

## Chapter Nine

# Mediation

For many, mediation is essentially equivalent to conflict resolution. Mediation is viewed as the central tool of conflict resolution and its primary professional expression. This view is very limiting, both for the field of conflict resolution as a whole and for mediators in particular, but it is also understandable. Mediation is a particularly visible expression of the conflict resolution field. Under its banner, clients can be solicited, training protocols can be established, and practice standards can be set. Although conflict resolution as a discipline provides the professional foundation for mediation, mediation as a practice can be presented in a much more concrete way to the public.

Contemplate these three conversations from a high school reunion:

*Person A:* Bernie, what are you doing with your life?

*Me:* I work in the field of conflict resolution. I live in Boulder, Colorado. . . .

*Person A:* I hear Boulder is a terrific place.

*Person B:* Bernie, so what's happening with you?

*Me:* I'm a partner in a conflict resolution organization in Boulder. . . .

*Person B:* Boulder is supposed to be really beautiful.

*Person C:* Bernie, tell me about yourself.

*Me:* I have a practice as a mediator, and I live in Boulder. . . .

*Person C:* I'll bet you get some really interesting work.

Let me tell you about this conflict I have. . . .

THE DYNAMICS OF CONFLICT  
RESOLUTION - A PRACTITIONER'S GUIDE

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Although the tendency to equate mediation (and sometimes arbitration) with conflict resolution is natural, it is also problematic. Mediation is a role, a skill, an approach, and a practice specialty. I don't think it is useful to view it as a professional discipline. Mediation, like negotiation or communication, is a life skill that everyone must occasionally employ. It is a powerful intervention tool. But it does not stand well on its own as a profession. That does not mean that the practice of mediation cannot be professionalized. It can be—under the aegis of the field of conflict resolution.

Those of us who make our living by offering our services as mediators need to be grounded in a broader and more developed professional and conceptual framework. Like most new fields of practice, mediation is derivative of existing disciplines and should borrow from them as extensively as is helpful. But unless the practice of mediation is thoroughly anchored in a professional discipline that is specifically oriented toward appropriate goals, values, and intellectual requirements, its growth will be limited, its independence constrained, and its conceptual framework simplistic. I believe that field is conflict resolution. That is where mediation's future intellectual and professional development lies. This is also the best long-term answer to the efforts of other professions (law and mental health in particular) to place mediation under their auspices.

This does not mean that every mediator has to have a degree in conflict resolution any more than he or she needs a degree in mediation. There should always be a place for people to function as mediators without making a full-time commitment to mediation as a field of practice. But those who present themselves as professional mediators need to acquaint themselves with the fundamental concepts of conflict resolution. Of course, these concepts are pertinent for other mediators as well. As important as it is for mediators to understand the mediation process, unless they are grounded in a thorough understanding of the dynamics of conflict and resolution, they will tend to view their work as a series of intervention strategies and not as an application of a rich and growing body of knowledge about the various ways individuals engage in conflict and seek resolution.

Having said this, it is important to look at what mediators in particular offer to the resolution of conflict.

## What Mediators Bring to the Table

Mediation is an approach to conflict resolution in which a third party helps disputants arrive at a resolution to a conflict. A mediator does not make a decision or impose a solution but rather assists the disputants as they attempt to find their own way through the conflict. Mediation works. Under the right circumstances, it makes a big difference in how well people handle conflicts. This seems clear from the many studies of mediation and from the increasing use of mediators (see, for example, Kressel, Pruitt, and Associates, 1989; Pearson, 1982). But why? There have always been mediators or mediating structures in almost all societies. These people and institutions have sometimes been formalized, neutral, and process focused, but more often they have played a less formal and also less neutral role. Religious and political leaders, elders, and influential community members have all been important sources of mediation services.

However, with increasing social and geographical mobility and the greater institutionalization of community life, these informal mechanisms of community-based conflict resolution have receded. As a result, more formal systems have been needed. The most developed of these formal conflict resolution systems have been the courts and political institutions such as town councils and planning boards. But these have normally been better suited for making decisions than building consensus among potentially competing interests. So it is natural that the use of formal mediation processes and related conflict resolution systems is on the rise. They are fulfilling a need that has always existed. But what exactly is this need, and how do mediators fill it?

There is a big gap between the experience people have when they resolve a conflict on their own and when they turn over entirely the power to resolve it to others. When these are the only choices people have, the likelihood that they will wait for a conflict to escalate to disproportionate levels before seeking or attracting outside attention increases. When people have a significant say in decisions that affect them deeply, they are more likely to feel ownership of those decisions. Therefore they are more likely to make the decisions work, less likely to sabotage them, and more apt to experience a satisfactory degree of psychological closure. Mediation attempts to bridge the gap between resolving one's own

conflicts and surrendering the power to do so to others. It helps people maintain their power over important issues in their lives as it also assists them in moving through a difficult conflict process. The need for this kind of assistance seems almost universal.

What is the essence of what mediators bring to a conflict to limit its destructiveness and promote effective resolution efforts? I believe there are four major ways in which mediators alter a conflict dynamic.

*They alter the structure of the interaction.* Often the mere presence of a third-party neutral changes the course of a conflict, regardless of any specific intervention. The disputants have to alter their approach to the conflict simply to accommodate the participation of someone with whom they are not in conflict. They change the way they present issues, communicate, and express their emotions. Usually, this means that people will tone down their most adversarial behavior when a mediator is around, but the opposite may happen too. That is, sometimes the presence of a third party provides the additional security people need to unleash their more negative behaviors or feelings. Also, the mediator often arranges for new systems of interaction, new types of meetings, new configurations of negotiators, and other structural alterations to the interaction process.

*They bring their personal commitment, vision, and humanity to the interaction.* Mediators enter a dispute with a set of beliefs about the potential of mediation to assist the parties, a commitment to contribute to the resolution process, and a vision of how to proceed. The energy and optimism of a mediator are often the most important contribution that he or she can make. Mediators also bring who they are as human beings. A mediator's warmth, sense of humor, commitment to the disputants, and ability to establish rapport with them are critical to effective mediation.

*They bring a set of skills and procedures.* Mediators bring a set of skills and procedures to the process, including abilities in communication, reframing, conflict analysis, problem solving, negotiation, crisis management, maintenance of neutrality, and conflict resolution design. They may have acquired these through formal training or experience; some may be natural talents. Mediators also bring a

set of procedures. They usually have a particular sequence of stages they try to take parties through, a set of ground rules, and a specific approach to identifying issues, interests, options, and relevant information. Often the mediator's specific procedures are less important than the fact that he or she has a process. The very existence of a clear approach is comforting to many disputants and adds a certain predictability and definition to the interaction process. It also adds to the mediator's control over the interaction.

*They bring a set of values and ethics.* Maybe the most important things mediators bring to a conflict are their values and ethical standards. These define mediators' most important commitments to their clients, and they profoundly affect the resolution process. Disputants do not necessarily adopt these values, but by entering into mediation they implicitly acknowledge them and therefore cannot help but buy into them to some extent. For example, a mediator is generally committed to helping parties search for an outcome that adequately addresses each of their key concerns. By entering mediation, disputants in effect commit themselves to searching for such an outcome as well. These ethical commitments are a foundation on which parties can develop trust, respect, and comfort with the mediation process.

Within these four general ways that mediators affect a process, there is considerable variation. Mediators affect the interaction structure in many different ways. They bring many different personal styles, skills, and procedures, and there are certainly many variations among mediators in their values and ethical principles. Specific procedures and tactics are easier to teach and to develop than personal characteristics, but in many ways it is the more complicated or intangible personal traits that are more important. The commitment of mediators; their ability to *join* with each of the disputants; their optimism, integrity, and openness; and their clarity about their value base and their comfort with it are usually the most powerful contributions they have to make. (For a discussion of mediators' different approaches, see Kolb, 1983; Kolb and Associates, 1994.)

What mediators do not normally bring to the process (although sometimes they think they do) is the best solution, the power to make people reasonable, the ability to change the genuine alternatives

that people face, or additional resources. Of course, if we are talking about a U.S. Senator mediating an agreement in Northern Ireland, a U.S. President mediating between Israelis and Palestinians, or a city manager mediating a dispute between two city departments, then the mediator does bring significant power and resources. But these are not pure mediation processes, and the mediator's power places its own set of limitations on the mediator's role.

But for most mediators, it is in the limitation of what they can do that their most important resource for contributing to a resolution process lies. Because mediators cannot generally provide additional resources or alter the fundamental approach and behavior of individual disputants, these disputants can more readily turn to them in a confidential and forthright manner. Mediators are easier to trust when they have less power over substantive outcomes. When mediators have greater power over substantive outcomes (say in a mediation-arbitration situation or in advisory mediation), disputants will naturally treat the mediator as a decision maker and approach him or her with more caution.

### **What Disputants Want from a Mediator**

What mediators expect from a mediation and what their clients expect are often at odds and always different. Fundamentally, disputants want mediators to help them get their needs met. Although this usually involves helping the disputants to feel safe, respected, and heard, what they are most likely to focus on is their desire for the mediator to help them achieve a good outcome. How they want mediators to help them and how mediators conceive of the mediator role can be at odds. Disputants often want mediators to figure out a good solution, to put pressure on each of the parties to accept a compromise, and to hammer out an agreement.

Mediators will often do just this, but I believe this is seldom at the heart of the genuine contribution that mediators make to the resolution of profound disputes. In serious conflict, it is not the absence of an effective solution that perpetuates the struggle but the lack of an effective process or structure of interaction. Unless mediators can somehow bring about a change in this situation,

their capacity to make a genuine difference will be limited. As a result there is often a tension between what mediators believe their function to be and what clients specifically request. Consider the following thoughts written to me by an attorney very experienced at representing clients in mediation processes:

Most lawyers prefer active directive mediators—mediators whose mission is arriving at a settlement, who urge the parties to settle, who cajole, who plead, who persuade. We bring our clients to mediation because we want to find a settlement. When a mediator spends the day simply communicating positions back and forth, and then at the end announces, "jeeppers, you guys are too far apart," then we feel that we've wasted our money. Lawyers are smart enough to communicate each other's position back and forth. We are looking for an active ingredient, who can give us more than we already have.

Of course, nobody wants to waste a day in a process that accomplishes nothing, but what is interesting in this statement is its description of the way that many attorneys believe mediators can be helpful. The alternatives posed here are "cajoling, pleading, persuading" and "simply communicating positions back and forth." They want mediators to be outcome focused and to commit to arriving at a settlement. They perceive mediators who do not do this as ineffective, patronizing, and naïve. The idea of mediators assisting by delving deeper and helping parties look more broadly at the conflict, for example, is dismissed as "fluff," or as not real. Yet the deeper the conflict, the more necessary such "fluff" is.

Simply put, disputants often want mediators to hear their point of view and then convince everyone else involved that they are right and should get their way. More sophisticated clients understand that some compromise is necessary and that part of negotiation involves looking at new approaches to a problem, but they still want the mediator to help them advocate their interests.

If mediators are to be effective, therefore, they will have to help parties do just that. They will have to listen to all of the parties carefully and give each one an opportunity to present his or her most powerful argument in an effective way. Here is where the real skill and art of the mediator becomes evident, and where the approach of the mediator and the desires of the parties can converge. If the

mediator is focused, maybe not on cajoling, pleading, and persuading, but on helping each disputant present his or her views in a cogent manner and on working to ensure that everyone's ideas and needs have been taken seriously, then the disputants and the mediator are working together. Furthermore, if the mediator helps each disputant carefully and realistically think through his or her choices at various points in the process, they are all likely to be working from a complementary set of goals. The mediator must start "where the clients are at" and travel in partnership with them from there.

Mediators' purposes do not have to be identical with those of their clients, but mediator and clients should not be working at cross-purposes either. Mediators would do well to listen to clients when they express not only their goals for mediation but also their ideas about what role they want the mediator to play. Inherent in those ideas will be very significant concerns that need to be addressed. This does not mean that mediators have to be cajolers or arm-twisters, or that they have to focus exclusively on finding a solution. It does, however, mean that they need to be very sensitive to the challenge posed by the differences between their sense of how to accomplish the purposes of mediation and their clients' expectations. In effective processes, mediators and the parties to the conflict are constantly reevaluating and in effect negotiating exactly what they are trying to accomplish in mediation and how.

Of course some mediators view their role exactly as described by my attorney friend. They believe that their job is to get an agreement and that the best way to do this is to confront parties with the weaknesses of their positions, the necessity of compromise, and the merits of the offers that have been made. There is nothing intrinsically wrong with this approach, and in many situations it is more likely than alternative methods to lead to an agreement. However, it is unlikely to achieve a deep level of resolution. For arriving at a dollar amount in a personal injury or patent infringement case, it may be appropriate. For helping people repair a work relationship, achieve a broadly accepted consensus about how to approach a public policy question, or learn how to be effective co-parents, such an approach may not only be ineffective but harmful.

Things get really interesting for mediators when the clients themselves have very different ideas concerning what mediation should be about.

When a group of professionals asked me to mediate the dissolution of their partnership, I found myself caught in their contradictory expectations about what would occur in mediation. On one level this was a negotiation about money and buyout terms, but it was also about hurt relationships, bad feelings, and blame. The professionals who were leaving wanted only to discuss the terms of the buyout, whereas those staying wanted to deal with the relationship breakdown and their anger at the departing partners. There was a sort of chicken-and-egg dilemma here. On the one hand, if we did not address the money issues first, the departing group would have a hard time discussing the relationship or addressing the remaining partners' concerns about future communications. On the other hand, if we did not address some of the anger and hurt that those remaining were experiencing, it would be very hard for them to move on the more substantive issues.

I presented this dilemma to both sides and suggested that we work simultaneously on both types of concerns, but that notion did not fly. The departing group saw it as a way of avoiding the financial issues that they viewed as their reason for agreeing to mediation. They were not here "to kiss and make up" they told me. So I tried a two-prong approach. I focused everyone in both groups on financial issues but acknowledged that it was unlikely we would get closure on these issues until we dealt with the less tangible aspects of the conflict. Then, in separate meetings with each group, I tried to probe more deeply. The partners who were remaining expressed considerable anger about how the departure of the others had come to pass and how unfair they felt any payment to them was. But they also knew that some payment was necessary and inevitable. They also could see that an in-principle commitment to some payment to the departing partners might lessen the hurt and anger all around.

I asked the departing partners why it was so important to nail down a buyout agreement before discussing relationship issues. They offered two reasons. One was money. They felt that if they did not get some commitment of funds quickly, they could not cover the initial expenses of their new organization. The other was their desire for an acknowledgment from the remaining partners that they did have a right to their share in the firm's assets and a right to leave if they chose. After an extensive discussion of these concerns, I suggested that they might be able to get a quicker and greater commitment

of money if they were willing to discuss the relationship issues underlying the firm's breakup.

In this way, by starting on the more tangible and concrete issues ("where the client was at"), both groups were able to come around to a deeper level of discussion about both financial and relationship issues. I felt throughout this mediation that I was engaged in a tricky negotiation with the clients about my role and the focus of the process.

### The Premises of Mediation

Regardless of the approach people take to mediation, there are certain implied assumptions that govern how a mediation process unfolds. These premises exist because of the structure of mediation, and they define some of its greatest strengths and limitations.

*Disputants need help (and can benefit from it).* A conflict goes to mediation because the parties feel they need help to arrive at a satisfactory outcome. They may have failed in their independent efforts to reach an agreement, or they may recognize that without mediation the conflict is likely to escalate or be prolonged. Sometimes mediation is structured into a contractual or legal process, as in grievances or divorces, but usually there are plenty of opportunities to settle a dispute independently before that becomes necessary. On the one hand the parties' realization that help is needed is one of the greatest sources of power a mediator has. On the other hand people are very resistant to acknowledging the need for help, and therein lies much of the resistance to using mediation in the first place.

*There is an advantage to disputants' reaching a voluntary agreement.* Why not go straight to a third-party decision maker, where at least some substantive outcome is guaranteed? There are certain tactical reasons not to do this—uncertainty about the outcome or the time and transaction costs of going to trial or arbitration, for example. But beyond this is the notion that people are likely to reach better, more carefully crafted, and more durable solutions if they are the primary architects of those solutions. Therefore it is worthwhile trying to arrive at a voluntary agreement with the help of a third party before turning the decision over to an external decision maker. The belief that the best agreements are those

made by the disputants themselves is at the heart of the values and approach of most mediators.

*Mediators can help people come to an agreement through intervening in an unproductive negotiation or problem-solving process even though they do not have the power to impose an outcome.* Participating in mediation usually implies that there is at least a possibility that a third party with no power over the outcome can make a difference. More than that, mediators' lack of power is part of what allows disputants to engage in the process. The deal disputants make with a mediator in essence is: "I'll give you power to run an interaction (up to a point), and I will reveal things to you and listen to your ideas about how to proceed, but in the end, I get to decide."

*Process is important.* For the most part, participation in mediation suggests that it is not just the elusive solution that is missing when parties are in conflict but that something about the process of the interaction needs work. How conflict resolution is conducted, how negotiations proceed, and how communication occurs are important. Mediators are called in to alter the process.

*It is possible for a third party to be attentive to potentially competing interests.* People do not necessarily have to believe a mediator can be neutral, impartial, or even fair. But by entering mediation, they accept the possibility that a third party can at least understand competing needs and views and can conduct a process without exclusively promoting the position of one side.

These assumptions exist regardless of the approach of the mediator. Some additional assumptions will exist that are not automatically implied by the basic structure of the mediation process but are very much dependent on the approach of the particular mediator or the agreement negotiated between the mediator and the parties and are rooted in the culture within which the mediation occurs. For example, there is no automatic assumption that direct communication among the parties is beneficial, and mediators vary widely on how they handle such communication. Many believe that direct communication is critical to an effective resolution process, although it may not always be possible. But I have heard mediators, usually those specializing in commercial cases, state that they would never bring two parties together until an agreement has been reached. Much of international mediation

also occurs through so-called shuttle diplomacy, in which the parties communicate largely through the third party.

Mediators also have many different approaches to confidentiality. There is significant legal protection for the confidentiality of mediation in most parts of the United States, and most of us who mediate use confidentiality as an important tool when we are trying to change the dynamics of a negotiation. However, not all mediation is confidential—public policy mediation in particular often has to occur in public. Mediators differ about the confidentiality of private communications, about whether they will reveal what occurred in mediation if the parties give them a release to do so, and about the confidentiality restrictions parties must agree to when they enter into mediation. Confidentiality is a strategic consideration, but not one that is necessarily built into the structure of mediation itself. What is almost always necessary for the credibility of the process is that the ground rules around confidentiality for each mediation are explicit from the beginning.

Impartiality (exhibiting no bias toward one of the parties or the concerns he or she is expressing) and neutrality (having no relationship with one of the parties or stake in the outcome) are not implicit in mediation. Without getting into a discussion of whether there even is such a thing as impartiality, it is clear that most mediators put themselves forward as having no interest in any particular outcome, no special relationship with any of the parties, and no intention of advocating for any one disputant. In this sense they indicate that they are neutral and impartial and offer that as part of what they bring to the process.

But mediation does not demand neutrality or impartiality. In many settings the mediator is not neutral and may have a special connection to one of the parties. In-house mediators in organizations, village elders in mediative roles, and family members who try to reconcile differences among other family members may not be neutral or impartial. What is required is that the mediator tries to help the parties interact with each other more effectively or work out an agreement that they all can accept.

Credibility is established in different ways depending on the values and needs of the people involved. In the middle-class professional world in which most of us operate, the promise of impartiality, neutrality, and confidentiality is usually necessary for

establishing the credibility and safety of mediation. But in other settings the community standing and personal status of the mediator may be far more important.

## What Mediators Do

What is it mediators actually do to influence a conflict? Mediators work in many ways, and each mediator has an assortment of approaches. Nonetheless, certain actions characterize what most mediators do, regardless of their personal approach. (For the most comprehensive discussion of the processes and interventions that mediators use, see Moore, 1986, 1996. For additional perspectives, see Folberg and Taylor, 1984; Haynes, 1981, 1994; Rubin, 1981; Saposnek, 1983; Williams, 1998.) Here are the key activities that mediators engage in to help parties move through a resolution process.

### *In the Beginning*

- Assess whether and how to intervene in a conflict
- Create or redesign an arena for communication and negotiation
- Get parties to participate
- Negotiate the purpose, structure, and guidelines of mediation with the parties

### *Throughout the Process*

- Help each party to feel heard and to hear others
- Identify the key issues that parties need to address and the needs driving these issues
- Frame and reframe issues, suggestions, and concerns
- Work to create an atmosphere of safety
- Manage emotions and communication
- Explore needs at a useful level of depth
- Deal with unproductive power dynamics
- Help disputants work across cultural, gender, class, and other differences
- Encourage incremental and reciprocal risk taking
- Facilitate an effective negotiation process
- Deal with impasses

### *During the Problem-Solving Phase*

- Encourage creativity
- Help parties develop and discuss options with each other
- Help people think through their choices
- Articulate and solidify potential agreements
- Apply appropriate amounts of pressure
- Discuss implementation

This is by no means a complete list of what mediators do. For example, I have not discussed drafting agreements; designing ongoing systems for conflict resolution; dealing with intraparty conflicts; communicating with such others as lawyers, judges, and substantive experts; following up on agreements; or teaching communication or conflict resolution skills, all of which are common activities of mediators. But the interventions listed here are, in my view, at the core of what mediators generally must accomplish in most disputes.

Most mediators will at some point engage in almost all of these interventions. The most effective mediators are those who can approach each one strategically. That is, they have a variety of approaches to each of these tasks and can choose among these approaches based on their assessment of the needs of the particular situation. This does not mean that they are always aware of doing this. Like any other skilled practitioners, the most accomplished mediators make many of their choices without consciously thinking them through. But I believe that effective mediators, if asked, can nevertheless articulate the thinking behind these decisions. To explore what mediators do further, the following sections discuss several of the interventions I have listed.

### **Mediators Assess Whether and How to Intervene in a Conflict**

Just because mediation is requested does not mean it is appropriate, and even when it is appropriate, there are many different ways of proceeding. The first step in any intervention should be some assessment of the appropriateness of mediation. Often this assessment can be done rapidly, but at other times it requires an extensive effort. The mediator's decision not to mediate or to suggest some other form of intervention is in itself an important contri-

bution to a conflict resolution process. One of the worst situations mediators can find themselves in is the middle of a dispute that is not appropriate for mediation and with all the key parties committed to going through with the process. Several years ago a colleague and I found ourselves in the middle of a dispute feeling as if we were holding a tiger by the tail.

Two teachers at a private school had filed a complaint against the acting headmaster and his assistant alleging intimidation and hostility in the workplace. The headmaster claimed that the teachers were refusing to accept the legitimate decisions of the board and the leaders of the institution and were fomenting "chaos and anarchy," and he threatened "significant disciplinary action." This standoff had found its way to the front page of the local newspaper. Subsequent to the appearance of that article, a large number of teachers and parents signed a letter requesting that a mediator be brought in, which the administration readily agreed to, and my colleague and I were contacted.

We traveled to the school for two days of meetings. During the first day we conducted individual interviews with all the primary parties and with others who had knowledge of the situation. On the second day we were planning to hold joint conversations with the people who were in dispute. However, after some of the meetings on the first day, including several with the headmaster and his associate, my colleague and I both sensed that there was more going on than we were being told, a lot more. The headmaster was uncomfortable with any questions about what would have to happen to improve working relations but very eagerly told us just how "crazy" the teachers were. What was really telling, however, was the headmaster's response to our questions about what he hoped to get out of mediation. There was nothing he could articulate except a desire to show the staff and parents that he had followed through on their request.

Finally, we bluntly asked him whether he had already decided to take personnel action against the teachers and whether this was subject to discussion. After obtaining a reassurance about the confidentiality of our discussions, he said that the board, on his recommendation, had already decided to fire the two teachers and that a letter of dismissal had been prepared and approved by the board and the board's attorney. He and the board members all felt, however, that they had to go through with the mediation because they had promised the rest of the staff that they would do so. He was sure that mediation would fail and that the letter of dismissal would then be delivered.



What really convinced us that this was a hopeless situation was that letter. It was over one hundred pages long! Hours or maybe days of devoted effort had been put into its creation. The commitment of the headmaster and assistant headmaster to this course of action was obvious. We probed for any sign of flexibility from the headmaster and from some of the board members we met with later that evening, but there was none that we could discern. So we stated that it was inappropriate to proceed with mediation.

But there was a problem. How could we stop the process at this point, given that everyone else was expecting and preparing for a joint discussion the next day? We could not break confidentiality; but we also could not proceed with an illegitimate process. We met with the different parties before the scheduled joint session and said that we did not believe the situation was amenable to mediation at this time, but we were unable to give very satisfactory reasons why. We suggested to both the headmasters and the board that there might be a need for mediation after some of the dust settled from the dismissal. They seemed to feel that they just needed to tough out the next step and everything would work out. It didn't.

The letter was delivered, the teachers dismissed. They filed a suit. Eventually, the headmasters were dismissed, and the teachers offered their jobs back. Instead they arrived at a monetary agreement with the board and took jobs elsewhere.

My colleague and I had planned on using our first day of interviews for assessing the situation and planning our intervention. In retrospect we both wished we had done more of this before we ever arrived on site.

## Mediators Create or Redesign an Arena for Communication and Negotiation

Often people in conflict have no constructive mechanism for communicating with each other. They may be communicating through formal letters, court filings, public hearings, voice mail, or inappropriate third parties (like their children). Or they may be trying to communicate more directly but with negative results. Mediators try either to create a new forum for communication and negotiation or to bring about a change in an existing one. Often this forum is the mediation session itself, although in many kinds of mediation more complex mechanisms need to be designed. In dealing with discussions of public policy issues, for example, the

design of an appropriate negotiating forum is a major aspect of what mediators do.

Mediators are often involved in the challenge of orchestrating a system for interaction among multiple parties, much of which will occur outside the mediation sessions. Sometimes this involves setting up subcommittees, encouraging particular individuals to communicate, making sure that representatives of organizations keep in touch with their constituencies, connecting people with substantive experts, keeping lawyers informed about what is happening, and so forth.

Another challenge facing mediators is finding a way to influence an existing forum that has already fallen into a rhythm of interaction and developed a set of norms and procedures, not all of which are productive. This was my challenge when I was asked to help with an ongoing dialogue on regional development policies in which everyone seemed happily ensconced in a thoroughly dysfunctional process.

The community activists and the developers involved in the policy dialogue were expert at humorous put-downs, but underneath their wit was a great deal of animosity. My first exposure to the group came when I entered a room in which a subcommittee was discussing a draft statement about the goals of the dialogue. A group of developers had just presented their revision of a previous draft, and a representative of a community group was raising certain concerns about it. The following interchange occurred within two minutes of my entrance:

*Developer:* I suppose you are going to organize a picket line at the local Safeway to protest our revisions.  
[*Developers chuckle.*]

*Community activist:* Maybe, but you won't have to face the mob because you will be in your polyester clothes hanging out with your cronies at your country club, which probably wouldn't allow our kind in anyway." [*Community representatives chuckle.*]

As much as I like to use humor to create rapport and remind people of their common humanity, this was out of hand. The group had fallen into a pattern of interaction that was both comfortable and destructive. They did not know me or my colleague, and there was a real danger that our efforts to put limits

on such interchanges or to search beneath their surface for the real concerns that inspired them would alienate this rather prickly group. Nonetheless something had to be done. We decided to restructure the way the overall group and its subcommittees functioned so that there was a tighter agenda for meetings and a more active role for the mediators. We also tried to set an example of a gentler form of humor (more self-deprecating than attacking), and we talked about the type of atmosphere that would be productive. New norms slowly developed, and the group was able to make considerable progress. The banter continued, but it was less hostile (and, to my way of thinking, funnier).

### Mediators Get Parties to Participate

Often not all the parties to a conflict have agreed to participate in mediation (or even an assessment of the situation). How mediators obtain participation is very indicative of their overall approach to mediation. Some rely heavily on persuasion, guilt, or a hard sell about the advantages of mediation and the consequences of non-participation. I believe that these approaches can easily become counterproductive because the mediator then has a responsibility to prove the value of the process. How mediators get people to agree to participate has to be congruent with the way in which they want them to participate.

It is more effective for the mediator to approach resistant parties by trying to help them think through the pros and cons of mediation for their circumstances than by trying to convince them to participate. One of the greatest services mediators provide is not just getting people to participate but doing so in a way that builds momentum for a collaborative process. Another important service is helping people decide not to mediate when that is the best decision for them.

### Mediators Manage Emotions and Communication

This may be the primary tool of the trade. Mediators help people express their emotions or feelings as necessary and appropriate, and they manage the flow of communication. This is also the area that may witness the greatest variation in mediator style. Some mediators place a heavy focus on helping people express their feelings, whereas others shy away from this in the name of avoiding

therapy and concentrating on helping people reach an agreement. Some mediators are very relaxed and easy about letting parties communicate directly from the outset. Others conduct the process so that almost all communication goes through the mediator—sometimes to the extreme of not ever bringing the parties together. I have found that the more secure mediators are in their ability to manage emotions and communication, the fewer restrictions on direct interaction they impose.

### Mediators Explore Needs at a Useful Level of Depth

As discussed in Chapter Seven, the art of creative problem solving involves finding the right level of depth for exploring people's needs, interests, hopes, and fears. Needs should be discussed at a deep enough level that the real forces driving the conflict can be addressed. Mediators help each person explore the issue at the level of depth that is relevant to him or her and then they try to find a way of discussing everyone's needs that encompasses the different levels that apply to each disputant.

### Mediators Encourage Incremental and Reciprocal Risk Taking

Searching for resolution takes courage. Disputants make themselves vulnerable when they raise a conflict, reveal their concerns, provide information, agree to negotiate, express their feelings, suggest solutions, or commit to agreements. If they take too large a risk, they may encourage an adversary to try to exploit a perceived advantage, and this may ultimately lead to an escalation of the conflict. Trust is built by incremental and reciprocal risk taking. As people make tentative concessions or share important data and receive reciprocal concessions and information, confidence is built and resolution promoted. For this process to work, the risk must be large enough to be meaningful but not so enormous that the party taking the risk is made disproportionately vulnerable.

Mediators often have to work with the parties to encourage some risk taking, help them think through just how large a risk is advisable, and nudge them to reciprocate when others have shown a willingness to take a risk. People are usually much more aware of their own concessions and risks than those of others, so mediators

have to help them recognize others' concessions or risks and appreciate them. When mediators talk about orchestrating compromises or trade-offs among parties, in essence what they are doing is arranging for an exchange of risks.

### Mediators Encourage Creativity

When conflict is intense and emotions are rampant, creativity can suffer. One way mediators deal with this is by trying to create a comfortable, relaxed atmosphere in which different ideas can be put forward and discussed without exposing people to personal attack. They also try to ensure that people feel able to suggest ideas without having to commit to them. Mediators often focus the parties on integrative or joint gain possibilities that they have not adequately explored, and in general mediators try to get people to look at a dispute from a new perspective that will open more creative ways of thinking about the issues.

Another approach is to bring new inputs into a process to provide fresh and hopefully creative perspectives. Sometimes this involves bringing in substantive experts or individuals who represent slightly different points of view or approaches. At other times it may involve referring people to outside resources or having them look at how others have solved similar problems.

One approach that I think is often overused is substituting the mediator's creativity for the disputants' creativity. Mediators often believe that they can find the solution to a problem because of their experience, their communication with the different parties, or their own creative abilities. Although I have occasionally identified a potential solution that nobody else seemed aware of, usually because of the confidential access I had to different parties, the real challenge is always how to bring the parties to the point at which they can identify the potential of a new approach for themselves.

Once in a great while I have found that a simple suggestion I have made will work. But more often than not what has appeared to me to be a particularly clever solution has long since been discarded by the parties because of factors I was unaware of. Furthermore, if a mediator proposes a solution, and it turns out that

this solution promotes one party's interests at the expense of another's, then the mediator may well have compromised his or her more fundamental role. There is an art to putting forward ideas at the right time and with the right amount of tentativeness that can help prime the pump of others' creativity or get an option on the table that would be tainted if it were suggested by one of the parties to the conflict. But it is important for mediators to avoid becoming personally committed to a particular approach, especially to the point where they start trying to convince the parties of its merits. More often than not, the mediator's highest value is not in figuring out creative solutions but in promoting an open, relaxed atmosphere and an effective communication and problem-solving process that elicit the creativity of all the parties. Mediators also need to be alert to the possibility that creative solutions will come from unexpected sources.

Charlie and David taught everyone involved in their parents' divorce a lesson in creativity and flexibility. The parents of these two preadolescent boys had already overcome a lot of animosity as they tried to work out parenting arrangements in mediation. The mother was about to graduate from a professional school and wanted to take on a greater parenting role. Her class schedule had limited her flexibility, but now she had a job with regular hours. The father had resented her entering this program to begin with and blamed it for their divorce. He had been resistant to any change in the arrangements before issues about decision making, church, and education were settled.

These parents were beginning to work with each other in a more constructive way, but scheduling Monday nights became a major obstacle. The boys were active in a Boy Scout troop that met near the father's home. For the parents' tentative schedule to work, however, the boys would need to be at the mother's house, forty miles away, on Mondays. This was too great a distance to manage on a school night. We discussed all sorts of different ideas in our sessions, but nothing seemed to work.

I decided to talk about this directly with Charlie and David, because each parent was worried that the other would manipulate the children in any discussion of living arrangements. The boys came in together, and when I got around to asking about Boy Scouts, they both said how important that activity was to them. But almost immediately they also mentioned a troop some of their friends belonged to near the mother's house that was doing "cool"

things. End of problem. I really wondered why neither of the parents nor I had thought about the possibility of a different troop, but we hadn't. It took the input of the boys to identify a creative solution to the parents' dispute.

### Mediators Help People Think Through Their Choices

Mediators sometimes need to nail down potential agreements when the parties are ready to commit to them. At other times they need to slow down the process so that people feel they can make a deliberate and clear choice among what are often less than ideal options. Usually, mediators have to do a little bit of both things at once. Typically, when an agreement seems possible, mediators will articulate it, frame it in a balanced way, ask people whether they are ready to commit to it, and if they are, then write it down. But there is also often an important pause at this point, during which people have second thoughts, doubts, or premonitions of what is sometimes called buyer's remorse. When this pause happens, many mediators want to turn on the pressure. However, what is often the most useful thing to do is the opposite, to decrease the pressure and give people more time or emotional space for considering their choices.

This is often a difficult point in a conflict, one at which potential agreements can fall apart. Seldom, however, have I seen a mediation fail because people took the time to think through their alternatives at this stage. More often I have seen agreements unravel because people were uncomfortable with commitments that they had made under pressure.

### Mediators Apply Appropriate Amounts of Pressure

No matter how facilitative or process oriented they are, mediators apply pressure in some form to the parties to encourage them to move toward resolution. They may or may not be aware of or comfortable with this aspect of their work, but it goes with their role. When mediators encourage disputants to make an offer, to respond to concessions, to share their concerns, or to think through their real options, there is almost always some degree of pressure involved. Sometimes mediators put time limits on the process, and this too amounts to pressure on the parties.

There is a fundamental difference, however, between putting pressure on someone to agree to a particular outcome and encouraging them to take a conciliatory step. If mediators believe their role is to identify a reasonable solution and cajole, plead, and persuade parties toward that outcome, then the pressure they put on can become quite heavy handed. If mediators see their role as helping the parties to a conflict engage in a collaborative process to meet their needs, then they are more likely to use their power to assist and encourage parties to communicate and negotiate in a more integrative manner.

### When Mediation Works and When It Fails

Assisting Harvey and Laura with their divorce negotiations resulted in probably the most successful failure that I have had as a mediator: Harvey and Laura had left the mediation hopelessly deadlocked and had taken their case to court. In the mediation they had fought bitterly about everything, but they did reach tentative agreement about most of the issues in their complex divorce. I had drafted a comprehensive memorandum of understanding, but as we were reviewing it, they had several disputes about its specifics and broke off mediation, indicating that they would prefer to take their chances in court.

At the time I viewed this as a failed mediation. But about three years later, one of their attorneys called me to say they had some new issues and wanted to return to mediation to "update their agreement." "What agreement?" I asked, and pointed out that they had not reached any agreement. The lawyer told me that I was wrong. In court they had each presented their copy of the memorandum. Though they had some minor additional requests, the judge basically entered the draft agreement as the court order. The couple referred to this as "the bible," and it had become the cornerstone of their postdivorce parenting and financial relations. When I met with them, each had a well-worn copy of the draft agreement, with highlighting, annotating, and underlining.

As it turned out, they had been able to use mediation to negotiate the terms of an agreement, but they had been too angry with each other to accept it voluntarily. They needed an outside authority to impose the agreement on them. I was concerned that they would feel that mediation had manipulated them into an outcome that they did not really want, and that the voluntary nature of the process had been corrupted. But they seemed perfectly happy with the way their mediation had played out. Though there may have been aspects of the agreement that each would have preferred to change, they felt that it

was as good a solution as they could expect. They had just needed someone else to finalize it.

This case pointed out for me the elusive nature of what mediation really accomplishes, of the times when it works and the times when it fails. I believe that successful mediations do not necessarily end in agreements and that failed mediations sometimes do. People come to mediators because they want help in reaching an agreement. If that end is never achieved, clearly something is wrong with the process. But the equating of success with reaching agreement and of failure with not achieving agreement is very limiting, particularly in complex disputes. The longer, more involved, and more intense a conflict, the less useful it is to see resolution and agreement as the same thing. Agreements are often just steps along the way. Mediators can be particularly helpful in taking those steps, but their larger purpose is to help people engage in a constructive resolution effort.

Mediation has been successful when the addition of a third party has helped people proceed with a resolution process appropriate to their particular circumstances. It is not successful if it does not do this. Sometimes this can be equated with whether or not an agreement has been reached. In most commercial mediations, for example, agreement and resolution go together. But in many public policy and interpersonal conflicts, reaching a consensus, especially one that is premature or overly general, may be less valuable than helping people confront their differences, articulate their beliefs, and frame the issues in a clear and constructive way.

Mediation is a powerful intervention. Societies need mediators, and in almost all cultures there are people who act in a mediative way. All of us, at some time in our lives, take on this role. Similarly, we all sometimes need help that assists us in resolving our differences rather than resolves them for us. But just like any other approach to human interaction, mediation has its limits and is not always appropriate (see Chapter Ten).

Even though mediation is a basic role in human interaction, it is probably an inadequately developed or institutionalized function in much of the world. Historically, most mediation has been provided in the context of less mobile and complex societies. Where community structures were strong, extended family systems

powerful, and social networks durable, there were many effective informal mediative roles. But fewer such structures exist now, and the need for formal mediation services has grown.

Something is gained and something is lost whenever formal processes with trained personnel are substituted for informal processes, whether we are talking about counseling, education, medical care, or conflict resolution. When people bemoan the loss of community, part of what they miss is the more personal, familiar, and accessible approaches of smaller and less institutionalized processes. There is a built-in contradiction here that defines mediation's greatest challenge. Mediators are trying to provide a formal and professional intervention to assist people to reach resolution in an informal way and without giving up power to other formal and professionalized procedures. The tension created by this contradiction gives a creative impulse to mediation but also explains much of the resistance to its more extensive use.

## Chapter Ten

# Other Approaches to the Resolution of Conflict

Mediation may be the role most often identified with conflict resolution, but it is by no means the sole approach of conflict resolvers. As the field of conflict resolution grows, the ways in which its practitioners define their role and conceptualize their work has diversified. Although mediation continues to be an important aspect of the work of conflict resolvers, there is a demand for a much broader set of approaches. Many of these other roles overlap with mediation, even as they bring a new dimension to the practice of conflict resolution. The future of conflict resolution as a profession will be defined to a large extent by its success in developing and integrating a powerful range of approaches to conflict. The growth of mediation and arbitration has been an important step in this direction, but only a step. The field is now in the midst of the next fundamental step in its growth. This step involves a redefinition, as practitioners identify themselves with the broader field of conflict resolution rather than with just the specific service they offer.

### Conflict Resolution as a Continuum of Services

The more conflict resolution practitioners can view the field in its broadest dimensions, the more able they will be to make a differential assessment of each conflict situation. That is, the initial question conflict resolvers will ask is not whether or how to mediate a dispute, but what kind of approach is needed at any given time and how that approach can be provided.

Conflict resolution as a field is at the point where it needs to take the development of a *continuum of services* seriously and to begin to identify the essential pieces of this continuum. Right now, new approaches are being developed as particular needs arise, but they have not yet been effectively tied together into a coherent continuum of services for people in conflict, although there is some encouraging movement in this direction. Currently, the field encompasses people who provide mediation, arbitration, training, facilitation, and settlement conferencing, among other services. But concepts of how to link these services; what a continuum of services, or interventions, would look like; and how it might be brought to bear in different conflicts are still primitive.

In order to clarify the dimensions of this continuum, we may consider the types of assistance that people in conflict need. In the last chapter I discussed what mediators offered to a conflict resolution process. However, it is also important to consider the limitations of mediation and specifically what needs it does not address. This will help us identify the characteristics that a continuum of services should possess.

### The Limits of Mediation

As versatile and useful as mediation is, it has significant limits on what it can provide to people in conflict. Moreover, these limits are essential to mediation because they are also the sources of some of its most significant capacities to help people cope with conflict. In some respects, mediation is powerful because of what it does not attempt to do. For example, on the one hand, mediators do not generally offer themselves as evaluators of the merits of each party's position. (I am referring here of course to process-oriented mediation and not evaluative mediation or mediation-arbitration, which are discussed later in this chapter.) This is one reason disputants will often share confidential information with a mediator. On the other hand, such an evaluation from a third party is sometimes useful to disputants.

The major limits of mediation as an approach to conflict resolution are identified in the following paragraphs. Each limit suggests conflict resolution approaches that can do what mediation does not do and that might become part of an effective continuum of services.

*Mediation is primarily used to intervene in conflict rather than to prevent it.* To be sure, mediation can be used to negotiate an agreement before a conflict has developed, but that is not its primary application. For the most part, people employ mediation after a conflict has arisen, and they feel they need help in managing or resolving it. Approaches such as partnering, team building, and systems design are more useful for preventing conflict and are designed to forestall the need for conflict intervention.

*Mediation by definition involves a third party who is directly involved in the communication or problem-solving process.* Even though a mediator seeks to empower disputants and leave them with the primary responsibility for the conflict outcome, his or her presence at the table changes their role. Frequently, people are reluctant to give up even procedural power to a mediator or to reveal their circumstances or concerns to any outsider. As useful as mediation may sometimes be, most disputes will be resolved by the participants themselves, without direct outside assistance. Thus there is a need for interventions that are designed to help people solve their own disputes without the direct participation of any third party. Training is one such intervention, as are coaching, systems design, and facilitated planning sessions. Working with groups to help them prepare for a negotiation can be a very powerful intervention, as it was in the following case.

Several years ago a state agency and all the county service-providing agencies it funded were sued by a national advocacy group in a class action to force the provision of additional services to the agencies' clients. The advocacy group presented the action as a "friendly suit," on the grounds that it was actually trying to force the state legislature to provide more money for the agencies' programs. But the agencies felt that the suit could easily lead to their losing control over their programs and to a serious increase in the "bureaucracy of accountability." A colleague and I were asked to assist the state and county agencies to prepare for the settlement negotiations that were about to take place.

We worked with the agencies in three ways. We facilitated a set of planning sessions during which agency representatives discussed their objectives, strategy, and the structure of their negotiating team. This included devising a plan for communicating effectively with each other and for making decisions

during the negotiation. We also conducted a training program in collaborative negotiation procedures for the negotiation team, and we provided consultation to the team as the talks proceeded.

Our hope had been to involve both sides in a facilitated planning session to discuss how to conduct the negotiations, and we also invited the negotiators from the advocacy group to participate in the training sessions. They politely declined, feeling comfortable in their own ability to negotiate and probably wanting to maintain some personal distance at this stage of the process, given the likelihood of litigation. We felt, however, that the offer to participate was critical in setting up a positive and open tone for the negotiations. Furthermore, they said that they were very pleased that the agency negotiators were getting this training.

We took no direct role in the negotiations, which were complex and at times difficult. However, an agreement was eventually negotiated and approved by the governor, the legislature, and the courts. It became the basis of some significant changes in the process by which services were delivered. Although the negotiations were tough, relationships among the key players were for the most part constructive.

How much did our work contribute to this outcome? Despite the favorable comments of the agencies' negotiating team, it is hard to know what impact our efforts had. Whatever effect we had resulted from our roles as the team's advisers, trainers, and coaches. Our ability to fulfill these roles would have been seriously curtailed if we had served as mediators because we would have had to maintain a degree of impartiality that would not have allowed us to give the same kind of advice and feedback. Also, I doubt that the team members would have been quite as forthcoming about their internal differences and their concerns about the weakness of their case if we had been working equally with both sides.

*Mediation is usually focused on helping people with a negotiation—that is, helping them to arrive at a mutually acceptable outcome or settlement of issues of concern.* Of course mediation may be focused on communication, reconciliation, public participation, and related interpersonal processes, but it is most clearly designed and most frequently employed for assisting negotiations. Most of the procedures, guidelines, confidentiality protocols, training, and marketing associated with mediation are specifically oriented to negotiation assistance. Efforts are being made by some in the mediation community to

develop an alternative to an outcome-based approach, but to some extent what they are actually doing is inventing a new form of intervention.

Sometimes people start mediation believing that negotiation assistance is needed, only to discover that they have hardly any issues to negotiate. Instead they may need assistance with reconciliation or healing or simply with communicating. Up to a point mediators can help with these needs, but approaches such as reconciliation, counseling, facilitated communication, and comprehensive programmatic interventions are often more suitable.

*Mediation does not necessarily lead to an agreement.* It is a premise of mediation that people have the right to decide whether to accept any tentative outcomes developed in the mediation process. Therefore mediation does not automatically produce an agreement. When mediation processes have integrity—that is, when they are conducted in accordance with accepted values and principles—a certain percentage of cases will not result in agreement. I am always suspicious of mediators who claim they achieve an extremely high rate of agreements. Too high a success rate could well be a sign of overly coercive practice (or of statistical manipulation). Of course a low settlement rate is a problem as well.

Yet sometimes the guarantee of a decisive outcome is important, either because the situation demands it or the parties to a conflict want it. For example, organizations often want an alternative to litigation to settle grievances that have not been resolved in mediation. Arbitration, private judging, mediation-arbitration combinations, and more complex dispute resolution systems are some of the approaches used when people want a guaranteed outcome.

*Mediation is process focused.* Mediators are not normally contracted to provide substantive expertise, and when they are hired for that reason, their process role can be detrimentally affected. Mediators generally do need some substantive expertise in, or at least familiarity with, the kinds of issues with which they are working. But this is to ensure that they understand those issues, can help parties evaluate their alternatives, can detect important unspoken issues, and can understand the implications of different options under consideration.

Often, however, the parties themselves have a need for substantive information and technical assistance. Mediators can offer

small amounts of such information on occasion without diluting their role as impartial process facilitators. For example, a mediator might explain the steps in a grievance system or the time schedule for putting together an environmental impact statement. But the more mediators make the provision of substantive information or advice the centerpiece of their work, the harder it will be for them to focus on promoting effective communication, negotiation, and decision making.

Disputants often receive all their substantive assistance from people who are highly partisan, such as their lawyers or technical experts committed to a particular cause. As a result the different parties often operate on the basis of different, inconsistent, and sometimes biased information. In many environmental disputes, for example, the battle of experts is a serious obstacle to resolution. In many circumstances alternative and less biased approaches to collecting, analyzing, and interpreting information are essential to the success of a conflict resolution effort. This has led to an increased use of fact finders, neutral evaluators, evaluative mediators, technical dispute panels, and other methods for providing balanced or impartial substantive information.

*Mediation naturally operates at the level of interests.* Although mediators sometimes explore the deeper levels of needs, their natural focus is on interests. The mediation process is generally structured to push people to move beyond their focus on what it is they want to a somewhat deeper consideration of why they want it. But mediation is not generally set up to push people to consider their identity needs. To get to this level, it is usually necessary to develop a deeper rapport, spend more time, and work at a greater distance from the immediate conflict than most forms of mediation allow. Furthermore, although mediators have been used to defuse tense situations where lives were at stake, the more common types of mediation are not designed to address immediate survival needs either.

For example, divorce mediation is seldom the best place to deal with an immediate crisis in which the physical safety and well-being of children are at issue. Similarly, the fundamental concerns individuals who are divorcing may have about the meaning of their lives and their ability to sustain an intimate relationship are not best dealt with by most mediation processes. There are conflict resolution procedures that are better oriented toward dealing with



issues of identity. Reconciliation processes, counseling, longer-term dialogues, and more programmatic approaches to building relationships are often better suited to dealing with conflict at this level. Survival issues usually require crisis intervention and tangible resources of some kind.

*Mediation is a short-term intervention.* Mediation is normally structured as a time-limited intervention with a specific focus, and that focus is usually the attainment of some specific and immediate goal. But many serious conflicts require long-term, systemic, and multifaceted interventions. The process of building peace in Northern Ireland or the Middle East, for example, has required multiple mediations, but it has also required many other processes as well, such as economic development, grassroots peace building, institutionalized communication structures, and multiyear strategic planning processes.

These limitations do not mean that mediators cannot or do not adapt to particular conflicts by altering the structure of what they do and the roles they play. Mediators have to be flexible, adaptable, and creative. Many creative new conflict intervention strategies have arisen when mediators or other conflict resolvers have found themselves facing a situation that called for a significantly altered approach. Also, many new interventions first appear as hybrids constructed from the alternative roles that a particular situation demands.

On several occasions I have found myself developing what felt to me to be entirely new roles in response to very specific requests from clients.

Helping siblings permanently sever their relationship was not the business I thought I was in, but that was what I found myself doing. Two adult brothers came to me as a result of a dispute about an inheritance. The terms of their mother's will specified that they should consult a "third party" before taking legal action. The older brother, who had experienced a series of business failures, had received much the larger part of the estate, and his younger sibling felt manipulated and cheated. He confided in me that he did not have the money, the law, or the resilience to take this to court but wanted a chance to state his views in a way that his older brother would have to listen to. After that, he wanted help in saying "goodbye forever." Perhaps not surprisingly

this exactly mirrored the desire of his brother. He wanted to make his case and then "wish his brother well."

They both felt that there was nothing to negotiate. The basic damage had already been done to their relationship, and they now wanted help in achieving closure—but not under the guise of therapy. To them, therapy implied a desire to heal the relationship and reestablish better communication.

Probably more to satisfy my needs than theirs I explored with them individually whether any agreements between them might be possible or useful. Although the younger brother would have liked a more equal division of the estate, he believed that this was not going to occur in mediation, and he was right. There really was no outcome that either of them wanted other than this facilitated siblingectomy. In individual sessions I listened to the worst feelings each had about the other, and I explored with them what they needed to say and what they were likely to hear. We discussed how they might present their views and feelings and respond to what they heard with dignity, honesty, and sensitivity.

The joint meeting, in a weird sort of way, was extremely moving. Each brother talked about feeling that the other was the "favored child," and about how much he thought he had sacrificed for the other. Each described how he thought the other had manipulated their mother. Most important, both talked about their need to "end the relationship." They did remember better times between them, and although skeptical, neither ruled out the possibility of contact at some point in the future. Then they both thanked me and with tears in their eyes said goodbye. I checked in with each of them shortly thereafter, and they both said that the meeting had accomplished exactly what they wanted.

Was this some sort of reverse conciliation process? A kind of antimediation? Whatever its label, I felt this hybrid of counseling, mediation, and facilitation had somehow accomplished an important purpose that would allow healing for both parties. They seemed to feel freer to go on with the rest of their lives after this encounter. Maybe they will reconnect someday, and perhaps having been through this process will make that easier, but there is no way of knowing this. I can now think of a number of situations in which facilitated leave-takings could be useful—relinquishment of children to adoption, divorce, and dissolution of long-term business partnerships, to name a few.

Many other new approaches have developed out of the particular circumstances of individual cases. Mediation-arbitration, sometimes called med/arb, arose when clients who could not settle a case in

mediation but had invested time in the process and developed a good rapport with the mediator wanted that mediator to render a decision. Sometimes people (or their lawyers) who have an ongoing but hostile relationship (such as divorced parents or hostile but successful business partners) contract with a third party to be available to make immediate decisions, often by phone, as conflicts arise. Lawyers sometimes seek ethical ways to advise parties through mediation rather than take on the responsibility of a client-attorney relationship. This has led to the concept of “unbundled legal services” (Mosten, 1997).

New approaches to conflict resolution are designed constantly. Some of them can be viewed as variations in how a particular service is delivered, but often an entirely new role is being devised. Of course great care must be taken to clarify exactly what this role is. One sure way to create distrust and suspicion of a conflict resolver is to allow a situation to develop in which the conflict resolver and the disputants have inconsistent understandings about the nature of the process or the role of the conflict resolver.

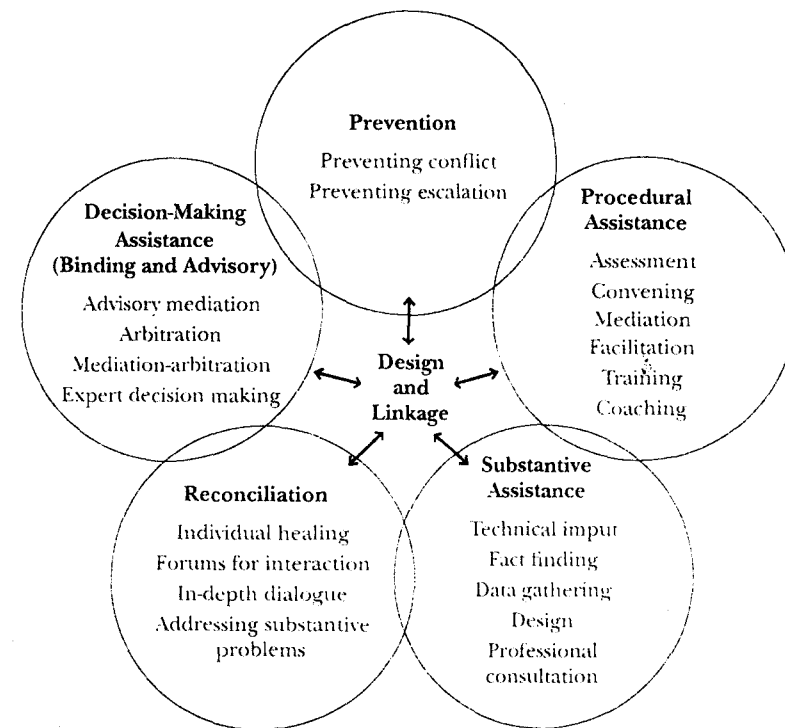
### An Effective Continuum of Services

New approaches to dealing with conflict develop because of the limits of mediation or other established means of conflict resolution. The challenge for the field of conflict resolution is to promote an effective continuum of services rather than identifying primarily with one or two types of intervention. The specific interventions selected from that continuum will then vary depending on the type of conflict (CDR Associates, 1996). Environmental, family, organizational, and commercial disputes, for example, all require somewhat different approaches. In general, though, all effective systems of conflict resolution will in some way provide prevention services, procedural assistance, substantive help, support for reconciliation, decision-making assistance, and mechanisms for design and linkage (see Figure 10.1).

#### Prevention

There are two aspects to prevention. We may attempt to prevent conflict in the first place, or we may attempt to prevent conflict

Figure 10.1. Elements of a Conflict Resolution Continuum.



escalation. And for each of these aspects, there are always two approaches—substantive and procedural. People can anticipate the concerns that can cause or escalate a conflict and deal with them before they become problematic, or they can agree on procedures for communication and problem solving to forestall conflict or prevent it from escalating.

#### Preventing Conflict

Conflict can be anticipated, and agreements can be put in place that address those issues that might later lead to conflict. A prenuptial agreement, a partnership buyout provision, an agreement about what will happen if a contract is not executed in a timely way, and a decision on land use made before there are development pressures are examples of this substantive approach

to prevention. The procedural approach of opening more effective channels of communication or decision making might include arranging for regular meetings between contractors and their clients to review the progress of a project or establishing an employee council, a citizen's advisory group, or effective public participation processes.

### *Preventing Escalation*

Conflict escalation can be prevented by early detection and rapid response systems and by the establishment of ongoing structures to monitor and resolve conflicts as they arise. One way in which citizen advisory councils have been effective resources for governmental agencies and industrial facilities is by helping them to identify conflicts with the community at an early stage and by acting as a communication link among the parties involved before these situations have a chance to escalate (Mayer, Ghais, and McKay, 1999).

Prevention processes are often the outgrowth of previous conflict resolution efforts. Difficult negotiations or interactions in particular may result in the establishment of preventive measures for the future. Prevention then should not be seen as something that necessarily precedes conflict. Instead it is often a link that builds on the lessons and momentum from past conflict to redefine how future interactions will take place. The institutionalization of conflict resolution activities is itself a prevention effort.

Conflict resolvers play several roles in prevention. They point out the need for prevention, help parties agree on preventive measures, consult on the design of prevention systems, and facilitate or organize the operation of those systems. They also provide training in communication, teamwork, conflict management, and related topics.

The line between prevention and intervention is a thin one. Often the effort to put preventive processes into place starts by revisiting a previous conflict and dealing with its unresolved issues. Escalated conflicts are often addressed from the point of view of prevention as well. I have frequently been asked to help prepare labor and management negotiating teams for the next round of bargaining. These ostensibly preventive activities almost always begin with an intense discussion of what happened in the last

round of negotiations. Before people can focus on the future, they almost always have to revisit their lingering feelings from the past. After processing some of these issues, some genuine preventive planning can take place.

### *Procedural Assistance*

Systems of conflict resolution have usually been built around some approach to providing procedural assistance, usually a form of mediation. In many ways, process is the conflict resolver's specialty. The acceptance and growth of conflict resolution as a field has been fueled by the increasing awareness that trained third parties can significantly assist people in conflict and by a growing understanding of the difference between procedural assistance and decision making.

Although mediation may be the most established form of procedural assistance, it is not the only type. Other procedural roles are being developed or formalized all the time. Some of these are aspects of mediation (for example, situation assessment) that are developing into independent roles. Others (for example, training) are not generally part of the mediation process. Process assistance roles in addition to mediation include the following.

#### *Assessment*

When organizations or public agencies are involved in complex disputes, they often find it useful to hire a conflict resolver at the outset to assess the situation and recommend what, if any, type of procedural assistance or other approach to resolution might be useful. Although the assessor sometimes later serves as the mediator or facilitator, there is a potential conflict of interest in combining these roles. Sometimes, therefore, the person doing the assessment is contracted for that task alone.

#### *Convening*

Conveners help start a process but do not necessarily assume responsibility for conducting it. They identify potential participants, discuss their concerns about participation, identify an overall set of issues to be addressed, develop a preliminary formulation of the purpose and design of the process, and arrange for the initial

gathering of the parties in a suitable forum. The participants may then run the process themselves, or a different third party may be brought in as a facilitator or mediator. Sometimes the convener has an ongoing role during a process, but at other times his or her purpose is served once the dialogue or negotiation begins. Often the functions of situation assessment and convening are combined, and one person or team does both.

### *Facilitation*

The term facilitator is used in different ways, however it usually refers to someone who is conducting an interaction of some kind and whose focus is on guiding and improving the process of the interaction. Facilitators usually do not have a substantive process role but try to help a group accomplish its goals or purposes. Mediation is in essence a form of facilitation where the focus is on helping people to resolve an identified conflict. Generally, mediators facilitate a negotiation process. Facilitators are often used to help people arrive at a consensus decision, an agreement that all participants can accept. So the role of the facilitator is in essence to guide a group process and, where decision making is involved, to orchestrate a consensus-building effort. (For an extensive discussion of the consensus process, see Susskind, McKernan, and Thomas-Larner, 1999.)

The concept of facilitation is broad and somewhat fuzzy, however, and a great many activities are labeled facilitation. Mediators are sometimes called facilitators, as are trainers, counselors, team leaders, and group therapists. I have sometimes been hired as a facilitator because people did not want a mediator and at other times as a mediator because people did not want a facilitator and in both instances I had to do essentially the same work—that is, help a group communicate about a conflict and arrive at agreements for how to proceed.

To some people, facilitation sounds less controlling or intrusive than mediation but also less powerful. I see facilitation as encompassing a broad category of activities for guiding a group process, and I do not care whether people want to label it mediation or facilitation. Facilitation may help in many different aspects of an interaction, not just in decision making. Any time a person has the task of focusing on the process of an interaction as op-

posed to the substantive issues themselves, he or she is taking the facilitator's role. (For two different approaches to facilitation, see Doyle and Strauss, 1976; Schwarz, 1994.)

### *Training*

Training is training—it is not in itself an intervention to resolve a specific conflict, but it can play a major role in assisting people to conduct an effective process. The line between training and intervention becomes fuzzy, however, when people or teams who are potentially in opposition to each other participate in joint conflict resolution training of some kind. Some of the most powerful steps that I have seen people take to break an unproductive pattern of interaction have come during such training. The purpose of such training is to impart conflict resolution skills, but as important as this can be it is often secondary to the personal rapport that can be built and the understanding of different perspectives that can develop as a result of bringing people together in an educational forum.

It is not unusual for an organization to ask for training in conflict resolution when people's real need is for a different kind of intervention. This can lead to a great deal of frustration for the participants because real issues seem to be hovering over an educational experience without ever being addressed, or it can be an opening for them to begin to tackle these underlying conflicts. Training is often essential if other conflict resolution processes, such as grievance procedures or policy dialogues, are to function effectively.

### *Coaching*

Coaching or consulting to people about participating in conflict resolution processes is an important service that is often neglected. I have worked with many organizations that have grievance procedures calling for direct meetings between the grievant and a manager as a first or second step. Seldom, however, is there any provision for advice, consultation, coaching, or any other assistance to help make these direct meetings productive. Too often the assistance that is available is either adversarial or focused on the substance rather than the process of the negotiation. Coaches can help the parties think through their own key concerns and goals

as well as those of others. Coaches can help the parties consider their alternatives, plan how to frame their concerns and suggestions, and consider how to listen and acknowledge other parties even as they disagree with them. Coaches can also prepare people to deal with aggressive behaviors and to be both powerful and conciliatory at the same time.

### Substantive Assistance

Disputants often face the problem that either no source of good substantive information exists or all sources are aligned with a particular party or side of a conflict. There are often no credible and neutral sources of legal, technical, financial, scientific, or other kinds of information. I have often wished that there was a way in which a divorcing couple, early in their decision-making process, could hear the same legal opinions at the same time. Some attorneys are willing to sit down with a couple, especially if they have no attorney-client relationship, and discuss these matters. Some mediators will attempt to provide this information. But by and large, the only real opportunity that couples have to simultaneously hear impartial legal analysis is during a settlement conference with a judge or settlement officer.

### *Technical Input and Fact Finding*

The technical advice available in environmental negotiations usually comes from someone representing industry, environmental groups, or government agencies.

Technical experts tend to view themselves as objective and unbiased, but usually whoever they report to or receive their payment from must ultimately be pleased by the overall pattern of their findings if they are to continue to work for that person. Therefore, over time there is pressure for them to emphasize findings that are favorable to their employer. It is no accident, for example, that studies on the impact of smoking generated by the tobacco industry have results very different from the results of studies produced by health advocacy groups. Even when information really is unbiased and independent, the perception of the parties about the reliability of the information is also important. Finding ways to

bring substantive information or advice to the table in a credible and accessible manner is therefore vital in many conflicts.

Conflict resolvers have attempted to meet this need in different ways. They have acted as fact finders, with the mission of producing an objective and unbiased analysis of a conflict and its potential solutions. Technical consultants have worked for a dialogue group as a whole or have been hired by a convener or facilitator rather than by one of the parties. Sometimes, in anticipation of possible conflicts—particularly in large construction projects—potential disputants have put together a panel of substantive experts or have agreed on a consultant who will make technical recommendations or rule on technical issues. Mini-trials have been used in large contractual disputes to lay out both technical and legal information for negotiators. These are a sort of mock trial in which lawyers put on their best case in front of the key decision makers prior to settlement negotiations.

### *Data Gathering*

Conflict resolvers often have to work with the different parties to create meaningful ways for them to gain access to information. In a public policy negotiation that involves important data questions, it is often as important for people to participate in formulating the key questions that need to be answered and in reviewing the methodology for obtaining information from a credible neutral source. Sometimes the data generated by one party to a dispute are accepted as credible if everyone has had a chance to review the methodology and if the parties feel that the technical experts have been open and straightforward in discussing their findings. At other times the input of credible and independent technical advisers is disregarded because they did not work effectively with the group to whom they were reporting.

Often the issue that conflict resolvers face is an imbalance in access to technical information. When one party, perhaps an industry group, has access to a great deal of technical expertise and support and another party, maybe a community group, has none, then providing a neutral expert may not be enough. It is sometimes necessary to find a way for the community group to gain access to technical or other consultants who will be their confidential advisers.

### *Professional Consultation*

Conflict resolvers often assist substantive specialists to fulfill what for them is often an unfamiliar role in a conflict resolution process. Conflict resolvers can offer them training, consultation, practice presentations, and ongoing feedback. Gradually, a growing pool of independent individuals and organizations is becoming experienced in providing impartial, substantive input into conflict resolution processes. I have repeatedly found that the role of these experts can be critical to the success of a consensus-building effort, as it was in this waste management policy dialogue.

I received my first exposure to the concept of Gucci Garbage when I worked with two adjoining municipalities after they had received federal funds to investigate alternative approaches to solid waste management. One of the conditions of the grant was that the municipalities convene an advisory group composed of representatives of the waste management industry, recycling organizations, the communities involved, and relevant public interest and environmental organizations. A colleague and I were hired to facilitate the meetings of this group, and several technical consultant firms were contracted to provide substantive input.

Although its members encompassed many different points of view, the group developed a good internal communication and decision-making process. But it faced very complex issues about which there was very inconsistent information. The initial issue defined by the municipalities was, "Should a plant that incinerates waste and generates energy be built in this area?" This raised all sorts of questions about environmental, economic, and health impacts. The group redefined this question as, "What should be the strategy for managing waste in this region to minimize negative environmental, economic, and health impacts, and is there a role for a waste to energy facility within this strategy?"

The technical consultants were a critical part of these discussions, but the group had very different reactions to the economic specialists and the engineering consultant. On the one hand the economic experts never established a strong personal rapport with the group, and despite receiving suggestions from the group, the other technical consultants, and my colleague and me, they were never able to structure a presentation that seemed accessible and relevant to the participants. As a result the group members never believed that they were receiving reliable economic data, and this inhibited their confidence about making bold recommendations.

On the other hand the engineering consultant was extremely well liked, personable, and responsive to the group dynamics. Participants trusted the information he presented and felt that he was not pushing a particular point of view. One day he showed up with a sack full of typical garbage and laid it on a table in front of the group. He then proceeded to tell a story about what would happen under different scenarios with the different contents of the sack. It was useful, funny, enjoyable, and relevant (even if a little smelly). The group felt a great deal of confidence in using the information he provided in their considerations.

The recommendations of the group reflected their different responses to the experts. They believed the primary tasks to be accomplished in solid waste management were to create a regional waste management strategy, to maximize the reuse and recycling programs, and to make existing facilities more efficient. They recommended against acquiring a large energy-generating waste incinerator because they did not think it was needed, did not believe its economic benefits had been established, and were concerned that it would draw resources away from reuse or recycling efforts. They did believe that a smaller more targeted facility, for example in conjunction with a new airport, to process a more refined set of waste (thus Gucci Garbage—the term the engineering consultant used) was appropriate. Most of this group's recommendations were accepted. The nature of those recommendations was a direct reflection of the quality of the input from the various experts and of the relations group members had had with those experts.

### Reconciliation

Beyond agreement are the deeper and more far-reaching elements of resolution that are sometimes called conflict transformation (Lederach, 1995), peacemaking (Curle, 1971), or reconciliation. In Chapter Five, I discussed the three dimensions of resolution—emotional, cognitive, and behavioral. Often conflict resolution processes focus on the behavioral dimension and do not address the emotional or cognitive dimensions. Yet unless there is also progress on these dimensions, it is unlikely that fundamental changes in the relationship among disputants will occur. Although most conflict resolution efforts can contribute to a broad approach to resolution, individual efforts are often limited in how far they can go.

Multiple efforts, over time, and at many different levels are usually necessary to address deeply rooted conflicts and to promote

genuine reconciliation. This is true whether we are talking about violent ethnic conflicts, such as those in Rwanda or Cyprus, or bitter interpersonal disputes, such as those between deeply conflicted divorcing couples. But such conflicts can be resolved in profound ways, and for every story of an intractable conflict that has gone on for years, there is a story of how former bitter enemies have made peace. We are witnessing some amazing transformations in the world—in Northern Ireland, the Middle East, and South Africa, for example. Optimism mixed with realism and hopefulness mixed with watchfulness are extremely important traits for conflict resolvers.

Conflict resolvers have been central to many reconciliation activities. Sometimes they have functioned through the more established roles, such as mediation or facilitation. Victim-offender mediation has proven an effective means for bringing a level of reconciliation and a deeper learning to perpetrators and victims in certain kinds of cases (Umbreit, 1994). My own work with child protection mediation in the 1980s convinced me that mediation could be an important step in setting parents and child protection workers on a different path, one on which they functioned more as allies than adversaries.

But reconciliation often requires approaches that are separate from more immediate resolution efforts. Four basic approaches are often necessary. One approach assists people to go through their own individual healing process. For example, groups that help victims of violence confront and share their experiences or that help perpetrators face their own demons can be vital to reconciliation efforts. A second is the development of safe forums for communication and interaction that allow people to get to know each other as human beings. Camps that bring youths from conflicting regions together or programs that encourage different ethnic groups to work together on common problems are examples of this approach. Often the best way to accomplish this is indirectly, through projects that are not directed simply toward bringing disputants together but that address some other interests they have.

One of the most impressive reconciliation efforts I have seen was at a community center in Banja Luka, in the heart of the Serbian section of Bosnia and the site of some horrible ethnic violence during the Bosnian civil war. At this

center there were many reconciliation efforts under way—a variety of classes, recreational activities, and discussion groups. But the most interesting was a radio station. It broadcast over only a two-square-mile area, but teenagers from all ethnic groups eagerly worked together to run the station. Most of them had suffered terribly during the fighting, but at the station they worked together, had fun together, got to know each other, and occasionally shared their personal experiences of war with each other.

A third approach brings people together for a direct in-depth dialogue about the conflict and all the feelings and pain that have gone with it. Sometimes this process encourages people both to take responsibility for their own actions and to forgive others for theirs. The Truth Commissions of South Africa are a fascinating effort of this kind, and so are many other efforts to bring people together, not to negotiate but to hear each other's stories and try to understand each other's experiences. The fourth strategy is to address directly the serious substantive problems that make reconciliation difficult (inadequate housing, unemployment, fears for personal safety, and so forth). Unless the ongoing sources of stress that keep people from feeling safe and secure are addressed, reconciliation efforts won't work. In other words, part of the reconciliation process is to address people's survival and security needs first.

The art of reconciliation requires making a constant judgment whether a practical and concrete problem-solving effort will promote a more profound reconciliation process or interfere with it. Whether reconciliation is formalized as a separate approach or incorporated into other activities, the capacity to move people toward reconciliation and healing is a critical component of conflict resolution. (For an approach to intergroup reconciliation in the workplace, see Blake and Mouton, 1984.)

### Decision-Making Assistance

Sometimes consensus-based decision-making processes are either inappropriate or ineffective. People are occasionally unwilling or unable to reach an agreement. Sometimes, a decision is necessary, but the conflict has not yet matured to the point where it is in the disputants' interests to agree. Some decisions are not important

enough to merit the time and resources it would take to achieve consensus. On other occasions, a decision must be made so quickly there is no time to implement a consensus-based approach. For these and other reasons, people need an alternative to a voluntary, or consensus-based, approach.

The most frequent public alternatives are court rulings, executive or legislative decision making, or within an organization, the operation of a management hierarchy. Using the courts is normally appropriate (although not always effective) when decisions involve basic issues of law or major questions of citizen rights and protection of the general public. But these decision-making forums are often ineffective, inefficient, or unavailable. Moreover, their very structure may escalate a conflict. Therefore conflict resolution structures need to include access to effective and efficient means of decision making for the parties when consensus-based alternatives are not appropriate or practical.

Two fundamental types of decision-making services are needed—binding and advisory. Giving an advisory opinion can be a bit like supplying substantive information, but it is an important option because it can give people a relatively cheap and quick foretaste of what might occur in a more expensive, lengthy, and possibly more toxic binding process. Advisory or evaluative mediation, nonbinding arbitration, early neutral evaluation, advisory dispute panels, and certain types of fact finding are all examples of this approach.

### *Advisory Mediation*

Advisory mediation, for example, is often used in grievances. In advisory mediation, mediators first attempt to facilitate an agreement, but if that fails, they render an advisory opinion, stating how they would rule were they to arbitrate the case. In one study the bulk of cases settled during the mediation phase, and of those that did not settle, the majority settled subsequent to the announcement of the advisory opinion but before going to arbitration (Ury, Brett, and Goldberg, 1988).

Mediators in more traditional processes are often tempted to play an evaluative role, that is to advise people about what is likely to happen in court or what they think is the most appropriate outcome. For all but the substantively and emotionally simplest of

cases, and maybe even for many of these, such evaluation can easily lead the parties to distrust the mediator and then distance themselves from him or her. So a separate advisory decision-making process is often helpful. Occasionally, the courts themselves will provide this service, through the services of a settlement judge or a pretrial conference.

### *Arbitration*

Binding alternatives to court-based decision making are also increasingly prevalent. Arbitration is being institutionalized in an increasing variety of contracts and institutions. It may be used even more extensively today than mediation. Arbitrators approach their work in many different ways. For example, they may take a rights-based or an interest-based approach. A rights-based arbitrator will try to decide how a dispute would be dealt with if it were a legal case, or how to apply a set of legal principles or contractual obligations to a dispute, and will consider the parties' interests only secondarily or tangentially. An interest-based arbitrator will try to sort through the key concerns of the parties and determine a way of addressing these within the framework of the law. In other words, arbitrators can take a legalistic or Solomonic approach. Of course, it is important that arbitrators be clear with their clients about the basis on which they make decisions.

### *Mediation-Arbitration*

Many other varieties of decision making can be brought to bear in different circumstances. Mediation-arbitration (in which the same person acts as mediator and arbitrator) and mediation then arbitration (in which disputants are automatically referred from a mediator to an arbitrator if mediation is inconclusive) are two increasingly popular alternatives.

### *Expert Decision Making*

Sometimes people in high-conflict relationships contract with substantive experts to be available over a specified period to render rapid and binding decisions about issues in their area of expertise. Divorced parents may use child development experts; construction contracts may provide for decision making from a designated engineer; business partners may use financial management experts.



Several features seem to distinguish these alternative methods of binding decision making:

- They tend to be less legalistic, or hearinglike, than arbitration.
- They are often linked to other conflict resolution mechanisms.
- They try to keep a door open to voluntary resolution.
- They often focus on very specific aspects of a larger conflict.
- They allow roles that are more fluid than the arbitrator's.

### Design and Linkage

The continuum of conflict resolution services is expanding with increasingly sophisticated approaches. This has led to important efforts in dispute systems design. Dispute system design is an approach to conflict resolution that is both preventive and systemic. System designers work with organizations or groups that are anticipating a set of conflicts they are likely to face over time, such as grievances, customer complaints, neighborhood conflicts, or citizen appeals of government actions. Together with representatives of the different groups involved, a designer works out a series, or a system, of linked conflict prevention and resolution steps to deal with the most commonly anticipated disputes. Such a system often includes training, communication procedures, process assistance of different kinds, and decision-making assistance. There are a number of principles that designers usually try to incorporate in such processes. (Some of these principles have been described elsewhere; see Ury, Brett, and Goldberg, 1988; CDR Associates, 1996. For other information about dispute system design, see Slaikeu and Hasson, 1998.)

- Emphasize assisting disputants to make decisions themselves, unless matters of overall organizational or public policy are involved.
- Assist disputants to resolve conflicts on the basis of their needs as much as possible.
- Assist disputants not only to settle differences but also to repair relationships and restore effective communication.

- Give disputants as many chances as possible to revert to needs-based decision-making mechanisms.
- Design the intervention of third-party decision makers to minimize stress, expense, and toxicity.
- Make decision-making and dispute resolution processes transparent, accessible, understandable, and easy to use.
- Make sure that the process of designing, implementing, monitoring, and evaluating the conflict resolution system reflects the values and goals of the system as a whole.
- Make sure that the system really is a system—that is, that the connections between its elements are well thought out and smooth in operation.
- Build the system on the strengths of existing conflict resolution mechanisms and with a careful consideration of the existing organizational structure or group norms.
- Build new systems incrementally.

The last principal reflects an important lesson that dispute system designers have learned about working with organizations. Although there may occasionally be circumstances in which profound organizational change or systems breakdown requires and allows implementing a whole new system, it is important not to build cathedrals. Ideal systems are seldom realistic systems. Often the most important question is, What are the key changes that can be made at a given time that will move a dispute system in a more collaborative direction?

Another challenge is to make the dispute system concept itself tangible and accessible to people who are trying to formulate a practical day-to-day approach for dealing with conflict. The concept will seem abstract, theoretical, and ungrounded to practitioners if they cannot translate it into usable everyday actions.

Despite these challenges, the dispute systems approach is at the cutting edge of conflict resolution practice because it seeks to fill in the gaps and create linkages among the approaches on the continuum of conflict resolution services. For the concept of a continuum of services to be more than an abstract idea, there must be a linkage mechanism among its different components and a way of deciding which service is appropriate to a particular circumstance.

Dispute systems designers face these questions constantly and are thus on the front line of the ongoing effort to implement an increasingly sophisticated approach to conflict resolution,

Almost all of us who work as conflict resolvers play several roles, but almost none of us can or should fulfill the whole gamut of roles that make up the spectrum of conflict resolution services. The more conscious we are about the range of interventions needed to develop a continuum that truly serves our client base, the more able we will be to make sophisticated judgments about exactly what services people need in any particular conflict. The more aware we are of what we can and cannot provide, the more responsible we will be in making referrals. The growing richness of the conflict resolution field will enhance the work of each of us by providing links to a more powerful set of interventions than any of us can provide on our own.

## *Chapter Eleven*

### **Conclusion**

#### **Conflict Resolution in Our Lives**

This book discusses how we can think about conflict and resolution in a useful and productive way. It is not meant to sell conflict resolution as a field or to tell people how to practice mediation, negotiation, or facilitation. I believe that good practice comes from sound thinking as informed and refined by practice. Our growth as conflict resolvers requires that we become increasingly sophisticated in our thinking, that we learn to apply our concepts and to test them in our practical efforts, and that we use these experiences to reevaluate our thinking. The ability to engage in this reflective process is a characteristic of an advanced practitioner. A clear and accessible conceptual framework not only helps us deepen our work but helps us learn from our experience.

Even more important in guiding our work than our thinking about conflict, however, are our values. A powerful commitment to the values that guide our work is the most important foundation from which we can operate. They are the source of our dedication to our work and the compass that guides us through our most difficult moments. Furthermore, if the concepts we use to understand what we do are not grounded in our values or reflective of them, then their power will be curtailed. Therefore I believe it is very important to ask ourselves what motivates us to be conflict resolvers. Of course each of us will have a different answer, but we can certainly learn from each other.

I enjoy the work, finding it challenging, stimulating, and fun. I also appreciate the fact that there are often (although not always) tangible results. My work has taken me to many interesting parts

of the world where profound change has been in the works, and I have had the opportunity to meet some amazing and wonderful people. My colleagues are interesting, warm people with values that I appreciate. Working with them has been a privilege. These are major benefits from working in this field. But none of them are at the core of what has motivated me to devote the last twenty years to conflict resolution. Why am I committed to this work? Because I want to see conflicts handled in a more productive way. Because I want to play a role in making this a better world. Because I want my work to help me grow personally.

### **A Better Way of Resolving Conflict**

When people find themselves in conflict, the mechanisms available to assist in resolution—in keeping with the way society responds to many other crises—tend to take power away from the disputants. Power is ceded to judges, lawyers, government entities, child custody evaluators, technical experts, arbitrators, and so forth. I believe as a practical matter and as a value that professionals should try to ensure that people in crisis remain as empowered as they possibly can. This is especially important because conflict is often generated when people feel disempowered.

For example, parents who abuse their children often do so in response to feeling overwhelmed and powerless. The response of the child protection system is often (and to some extent inevitably) to overwhelm and disempower them further. We must find ways of protecting children as we also empower parents to be parents. That is the point of the burgeoning movement to use mediation and other conflict resolution mechanisms (family group conferences, for example) in child welfare (Mayer, 1984, 1995). The challenge is how to take enough power away from parents to protect their children while helping them maintain or develop enough positive power to become more effective and humane parents.

The essence of what the field of conflict resolution has to offer to disputants is an empowering approach to solving serious conflict. The goal and the value is to help people in conflict maintain as much power as possible over their lives while ensuring that other people's rights and concerns are also respected and protected.

Our desire to fix things for disputants, to take over so that people can be protected from themselves, is at the heart of what disempowers people in conflict. Conflict resolvers have to accept that sometimes people will make very bad decisions for themselves, but that is their right. The consequence of our taking on the responsibility of preventing people from making poor decisions is that we also take away a significant degree of personal autonomy. Therefore it is essential that conflict resolvers trust people's ability to make good decisions for themselves and accept their right to make what may be poor decisions as well. This is a defining belief, in my view, of effective conflict resolution practice.

Related to this is a creative dilemma that conflict resolvers face—the question of whether they are in the business of trying to change people. Does profound resolution require personal change? Is conflict resolution about helping people as individuals grow, “transform,” or in some way become better? And if it is, how do resolvers reconcile this with the fact that people do not usually come to them for this purpose? How do we empower people if we also have an agenda to change them? The paradox is that much that resolvers do can and often does have the practical effect of changing people, but this result is also closely connected to the fact that it is not their major motive. I believe that effective conflict resolvers often contribute to profound personal change, but in a way that is indirect and respectful of personal autonomy. As they help people work through conflict on as deep a level as is practical and necessary, they help disputants accomplish their goals, and personal change is a frequent by-product of this process.

Another way in which the field of conflict resolution contributes to a better way of handling conflict is by helping people think about disputes differently. When resolvers can help people step outside of the distributional trap, of the dilemma of whether to act to preserve their relationships or protect their interests, of whether to be nice or to be smart, they have accomplished something significant. Conflict resolvers can help people find approaches that avoid such destructive choices, but to do this, we have to really believe that it is both important and possible. Conflict resolvers have to believe that people can be strong and kind, wise and compassionate, realistic and optimistic at the same time. Our confidence that disputants can both protect themselves and deal with

others in a principled manner is one of the most important things we can transmit to our clients.

All people have difficult choices to make in life, and no one can always get what he or she wants. Sometimes, in the name of peace or resolution, disputants have to give up something very important to them. But people can address their most important needs and protect their essential interests with dignity and with compassion and respect for those they are in conflict with, even when they don't like these other people and are very angry. People in conflict can get beyond their anger and fear to make wise choices, even when under great duress. By participating in this field, we help make these beliefs a practical reality in a complicated world.

### Changing the World

For most conflict resolvers that I know, the purpose of our work goes beyond finding better ways of solving conflict. It involves a commitment to contribute to a better world. Of course finding better ways of settling conflict is part of making a better world, but I think there are other ways in which most of us see our work contributing to fundamental social change.

Violence and intolerance are major problems throughout the world, and the ability of people to accept differences and resolve conflicts without demonizing each other is a major challenge that will shape everyone's future. As I was writing this book, halfway around the world Serbians were expelling Albanian Kosovars from their homes while NATO was bombing the Serbs, and twenty miles from my home, students were being gunned down by their classmates at Columbine High School. Everyone has been struggling with trying to learn why these things happened, what could have been done to prevent them, and what should be done now. Clearly, there is much that we all have to learn about how to live with one another.

The conflict resolution field spans many different areas of human interaction. By learning lessons across these different kinds of interaction, people can do much to promote new understandings of wiser and better approaches to peacemaking. Too often peacemaking is equated solely with ending violence, just as conflict

resolution is equated with achieving agreements. Yet we know that genuine peace requires a significant change in the relationship among the disputants, just as genuine resolution occurs only when progress is made on all three dimensions of conflict. We need to develop better approaches to deep peacemaking and to the deep resolution of conflict. By a principled participation in our field, we learn more about how to achieve more profound levels of resolution, and we help develop new approaches for handling serious conflict. In this way we make an important contribution to bringing about a more peaceful and secure world.

Part of the challenge in dealing with violence is to find ways of building more respect for diversity. Much of what conflict resolution is about is helping people respect differences and learn to see them as potential sources of strength rather than as threats. Conflict resolvers are constantly in the forefront of helping people to understand that for every challenge diversity poses, it presents important opportunities as well. They do not do this in an abstract way, but by helping people deal practically with troubling problems they are having with those they view as different. When people experience success in reaching a significant resolution to a conflict, they begin to break down the walls that have separated them from each other.

Another way in which our field is on the cutting edge of trying to improve the world has to do with the deepening of democracy and the struggle for social justice. When I was a college student in the 1960s, active in various social movements, we were often quite understandably taken to task for having a much clearer idea about what we were against than what we were for. Activists made many attempts at articulating the kind of society they were advocating, but the most durable concept that emerged was *participatory democracy*. Aside from sounding good, this term seemed to capture many people's desire to move away from a hierarchical and patriarchal approach to the governance of society and of the major institutions such as corporations, universities, families, and municipalities in which people lead their lives. The practical meaning of this, however, was never clear to most of us, certainly not to me.

What has become clear, however, is that the call for more meaningful participation reflected an important need that people were experiencing. On multiple fronts, people have been demanding

more direct input into the decisions that affect their lives. Citizens demand input on land use decisions, transportation plans, police policies, fire station locations, the siting of almost any public facility, the allocation of public funds, and almost every other issue that government faces. Schools have created school improvement teams, parent advisory groups, and other accountability and input structures. Employers have embraced many variations of employee input processes. They may be called flat organizational structures, team management, employee councils, quality circles, Total Quality Management, or industrial democracy, but whatever the label, they all involve attempts to give employees more participation in decision making and more accountability for those decisions. Corporations now form many varieties of citizen advisory groups and negotiate *good neighbor agreements* with the communities in which they are located. And of course there are all the consensus-building dialogues, town meetings, regulatory negotiations, and policy roundtables with which conflict resolvers are so often involved. All of these structures and many others point to people's desire for more involvement in decision making. In fact this is participatory democracy in action.

Some of these new structures for democracy are faddish. Others are more for show or for discouraging political organizing than for encouraging genuine dialogue and problem solving. But those structures that lack real substance do not usually last. The reason many of these new mechanisms for participation have endured and grown is that they meet a genuine need for involvement and participation, for meaning and community, that people have. They also have proven effective at building better relations among people and finding solutions to difficult problems. The infrastructure of participation is growing and becoming more imbedded in our social institutions because it meets a fundamental need and, though its processes are sometimes muddled, it produces better results.

However, there is a definite down side to all this participation. Policy decisions are sometimes more difficult to make. Decision makers, managers, and the public often feel overwhelmed by process. Government officials refer with sardonic resignation to the "c" word—consensus. On the one hand, for example, deciding where to locate a sanitary landfill was a relatively simple matter

thirty years ago. Now it involves many layers of often contentious public involvement. On the other hand many of those older landfills were not safe or thoughtfully located. In order for participatory democracy to work, to provide meaningful participation, to give people input over the critical decisions affecting their lives, and to assist in solving the major public and organizational conflicts that affect them, the tools of the conflict resolution field are critical. In order to allow democracy to deepen without overwhelming people with process or the "c" word, the contributions of this field are essential.

Conflict resolution approaches are also essential if democracy is to take root in the many parts of the world where it is still a new and untested system. Democracy is at a crossroads in the world. There are many places where people are trying to embrace democratic principles and the freedoms that go along with them, but these efforts are also unleashing serious conflicts. Many people are equating democracy with instability and increasing inequality in the distribution of wealth. Democratic political and economic institutions are being attacked as the cause of personal insecurity and economic deterioration. Ethnic conflict has increased as centralized and authoritarian systems of governance and decision making have collapsed. These conflicts have been used by antidemocratic forces to try to maintain or reestablish authoritarian political structures. If conflict resolution procedures and skills can be introduced alongside democratic political structures, the chances for democratic reforms to take hold will be significantly improved.

The next few years will be critical in determining the future of democracy and civil society in many parts of the world. There are both discouraging and encouraging trends—countries apparently rejecting democratic reforms and countries embracing them. At this juncture it is particularly critical that consensus-building and conflict resolution processes be brought to bear at the level of ordinary citizens' lives in the emerging democracies throughout the world. Ultimately, democracy's strongest safeguard is the expectation of citizens that they are entitled to participate in the decisions that govern their lives.

This cannot be accomplished by simply exporting Western models of conflict resolution and decision making. But as we learn how to deepen democracy in existing democratic societies we can

provide an example, a set of insights, a wealth of experience, and above all a sense of optimism to people elsewhere in the world. Others' efforts to create democracy will offer many lessons and ideas to the more established democratic world as well. I believe the knowledge of the field of conflict resolution is vital to the efforts to find an effective avenue for democracy to take powerful and positive root in many societies in transition.

At the heart of many of these struggles is the question of social justice. Can democratic approaches to governance enhance the struggle for social justice? Can democratic structures protect the weak, restrain the acquisitive impulses of the powerful, and balance the distribution of economic and other social benefits in a wise manner? I believe that the democratic framework is ultimately the only way in which enduring social justice can be obtained. However, when we look at the incredible inequalities in the distribution of income in the United States and the deterioration of the standard of living in Russia since the breakup of the Soviet Union, it is easy to become skeptical. I think the answer is more democracy, more deeply rooted, and more genuinely empowering. The more people are empowered to make decisions for themselves, the more they realize that democracy is not ultimately bestowed from above but is taken from below, the more they will find effective ways of demanding a socially just and economically wise approach to the distribution of social benefits.

Conflict resolution is in essence about empowering people to have a greater say over their own lives, particularly, but not only, during times of crises. It is in this sense that I believe the work of conflict resolvers is key to the deepening of democracy and the struggle for social justice in the world. Conflict resolvers are advocates and designers of practical democratic processes. And these processes are key to transforming the world we live in and to addressing fundamental issues of peace, democracy, and social justice.

### Changing the Conflict Resolver

In conflict resolution, as in any intense field of work, practitioners as well as clients undergo change. If we are not involved in this business in part because of its personal growth potential for us, we are not fully involved. This is not about being unprofessional,

about putting our needs before those of our clients, or about focusing narcissistically on our own development. It is about being fully engaged, present, and committed to what we are doing. Unless we see our engagement as offering something to us personally, to helping us be the kind of people we want to be and to play the role we want to play in the world, our participation in this field will be more mechanistic and calculating than the intensity of the work can ultimately tolerate.

If we are fully present, however, and if we do not create a defensive barrier that shields us from being influenced by our experiences—and I do not think such a barrier is really possible—then we will be profoundly affected on a personal level by what we do. For each of us, of course, the impact will be different. For most of us, participation in the field of conflict resolution will hopefully enhance our ability to communicate, to see the complexities of public and personal conflicts, to empathize, and to be creative. We will also hopefully grow beyond a tendency to see the conflicts in the world and our lives in polarized terms of good and bad, right and wrong, smart and stupid, true and false. And our ability to appreciate differences and to reach across cultural, age, gender, class, and other divides will hopefully be enhanced.

Not all the impacts of practicing conflict resolution are positive or comfortable. Perhaps it is age, perhaps it is the perspective that being a parent and having a career gives, but my clarity of beliefs and ability to be indignant about social ills are not what they once were. Making a continual effort to understand different sides of an issue or to look for the needs that are impelling distasteful behavior on the part of individuals, organizations, and governments can undercut one's ability to take decisive and unambiguous stands about public issues. I sometimes miss my clarity and indignation about people and issues, and every once in a while I look for an area to express this at one time more prominent side of my personality.

The world needs advocates, people who are focused on the struggle for social justice, who defend the unempowered, who strive to protect the environment, and who guard against assaults on our freedoms. It needs people who are focused on promoting the interests of a particular group or cause above the goal of resolving conflict or being collaborative. Without the engine such advocates

provide for social change, conflict resolution as a field of practice would be just a means of lubricating the interactions of the powerful. Sometimes such single-minded advocates can be a major source of irritation and frustration. But they play a necessary and valuable role. As conflict resolvers' ability to embrace a larger picture grows, it is important that their appreciation and respect for such advocates does not diminish. Many of us can look at them and see ourselves at one point in our lives.

Something is lost and something is gained by any choice we make about how to lead our lives, and our work in conflict resolution is no exception. For me, the overall direction of the change has been positive. My experience as a conflict resolver has helped me grow as an individual, and it has helped me reconcile my values about human relations and social change. I have felt fortunate to be working in an area that is interesting, challenging, satisfying, and innovative. More important, I have cherished the opportunity to work in a field that contributes to making the world a better place at the same time as it helps individuals with their immediate struggles.

Although most of the roles people play as conflict resolution practitioners require them to act in an impartial way, the field itself is far from being value neutral. Implicit in what we do are very strong beliefs about how to improve the world we live in and about how people ought to relate to each other. Sometimes there is a contradiction between these values and our roles as conflict resolvers. More often, however, these values are the foundation from which we derive our power and energy. A true adherence and commitment to democracy, personal empowerment, and social justice is what allows us to play our roles with consistency, enthusiasm, and strength.