mediators, and those who have not raised teens, tend to adopt a youth advocate role. The mediator role is one of balance and not of taking sides. It is a role that does not seek truth, or right or wrong, but simply manages the negotiations necessary to resolve the different perceptions of the situation that have brought the family to the crisis requiring mediation. In the present case the family entered mediation on the
advice of the school counselor who is concerned at the son’s aggressive behavior at school. The parents are older than most parents of fourteen-year-old teens. Thus the generation gap is wider than in most families. Most mediators have worked with families with much more serious crises than this one. However, this case reminds us of the need to accept the family’s definition of the crisis and to work with them in a nonjudgmental way.

TRANSCRIPT AND ANNOTATIONS

Mediator: Well, Mr. and Mrs. McDougal, and Joe, welcome. Would you be comfortable with first names?¹
Ron: Yes, my first name is Ron.
Mediator: Ron and . . .
Katherine: And I’m Katherine.
Mediator: And Joe, and I’m John. Okay. Well, Katherine, my secretary says that you placed the call asking for this meeting and I think she said that you had been recommended to come to see me by the counselor at Joe’s school, I think. Is that right?²
Katherine: Right.
Mediator: I wonder, then, if you would tell me what is it that we’re here for?
Katherine: Well, we tried to see her as a family, but Joe was just completely unwilling to talk about anything there.
Mediator: Oh, I’m sorry, I mis-asked the question.³ I meant, why did the school counselor think that it would be useful to come to me?
Katherine: Well, for the last while, we just haven’t gotten along as a family. We’re finding that Joe’s behavior is completely unacceptable. It’s changed so much. He used to be such a good, sweet kid and he’s our only son and we’re just at our wit’s end right now. His behavior is unacceptable. The school is complaining about his aggressiveness and we just don’t know what to do any more.
Joe: I don’t start anything; they start it with me. I’m not that aggressive.
Mediator: Tell me, Joe, what is your sense of what’s going on?⁴
Joe: Well, my parents just won’t lay off. I mean, I do something and they want to get way too involved with everything I do — like let me live, you know.
Mediator: Mmm . . . okay. (to parents) Let me see if I understand. You feel that some of Joe’s behavior is unacceptable to you. You’re concerned because the school apparently has some complaints and, Joe, you feel that your parents are on top of you and won’t give you space. Is that fair? (Family nods agreement)
The agreement to use first names helps me put all three family members on the same level. Gaining Joe’s confidence in the process is difficult if I refer to him informally, Joe, while referring to his parents formally, Mr. and Mrs. McDougal. In the Sexual Harassment chapter, you will note I do the same thing by calling the professor by his first name, Mark, even though Irene uses the formal, Professor Browne.

The mediator begins with the mother in the belief that, since she made the appointment, she is the gatekeeper for the family and therefore controls admission to the family.

It is useful to engage the young person as quickly as possible after speaking to the gatekeeper. The mediator cannot start with Joe because (1) starting with Joe would alienate the mother, the gatekeeper of the family and, (2) as the identified “problem,” he could only deny the existence of any problem. Comparing again with the professor-student case, when I asked Mark, the defendant or identified problem, to go first he could only deny the existence of any problem. This reinforces the strategy of starting the session with a question to the plaintiff/initiator.

I do not respond to the Joe’s statement, preferring to continue to gather data. At this point, any response by the mediator will direct the conversation into a deeper examination of one person’s story. The mediator avoids buying into one story by avoiding discussion of the content of each person’s early data. If I comment at all, it is to distinguish between useful and useless data in a summary of the client’s statement, ignoring the useless and only feeding back the useful data of the participants. (See Fundamentals, chapter 1.) It is useful to think of a case proceeding through stages with the first stage being the data collection and establishment of a mutual definition of the problem. If the mediator is clear about which stage he is in, there is less danger of falling into a conversation that should take place later in the process. The data-collection part requires frequent movement between clients as they tell their stories.

Mediator: Okay, all right. So, how does this all come about? Give me some examples, what happens? What is not acceptable?

Ron: The school-ground fight.

Katherine: Oh, apparently the school complained that he gets into fights with other kids . . .

Ron: Especially Adam.

Katherine: Especially Adam who lives next door.

Mediator: Mmm, okay. All right. So is the fighting the key issue?

Ron: No, he, he stays out all hours of the night. We don’t know where he is, we don’t know what he’s doing, we don’t know who he’s with, you know. He’s just out of control.
Katherine: We expect him to come home from school, we expect him to do his homework before he goes out and hangs out with his friends, and sometimes he doesn’t come home after school at all. We’ve talked about what we need him to do and what we think is right and he simply refuses to hear us.

Ron: (to Joe) I told you to be home at ten o’clock at night during the week, and (to mediator) he turns up anytime between ten-fifteen and ten-thirty, eleven o’clock sometimes.

Joe: What do you care? I get my homework done, as long as I get it done.

Mediator: Hey, hey, Joe, is that what happens?

Joe: Well, sometimes, not all the time. You know, it shouldn’t matter when I’m home, as long as I get done what has to be done.

Ron: Oh, we don’t know where he is.

Mediator: Well, let me separate it into two parts and let me find out what’s going on, then we can talk about what each of you feels about what’s going on. Tell me Joe, do you have curfew?

Joe: Well . . .

Katherine: . . . Well, we sure have. We set down a curfew for him. We set down a curfew for ten o’clock on weekdays and eleven-thirty on Saturday nights.

Mediator: Okay, (to Joe) how does that work?

Joe: Well, I never agreed to it. They just set it down and acted like I would agree to it and I would always be home at ten like their little dog who always obeys them . . .

5. This summary pulls out the useful data and maintains balance by including the content of both the mother and the son. This is the most useful form of summary and is essential in the early stages to maintain all of the clients in the process.

6. I need specific examples of the problem/behavior to be able to understand what we are talking about and to understand where they agree and where they differ about the data. I avoid making assumptions because what is acceptable in one family might be unacceptable in others. From the mediator’s experience most of the behavior, which is unacceptable to these parents, is normal in other families. I honor each client’s values and the framework they present. The process of normalizing, in which the mediator reframes the problem as not unique, therefore solvable, should not be confused with normalizing value differences. The mediator does not trivialize value differences by implying that they are normal.

The values of a family are set by the parents. In most families, these are modified over time by the action and acceptance of those values by the children as they move into teenage and adulthood. The problem for the mediator
is how to balance the disputes over behavior or activities without trying to mediate the emerging value differences between the parents and children.

7. This intervention helps Joe to focus on the data rather than on the argument. I want Joe to talk to me about the problem, not to his parents. When talking to me he is less likely to get sucked into the family patterns of conflict. I do not want him attacking his parents in front of me until they are more comfortable with me, since it will provoke anger and retaliation from them. Before discussing the conflict, the mediator needs to know what it really is. He can only find this out by collecting more data to discover sameness and differences between them.

8. Note the gatekeeper role here. I ask Joe a question and Katherine answers it.

10. The mediator ignores Katherine's intervention and directs the conversation back to Joe through another question to him.

Mediator: Hum-hum.

Joe: So if I didn't disagree, I'd have to do what they say anyway. I don't think it's fair.

Katherine: But Joe, we're doing it for you because we are concerned about your safety; it's dangerous out there. We don't know whom you're with . . .

Ron: You need your sleep . . .

Katherine: We're your parents.

Joe: It doesn't matter. I know what's good for me. You don't have to know what's good for me. You don't have to care.

Ron: Look, we're your parents.

Joe: I didn't ask you to care.11

Mediator: Give me some more data, Joe. How are your grades?12

Joe: My grades? They suit me, they're satisfactory to me.

Mediator: Okay. What are they?

Joe: They're in the seventies, high sixties sometimes, depending what class.

Ron: He's capable of a lot more than that. He used to get good marks, (to Katherine) didn't he?

Katherine: He used to get very good marks.

Mediator: So tell me, you've got these concerns about some of Joe's behavior. Tell me about what you like about what's happening. What do you like about Joe?213 (silence)

Katherine: At the moment, not a whole lot. And it hurts to say that because we've done everything for him. He's changed so much. We used to have fun together. We used to enjoy being together. We used to love taking him on holiday with us, going with him to ball games. We don't get any pleasure anymore . . .
Ron: Now he acts like he knows everything.
Katherine: He doesn't want to come with us anyway.\textsuperscript{14}

Mediator: If we could look forward one year . . . (to Joe) How old are you?
Joe: Fourteen.
Mediator: If you could move forward a year, and it could be the way you wanted it to be, what would life be like?\textsuperscript{15}

11. This interchange tells me how the family argues. An argument cycle is a pattern constantly repeated by the participants. For example, the cycle can begin with Katherine making a comment, Ron interrupting her, Katherine ignoring Ron and continuing with her comment. The son replies but the reply is ignored by Katherine who repeats the original comment (or a variation of it) and while doing so Ron interrupts, is ignored. Joe's reply here begins the cycle again.

12. When the argument has passed through a cycle, the mediator interrupts the family bickering by asking Joe for more data. This draws the participant's attention away from the bickering to data. I also need a context into which to place the negotiations. How is Joe's behavior affecting his schoolwork? This question divides the problem. Are his parents opposed to his return time on principle, or because of some negative consequences of it? The answers will lead to two very different conversations about the problem.

13. This question is designed to move the conversation into a more positive mode by having them say something good about Joe. However, it is a major mistake because the parents have not yet had the chance to complete their storytelling. This deflection is unsuccessful because they have more negatives to tell. It is a mistake because the mediator offered them the opportunity to move to a more hopeful conversation. The parents decline the offer. One guideline to advise the mediator is: such an intervention has the most chance of success when the participant's stories cease to repeat themselves. The mediator can assume that the presenting story has been articulated and they are ready to consider new ideas.

14. Katherine has a need to get in the last word.
15. The mediator's reflective question about the future, directed to Joe, is designed to move him toward a future that is different from the one he envisioned when he came into the session. It is designed to get Joe talking about what he does want rather than what he doesn't like. It is difficult for clients to give up their complaints. Talking about the future encourages them to focus on new ideas.

Katherine: Oh, what would life be like? Well, I think one of the things that would be different would be that Joe would be more respectful toward us, that he wouldn't use the language that he uses now. It's so, it's so dreadful.\textsuperscript{16}
Joe: You start it. You act like I’m supposed to agree with everything you say. If I disagree, you keep pushing it. Of course I’m going to be abusive once in a while.\textsuperscript{17}

Katherine: No, Joe. I’m talking about awful language you use. I’m talking about that f-word. It’s every second word you use. We don’t use that word in our home, but you seem to think it’s okay. That really offends me, using dirty words.

Mediator: So, one of the things you would like to see a year from now is you would all be respectful to each other.\textsuperscript{18}

Katherine: Yes.

Mediator: (to Ron) And you would have a common language that would exclude swearing.\textsuperscript{19}

Ron: That’s a bare minimum.

Mediator: (to Joe) What do you look forward to when you’re fifteen and it could be the way you wanted it to be? What would life be like?\textsuperscript{20}

Joe: Well, hopefully there would be more freedom. They’d give me freedom; a lot more freedom, actually.\textsuperscript{21}

Mediator: What does it mean to you? I mean, give me an example of how you might have more freedom.\textsuperscript{22}

Joe: Well, sometimes after school a friend would ask me over, he’d ask me to come over and I’d say “Yes,” and I don’t feel like I have to ask them anytime I want to go somewhere, you know. Other people don’t have to ask their parents if they can go over to other people’s houses. Why should I?

Mediator: So you’d like it, if for some reason, someone invites you over to their house that you could go over there. And then what?\textsuperscript{23}

Joe: And then, you know, hang out there and come back whenever I want, as long as I do my homework and get it in the next day.

Mediator: Would you think that they might worry about that?\textsuperscript{24}

16. Katherine takes control of the conversation answering the question on her terms. Her reply is useful, for while still critical of Joe, it opens the conversation to the possibility of change.

17. Joe is probably annoyed that he is not able to respond to the question and his outburst seems to be as much a response to not being allowed to answer the question as it is a response to his mother’s answer. It is useful for the mediator to identify the source of Joe’s anger so as not to overreact, but to see it as an expression of frustration that leads the mediator to develop strategies to keep Joe engaged in the process as an equal.

18. This question, posing as a summary of the previous argument between mother and son, is designed to mutualize the problem and balance the power by requiring a change on everyone’s part, not just by Joe. The danger of identify-
ing change on the part of one participant is that the others support the mediator’s statement, making it more difficult for the person to make the change.

19. The mediator engages Ron who, so far, appears to simply follow his wife in the conversation. When the mediator believes one party is not speaking for himself, a directed question will often engage that party on their own terms.

20. Gaining mutual agreement for mutual change from the parents allows the mediator to include Joe in the new problem definition with a future question, which only he can answer.

21. Joe replies with a positive statement about the future.

22. In order to be sure that all participants have the same definition, the mediator asks Joe to give an example of “more freedom,” to prevent the conversation from continuing under different assumptions as to what the subject (freedom) means.

23. The mediator asks for further clarity, “And then what,” to develop a full scenario for the parents to respond to.

24. With this question, I preempt the parent’s issue to get the fullest story from Joe before allowing them back into the conversation. Joe will probably respond to the mediator without the emotional baggage that drives the family’s conversations. This question gives him the chance to think about how to modify his proposal to make it more compatible to his parents.

Joe: Well, they shouldn’t. I mean nothing is going to happen to me. All my friends live close to my house. You know, I’m going to be safe, I’m going to get home safe every night.

Mediator: In your mind is there a difference between asking if you can stay out there and calling up your folks and telling them where you are?

Joe: Yes, there is a big difference. Because if I call and tell them where I am, then, you know, they can’t say no, they can just say okay. And as long as they know, that’s fine. I’m prepared to tell them where I am.

Mediator: Okay. All right. (to Ron) So you’re concerned at this stage with all the things that are going on, right, and you’d like to change things?

Katherine: Yes.

Ron: We never know where he is.

Mediator: Uh-huh.

Joe: Well, you’ll say no. I know that if I call and tell you where I am, you’ll tell me to come home right away. You’ll say I don’t get my homework done and stuff.

Katherine: (to Joe) I guess one of my big concerns is that a lot of the friends that you used to have, you don’t have anymore. And you seem to be going to friends whom we don’t know and we’ve heard some not very nice things about some of them. So we’re a little concerned that the people that you’re
going to and you're being badly influenced by them and that's something that we really don't want to happen.\textsuperscript{28}

Joe: You won't even let me judge who my friends are?\textsuperscript{29}

Mediator: Let me ask you, Katherine, if Joe did his homework,\textsuperscript{30} that would be a basic understanding on everybody's part, and maintains some level of academics at school that you all feel is going to make it possible for Joe to do all he wants to do in his future life, would it be acceptable if he called you and told you where he was?

Katherine: I think that's a simplification. I could live with that, to some extent.\textsuperscript{31} I don't think, oh, (to Ron) I shouldn't be talking for you, I know, but I don't think my husband would agree with that at all. If I know where he is, that's part of the issue resolved for me. My problem is that I don't necessarily like where he is. I'm concerned that he goes where the parents are not there, they've got the run of the place. I'm concerned that some of his friends are driving cars. (turning toward Joe) I know Joe would never do that.\textsuperscript{32} (to mediator) I'm concerned that some of his friends drive without a license and he could be in the car with them. I'm also concerned that he may not be telling me the truth. And that's my biggest concern. I'm concerned that some of his friends drive without a license and he could be in danger.

25. This is an embedded suggestion question designed to help Joe make a proposal that is more likely to satisfy his parents so that they, in turn, can respond positively rather than automatically rejecting it.

26. This question is designed to move the parents into problem solving rather than reacting. Note the mediator solicits a commitment from Ron to seek change. Katherine does not give Ron a chance to answer, but her positive “yes” is negated by Ron’s justifying answer because his idea of change only involves Joe. Most clients feel that change can only be achieved by a change in the other.

27. Joe responds to his father’s statement as an attack on him and, therefore, returns to his previous attitude and justifies his position just as Ron had done earlier. Here is an example of the old saying, \textit{like father, like son}. The mediator’s task is to get them talking in a different way. The best way is to have them talk in a way that each listens to the other. If they listen to the content of the other party they will not respond automatically to what they think the other is saying.

28. Katherine joins the fray in a critical way and the opportunity for discussing Joe’s earlier position is lost. Note that she talks directly to Joe. Clients sometimes use mediation to make an important statement that could not be made at home. The mediator encourages this direct dialogue if it is useful and notes Katherine’s words and their priority to her as a way of emphasizing it for Joe.

29. However, Joe engages in the old family cycle. The word “judge” is said in a way that it becomes another plea for self-determination.
30. The mediator restates Joe’s position without the family language and baggage, in a question to Katherine.

31. Katherine makes a small concession, “to some extent,” and immediately retreats behind her husband. This may indicate the mediator is moving too fast toward solution development. The mediator honors her right to set the pace of change that is right for the family.

32. Katherine softens, denying that Joe would drive cars. This action of not making charges of illegal behavior might mean she does not yet trust the mediator enough to admit to such activity. Or it might be an honest statement indicating the parameters of Katherine’s complaint about the son.

Ron: He always used to tell the truth when he was younger. We had no problems then but now, I don’t know.

Mediator: Because?

Katherine: Well, there have been one or two occasions when he said he’d been somewhere and then we found out later that he was not there, he was somewhere else. And I think that’s not only disobedient, that’s dishonest.

Joe: Well, its only because you make me come home whenever I tell you I’m somewhere . . .

Mediator: Well, Joe, if you were not told that you must immediately come home, how could you assure your parents that if you say, “I’m over at Jimmy’s house,” that in fact you are over at Jimmy’s house?

Joe: Well, maybe if they’ll just let me have my freedom and I could trust that they’d let me have my freedom, then I’d always tell the truth. I’d always say where I am because I’d be confident that they wouldn’t make me come home.

Mediator: And is there something you could do that would make that clear to your mom and dad?

Joe: (with resignation after five seconds of silence) Nothing I can do can make anything clear to them. They never believe anything I say anyway.

33. The mediator uses the simple “because” to encourage Ron to stay in the conversation and to provide more information. The use of a bridging word to create a question helps to keep the client talking.

34. Katherine takes back control and escalates the conflict by adding the charge of dishonesty. The mediator must be careful not to become involved in any discussion as to whether Joe was or was not honest or truthful, since that is a perception that each member of the family has. Seeking to find the “truth,” and, therefore, who is telling the truth, leads the mediator into a judge role. The client who finds himself judged negatively by the mediator will lose interest in the process and drop out.
35. The mediator intervenes to deflect the conversation from whether Joe is dishonest to one that empowers him to answer with a commitment of his own that can be made without reference to the honesty issue. This is also an attempt by the mediator to teach Joe some quid pro quo negotiating skills; if he could assure his parents on their “truth,” his request for more “freedom” would stand a better chance of being heard favorably.

36. Joe’s response is to return to the vague “freedom,” but also raises a plea that the parents act so that he could trust them. The mediator now notes the trust theme and will use it later in helping the family to develop a new level of trust.

37. Continuing my coaching role, I alert Joe to the kind of things he needs to say next to make the offer acceptable to his parents.

38. Joe’s response to the mediator’s line of questioning indicates that the mediator is pushing too hard, just as Katherine’s response alerted him earlier in the session. Given Joe’s inability to answer the question at 37, he falls back into his disempowered, little-boy role, which has the danger of putting a stamp of hopelessness on the session.

Mediator: Yeah, most guys in your picture have a sense of having no control in the matter and it’s always a problem because when you have that then you don’t take responsibility for it. And my sense is that you really do want to be able to control your own life. Unfortunately, part of being in control is also being responsible for it and I’m wondering how you could be responsible, so when you say something to Mom and Dad that it is, in fact, true and they know it. That’s the key issue; you know it and, of course, the main thing is, do they know that it is true?

Joe: Uh, I don’t know what I could do. (drops his eyes and then his head)

Mediator: Okay. Let me ask you, Katherine and Ron, what would you need from Joe, in order to feel comfortable that when he called up and said I’m over somewhere, that indeed was where he was?

Katherine: Hum. That’s quite a difficult question right now. We’ve gotten to the point where, as Joe rightfully says, we often don’t trust him . . .

Mediator: Uh-hum . . .

Katherine: He’s broken our trust enough times that it’s not easy to trust him now.

Mediator: See, trust gets broken in small pieces, right?

Katherine: Right.

Mediator: And so it gets mended in small pieces and the question is: What small pieces can we do to repair the trust, given that we’re all working at the same thing? Katherine, you said a little earlier, you weren’t sure that Ron would want to go with . . . Let me ask you, Ron, how comfortable would you be if Joe calls up and says, “I’m going to Jimmy’s house, I’ll be home for
dinner” or “I’ll be home after, I’ll have dinner there,” or whatever it is. Would you be comfortable about that if at the same time he maintains the grade level that you all recognize and can agree to? We have to talk about what you all agree is Joe’s potential.44

Ron: I guess I’d be okay with that if I didn’t hear sometime later that he wasn’t there, as happened before.45 We’ve heard just incidentally from neighbors that they’ve seen Joe and one of his pals down at the 7-Eleven . . . and he was supposed to be at Jimmy’s place.

39. The mediator acknowledges Joe’s sense of powerlessness and normalizes it by making it a peer issue while pointing out the consequences of not being in control. The mediator also points out the way to regain power. Here I am back in my buddy educator role. I am joining Joe and attempting to empower him by advising him on how to negotiate to protect his legitimate self-interest.

40. Joe, however, maintains his powerless role. The mediator must try to determine why he adopts this position since it does not aid his goal achievement. Two hypotheses suggest themselves. He may drop into this role out of habit. Or he may feel that his demands don’t stand a chance of being considered, either because he doubts his parent’s ability to make the movement, or because he doubts the certainty of his demands, or he isn’t sure the mediator is his buddy-educator.

41. So the mediator moves to the parents to see if they can define an action Joe could take to break the cycle. This tests one of the hypotheses suggested in 40. It would also open a clearer need on their part for Joe to respond to achieve a quid pro quo. This is a mediator attempt to move the conversation into a negotiations phase.

42. Katherine repeats her negative attitude toward Joe so the mediator attempts to define what small steps would have to be taken to rebuild trust in the family. This statement may not actually be true; trust is usually broken by a single act that takes many steps to rebuild.

43. The mediator engages Ron in the conversation since, if he is not an active participant, he could veto any change or be used by Katherine to veto premature change.

44. The mediator is careful to define what steps to take by selecting an item from the parent’s list and one from Joe’s.

45. Ron appears more willing than Katherine to find a solution. However, Ron also enlarges the conflict by alleging that Joe would break the agreement. This indicates that, although he has said, “I’d be okay with that,” he is wary of moving too quickly or being too far ahead of his wife. In moving the conversations into a problem-solving mode, I must move all three participants at the relatively same speed. This increases the process-management complexity.
Joe: Just because I did it once doesn't mean I'll keep doing it, you know.

Mediator: You did it once, right, and that undermined the trust. And so in a sense you're not going to have to do it for a few cases to rebuild the trust. That's the basic fact.46

Joe: I haven't done it for months. How long will it take?

Mediator: That's a good question. Ask your mom and dad.

Joe: How long will it take? How long will it take before you can, you know, trust me with things? (sadly)47

Katherine: Well, I guess the trust is more than just going to Jimmy's or to Adam's—I know you don't go there anymore—but to any of the friends that you used to have, but it goes beyond that. The trust around asking you to do some basic things at home and they never get done—and you always say “yes,” you'll do them and then you don't get your chores done before you go somewhere.48

Mediator: Give us an example, Katherine.49

Katherine: Well, one of his chores is to keep his room tidy, and you should see it.

Mediator: Is there a quid pro quo for it?50

Katherine: Our belief has been that he lives in that room, that’s his room, and so he has a responsibility to keep it livable.

Ron: You know, we have standards.

Katherine: And we’ve been really clear on what we want. We want his bed made. We want his sheets changed once a week. We want his clothes picked up off the floor and either put in the laundry basket or hung up.

Joe: See that’s the kind of thing I’m talking about. I spend time in my room. You know. You don’t. You shouldn’t.

Katherine: How can you spend time in that room, it’s an absolute pigsty.

Joe: (sighs) Good.

Mediator: (to Katherine) So, there’s a difference of standards between you.51

Katherine: I guess so, I guess so.

46. When Joe claims that he only did it once, the mediator uses this statement to repeat the warning that restoration of trust will take time. It is useful to establish reasonable expectations by the participants and not to promise miracles.

47. Joe’s responses in the two previous interchanges have been clear and assertive. Now, he responds in the way of a much younger child, indicating his sense of powerlessness in this situation. The mediator watches for such
affect changes, which help him to understand the role the participant is adopting at each stage. When Joe slips into a younger age behavior, the mediator helps him move back into a true age role with an age-appropriate question or comment.

48. Katherine picks up the trust issue and expands it to include doing chores. This might be a real issue or simply a conflict-expansion strategy to protect a more important issue: the curfew.

49. Asking for an example helps to provide clarity, which is important if we are to move toward problem solving. A problem is more easily solved if it is precise.

50. Asking about the quid pro quo, for example, the possibility of making an allowance contingent on chore completion, evens the power relationship: parents and son hold a measure of power on this matter. While the son can choose whether to complete the chores, the parents can choose whether to pay the allowance. It also provides an alternative to complaining. Most parents in this situation spend too much time unsuccessfully complaining about a situation (more of the same) rather than thinking of alternative strategies to achieve change (a future with a difference).

51. This is an example of reframe to remove toxic language. Katherine’s “absolute pigsty” is transformed into a matter of differing standards. By connoting the idea that the problem is a difference of standards, without saying what those standards should be or whose standards should prevail, the mediator continues to power balance.

Mediator: ... and that’s a problem, I suppose, in one sense, that every parent has with every teenager, keeping their space clean and tidy. And your case it’s aggravated because of all the other things that are going on between you as well. So, we’ll keep track of these things now. It’s the question of trust . . .

Katherine: Well, one of his chores is to keep his room tidy and, you should see it.

Ron: And taking responsibility.

Mediator: Okay, but it’s also a question for Joe to know that you trust him, right? You want to know that you can trust Joe . . .

Katherine: That’s right.

Mediator: . . . and Joe wants to know that you can trust him.53

Katherine: Yes.

Mediator: Okay. The second part then is the room. That is, you have differences about how that room should be kept, and there have been other issues. Okay. What other issues are there?

Katherine: I think one of the most basic issues is his attitude. His negative attitude. His rudeness toward us. His rudeness toward our family. We’re embarrassed to take him to family occasions.54
Ron: Look how he dresses.
Katherine: We asked him to dress appropriately to come to see you this afternoon and . . .
Joe: I can dress the way I want to . . .
Katherine: . . . it’s how he sees himself being appropriate . . .
Joe: It’s not up to you.
Katherine: . . . and that really makes me angry.
Mediator: So what would have to happen over the next year for you to feel better about things about Joe?55
Katherine: (to Ron) You go first.
Ron: Well, I guess the dress is one thing. I think when he’s with his friends, and I’m not there, I don’t mind if he dresses like that. But, we go to family events and he turns up like this, even though we say, “Look Joe, this one time, why don’t you dress appropriately,” he comes like that. (pointing to Joe’s clothes)56

52. After normalizing the situation, the mediator does not provide space for discussing his point, thereby avoiding overt disagreement with the parents. Instead, he returns to the task at hand. The mediator does not want the clients to discuss his observations since this would take the family off-track. Rather, he wants them to understand them, assimilate them and, after thinking about it after the session, undergo some changes.

53. The mediator also mutualizes the issue of trust and makes the parents share responsibility for change. The decision to mutualize at this point of the conversation is the mediator’s. It is an attempt to respond to Joe’s sense of powerlessness at 47 and to move him into a more appropriate role. I am working from the hypothesis (40) that he drops into the powerless role out of habit. Power balancing is a frequent strategy of the mediator in family situations primarily to help each participant to stay in the most appropriate, and, therefore, the most powerful role. I am also picking up on the various pleas for trust that Joe has raised in the session. The mediator keeps track of themes each client develops and, whenever these themes are useful, integrates them into the solution finding.

54. The family drops back into its old style of conflict which is generally vague (Joe’s attitude and the parent’s embarrassment) and, as such, generally unsolvable. The issue of rudeness might be resolvable if the family provided specific examples. However, to focus on specific examples of rudeness at this point would simply push the family deeper into the recriminatory cycle, which would certainly be to Joe’s disadvantage. The mediator looks for greater specificity only when he does not understand or when he thinks that sharpening the conflict will help the problem solving.
55. A reflective question regarding the future with a difference that also seeks specifics rather than continues the generalized complaining/conflict. When participants are not ready to answer a question they are quick to find a way of avoiding it. In this situation, Katherine, who has taken the lead on all issues, defers to her husband. This indicates that the mediator’s question is provocative.

56. Ron’s final phrase, “he comes like that,” while pointing at the boy’s jeans with holes in the knees and matching holes in his T-shirt, supports Katherine’s attempt to get the mediator to judge Joe and join the parents in a generational alliance.

Mediator: That tells us what you don’t want, Okay? I’m trying to figure out how you would look at it if you got what you did want. What would it be like?57

Joe: I’d have to wear a suit everywhere I go. You didn’t dress that way when at my age. Why should I dress your way?58

Ron: We were a lot more formal than you kids are and we certainly did what our parents expected in terms of dressing.

Mediator: So you feel that things would be better, it would be okay for Joe to dress as he wants to dress when he’s with his peers, but to dress more in your style when with your peers.59

Ron: Yes.

Katherine: I don’t even think in our style. I think if he were just willing to wear a clean pair of mended jeans, of which he has several pairs hanging in his closet. Some clean shoes and socks, a nice shirt. He doesn’t have to wear a tie, he doesn’t have to wear a jacket; he can wear a sweater. And not wear his infernal baseball cap, particularly the wrong way around.60

Ron: He goes to sleep in that thing . . .

Katherine: You can’t see what’s growing under there.

Mediator: Okay. So could you accept that it’s okay for Joe to dress as he wants to do when he’s with his peers . . .61

Katherine: Yes.

Mediator: And you want him to dress in a way that you feel comfortable about when he’s with your peers.

Katherine: I believe that it shows some respect for them and some respect for us.

Mediator: All right. And that would make a big difference to you?62

Ron: Yes.

Katherine: Oh, tremendous.
Mediator: Joe?

Joe: Well, I don’t care what they think, actually. I think that they make too many rules as it is. They don’t have to infringe upon my actual style or my life as it is. And now they want to regulate how I dress! You know, they don’t let me make rules about them. Why should they be allowed to make rules about me in every aspect of my life. It’s not fair, and that’s what bothers me the most.63

57. The mediator avoids engagement by moving from the negative to the positive “Don’t tell me what you don’t want, tell me what you do want.” In addition, the mediator restates the question from past to future: “...if you got what you did want, what would it be like?” A reflective question about a future that is different.

58. Joe misses his father’s differentiation between normal dress and when he is with the family; all Joe hears is that he is being controlled.

59. The mediator reiterates the different position of Ron in the hope that Joe will see that he has the right to dress how he wants when with his peers and a responsibility to accept the family dress code when with the extended family.

60. Katherine minimizes the extent of their dress code to being neat and clean but obscures the movement by attacking Joe’s baseball cap. It is helpful if the mediator can stress the positive aspects of each person’s contribution.

61. The mediator restates, in clear terms, the limitations of the parent’s dress code demands. It is important for the mediator to help Joe hear the limited extent of their demands and the amount of movement they have made because this will help him understand the power he has in the negotiations. As long as a person feels powerless, he will behave as if he has no power.

62. This question should help Joe to understand the importance of the dress code to his parents when he is with his extended family. I am trying to communicate to Joe that a minor shift on his part would be seen as a major gain by the parents and is likely to reap major movement from them. Understanding the value of conceding on a low priority item, which is a high priority for the other person, is an important negotiating skill.

63. For Joe this is not a tradable issue but a further imposition on his freedom. In order to make movement he will have to see what he would get in return for a concession (even this small) to his parents. This is difficult for the mediator because of Joe’s unrealistic position that his parents have no rights, even their limited assertion regarding the dress code.

Mediator: Okay. So, now as you’re growing up, moving from fourteen to fifteen and on up, you want to be able to get more freedom and more space, right? It doesn’t come down as a gift, right? It’s not a gift, it’s something you get, you earn.64

Joe: Well, I said I would call them and tell them where I am, as long as they don’t make me do something for it, like make me come home.65
Mediator: Okay, all right. And then we looked at the clothes, and we said that when you’re with your peer group, you dress how you do with your peer group. When you’re with their peer group, you would dress in their way. I think your mom said a shirt, she’s not looking at ties, and all that stuff. Just the way you’re dressed now, except no holes, no grunge.66

Joe: All the other kids dress this way, why should I be different?

Mediator: Okay.

Joe: And I don’t care what they wear, why should they care what I wear?

Mediator: Joe, let me ask you, do all your guys dress that way when they go with their family to family?67

Joe: Probably, I don’t know, I’ve never been to their families.

Mediator: You might want to check it out.68 I suspect that most guys have to run two lines. One line when they’re with their buddies and one line when they’re with their grandparents. All right. Hold that for a second, we’ll think about that. Okay, so we’re looking at knowing where you’re at, clothing, and, (to Ron) you said about attitude, right?69

Ron: Oh yes. I get so mad at him sometimes, you know. You can’t tell him anything. You make a suggestion and all of a sudden you’re getting all this abusive language, you know, “Mind your own business,” and that. I really can’t tolerate that. That’s disrespectful.

Mediator: Okay.

Joe: You don’t listen to me, why should I listen to you?

Ron: Look, I just give you some suggestions about how to do things, study suggestions, and you tell me to “f off.”

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64. The mediator begins a monologue designed to point Joe toward the future and to help him think about the value of trading. A question about a future with a difference.

65. Joe is defensive, pointing out how he has compromised by agreeing to call home, however, ignoring that he has already extracted a concession for the calling—his parents won’t force him to come home immediately. This may be because the mediator proposed the trade and Joe did not fully understand the quid pro quo of the suggestion.

66. The mediator returns to the issue of the dress, emphasizing the small scope of the difference and the parent’s willingness to tolerate two styles; one with family and one with peers. This represents a victory for Joe and acceptance of his peer group.

67. Joe defends his position unrealistically, so the mediator challenges the reality of his position. It is much more useful for the mediator to do this than for the parents to argue with Joe as to whether he is realistic since the mediator can challenge and, at the same time, help Joe to save face while shifting positions.
The mediator gives Joe a way out of his position by normalizing and suggesting that Joe check his position with his peers.

The mediator doesn’t ask Joe to answer his question at this moment, so as not to box him in. I change the subject and the focus of the conversation by involving Ron in a conversation about another issue, “attitude.” I assume Joe will think about my question during the next week. In any mediation session many ideas are created and introduced into the family in a short space of time. The mediator cannot expect the clients to respond to each new idea immediately. It is useful to decide which issues not to follow through at that moment. These are the issues the mediator believes the individuals will benefit from by thinking about them during the next week. Clients seem to be more aware and possibly intrigued by unanswered questions and these are the ones they often think the most about. Thus, it is useful for the mediator to leave unanswered questions for the parties to think about during the next week while noting them so that he can raise them if the family members do not.

Joe: Well, maybe I’m doing it my own way and it’s fine as it is and I don’t need your suggestions and maybe I’m allowed to disagree once in a while.

Mediator: What sort of respect do you want from your parents, Joe, and what kind of respect can you give them?

Joe: Well, I think I said it already, I just want to be treated equally. I mean, I wouldn’t be so abusive if they always treated me equally. You know, I’m always treated as a little kid.

Mediator: What do you mean by equally?

Joe: Well, why can’t I be treated the same way as their friends treat them. You know, I’ve seen my grandfather treat her and he treats her with respect. He doesn’t treat her as a kid.

Mediator: So give me some ideas what respect means to you?

Joe: When you listen to somebody, and when you talk to them normally; you don’t always yell at them.

Mediator: Okay, and . . .

Joe: When you cut down on suggestions, you know.

Mediator: Okay. If your parents were looking at that issue, what part would you be looking at in terms of your respect for them?

Joe: Well, I’m sure I’d be a lot nicer to them. You know, it’s a two-way thing.

Mediator: How would you define your being respectful?

Joe: (silence for five seconds) I don’t know. I guess I wouldn’t swear as much, I wouldn’t yell as much and stuff. But I only do it because they start it, you know, I never start this stuff. I don’t walk up to them and swear or anything.
Mediator: Well okay. I see you're very clear about what you'd like your mom and dad to do. It would seem, maybe, you should be equally clear about what you would do if they did that. I'm going to ask your mom and dad the same question.  

Joe: Well, basically two things. First of all, I wouldn't change the way I dress. I dress the way I dress and that's it and I hope they can respect that because I respect the way they dress. I don't even bother telling them what to wear or anything. I guess I wouldn't swear as much and I'd call but I wouldn't expect them to tell me to come home. I'd call home and that's it, just let them know where I am.

70. I mutualize the issue of respect and help Joe to respond to Ron's charges as a member of the family. I do this by asking Joe to articulate what respect he wants and what he is willing to give. This also points out the value of trading. The mediator does not attempt to make Joe an equal in the relationship since, no matter what the mediator might say, the participants will always have a father-son relationship. The equality the mediator is working with is not equal relations but of equal treatment.

71. Joe speaks in general terms so I ask him to define “equally” since it is more possible to resolve a specific, well-defined problem. When the mediator helps participants to define their terms other family members often discover that their thinking is closer than they thought. Family members often ascribe to the other person language definitions they, themselves, are using.

72. Joe responds with another general term, “respect.” I am trying to get Joe to understand reciprocity and at this point he states what he wants: respect = listen to me, don't yell at me, and reduce the suggestions (nagging).

73. The mediator accepts “cutting down on suggestions” as a specific and asks Joe what he would give to his parents in return. I am leading him to reciprocate: respect = no swearing, no yelling. I continually try to help him to understand the process of trading. I also believe that if the son sets his own limits he will feel more powerful and there is more chance that he will honor them.

74. Recognizing that I have been focusing a lot of the time on Joe, I point out that I will ask his parents the same question. This sends a message to the parents that their turn is next and also a message to Joe that they will get equally tough questions. When the mediator is working with one participant, he must be aware that (1) the participant is feeling pressured and (2) the other participants are feeling left out. Comments such as this tend to balance the two feelings. Joe knows his parents’ turn will come and the parents also know that they are still in the process and will be reengaged shortly.

75. Joe digs his heels in and cancels out the previous small moves toward accommodation. This means that the mediator must continue working with Joe to help him develop a meaningful (to him and the parents) reciprocal concession. This will only be done by continual reference to Joe’s legitimate self-interest.
Mediator: Now, there are two parts I am hearing to that and I’ll try to come back to it. There’s some very concrete ideas that you’ve got but there’s also an attitude in there that I want to look at with you and I’ll do so in a little bit. But let me hold it there and I’ll come back with you. Katherine and Ron, you both said that you would like there to be more respect for you and for your family’s standards.76

You’d like the McDougal’s standards to hold. Right? And that you want when the McDougal family is all together, on part Joe’s part, you’d like there to be some recognition of that in terms of dress and in terms of behavior, right? And you’ve said that you’d like to know where he is. You’ve got concerns about you are not always sure that you’d like him to be where he is and we’ll deal with those in a bit. But, at the moment, you certainly want to know where he is.77

Ron: Right.
Katherine: Yes.

Mediator: And that if you knew that, a lot of your concerns would die down on that issue. You’re still concerned about, perhaps, where he is. And then we talked a little about respect, and thinking about it now, what do you think you could do differently in your relationship with Joe? As of now, what could you do differently that perhaps would change some of these things?78

Katherine: Well, I’m prepared, and again, I don’t know whether Ron would agree . . .

Mediator: You speak for you; Ron speaks for him . . .

Katherine: . . . that I would be prepared, if Joe called me around four o’clock in the afternoon, at the time when I expect him home from school, if he would call me and let me know where he was, I would agree not to insist that he come home right away. But I would not agree to simply allow him to be wherever he is until he chooses to come home, which could be twelve at night . . .79

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76. I now swing back to the parents with a general summary of the agreements so far. Here the mediator is separating the person from the problem. In this case, the attitude from the behavior, so as to focus on behavior (problem) and hold the parents from dealing with the attitude (person). Problems have solutions, which can usually be isolated from the person. However, attacks on Joe only make him more entrenched and defensive. By isolating the person from the problem and then focusing on solutions, there is a better chance that the parents will be able to find solutions unencumbered by their feelings toward Joe.

77. The mediator combines all of the issues into one: the McDougal family standards. This is based on my belief that family loyalty is strong and will lead all of the participants toward unity and a common problem definition. Teens face the paradox of trying to individuate on the one hand while main-
taining essential loyalty to the family values on the other. Recognizing this, the mediator can direct all of the participants back toward their shared values as a basis for problem solving.

78. The summary is completed with a question about a different future. It also asks the parents to be more specific about what they can do to change things in the future. Here, the mediator is hoping that if the parents can spell out changes they will make, Joe will be able to see the value of exchanging and make accommodations to match those of his parents.

79. Katherine is specific about one key change; she would no longer require Joe to come home immediately when he calls to tell her where he is. She sets limits on her movement by stressing the importance of a clear curfew time. The mediator recognizes each participant’s priorities and limits. Katherine is willing to make a move but not if it results in pushing the curfew beyond 10:00 P.M.

Mediator: Okay, all right.
Katherine: . . . that’s taking it too far.
Joe: Have I ever come home at twelve at night?
Katherine: Close to.
Joe: I’ve come home at ten-fifteen; that’s pretty much the latest. Katherine: Ten-fifteen, ten-thirty.
Joe: That’s not twelve.
Katherine: But, dinner was there, waiting for you, we didn’t know whether you’d come home. Those are the kinds of things around responsibility that we feel we really need to straighten out.

Mediator: Okay. So, Joe, you call up and say, “I’m over at Jimmy’s,” right, and Mom says, “Okay, great, I know where you are.” What other information are you going to share with her?
Joe: I might say if I’m going to be home for dinner or not, just so they don’t make me dinner and, like, waste it. That’s it. And I hope they can accept it. And if they can’t, too bad.
Mediator: For whom?
Joe: For them.
Mediator: But also for you right now, right? Life ain’t gravy for you right now, either. So, when you say “too bad,” it means too bad for them, but it also means too bad for you. And one of the things I’m trying to help everybody to figure out is a way where it’s not too bad for anybody, right? Because none of you is happy in this situation. I don’t expect to have you all jumping up dancing with joy at the end of the session, but I sure want to help you figure out some ways where you can be happier. Joe, freer, happier, and Mom and
Dad can also be happier and freer and more at ease. So it’s not, you know, whether they can deal with that. Let’s backtrack and walk this through: you call up at four o’clock at Jimmy’s, and so you say, “Mom, Jimmy’s mother’s asked me if I’d like to stay for dinner, so I’m going to stay for dinner.” Okay. Do you think they then have the right to hear from you about when you’re going to get in?

Joe: Well, their parents don’t always have the right to hear from them when they’re going to get in, so why shouldn’t it be the same way for me?

Mediator: Because they’re not on their parents’ payroll.

Joe: (sighs) Well, if I could afford it, I wouldn’t be on theirs, either.

Mediator: Yeah, but you are. And that’s what we’re working with, right? So let me ask you, do you think they have the right to know when you’re going to be home?

Joe: No.

80. I do not need to fix the exact time Joe came in late. The difference between them is real, even though each of them has a different perception of the precise times. If the mediator pursues the exact time Joe came home, he will force one of them to be right and the other wrong. Instead, I focus on the issue of being home on time.

81. The mediator returns to Joe in the belief that this is an area where Joe is willing and able to make some movement. I summarize Katherine’s movement “and Mom says, ‘Okay, great, I know where you are.’” The mediator is taking a risk here because, by emphasizing this part of her statement and ignoring the other, the mediator commits Katherine to this idea.

82. Joe responds positively to his mother’s point about the dinner and, in a moment of false bravado, rejects a possible agreement. The mediator challenges Joe’s bravado, pointing out to him the consequences of “too bad,” directing Joe to think of his self-interest. This is another example where the mediator can challenge a client without causing a problem by including in the challenge the self-interest of the client.

83. I challenge Joe as to the reality of his position. My response was also sparked by an annoyance at Joe’s negotiating behavior. It is useful to recognize when bias gets in the way. Since we will all commit these acts at various times, one can lessen them through awareness, and in awareness can take ameliorative steps after a biased reaction. Joe takes a tentative step forward in agreeing to make the call, then sabotages it with “too bad.” This leaves Katherine having made a concession (79), not requiring Joe to come home immediately, and instead of receiving something in return, finds herself having to defend the 10 P.M. limit.

84. Joe responds with an invalid comparison. He moves from a child to a peer relationship in this reply.
While this challenge to Joe might appear dangerous, it is not because Joe also recognizes that his response at 84 was out of the ballpark. But he appears trapped in his position. It would have been useful for the mediator to find some face-saving way for Joe to move back into the offspring role from the peer one. I am always looking for ways of helping each participant save face in the light of having to move off a position.

Mediator: And do you think they have the right to say that you should be in by ten?86

Joe: No. I’m not wasting any of their money by being later, being home later or earlier or anything so it shouldn’t matter at all, as long as they . . .

Katherine: But Joe, we’re not talking money, we’re talking about concern, about safety. We’re talking about worry, about all these things. We are not talking about money here. Money is the least of the issues.

Mediator: Joe, have you ever been home alone, when you expected your parents back, and they didn’t come back when you expected them to come back?87

Joe: Probably. I can’t remember, probably because I didn’t worry about it.

Mediator: Okay, all right. Do you sense that parents do worry when fourteen-year-old guys are out and they don’t know where they are?

Joe: Well, they tell me they worry, but you know, at the time I would just, I’d just think they’re thinking the same thing that I am, that, you know, that I’ll be back and it shouldn’t matter.

Mediator: Yeah, but I can tell you that every parent that’s ever sat in this room has told me that one of their biggest worries in life is when a kid is out there somewhere and they don’t know, they have no idea what is happening or may have happened, right? When most parents ask what time you’re going to be home it’s so they know what time they begin to have to worry.88

Joe: Okay, but what happens if I say, okay, I’m going to be home at nine . . .

Mediator: Right.

Joe: . . . and then me and Jimmy decide, well, we’re going to do something different and I might be home a little bit later.

86. This line of questions is designed to provide Joe with a rationale for moving off his position, which does not have any face-saving parts. It freezes him into the position rather than releasing him. A comment, perhaps about his parents’ worries, however, might have provided him with the needed space. (See my comments at 88.)

87. The mediator tries to place Joe in his parents’ shoes to gain some empathy for their concerns. If a participant can make that switch, a shift in attitude often follows. Joe’s response indicates that he understood the question—and
its purpose—and, although he denied their need to worry, it undoubtedly had an impact on him. This is a use of dissonance theory. (See A. Cohen, *Attitude Change and Social Influence*: Basic Books, NY, 1984.) The mediator is challenging Joe’s stated position in a way that forces him to look at normal concerns of his parents. While he is thinking about their worries, in the terms the mediator has normalized them, he will experience dissonance between his stated positions and his beliefs. He will shift either one to bring them back into harmony.

88. I use humor to get my point understood while putting a positive connotation on the curfew to provide Joe with another opportunity to save face and move off his goal of a flexible curfew. Humor, when used lightly, is a very useful tool of the mediator. In this interaction the mediator has finally provided some face-saving for Joe. He can make a shift because his parents worry. Thus he can respond to this intervention by giving a little and moving into a more normal posture, because his parents need it. Humor must be used with caution to be sure that the client experiences the mediator laughing with him not at him.

Mediator: You and Jimmy may not have that right, mightn’t you?  
Joe: Well that’s the thing. Then my freedom goes to the dumps.

Mediator: Yeah, because your freedom gets substituted with your responsibility and those are two parts of the same coin. One is the head and one is the tail, the same coin. That is, when you say, “I’m going to be home at nine, Dad, Mom,” that’s when you get home. If it’s eight, then it’s eight. Or you call up and say, “Hey, we changed our plans — we’re going to go with so and so to a movie or we’re going to go wherever and we’ll be home at ten,” because that’s the curfew time.

Joe: I don’t think it’s fair. It’s not my fault I’m young, I should have the freedom, you know . . .

Mediator: Mmmm.

Joe: The adult isn’t always right. Sometimes I’m right once in a while, too.

Mediator: Yeah.

Ron: But, but we’ve lived a lot longer than you have, and we’ve got more experience than you have.

Joe: So why is that my fault. Why should I have to pay for that, why should I have to give up my freedom for that?

Katherine: Well I think perhaps you haven’t realized yet that freedom is something that you earn, and freedom isn’t something that you have a right to, not when you’re fourteen years old.

Joe: Great, but all my other fourteen-year-old friends have earned their freedom but I haven’t. I’m a freak.
Katherine: We're not talking about your friends and we have no say.

Mediator: Joe, let me ask you a question because I've seen a lot of fourteen year olds. How many of your fourteen-year-old friends leave school at four in the afternoon and don't go home, don't call home, come in whenever they want. You know that's not true, I know that's not true. All of your buddies have some kinds of regulations they have to live with because we have to have regulations to run a family, right? You know that and I know that. So the issue that we're really talking about is what are those kinds of regulations that will run well for the McDougal family. I'm not asking you to say we've got to take the Smith's regulations or the Oppenheimer's regulations, whatever. What's right for the McDougal family? And you know, every family has rules and regulations.

89. It is not clear whether Joe is pushing for flexibility on the curfew itself or flexibility within the existing curfew, that is, if he called home and said he would be home at nine, could he unilaterally change it to 9:30 P.M. The mediator hypothesizes that he is trying to extend the curfew and, therefore, challenges him. This is a preemptive intervention designed to prevent the parents reacting to it since, if they do, it is likely to be with hostility. This preemptive strategy keeps the parents out of the dialogue for a moment. They don't need to respond if the mediator does in a way that is acceptable to them.

90. However, Joe sees the mediator's response as a total loss.

91. The mediator continues his line of reasoning by saying that if you make a promise, you keep it. Teens tend to see things in black and white, thus this is acceptable.

92. Sensing that I am operating under an unuseful hypothesis, I shift to assuming he wants flexibility within the 10 P.M. deadline. I test out Joe's concern and suggest an alternative: another phone call but within the firm 10 P.M. curfew.

93. The mediator does not argue with the participant. Here I merely acknowledge the validity of Joe's comments with an encouraging “Mmmm,” then a “Yeah.” It is important for the mediator to refrain from answering comments such as Joe's at this point. Any answer will merely engage the mediator in an argument with the participant.

94. The parents reenter the conversation, but take it back into the old family cycle by aligning with the mediator. Joe responds in the same old way. Here Katherine picks up a point articulated earlier by the mediator, “freedom is something that you earn.” Joe probably hears it as a parental statement. At this point the parents have successfully triangulated the mediator.

95. The mediator opens with a statement that he has worked with a lot of fourteen year olds. This establishes my credibility as the owner of normalcy. I pull Joe out of the family bickering and ask him to respond for himself as a
fourteen year old, not a child. I am working hard here to remove myself from the triangulation with the parents by moving back into a counseling relationship with Joe.

96. The mediator injects the reality of normalcy again pointing out that Joe’s friends suffer under similar restrictions . . .

97. . . . and brings the conversation back to what will happen in this family. Joe, of course, would like to use his peers as the reference point in this argument. However, the problem will only be solved using the McDougal family as the reference point. Only the mediator can anchor the discussions in the shared reality.

Joe: You mean like what kind of rules that we have right now that is right?

Mediator: And what kind do you think you should have after today?98 (eight seconds of silence)

Joe: Well, maybe I should call home just to tell them that I’m out. But I don’t think it’s fair that I should have to say when I’d be back as long as they know where I am. And, maybe, they could make a rule after today that, maybe, I could call, you know, call home once every two hours or something, just so that they know where I am and they don’t have to worry about it or anything. And that would be like responsible, right?99 Then I could come home at the end of it and they wouldn’t be mad and they wouldn’t have to worry.

Mediator: Well, ask Mom and Dad. How would it be if Joe does not come home right after school but he calls and tells you where he is?100 And then if he’s not home within two hours, and also lets you know that he’s going to stay at Jimmy’s for dinner, and then checks in and lets you know where he is each two hours?

Katherine: Well, I still feel that the deadline during the week needs to be ten o’clock because he’s supposed to be up for school the next morning and I am concerned that if this happens every day, there isn’t be any time for him to do his homework.101 You know, he’s moving on, he’s in grade nine and he gets homework. If he’s away from home from four o’clock in the afternoon until ten o’clock in the night on a regular basis . . .

Mediator: I think we talked earlier that it’s all conditional upon the grade maintenance, right?102

98. A question about the future with a difference. Note the long silence that follows the mediator’s question. I believe that the longer the silence following a mediator question, the better the question.

99. Now that he is clear he can set some terms, Joe articulates a position—one that gives the parents more than they asked for originally—but the important thing is that he is in charge. When a participant feels powerless, he is usually unable to make proposals but simply reacts to the other’s proposals. It is not unusual for participants to give more if they feel in control. Note
that the movement also comes after the mediator calls Joe with the “they’re not on their parent’s payroll” challenge, which brought him back into the ballpark.

100. The mediator moves out of the conversation by directing Joe’s response to the parents for a reply. The mediator directs the conversation by deciding when it is best for the participants to talk through him and when to speak directly to each other.

101. Katherine replies, not to Joe’s proposal, but to her sense of what is behind it—extension of the curfew beyond 10 P.M. She is clear that she does not want to extend the time beyond 10 P.M. and protecting this time limit motivates all of her negotiating behavior. Katherine enlarges the conflict (and ignores Joe’s movement) by adding the question of his grades. She is enlarging the conflict to protect her concern that Joe will violate whatever the curfew.

102. I separate the issues by referring to the previous discussion regarding doing homework, keeping grades and having a future. The mediator can be useful to the clients in separating issues in a way that lets them focus on the most important ones.

Katherine: I’d like to know how he’s going to maintain his grades.

Mediator: You’ve got to do your homework to maintain the grades, right? Katherine: Right.

Mediator: All right, (to Joe) What’s wrong with that?

Joe: Well, first of all, I usually am not home much later than ten. Okay, they might say I’m home at twelve, but that’s a lie. I’ve never been home later than ten-fifteen and that was just once.

Mediator: So there’s no problem for you to say yes, ten o’clock is an okay time for me.

Joe: Well, as long as it’s not strictly ten. Why does it have to be ten o’clock; can’t it be around ten? You know, why does it have to be dead on the hour.

Mediator: What do you mean by around ten?

Joe: Give or take half an hour.

Mediator: So between nine-thirty and ten-thirty?

Joe: Yes.

Mediator: (to the parents) How’s that sound? Does that sound like pushing out to ten-thirty, or does it . . .

Katherine: To me that’s exactly what it sounds like because we’ve been through this before and then ten-thirty becomes our new bottom line or standard and then we get pushed to eleven. I’m not happy with that. I’m willing, as he gets older and as he shows us how responsible he can be . . .
Ron: And we can renew, we can . . .
Katherine: . . . we can renegotiate, we can talk and if we can’t talk to each other, maybe we should come and talk with you. But I’m not happy to be pushed at this point that far when he hasn’t shown us anything yet.¹⁰⁹
Mediator: (to Joe) Okay. Looks like you’re stuck with ten o’clock, right?
Joe: If you say so.¹¹⁰
Mediator: Can you live with that?¹¹¹
Joe: I don’t know. I just don’t think they trust me. If I say I’ll be home at around ten, they’ll think I’ll be home later than ten-thirty.

103. This comment has two purposes: (1) to remind Katherine that we have already agreed on an objective criteria for making the determination—grade maintenance, and (2) to remind Joe that he is in control of his grades. A discussion of Katherine’s issue would disempower Joe.

104. The mediator tries to put the issue of the curfew to bed and bring the discussion to closure whether 10 P.M. is the time.

105. I direct the 10 P.M. time back to Joe. This question is placed in the normalcy concept developed earlier.

106. Joe looks for more flexibility as to the precise time, +/− ten. This creates a great problem, since the family problem won’t be resolved with a flexible curfew. That is one of the major issues of the parents. Agreements should be clear and measurable if they are to be useful to families in this type of dispute.

107. Mediator bias creeps in as I indicate to the parents’ sympathy with their position, and essentially give them permission to reject Joe’s flexible curfew suggestion.

108. Katherine takes the triangulation offered to her by the mediator and joins him in an alliance against Joe. The mediator is again in an unbalanced position vis-à-vis Joe.

109. Katherine stakes out a clear position. Holding firmly to the 10 P.M. curfew. We are in a no-win position as long as the issue is whether the curfew should be ten o’clock or later. A breakthrough can come if the family develops a trade between a high priority item for Joe and a lower one for the parents if the parents sustain their high priority of a firm ten o’clock curfew.

110. The mediator repeats the ten o’clock deadline. Joe partially accepts the time, correctly blaming the mediator, “If you say so.” This is either a face-saving statement for Joe, “I had to do it for the mediator,” or it might be a signal that if he agrees he will not honor the ten o’clock time.

111. The mediator tries to place back the responsibility for acceptance with Joe, who avoids answering the question and thus accepting responsibility. Instead Joe rearticulates the issue of trust. He may have chosen this subject because he remembered receiving more support from the mediator on the trust issue.
Mediator: The answer, I think, at this stage, Joe, is that they do not trust you.\textsuperscript{112}

Joe: I know and that’s not fair.

Mediator: The issue for the three of you to work out is how to rebuild that trust, (to Joe) because without trust you’re going to be on a very short leash and the greater the trust, right, the greater the freedom. Less trust, less freedom. You’re not going to restore trust tonight or tomorrow. You can restore trust over the next two or three months based on real experience. And my assumption is that, as you get more trust back in the family, then, whether it’s ten or ten-ten is less of an issue. But I would assume right now that ten o’clock is an issue.\textsuperscript{113}

Joe: Okay, great. So then I wait two or three months and my friends all get mad because I can’t stay out with them, you know, I have to say, “Uh, my mom wants me back at ten.” So then two months go by and I’ve lost all my friends. Then it’s not even worth my while to be able to stay out until ten-thirty.\textsuperscript{114}

Mediator: You’re going to lose your buddies because you have to be home at ten?

Joe: I might, I don’t know.

Mediator: What kind of buddies are those?

Joe: (five seconds silence) I don’t . . .

Mediator: You think you have problems with your parents. If you have problems with your buddies who judge you on ten minutes one way or the other, you have more problems with your buddies than you’ve got with your parents.\textsuperscript{115}

Joe: Well, the problem would be solved if they just let me stay out ‘til ten-thirty. I mean what if they let me stay out to ten-thirty and then I come home later, I mean then they could ground me. I would accept that.\textsuperscript{116}

Mediator: Because you’ve got to rebuild the trust again to get back again to ten-thirty.\textsuperscript{117}

Joe: See, it’s a lose-lose situation. Fine, I rebuild my trust but then it doesn’t work because I’ve lost all my friends.

\textsuperscript{112} The mediator is blunt on the issue of trust to highlight the disagreement and to open a way to discuss how to deal with the trust issue. Sometimes mediators blur sharp disagreements. I believe that, at times, it is useful to highlight them as a way of forcing the participants to deal with the issue.

\textsuperscript{113} The mediator attempts to develop the theme of trust, how it is broken and how it is restored. I note that it is something “for the three of you to work out,” and point out to Joe the cost of not working it out. I change the issue from the broad one of trust, to a more fruitful issue of what steps are needed to restore the trust. It makes no sense discussing whether the trust is broken or the extent to which it is broken. The past. The problem of trust...
will only be resolved by discussing how to rebuild it. The future. This alerts them to the limitations the trust issue places on their ability to move on other issues. Thus it also injects a sense of reality into the discussion.

114. Joe's main concern is life at age fourteen and how he fits in with his peers. He expresses the fear that if he spends a couple of months rebuilding trust by respecting the curfew he will, in the meantime, lose his friends. This is one way of his commenting on what he probably senses is the unbalance in the room. It is also a real fear if he is right and his friends all have a later curfew.

115. The mediator challenges this position, sure that Joe's friends also have curfews and that his friends recognize the differences between families. This is also an attempt to normalize his situation by linking it to his peers' situation/culture.

116. Joe makes a new offer: extend the curfew until 10:30 P.M. and if he breaks the new curfew he will accept being grounded. His proposal provides him with an immediate benefit with only a cost if he breaks the 10:30 P.M. deadline. It does not speak to his parents fears articulated earlier about trust. He is already suggesting the possibility of violating the ten-thirty time.

117. The mediator replies for the parents, revealing his bias again, by returning to the issue of rebuilding trust. It would have been better to allow the parents to make the response and reject Joe's offer rather than the mediator speaking for them. When replying for one party he must always be sure why he is doing it.

Mediator: But if you lose some of your friends over ten minutes a night, they ain't friends, they ain't your buddies, are they? Your real buddies are with you through thick and thin, right?

Katherine: I guess what he's really showing us is that the friends that he's spending time with now are really, again, not the friends that we're happy that he's with and he's beginning to give us more and more evidence that that might be so.118

Mediator: You are in a position . . .

Joe: They're my friends . . .

Mediator: . . . that most parents are in. I remember that when my kids were Joe's age and had the same problem, which is that around about fourteen and fifteen, they begin to have friends that you're not that thrilled about.119 That's life, and we don't get to make those choices. You know those choices, in a sense, get taken away from us simply by chronology, by chronology. And my sense is that the real task here today is to say what are the small steps that we, the three of us, can take that can rebuild some trust so you're not worrying every night, what's going on, where he is, and, Joe, you're not worrying every night that you're on a leash so short you're choking. Right?120 You've got to figure out how to get out of that. The only way you get out of that is to rebuild trust. And how
do you rebuild trust? You have some agreements that you both, all three live by for a period. And as you restore trust to where it was, you can then begin to think of the how to make other changes. What is it that's needed? (to Joe) Because you're going to continue to change. You're fourteen this year. Next year you're going to be fifteen, then sixteen. And you have very different needs when you're fifteen or sixteen or seventeen than you have when you're fourteen. Sometimes, when we're fourteen, we'd like to be seventeen. It can't be. The law of nature says when we're fourteen, we're fourteen. We'd like to have some of the rights seventeen year olds get. We don't get them because rights come along. We have different rights whatever age we are. So my sense is, Joe, think about what can you do to rebuild the trust and what can you ask your parents to do to help rebuild that trust so that you can get off the short leash?

Joe: Okay.

118. Katherine enters the conversation between the mediator and Joe to develop an alliance with the mediator and to repeat her criticisms of Joe. Katherine, sensing the mediator is on her side, increases her criticism.

119. The mediator realizes he is unbalanced and responds to Katherine's triangulation attempt by pointing out how the parents are part of the problem. Hopefully, Joe will also hear this and feel a little more balanced with the mediator.

120. Having restored some balance by my remark that the parents are also part of the problem, I return to the trust theme and remind Joe of the benefits of rebuilding trust.

121. This comment is designed to remind the whole family that change is inevitable and therefore, to plan for change. I provide food for thought for each participant. I anticipate that each will hear different parts of what I am saying and mull over the points they have heard during the intervening week. One of the points I want the family to think about is change. My hypothesis is that the family is facing two opposing views. The parents appear to be a little flexible but essentially they are still parenting to protect Joe. However, Joe is looking for parenting to prepare him for adulthood, albeit that he wants to force the pace of change. He wants rapid change, too rapid, considering his parent’s standards. If the family is to succeed in finding an appropriate rate of change, then all of the participants must be thinking about change from parenting to protect to parenting to prepare; what the change should be, what the rate of change should be, and the consequences for the whole family.

Mediator: My sense, Katherine and Ron, is that there are changes going on and obviously with those changes come new rights and new responsibilities. At the moment, those don't seem to all be in line for you. But, by the same token, some of them may be out of line because you hold on to some things that were useful at age thirteen and may not always be useful at age fourteen. What things can you do in the next period to rebuild trust in Joe
and so that Joe also can rebuild trust in you, right? Because that’s what it’s all about is trusting and doing enough small changes over the next month or two so you can each have some more trust in each other.

Ron: I’d like to be able to trust him like we used to.

Mediator: Yeah, right, okay. So let’s do this. Let’s live with this for week or two, right? (to Joe) And I want you to put your thinking cap on, you can wear it forward or backwards, I don’t care. Put your thinking cap on. Think about what you have to do to restore some trust. (to Ron and Katherine) And I’d like you two to do the same. Thinking about what can be different, not what’s done in the past—that’s just complaints.123 What can be different in the future? What can you do differently in the future as well as what Joe can do differently in the future. And when we get back together again let’s see if we can’t work out some sort of contract, a contract that says if you do this, we’ll do this, and, if we do this, you’ll do this. It’s very clear what each of you is going to do in the contract, and you know you have something to measure what life is going to be like.124

Ron: I’d like that.

Katherine: It sounds very reasonable.

Mediator: All right. Let’s do that then and I’ll see you in two weeks, okay.

Ron: Yes.

Katherine: Thank you.

Joe: Thanks.

122. Most of the session time has been focused on Joe’s role in the problem and he certainly has lots to think about. However, the mediator must be in balance at the end of the session. One way of doing this is to involve the parents in thinking about how to change from protection to preparation, so the mediator shares some observations about their role in the problem. This signals to Joe that the mediator recognizes that the parents also contribute to the problem.

Most mediation participants think a lot about what they experienced in the mediation. They select ideas that are important to them. In addition, they will pick up on suggestions to consider from the mediator, such as this one. Often, this consideration leads to change at the next session.

123. The mediator tries to build hope into this theme by reminding them to think about a different future that contains hope rather than harp on the past and its failures. The promise of the contract with specific agreements and commitments for both parents and Joe give all of them a sense of hope for the next session, and they respond to it.

124. As the session is comes to a close, the mediator establishes some themes for all members of the family to think about during the week before the next session.
COMMENTARY

Overcoming Problems in the Session

Several issues in this case illustrate the organizing principles underlying all mediations. We will give special attention to helping clients improve their negotiating skills by applying negotiations theory to the case.

The first problem we identified in the chapter introduction, that of the family gatekeeper, was easily resolved in the present case since Katherine seems eager to find a new arena to search for solutions after discussions with the school counselor proved unproductive. The first interactions with her are followed quickly with a clarifying question to Joe to engage him in the process (4). Ron joins in, but is clearly in an auxiliary role, not the gatekeeper. Katherine takes control of the conversation and holds it throughout the session.

The second problem—feelings of powerlessness—is not so easily dealt with. Katherine expresses it immediately, “We just don’t know what to do anymore,” and Ron chimes in with complaints. Joe begins with bravura, suggesting that the whole problem is the parents’ nagging him, “Like, let me live.” But his mood soon changes and he adopts a dejected little boy tone and demeanor (37, 39). He swings between these two roles, as if not believing that a solution can emerge from three adults arrayed against him. I must work hard to assure all three that through negotiations they can assert a measure of control over their lives and reduce the need for defensiveness.

This leads directly to the question of negotiating in families. It is not a skill that many people, particularly young people, have experience with and it must be taught as part of the mediation session. There are numerous examples in the transcript of how I work with Joe, in particular, to become more aware of how he can advance his interest—rather than just butt heads with his parents. For example, in regard to their trust for him, I demonstrate how he could offer a quid pro quo promise in exchange for what he wants (35–37). But Joe doesn’t pick up on my suggestion and instead returns to the defeated-little-boy role. I continue the education feature around the dress code issue, showing that the parents are willing to compromise (61–62). Joe, however, rejects their movement because he seems to think it is insufficient to match his (63). Again around the curfew issue (82–86), I try to show Joe how to trade his need for the parents’ need. He makes a counter offer at 99 that shows he has learned the fundamentals of trading. But his mother rejects his offer. In the final negotiations on the curfew (104–111) Joe cannot make a trade and so is stuck with the firm time of 10 P.M. However, he has learned the basic lesson and (at 116) makes a last ditch offer. It is too late, however, and no one responds to it. But it is a step in the right direction.

In working with this family (as with most families) a major problem for mediators is how to maintain balance between the generations. In terms of age, I am closer to the parents than to Joe and this comes out at various points. However, what at times might be considered a pro-parent comment is also reality testing
with Joe. For example, the parents’ position regarding the curfew is not unreasonable compared to community standards. Ten o’clock during the school week and eleven o’clock at the weekends seems normal—or even a trifle late—for a fourteen year old. If the family was not in dispute about this issue it would not matter whether the curfew was inside or outside community norms. But the critical position the parents had developed toward Joe’s general behavior made the curfew an important issue and the mediator needed to have some sense of what is normal in order to be able to mediate and not referee the dispute. Without some sense of the reality the mediator could not mediate in this sense between the teen, his parents, and community norms. The mediator would lack a basis from which to operate and, clearly, if the mediator took a position that moved the family into accepting an agreement outside of community norms, the parents would never agree or, if they did, would quickly regret and reject the agreement as they understood this.

Choosing the Issues to Focus On

As any session develops, the mediator must decide what issues to include, which to exclude, and how to focus on the primary ones. The parents try to make the question of Joe’s attitude the central issue (54). That is a poorly defined set of perceptions rather than data and, therefore, more difficult to negotiate. Indeed, if the conversation were centered on Joe’s attitude and not on the attitude of all of the members of the family, the session would have been a disaster. After reframing “attitude” as the dress code (59), which can be quantified, I reframe again into family standards (76). And movement begins to take place. In addition to attitude, there are questions of trust, respect, and freedom—all abstract until each is defined, with examples. The presenting problem is fighting at school; other specific issues are the dress code, cleaning Joe’s room, his choice of friends, his language, grades, homework, and the curfew hour. The mediator explores each one and could have used any of the specific issues as the focus, yet the curfew emerges early (8) and reemerges (79–88) as the central issue. The central issue comes to the mediator. I welcome the focus on the curfew because it is a clear and simple issue based on precise data. If later than ten, how much later? All participants could focus on this easily negotiable matter. By the time this issue emerges, Joe has learned some negotiating skills and is able to make a major statement (99). Unfortunately, Katherine cannot accept his concession and expands the issue to the maintenance of grades. Joe, apparently in retaliation, hedges on his original statement and expands the time “around ten . . . give or take half an hour.” And the tentative agreement slips away.

The other central issue in this case can be described as the age appropriate attitude of the parents toward their son. In some ways they treat him like a sixteen year old in terms of the curfew, while, at the same time, treating him as an eleven year old regarding his friends and interests. Parents have important choices as they bring up their children. In the younger years they are parenting
to protect. In this mode they must make the majority of decisions to protect the child. In this family, the parents have a metastory that says parents must protect their children, even beyond the age when such behavior is no longer appropriate.

Beginning at about age twelve, parents must begin to shift their parenting emphasis to prepare the child for adulthood and independent living. Parents must choose when and how to give the child greater autonomy over minor decision-making that provides the child experience to make decisions about more important and difficult decisions, so that when the child is ready to leave home he will be prepared to live without parental supervision. Most families experience problems in maintaining the appropriate pace of change according to the child’s ability to handle decision making. The child’s view of the pace and the parents’ view rarely coincide and the process of individuation of teens is rarely smooth (121). The mediator’s response to these issues is to help the parents recognize the types of parenting and let them make the inferences that would create change in the family. The mediator does not attempt to create change since that would slide him into a therapeutic intervention, outside the parameters of the mediation the family came for. If the issues block the ability to hold meaningful negotiations, like any other obstacle, the mediator would consider referring the family to a family therapist.

Applying Negotiation Theory to this Case

Since most participants to a mediated dispute are not adept negotiators it follows that neither do they have a clear theory or practice of bargaining. The mediator helps by teaching some of the negotiation strategies needed for a successful outcome. Most of the clients mediators see rely heavily on one of two general approaches to conflict. Either they avoid the conflict, usually by denying its existence, or they engage in promise/threat bargaining with an emphasis on threats if the other party does not comply. This is particularly relevant in family mediation where the family relationships are often based on promises and threats.

Negotiations in business are more generally understood to ratchet the discussion between the parties’ ultimate goals—their bottom lines. Likewise, in family and other types of mediation, the settlements should guarantee that client goals are satisfied at an acceptable aspiration level (see Haynes, Fundamentals) so that the clients’ bottom lines are not violated. The mediator’s work should generally be shaped by a desire not to support the invasion by one client of the other client’s bottom line, nor that all the bargaining remain close to one client’s bottom line. When it appears that the negotiations are stymied because the discussions have concentrated in an area close to one client’s bottom line, the mediator must find ways of directing the negotiations to a different issue as the first step toward creating an environment in which the parties are negotiating within the overlapping aspiration areas. In this situation, the mediator can restructure problems to help clients find agreements, or to help save face for the clients to make
movement within or to their aspirations. While it is true that bottom lines are subject to frequent change based on new information or ideas in the negotiating process, shifts in the parties’ aspirations seem to be more rare and most negotiations end up within the overlapping aspirations of the disputants.

The mediator has a number of ways of restructuring, the three primary being goal substitution, goal abandonment, and changing the bottom line.

1. **Goal substitution** means helping the client to accept a different goal in place of a goal that appears unattainable in the specific situation. In this chapter the mediator makes an attempt to help Joe substitute goals as follows. The boy wants the freedom to go to his friends’ homes without prior permission from his parents. The parents want to know where he is and retain the right to determine whether he should stay at that particular location. The mediator asks Joe a question (which he hopes the parents also hear and understand). “Is there a difference between telling your parents where you are, and asking them?” (25) (emphasis added). Joe replies in the affirmative. Later in the session (99), Joe proposes that, provided he is not told to come home, he will call his parents every two hours to let them know where he is and what he is doing. Thus Joe substituted his initial goal of totally unregulated movement for the goal of notification without being ordered home. This goal substitution strategy on the part of the mediator is successful if the parents also accept the substitute goal.

2. **Goal abandonment** involves helping the client to simply give up a goal when modification and compromise fail to achieve it. For example, the mediator helped Joe abandon his goal of extending the curfew to 10:30 P.M. by allowing him to test his parents’ willingness to agree to an extension. When it became clear that the parents were unwilling to make any movement on this item, the mediator helped Joe to abandon this goal with the statement, “Seems you’re stuck with ten. . . . Can you live with that?” (111). Two strategies the mediator can use that result in goal abandonment are: (1) the promise to fulfill a more important goal if the client abandons the current goal, and (2) helping the client understand that insistence on the current goal threatens another, more important goal.

3. **Changing the Bottom Line** In an auction, for example, the seller sometimes sets a reservation price below which he prefers to withdraw the item from sale. He does this in the hope of finding a new buyer who will pay above the reservation price. In mediation this is called the bottom line. During bargaining, a party cannot hold to his or her bottom line unless the other participants concede. In mediation, it is not useful to allow prolonged attacks on a bottom line unless that attack is tempered with concessions consistent with the concessions being asked of the person whose bottom line is under attack. Thus, in the example of setting the curfew, the mediator defended the parent’s bottom line (10 p.m.) by suggesting to Joe that he abandon his attack.
However, there are times when a bottom line is unrealistic and a modification in the position is reasonable in the context of the negotiations. I continually condition my behavior to the situation by limiting it to the context established by the family. In this instance I merely wish to emphasize that each of these goals is situational and based on the mediator’s understanding of the position of the clients in relation to each other and not by the unilateral establishment of some external norm by the mediator.

The mediator is always concerned that the clients should not fight for too long or too often over the same issue. However, it is useful to distinguish between fighting and what I call persuasive argument. Fighting is relentless restatement of a position, characterized by going round and round on an issue with no change; personal attacks and insults; threats that cannot be carried out; and raised voices (7–11). When this happens, the mediator uses strategies to cut the fighting associated either with attack or defense of positions and returns the clients’ attention to goal attainment. When one party is simply defending a position, he is more likely to do so by fighting with the other.

Persuasive argument is an important part of negotiations, since this is what generates legitimate threats and promises that often create new ideas and provide an exchange of information, which presage a change in position. Persuasive argument can be defined as a (possibly heated) exchange of ideas in support of or in opposition to a position, supported by facts, opinions, and norms. The effect of argumentation is to change beliefs and behaviors of the other negotiator. It is also useful in changing one client’s perception of the negotiations or the other client. Persuasive argument, although at times just as loud as fighting, is a useful dialogue to be encouraged. A study of the transcripts shows us numerous instances of fast mediator intervention when the clients begin to fight (12, 35, 55, 95) and also examples of mediator nonintervention when the clients are exchanging information and persuading each other (25–29; 58–61).

Thus we see how negotiations theory has practical applications in mediation. The restructuring should change the perception of the client whose disagreement hinders progress toward agreement. The desired outcome of restructuring is a balancing act. It creates a new proposal that gives the rejecting party a higher payoff than the original proposal, but does not lower the payoff of the other party (who had accepted the previous proposal) to such an extent that he will now reject the new proposal. An example of this is seen when I ask Joe if he would make telephone calls to his mother if he is assured he will not have to go home immediately.

Finally, we reiterate that the task of the mediator is to help the participants develop a future that is different from the future they brought to the mediation. The future they bring to the session is based on their definition of the problem. They will be able to negotiate a positive agreement only if the mediator can help the participants disconnect their futures from their perceptions of the past. We
can see how the parents and son in this case tend to go round on the same track until the mediator can get them to look ahead. They can only shift when they give up blaming and begin to look for solutions. The frequent use of questions about a future with a difference, as the participants define it, helps the family members achieve this shift.
Most family mediations involve parents or guardians who are involved legally and emotionally. In all likelihood they are doing their psychological best when things are psychologically the worst. Mediation in family conflict is utilized in these most intimate conflicts because of the importance of sustaining long-term and valuable relationships. Likewise, mediation in family conflicts includes the fullest range of all emotions. Research indicates that an increase in the number of parties to a negotiation increases the timeliness of decisions and overall complexity. The present mediation exemplifies how adding one more person to the conflict increases the complexity of mediation as well as the importance of sustaining some semblance of “neutrality” on the mediator’s part.

This mediation is about an open adoption. Open adoption is used when both the mother and new parents have the opportunity to plan how a child might live in new circumstances. Although many countries may not yet have this system, the open adoption system is one that meets the current and future needs of a child. However, such a process is met with difficulties, none so different than the traditional system of closed adoption. Sometimes under the auspices of a child protection or child welfare system, mediation is recommended to resolve certain issues rather than take them to Court. In the present case, the prospective adopting parents and the natural parent met each other prior to the mediation. In addition, the three had self-selected each other and were familiar with each other. Unfortunately the best-laid plans do not always work out, especially when there is a great
deal of excitement and confusion. A mother about to give her child to new parents, and new parents about to receive a new child do not have the prerequisite experience to tie all loose ends. It is these loose ends that sometimes lead to future misunderstandings that require immediate clarification and resolve.

This particular mediation demonstrates specific issues of adoption: transfer of physical and legal custody; guardianship, and issues related to motherhood; and universal issues of differences in age and ability to negotiate, fairness, power imbalance, and conflicts of interest. For example, there is virtual inequity of power because of the differences in the emotional, cognitive, and affective development between the adopting parents and the natural mother. Does the natural mother have the cognitive capacity to understand long-term consequences of her actions? Is there an influence in the mediation of two mature adopting parents compared with a younger natural parent? We will deal more fully with the universal issues in the commentary section after the Transcript.

The Importance of Language

Language is the primary method human beings use to communicate. In our words and language, we communicate with each other. Our words can make things better or worse depending on how the other person receives the message. Mediators acknowledge that a message can be accepted by another person not only in terms of “what is said” but also “how it is said.” So it is important that the mediator use language that is neutral to the three “parents” to ensure some modicum of fairness and equality. Language is an organizing principle because it can easily determine how mediation meets the needs of the participants. For example, the mediator in this mediation uses the word parent to refer to any and all of the participants, putting all on an equal footing.

In this mediation, the adopting parents realize that the natural mother, Vicki, may want to change her mind about her son, Robert. She wants more access than what the parents had previously agreed to. Now Vicki is considering taking Robert back with her. The adopting parents have an overriding fear of loss of their son. This same fear is experienced by the natural mother. The mediator must distinguish between this “sameness and differences” in the questions asked of all the parents. Sameness gives stability to the parents. Differences allow for changes to occur between the parents. The language of the mediator is what helps create change and difference between the parents in a respectful and safe environment for mediation. Again, one of the hallmarks of mediation is to create an atmosphere of safety for all in the mediation so that everyone's points of view are respected. By allowing for “sameness,” everyone knows they are in the “same boat together.” By allowing for “differences,” everyone acknowledges the uniqueness of varied perspectives of the problem. The mediator's job is to join the “sameness and differences” into some kind of focused and problem-solving task that meets the needs of the parents.
The mediator needs to be sensitive to each parent’s language and personal meaning. Reframing by the mediator using the language of similarity and “safe differences” allows for more creative change. Reframing is how a mediator recomposes the messages given by the parents into a cohesive and coherent statement that meets the needs of all three parents. A reframe is not only a positive statement, it is recategorized in a way that psychologically fits the parents’ needs for explanation of the problem and resolve. It is one of the hallmarks of mediation to create a vision of the future that all the parties can accept. In this particular mediation, each parent comes to the session with a different vision and story. Their stories and visions are ways they perceive their plight, and includes within their story the sole and solitary solution to the problem. Thus the statement of well-known storytellers: “He or she who defines the problem, defines the solution.” For parents this is not a problem unless the other parent does not acknowledge this personal solution.

Three Phases of Mediation Need Different Types of Questions

The real goal of this mediation is to encourage the parents to talk, negotiate, and reveal their insights in an atmosphere of imminent safety and security. The mediator must ensure the reframed story between the parents is similar to what they perceive the problem to be. It is well known that there is no safety outside of a story. Thus all the parents need to be inside a story that meets their needs, not outside a story that does not meet their needs. As well, the goal of this mediator is to allow for more certainty than uncertainty, as not many disputants want to live their lives in an uncertain discussion or dispute.

To reframe issues of conflict and make them more mutually respectful and acceptable, as well as to ensure that the spoken language does not confirm bias, the mediator chose to concentrate on what he hypothesized to be an honorable and respectful past. How did they meet? Why did the natural mother choose these new parents for her son Robert? What arrangements did they agree to in the past?

This first phase of questioning is one of intense, respectful curiosity. Questions are at first asked in simple and understandable sentences. Then the same question can be asked in many different ways. Sometimes called the Socratic method of questioning, the mediator asks questions, without knowing what the answer might be. This differs from other questioning techniques whereby mediators ask questions when they already know the answer (strategic questions). Good questions provoke parents to think about their thinking. This is one of the hallmarks of mediation, that you cannot go wrong asking a question, as the parent answering is responsible for the answer. Isn’t this why many teenagers don’t answer our questions? It is because if they answer the question they will become responsible for the answer. Thus the questions here are always of curiosity and exploration, and not of crystallization. Mediators initially need to explore before any crystallization occurs. One of the goals of mediation is not to allow premature
negotiations to take place, especially when the mediator has not yet established trust and rapport, and when the fullest of information is not yet available to all of the parents.

In this mediation, the mediator ensured that the questions about the past describe the elements of courage, wisdom, mutuality, respect, and most of all, center on what is in the best interests of Robert. Although Robert is not physically in the room, the mediator draws Robert into the room as a focus of the parents’ new resolve. The mediator becomes not the expert in the content but the expert in the process. This mediation model, whereby the mediator is expert in the process, differs from other mediation models where the mediator is an expert and has a much more authoritative role in mediation. The present, systemic model believes in the clients being more knowledgeable and cognizant of the problem, and thus must be inherently more involved in resolving the problem. In this classic “one-down position,” the mediator holds the clients up in esteem so that they might find a way to resolve their particular problems at hand.

The three parents in this particular situation know more about the problem than anyone else, and have the power to make good decisions to resolve this problem. Such statements of self-determination and self-respect allow for the clients to find within themselves how to resolve a problem that meets their personal threshold. The mediator is there to “empower” the clients to make decisions on their own. Indeed, it would have been easy for the mediator to forward as much advice to the parents in this mediation so as to quickly resolve their difficulties. However, the role of mediator, in this model, is to create that environment of respect and dignity where, after all matters have been raised, there is enough information to come to a similar “story” that meets the comfort level of all.

Whatever the problem, the mediator must choose the neutral focus that all questions shall arise from. That focus is on what Robert needs, and not what each parent needs. If the gold standard is “best interests of Robert,” then it is what Robert needs for his future and not what the parental needs might be. Already the parents are there for this very reason—to ensure that Robert’s needs are met with those who can best meet those needs. Some mediators are concerned about the concept of neutrality. From a systemic perspective, the Milan approach in mediation is not only what a mediator says/does not say, but also what a mediator does/does not do. Neutrality is not only an attitude or behavior, but also a way of thinking about your thinking. Neutrality is being allied to everyone and no one in the room at the same time.

The second phase of this mediation concentrates on “Knowing what the past is all about, what the problem is now.” For these parents, it is not known exactly what happened in the past, but the past provides to the parents a common understanding of their success to date. The past is examined to ensure that everyone understands what has happened. Strictly talking only about the past however, neither helps the clients focus on the present (here and now), nor on what should happen (future). This phase concentrates on defining the problem as the parents define their impasse. Remember that the parents properly define the problem and no description given
by any parent is more true or false than any other one. The mediator must be care-
ful. Do the adoptive parents’ perceptions of the truth overwhelm the natural
mother? Does the parent who explains the problem the best become the most cred-
ible? Does the mediator perceive the natural mother as being helpless? These are just
some of the many issues a mediator must reflect on. What ideas do you have? Does
the new parents’ perception override the natural parent because they are older and
wiser? Does the natural parent’s perception become more relevant because she is the
natural parent? Is she held less credible because she is younger?

The mediator must listen and focus more on the cognitive components of
the language of the parents rather than the affective or emotional content. This is
one of the elements of neutrality, to ensure that a mediator remains compassion-
ate, but not passionate, about the problem at hand; empathetic, but not as
involved in the problem as the clients are. Good mediators care about their
clients but must let go of the solution. The solutions are the responsibility of the
parents. This might well be a difference between mediation and therapy. In ther-
apy, the professional focuses more on the resolve of the emotional content of the
difficulty, believing that change best occurs when emotions are resolved. Medi-
tion tends to be much more a cognitive process than an affective one. Many pro-
fessionals have to define a difference to their clients lest they become confused
between the role of a therapist and the role of a mediator.

Questions during this phase ask for a description of the problem as it relates
to the past. The focus is on defining the problems so they are manageable, work-
able, solvable and acceptable to the parents. Language, therefore, must be as
mutual, respectful, and as nonthreatening as possible. From each parent’s defini-
tion of the problem comes even more questions about the problem. For example,“How is it you’ve worked out all these problems in the past, and you find your-
self unable to do so now?” This is an example of a temporal, perceptual, and rela-
tionship question that brings the clients from the past to the present.

The third phase is strongly dependent on the mediator’s questions in the first
two phases. If a good history is taken, then all the parties can properly and mutu-
ally understand the same problem at hand. Sometimes this is called “getting the
clients on the same page.” If everyone understands the same problem and it is visu-
alized in the same or similar way, then problem solving is made easier. Writing
down the problems on a flip chart makes the problem more easily resolved. Again,
mediation is somewhat like choreography. The mediator attempts to ensure that all
the parts of the play are together and create an opportunity for a good ending.

As the reader, you can take the problems and see how each is readily solv-
able so that the parents will carry out solving the problem. In this particular
mediation, do not be compromised by the time element of court proceedings. It
is easy to be worried about the time constraints. The mediator can take the stance
that there is lots of time, or no time at all. Which approach best meets the needs
of these clients? This complicated mediation, once viewed on videotape, and after
review of the transcripts, will provide the reader with a wealth of questions and
other alternatives to solving the problems. That’s what makes a good case study
or videotape—it must be controversial, stimulating, and satisfying. If the reader is also using the videotape of this mediation, then use the transcript as a learning or training tool to develop more questions. For example, ask questions of yourself or your students, such as, “What would you have done differently? What made you think . . . ? What was your reasoning to ask that question? What question do you think will make the biggest impact or change in the parents?”

Thus, the model used in this mediation is clearly one where four major components are constantly used to create change in the clients. The mediator thinks of (1) asking questions that are reflective and reflexive, (2) attempting to be neutral with the clients, (3) hypothesizing all the time, and (4) strategizing what to do in the mediation.

To put order to this mediation, I ask questions that are not linear or strategic. These types of questions do not allow for clients to think about their thinking. Systemic questions here attempt to be more circular (a question that points out a difference), and as well reflective (a question of a difference that makes a difference). Questions that make a client think are powerful in that they start to create change in both attitude and behavior. Attitudes are difficult to change and require a client’s personal, private reflection. It is the client who creates a change in behavior, not the mediator. Thus the questions a mediator asks are a catalyst for change in behavior on the parent’s behalf.

We have already discussed how important language and behavior are in establishing neutrality in a mediation. The mediator also uses hypotheses as a way of understanding the problems at hand. Hypotheses are an initial investigation of inquiry. A hypothesis is the mediator’s initial point of inquiry. Every mediator has a hypothesis. A hypothesis always starts off with a question. From the questions the mediator asks, the clients provide many answers. The answers received by the clients determine the validity of asking more questions related to the hypothesis of the mediator. Hypotheses are neither true nor untrue. They are simply useful or not useful to the clients. If the clients accept the hypothesis then the mediator knows they are closer to an accepted storyline by these parents. The mediator must discard a hypothesis that is not useful, or the mediator becomes another unneeded problem. In other words, “Don’t marry your hypotheses.” Know when to let them go or you will lose the clients with your definition of the problem, or with your ideas of how the problem ought to be resolved. The mediator tries out strategies based on the outcome of the hypotheses. The reader will be able to observe the interplay of hypothesis and strategy throughout the transcript and commentary.

TRANSCRIPT AND ANNOTATIONS

Mediator: Good afternoon. You know, I have the sketchiest of information as to who you are and perhaps you could just take the time for me right now to let me know what your names are and who you are with. I don’t know if you two are together, or you two are together. Can we start with you?

Larry S. Fong
Henri: Okay. I’m Henri. I’m married to Janice.

Janice: I’m Janice.

Vicki: And I’m Vicki.

Mediator: Can you give me an idea in a nutshell why you are here today? Vicki, would you like to give me an idea?²

Vicki: Sure. Well, as you know I gave birth five days ago and I would like to have some visiting rights with my child. They’re wanting to adopt the child and they don’t want me to have any visiting rights. That’s why we’re here.³

Mediator: Okay, I understand. So we have, is it a boy or a girl?⁴

Vicki: Little boy, Robert.

Mediator: Robert, okay. And five days ago Robert was born and, did you have other arrangements with Mom and Dad previously to this, I’m not sure.⁵

Vicki: Well, I’ve signed the papers, but I’m still in my waiting period. I still have, you know, time to decide what I really want to do and the arrangements were that I would be able to have some contact with him.⁶

Mediator: Okay. So, all three of you have worked together before. We have Robert who is born now. We have a situation where it might be unclear as to what kind of arrangements there were about visitation, or something like that? Does that put it in a nutshell for you?⁷

Vicki: Yeah, Robert is at their house now.

Mediator: Okay. What has she left out? What would you like to include? Can you give me a little bit more framework of what you think the problem is today that brings you here?⁸

Janice: Well, when we adopted Robert, I mean we adopted him. We expected that he was going to come into our family and be our child. We’ve met with Vicki and we talked before the baby was born and our understanding was that the baby, now we know the baby is Robert, was going to come and live with us and be our child.⁹

Henri: For 100 percent. That was our understanding.¹⁰

Mediator: Let me go back a little bit. Obviously, you must have met each other somehow. How is it that Vicki, you decided upon the parents taking care of Robert?²¹

Vicki: Well, where I work, I met this friend of mine. He knew this couple, Janice and Henri, and said that they had been wanting to adopt, but adoptions took too long to wait. So, you know, I talked to them, and I agreed that they would. They seemed pretty nice people, and I agreed to let the baby go with them.
1. The first question is oriented toward curiosity—who the clients are—without making assumptions. It gives clients a chance to talk about information that is not threatening. I usually start with anyone to get the ball rolling. I am always aware, though, that no one person should dominate the discussion because of going first.

2. I use language that gives the clients an idea of how long to talk. The use of the word “nutshell” or any word describing “short and concise” ensures a timely, respectful response. Now I choose Vicki because she is next to speak.

3. Vicki provides information about her perception of the problem. This is all the information I require. I don’t want her story to monopolize the conversation. If that’s so, the dominant story will become primary, and Janice and Henri will always be responding.

   Every client has a definition of the problem. The client, however, who defines the problem, has the solution. If a mediator allows clients to talk “more about the same” then this discussion moves away from “solution talk” to “past problem talk.” The goal of the mediator is to ensure that their “story” is now similar to each other’s. The mediator uses language that is equally palatable to all. It is something they can easily accept, and cannot easily reject.

4. This is a process-interruption question. I need more information about the problem. I don’t want to rudely interrupt, so I ask a question to interrupt the “process of discovery.”

5. I move to another line of questioning.

6. I need to know more about the perception of legal issues. Also I find out what or where she “draws the line” in terms of her demands.

7. I summarize for all three, and Vicki responds positively.

8. The mediator now turns to Janice and Henri to let them tell their story the way they want to.

9 and 10. Note that the adopting parents talk as if Robert is theirs. Vicki, to this date, has only talked about seeing Robert. Her communication does not state that she wants Robert back. It is implied, but not stated.

11. It is too early to let them negotiate their misunderstandings. An exploration of the past is now necessary. The mediator’s hypothesis is that the three parents’ relationship to each other is important. The mediator now moves toward the mutual story—to see how they came together—how they chose each other—how they bonded to each other.

   Mediator: Was there some kind of selection procedure that you went through for these parents, Janice and Henri?

Vicki: I met them at their house and I asked them questions, you know, what did they do and you know, how they perceived raising a child? I just wanted to make sure it was a safe home, a good home. I want my child to be provided for. I can’t do that right now.
Mediator: So, then, you felt happy and satisfied that that was going to be a good home. Are you saying that’s the way it is now, or not?13

Vicki: Yeah, but, I had agreed that I had talked to them about it, about having agreements of me being able to see him, have contact with my child.

Mediator: With Robert? I see you nodding your head. Does that mean yes or no?14

Janice: Yes. My understanding was that by “contact,” Vicki was free to write letters and send pictures on holidays, Christmas, birthdays, that kind of thing. But I had never, I don’t think we ever considered Vicki seeing Robert and spending time with him. I just think it’s a very confusing situation for everyone, including Robert, when he gets older.

Mediator: Henri, check this out. Is this the same kind of... 15

Henri: Yes, my understanding was that the contact would be up until the point where she surrendered the baby to us after signing the papers and it would be contact as in saying good-bye to the baby and having a last few moments alone with little Robert. But I didn’t realize that it was going to incorporate visitation every other weekend. I agree with my wife that it would be very confusing, not only to us, but also to Robert as he was being raised, to have another person in his life that was saying she also was the mother. I think it would be a difficult situation to maintain.

Mediator: You have obviously been referred here by your legal counsel. Why is it that you have not pursued this legally, then? Is there a reason why you haven’t decided to pursue this legally and come to mediation today? I’d be curious as to... some couples I deal with say, “Let’s just go to court and fight about it.” Some say, “Let’s go to mediation.” Did you guys make a decision that this is the way you would resolve this, or how did this come about?16

12. I reinforce the conscious choice of the three parties that brought them here today. I try to strengthen a positive relationship that has occurred in the past. How they met, what they agreed to is all-important in how they might resolve this difficulty. Honoring the past might help these clients respect what kind of future they might want. If they had discussed and worked out issues in the past, what particular reason would they have for not being able to resolve this problem now?

13. I ask a question of a difference. A good difference question must provide an answer that also makes a difference. I ask a past-to-present question. In the model I use, the questions are respectfully inquisitive and curious. Curiosity increases respectfulness of the parties in the room. A difference question is simply a question between two things, two events, two behaviors, two of something that is different. However, to be meaningful to a client, the question of a difference must be a question that makes a difference. It must thus
be relevant, germane to the problem, have some semblance of being understood by the clients, and even use some of the same language or understanding that the clients hold true.

14. Always check with clients when they respond “yes” or nod their head affirmatively. Does it mean they understand the question, or agree with the question? Always confirm.

15. Make no assumptions that the husband and wife think alike. Be respectful that both should be asked for their thoughts and review. Of course, one of the concerns any mediator has is when a couple is in the room there is the potential of conflict between the couple. Few couples want to object to each other in front of a stranger, especially when the stakes are relatively high. A mediator must address everyone in the room and ensure that they are party to the discussions. The goal of the mediator is to ensure that the clients are equally respectful of each other. Thus in this question to Henri, he responds with information that can confirm his ideas, understandings, or perspectives of the “shared problem.”

Henri’s response to the problem at hand is more succinct. When a mediator listens to disputants, good listeners can understand how people talk and what they mean. For example, some people think and talk at the same time. Some people think for a long time before they speak. When they speak, they appear more assured than those who speak and think at the same time. In this case, which parent might appear more confused because she or he thinks and talks at the same time? Is it easy to assume that person is confused, or trying to make sense of the problem? As a mediator, it is important to listen to how people talk as much as what people say.

16. The mediator asks the WATNA question. This is the Worst Alternative to a Negotiated Agreement. The adopting parents could have gone to court. I want to know why they are here. They have Robert. I must assume that they, too, want to keep alive this valuable relationship with Vicki.

Janice: Well, we’re still in the period in between signing the final papers and I think we really want to try to find a solution.17

Mediator: Help me out with something, Vicki. I need to understand a little bit more. Is it your impressions that during the negotiation phase with Mom and Dad here that it wasn’t clear to you about what “visitation” meant? Was it not discussed? And then, if I might, then I’ll ask both of you what your general impressions are.

Vicki: No, I pretty well got the impression, I said I wanted to have contact with my boy and that’s why I signed the papers. They had agreed that I would have contact.

Mediator: Did they say anything about what kind of contact?

Vicki: No. No, we didn’t really talk about it.
Henri: That was the problem, the ambiguity of the way things were pre-
sented to us by our legal counsel. It's becoming quite a big issue for us right
now, because we have an inability to conceive children on our own and the
adoption process is an almost impossible mass of paperwork and red tape. So
when the opportunity came to adopt Robert, we just jumped at it. We very
much truly want the baby.

Mediator: That's generally my experience. What happens is that couples
who want to adopt are excited. And moms who are going to consider giv-
ing up their child to a family have a lot going on in their mind at once. So,
it might appear that it would be easy for something like this to slip by. I
need to know from you, Vicki, what is it that you do want, because I still
don't know yet. I know you want access. I hear Henri and Janice saying
what they think you want, but I personally don't know what you want yet,
for you and Robert.18

Vicki: I want Robert to know that I just didn't abandon him. I'm very much
a part of his life. I work nights, I'm a waitress, I make no money. I can't pro-
vide what these people can, and I want him to know that I just didn't leave
him, that I really do care about him. I want him to be part of my life.19

Janice: But, I'm a little bit confused because when you phoned the other day
you said that you wanted to come over and see him and that you were even
thinking about having him come to you on your day off. To me, it sounds
like a foster home. That we're not the adopting parents, we're the caretakers
for Robert so that there can be access to him when Vicki has the time.20

Mediator: Henri, do you share the same feelings about access as Janice does?
You've been very quiet.21

17. The mediator finds out about the element of risk/loss because there is a time
constraint. They are between the time the adoptive parents first had Robert
in their home and the now-loomng deadline where final legal documents
need to be signed. Every jurisdiction in the world has some type of legal
deadline where a natural parent can petition the court to have a relationship
or have their child returned to them. Every court in the Western world has
a perspective on how children and natural parents should/should not have a
relationship. The mediator must not follow the same panic or feeling of time
pressure as the parents. The mediator must ensure that time works for every-
one in the room, and that good decisions can be made in the time allotted
to the parents.

18. What are some of the general goals of a mediator? One is to normalize and
let clients feel that the problem is not only resolvable but also surmountable.
It is a problem that other clients have endured and resolved. Clients need to
feel the problem can be overcome. Second, is always to summarize. Summa-
ration allows for two things. It allows the mediator to show the clients he
understands the problem, and to ensure that they are listening. It also allows the mediator to interrupt and keep the information coming in small, manageable portions.

Here the mediator asks a question of a difference between the clients. The question is defining and clarifying the differences in stance between the clients. Thus the mediator indicates it is clear in his mind what the perception of the problem is with the two adopting parents. However, it is time for Vicki to properly clarify what her concerns are, that she needs to have some remedy in her life, and what her aspirations are for her son. Notice the mediator does not ask what she wants for herself but what she wants for Robert. What do you think Vicki is going through now? What is your hypothesis? Ultimately the mediator must ask more clarifying questions to home in on what she does want.

19. It is interesting to hear what Vicki says. She acknowledges what she can, and cannot do with respect to Robert. The previous clarifying question by the mediator provided a perspective of Vicki’s dilemma. Notice that at no time does Vicki say she wants Robert back. Her concerns are global and unspecific. Clarifying questions are needed to quantify what she does want. It is hard to mediate in global terms. Thus a goal of the mediator here is to help Vicki quantify “part of my life.”

20. Janice now speaks to Vicki instead of the mediator. A relationship has been reestablished. Her confusion is full of questions. She asks for clarification to reduce her confusion. When clients start to genuinely talk to each other, when they ask clarifying questions to each other, the mediator’s job becomes much easier.

21. This is to engage Henri, to ensure his active participation. The mediator must always ensure every participant has the ability to respond. Also, the mediator never assumes one spouse, as in this scenario, will have the same thoughts, ideas, and responses as their respective spouse.

Henri: Yes, we did discuss it. My true feeling is that I would like to have one hundred percent care and responsibility of Robert without any outside intervention at all. The adoption process entails that you will be the new parents and I just think it would be very confusing for Robert as he's getting older and begins to understand what mommy and daddy means, to have another mommy there saying, well, I'm your real mommy. I just think it would be very traumatic for him. I think it would be best, the best thing for him just to know that we are his parents.

Mediator: I watch you two and sometimes you nod your head, which means you're in agreement. When I heard Vicki say that she wanted to be able to be ensured that her son, who is now in your home, is not forgotten by her, I didn't see you guys nod your head “no.” I'm not sure if you were in agreement with that or not.
Janice: I understand. Vicki, I understand how you feel and that you don't want him to forget you and that's why when we had started to talk about it earlier, I guess there was a lot of confusion, there was so much going on and we were all so excited. I had thought by maintaining contact, you meant, you know, letters and maybe presents and pictures, so that there would be that link. That I understand. Henri.24

Henri: I can empathize also with being the biological parent, that you would want to maintain contact. But it's almost, I get the feeling you want the best of both worlds. You want Robert taken care of, but then you also want him to be available to you, you know, certain times of the month. And I don't know, to me, it's more of an all-or-none situation. If you want Robert in your life, then perhaps you should keep him and be the full-time parent and guardian. But to have him shuttled back and forth, I just think there would be a lot of difficulties.25

Mediator: I'm confused. Because all I heard Vicki say so far was that she wanted to ensure that her son didn't feel as though she gave him up. That's what I heard. That's all I heard so far. I think you guys have had some discussions that I certainly have not been privy to and I'm not even quite sure if Vicki feels the same way today and I am prepared to ask her. But what I'd like to ask again, Vicki, is if you had a wish list for the future, knowing the kind of schedule you have, knowing the kind of schedule that new mom and dad are going to have, what is it that you would want that would help you feel better that your son never would believe that you abandoned him, abandoned Robert? What would you need?26

Vicki: I'd need some contact with him. I'd have to be a part of his life, and him a part of my life.

Mediator: What would that look like, in your mind?27

22. Notice Henri talks about his “true” feelings. A mediator must always be curious as to whether there are differences between Janice and Henri, not only those between them and Vicki. By keeping clients informed of the mediation through asking questions of curiosity, they become more alive to the problem.

23. Always ask if an alleged affirmative response (head nod) means “yes” as their answer, or “yes” they understand the question. It is always dangerous to assume what the head nod means. However in communications such as noted in the mediation, the mediator always takes a risk-aversive model. You can make assumptions, but you must always be right more times than wrong. If you are not sure as a mediator what to do, take nothing for granted, and ask more questions.

24. Again, Janice establishes a relationship with Vicki by speaking with her directly. She then asks Henri for confirmation. She assumes, much like the
mediator, that Henri may have a different point of view. This is what mediators do. They get clients to talk about their difference/sameness, and what it means to be that way. When the mediator clearly understands both their hypotheses, which lead to further questions, then the job of bringing them closer to mutual consensus is made easier.

25. Henri states he can be empathic. His response, however, is more “all or none” or “win-lose” when he suggests placement of Robert. Mediators must be aware that this type of communication, early in mediation, makes it easy to adopt a position. Positional beliefs do not bode well in mediation. Common interests do bode well. The mediator knows that to create change and resolution it does not help to make a threat. Also, this position may not sit well with Janice. Clearly Henri’s relationship and negotiations are different from the relationship between Janice and Vicki.

26. The mediator confirms and clarifies what has been stated to date. Vicki never stated she wanted Robert back. The job is to put the clients back on track, so to speak. When the mediator states, “I’m confused,” he can confirm what was said in past conversations. This confirmation ensures what was heard by everyone in the room versus what someone might have liked to have heard. The mediator now asks Vicki a future-oriented question. The question transcends a temporal (time) nature, and as well a relationship issue (Vicki to Janice/Henri; Vicki and Robert; Janice/Henri and Robert). The future-oriented question, hypothetical in nature, is safer because it has yet to happen. There are no problems in the future, just possibilities.

27. Vicki is still in the global, unspecific way of thinking. She needs help to think in more specific terms. While in a future mode, the mediator asks Vicki to clarify what a relationship with Robert might look like. With that information, Janice and Henri can better see what, at this time, Vicki needs. No assumptions or miscommunication occur.

Vicki: I don’t know, getting to know each other, you know.
Mediator: Like an aunt? Or like a friend, or there’s babysitters, there’s neighbors, people have all kinds of relationships. I'd like to know what it means to you. 28
Vicki: I want him to know that I’m his biological mother, but I also want to be his friend.
Mediator: Can I ask about the first one? Because I think this is the information that Mom and Dad need to know now, at least how you feel today. When you said you would like to get to know him better, what would a plan look like for you? 29
Vicki: You know, spending time together on weekends.
Mediator: Just for interest’s sake, when you spend time on weekends with Robert, what would you say to him? How would you tell him that? Are you going to tell him you’re his friend, or his. . . . 30
Vicki: No, I would tell him I’m his birth Mom.

Mediator: So one of the issues that may arise is not if you tell him you’re his birth Mom, but for most couples it’s not only if, it’s when. So we have a number of things to agree to here before you walk out today. One is you want to make sure that Robert doesn’t forget that you’re his Mom. You want to ensure that Robert always feels as though you never abandoned him. And you want to ensure that you have a good relationship with Robert, and we still have to discuss the parameters of what this is going to look like. Just in principle, (to Janice and Henri) on those three issues alone, without looking at what it’s going to look like, or how often, or whatever, what are your impressions about what Vicki is saying today about what is going to be good for Robert?

Henri: Well, I can understand what she’s saying and one part of me agrees that perhaps the boy should know that. However, I think there’s a question of timing. You know, an infant isn’t going to understand that. A four-year-old probably won’t understand that. And perhaps a teenager would probably understand what biological mother means, but I think there’s a whole question of the timing of it, as you said Dr. Fong, and I think a whole lot more clarification is necessary.

Mediator: Janice?

Janice: I’m feeling really confused. If we are the adoptive parents, we are Robert’s parents, then it’s as if he’s our child. And that I’m his mother, and Henri is his father and that’s who he is going to develop the relationship with. And how can you ask this child to try to figure out our relationship to him, and then have him have this ongoing contact with Vicki? I mean, especially if we’re talking about him going to her on weekends or days off.

Mediator: Why don’t we talk about the one that may be the easiest to resolve right now? And that is, if Robert was to be told who his biological Mom is, when might he be told in the future? When do you think he would be old enough?

28. The mediator provides a spectrum of responses to Vicki’s relationship with Robert. Spectrum questions allow for the greatest breadth of information to be received. Thus the mediator is exploring and scanning for new information and does not crystallize the information. This is what is done to avoid premature negotiations when all the facts are not properly in front of the clients.

29. The mediator responds to both questions. Listen carefully to a question that sounds like one question but is really two questions. Remember the questions asked in order. This allows for the client to be clearer with what they want, and as well to understand that they themselves must pay attention to their questions and answers. By breaking down the question, sometimes called
“partializing the question,” it also decreases complexity and increases simplicity. Thus managing the questions helps all the clients understand more of how to solve this dilemma.

30. I ask a clarifying question. It is still not known clearly what Vicki wants. Her style of thinking remains global and unspecific. These questions ask her to think in specific terms about the future. I use the full spectrum of questions and assume as little as possible. Neutrality is enhanced when the question is one of curiosity, respect, and naïveté.

31. In my summary, I acknowledge and respect Vicki’s choice to tell Robert she is his birth mother. The mediator summarizes for two reasons: one to encapsulate the information for the parents, and the other to ensure that the mediator is keeping the clients on track. It is difficult to remember when so much goes on in mediation, so the mediator must take time to summarize the information. Also the “if/when” time question is put into place. There is a difference between “if” a situation occurs, versus “when” something might occur. The “if” question is debatable as to merit, while the “when” question puts a definite timeline on when something might occur.

32. For the first time Vicki has given an idea of what she might want, and the adopting parents are given a chance to give feedback. The mediator asks a future-oriented question, one that allows a vision of the future without any problems. It is a reflective question that looks at a hypothetical, or “what if” situation. I am trying to find the adoptive parents’ threshold. I am not invested in their answers, but ask in order to help the three to reflect on the issues.

33. This question illustrates the concept of partializing the problem. It builds on the if/when comment at (32). By focusing on when, however, it does assume a positive answer to if. A choice is made about which issue one would be easier to resolve. Another option would have been to ask the clients to choose which issue was more quickly resolvable. The mediator chose not to. One of the goals is not to let clients negotiate prematurely. The general issue here is making sure the clients get to know what pieces of the information are missing in the puzzle.

Janice: Six?
Vicki: No, I think three. As soon as he’s understanding, we’d talk about it.
Henri: I think it would be later. I think it would be at least six, maybe eight, maybe more. But to be three years old, and say this is your second Mommy? It’s too much. It’s too much for a child.

Mediator: Six, or three, or whatever it is, let’s get back now to when do you think that a young boy would be able to understand this rather complex discovery that he might have? Who would you consult? Would you consult with friends, or neighbors, or with a psychologist, or a medical doctor? 34
Henri: I would say a child psychologist would know. Cognitive development is what we're talking about. And then if you introduce the fact that the biological mother is someone else, then you're also introducing the fact that he's adopted, so he has to understand both of those concepts, I would think, hand in hand.

Janice: I've done some talking to other parents who have adopted and most of them haven't faced this kind of situation.

Mediator: It’s new for them, too?

Janice: Well, this is new for them because in the case of their adoption, the biological mom signed the papers and the couple took the child and raised the child.

Mediator: I've got an answer from Henri and I'm just wondering (to Janice) how would you find out when it would be appropriate for Robert to know about his biological roots? How would you find that out?

Janice: I think, what Henri said, I would consult with people who have expertise in the area of child development, such as psychologists or pediatricians . . .

Vicki: I don't know. I don't know anything about that.

Mediator: It's, maybe I'm not asking you if you would know anything about it, it's how do you feel about consulting with professionals to know when it would be best. It appears to me that all three of you are here today for one specific reason: what’s in Robert’s long-term best interests and you’re all working together to make sure that things are going to be successful as he grows. And the only way to do that is to make sure you have the best information. By my asking you some of these questions, it might appear that you don't quite have all that information yet, and you need it before you can make an intelligent decision. I wouldn't want you just to make a flip, kind of off-the-cuff kind of decision for a child that is so imperatively important for all three of you. That's why you're here today, to work this out together. So, maybe we should have an agreement about what your next step should be about when Robert is to be told. Do you think that’s too bold of a step, Vicki?

Vicki: I don't know, sure, it seems all right. My main issue is, I want contact.

34. The mediator refrains from bargaining or negotiating on what is the correct age. The parents do not know. This is their first child. They are neophytes. They have no experience in this field. This sets the stage for asking a question about how to find the information. It is tempting for a professional to give advice in this situation. Mediators ought to be aware of their influence on clients and minimize the overall impact of their ideas of what the literature might say.
35. Novel or new experiences require more investigation by the parents. However, more ambiguity results in more discomfort for the parents. Finally one of the parents gives an idea that other parents have been through this and they might know of other resources.

36. Return to a question unanswered. The mediator now attempts to ensure that this journey to fact-find, mediate, and resolve together is enhanced. Again, the mediator refrains from jumping in to help out the clients. It would be easy to do, but mediators can be more helpful when the clients find their own way to resolve their difficulty.

37. The mediator acknowledges that Vicki may not know the specific answer, and asks if she wants to join in the decision-making process. The mediator summarizes about their journey and asks them to consider what Robert’s needs will be long term. Vicki must make the decision about whether she wants more information to make a more reasoned decision. Part of this process called mediation is really an educational one. Vicki needs to educate herself more about a problem that is unique to her.

38. Vicki evaluates that this issue may not be as important as she originally stated. She may be even prioritizing her concerns. Her main vocalized concern now is contact with Robert. The mediator is not sure, however, that Janice and Henri also share this agenda.

Mediator: And we’re going to work on that in just a minute. But I want to make sure. I usually find that if you take a problem and you try to work on a lot of little things, they all add up, and they kind of seem to fall into their place. The first thing I want to ensure is that Robert knows, at a time that most experts tend to feel is the most appropriate time. I want to make sure, and I want to spend a little more time with Vicki on this because I think Vicki is more unsure about what she wants now than you two do. I want to make sure, Vicki, when you say to me, okay, this is okay.

Vicki: You know, they have lots of money and I just have the feeling they’ll get a psychologist who wants to say whatever they want to hear . . .

Mediator: Would you like to be part of that decision-making with them then? What can they do to make you feel more comfortable that wouldn’t happen?

Vicki: I don’t know. I don’t know any psychologists or anything like that.

Mediator: How about being part of the decision making with them? You came here together to make decisions for Robert, would you like to join with them?

Vicki: To look for one?

Mediator: To look for one, choose one.

Henri: Meet with one?
Vicki: Or two, yeah.

Mediator: This journey that brought you together, this family and yourself, is a journey that has continued. You made decisions to work together on some things and that’s why you’re here today, still, to decide what’s in the best interests of Robert. I wouldn’t want to destroy any part of that because if it worked so well in the past, why would I want to tinker with it now? So, it seems to me that’s one of the things that you could work on together. The second one that is equally true is, I just would want to know what would be good for Robert in terms of access. I get the feeling from Janice and Henri that you’re rookies at this, you’ve never adopted before. And, I got the feeling, likewise, from you, Vicki, that you’re a rookie too. This is new, and because of this it’s more than apparent that you have to think of the planning that’s required. If you make decisions or make statements on something that you know so little about it, then it may be detrimental to Robert, which would not make any of the three of you happy. And I’m wondering, how would you find out what would be in a young boy’s best interests in terms of seeing his biological Mom, you, Vicki? And what would be the effect of access, how much? We don’t know. Who would you consult about that? Who would you talk to about that?

Vicki: I don’t know.

Mediator: Who have the other parents talked to? Who did they consult?

39. To ensure that process is complete, I need to make sure questions are answered. Vicki’s concerns suggest that, as definer of the problems, she also has the solution. Indeed, as definer of the problem, her solution to the problem needs to be discussed in light of the big picture, the adoption.

40. A different concern arises. Her concern might be one of how many participants there are in the room (two to one), and also factors of age, power, and finances. These were probably the reasons that made her choose these parents to adopt Robert. Mediators must consider the statement as a perception of possible bias, power imbalance, or general insecurity on Vicki’s part. She may now fear that these same important criteria are overwhelming for her negotiating stance. She may feel powerless.

41. Empowerment has to do with sharing information. Information is power. The mediator asks two questions. First, will Vicki join the parents in choosing the expert? The second question allows her to request more reassurance. Using a compliance model of negotiation, I ask Vicki what the adopting parents can do to make her feel more comfortable? Once she answers that, the adopting parents can agree, modify, or disagree with her request.

42. Perhaps Vicki didn’t hear the first question, or was thinking about it. Regardless of the cause, the mediator asks the same question again.

43. Vicki now implicitly suggests that exploration with the prospective adopting parents is a good idea. She does not, however, respond to the second question.
In the following monologue, the mediator mutualizes the situation to that point, emphasizing that they are all novices. This highlights another problem: mediation is like weaving a tapestry of many threads. The mediator must keep track of the many threads. But by following one thread (finding an expert), the mediator must necessarily let go of the second one (getting reassurance), but must not forget it altogether. The opportunity for giving reassurances opens again (at 53), once the three parents are satisfied about how they will go about solving the expert advice problem.

44. The mediator summarizes how these people came together. They have a history together. So far it has been a history of mutuality and success. To solidify the past (which was intentionally chosen by all), the mediator talks about how all three have little experience in this situation. It is a novel experience. The three negotiate with no life experiences in this matter. All three are on the same level playing the field.

45. The mediator asks more questions. It would be easy to provide the answer, but I am trying to focus attention on the process of how they can gain the information. Time is running out, the clients are under pressure, but I must ensure that the clients don't feel rushed into making decisions they might later regret.

Janice: Well, the people we’ve talked to haven’t had this problem, and so that’s why it’s hard for us to answer the question. We don’t know anybody who has faced this before. And we are new at this, we didn’t have a lot of notice. We’ve waited a long time to have a child and he’s so important to us.

Mediator: Maybe I inappropriately stated the question. I was trying to ask, what professionals could you talk to together about what would be best for Robert in terms of the kind of relationships he would have with Vicki?

Janice: Social workers, maybe?

Henri: Yeah, I would think social service workers who have dealt with similar types of cases and perhaps their expertise and experience could shed some light for us who are all crossing this bridge for the first time.

Mediator: Social workers, so maybe some of the social workers that you dealt with. Did you deal with social workers when you came together, was there some kind of . . .

Vicki: No, just the lawyers.

Mediator: Would your lawyers know of anybody?

Henri: They might have some contacts, and again, maybe some child psychologist specialists could possibly shed some light on that.

Janice: We’re under some pressure because of the time period where Vicki needs to sign the final papers.

Mediator: I’m confused, I thought she signed the papers.
Vicki: Yeah, but I can choose not to follow through.

Mediator: Oh, I understand.

Janice/Henri: She can change her mind within a few days.

Mediator: One of the things I want to make sure is that all three of you are sure of what you're doing and the only way to do it is to make sure that you have the information. I know you're constrained for time but I know that in your busy lives good decisions are made by getting all the facts. If you're rushed for time, I'm wondering what might tip the boat either way for you. Let me ask just a couple more questions, if you wouldn't mind. Vicki, if something doesn't happen today, that it doesn't go the way you would like it to go, where do you go from here?49

Vicki: Well, I've thought about it. One side of me wants to just take the baby, but the other side . . . I have no money. I have no education. How would I ever raise a child? I have nothing.50

Mediator: Quite the dilemma for you, and for Robert. (To Janice and Henri) What happens today if nothing goes the way you want it to go, where do you go next?51

Henri: Well, we'd like to work it out amiably between all of us and we, really, this is probably going to be one of our very few opportunities to have a child together. So we would probably have to let the lawyers possibly get amongst themselves and work it out. But since we're the primary people, we'd like to work it out between all of us. Something acceptable.52

46. The mediator’s question was answered properly by the client. That is how Janice understood the question. The mediator now asks the question with more clarification, as it relates to how they could find someone knowledgeable to ask about the access issues.

47. The mediator again tries to increase options for the clients. Creating options for clients increases hope. The mediator doesn’t solve the problem, but only suggests resources they might not think of themselves.

48. When a client imposes a time constraint on the problem, the mediator must choose how to address the issue. There is a danger that the mediator may get sucked into the client’s panic. The general answer is to ignore the “time” issue and focus instead on the options that are available within the time. Here, the mediator decides to put this concern on “the back burner.”

49. The mediator asks Vicki about her Worst Alternative to a Negotiated Agreement (WATNA). The question allows Vicki more latitude in her response. Normally such a question is carefully planned and should not be used at the start of mediation. If done too early, it would increase positional bargaining without the proper interests first being brought forth. It is important to create an atmosphere of safety before pushing a worst-case scenario. But at the same time, it is a reality check for Vicki. She intimated that she
might “choose not to follow through” with the agreement she has already signed. I’m curious if she has thought out what that would mean for her, and for Robert.

50. The dilemma for Vicki is made explicit. She looks at the reality of her situation and recalls why she decided on adoption in the first place.

51. The mediator symbolically brings Robert into the room and the focus returns to him. In fairness, I ask the same question of the adoptive parents—a reality check for them if they can’t reach an agreement on the outstanding issues.

52. Henri reiterates the need to negotiate. He now suggests that they should exercise their responsibilities vs. rights as parents and shows goodwill by stating this. His projected reality seems more promising than Vicki’s does because he appears to have lawyers and ultimately the court to fall back on. While acknowledging this advantage, he returns to the need to find a solution in mediation, “to work it out between all of us.”

Mediator: I generally find that people are more expert than they think they are and that really many of the solutions that you’ll find are really close by. I just want to ask what needs to be done in the shortest period of time so that, Vicki, you could feel comfortable that things were going comfortably enough for you to be able to say to Janice and Henri that, for them not to be so scared that things could fall apart? And I’m wondering what, likewise, Janice and Henri, you could say to Vicki that will make her feel confident that you guys were going to work this out? You’ve come this far. You’ve worked it out this far. I’m just wondering what assurances you need while you get all this information to make sure that this is going to work. Is there anything?

Henri: Well, I would think one of the things we could do is start to make arrangements to meet with some experts, child development experts, at our cost. Perhaps all of us could meet with them and talk about the issues we have about Robert’s development since he’s the mutual concern of us all. Beyond that, I don’t know what else.

Mediator: What would happen if you did go to these experts and the expert said it’s okay for children to know at an early age that there is a biological mom? Let’s say an expert said that. Would you just obey the information, or would you not want to comply with it? And vice versa for you, Vicki, what if a professional said not until six or eight, what would you do with the information, because you can go get the information, but what if you choose not to accept it?

Janice: I think, from where I’m sitting, I think that information is helpful, but it doesn’t solve two other issues for me. One is the papers being signed because there is a clock ticking and we need to have that for some sense of security for us.
Mediator: For Robert, too.

Janice: And for Robert. And, for me, and I can only talk for me, the other piece really has to do with the extent of Vicki’s involvement with Robert. Because we have busy lives, but we’re there for him, we’ve been up, you know, we’re exhausted, we’ve been up throughout the night every night for the last few days looking after him, he’s a newborn. And those weekends are time for us with him as well. And I’m not comfortable having him coming and going.

Mediator: What are you comfortable with? I know what you’re not comfortable with, in terms of that much access. What are you more comfortable with? You’ve told me what you don’t want, now what would you like?56

Henri: We hadn’t really thought about it.

Vicki: Well, I don’t see what’s wrong with every other week. How would Robert get to know me if I’m not there?

53. The mediator tries to enhance Henri’s comment. My underlying message is that “There is no one in the whole world who understands more about Robert’s needs than you three. How does each person get what they want for Robert?” I believe we have reached the crucial point in this mediation. Any one of the three could walk out right now. My statement seeks to hold them by pointing out all the positive elements. I return to the concept of the mutual reassurance that was put aside at 43. I ask each what they can say to make the other “feel comfortable” and “feel confident.” The answers don’t come immediately. However, I have planted the seeds that actually bloom at 64.

54. The mediator does not want the clients to embark on a journey to find professional information if no one will follow the opinion. Always make sure that if someone agrees to do something, that when the opinion is given, that you find out their threshold to accepting that professional opinion.

55. Janice reenters the discussion for the first time since 48. But apparently she has not been following the last few minutes, and particularly the request for reassurances. For the second time, she brings up the issue of the time frame. She wants the papers finalized. This indicates how important the issue is for her. She needs her own reassurance from Vicki that Robert will not be taken away. The quandary for the mediator is how to address the issue of time. How can this be done without all of the agreements in place?

56. Henri, at least, has tacitly agreed to consult with experts. So I decide to concentrate on defining the access since this seems to be the overriding issue. I ask a future-oriented question—one that assumes some kind of access is feasible. This future-oriented question is directed to all three parents to probe what in fact their thresholds might be. As we have seen, it is always easier for clients to say what they don’t want, but hard to frame a statement of what would be acceptable. At this point, I am acutely aware of the time running out in the session, but refrain from pushing the clients into making decisions prematurely.
Janice: As I said before. I said I would be comfortable, (to Henri) tell me if I’m saying it for you as well, with cards and letters. I think I would even be comfortable, Vicki, with your coming over to the house to see him. We can work out how often—that our home would be open to you, that you could come over and you could spend time with him and, you know, play with him.⁵⁷

Vicki: But I couldn’t take him?

Janice: Well, especially in the beginning, I, you know, when they’re infants . . .

Mediator: Let me ask this question here because you guys are all over the place here. The first suggestion, the first proposal right now is that Vicki would be able to come over. He’s five days old now, pretty young. And you would want to see him. The question is over what length of period of time, and how often. I like to work on things a little bit at a time, to know there is some kind of predictability here. I’m wondering for the short term, right now, what we can put into place to ensure Mom’s needs and the parents’ needs and Robert’s needs. (To Janice) How often in your mind did you have her coming over to see Robert?²⁵⁸

Henri: That would be a compromise, though, Vicki coming to visit and being there.

Mediator: I’m a little confused. (To Vicki) One of the things that you said to me was that you were afraid Robert would forget about you because you felt as though he would be abandoned. But now I hear you say that, how would he get to know you? And I’m just a little confused as to, is it that you want Robert not to forget about you, or do you want Robert . . .⁵⁹

Vicki: Well, you have to know someone so you don’t forget about them.

Mediator: So how long would it take? How often do you think it would take for Robert to get to know you so he wouldn’t forget about you?²⁶⁰

Vicki: I don’t know.

Mediator: At an early age, would he be able to recognize that, do you think?²⁶¹

Vicki: Probably more frequent when he is young.

Mediator: I’m getting the feeling that this arrangement that you have has to extend over time because as Robert grows up he has different needs. And I’m just wondering right now where you want to go with this? Not only the amount of time you want to spend with Robert now, but we have to look at some long-term goals for you also as he grows up when he gets to know you in a much different light.²⁶²

⁵⁷. Janice now states what she can agree to versus what she cannot. For the first time she is specific as to what the threshold for parenting will be. She has made a giant step by agreeing that Vicki could come to their house and play
with Robert. If the mediator has done a good job, the parents can talk to one another in an interest-based format and not one that is rights based.

58. Questions are good and useful when clients talk with each other and negotiate with each other. In this matter, I attempted to create that atmosphere of safety. In a story, everyone likes to live in a story that is predictable and makes sense to all. The story I tried to present is one of mutual concern and respect for one another. The story was based on what was best for Robert and not for any of the parents. While Janice has made a concession, however, not all of Vicki’s questions have been answered. To clarify the details, I ask more about Vicki’s proposal in performance terms. What will this tentative proposal look like in the adoptive parents’ minds?

59. *Clarification of the problem.* Vicki might be saying two different things. The mediator brings forth her previous comment that she did not want Robert to *forget about her* versus wanting Robert to *get to know her*.

60. *Clarification of the concern.* Vicki is still quite global in her concerns. The mediator asks her about how long would it take for Robert not to forget her? Finding out from her what her ideas or threshold might be allows the other parents to best understand Vicki’s perspective. Further, the adoptive parents need to hear more specifics. In order to negotiate, all three need an atmosphere of certainty that comes from specific statements.

61. This is a further question to help Vicki clarify her thoughts. It moves from the global to the specific.

62. Statements are fine as long as all agree it is a statement that is equally palatable and agreeable. The general rule of thumb is that open questions minimize risk because the client must answer the question and thus becomes responsible for the answer. Making statements, however, increases risk that the mediator could be wrong. Thus interest-based statements that are accepted by all and cannot be rejected tend to bring clients together (about their interests). Compare these to position-based statements that tend to split clients apart. To soften the effect of my statement, I ask another future-oriented question: “Where do you want to go?” is a reflective question that facilitates a joint journey for change.

Janice: I’m sitting here feeling a little bit confused. To go back to something I said earlier, if we’re the adoptive parents, if Robert is coming into our home, then we’re his parents. Vicki, I mean, you’re young, in four years or five years or ten years, you may decide to set up and establish your own family. Does that mean that you’re going to come back and want Robert to move into your family?263

Vicki: No, no, no, I would never expect that. I see you as his parents. But I want him to know me and how would he get to know me if I’m not a part of his life or he never sees a picture of me or, you know, gets a letter from me and so forth?264
Mediator: There are a number of things that have to be considered here. The first one is *when* does Robert know that his mom, his biological mom, if we might call it that way, is Vicki? The second one is *what* is he told now, while he’s growing up? If you pick an arbitrary age, X, what is he told until then? Another issue is, at this time, how much time can be spent in your busy schedule seeing Robert, in their busy schedule caring for Robert? I’ve always got the feeling so far that you’re not concerned about them as being good parents.

Vicki: No, not at all.

Mediator: I only get the feeling that you want to ensure that Robert doesn’t forget about you and that you have a good relationship with Robert. The only question now is quantity. How much? You can ask an expert, if you so please. But sometimes I tend to feel that parents are their own experts. They know what their threshold is. I’ve got some real concerns from Janice who is saying, gee, you know, I’m the Mom here and I need to feel as though, that I have control over my son’s life and it’s very complex. I’m wondering if it’s so complex for you, how complex it would be for your son to understand at such an early age what’s going on. And I’m wondering whether or not it might occur later, albeit, I don’t know what age that would be.

Janice: For me, I think what would make me feel more confident is for Vicki to say that you want us to be his parents and that you’re prepared to sign the papers. I mean, I think you can see that we’re not shutting you out of his life. We’re here talking with you and I’ve already made some suggestions as how it could be worked out. But until those papers are signed, I have a fear in me that you’re going to want him back.

Vicki: Well, I’m willing to sign the papers but I have to know that I’m going to get visitation rights, for sure.

Mediator: What do you want them to say or do for you today, because we’ve got about five, seven minutes left before I have to go to my next session. What do you want them as parents to do for you today so you can feel comfortable about doing that?

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63. Janice talks about her fears, those that could become problematic in the future.
64. Change occurs when the mediator has created a safe atmosphere for exchange and change. Vicki is now ready to provide unequivocal reassurance to Janice’s fear for the future. Because she can hear Janice, she moves to calm Janice’s fears. By the asking questions, the mediator models for clients how they can ask questions, for themselves and of others.
65. It is time to list the issues specifically. This helps each participant to see how far they have come, and what is left to be done. It demonstrates how important it is for the mediator to keep track of the specific issues. Sometimes I put them on the flip chart to keep them in focus for the clients as well as for me.
66. I separate out the question of how Vicki feels about Janice’s and Henri’s suitability as parents. I want to be sure Vicki has no concerns there, and I want the adoptive parents to hear her answer. She reaffirms her confidence in, and commitment to them as parents. This is a further reassurance from Vicki.

67. The mediator summarizes and stresses how important it is for the parents to make their own decisions. Wisdom lies with themselves as parents; they know their own thresholds. Further, I want to be sure that Vicki has heard the full extent of Janice’s fears, not just in some far future, but about Vicki’s going back on the signed agreement, and the extent of her involvement with Robert right now.

68. Janice speaks personally to Vicki. She returns to the assurances—what she offers to Vicki, and what she asks in return to lay her fears to rest. Thus she sets the stage for negotiation by telling Vicki on a “good faith basis.”

69. The reassurance she hears allows Vicki to agree to sign the papers, but conditionally. She wants a “tit-for-tat” promise.

70. The best mediation work often occurs in the last few minutes of a session. If the mediator has “choreographed” the session productively, change can occur naturally. In this case, the exploratory discussions have already allowed for change. The mediation session has been a series of complicated, small changes and now the two mothers have reached a tacit understanding. I want to make it explicit.

Vicki: Somehow guarantee me that I’ll be still part of Robert’s life.

Mediator: And how might that occur? Do you want them to sign something?271

Vicki: At least have something in writing because if I say, if we do it verbally then it would never hold up in court if I ever tried to take it there.


Vicki: You know, I’m not going to come back and take him from them. I just want to have access to him, to be able to see that he grows up to be a good boy and, you know, he gets provided well.72

Mediator: And those were some of the reasons why you chose them as parents. How might that occur? Would it occur by your writing down in the next twenty-four hours some of your ideas of what you would want? Or would it be added to this contract that you had, that you would like the following things, without putting an exact time or date to it. So instead of saying every second weekend, you know, once a month or something like that? I’m trying to find a middle ground that’s going to work for everybody here.

Janice: I think we’d be willing to sign a document.73

Henri: I think we might be able to find something, that both our lawyers could find something satisfactory. Because as far as the adoption goes, I mean, we would be one hundred percent the parents. So we would have a
separate agreement, you know, that could be drawn up. I’m sure that it would be that way, but I think we can work something out that will be amenable for all of us.\textsuperscript{74}

Vicki: Well, I’m willing to sign something as long as I’m guaranteed for sure that as soon as I sign the adoption papers, you don’t slam the doors on me. That’s my biggest fear, that I never get to see him. I don’t want that to happen.

Mediator: I guess that’s something that you should both speak to your legal counsel about, too, you need some legal advice on that. And, secondly, I think that a lot of things in life are based on goodwill. There must have been a reason, Vicki, why you chose these people as prospective parents for Robert. And there must have been really good reasons why you picked Vicki when you knew that Robert was going to be born, that she would be a good birth mom as long as the relationship lasted. And there had to be reasons for it, there had to be a match. I’m getting the feeling that you guys need to work on that a little bit longer, right now when you’re scared, everybody here, scared about what might happen to you, instead of thinking about what would be best for Robert.\textsuperscript{75} And your ideas about what Robert needs will change over time, just as much as what your ideas will change for Robert over time and I think you all need a little bit more clarification as to how, when, where, what, why these things occur. And I’m wondering, it might be best if you had twenty-four hours to think about this more, talk to your lawyers, write down a few ideas. Then I’ll see if I can sneak you in for another appointment and we can get this done, because I think the clock serves for both of you, everybody here, about Robert’s needs. Another reason why I do this sometimes, too, is that I want to ensure that nobody feels coerced, pushed into a decision, when you have only that much time. How does that sound?\textsuperscript{76}

\textsuperscript{71} Vicki has made her request explicit, although she is not specific about what kind of a guarantee she needs. The question really is, “What do you need to be reassured that you will get what you want?”

\textsuperscript{72} Vicki has moved from her original global statements to a concrete formulation of what she needs. She is looking for a “tit-for-tat” agreement.

\textsuperscript{73} Janice makes her agreement explicit. Agreement is based on common understanding. The same story is now understood. Previously all three were not in the same mutually acknowledged and shared story. Previously there was no safety in being outside each other’s story.

\textsuperscript{74} Henri rejoins, but at arm’s length. It is interesting that he has not participated in hammering out the details of the understanding, and so he is more vague than his wife when it comes to agreeing. He reverts to his earlier position of “one hundred percent” and wants to turn it over to the lawyers. He seems to have forgotten his desire to work it out among the three of
them (52). This highlights a dilemma for the mediator when more than two people are parties to a dispute. If two are working well together, the third may sit back, uninvolved. The mediator may not want to interrupt the flow of the two to include the third. We saw earlier (55) how Janice tuned out of the Henri/Vicki interchanges, and reentered with her own agenda, derail- ing the progress the other two had made. We can’t know what was going on for Henri since his last comment (58), but clearly he is slowing down the process now.

76. I had originally visualized each parent writing his or her own ideas that we would incorporate into an agreement a day or two later. Now I must back off, and hand them to the lawyers. I temper my comment with a positive summary of their history and suggest that they take “a little bit longer.”

77. I end on an upbeat note by reminding them of their common love for and interest in Robert’s future.

Vicki: Yeah, I’ll go for that.

Mediator: So, what I’m going to do is I’m going to let you go. I want you to speak to your lawyers. I want you to write out a little bit of a schedule as to what your wish list might be. I’ll try and make sure and if it’s too far apart, I’ll try to get something in the middle for both of you here, and then we can kind of go from there. But the best thing here is that cool has prevailed. Things are going to be as positive as they can be, and don’t worry about the fears of what might happen; think about the neat things that are going to happen for Robert, the dreams that all three of you have for him, because that’s why you’re here. Sounds good?

Vicki: Okay.
Janice: Okay.
Henri: Okay.

77. A summarizing statement to provide closure to the session. The mediator reminds them of issues of goodwill, good faith. In addition, I reminisce about their past journey together, one that continues into the future. It brings Robert’s needs to the forefront, and presents the parents as tutors or advisers. It substitutes normal and natural expectations for doubt as to Robert’s needs.

**COMMENTARY**

This multiparty mediation illustrates how a case develops through a series of small steps, like a dance performance in which each participant takes center stage for a brief time, dances in different combinations, and eventually reaches an
ensemble finale. The mediator’s role is as choreographer—to provide a safe atmosphere in which participants can explore their options, and to keep track of the themes so that nothing gets lost.

Three Issues that Emerge in Many Mediations

While the mediation relates to some issues limited to adoption, such as transfer of custody, guardianship, and definitions of motherhood, other issues are more universal, such as fairness, power imbalance, and conflicts of interest. We will deal only with the latter three here. The question of fairness in the terms of an agreement is determined by the participants, but must always be measured by the standards that exist in the community. An agreement that may seem fair to a set of participants may actually be far from the norms of society and may be challenged in a court of law. Thus the mediator must always be knowledgeable about community standards and court precedents. He can advise the parties about these standards, but ultimately will have to incorporate what they agree is fair for them. In this case, the mediator suggested that the three parents consult experts (i.e., those knowledgeable about community standards) with regard to details—when and how to inform Robert about his natural mother. He also asked about other adoptive parents’ experience since they would also know about such standards.

The problems of power imbalance are amply shown between the natural mother and the adopting parents. To begin to rectify this, the mediator uses language that signifies his respect for all three as equals. Further, Vicki’s mode of thinking reduces her power, as well as her age, inexperience, and lack of resources. The mediator cannot compensate for her life circumstances, but he can help her think more clearly. Therefore, he asks different kinds of questions of Vicki to help her to become specific about her concerns for Robert.

In addition, in the dynamics of two adopting parents, other conflicts of interest may arise. Just because they are married, they do not think alike, or have the same needs. But the more powerful one may override the needs of the other. We see this most clearly in the final minutes of the session when Janice and Vicki are nearing an understanding about their respective positions as mothers. Each has heard the need of the other for guarantees about future actions. They are prepared to make verbal assurances to each other. Suddenly, Henri enters with talk of lawyers and the session takes a different turn. His interest is in getting custody 100 percent, not in making accommodations with the natural mother. Because of the lateness of time in the session, the mediator has no alternative but bow to his response, with the invitation to return to complete a mediated agreement later.

As mediators, we must have all these concerns in the back of our minds, as well as the presenting problem of each session. The more we experience problems, the more confident we become in solving them.
Organizing Principles Applied to Adoption

The case also demonstrates several of the organizing principles discussed in the first chapter, for example, *who to ask first* to explain the problem. Here Vicki, a young single mother with limited resources, was clearly the least powerful party. I deliberately chose her to begin, knowing this would enhance her power. I move briefly to the adopting parents to reassure them of their importance to the process, and then return to Vicki. As we can see in the transcript, the three parents build a story that is almost synonymous about the past. I learn that the past is not the problem. They each have fears about the power of the others to interfere with their future with Robert. He is now five days old and the fifth person in the mediation, but obviously not present in the room. So I must remind the three parents of his needs, over and above their own needs.

During the central portion of the session, I must work to get the issues stated as specifically as possible without allowing the participants to negotiate prematurely. In this sense, I am teaching them *how, and when to negotiate*. I help them explore the issues without taking firm positions that they would have to defend in later negotiations. However, in the dynamics of three parties, one—Henri—does stake out a position (100%), which forces him to reject the negotiations of the two mothers. Perhaps in a longer session, I could have helped him see his advantage in coming to an agreement within the mediation framework, as he had stated in the early part of the session. But in an imperfect world, we must be satisfied with less than perfect outcomes.

I learn that they really need to get more information before they can proceed, so I make *process suggestions* about how they could cooperate to get the information. As a psychologist-mediator, I could easily have given advice on the issues they raised. But that would violate my role as mediator, and could be seen as favoring one position over another. I could also have suggested names of experts, but again I refrained and helped them see how they could do it for themselves.

The most important principle, and the one that underlies all successful mediations, is *developing a future with a difference*. My questions built on their success in the past (unlike many divorce or family mediations) and how to project that cooperation into the future. The blocks to success in the session emerged around their fears about the nature and extent of Vicki’s relation to Robert. Both women needed specific guarantees of their position as mothers before they could consider the details of the day-to-day contacts. Paradoxically, some kind of agreement on the details was needed before they could extend their guarantees. In this dilemma, I had to call on their good faith, and return them to their lawyers for a written set of details. It was a delicate balance, but successful in the long run. I believe the success hinged on their vision of a future that was different from the one they had when they first came to mediation.

I hypothesized that the need for mutual assurances was central to this mediation, at least for Janice and Vicki. Henri “stood in the wings” through most of the discussion leading up to the statements of Vicki (64, 69, and 72) and Janice.
(73). He concurred (74), but brought the lawyers back into the picture. Perhaps if he had been more active in the give-and-take, he might have been more willing to give verbal assurances to Vicki in the session. We will never know for sure. But it does point up a problem in multiparty mediation: How to keep everyone involved and moving toward an agreement at roughly the same rate. The more participants there are, the more complex the dynamics.

Finally, the reader can examine the kinds of questions asked at each phase of the session—first those of respectful curiosity, where specific information results that is important to the mediator. In the central phase, the questions change—they help the parties to move from their global, unspecific thinking to more clear-cut, specific answers about the issues. At this time the mediator is not invested in a particular answer, only in the type of answer. In the final phase, questions become reflective for the parties—usually about the future that is different—where the answer is most important to the participants. The latter questions are what can cause change in the clients and ultimately are responsible for success of the mediation itself.
In mediation there are two threads: the problem presented for mediation and the way the parties talk about the problem. The latter is often the major source of the conflict. In my observations, the closer the relationship in most, but not all cases, the more likely it is that participants will fight more about *how to talk* about the problem than *about* the problem itself. This means that the mediator must think about the issues presented for mediation in two ways: What is the problem, and how do they talk about it? When problematic, the mediator must work on changing the way people talk about the problem as a precursor to solving the problem.

How Clients Talk About a Problem Versus the Problem Itself

In the case examined in this chapter, the way the parent and teacher fight about the problem is indeed most of the conflict. The issue of what is best for Peter—the mother’s son and the teacher’s pupil—is lost in the way they interact. Initially, there are a few areas of disagreement—primarily of perceptions—about why the son has extra homework. However, the hostility between them prevents any search for solutions because each is invested in winning the argument about how the argument should be conducted, and each is concerned at what she sees in the other.

The mediator must work hard to separate how the adults talk about it from how the problem can be resolved. He must lower the tension and hostility
between the parent and teacher as competing adults before he can turn them
toward talking about how to solve Peter’s problems.

The teacher, Carol, is angry that the mother went to the principal about the
problem rather than talk to her. She retaliates by attacking what she alleges hap-
pens (or does not happen) at home. The mother, Maria, is angry that her attempt
to protect her son has met with hostility, and pursues a counter attack on the
teacher’s professional ability. Thus they choose to talk about the problem of Peter
by attacking each other’s integrity, as a parent and as a teacher. The way people
argue can become the driving force of the session and, at times, dominate the
entire mediation conversation. There are two types of situations that lead to this.
The first is when the parties’ historical behavior is one of unproductive talking.
Games such as “gotcha,” one-upmanship, put-downs, and so on can interfere
with the efficient progress of mediation but rarely prevent resolution. In chapter
1, “The Business of Bagels,” for example, the two partners replicate in the medi-
ation the unuseful ways of talking about the problem that they have in the busi-
ness. When the behavior is historic, the mediator deals with it by ignoring the
sniping and crossfire while remaining tightly focused on the problem-solving
task. This task focus will usually override the unproductive method of arguing.

However, the second type of unproductive arguing is one driven by unremit-
ting hostility. The hostility is caused by specific acts the parties have engaged in
that, in general, have not been resolved prior to the mediation. The participants
do not openly acknowledge the acts because, usually, that would reveal a level of
vulnerability. We can identify this as a form of an underlying issue. An example of
this type of underlying issue is when clients feel so vulnerable about an aspect of
the problem that they spend most of their time defending against this vulnera-
бility rather than dealing with the total problem. In the case of Tom and Pat
(Haynes, Mediating Divorce, chapter 7), the wife was afraid of losing the child to
the husband and her strategies were driven by this underlying fear.

Searching for an Underlying Issue

When unremitting hostility interferes with the negotiations, the mediator must
create an environment in which the source of the hostility can emerge either
organically from the participants or through questioning. By emerging organically
I mean that the source of the hostility is articulated openly by one or both of the
parties during the interview without the mediator specifically engaging in strate-
gies to bring the issue to the surface. If the unremitting hostility does not emerge
organically, then the mediator must actively intervene to surface the issue. He can
ask questions designed to surface the underlying issue so that it can be acknow-
ledged and discussed by the participants. However, when the mediator looks for
the underlying issue, he is faced with another problem. How will he know when
he has found it? How can he be sure that, if he digs a little deeper he may find
the real issue below the one he has already found? The answer to these questions

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lies in the minimalist approach. The mediator knows he has found the right definition of the underlying issue if his strategies based on this understanding work. That is, when the parties indicate that they have been heard and can now focus on the negotiations, the mediator need dig no deeper. In other words, if the problem is solved you don't need to carry on solving it.

This, in turn, leads to another question, how can the mediator surface the issue without performing therapy? The answer to this question lies in the focus of the mediator. The mediator's task is to manage the negotiations between the parties required to resolve the conflict. The task is not to transform the clients or to resolve their individual problems. The only work the mediator engages in to resolve interpersonal problems is the least amount of change required to facilitate the negotiations.

As long as the mediator views himself as the manager of the negotiations, he will not engage in a therapeutic relationship with the clients. The moment the mediator believes he has a higher responsibility to transform the clients (whether they want to be transformed or not), then attempts at creating the transformation will be through therapeutic not mediation strategies. Our clients have the right not to be treated as therapy clients. We have the responsibility to maintain a mediator-client relationship, while pursuing solutions to the presented problems.

The key to creating an environment in which the source of the hostility can emerge organically is the mediator's nonjudgmental behavior. If the participants can be sure that the mediator will not judge them negatively, they will be more willing to risk raising the issue. They must also know that the mediator will generally protect them when they do reveal. The mediator creates such an environment by maintaining a balanced, nonjudgmental role throughout the session no matter how aggravated by the clients' behavior. We will discuss how to do this later in this introduction.

When the underlying issue is surfaced, the mediator acknowledges it in the present and opens a view of the future without the issue. We believe that it is not useful to pursue the past aspects of the issue once the clients have surfaced it. Rather we have found that the most helpful role for the mediator is as pathfinder to the future rather than wanderer in the past. It is worth restating our basic mediation assumption. No behavior of the clients needs to be dealt with unless it interferes with their ability to negotiate an agreement. Mediation is all about reaching an agreement to resolve a conflict. All we are required to do is to facilitate the negotiations. The mediator is not responsible for changing the clients' dynamics, providing them with therapeutic insights, or in creating any form of transformation. If the clients gain new insights, change their dynamics, or discover a transformation, each of these gifts should be serendipitous to the process, not its goal.

With this in mind let us look at how the mediator asks questions about the underlying source of the hostility in a minimalist fashion. We can think of the problem as an onion. If the mediator is able to create an environment in which the underlying issue surfaces organically, there is no need to peel the onion. If the
negotiations proceed satisfactorily, the onion remains unpeeled. However, if the source of the hostility remains a block to productive negotiations, the mediator reviews the session and determines the need to use questions as a strategy in the next session to try to surface the source. By waiting until the next session, the mediator is required to work hardest in the first session to find an organic solution. During the intervening week, the mediator can develop hypotheses about the problem and then construct questions to test what appears to be the most useful of the hypotheses. In the next session the mediator will have a number of hypotheses in descending order of usefulness. He can discard the ones remaining as soon as one hypothesis works.

This is important and the mediator should not believe that everything can necessarily be done in one session. It is much better to spend the entire session trying to get the clients to state the organic answer to the question than to switch halfway through from the organic search to directed confrontation, designed to force its emergence. The time between sessions is always productive time for clients and the mediator. The clients think a lot about what happened in the session and the mediator reviews his work and refines his process management. The questions the mediator develops in the intervening time to test the hypothesis are more likely to be useful ones. Those developed in the session are more likely to express mediator frustration at the lack of movement.

It is useful to have more than one hypothesis as to the possible underlying issue so that the mediator does not become tied to one idea. When the mediator has only one hypothesis, he tends to continue looking for support for that hypothesized underlying issue even when a different one emerges. As Luigi Boscolo puts it, one should “flirt with a hypothesis, not marry it” (Boscolo, Luigi & Paolo Bertrando, *The Times of Time*, Norton, 1993). The line of questions developed by the mediator between sessions should be to test the usefulness of the various ideas suggested by reflecting on the previous session.

As the questions develop in the following session, the mediator will usually surface a source of the hostility that, when identified and acknowledged, will permit the negotiations to proceed productively.

The goal of the mediator is to facilitate the negotiations of the parties to the dispute. Whenever an intervention accomplishes that goal, the mediator needs look no further at the issue. Indeed, it is important that the mediator turn the conversation from identifying and acknowledging the source of the hostility, which lies in the past, to a future focus as to how the participants can have a relationship without the source of the hostility. The mediator searches in the present for the cause and once it is found, moves quickly into the future to make the negotiations productive.

In doing this, the mediator might think of each hypothesis as being a layer of the onion. He peels away one, and if the source is not there, he changes hypothesis and peels away another layer. The mediator continues this process until he finds a line of hypothesis-testing questions that surface the cause of the hostility. The moment the cause is surfaced, he deals with it and moves back into
the negotiating phase of the mediation and as long as the negotiations proceed, he lays the onion to one side. This has the effect of increasing the mediator's efficiency in facilitating the negotiations and, as a side benefit, limits the amount of tears that will flow and impede his vision if he keeps on peeling the onion.

Maintaining Mediator Balance Under Pressure

It is not easy to maintain a balanced, nonjudgmental role throughout the session when the clients' conflict behavior is aggravating to the mediator. Sometimes, as in this case, it is difficult to believe that a solution is possible given the unremitting level of hostility. However, it can be done. The mediator must accept that the hostility is not directed toward him. If it does become directed against the mediator, it is usually an indicator that the mediator has taken sides and lost his balance. With that in mind it is easier to stay as an observer rather than a participant. When the mediator feels under attack from the client it is useful to step back and identify what he has done to attract that hostility. The mediator can discover his imbalance and take steps to get back into balance between the clients.

It is better, of course, not to become unbalanced. To remain balanced between the clients and towards the dispute, it is useful to remember that conflict is productive; only unresolved conflict is unproductive. When people engage in unresolved conflict, it is because the parties have become disconnected from their inner wisdom. The mediator can help them reconnect by responding to that inner wisdom and not the overt behavior of the moment. This adjustment requires the mediator to maintain a stance of unqualified love for the person. Each person has within them that of God. The mediator's task is to converse with that part of the client. It means that instead of judging the clients badly for their behavior, the mediator asks himself, "Where is the goodness; where else can I look for it?" He further asks, "Why can't I love this person? Why can't I love their goodness rather than be aggravated by their behavior?"

The behavior of the parties inevitably has an effect on the mediator. In this case it has the effect of raising the mediator's tension. As the tension between the clients continues to rise, the mediator experiences an increase in his own tension. We must deal with it or our tension will interfere with our ability to maintain a clear focus on separating the how to talk about the problem from the how to solve the problem.

In reading the text of this session you will see times when I do become aggrivated at the clients and temporarily become disconnected from my own inner wisdom. But, on the whole, I am able to overcome my reaction to their behavior by remembering to look for the good in them. Looking, finding, and believing in the good enables me to maintain an overall balanced, nonjudgmental stance as a mediator. It is this part of the work that facilitates the clients' organic recognition of the source of the hostility. Once the source is recognized and then acknowledged, I have found that the clients are able to let go of the hostility and get on with the negotiations.
No movement is possible in this session on the real issue expressed in the following questions: Is Peter doing his work in school? If not, why? What can the parents do at home to support the teacher in the classroom to help Peter fit into the class, do his work, and enjoy school? How can the teacher change her attitude toward Peter?

To have this discussion, the parent and teacher must reduce their respective defensiveness and retreat from the boundaries they have crossed into each other’s domain. Thus, the mediator’s work in most of the session is to help them let go of the positions they have taken about how to argue about the problem. As some of those defenses are lowered, a few opportunities emerge to have the parent and teacher talk about how to solve Peter’s problem. It is in the parent’s and teacher’s self-interest as adults to move away from how to discuss the issue toward discussing how to solve the issue.

**TRANSCRIPT AND ANNOTATIONS**

Mediator: Well, welcome Maria and Carol. Dr. McNulty, the principal of the school, has asked me to meet with you and I think he has discussed this with each of you because you have a dispute. He’s asked me to help mediate that dispute: to help you come up with a solution to the problem that’s obviously right for each of you, and is obviously right for the children in the classroom. Recognizing this is voluntary, obviously we can only come to an agreement if it’s satisfactory to both of you.¹ So perhaps I could ask you, (to Maria) what is the problem that currently exists?²

Maria: Well my son is in Carol’s class in grade three. My son is eight years old. My husband and I travel around the world a lot with our son because my husband is in the diplomatic corps. Last year Peter was in the U.S.³ and he did grade two, completed it. We felt that he should be going into grade three this year, which the school agreed to, because he’s an older eight-year-old—he was born later in the year. So what’s happening is that Peter is coming home very unhappy. He complains that Carol is picking on him, putting him aside from the other students on a regular basis. He feels that she doesn’t like him and he’s in tears when he comes home. He believes that Carol is giving him far too much work. He gets more work than all the other children do. So, he thinks that she has something in for him, you know, that he doesn’t know what he’s done. I feel that I don’t understand the situation either. I mean, I have no idea why Carol is doing this to Peter. What I have done is I’ve gone to speak to the principal because I think, well, it’s no point speaking with Carol. It seems like a very hot issue. She probably doesn’t like Peter so I went to speak to the principal, and it seems that Carol is very upset now.⁴

Mediator: So let me see if I understand. Peter is your son . . .
Maria: Huh-huh
Mediator: . . . and spent last year in the United States, did second grade there and is in the third grade. Carol, you’re the teacher.5
Carol: Yes.

1. The mediator begins with a basic problem. I have been retained by the school principal not the parties. While Carol and Maria have agreed to mediation, the initiative for the move came from the principal. Thus, in opening the session I must stress the voluntary nature of the process and, by acknowledging McNulty as the hirer, speak to any concerns either of them may have about my balance. At this stage I am particularly concerned that the teacher see me as a free agent and not reporting to the principal since she probably feels that he would accept any settlement that satisfies the parent. While I stress the voluntary nature of the process, I do not go into a lengthy explanation of my concerns as to how they view me. Rather, I hope that my actions as manager of the process will speak to those concerns more effectively than anything I can say in my opening remarks. I frame the charge as finding a solution that will benefit all of the children in the classroom as a way of trying to avoid a focus on Peter.

2. There is always a problem of deciding who goes first. Here, unlike the sexual harassment case, I go to the person filing the complaint—Maria. If I had gone to Carol first she would either have to deny the problem or, more likely, as we discover in the session, enlarge the problem she is having with Peter and place the mother in an even more defensive position.

3. This case was held in Canada.

4. Maria has identified four issues in her opening remarks: Peter belongs in grade three not grade two; Peter is unhappy in school; the teacher is picking on him; and Carol is giving him more homework than she gives to the other children in the class. She spoke to the principal without consulting Carol. I do a process interruption when I sense that Maria is about to recycle her complaints. One way of reducing the power of the first storyteller is to reduce the amount of time she has to speak by summarizing at the first opportunity and carefully honoring each of the points she raises.

5. During the summary, I switch from checking with Maria to Carol, as a way of signaling that Carol will get her turn.

Mediator: And that Peter, when he comes home, is unhappy about what goes on during the day, right? Okay. Just before I ask you, Carol, could you clarify for me, so I could be clearer in terms of the age range in your class, where does Peter fit in terms of chronological age?6
Carol: He’s in the middle.
Mediator: In the middle. Okay. Fine. So let me ask you, what’s your understanding of the situation?
Carol: Well, Peter came into my class in the beginning of the year from the U.S. where he had completed grade two. But a grade-two level there and a grade-two level here aren't necessarily the same thing. Although he's a big boy for his age and he's an older child for grade two, upon my recommendation, after I tested him the first couple of weeks, he should have been in grade two. It's nothing to do with his ability; it's his developmental level. He's moved around an awful lot; there are lots of steps he's missed. He has very little ability in skill habits, work habits. He has great difficulty settling down in the classroom. He disturbs everyone around him.

Mediator: How is that exhibited?

Carol: Oh, he just doesn't, you know, he doesn't complete his tasks. He doesn't set to his tasks. He's very, he's quite immature in the classroom scenario. And so I have tried several areas of trying to get him to conform and he won't. I now isolate him at his desk away from the children so he can't, you know, he can't pick at children; he can't pick things up and can't keep disturbing other children. And I tried a behavior-modification program with him, rewarding him for stuff that he did do on time. It didn't really work because he has the attitude that he doesn't have to do it because when he goes home, Mum and Dad don't think he has to do it.

Maria: Oh, that's not true at all. I don't know where you're getting that from, Carol. I mean, that is, that's an assumption that you have made and I find that absolutely outrageous . . .

Mediator: That would be . . .

Maria: . . . quite frankly.

6. This question is a data-collection question designed to add to my knowledge of the situation and designed to break the teacher's focus on answering the mother's story and to help her to concentrate on telling her own story. A concern in the early stages of the session is to ensure that each party gives her story and does not simply respond to the other's. The mother opened the conversation, so has the advantage of establishing a story to which the teacher feels forced to respond, thus adding to the weight of the mother's story. I help to balance the stories by asking the teacher questions to elicit more of her story.

7. Carol responds with a number of attacks on Peter reinforced with key words (very, great, everyone). She is not caught up in directly answering Maria's story. Her points are not particularly useful. However, the last one, while about Peter, is in the context of his relationship with the other children. Thus the mediator asks a question about the latter point to bring the discussion back to his original statement, "what's best for all children." I follow up with a question to keep the focus on issues that involve all the children. This helps ameliorate the teacher's attacks and, hopefully, will reduce the mother's need to counterattack.
8. The clarifying question fails as Carol uses it to expand her criticism of Peter and his parents. It might have been useful to acknowledge the teacher's anger at the mother's going straight to the principal. If this point had been cleared up early, Carol may have been less defensive (and therefore also less offensive). This would require a strategy to separate the teacher’s anger at the parents from her attitude toward Peter. At the moment it is unclear as to the intensity of the two angers. If the teacher–parent anger could be isolated, discussed, and resolved, then the dimension of the problem with Peter would probably be reduced and the chances of cooperation between parent and teacher increased. Mediation requires frequent defining and partializing of the problem so as to focus on creating the best problem-solving environment.

Mediator: That would be one of the reasons why this conversation could be very helpful so that you two can get a picture directly from each other because obviously at the moment everything is going through Peter . . .

Carol: That’s right.

Mediator: . . . who has his own version of the world, as we all do, and that may not always correspond with what really goes on.

Carol: The reason he has extra homework is because he doesn’t complete his class work on top of the assignments that the children do have at home.

Mediator: Okay. So . . .

Carol: So to get this work completed and to keep him on track, otherwise he’s, you know, he’s not on level yet with that grouping.

Mediator: Okay. So let me see if I understand, Carol. Your feeling is, based on your testing, that Peter would have done better this year in second grade.

Carol: Yes, but Mum was violently opposed to that.

Mediator: Okay. And you feel that there are gaps in the knowledge and developmental stage.

Carol: Mostly maturity level and development, yes.

Mediator: And that causes some disruption in the classroom. You have isolated Peter at this point.

Carol: On occasion for certain areas.

Mediator: On occasion; and you’re giving him extra work in the hope that will enable him to catch up.

Carol: Not really extra work, Dr. Haynes. It’s more of what he doesn’t complete in the day. He then has it attached to what he takes home for his class assignments, what the other children are taking home. The reason he feels he has more is because he’s not doing what he’s supposed to do during the day. We’re adding it on at the end of the day hoping he’s going to get the picture: that he completes his work during the day . . .
9. This is an example of a strategic or paradoxical intervention, which challenges the clients to take control. Here I am appealing to each in their own roles, Carol, as the teacher, should want to disempower Peter’s disruptive behavior and Maria, the mother, should also want to be in control of the situation. If we can isolate Peter’s behavior and reframe the situation into how the adults can be in charge and resolve the problem, a solution should emerge from the adults.

10. Here I normalize Peter’s behavior to reinforce my attempts to not make him the problem, what Fisher and Ury call separating the person from the problem (Roger Fisher & William Ury, *Getting to YES*, Houghton Mifflin Co., 1981). By externalizing the problem it becomes less emotionally loaded and should permit the mother to engage in the discussion less defensively.

11. This line of summarizing is designed to identify the issues raised by the teacher while removing the sting from them. I am trying to normalize the situation and make the whole matter in which Peter is involved a normal developmental problem. The mother is not going to engage in a problem-solving dialogue if, at the same time, she is forced to defend her son. The teacher is not going to be able to see beyond her current relationship with Peter if she is also defending her integrity as a teacher. The summary is also a way of not allowing the session to be overwhelmed by Carol’s story. Most of my effort in the early stage of the mediation is to get two independent stories on the table in a way that does not require each to answer the other and get caught up in discussing one story. Only after we have two independent stories can we see where they are mutual and where the interests of the participants overlap. Thus, I spend time honoring both stories and shielding each client from having to answer the other. The best strategy to accomplish this is to have each speak for herself rather than answer the other, while, at the same time, assuring each participant that, as a mediator, I have not bought into the other’s story.

Mediator: Great, okay.12

Carol: But he’s a little bit, got a bit of a persecution complex and when he goes home . . .

Maria: I don’t think that’s fair . . .13

Mediator: Just a second. Maria, when he comes home with this work, is it clear to you what is normal homework and what is make-up work?214

Maria: No, no, that’s not clear to me. When he comes home to do his work, what I understand it to be is his homework. I have no idea that he’s doing make-up work.

Mediator: Would it be helpful for you if, when he comes home with stuff, you could distinguish between what was the normal homework and what was make-up for that particular day?215
Maria: Yes, that would help me.

Carol: I have done that. I have sent letters, I have made phone calls, and I get the housekeeper because Mum and Dad are never home. We’ve had parent interviews . . .

Mediator: Let’s now talk about how it might work. Would it be possible, for example, to mark the make-up work in some way?

Carol: I do. I attach a piece of paper to it and put “Dear Mum, this is make-up work from Peter’s class that he didn’t complete. Please have him do this before he does his assignment.”

Mediator: Okay. Would it be possible, perhaps, to put that on the actual paper?

Maria: But it’s not coming to me. It’s not clear to me the difference between the kind of homework that it is; it all looks like the same homework to me.

Carol: I do.

Mediator: Not a note, but just something like an M or something on the pages that it is make-up?

Carol: Well, I could, but I thought that a note was more direct . . .

Mediator: Yes.

Carol: . . . directed to the parent.

12. The mediator’s responses are intended to end Carol’s part of the conversation. The first, “Great” is said in a way that represents a period signaling an ending of Carol’s sentence, or that it should come to an end. The second adds an emphasizing “Okay.” I find this method useful to signal that it is time for a client to end the remarks, since it is not confrontational and minimizes the need for me to intervene directly in the conversation and ask the person to end. But, as we see, it is not always successful.

13. When Carol ignores the mediator’s attempts to break in, Maria takes over and overrides her.

14. The mediator takes advantage of Maria’s intervention to ask Maria a question designed to direct her away from answering Carol and providing more data. If she provides the data, she does not get hooked into responding to Carol’s story.

15. This is what I call a process suggestion. It is not a content suggestion since it does not adopt either participant’s story. It is a suggestion about how each of them might do something differently as a step toward breaking the cycle of recriminations. It does not influence the conversation in either Carol or Maria’s direction. It is simply a different way of looking at the way they are talking about their problem.

16. Carol breaks the positive direction of the conversation with another attack on the parents. This type of activity is often annoying to the mediator, since
the client is interrupting and redirecting what I am trying to do. When clients do this, there is always a danger that the mediator might react negatively to them.

17. The mediator breaks Carol’s attack with a future-focused statement, “Let’s talk about how it might work,” and returns to his process suggestion that the adults find a way of cooperating.

18. However, Carol claims she already does what he suggests. This reply effectively blocks the mediator’s line of thought since it would be unwise to enter into an argument about this. Rather, I will have to find an alternative way of dealing with the problem.

Mediator: Great. So here’s another thing, we’re getting some clarity. I have a sense that what we’re going to do this afternoon is get more and more clarity, so that you can each do what’s best for Peter. I think it’s clear that you both want what’s the best for him, in the context of what’s needed for all of the other kids in the class as well.

Carol: Well, you know, I have to have Mum to support me on this. If she talks to Peter and tells him why he has the extra work, instead of when Peter says, “Mum, I have all this extra work.” Because he knows why he’s got it. He knows fully why he’s got the extra work to do. He’s not, he’s not . . .

Mediator: Okay.

Carol: You know, he’s not, he’s not telling Mum this. So Mum should be talking to me first. Never mind going to the principal and saying, “Why does he have this?” I have tried on a lot of occasions to take . . .

Mediator: And now, Carol, if I may interrupt . . .

Carol: (clears her throat)

Mediator: . . . we do have a chance to do that, don’t we? Because we are here and we have a chance for you two to talk directly and get some clarity so that you could both be supportive of each other and each others’ goals in the hope, therefore, that Peter will do the best he’s able to do this year. Because third grade, I think, is a very critical grade for kids and often sets how they feel about school over the long haul.

Maria: I have a real concern about Carol’s way of describing how we’ve communicated. We haven’t communicated very much and part of the reason is that I am concerned that if I communicate with Carol, I’m going to get an angry teacher. Because Peter tells me how Carol handles the situation and treats him. So I don’t really want to approach Carol. She seems like a very irate and unsympathetic teacher. So that’s why I went straight to the principal.

Mediator: Okay. So this afternoon is really an opportunity to overcome some of these prejudices that we have about each other, to have a frank discussion about what’s best for Peter, and how we can cooperate in doing what’s best for him.
19. Here I use the term “clarity” to distinguish from truth. It is not useful to try to determine the truth in the matter. I do not need to know whether Maria or Carol is telling the truth. They are each telling a story that is their perception. In mediation, aside from basic data, there are only perceptions, not truths.

20. I bring the issue back to the class as a whole in a continuing attempt to protect Peter from being the problem, and to point to the adults’ mutual interest.

21. Another use of “Okay” as signal to come to closure.

22. I interrupt Carol’s attack and move the conversation from the past, “going to the principal,” to the present, “we are here” to the future, “best he’s able to do this year.” This conversation again directs them to their shared interest that Peter should succeed.

23. This is a pivotal point in the opening sequence. I have been reaching for a mutual problem definition. The clients are locked in their separate definitions. They have each spoken about going to the principal and have taken positions. It is not a major issue. Rather, it has emerged as an underlying issue that motivates their negotiating behavior and keeps them locked in a high-conflict relationship. The major issue is Peter’s behavior—whether he completes his work in school, and whether his behavior is caused by the teacher’s attitude toward him. As the session continues you will note that I am unable to get them talking about the issue of Peter because it is superseded by the feelings Carol has about Maria’s complaint to the principal and Maria’s reaction to the hostility generated by these feelings. My hypothesis is that the driving force of the conversation is the conflict over the way they talk about the problem. Carol defines it as Maria going over her head to the principal and Maria defines it as the teacher being unapproachable.

24. I redirect Maria’s attack by turning to the positive and suggesting a mutual goal of jointly defining what is best for Peter. I am balancing an earlier redirection from the teacher’s attacks on Maria. This is the process of balancing. The goal in mediation is not to achieve neutrality but to achieve balance. I cannot change past perceptions. I can shift the focus to the future. I can say “overcome some of these prejudices” in a way that assigns shared responsibility and puts it aside, then and refocus on the future with “how we can cooperate . . .”

Maria: I’m a little concerned about how Carol is feeling about me and how Carol feels about Peter. I guess what I’m saying to you is that I’m really very apprehensive about Carol’s feelings towards us, to the family.

Mediator: Huh-huh. And I hear from Carol some apprehension about how you feel about her.25 I wonder now, obviously there are a number of solutions to this problem.26 One obvious solution is that Peter could change classes.27 Another solution is that we could find out what the difficulty is, go for a correction, cooperate on that and do it for him.28 (to Maria) I think that you’re
right to be concerned: Has Peter been stigmatized in that way? And, Carol, in the same sense, you’re concerned: Have you been stigmatized in that way and how do we break out of that?²⁹

Carol: I don’t feel that, John. I don’t feel that at all because my concern is the children, you know. Parental likes and dislikes don’t really enter into it; the main object here is for me is to give that child a good year and . . .³⁰

Mediator: Yeah.

Carol: . . . provide him with what he needs to go on.

Mediator: Excuse me, Carol, but that is everybody’s goal.³¹

Carol: Uh-huh.

Mediator: . . . this afternoon in this room, yeah?

Carol: Uh-huh.

Maria: Well, I certainly want Peter to be successful in his class and to be a happy child, and he’s not right now.

Mediator: Okay. What would it take for him to be either successful and/or happier?³²

Maria: Well, my personal feeling is Carol’s attitude towards my child and Carol’s attitude towards my family. We’re busy and, you know, I just heard some accusations about what kind of people we are.³³ I mean I’m concerned that she may not be able to be his teacher and, also she says that I was angry and insisted upon Peter being in grade three. Well, the school went along with that. I mean, I thought it was correct—from grade two you go into grade three.³⁴

25. Mutualizing by pointing out how both have apprehensions.
26. I thought Maria’s visit with the principal had been diffused and assumed they would be ready to focus on solutions, so I use an upbeat note that there are many options available to them.
27. This is a challenge to the teacher. I assume that Carol, like most teachers, would see the transfer of one of her students as a loss of her professional status.
28. I offer them a better alternative: cooperating on defining the problem and jointly resolving it.
29. This balances the stigmatization issue for Peter, parent, and teacher by naming the issue and showing how each is tarred by it. In this section of the session I am trying to move the protagonists beyond the blaming cycle by mutualizing the situation while also offering the possibility of their finding a mutually acceptable way of solving the dispute.
30. This is a difficult comment by Carol since it dismisses Maria and her concerns while claiming the best interests of the child, thus putting the mother in a double bind.
31. I cut off Carol’s statement hoping to obviate Maria’s need to answer it, thus halting the downward spiral.

32. A question about the future with a difference. When thinking about and answering this type of question, the client moves into the future, no matter how temporarily.

33. Maria, however, is still dwelling on an earlier comment by Carol and remains hooked into the blaming/retaliating cycle.

34. She follows up with a threat to move Peter. She also tries to justify her fight to keep Peter in the third grade and fixes herself in the past rather than the future. I realize that the parties are locked into unuseful roles and I must try various strategies to move them into productive roles. I am hoping to appeal to their nurturing instincts as mother and as grade school teacher rather than as irate parent and threatened teacher. In the positive roles, I can help them think about Peter’s needs rather than the adults’ needs to defend their individual integrity. I must avoid criticizing either of them or their behavior, since any criticism will simply add to their defensive responses. By attending to the good in them, I can create a comfortable environment so that each can move off her current position.

Mediator: I understand your concern, and I understand the fact that the relationship between you is not the best of relationships, that it somehow spiraled down. I’m wondering, aside from attitudes, what can be done in specific terms, for Peter to be happier in the classroom. What do you think could happen?

Maria: Aside from attitude?

Mediator: Huh-huh.

Maria: Well, I think perhaps one of the things, that if I were told directly which is make-up work and which is homework, I would certainly be able to have a handle on that and be able to understand how much Peter is not doing in class and those, for whatever reasons, those instructions have not come through to me, and I don’t know what’s been happening there.

Carol: Well, you’re never home.

Mediator: Well, let’s not get into what happened in the past, right, because you can’t change that. You can shape what’s going to happen in the future. You can say, “Okay, here’s what we want to do from here on out.” And it seems to me that one of the things that we want to do from here on out is to find a way where it is easy for the parent to see what is the make-up work and what is the normal homework, and that we obviate the ability of Peter to lose pieces of paper in the process.

Carol: Well, half the time he doesn’t even take it home, you see. He’s picked up, Mum never comes to get him, he’s picked up. Half the time his bag is in the hall . . .
Mediator: Okay. What do you . . .
Carol: . . . mostly on his peg. 39
Mediator: What’s the normal thing now in school when kids are forgetful? 40
Carol: Well, at the grade-two and grade-three level, I mean we do not run around after them if they forget something. They are supposed to be learning responsibility.
Mediator: Okay.
Carol: So the next day when he comes in, if that work isn’t done, then the responsibility is on him. 41
Mediator: Okay. So it builds up?

35. In responding to Maria, the mediator ends with another question about the future. This question also helps her to think about what she wants rather than what she does not want.

36. Maria breaks out of the blame cycle long enough to make a positive response about what she might do differently in the future.

37. However, Carol returns to the blame cycle, thus undermining the positive impact of Maria’s response. Carol is not moving at the same speed as the mediator–parent conversation.

38. I suggest simple, practical solutions to the parties that solve the process problems they are having thus enabling them to focus on the content issues. It is unuseful for the mediator to sit and watch the parties fight about how the issues are to be discussed. Simple remedies are available that can change the way things happen in the conversation which, if adopted, gives the clients a chance to look for content changes. These questions about how the future can be different are not always successful individually. But, repetition of future-focused questions will, at some point, create a breakthrough, changing the environment to enhance problem-solving rather than problem-maintenance.

39. Carol resumes her attack, reminding the mediator that breakthroughs come in small steps. Her behavior tells me there are more layers of the onion to peel. There are no miracles in mediation.

40. The mediator tries to switch the focus of the discussion from Peter’s individual behavior to the school’s or Carol’s policy. This has two values: It moves the spotlight from Peter, and provides the mediator with a context in which to understand the situation.

41. Carol is not easily redirected. She responds to Peter, not the policy. Here we can see that the struggle is between the mediator’s focus and the client’s focus. My task is to help the clients maintain a focus on their self-interest and future-oriented solutions. This is not always welcome to the clients at that moment, for they have a story to pursue. So the mediator maintains his focus without overtly challenging the client’s focus. Overt challenges lead to arguments that no mediator ever wins.
Carol: Uh-huh.

Mediator: So at some point he has to take this stuff home?

Carol: That’s right.

Mediator: I’m sensing that perhaps notes may get mislaid along the way; whereas he takes home the work at some point.\footnote{The mediator redefines the problem of undone homework to mislaying notes as a way of creating a shift in the tenor of the discussion. The teacher cannot be as critical about mislaying as she is about undone homework. The mislaying concept also removes the blame from the teacher and the parent.}

Carol: I have kept him in at recess on one occasion when he did forget it. I think it was the third or fourth time he’d forgotten it.

Mediator: Okay.

Carol: And I just felt this wasn’t working with reminding him. I’ve even put it on the corner of my desk and said, “Peter, remember this must go home.”

Mediator: What would you want from Peter’s mother?\footnote{217 Teacher-Parent Conflict}

Carol: I think if Peter’s Mum tried to work with me so that we’re working together for Peter instead of working against me, Peter would realize that . . .

Mediator: How would you like her to work with you?\footnote{The mediator believes that the involvement of the parent is crucial for the success of the intervention.}

Carol: I would like her to tell Peter that he has to behave himself in school first of all. He has to stop the fighting and antagonizing other children; he has to learn responsibility. But it’s not going to happen overnight because he hasn’t got those skills. And they have to be done one at a time.

Mediator: All right. Now these are . . .

Carol: It’s important, you know, when I’m asking him to do it, make sure he completes his tasks . . .

Mediator: Okay.

Carol: . . . then maybe we can get somewhere.

Mediator: Okay. Now obviously you can’t control what goes on at home and (to Maria) you can’t control what goes on in school, right?\footnote{45 The mediator recognizes the limitations of external control and emphasizes the importance of internal processes.}

Carol: Right.

Mediator: I mean, children are often very different people in different settings.

Maria: Yes, because I don’t recognize the Peter she’s describing.

Mediator: So that the ideal then is: That you can do things at home to reinforce learning processes, et cetera, and (to Carol) you can do things in school, right?\footnote{Encouraging collaboration and shared responsibility is emphasized.}

Carol: Uh-huh.
Obviously no movement will take place if the argument is whether the teacher really sent the note, versus whether the mother read it.

43. When this redefinition is unsuccessful, the mediator redirects from Peter to his mother. The form of this question is useful since it asks Carol to talk about what she does want rather than what she does not want. Clients can talk for a long time about all of the things they do not want. However, I am not very helpful in not getting what people don’t want. I am more useful at helping people get what they do want. The purpose of this question is to get Carol to articulate a goal that Maria can help her attain. If this is successful it should cause a small shift in Carol’s blaming posture and create some space for forward movement.

44. When Carol uses the question to repeat her blaming strategy, I redirect from the what to the how. I first asked Carol what she would want from Maria and when Carol does not answer the question I switch and ask how Maria could work with Carol. This is two forms of the same question with the same purpose of moving the client into the future discussion about what could be different rather than recycling all of the failures of the past.

45. The mediator is doing some reality testing as to what each can control and also setting some clear role boundaries. Carol appears to feel that Maria has crossed her role boundary in going to the principal, and Carol is also crossing the parents’ role boundary by criticizing Maria’s home and family life.

46. I attempt to strengthen the validity of the school-home role boundaries by noting that Maria can control at home and Carol can control at school. They can cooperate while maintaining the integrity of each person’s role. Here I am naming the underlying conflict and surfacing the driving force of the session. By explicitly pointing out that each is invading the other’s role I am hoping to help them see the advantage of a mutual withdrawal from each other’s domains.

Mediator: What can, what would be most helpful for Peter’s mother to do to, in fact, reinforce the learning in the classroom?

Carol: For him, for her to reinforce? I think basically if she would, you know, ask to see his work when he comes home at night and, “What did you do today? Show me what you did today. What do you have to do tonight before tomorrow morning?”

Mediator: So would it be helpful for you if you got some indicator back that indeed either Mother or Dad had seen the work?

Carol: Uh-huh. I don’t think they do, and when I ask them . . .

Mediator: That’s beside the point. Would it be helpful to you in the future if you got that information back?

Carol: Definitely.
Mediator: Okay. Now, Maria, how could that operate? What would be a good way for you or your husband to be able to sign off or in some way to indicate that?

Maria: Well, first I would have to know what Peter didn’t bring home, all the notes he’s supposedly not bringing so that I would know the difference between the kinds of homework. What I would do is to sit down with Peter before supper, because we’re always together for supper. On occasions we are out; on the weekends we’re usually out. During the week we’re mostly home together for supper. And before supper, sit down with him and ask him, you know, what has he got for homework and what is the make-up and what is the regular.

Mediator: Huh-huh. Now, it may be useful not to have Peter carrying notes. Perhaps it would be more useful if the material could be marked with an $H$ for homework or an $M$ for make-up. (to Carol) You could just put that mark on them at the end of the day. So he brings them home, then he doesn’t have to lose a note because he’s got his homework. Apparently he does bring the work home. What seems to happen apparently, is . . .

Carol: Half the time he leaves it at school.

Mediator: Okay. Part of the time he leaves it at school.

47. I return to Carol asking what Maria can do in her domain to reinforce what Carol is doing in hers. This maintains the mutual focus I have achieved and indicates that each can request a change in the other’s domain but cannot invade it.

48. There is an edge to Carol’s reply, but for the first time she does offer some positive response.

49. The mediator ignores the critical aspect of Carol’s response and makes a process suggestion that could ease the role boundary problem. It is perfectly appropriate to make this type of process suggestion. I make a sharp distinction between this type of process advice and content advice, which should be avoided. The clients should always be left in control of the content. The limit of the mediator’s intervention is to suggest how it might be done.

50. Carol denies the parents’ ability to do this, so I intervene and restate a positive, future-question about a positive change.

51. Carol’s brief but clear response allows me to engage Maria back into the discussion by asking her how the process proposal would work from her and her husband’s perspective. I bring the husband in at this point to remind Carol and Maria that his view must also be considered. When a third party is influential but not present, it is useful to take him into account.

52. Another positive move by Maria who is making a number of small moves that could lay the groundwork for change. Carol reciprocates none of these moves. If we are to find the direction of the solution, Carol must also make some positive proposals.
This process suggestion reminds the parties that Peter is powerful in this situation and, if they wish to disempower him and return him to his son/pupil position, they must cooperate.

The mediator moves to Carol with another process suggestion which, I hope, she will pick up and develop into a positive proposal of her own.

Carol does not. Instead she maintains her attack and blaming.

Note the slight change, or reframe, the mediator makes in this summary from “half” of the time to “part” of the time. This acknowledges that Peter does not always take the homework home, but at a lower frequency than Carol suggests, which helps to balance the position between parent and teacher.

Carol: I've asked him about this suppertime business. I've said, “Can you make sure that Mummy or Daddy helps you with this homework at home when you go home?” And he tells me that they’re never there. He has lunch in front of the TV, takes supper with the housekeeper.

Mediator: I think we’re making Peter much too powerful here because you see . . .

Carol: Yes.

Mediator: . . . because you’re getting one story from him, right?

Carol: Huh-huh.

Mediator: . . . and the parents are getting another story from him. He’s in control of the situation because he’s the only one talking to everybody. I think perhaps that it’s time for the adults to be in control of the situation . . .

Carol: Huh-huh.

Mediator: . . . and we only get that if you two are both comfortable to talk to each other. Now if we could eliminate the notes but have some indicator, (to Maria) you then would know what he has to do and what he hasn’t done. You could then begin to make an assessment of how much undone day work there is.

Maria: Huh-huh.

Mediator: At some point then you could check in with Carol and find out the extent to which this is normal, or high, or low. I mean obviously every kid has some mistakes. Sometimes they don’t do their homework . . .

Maria: Huh-huh.

Mediator: You’d want to know: Is what Peter’s doing normal, is it more than normal or is it less than normal? That gives you a chance to measure it and to monitor it. So if (to Carol) you did that and (to Maria) you then knew, what would you do or could you do if you discover the amount he’s bringing home is higher than normal?
Maria: Well, I would, I would want to know what he’s doing at school, why
is he not doing the work in school. My understanding is that he’s given extra
work, and so it’s too much for him to do at school. If that’s the case, I think
it’s unfair.64

57. Carol again crosses the role boundaries and attacks the way Maria’s home
is organized. I have not yet succeeded in helping Carol to let go of her
anger, her driving force. The mediator must control what dialogue is useful
and appropriate in the mediation. The reality is that how Maria runs her
home has nothing to do with Carol—unless it interferes with Carol’s role
as a teacher.

58. Since I do not want to repeat the blaming cycle yet again, I try a different
strategy of reinforcing my earlier idea that Peter is overly powerful as a result
of the parent-teacher dispute. I define Maria and Carol not in their parent-
teacher roles, but as adults. As adults there is a better possibility of collabora-
tion and, in this role, they share some common ground. If I can get them
to think as adults in relation to Peter, there is a good chance they will col-
laborate in finding a mutual solution.

59. I direct them to their self-interest in talking directly to each other, adult to
adult, as a precondition for solutions. If successful, this should shift the dri-
vling force of invading each other’s roles.

60. This suggestion puts the mother in control of those parts of Peter’s educa-
tion in which she does, indeed, have some say. Placing her in control of her
domain should empower her to be more forward-looking and positive, and
less critical of the teacher. It will also maintain her in the mother role that
does not invade the teacher’s role.

61. In a process suggestion, I project an area of collaboration that is possible if
Maria feels in control and a future in which the parent and teacher are coop-
erating in talking about Peter.

62. I normalize mistakes of children at Peter’s age so as to minimize this issue.
Normalizing is a very useful strategy in reducing the impact of charges by
one of the clients against the other.

63. The mediator again mutualizes and reviews the tasks that Carol and Maria
have agreed to so far.

64. However, the mother reverts to blaming and appeals to the mediator for a
judgment on Carol’s fairness.

Carol: I have twenty-seven children in my class. I’m certainly not going to
go out of my way to make more work for one child, you know. I mean I have
a lot to do: I have three special needs children in that classroom. I have three
children that are bordering on being gifted. I have better things to do than
victimize one child and give him more work than he can do, if he doesn’t
need it.65

Mediator: Let me, may I ask you . . .66
Carol: Really to think that . . .
Mediator: . . . how work and homework are assigned in the classroom? Do all the children get the same work? Do they work in unison or do they work in groups?²⁶⁷
Carol: No. I've probably got seven steps in that room.
Mediator: Seven steps.
Carol: Seven different levels of ability,
Mediator: Okay.
Carol: So, obviously there's seven different sets of work that I have to keep on going all the time and homework is assigned in that group.
Mediator: Okay.
Carol: You see, as I say, Peter should really be in grade two. He would have the time in grade two to back up on some of these skills . . .
Mediator: Mm, yes.
(Carol) . . . that he doesn't know and doesn't have . . .
Mediator: Yeah, okay.
Carol: . . . and I think what he's doing and Mum doesn't see it, but I see children all day long. I mean this is my career, and I see what Peter is doing. He is a spoiled little boy, at home he rules, he runs the roost . . .³⁶⁸
Maria: That is really unfair.
Mediator: We don't really know that because we don't live there, do we?³⁶⁹
Carol: Well, just by how he is in the classroom.
Mediator: Okay.
Carol: Okay. Like . . .
Mediator: He acts spoiled in the classroom. Okay.⁷⁰

65. Despite the fact the mediator ignores Maria's triangulating appeal, Carol is defensive because she cannot risk that the appeal has influenced the mediator. Thus she answers the charge inherent in the appeal to straighten out the mediator.

66. The mediator ignores the defense. By ignoring both the attack and the defense the mediator can assure both clients of his balance on the issue and bring the cycle to closure. The mother knows her attack has not impacted the mediator and the teacher is aware that he is uninfluenced by it. Clients monitor the mediator's reaction to what is happening. They are, of course, interested in how they are influencing the mediator. But, they are even more anxious about whether the other participant is influencing the mediator. By attending to this concern, the mediator helps maintain a balance.
67. This redirects the discussion and places Carol back into her professional teacher role. Placing her in this role empowers her and enables her to respond in a less defensive way. At this point of the session the tension has diminished. When the tension diminishes, it is an indicator to the mediator that the client’s horizons are rising and they are ready to make some movement.

68. In the last few minutes, both clients have been in their appropriate roles and moving toward a future focus. Suddenly, Carol uses her teacher role to launch an attack on Peter. Mediation rarely proceeds smoothly. I can view this as enlarging the conflict, as a way of preventing movement, which is a signal to me that I am moving too quickly, or I can assume there is an underlying issue at work. The danger of peeling another layer of the onion is that the mediator may succumb to developing a therapeutic relationship with Carol.

69. The mediator cuts off the mother’s response with a closing statement of his own to prevent the cycle from repeating itself. This stops Maria from engaging in the fight. I close with a reality check to prevent Carol from repeating the charge.

70. I acknowledge the teacher’s classroom role and legitimate her observation of Peter’s behavior in the arena in which she can observe it, the classroom.

Carol: Just by listening to him with the children, like he doesn’t have a friend, the children don’t like him. He won’t, I’ve tried to talk to him, and we’ve done it in a class situation; how we have to work to have friends and how we have to be a friend to have a friend . . .

Mediator: What do you mean?

Carol: . . . but he has this feeling that no one likes him.

Mediator: Let me back up, let me back up for a second. You say you have seven levels or seven steps. 71

Carol: Seven abilities, yeah.

Mediator: Okay. And he’s in one of those, right?

Carol: Yes.

Mediator: How many other children in that step with him?

Carol: Probably one . . .

Mediator: Probably?

Carol: . . . and that’s a child with special needs.

Mediator: And so do you, when you say to me “steps,” do those children work in different groups in the classroom? I’m just trying to understand how it all works. 72

Carol: We may at times, yes. And, at times we may work on the same assignment but just different expectations and assignments given on that work. For instance, we’ve been doing dinosaurs. The children that are at the top end of
the room are working sort of on their own, their own speed. They’re given a text and away they go. And then as it goes accordingly with the levels. Like with Peter’s level, he can only handle one job at a time and it has to be directed clearly so he can focus.

Mediator: Right.

Carol: Because his attention span doesn’t stay long enough. The other thing with him is that he doesn’t read at that level well enough so he has to have someone with him to make sure he can read the assignment and understand what he has to do.

Mediator: Is that something that could be helped at home?

Carol: It could be helped at home, but you see, he’s always going to have . . . Mediator: How could it be worked out?

Carol: . . . have this problem because he’s not in the right level. That’s the problem.

71. This question ignores the criticism in Carol’s comments and brings her back into a dialogue with the mediator in which she is still in her teacher role and answering professionally. Note the high number of mediator interruptions as the clients are speaking. On review, this indicates a lack of control by the mediator who, normally, should be able to control client-negotiating behavior by questions rather than by interruptions. So far the questions have been minimally successful. While I realize that the questions will ultimately succeed in changing their behavior, it is difficult to manage the session until change takes place. The mutual role invasion is now clear and I try to limit this as a driving force in the session. Mediator frustration is not uncommon in such situations and it is helpful for the mediator to be able to monitor his behavior during the session and to note when he is interrupting the clients too frequently. He will then be able to identify his frustrations with the session and think more clearly about alternative strategies that may have a higher rate of success. It is much more useful for the mediator to reflect on his frustrations rather than to act on them.

72. Here, I go one down to gather more information. I probably also went one-down to control the anger I experienced when the teacher linked Peter with a child “with special needs,” which I heard as an inappropriate linkage and an attempt to use her professional standing to put down the mother via Peter. I control my anger, which means I have become unbalanced. I assume a more humble role, reminding me of the self-righteous nature of anger. Righteousness as an external force is useful in the mediator’s demeanor but self-righteousness is destructive to the mediation process.

73. The mediator redirects the issue into what the parents can do at home. This also engages the mother who, fortunately, has not responded to the professional jibe that irked me.
When Carol responds with another negative, I cut across and ask what can be done rather than what cannot. In mediation it is easier for clients to talk about what they do not want and what cannot be done. It is useful for the mediator to continually ask questions about what they do want and how they can do it.

Mediator: Okay. Are we mediating whether he should move to grade two? . . .

Carol: That was my recommendation . . .

Mediator: . . . or has the decision been made?

Carol: . . . and the principal did agree with me. But Mum and Dad felt because he had done grade two in another area that he should be in grade three. He is a tall boy for his age, so we said fine, fair enough. I'm perfectly willing and happy to work with him and bring him up . . .

Mediator: Uh-huh

Carol: . . . but I have to have the support at home.76

Mediator: Okay. How could the parents support you in . . .

Carol: I would like them maybe . . .

Mediator: . . . say, his reading level?

Carol: . . . to come into the classroom.77

Mediator: . . . For his reading level?

Carol: His reading level? Well, we could send him to the resource teacher but they didn't want that either. They didn't want him singled out.

Mediator: How could mother and father help in reading?78

Carol: By allowing us to progress, to put Peter in the resource room and give him the help he needs and therefore . . .

Mediator: Are there things they could do at home?79

Carol: They could sort of reinforce at home.

Mediator: Could they read?80

Carol: They could read. But then he needs a professional right now to take him back through the steps and do the remedial work that he needs to do . . .

Mediator: Huh-huh

Carol: . . . in the reading.

Mediator: Huh-huh.

Carol: And if he went to the resource teacher for half an hour a day, which is what I suggested, but Mum said I was singling him out and victimizing him, which, you know, it isn't . . .81
75. This reality check is also a warning from the mediator that the teacher may be pushing the situation into allowing only one solution—the transfer of Peter. This would be a loss of face for her. Hopefully, she will change her tactics as she realizes the strategy is not in her self-interest. Self-interest motivates people, and Carol is no exception. In conflict situations people sometimes become so engaged in the conflict that they ignore their self-interest. It is useful for the mediator to remind participants not lose sight of it in the pursuit of victory.

76. Carol makes a positive move of what can be done but conditions it on reciprocity—receiving more help from the parents. It does not seem that the concession she has made requires reciprocity by the mother. If the mediator looks for one client to reciprocate all movement of the other he may require the second client to overreciprocate.

77. Carol makes another positive proposal that the parents come into the classroom to see what is happening. The problem with this proposal is that it requires the parents to enter the teacher’s arena of expertise where they would have difficulty challenging it. Later we will explore ways in which this can be done with the parents having some power in the situation.

78. The mediator ignores the jab at the parents and asks a future-with-a-difference question.

79. The teacher wants more support from the parents for the changes at school, but I think it is too early to ask the mother to make a concession on this point. Instead I redirect to what the parents can do unilaterally at home.

80. I press the point with this process suggestion question.

81. Carol pursues remediation and undermines it with a jab at the mother. At this point it might have been useful to ask Maria future-with-a-difference questions about reading remediation such as: Under what circumstances would it be useful for Peter to go to the resource room? What information would you need in order to make this decision? Would you agree to Peter’s using the resource room if it was helpful to him and did not result in his being stigmatized?

Maria: Well, he didn't have problems when he was in grade two in the U.S. and I'm not prepared to accept that the difference between the Canadian system and the U.S. system is that different. I mean I believe Carol is making a mountain out of a molehill here and it seems to me that if he was able to complete grade two successfully what is so incredibly superior about grade three here? I don't understand this. I mean talking about remedial work and being in a special needs group. This is not Peter. Peter is a bright boy.

Mediator: Are you happy with his education at the moment?

Maria: Well, I'm certainly not happy with Carol's treatment of Peter; that's what I'm not happy with.

Mediator: So what would you like to see changed in his education?
Maria: I would like to see a fairer treatment of Peter . . .
Mediator: Huh.
Maria: . . . and this is what I believe Peter is not getting.
Mediator: Now Carol said a little earlier that she would like to see you perhaps come into the classroom.86
Maria: I’d be happy to do that.
Mediator: And to be able to observe what’s going on. My sense is that a lot of what goes on between the two of you is a lot of miscommunication. I could be wrong, but I sense that there’s a lot of miscommunication and I’m wondering — because I sense you both want what’s best for Peter . . .87
Maria: I’m not sure Carol wants that. I know I do.
Mediator: Okay, you do.
Maria: Huh-huh.
Mediator: Carol, I assume that you do.88
Carol: (turning to Maria) You, as a parent, have to realize that your child is not this perfect person. Children have faults. . . .
Maria: Well that’s . . .
Carol: Children have developmental problems.
Maria: That’s exactly what I mean. You have an attitude towards me and you have an attitude towards Peter . . .89
Carol: I haven’t any . . .
Maria: . . . and that is what’s getting in the way.

82. Carol’s attack forces Maria onto the defensive, again to challenge Carol’s competence as a teacher. In the defensive position she can only act to protect Peter, not think about change.
83. This strategic question is designed to remind Maria of her and Peter’s self-interest and to move her toward a discussion of the education questions rather than each party’s personal assessment of the other. This is an example of the usefulness of the strategic question when the answer speaks to the client’s self-interests.
84. Maria’s reply is another attack on Carol’s professionalism.
85. This is a rephrase of the question at 83. When the mediator does not get a useful answer to a question, it helps to ask the question again rather than ignore the original question by following the nonsequitor reply. The second question is framed by a change “in his education,” not how the teacher treats him.
86. The second phrasing of the question fails to elicit a useful reply; therefore, the mediator turns to a redirecting question. This one, I believe, should be an empowering question since it places the mother in the role of reviewer of the teacher.
87. With Maria’s assent to visiting the classroom, I reframe the source of the conflict between them as “miscommunication.” Besides being a less toxic term, it is mutual and resolvable. I do not attempt to delve into the past, but focus on their emerging mutual problem definition, “what’s best for Peter.”

88. When Maria denies Carol’s interest in wanting what is best for Peter, I speak for Carol. Intervening like this obviates Carol’s need to reply with what would be an unfruitful counterattack.

89. Neither client can resist counterattacking, placing the other on the defensive again which, in turn, causes another attack. So far I have been able to move one or the other clients into a more productive frame of mind. However, I have not yet been able to move both of them in the same direction at the same time. I must remember that the clients set the pace of change and they know what pace is right for them. I would like to move forward in an orderly fashion toward problem solving. They are still entrenched in their initial positions that continue to be the driving force of the conversation. Mediator efficiency is important, but it cannot come at the expense of client satisfaction.

Carol: I haven’t any attitude towards you.

Maria: You certainly have.

Carol: I’m trying to explain to you.

Maria: You have to realize that Peter—you have to realize what you’re telling me, you have to realize . . .

Mediator: Whoa . . . Let us accept that only God is perfect. 90

Carol: Right.

Mediator: Nobody else is perfect.

Carol: You have to see your children’s faults as well.

Maria: And I think you have to see your faults, too, as a teacher towards the way you treat children.

Mediator: It seems to me that since none of us is perfect, we all need some extra love, right? Some extra care and concern. 91

Carol: That’s right.

Mediator: And I’m wondering what might happen, what would need to change? (to Carol) What would need to change in the classroom? (to Maria) What would need to change, from your perspective back at home, for Peter to be more successful? 92

Carol: Are you asking me?

Mediator: Yes.

Carol: Well, from my perspective I think that if Mum and Dad . . .
Mediator: Now that’s what would happen at home. What would have to change in the classroom?\textsuperscript{93}

Carol: Well, just let me finish. If they were supportive . . .

Mediator: I want to . . .

Carol: . . . of what was going on in the classroom . . . towards the way I treat children.

Mediator: Okay.

Carol: . . . If they said to Peter, “Now look . . .

Maria: You see, that’s . . .

Carol: . . . I’ve had a talk to . . .”

Maria: You see now that’s the whole problem here. You’re not even answering his question.\textsuperscript{94}

Carol: I’m trying to . . .

Maria: You’re talking . . . he’s asking you about the classroom and you’re talking about the home. I think, let’s stick with the question.\textsuperscript{95}

Mediator: Okay.

\textsuperscript{90} This is a dramatic intervention to cut off the argument. On one hand, it appeals to a level that cannot be superceded. On the other hand, it normalizes the situation and helps us to think of Peter as simply another child not as the problem. It introduces a sense of spirituality into the session which is a fundamental way of reconnecting people to their own inner wisdom and speaking to that of God that each of them carries but which they have temporarily lost contact with.

\textsuperscript{91} I weave another point into the story calling for extra love and concern appealing to their caring instincts in behalf of Peter.

\textsuperscript{92} The mediator makes a mistake by asking a double question in a single statement, asking Carol what she thinks should change in the classroom (her area of control and competence) and Maria what should change at home (her area of control and competence) in order to make Peter more successful. The purpose of the question is to see what each of them could suggest to increase Peter’s success. Carol believes I am asking her to answer Maria’s part of the question. I do not understand her misunderstanding and give her permission to answer the wrong question. This causes a major disruption and fertile ground for the parties to continue the blaming cycle. It is more useful to ask each client each question separately. In that way they reply to the question asked of them rather than the other.

\textsuperscript{93} The mediator makes an attempt to redirect Carol to her part of the question. Either Carol has not heard the differentiation, or she is enjoying her response; in either case, she insists on continuing the attack.

\textsuperscript{94} This causes Maria to reenter the dialogue defending her position while launching a counterattack in which she appeals to the mediator to apply
his rules since she obviously understood the dual question and which part belonged to whom. She is right, but if I do that, I become triangulated with Maria.

95. Maria, while challenging Carol’s position, aligns herself with the mediator by asking Carol to listen to what the mediator is saying. This can be dangerous if Carol sees this as an alliance against her. Thus, the mediator must be careful to ignore Maria’s attempt and to stay focused on the mediation tasks, even though he may agree with her on this point.

Carol: If the attitude coming in from the home . . .
Maria: You see, you're still . . .
Carol: if the child knows that the parent is . . .
Maria: (to the Mediator) You see, she's still . . .
Carol: . . . not going to support the teacher, then the child is making that situation worse because he has the power . . .
Mediator: Okay.
Carol: . . . like you said. If Mum and Dad say, “Now I’ve spoken to your teacher and I want you to promise me that you’re going to complete your work today. You’re going to go back into the classroom by the other children, but you have to sit at your desk and you complete your work. When that is done, you take it to your teacher and give it to her.”

Mediator: Okay. Assume that’s all done. What would have to change in the classroom for Peter to be more successful?
Carol: I think just the understanding that he has, has a responsibility. He is responsible for himself and what he does in that classroom.
Mediator: And if those changes took place how would you change? What would you do differently with Peter?
Carol: Well, if his work was completed and he took his homework home, I mean it doesn’t have to be perfectly right as long as he’s taking it home and making an attempt then there would be no reason for me to isolate him. And if he stopped pinching other boys and girls, pulling their hair and writing on their work, then I wouldn’t have to isolate him. I mean, I do have the other children to consider too. I’ve had parents complaining to me of his behavior. They’re complaining to their parents . . .
Mediator: So what . . .
Carol: . . . about Peter.
Mediator: . . . so what would you do differently?
Carol: I would reinforce the positive, you know. If there was something positive coming through. But it won’t work until Mum and Dad and I work together.
Mediator: So, in order to turn this around, we don’t think of Peter’s behavior negatively but can all think positively about him. We also need to be able to turn around (to Maria) your perception of the classroom as negative and the teacher as negative. And (to Carol) your perception of the parents as negative. Because at the moment everybody’s on a negative kick and we’ve got to figure out some way of breaking through this.

96. Maria tries again to triangulate the mediator with her against Carol and I am careful not to say anything that might support the attempted alignment.

97. Carol ends her attack with a triumphal assertion that I agree with her, “like you said.” In effect, she trumps Maria’s attempt at triangulation with one of her own.

98. Carol then moves to a more positive note.

99. The mediator tries to move beyond this point by assuming those things are already done—"What would have to change . . . ?" This question is designed to keep Carol in her future focus, talking about how things might be different in the classroom. The emphasis here is on Peter being successful. Note how the mediator frequently attempts to redirect the conversation of the adults back toward problem solving by relating the conversation to the needs of the child.

100. The previous few questions have been an attempt to have Carol talk about a future with a difference. She has done this even though it is the parents and Peter she sees doing things differently. The mediator redirects with this follow-up future question about what she, Carol, would do differently.

101. However, Carol cannot let go of her negative attacks and uses the time to further criticize Peter.

102. I repeat my question as to what Carol would do differently.

103. Here Carol agrees to a change: she would reinforce the positive. The suggestion being that if Peter changes she will deal with him more positively. However, she undermines this small change by demanding the parent also change. Normally, the additional demand of parental change would cause an immediate rejection of the parental change by Maria while she ignores the former productive suggestion. Therefore, I look at this answer differently and see within it an opportunity for developing a collaborative scenario. It is a useful mediator skill to be able to make an interpretation different from the obvious (also known as a reframe) of a proposal to keep the conversation productive. This highlights the point that mediation is the management of other people’s negotiations. We strive to help each client be a better negotiator.

104. This commentary about the problem shares responsibility for change between both parties. In this way I validate the claims each has presented within the problem definition: How can we all change for the better to Peter’s benefit?
Carol: Well, if Mum and Dad could make sure that homework came back done, but not them doing it, him doing it, then I think we could start a cycle, you know, of working together.  

Maria: I don’t hear what you’re going to do, quite frankly.  

Carol: Well, well, I can’t do anything . . .  

Mediator: Maria, Maria.  

Carol: . . . until you both . . .  

Mediator: Maria let me ask you what would you do differently?  

Maria: As, as Peter’s mother?  

Mediator: Yes.  

Maria: You see, I don’t see Peter that way. I mean, the Peter that Carol describes is a stranger to me.  

Mediator: It’s a very different boy.  

Maria: A different boy.  

Mediator: Very often . . .  

Maria: The boy that comes home crying because of this teacher. He is very unhappy; he feels left out. He’s in a new country; he is trying to make friends.  

Mediator: What could you do differently for Peter?  

Maria: I, for me, what I would do differently for Peter is spend more time with his homework.  

Carol: That’s all I’m asking.  

Maria: Carol, I am not interested in what you are asking, quite frankly.  

Carol: Then how can we resolve this?  

Mediator: (to Maria) So you would agree that you would spend more time with him on his homework and help him to understand and to find out the causes of his difficulty, right? Because children are not naturally bad. Children are naturally good. Children naturally want to learn. If they don’t want to learn and if they’re not learning, there is a reason for it. It doesn’t come out of thin air, and it would be useful if we could figure out what that reason is, yeah?  

105. Carol makes a positive statement (albeit a criticism of the parents is lodged within it).  
106. Maria does not hear the positive content but reacts to the criticism and to Carol’s lack of sense of responsibility for the problem.  
107. The mediator breaks the cycle that is winding up by asking Maria a question about the future with a difference that she can control.
108. Here the mediator acknowledges the validity of the mother's observations about the difference she sees in Peter at home versus what Carol sees at school. I hope that by validating her position I will help her to avoid the need to respond to Carol.

109. However, Maria has a need to defend Peter and respond to Carol's attacks on him and paints a picture designed to win the sympathy of the mediator. I pose the question again as to what Maria can do differently to place change in her lap. Questions are the most important tools of the mediator and we use them to redirect the conversation from the unuseful to the useful.

110. Maria makes a major move. By agreeing to spend more time with Peter on his homework, she will gain a clearer insight as to what is happening. If some or all of what Carol is saying is true, then Maria will come to acknowledge this and take some action. If she plays a greater role in monitoring Peter's homework, he will have less chance to play off school and home against each other. The mother can use this to take charge of her situation vis-à-vis Peter, and I must find a similar strategy to encourage Carol to reciprocate Maria's move.

111. The tone of voice that Carol uses challenges Maria and, in isolation of the rest of her negotiating behavior in the dispute, appears to be positive about creating change to resolve the problem. While the question is a good one, the mediator cannot answer it for fear of triangulating with Carol. But, it would probably have been useful to try to have Maria answer it.

112. I redirect with a summary of the mother's proposal while at the same time lessening the impact of the attacks on Peter by normalizing his situation.

Carol: Well, Mum's saying that he goes home and he's unhappy. I mean he comes to school unhappy. His biggest lament is when he hears the other children talking about them going to hockey and they're doing this with their dads. He doesn't get to go anywhere with his dad because his dad's very busy. So we've talked about this. I took it as a class project and we all talked about how some daddies have more time at home than other daddies . . .

Mediator: Okay.

Carol: . . . and what they did and how I understand. We've got a daddy in there that's an eye surgeon and he's on call almost all day and all night so that other child is in the same situation.

Mediator: Huh–huh.

Carol: So I tried to put the two boys together so that they could discuss this. But you see I think with Peter, he's moved around such a lot and he's, yes, he is a sad little boy. He's a sad little boy. He never has anyone over, you know, from the class over to his home to play or for lunch on a weekend so that he can make friends.
Mediator: Okay. Now let’s take a step back now. (to Maria) You’re going to work with him more on his homework.117

Maria: Yes.

Mediator: You’re going to find out where he’s at in terms of his work. You’re going to be able to differentiate between when he’s bringing make-up work that he didn’t do in school that day versus when his homework is the same as all of the other children in the class have, right? Okay. Now I’m not sure whether you should actually go visit the classroom at this point . . .

Maria: Well . . .

Mediator: because I’m not sure that you two yet . . .

Maria: Well . . .

Mediator: . . . have a relationship that would make it work.118

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114. Carol simply continues her cycle of attacks on the parents and their lifestyle.
115. This “Okay” is an attempt by the mediator to place a period at the end of Carol’s comments signaling her to close. It has the advantage of not being a mediator override of the client’s conversation.
116. It does not work. Carol continues but seems to be offering some useful information regarding another student in the same situation (in Carol’s eyes) as Peter. So, I allow her to continue without interruption.
117. However, Carol turns this new information against Peter and his family so I intervene and direct a question to Maria to confirm her positive negotiating behavior in proposing to work more with Peter on his homework while leaving Carol’s new attack unacknowledged. When a client is committed to a strategy—in this case an offensive against the parents—the mediator’s best opportunity of gaining control of the conversation is to summarize the agreements reached so far that effectively negates the client’s attacks. From this position the mediator can then ask the client what she can do differently in the future.

As a person, I had another negative reaction against this attack on Peter and wondered, at that moment, whether he could survive in Carol’s class. Following this thought would have led me into the position of judging Carol’s ability as a teacher and pushing me into a judge role rather than mediator role. So, I thoughtfully placed it out of my mind.

118. This is a paradoxical intervention. I am telling them not to arrange for Maria to visit the classroom even though they have previously agreed it might be a good idea. It is a deliberate paradox, albeit I also thought the visit might be premature. By making this statement, they will probably want to go ahead with the visit even though I recommend against it and, therefore, may make more effort to make the visit work beneficially. If this is true, it will help the solution.
Maria: Well, that’s what I want to talk about. That’s what I want to talk about. My feeling, from what I’ve heard here, and this is what I’ve been hearing from Peter; Peter has felt left out. I feel left out right now, okay.

Mediator: Because?119

Maria: Because of how Carol is handling this whole situation . . .

Carol: Well . . .

Maria: Now I don’t want you to interrupt me, Carol. I want to talk about what I’m feeling right now.120 What I’m feeling right now is that Carol’s attitude to Peter, hearing this directly, is that this is Peter’s problem; it is not her responsibility to do anything as a teacher, it’s Peter’s . . .

Carol: I never said that.

Maria: I asked you not to interrupt me. It’s Peter’s responsibility.

Carol: Speak the truth then.

Maria: And it’s his parents’ responsibility and then her life would be all right.

Mediator: Huh-huh.121

Maria: Then life would be okay. All right. So what I want to say is that no wonder Peter is unhappy. It’s everything Peter has to do. Now I think this is just a little boy; he’s eight years old. He needs some adults guiding and helping him. Carol’s attitude is . . .

Carol: That’s right.

Maria: Yeah, right Carol, you’re the teacher.

Carol: And you’re the mother.

Maria: Yeah, okay, so I already am saying what I want to do.

Mediator: (to Maria) What would you like to be different for Peter? What would you like to be different?122

Maria: I want Peter to get a helping hand.

Mediator: Okay. In?

Maria: From adults in his life.

Mediator: In?123

Maria: Well, I’ve made a commitment to spend more time with Peter to make sure that he does his homework and for me to understand what’s make-up and what isn’t. And that’s a commitment that I’m making now. I didn’t . . .

Mediator: What do you want from Carol?124

Maria: I want Carol to be a teacher. I don’t think she’s a teacher. I think she’s a child.
119. I am not sure whether this complaint is against Carol or me. Whenever the mediator is unclear it is always useful to ask a simple open question which keeps the client talking so that the full picture emerges. In this case her anger is at Carol and not the mediator or the process.

120. Maria is clear and asserts her right to be heard. This is an example of allowing clients into the “feeling realm” without dealing directly with the particular feelings expressed. Sometimes called “ventilating,” the mediator simply allows space for the feeling and moves back to the task (at 122) by asking a future with a difference question.

121. This mumble sounds more like a nod of approval to what Maria is saying.

122. The mediator intervenes when Maria appears to have finished saying what she wanted and it looked like the squabble cycle would start up again. The different-future question gives her a chance to move into a positive stance. As you read on, you will notice that having gotten her statement out on the table, Maria is able to maintain a more positive, nondefensive stance on what might be done differently.

123. A shorthand invitation to expand on her previous comment to provide more useful information. I frequently ask a question with a single word such as “in” or “because” as a means of allowing the clients to continue their part of the conversation when I believe there is more to be said. In conversation the mediator uses a bridge word with the voice rising at the end to make it a question so that the clients finish the sentence they began. This is the opposite of using a single word such as “Okay” with a falling inflection, which acts as a sentence period.

124. The mediator senses that Maria is going to move from the positive to an attack on Carol. I intervene with a specific question that suggests reciprocity. Most clients are not aware of the value of making a concession and seeking reciprocity from the other. I am also a little concerned at this point that Maria has controlled the conversation. The exchange has been useful and I did not interrupt it before now because I wanted to hear Maria through. However, the mediator must be aware of the other client’s feelings while this is happening. I was concerned that Carol might be feeling left out and therefore sought a way of bringing her back into the conversation in a positive way.

Mediator: Don’t tell me what you don’t want; tell me what you do want.  
Maria: What I do want? I want Carol to guide Peter, to give him a helping hand, to encourage him, to promote a feeling of well-being, to give him a feeling that he’s worth something. To help him spend time with other children, even to spend some time with him. She may not like him; that’s what I think. But at . . .

Carol: It has nothing to do with liking him.

Maria: . . . at least spend a little time and get over, he’s only a little eight year old boy, to get over whatever it is that’s between them, if it’s negative.
And to say, “Let’s spend a little time here to get to know each other. Here’s this little other boy whose dad is out a lot and let’s spend some time with the three of us.”

Carol: What time do you think I have in my day? You have him every other minute of the day . . .

Mediator: Carol, let me . . .

Carol: . . . but you’re never home.  

Mediator: Carol, let me ask you, Maria has now said that she will work a great deal more with Peter . . .  

Carol: She has no understanding of teaching, does she? That’s very obvious. You know, to say what I’m not doing.  

Mediator: Don’t tell me what you don’t want; tell me what you do want.  

Carol: I want her to grow up and be a mother. Now I can’t be the teacher . . .

Mediator: Is that something you want from her?  

Carol: . . . unless the child has a mother.

Mediator: Or for you?  

Carol: You know, this is getting ridiculous.  

Mediator: My sense is that Maria has said very clearly that she would work a great deal of time with Peter . . .  

Carol: Huh-huh.

Mediator: . . . on the homework and the make-up work.  

Carol: You see the problem is . . .

Mediator: Let me finish. And then I said, “What would you want from Carol?” and she said what she’d like from Carol is to be guiding, helping, supporting Peter.

125. This phrase can become the mediator’s mantra in some sessions when clients seem unable to talk except to announce all of the things they don’t like or don’t want rather the positive side of the equation.

126. I am not sure what Maria meant by the last part of the final sentence. I think she was talking about Carol, the other pupil, and Peter as “the three of us.” However, it is a reasonable appeal, which hopefully will receive a sympathetic ear from Carol.

127. Carol sees it as an attack not an appeal, and counterattacks. When this happens as frequently as in this case, the mediator needs to take a step back and ask himself, “Why can’t she let go of her anger? What can I do differently to help her focus on her self-interest rather than her anger?” It is very easy to blame the client for the continual attacking. But it is the mediator
who is charge of the process and if the client maintains an unuseful posi-
tion, it is the mediator who must accept responsibility for not finding that
something different.

128. The mediator intervenes to break the force of the counterattack by sum-
marizing the positive content of Maria’s statement that coincides with
Carol’s earlier demands. This is an attempt to remind Carol of her self-
interest in the negotiations and not to argue past a point of agreement.

129. The mediator repeats the mantra.

130. This question is asked with a note of incredulity. I want to try to obviate
Maria’s need to reply to this latest attack.

131. Carol responds angrily to the mediator’s strategy of reality testing her
remarks about Maria. There is no problem in making a participant angry
when you block unproductive negotiating behavior. One or both of the
participants will dislike some mediator strategies at different times. I can
afford to upset Carol at this point because, I believe, I have been generally
balanced and she recognizes this.

132. I summarize the moves Maria has made that were goals of Carol. This
points the teacher back to her negotiating self-interest and helps her not to
undermine the progress made so far. Here I am struggling with the “What
can I do differently?” issue discussed at 127.

Carol: Which I am doing.

Mediator: And to make perhaps some extra allowances for him.

Carol: Which we have done.133

Mediator: Okay. Now if you do that then, what else would have to change
in the classroom?134

Carol: In the classroom?

Mediator: Yeah.

Carol: There wouldn’t be any, I mean the changes would be all for his ben-
efit. If he could sit at his desk and do his work, then he wouldn’t have to
be removed. If he can leave the other boys and girls alone and make friends
instead of enemies with them, then that would unfold and he’d have a
friend. I’ve assigned a buddy to him. I’ve gone through probably four dif-
ferent children in the classroom that I, you know, put with him as a buddy
to work together to help him. But they won’t work with him.

Mediator: Hmm.

Carol: You know he either writes on their work, or he tears a page out, or
he pinches them, or, you know, he’s just negative. Well, the kiddies know
that it’s wrong and they don’t want it.

Mediator: Do you feel that he would be better off in another class?2135
Carol: I think, well, that’s one solution, to put him into a grade-two room so he’s got time to catch up the areas. But he’s going to have the same problem in there until the attitude changes at home and at school. We should be united and work together and until that happens; it isn’t going to help Peter ‘cause Peter’s setting the stage right now.136

Mediator: Huh-huh.
Carol: He’s manipulating at home and he’s manipulating at school.137
Mediator: That’s right. He’s doing a very good job . . .
Carol: Yep.
Mediator: . . . of running his world and . . .
Carol: That’s right.
Mediator: . . . and that’s pretty smart for a kid to be able to do.138

133. As I make the summary Carol proudly announces that she has done everything Maria suggested before this session. This effectively negates the mediator’s strategy and renders Maria’s movement worthless. I decide this is not an intentional strategy to undermine the possibility of cooperation but rather an attempt to align with the mediator.

134. Thus, the mediator ignores Carol’s claims and asks her what she might do to reciprocate.

135. Another paradoxical restatement intended to remind Carol of her self-interest as a teacher. I am thinking about another class in the third grade, assuming that Carol would not want this to happen.

136. Carol deftly puts the mediator’s strategy to one side by suggesting that Peter go back to the second grade. However, she picks up on the mediator’s earlier strategies and joins me in calling for a united effort while agreeing with my earlier analysis that Peter is in charge of the situation. I have the problem in this mediation of distinguishing between negative negotiating behavior and unuseful conflict behavior. One way of determining this is to decide whether the client can predict the outcome of the specific strategy. If Carol is engaged in negotiating behavior, and is applying a strategy of negating Maria’s moves so as to minimize the reciprocity expected from such a move, then the mediator must intervene to revalue Maria’s concession while seeking a relatively equal concession from Carol. If Carol’s behavior is unuseful conflict behavior, then the mediator must deal with it at that level and help Carol see the reality of Maria’s moves without, at this moment, adding the appropriate reciprocity required. The reciprocity is raised after Carol recognizes Maria’s movement.

137. Carol repeats the mediator’s earlier statements as her own. At this point the mediator can assume that the client is trying to realign herself with the mediator. She is doing it in a productive way by restating the mediator’s comments with which she agrees.
This intervention is designed to raise Maria’s esteem of Peter. Hopefully, Carol will pick up this mediator thread and add her agreement thus easing the situation.

Carol: He needs to know that we are now on to him and we’re going to change it by working together.\textsuperscript{139}

Mediator: But you’re not on to him.

Carol: Well, I certainly am.

Mediator: I don’t think so; I don’t think anybody’s on to him at the moment.\textsuperscript{140}

Carol: He’s a lonely little boy and he wants a lot of affection.

Mediator: Yeah.

Carol: And he’s not getting it.

Mediator: Okay. And I think part of the problem is that there is no cooperation among the adults.\textsuperscript{141}

Carol: And that’s what I’d like to have.

Mediator: Okay, but cooperation is something you do, and (to Maria) you do, right?\textsuperscript{142}

Carol: Huh–huh.

Mediator: And I hear a lot about what each of you say you will do but I also hear that neither of you believe the other one is capable of doing it.\textsuperscript{143}

Carol: Well, I know she has his interest, but I think Mum’s probably—I would like to speak to Dad too—it’s where I’d like to get it out. I’d like Mum and Dad to sit down . . . \textsuperscript{144}

Mediator: Huh–huh.

Carol: . . . and I would like Mum and Dad to also sit down with the resource teacher that’s tested him . . . \textsuperscript{145}

Mediator: Okay.

Carol: . . . and hear it from another opinion. And I would like them to come in and observe. We have a room that is a room we can use. I can take a certain group in there and they can watch from a window that’s a one-way mirror that they, that he can’t see them and just let them observe, but you see, I have the feeling that no matter what I do in that room . . . \textsuperscript{146}

Mediator:Oops, beep, beep. You have some good ideas there . . .

Carol: Okay. You were just about to throw them away but that’s okay, it’s all part of the process.\textsuperscript{147} (to Maria) Would you like to be more involved in that way?\textsuperscript{148}
139. Carol maintains her cooperative stance by joining the mediator in calling for change.

140. The mediator challenges Carol’s perception in a way that acknowledges what she has said, but not the conclusions she has drawn. I want her to discuss how things can change in the future involving everyone not just Peter. Carol is still blaming Peter and not looking at the adults’ roles.

141. The mediator closes by laying the responsibility on the lack of cooperation between both the clients. This is a clear hint of what needs to be done next and underscores the mediator’s ignoring Carol’s response regarding Peter at 139.

142. The mediator points out that cooperation demands action by both of the adults, reinforcing the need for joint change.

143. And challenges them that each is seeing only one half of the picture by denying the ability of the other to change, reinforcing joint responsibility.

144. Carol begins with an acknowledgment of Maria’s mother role but goes on to bring the father into the picture. This might be a way of expanding the conflict so as to slow down movement. This is a signal that I am moving too fast for Carol. However, I can see the clock and time is running out for this session.

145. Carol also asks for the parents to meet with the resource teacher, which is useful, since the parents would be able to get another opinion on the matter.

146. Carol has made a number of very useful proposals but cannot resist the temptation at the end to defend herself and her integrity as a teacher.

147. The mediator quickly intervenes, hopefully in a humorous way, and points out the likely outcome of her final statement while acknowledging all of the good things she said prior to that. I make a point of normalizing the negotiating behavior I am criticizing so as not to increase her defensiveness.

148. The mediator follows up by involving Maria to check out her support for all of Carol’s positive proposals. The mediator’s acknowledgment of the value of Carol’s proposals makes it possible for her to accept my intervention stopping her.

Maria: Yes, I would like to actually see what’s happening with Peter in the classroom.  
Mediator: Huh-huh.

Maria: And I would, I think it is a good idea to look through the one-way mirror so that Peter doesn’t know we’re there . . .

Mediator: Yeah.

Maria: . . . and he’ll be at his most natural. The trouble is, I want Carol not to know we’re there too.

Carol: Fine with me.
Maria: I want to see how Carol handles the situation without knowing who’s there.

Carol: Yeah, I feel what’s at stake here isn’t Peter; it’s my ability as a teacher is what she’s questioning.150

Maria: And you’re questioning my ability as a mother.151

Mediator: Oh absolutely. Your status as a teacher is under question . . .

Carol: Huh-huh.

Mediator: . . . and your status as a mother is under question.152 Now when either of you or both of you can let go of those two things, then you can begin to cooperate.153

Carol: I don’t mind when they look; I don’t need to know if she’s there or not. I have no problem with that.154

Mediator: All right. Let’s do this. Let’s do this.155 In the course of some-time in the next week we’ll set up with Dr. McNulty about your being able to go in and observe the class behind the one-way mirror. (to Maria) I’d ask you also to talk to the resource room teacher. Ask what it is they do in the resource room, what it’s all about. (to Carol) I’d like for you in these next weeks to mark his paper—no notes, but just to put a small M somewhere on the page that says “this is make-up” and H for homework so that Peter’s not aware of it. (to Maria) He brings it home with no notes. You know what to look for and then you’ll work with him more intensively on the homework. You’ll observe during the course of the week and you’ll consult also with the classroom resource teacher. If you do that, then we get back together again next week. I think what we might be able to do, then, is we might have a much better picture of how the adults can take control of the situation, right? And that means how you can cooperate around the situation and, hopefully, you’ll both have a lot more information the next time we meet to be able to think about how you can cooperate together. And if you could do those three or four things between now and then, let us then get back together in about ten days and continue the discussion and, at least, each try not to say negative things about the other to Peter.

Maria: Nothing at all.

Mediator: It will be difficult but try not to, okay? And so I’ll let you set it up directly with the principal about when you come in and I’ll tell him what we agreed to so that he’ll know. And you can just go in and do it, all right? And then you’ll both do your pieces around the homework and the make-up work, and we can get some handle on monitoring this problem for Peter’s benefit, okay?2156

Carol: A-huh.

Mediator: All right. Thank you.

Maria: Thank you.
Maria replies positively although there is a hint in her voice that she is skeptical of Carol because she also does not want Carol to be aware of the observation.

Carol makes a crucial statement, the recognition of Maria's role invasion. Thus in the final moments, she has uncovered the issue underlying her position. It has emerged organically from the client through the protracted interaction with the mediator.

Maria reciprocates that the same is true for her. She acknowledges her sense of role invasion. Now that both have identified their underlying issues, the mediator can validate their fears in the next intervention.

The mediator immediately acknowledges their feelings and makes it a point to be shared and jointly overcome.

The mediator suggests how they might proceed jointly, by pointing into the future and cooperation.

Carol agrees to the proposal, withdrawing her complaint about Maria. The mood in the room has changed noticeably.

It is too late in the session to begin any negotiations about the presenting problem: Peter's behavior. It has taken the entire session just to peel the onion to this point, but the issue, once exposed, can be laid at rest in the following session. Therefore, the mediator begins a reviewing summary of the points of agreement made during the hour. He reminds each of her appropriate adult role. He spells out the tasks for the intervening time before the next mediation session.

In the final statement, I reinforce how difficult the process may be for each, but have the assurance that each will cooperate. Without making a big deal over the problems of the past, I look at what the future might be like without the problems they have created for each other. The final word is the affirmation of Peter's needs.

**COMMENTARY**

This case illustrates a number of the organizing principles: finding the central issue, process suggestions, the clients' metastories, and teaching negotiating skills. These have been covered in previous chapters; the principal lesson here is that of roles and that will be analyzed in this section.

**Understanding How Roles Affect Mediation**

As this case unfolds, an interesting problem emerges: How the mediator maintains appropriate role behavior in the clients. In our daily life each person plays many different roles. Each role is defined by the particular task needed at a particular moment. We may move during the day from parent, to employee, from...
supervisor to subordinate, from consumer to seller. As adults we may move from spouse to child when our parents join us. Normally, as the task changes, the role changes.

Within each role we also fulfill a persona that defines the type of role. For example, in the role of parent, we may have a critical or a loving persona. In the present case we have Carol in her teacher role with a critical persona in regard to Peter. The combination of role and persona dictates the way we behave and the way we respond to each situation. When a child breaks a cup the critical parent responds quite differently from the loving parent. Understanding the differences is useful to the mediator in being most efficient to the clients. With this understanding we can also begin to understand how, as a mediator, we can influence the role each clients adopts in the process, and to thoughtfully move the client into the most appropriate role required for problem solving and negotiating agreements.

Carol and Maria come to the mediation as teacher and parent. Carol at first projects the competent educator role and helpful persona while Maria projects the concerned parent. However, as the session proceeds, Carol slips into the critical teacher, and eventually, into the critical parent role. Maria also shifts as time goes on, into a defensive parent and then scolding educator. Thus they frequently invade the role of the other. Maria, in complaining to the principal rather than dealing directly with Carol when the problem first emerged, invade Carol’s teacher role. She moves into an educational expert role when she criticizes Carol’s teaching ability. Carol, in turn retaliates by constantly invading Maria’s parent role and attacking her parental behavior—and the behavior of the father—at home.

Each of the clients then adopts a defensive position against the other’s role invasion. This puts the entire conversation in an essentially defensive context. Obviously, their definition requires agreement with the adage that attack is the best defense. While they are in their equally defensive positions, resorting to offensive attacks, problem solving is impossible. Therefore we can see that I make frequent attempts to shift the roles and personas of the clients. I try to move them into their caring adult roles: Carol as an adult, caring teacher and Maria as an adult, caring mother. Whenever I am successful in moving both clients into these roles at the same time, productive movement takes place.

The role is the mind-set of the person. To change the role successfully the person must change the mindset and see the world from a different perspective—from defensive parent to caring adult. The new mind-set is communicated to the other persons in the field of interaction who respond accordingly. Each role contains more than one persona. I can be playful expert or serious mediator. The role is modified by the persona I adopt within the role.

As we have seen, individuals play many roles each day and while in each role, we can change personas with different results depending on the specific persona we adopt within the role. Each individual designates which role to be in at any
given moment. However, the other actors in the field of interaction determine whether we can sustain that role. When my children were young, I could adopt the stern parent role very easily. However, I could only sustain it if (1) the girls did not laugh or giggle and (2) Gretchen also took a similar role. If the girls took me lightly and engaged me in their giggling, or if Gretchen asked me to “lighten up,” it was difficult for me to sustain the stern father persona/role I had designated for myself.

From this I suggest that, to accomplish the task defined by the role, each person must (1) be in the appropriate role, (2) be in a consonant persona, and (3) the other actors in the field must cooperate in maintaining the role and persona. If any of these three requirements is not met, the tasks associated with the role cannot be completed. Role/persona maintenance has significant implications for mediation. If the tasks of mediation are to be successfully accomplished, then all actors must all be in their appropriate roles. Let us examine the roles in mediation.

The mediator must be an expert. I would suggest that the expert mediator is an adult, professional, process manager, engaged in nonjudgmental problem solving, balanced and future focused as he manages the client’s negotiations. The expert mediator does not take sides, give advice, align with one participant, offer opinions, conduct therapy or practice law. The persona of the mediator is caring adult, curious regarding the data, and a-responsible regarding the outcome.

The participants to be successful should maintain a role as an adult (such as parent, teacher, business partner, etc.), future-focused, solution-seeking disputant who cares about the continuing relationship with the other disputants. The successful participant does not fill an inappropriate role such as spouse when talking about parenting, or seek a judgment or vengeance, or want to focus on the problem and the past. From this we might say that for a mediator to be successful, along with all of the technical information and conflict management skills, he must be able to position and maintain himself and the participants in their appropriate roles and personas.

Let’s take a look at the standard roles of mediation participants in family disputes. In a family mediation the participants’ roles may be adults, children, spouses, parents, siblings, or kin. (Kin is used here in the sense that one child might identify herself as a Smith—the father’s family of origin, while the other child identifies herself as a Browne—the mother’s family). A further refinement includes such role designations as eldest son, favorite daughter, heir to the family’s honor, avenger of its losses (James P. Carse, *Finite and Infinite Games*, Ballantine, 1986, p. 72).

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How the Mediator Uses Language to Help the Clients Change Roles

When the participants adopt the wrong roles, it is the language of the mediator that helps switch them into their appropriate role. For example, when talking to a couple about their self-interest, the mediator might say, “Well, what do you want, Michael?” “Tell me, Debbie, what do you want?” Here the participants are addressed by their first names—the normal usage between adults. When talking to the same couple about the parenting, the mediator might say, “If the children are living with you, how much time should they get to spend with their Daddy?” When talking about the children, the mediator addresses the clients as mother or father. This language use is, of course, modified to match the language the parents actually use in the session.

However, the appropriate role is only part of the equation. For the disputants must also be in the appropriate persona. The defensive teacher is likely to be accompanied by a vengeful, hurt, or frightened persona. The disputants might be in the little boy or little girl persona. It is hard for divorcing couples to negotiate about the future parenting of their children when they are in the spousal role and any of these negative personas. The persona of the disputant can affect a switch in the persona of the mediator. A little girl behavior on the part of the woman may bring out the critical parent persona of the mediator. Since the conversation participant can only maintain a role as long as the other actors in that conversation accept the role, the mediator, as the primary actor in a mediation setting, has the greatest influence in determining the roles of the participants. In addition, the mediator’s awareness helps him stay in the appropriate role and use the appropriate language to keep the other actors in their appropriate roles.

Depending on the nature of the dispute there are other appropriate roles. In the present case, we can say that there are the teacher and parent. The ideal personas are caring adult, future-focused, with a clear sense of self-interest. It is unlikely that both participants are going to maintain their appropriate role/persona at all times. In fact, their normal interaction is likely to trigger shifts into inappropriate roles. For example, a review of the transcript indicates frequent shifts on both clients’ part in response to something the other says. The task of the mediator is to maintain the participants in their appropriate role and persona. He does this by continually monitoring his own role/persona and by using language to switch the participants back into their appropriate roles.

When the Client Determines the Mediator Role

Just as the mediator can work to keep a client in a specific role, the client can also work to keep the mediator in a specific role. Indeed, most clients want the medi-
ator to be a judge. When one spouse asks the mediator, “Don’t you think that’s right?” he wants a judge not a mediator. When the wife asks the mediator, “What should I do with a father like that?” she is asking for a judgment or advice, neither of which are within mediator roles.

Some clients are very adept at moving and holding the mediator in an inappropriate role. Mediators with a therapy background are easy targets for a client who wants to talk about feelings in order to avoid dealing with data. As the feelings are expressed the mediator slowly but surely slips into the profession of origin and becomes a therapist. While the mediator is in a therapist role no negotiations will take place. Clients seeking advice easily seduce mediators with a legal background. When the client asks, “Well, what do you think I should do?” and the mediator begins to advise her, slipping into the lawyer role and again, no negotiations take place.

Returning to the present case, we can see that the persona-role factor played a crucial part in the way the two carry on their discussion. As the mediator, I could not hold them in their best roles for much of the session. The role invasion was the underlying issue that kept them in dispute, not the presenting problem of Peter’s behavior. This fact becomes obvious halfway through the session, and I could have told them what I was observing. But I believe this would not have made a significant difference until each discovered it for herself, which eventually did happen.

Furthermore, I believe that this was the appropriate layer of the onion to peel down to. Now there might well be more layers that I could uncover. I could hypothesize that Carol was really a frustrated mother who would dearly love to be a stay-at-home-mom and, therefore, resented Maria who could be, but gadded about instead. And that Maria was really a frustrated career woman forced into trailing after her diplomat husband and never able to assert her own abilities. These are reasonable hypotheses, but to follow them would take me into a therapeutic role, not a mediating one.

Finally, one could say that a kind of transformation took place when each could admit her fear-anger. It meant making each one completely vulnerable. And from mutual vulnerability, change could begin to take place. However, this transformation was serendipitous to the process, not its goal.

In review of the strategies I used, I can say that my frustration level rose dangerously on several occasions, as noted in the transcript. Only by restoring my faith in their essential goodness, could I keep my own feelings in check. I drew on my theory of the power of the future with a difference: What that future might be like without the problem. By returning to this theme like a mantra, I kept my focus and eventually drew Carol and Maria into the future focus. Successful mediation is not magic, although it sometimes has magical effects. It is the ability to draw on the organizing principles from a solid theoretical base that keeps us on track. This case demonstrates why we must never give up.

Gabriele Link at the University of Heidelberg, Germany, pointed out to me in a private conversation that the transcripts lack an essential part of the process:
the tone of voice. She noted that the printed words often seem cold when, in viewing the videotape, the tone of voice and demeanor of the mediator is very gentle and caring for the most part. Therefore, in reading this excerpt without the tape, imagine these words being spoken in a very gentle, caring tone of voice, most of the time.
Conclusion

Participation Feedback

The authors were fortunate. When they held the taping sessions, the participants agreed to be interviewed following each session. The interviews articulated the participants’ immediate insight about the dynamics of the mediation. We can learn from what points stood out in their minds what they think made an impact on their subsequent behavior. Thus we have not only a verbatim transcript of the mediation session, and the mediator’s comments on what was going on for each of them, but also the insights of the various participants. To avoid any bias, John Haynes interviewed those mediated by Larry Fong, and Jack Dobbs interviewed those mediated by John Haynes; neither mediator was present during the interview of his participants. The interviewers asked similar questions to get a general sense of what was going on. The results are summarized and presented in the order of the chapters.

The Business of Bagels

In mediation, where conflict is bound to be high, one central problem is how the mediator can maintain a balance, a neutrality between (or among) the parties. In the case of the business partners, the first point that emerged for them was that John asked them both questions, but kept them from answering for each other. In response to Jack Dobbs, Dan remembered John saying, “Ross can speak for himself.” A second point was dividing, or partializing into manageable parts the jumble of issues that are presented in the opening statements. In the bagels case, John did not pursue the family issue, and both partners appreciated this as a way to keep the focus on the business. Ross commented that John perceived that if the business issues were resolved, the family issues would take care of themselves. Ross further saw the business issue as breaking into two parts: Dan’s concern about labor costs, and his concern about financing.
Another mediation problem is how to measure success, particularly in a high-conflict situation where a final agreement is not feasible in a single session. In the bagels case, both partners appreciated the task focus: helping them think about what information they needed in order to begin negotiations. By taking responsibility for finding the information together, it removed the personal perspective and threw it back to a business matter. Ross commented, “it became we, rather than me.” Part of success is learning whether and how the clients have shifted their perspective as a result of the mediation. The interviewer asked, “I know that you came in with pretty entrenched positions. . . . Now, knowing what’s gone on through this session, do you think anything differently about it than the way you did?” Dan said he felt “a little hopeless” coming into the session; he thought the problem was not resolvable. But because John could put the issues into compartments, and look at them dispassionately, he could “cut through the other crap.” Dan came out of it knowing “we could take the next step.” Ross saw success as setting the problems up so that the two of them could direct themselves to do what was necessary to resolve the problems of both business and families.

Finally, Jack asked what they had learned about mediation that they could use “with other people, with other disputes.” Dan thought that the third-party point of view was useful in surveying the whole problem compassionately but from a slight distance. He said John was able to see what the real issue was and how it might be resolved. Ross concurred that the third party could get past “all the nonsense” and right to the issues. They commented on John’s presence, or essence: his calmness that could bring them down a step if they got tense. Dan saw it as running the show without being overbearing. John drew things out of them that they wouldn’t have thought of themselves. Both agreed that the mediator did not need to know the details of the particular business, but about business and financing principles in general.

SEXUAL HARASSMENT

The next case, between the professor and the graduate student, was also highly charged, and had the potential for emotional eruptions. Jack Dobbs asked first what they perceived the mediator was doing to keep them “on track” and whether it was effective in resolving their difficulties. Mark Browne suggested that by keeping to the facts, John did not allow him to voice his subjective views of the student, Irene. The focus was on “the why and what of the situation,” not his assessment of Irene’s behavior. Irene expressed it slightly differently, but characteristically. John didn’t “engage me” in tearing Mark apart. He ignored her barbs, while not making her feel ignored. He did ignore her attempts to escalate things by sticking to the process. Jack reminded them of raising the “boundary” question. Mark thought that “it was almost a key” to his understanding the problem, as well as gaining an understanding about her hurt feelings. The third thing Mark mentioned was the mediator’s asking whether he could turn to Irene to
acknowledge it, “whether I would apologize.” Mark sensed that John wanted him to talk directly to Irene but he had trouble getting past the regret. He noted how it was drawn out of him eventually to “turn to her and indicate that I regretted it.”

Further probing the emotional content of the session, Jack asked, “Irene, you were upset. Visibly upset. Do you think that [John] should have got down further in what you were feeling?” Irene broke the question into parts. First was her feeling of indignation; not dealing with that was not a big loss for her. Doing so, she said, would have just gotten her more indignant. Second was that John did deal with her feeling of being labeled as a crazy person, making wild allegations. That “was the big one for me.” Somewhere in the session she felt equalized in this. “I got some recognition. Some power.” She felt validated even though John never dealt with the actual allegations. She felt believed, but that maybe it was not about truth, being right or wrong. Irene didn’t feel she was being blamed, but simply that they were two people with two different ideas about what had happened.

Mark concurred that each could be right, and that they just were not looking at the events in the same way. Irene elaborated further, referring to the point when “I was so sad and when I was crying. He didn’t belabor that, didn’t say, ‘Oh, you must be feeling terrible.’” She said, “We didn’t sink into that.” Mark added that they didn’t “sink into allegations either,” that John stayed out of that also. By not trying to ascertain the “truth” about any of the allegations, John allowed them to move past them. What was important for Mark was to recognize Irene’s feelings without addressing the specific allegation. The reader can go back to the transcript and see just how this transformation took place—without going into a therapeutic relationship.

Jack Dobbs was interested in their perceptions of success of the session, particularly how John “ensured that everyone was going to be left with a high level of integrity.” Both commented that they never felt blamed or that they were “bad people.” By the end of the session, Irene felt that the situation was one of misunderstanding, but now the two of them had a way of figuring it out. She said she understood Mark wasn’t predatory, “he was being him and unaware of it, but now he’s going to be aware of it.” Mark felt safer with the clarification of the boundaries that he had crossed inadvertently. Before the mediation, he wasn’t aware of any boundaries, let alone their importance to Irene. He said John helped him to understand Irene’s hurt feelings by graphically talking with his hands, pointing to the boundaries, first here and then there. In this case, there was no need for a formal agreement—indeed an agreement would have been counterproductive. The two needed to hear each other, to acknowledge their misunderstanding or miscommunication, and tacitly agree that the situation would not recur.

The harassment case demonstrates how important language and metaphor are in understanding the problem. Both parties entered wanting a judgment of how innocent they were, and how blameworthy the other was. The interview reinforced how the mediator’s language helped the two step over these needs to find another way out of their difficulty. Each could reframe the issue from harassment to one of misunderstanding, specifically of the importance of boundaries.
The two families in conflict over the behavior of their sons were interviewed by John Haynes who began with a general question about the mediation process as they experienced it in the session. Brian opened with a statement of the relief he felt when he knew that having the mediator present would “put a lid on things” and get the adults listening to each other. They needed to “get rid of the anger” and let reason enter. Ron saw it as a structure that assured civility. He felt safe even though he still felt angry and hurt, but that he would not become overcome by his anger, or be physically threatened. One of the wives added that it was important to leave with something positive, if only that the husbands would agree to restrain themselves.

To measure success in this case, John added a specific question to explore the timing of any negotiations. “What would have happened if at the point [toward the end when compensation was mentioned], the mediator had said to you, ‘If you were to share the costs, what would the percentages look like?’” Ron reaffirmed his comments in the session, that he would need some time to discuss it with his wife. He thought a discussion of shared costs would have been premature for him, that he wasn’t “quite ready for that.” Katherine agreed and pointed to Larry’s question about putting themselves in the place of the other parents—that it was their son with the broken tooth. That got her to thinking, but she was not ready to make a decision about the money without considering it fully and talking to her husband.

Brian signaled his change of initial attitude when he thought it was all Joe’s fault. By the end, he recognized that they had been neighbors and friends for a long time, and both knew what it is like to have teenage sons. He would be willing to look at 50-50 split instead of 100 percent from the McDougals. John asked specifically, “Would it threaten you if you were forced to say a number at that point without being able to discuss it with your wife privately?” Brian answered that he would not have stated a number, that such a request would cause a bigger problem (between him and his wife). He reminded John that he had been reluctant to come to mediation in the first place, but was more agreeable now, and hopeful of resolving the issues over the boys and the money.

Cynthia concluded by saying she was glad when she saw Katherine had shifted in her perspective and was more able to appreciate the Andersons’ feelings. She also stated that she would not want to agree to a figure without first talking it over. But after the discussion they had shared, she could see that “right, Joey hit Adam, but Adam hit Joey” and that was hard to see when the disagreement first started. No one could say it was totally one boy’s fault.

Unfortunately, the audiotape ran out at this point, so we cannot tell what other impressions the families might have had. It is clear, however, that none of the four was ready to discuss any kind of monetary settlement at the end of the session. It would have asked too much movement from them in a single session, and assumed solidarity between husband and wife that might not exist. The les-
son here is for the mediator to follow his instincts and listen intently to the readiness of the parties to proceed. The mediator must honor the most conservative party of a multiparty mediation and not try to force negotiations prematurely.

**PARENT-TEEN CONFLICT**

The McDougal family came for a second mediation session with their son, Joe. Of all the cases reported here, this was the one most likely to become a therapy session. Readers with a therapy orientation will see opportunities, and all readers will see the differences between a family mediation and a family therapy session.

In answer to a general question about process in the session, Joe revealed his change in attitude. He says he arrived “really stubborn, but by the end of it I was willing to negotiate with my parents more” because the mediator said things that convinced him he was really being stupid. Ron was also specific, “I came in with that very rigid mind-set, too.” But by the end he felt there was some hope that the parents could actually draw up a contract because they would know what to expect from Joe, and Joe would have “some idea” what to expect from his parents. Katherine was more general, saying that she did experience a shift in her attitude and her perception but not specifying what.

Jack Dobbs asked, “Was there a point that you could say, ‘Yes, this may have been where that shift occurred?’” Joe didn’t hesitate to point to the comment he made about how his grandparents treated his parents and John responded, “But they’re not on the payroll.” Katherine was not sure, but Ron said that was the point for him. He would have said the same thing, and demonstrated in more words and more emphasis on authority. He ended with the insight that if he had spoken, it would have provoked a negative response from Joe. Jack asked Joe to expand on his perception. Joe described his original thinking as “straight ahead, really stubborn.” Then it became “more in two dimensions.” The payroll comment got him to think about alternatives and he was willing to listen after that.

Jack returned to a general question about process and Katherine said one of the things that was really important for her was that “we didn’t get out of control” over such an emotional issue. She worried about getting upset and out of control, but said she never felt that was happening at any time. Ron added that he sensed John was hearing him and his point of view but also hearing Joe, so he did not feel that John was aligning with either the parents or the teenager. That was important for him. Katherine amplified her fears that the session might degenerate into a fight as it does at home when “we start off with the best intentions . . . and in five minutes, it’s all gone.” Jack asked them how the mediator accomplished this and Ron explained how John kept bringing up points made earlier in the session. “He was letting us know that he was listening.”

The interview ended at this point, and we can see how the mediator’s focus on task kept the emotions under control in this case. Readers can see how easy it could be to slip into a therapeutic relationship with this family. John asked about
the past only enough to establish what they had done to solve their problems, but
never to try to explore the past dynamics. Instead, John’s ability to listen intently
and to remember the points from earlier in the session was important for this fam-
ily to begin to listen to each other and lay aside the attitudes they came in with.
The reader can sense the change taking place and note the key points at which the
negative, blaming cycle shifted into more productive attitudes. While client
change is not the goal of the mediation, it is a serendipitous outcome, which pro-
motes the ultimate success of the mediation. One can also compare the two pro-
jections of Joe in this and the Neighbors session, and appreciate how mediation
empowers every participant to take responsibility for his or her behavior.

ADOPTION

John Haynes, who conducted the sixth interview about adoption, started with a
question about the mediator’s balance. The natural mother, Vicki, was the first to
respond and she thought that Larry was fair. She commented that he kept focus-
ing on the child’s needs rather than the adults’ personal needs and that was some-
thing all three could agree on. That focus helped her to let go of her own agenda
and look at what was best for Robert. Janice, the adoptive mother, noted that
when Larry said they had only five minutes left, it helped to home in and they
could make some positive steps. It brought everyone on the same wavelength.
John asked what Larry did that worked for them. Janice talked about her biggest
fear that Vicki would renege on signing the papers. She needed reassurance that
Vicki would sign, but until there was a statement to that effect, “I was afraid that
she would take the baby away.” Vicki responded that she needed a guarantee that
she could continue to see the baby—the exact details didn’t matter so much as
the assurance. She feared that once she signed the papers, “They’d shut the doors
and say, go away.”

When John asked what part of the process made them feel uncomfortable, Janice spoke directly to Vicki, telling her of her fear every time Vicki talked about
“wanting to be part of his life,” which Janice saw as different from “wanting to
know about him.” John reminded her that, “There were a couple of times when
Larry attempted to make that clarification. Did that help at all, or did you need
it from Vicki?” Janice replied that she recognized what Larry was doing, but it
would creep up again for her. John asked Vicki the same question and she cited
her concern when the others said, “We’re going to be the parents’ . . . Well, I’m
his parent, too.” She had a sense of the door closing, as if she was going to be sent
home. John turned to Henri with the same question. He responded that he did-


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not like the idea of the three-party arrangement. He wanted to adopt the child
“one hundred percent, period.” He wanted to make all of the decisions and not
feel coerced by any agreement with Vicki.

Janice demonstrated the dichotomy that can exist between a couple by say-
ing that she felt she had to hold herself back and be more tentative than Henri.
While she wanted to be more outspoken about the situation and her feelings, she was afraid of alienating Vicki. She felt it was “power struggles between us two,” not really an issue of access. Henri agreed about the power, and so did Vicki.

John turned next to which of the many questions Larry asked “made you think the most, or the deepest?” Vicki answered first that the hardest question was what she wanted, because she really didn’t know what she wanted. In the end she had to pinpoint what she really wanted to say. At first she didn’t want to drop anything from her general statement because she didn’t want to throw away a main point. John commented, “Yes, but until you say what you want, nobody knows how to get it for you.” For Henri the good questions were: What would it take to make this work? and How do you see this working? Vicki agreed that, “What would it take?” got her thinking. Focusing on signing a document was reassuring for her because it brought closure and a great sense of relief in the room. But she added that she found it confusing when, toward the end, Larry asked again about who they could consult. She thought that had been settled earlier and she really did not know about such things. John asked how she felt now and she said Larry did a good job because he refocused comments away from personal needs and feelings.

Another key element for the participants was Larry’s ability to partialize the broad problem and decide which problem to focus on in the session. Henri liked Larry’s style of breaking the bigger issue into smaller ones that were easier to deal with. He saw that if you deal with a lot of little things, they add up. For her part, Vicki could focus more when the problem was presented in smaller parts. She could then bring things up one-by-one and see what the main issue was for her. “It has given me the permission now to say really what I want.” Vicki appreciated Larry’s praise for their being willing to sit in a room together and work things out. It put all of them in a positive light. For Janice, it was important that Larry referred to the fact that they had chosen each other, so they must have liked something about each other to even get into such a situation. This confirms the mediator’s delving into the past, because it was a positive past that could help the three adults build a positive future.

In conclusion, each commented that there were still many details that need to be worked out. But they sensed that they had established a framework for the future—whatever that future might hold for each of them. Thus we can see how the past successes helped these three to envision a different future than they brought to the session. By careful listening, Larry hypothesized that clear assurances from both women were needed before each could move forward. The interview confirmed his judgment. As a mediator, he set aside his projections of where an agreement might emerge and allowed the parties to create their own futures.

**Teacher-Parent Conflict**

By far the most problematic mediation recorded here is that between the teacher and the parent. Jack Dobbs found his interview a continuation of the bristling
mediation itself. The participants had not yet let go of their positions and, in a sense, were continuing their fight in the postinterview. Jack began with a general question about how the mediator kept them on track, considering that they had many issues. Maria, the mother, answered at length that the session went slowly, even to the end. She thought that was because John did not get “all the stuff” out earlier. What she did like was his saying, “Don’t tell me what you won’t do, tell me what you would do.” That helped her shift from the negative into the positive, and get away from what was causing the conflict into problem solving. She also liked how he focused on how she and Carol were not communicating about Peter, her son. She had not thought of Peter as a different child in school. Further, at the beginning when Carol described Peter in school, she worried that her child might have some kind of psychological problem. But when John said this is “often the case,” she felt better because “he made it normal.”

Maria appreciated the focus on communication between the two adults and giving tasks to do to solve the problem. But, she concluded, she was angered at times when John tried to get back on track because she did not feel she was getting to “substantiate some of the accusations.” Jack asked Maria if that mattered. She said no and then pointed out that there were many issues, that the focus on Peter’s homework was not really the main issue, but it became the main issue. She paid John a compliment of being the “master in the chair.” Jack asked her to explain the comment. Maria said that John did not really listen to negative or “reactionary” remarks. By ignoring them, he “deflates the person immediately. Like, you can’t go anywhere with it.”

Carol, the teacher, remained quiet throughout this time. She entered the interview by going back to the slow beginning, saying that she supposed it takes time to “dump all the garbage” because they were hearing from each other for the first time. She noted that John asked Maria to go first because she is the mom, and when it was Carol’s turn, she didn’t have time to give the full picture before he got into the homework issue. She would have preferred “to total up the whole program area.” Basically, she said, if she could have given “my little report at the beginning, then he could have assessed” the whole picture, and that could explain why it was slow at the beginning.

Maria countered by mentioning that she was emotional and didn’t really know much of what had happened in the past. She suggested that John should have done more fact finding in the beginning so there would be less dumping, and the homework would have made more sense. Then they could have gotten to the problem solving.

Jack asked each what “makes more sense now than it did before?” Carol said keeping on track and ignoring the outbursts. But Maria thought the outbursts had to be dealt with and cleared out of the way before any issues could be handled. She did not expect that they would be “admiring each other,” but listening just enough to be able to understand each other. “I needed to be empty before I could problem solve.” Jack asked what she meant by being empty. Maria explained that she needed to clear herself of all the anger she was feeling toward
Carol. She needed to clear the air. Jack asked if she had been able to do that. Maria was noncommittal. Carol reentered the interview by saying, “It was beginning to be an attack on me as his teacher, and I thought, ‘God, this woman is . . .’” That is why she invited Maria into the classroom, she explained, to deflect the attack on her professional ability, and because she felt the issue of Peter’s behavior was lost.

Next Jack asked both how they perceived the mediator in terms of his neutrality. Carol answered that she thought sometimes he went to Maria’s side, and others when he seemed to be supporting her. But then he would come back to neutral. Maria said, “You know, this was an amazingly neutral person. I thought this man was totally neutral.” Carol countered that perhaps she perceived it so because she wanted to. Because she was annoyed, Carol took it that he was supporting her in one area, and then Maria said something and he supported her. Jack asked them if they would say that “on balance he was neutral?” Carol agreed, on balance. Maria thought he was very neutral; she was “struck by that.”

Maria added that she had a problem with the session; she thought “they were being really unreasonable. . . .” Jack followed up by asking if John indicated at any time that he disliked her. Maria said no, she didn’t get that feeling. Jack asked about John’s body language. Maria responded that one time she was a little concerned when John said, “Yes, Peter is running his world.” She thought—what is he saying about my son? It wasn’t a doubt about her, but about Peter—just “a very flickering moment of doubt.” Jack asked his question again, “At any time did you feel that the mediator perhaps didn’t like you?” Maria said, “No.” The interview ended on that note. In many ways it is as inconclusive as the mediation itself. We see positions being staked out. We see triangulations. We see annoyance. We don’t see much insight.

It is often from the most problematic sessions that we can learn the most. When things move along smoothly and come to resolution easily, it seems either as simple as pie, or like magic. But in this case, we can see just how hard mediation is, with no magic to call on. Both women wanted a Solomon to proclaim that she was better able to understand Peter, and the other was, in fact, damaging him. Both were aware of their bickering and put the best face on it by saying they needed to dump the garbage, or to clear themselves of the anger. Maria suggested that the mediator should have stuck to fact finding in the beginning, but also said that she was angered when not allowed to substantiate all her allegations. Carol also wanted more time at the beginning to make her case. However, she was able to voice her fear/anger about the role invasion, suggesting that she did enjoy some insight into the behavior. Maria did not allude to the roles at any time.

The paradox of their reactions (to get on with it, versus having their day in court) reinforces for mediators how important it is to let the issues emerge organically rather than force the mediator perception of the issue through directive confrontation. One must ask what would be accomplished by such interference—the short circuit of the bickering, perhaps. But would the two have been able to agree on a mutual problem and then negotiate its solution? It is doubtful, given
their level of hostility. We can see from their interview responses that our comment in the chapter is vindicated: it is better to spend time in the session asking questions to allow the underlying issue to surface organically, than to force it prematurely. The clients must ultimately be responsible for their own solutions, based on the insights they have arrived at through the process of mediation.

Finally, this case illustrates an underlying premise of the “Haynes model” of mediation: How important it is to search for the goodness in the most argumentative clients. As John’s patience wore thin, he speaks of having to reconnect himself in his belief system in order to help the two reconnect to their own inner wisdom. While they will need more help to really focus on Peter and his behavior, one hopes the foundation laid in this session can be built on in the future.

**LESSONS WE CAN TAKE FROM THESE CASES**

So, we have learned in mediation how to separate the emotional and practical issues and to work with the practical issues while foregoing the need to relate therapeutically with the clients. We do this by maintaining a tight focus on the substantive issues the clients bring to mediation and on creating a future with a difference—a future in which the substantive problems are resolved satisfactorily.

Given this as a legitimate goal, it is worth considering whether people can be helped more efficiently by constructing a new future, without first understanding their past. Clients come to mediation because they are unhappy with the existing conditions. They want change. But they also come encumbered by a view of the past that freezes the present, and defines the future for them. What would happen if they were offered the opportunity to construct a new future that is different from their past behavior and is different from the future they thought they were stuck with? Our view of mediation offers—up front—a new and different future that the clients can construct with the help of the mediator.

We have looked at how we do this in six typical situations from several conflict areas. We can summarize briefly: Mediation begins by mediators gathering the data. As they collect the data, they develop a hypothesis about the definition of the problem. As part of the information-gathering, the mediator is keenly interested in learning from the clients what steps they have taken so far to resolve the problem. Many clients have already made some attempts at resolving the problem. If they experienced any success with those attempts, this provides the mediator with a basis to start the work—from the clients’ past successes. We believe this is the only justification for asking questions about the past—not to probe causes of the problem, but to identify positive steps to resolution. We are totally committed to helping the participants find their own solutions and if they have positive conflict resolution skills, they need to draw on them again.

Throughout the book, we have invited the readers to come up with their own questions and hypotheses about the events and interactions. We have learned as much from the problems in the various mediations as from the suc-
cesses. The readers may see different implications from those we offer, and that's just fine. We each approach a learning situation with different experiences and skills and will have different insights. It is through such dialogue that we will advance the practice of mediation and establish its discrete theory.

The way is open. We invite everyone to join us in this glorious journey.
The program ahead of us is packed with workshops and seminars that focus on skills and process. We will be able to learn new techniques, skills, and ideas about mediation. So, it seems to me that the keynote should look at our role as mediators from a different angle. Rather than talk about new skills and techniques as mediators, I want to focus on how mediation challenges and changes our lives, which is why I chose the title *Support for Human and Social Growth*. I am sure that most of you assumed that I would talk about the human and social growth of our clients. That certainly takes place in mediation, although I firmly believe it should be a serendipitous outcome of the mediation, not a goal of the mediator.

What I want to talk about this evening is how becoming a good mediator influences us to become better people and how it enhances our impact on social growth. I am going to lay out some ideas on how we can learn from our practice how to improve our lives and the lives of people we interact with. I will identify key useful mediation strategies and concepts and then apply them to our personal behavior. That’s a tall order so before I begin I want to identify what I think are the key elements to good mediation. Then I will explore how each of these elements can make us better people when we transfer them to our personal behavior.
Mediation is the management of other peoples’ disputes. It involves storytelling. Each client comes to the mediation with a carefully rehearsed story consisting of three common components.

1. They give their version of the events in a way that is designed to show how good they are.*
2. They state their complaint about the other in a way to show how bad the other client is.
3. They offer a definition of the problem that can only be solved by a change in the other client and always to their benefit.

The mediator’s task is to listen to the two stories with the two versions of the events and two complaints and the two mutually exclusive definitions of the problem, and then work with the clients to develop a single, shared definition of the problem. Once the clients accept the mutual problem definition, they can begin to negotiate how to solve it to their mutual benefit.

Now, that sounds much too simple. So let’s complicate the problem so as to give it greater credibility to the skeptics. If mediators are to be useful to both parties they must be able to listen to the two stories with an open mind and be careful

1. to avoid making judgments about either story or client;
2. not to get caught believing either client’s story is the truth;
3. to maintain an acceptance of everything as it is taking place at that moment without being attracted to or repelled by either story or client; and
4. to maintain a balance between the clients and their stories. Note that I use the term balance rather than neutrality since I believe it is impossible to be truly neutral while listening to any story.

In order to do this, mediators must adopt a posture that

1. there is no truth and really few lies, just two different stories.
2. there is no right or wrong, just different ways of doing the same thing.

So, mediators must develop a set of strategies to move into balance between the parties and to stay balanced throughout the mediation. When mediating I constantly reflect on my relations with each of the clients and ask myself, Who do I agree with the most? Who do I like the most? And one question I find particularly helpful, Who makes the most sense?

An honest answer to these questions often reveals my bias and helps me make the appropriate corrections so as to stay balanced. When I am in balance it is easier for me to monitor my relationship with the clients and to be sure that I

*I am using a two-client situation for linguistic simplicity. However, the ideas hold true for multiparty disputes.
love each of them. I don’t need to approve of their story, I simply need to recon-
nect them to their own inner wisdom, which results in a different story far more
quickly than anything I do to change it.

When I am in a good relationship with the clients, I can work under a basic
belief that there is that of God in everyone and my task as a mediator is to con-
nect with the Godness in the clients. (If you don’t like my theology, simply add
a second “o” to God to make Good, and it works as well as spell Gott or Gute.)

The next concept that I believe separates the mature mediator from the
learner is the understanding that mediation can only be conducted in the future
tense. Talking about the past is a waste of time since past-focused discussions are
always about the problem. Solutions will only be found in the future. Just stop and
think for a moment about the events that take place in the past versus the future.

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<th>Past</th>
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<td>Problem</td>
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<td>Complaints</td>
<td>Goals</td>
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When the clients come to mediation they only want to talk about the problem
and the past. Obviously, a certain amount of past-focused discussion must take
place. But for change to begin, the mediator must move the discussion into the
future. The clients’ past focus will be all about their complaints as to what they
believed happened (or did not happen). To learn about their goals the conversa-
tion that is mediation must be in the future tense.

The past discussion will always be the same—the same problems, the same
complaints, the same story, and the same disappointments. Difference emerges
only when the conversation is about the future.

The past is unchangeable. Whatever a client did or failed to do last week
cannot be changed. However, both clients have the opportunity to change their
futures. When they first come to mediation clients see only a future captured
and shaped by the past. The great gift mediators give to them is the possibility
of reshaping their futures. Talk about the past always contains a large measure
of hopelessness. Indeed, it is this hopelessness that brings many clients to
mediation. On the other hand, the future holds all kinds of hope. So we see
again the value of moving the conversation into the future rather than dwelling
on the past.
When the clients talk about the past it is always about what they do not want; the conversation is essentially negative. When we get the clients to talk about what they do want, the conversation becomes one about the future. The past is always about what did not work. A different future can work.

When the clients stay in the past beyond the first telling of their stories, the session quickly becomes stuck in an ever-decreasing circle of blame, recriminations, and hopelessness. However, when they talk about the future a new fluidity emerges, as change becomes possible.

Last, I don’t believe in such a thing as client resistance, except in their resistance against repeating the past. I believe that resistant behavior on the part of the client is a clear indicator to the mediator that the session is stuck in the past. Openness occurs when the talk is about the future.

Michael White, the noted Australian family therapist, alerts us to avoid the problem-saturated part of client stories and to focus on the solution parts. We could sum up this part of the exploration by saying that the task of the mediator is to focus the clients on a future with a difference. That is, a future unencumbered by the past and freed from the past. The change that takes place in the clients is a shift from the defensive past-focus to the openness of a different future.

The next part of the change that takes place in mediation relates to focusing on the clients’ strengths. When the clients first tell me their story I listen carefully for any indication of what they have already done to solve the problem. This helps me identify their resources and ways in which they can build on them.

Two years ago in Regensberg I worked with a divorced couple who were concerned with the aggressive behavior of their five-year-old son. In the early part of the interview I asked them what they had done about the problem. They related that they had reduced the amount of time he spent with the paternal grandparents since his aggressiveness seemed greatest on returning from them. In addition, they said that the father was now spending more time with the boy. Building on this, I was quickly able to advise the couple that they were doing the right things and it was wise to check to see if what they were doing was the best. They left very happy and reported back ten days later that “the boy changed upon our return from the mediation.” I could have continued the mediation trying to find other things to do with the parents. Instead I chose their inner wisdom and supported the idea that they knew best how to utilize their strengths.

Earlier I stated that the mediator manages the negotiations; he does not conduct them. As the manager, the mediator is most effective when the conversation moves to the future, and the quicker we can do that, the more effective we are. Thus, mediators must insist on our right not to know everything. We must forgo the need to collect every piece of information about the past. We must reject the idea that the clients have the right to tell us everything about the past in great detail. We need to know only enough about the past and the problem to be able to move toward the future-focused, solution-finding conversation.

Think about your recent mediations. When did you feel the most productive—talking about the problem of the past or talking about possible solutions for
the future? When were you most engaged—listening to the complaints or managing the negotiations about their future solutions?

So we can see that the mediator must be able to live with a high level of ambiguity, be willing to discard the search for truth, leave judgment aside, have great faith in the essential goodness of the parties and their ability to resolve the conflict, and be focused on the future.

**HOW DOES ALL THAT WORK IN OUR PERSONAL LIVES?**

I began by suggesting that the mediator’s task is to listen to the two stories with their varying definitions of the problem and help to develop a third, mutual definition of the problem. Because a shared problem definition will produce shared solutions. Let’s think about how this works in our private lives.

Conflict is a natural part of life. Indeed, we can say that conflict is inevitable in all human relationships. Thus the issue is, can we make conflict a productive part of our lives? We can if we are able to recognize that the other person’s story is as valid as our own and thus listen intently to the other person as closely as we would if she were a client in mediation.

A man walked into a restaurant and told the waiter he wanted to talk to the owner. When the owner arrived the man explained that he understood the food business and knew that cockroaches plagued this facility, as they did most other restaurants. The man explained he had a way of eliminating cockroaches that he would share in return for a good meal. The owner agreed and after serving the man with excellent fare, he asked him for the secret.

“Well,” the man explained, “when you see a cockroach running across the floor you pick it up, squeeze it gently to force its mouth open and then, with a small spoon pour water down its throat and the cockroach will drown.” The owner was irate. “I could just as well take a brick and smash the cockroach,” he said. The man looked up at the owner, nodded his head affirmatively, and said, “Yes, that’s another way.”

Think of the changes that would take place in our relationships with our spouses, our children, coworkers, and neighbors if we paid attention to the other person’s story. Think how differently each conflict will proceed if we start with the premise that the other’s story is as credible as our own. If we could say, “Yes, that’s another way.” Listening is an important component of useful mediation. We must listen while avoiding judgments. In our personal lives, however, we continually make judgments. We measure everything against our own personal experiences and upbringing. This is particularly true in family life where we perpetuate the culture and values of our parents. How would life be different if we were able to lay those judgments aside? Without the struggle to perpetuate the values of one’s family of origin in the new family, most spouses would have little to fight about.

Our relationships with our children would change dramatically if we stopped judging and spent the same amount of energy trying to understand.
How many fewer battles would we have with our children if we understood them rather than judged them? Let me digress for a moment and assure you that I am not suggesting that the important moral values of the family be laid aside, or that we should not raise our children to live by those values. Our essential moral values must be sustained and imparted to our children if we are to be true to ourselves and to raise our children responsibly.

I am suggesting here that listening nonjudgmentally leads to a nonjudgmental response from the parent. The respectful response, in turn, enables the child to hear it clearly and increases the possibility that the child will further internalize those values that are shared across generations.

No one should give up their value system unless they meet a better one. I have noticed that the process of maturation as an adult is the ability to live with a higher degree of ambiguity and also to integrate values from another’s system into my own when I believe them to be useful. So, when I enter a conflict situation in mediation or in an interpersonal relationship, I must be aware of my value system and be open to accepting alternative values and not allow a rigid adherence to my own system to interfere with my role in the conflict.

Again, I am not suggesting we give up our values, simply that we keep them in check. To recognize that resolving a conflict is rarely achieved by my imposing my value system. Rather, in interpersonal relationships, my value system will be demonstrated by how I behave more than how I demand the other behaves. So, I prefer the term balanced to neutral. I try, in my personal life, to maintain the same sense of balance that I use in mediation.

In mediation we try to maintain an acceptance of everything as it is taking place at that moment without being repelled by the story or the client. In our personal lives, however, we tend to catalogue the faults of the other person in a close relationship. In each conflict, we remember the number of times the other has done something similar. We drag up the past even though it is the current conflict we are trying to resolve. When this happens, the conflict is not only about the current event but also about the history of the relationship.

A more useful approach is to take the current conflict and determine how it can be used to create a different future. What do we want and how can we cooperate to achieve it?

So, I must adopt in my own life the two mediator dicta. There is no truth and really few lies, just two different stories, and there is no right or wrong, just different ways of doing the same thing. This is a tough task. How often have you said to your children, “I want to know the truth. Who did this?” or something similar. We stick with the conflict by trying to discover the truth. We will find a solution when we ask the question, “How can we make sure this does not happen again?” This focuses on the future and a sense of hope; it opens up new possibilities for new solutions and a new relationship that both participants want.

When we can give up the idea that we know what truth is, or that we understand what the truth is in the current conflict, we can begin to share the conflict. When we share in the responsibility for the conflict we can more easily move to
a sharing of the solution. In life we can work with people’s strengths or weaknesses. The bully chooses the other person’s weakness. The mediator looks to work with the other’s strengths. In our own lives we need to remember our strengths and what we have done successfully in the past. Those are the useful parts of the past. This indicates that, in talking to other people, the past-focused questions that are useful are those that ascertain how the person dealt successfully with similar situations. And just as I look for the strengths in my clients, I must look at how I resolved similar problems in the past. I can then identify my strengths. I noted earlier that, in mediation, I ask myself questions about my balance such as, “Who makes the most sense?” In my private affairs I find the question equally useful. In a conflict involving myself and more than one other person, I must be aware that it is too easy to become allied with one person simply because that person thinks like me. If I join an alliance with that like-minded participant, the others will quickly see themselves ganged up against and the conflict will escalate.

In conflicts I do not need to approve of the others’ story—I need to reconnect them to their own inner wisdom. Before I can do that I must be clear that I am connected to my own inner wisdom. So I need a meta-idea to keep me connected to my own inner wisdom. That lies in the Quaker belief that there is “that of God in everyone” and my task in life is to connect to that godliness in all I meet. How does that work?

First it requires that we believe in the other person’s goodness and that we respond to that, not to our bias about that person. It means we expect goodness from the other—as a starting point of our interaction—rather than hostility or opposition.

A man was cutting the grass when his lawn mower broke down. Attempts to repair failed and he needed to complete the job that afternoon. So, he thought he would go across to his neighbor, Frank, and borrow his machine. But, still frustrated with his own mower, he stopped and thought to himself, “Oh, he has a brand new mower. He is going to feel very superior to me for having a newer machine. Then he will gloat and insist on showing me how his mower works and tell me how careful I must be not to break his machine. Then he will come to the fence and watch me use it and then tell all the other neighbors about what a great guy he is and what a fool I was not to be able to repair my machine.”

By this time, the man had reached Frank’s front door and rang the bell, still fuming. When Frank opened the door the man blurted out, “You know what you can do with your mower. You can stuff it!” as he turned and marched back to his house. Whenever I get aggravated in similar situations, I remind myself of the lawn mower joke!

Many people present themselves as being unsociable and unfriendly. Now when I meet someone of a miserable disposition, I set a goal of finding a reason to like them and to respond to them as if they were not miserable. In my village one store owner never smiled and seemed always on edge. I set a goal of smiling at him whenever we met. After a while I asked simple questions, such as, “Did
you have a good weekend?” It took about two years until he finally smiled and entered into social conversation with me. Thus instead of leaving the store each time wondering why I went in only to find a miserable person, I could look forward to going in, being welcomed and responded to as a full person—because I had treated him as a full person with plenty of goodness. Each good experience can be built on.

So far I have identified how we can use mediation techniques in our family and interpersonal relationships. How can we use them in the wider community? How can we take what we know and apply it to the social growth of our communities?

First we need to believe in what we do as mediators and to expand what we do into all areas of our lives. I am surprised at how often mediators (particularly in the United States) threaten to sue if something goes wrong.

I am surprised at how many are committed to winning. I have a sign on my desk that says, “I'd rather succeed than win.” This reminds me to take my mediation knowledge wherever I go. It also reminds me that winning is often easier than succeeding because the latter requires that the other parties also win. As we act within our communities, whether it is attending a village board meeting, facing ecological problems, dealing with juvenile crime, or worrying about the location of a new highway, we can take our mediator skills with us. Or, more important, we can take our mediator mind-set. Our mediation skills are not like a doctor’s stethoscope, which is removed at the end of the workday.

The mind-set of the mediator is the most valuable tool we take with us into the wider world. Think for a moment about common situations where you lose your mediator hat and blow your cool. A couple of weeks ago, Gretchen and I were driving into New York City for dinner followed by a concert at Lincoln Center. The traffic was unusually heavy and we were helpless as valuable time slipped away. I began to wonder whether we would arrive in time for a meal before the concert and my aggravation increased. My driving took on an edge of hostility and my language about some of the other drivers, particularly those that got in front of me are, fortunately, lost in the translation. At one particularly desperate maneuver, which led me to slam on the brakes at a red light, screaming at the idiot who had stopped for the light, Gretchen lightly touched my right arm and said, “What would Thich Nhat Hanh say?” I took a deep breath and said a mantra, “Thank you, red light, for this opportunity to reflect on this moment.” As I reflected, I slipped back into my mediator mind-set and we arrived in one piece and in time for dinner.

We can also assist in social growth by each and every one of us donating our mediation skills pro-bono, to help our communities resolve local disputes. I like to donate 10 percent of my billable time to such causes. In this way, we take mediation into the wider world and demonstrate its value to everyone. We can show how it makes for a better life for all. So, when two neighbors become entangled in a boundary dispute we can volunteer our services and help them find a solution. Each time we intervene in conflicts we spread the word and
enhance the use of mediation. We also turn our communities toward thinking about succeeding, not winning.

*Smile, and the whole world smiles with you; cry, and you cry alone.* I believe that we can rephrase that to be: love, and the whole word loves with you; hate, and you hate alone. If we have any purpose on this planet other than survival, it is to carry out God’s will and love all we meet. Yes, even to find ways of loving the Serbs. And we can only do this when we have a clear focus on the future rather than the past.

We cannot love what the Serbs have done in the last decade, but we can lovingly help them construct a different future. We cannot love what the Nazis did in those terrible years of the holocaust, but we can love what German-speaking people have done since then in building a new Europe in which war seems impossible. Love has the wonderful ability to move us from the past to the future.

No conflict has ever been settled by talking about the past conflict. The negotiations in Ireland that led to the Easter Agreements moved to solution-finding when all parties gave up condemning the others’ past atrocities. No party could change the past. All parties helped to change the future of Ireland. The Oslo agreements between Palestine and Israel came about through mediation that helped the parties focus on their future needs rather than their past failures.

Whenever we see mediation in action internationally and in communities, success comes when the parties are focused on constructing a different future rather than rehashing the past.

And so it is in families and interpersonal relationships. Conflicts are resolved by constructing a future with a difference. As I said earlier, knowing the truth about who did what does not solve the conflict. But the question, “*How do we prevent this from happening again?*” is the first step toward finding a solution.

The great problem with human interaction is that so much of it is spent living in the past, worrying about the past, reliving the past, and staying focused on what happened and why. Life changes rapidly when we live in the present, experiencing what happens as it happens. Conflicts become minimal and solvable when we think about what needs to change in the future.

We control the future if we are willing to disconnect it from our past. That is, only when we realize that worrying about the past, brooding about what happened, and plotting how to get even, is not productive; then we can disconnect from that past. Once we make the disconnection we can plan a future that is different. A future where the events that caused us pain do not recur. A future where sour relationships become sweet. A future where families, groups, and communities share an equal commitment to similar moral values. A future that we control.

This, then, suggests that the only useful prayer is the simple one, “Dear God, what can I do differently?” In mediation we look for the clients’ strengths. We can also look for our own strengths and the strengths of those close to us. Using those strengths we can reshape a different future for our families and our communities. If we do that we will have reshaped the world. That is the promise of mediation.
Appendix

Books, Articles, and Professional Activities by John M. Haynes

Books


**JOURNAL ARTICLES**


MEDIATOR TRAINING

Argentina | Norway

Austria | Poland

Australia | Russia

Canada | Scotland

Germany | Singapore

Great Britain | South Africa

Ireland | Spain

Italy | Switzerland

Netherlands | United States of America

New Zealand | Uruguay

Northern Ireland

OTHER PROFESSIONAL ACTIVITIES

Pro Bono Mediator for Child Find and Martha Graham Dance Company
Member, Association of Family Conciliation Court
Founding Member, World Mediation Forum

DELIVERED PAPERS AND WORKSHOPS AT

Academy of Family Mediators Annual Conferences
Association of Family Conciliation Courts
American Association of Family and Marriage Therapists
Family Mediation Canada
Orthopsychiatric Society
Texas Bar Association (University of Texas at Austin)
Touro Law School (Huntington, New York)
ABA Family Law Section—Harvard University Law School

KEYNOTE SPEAKER AT

Academy of Family Mediators
Family Mediation Canada
UK Family Law Solicitors Association (Harrogate, England)
First International Conference on Family Conciliation (London, England)
First International Conference on Mediation in Ireland
First World Mediation Forum Conference, Madrid, Spain, 1995
Second World Mediation Forum, Adelaide, Australia, 1996
Annual Information Conference, Belgian Bar Association, 1996
John Michael Haynes was born in London, England, in 1932, the youngest of five children. Like everyone else in his family, he left school at fifteen to go to work. He was active in the Labour Party Youth contingent where he made lifelong friends and learned the skills of debating and organizing. After service in the Royal Air Force, he returned to Labour Party politics with devotion. He married Gretchen Winterhoff in 1957 and immigrated to the United States, where he became involved with the International Union of Electrical Workers, first on the local and later on the national level. He began teaching at the School of Social Welfare, State University of New York at Stony Brook, and eventually left labor for the academic life.

When the tenure issue loomed, the dean, knowing that John had not finished high school, recommended that he get an advanced degree. The Union Institute, a nonresidential, experiential program, accepted him as a doctoral candidate where he transferred his knowledge and skill as a labor negotiator to the field of family and divorce conflict. At his defense of thesis conference in 1978, one mentor commented, “It’s very impressive, but will anyone else ever be able to duplicate?”

The answer is now evident: Yes. John shared his ideas generously in writing and speaking. He considered his major achievement to be bringing the principles of alternative dispute resolution first to divorce, then to other family issues, and eventually to all areas of dispute: business, education, medical, and interpersonal conflicts. He pioneered the training of mental health professionals, clergy, accountants and others, as well as those in the legal profession and court personnel. John trained mediators across the United States and Canada, and introduced mediation training in twenty other countries, helping to popularize its applications. He had two conditions for training: to be housed with a local family (not in a hotel), and a cultural or nature experience as part payment for the training. Thus he made friends all across the world and learned about local customs and culture wherever he went. His approach to mediation and to training others sprang from his Quaker spiritual conviction that everyone has good in them and it is the mediator’s task to find and join that goodness in the search for solutions to the conflicts.
John Haynes died of leukemia on December 22, 1999, just as the last full moon of the century was rising. His spirit carries on wherever mediators are at work.

He is survived by his wife, Gretchen, and two daughters, Karen Haynes and Julia Haynes, and grandchildren, Charlotte Mills and Oliver Haynes. He was an active member of the Westbury Monthly Meeting of the Religious Society of Friends (Quakers).
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