

Conflict and Communication

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MEDIATION SKILLS

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I tell students in my communication and conflict classes that not many people know what “mediation” is. One of my students undertook a survey in a grocery store line. She simply asked people if they had ever heard of mediation and, if so, what it was. One of the first people she asked said that “mediation is when you relax, close your eyes, and try to clear your mind.” You probably wouldn’t have confused meditation with mediation.

Many people have experienced some form of mediation. Some of us have participated in **peer mediation programs** in schools; some

Learning Objectives

After studying this chapter, you will be able to:

1. Discuss the development of mediation
2. Describe the uses of mediation in indigenous societies
3. Distinguish between different styles of mediation
4. Identify the steps in a facilitative mediation
5. Apply ethics to mediation
6. Identify mediation skills useful in dispute management

family members may have experienced **child custody mediation**; others may have participated in **court mediation programs** such as in small claims court.

Community mediation centers offer their services for neighbor–neighbor disputes. So often what starts out as an irritation escalates to shouting matches and even to violence.

This range is evidence of how robust the process of mediation is. Most of us have also experienced the intervention of a third party who employs mediation skills in a dispute, such as when a friend attempts to help two roommates resolve an argument about overnight guests. The extent of the use of mediation skills demonstrates how important third-party mediation is in interpersonal relationships.

In this chapter, you'll first read about the history of mediation to better understand its uses. Then you'll read about different styles of conducting a mediation and learn how the most commonly used style is conducted. After looking at the ethics that guide mediators, we'll examine how President Jimmy Carter used mediation skills in reaching the Camp David Accords with Israel and Egypt and how a neighbor helped two roommates resolve a dispute.

DEVELOPMENT OF MEDIATION

Today, **mediation** is typically defined as a process in which a neutral party facilitates communication between disputing parties and works to help them determine mutually agreeable solutions (Putnam, 2013). Keep in mind that it is the disputing parties who must decide on an agreement—not the mediator. Even though the mediator may see an obvious way out of the conflict, he or she does not make the decision.

From the days of colonial America, the Quakers have been acting as mediators in community as well as international disputes. Quaker mediators have genuine respect for and concern about parties in conflict and work to help them change the way they perceive their adversaries, themselves, and the conflict. The Quaker belief in powerlessness, of sharing or relinquishing power rather than acquiring it, makes it possible for disputants to view the Quaker mediator as trustworthy (Sampson, 1987). In fact, much of the early use of mediation in the United States was based on Quaker practices.

In the 20th century, mediation was applied to a growing area of disputes and as a consequence became somewhat more standardized and more widely known. Late in the 19th century, violent labor disputes brought striking U.S. workers into conflict with management, and then into confrontations with police and state militia supporting management. In an attempt to find a better way to deal with these disputes, Congress established the U.S. Department of Labor in 1913, and a panel called the “commissioners of conciliation” was appointed to handle conflicts between labor and management. These commissioners became the U.S. Conciliation Service, and in 1947, that entity became the **Federal Mediation and Conciliation Service (FMCS)**, an independent federal agency to provide mediation to minimize the chances of strikes. The reason the FMCS is important to communication and conflict studies is that the expertise the FMCS mediators developed became the model for contemporary mediation in other U.S. settings (Merry, 1982a; Moore, 2014).

NFL, UNION AGREE TO MEDIATE

Following several months of negotiations, in February 2011, the National Football League (NFL) and its players' union agreed to mediate their labor dispute. Three mediations were required to reach agreement. The major issue in the dispute was how to divide \$9 billion in annual revenues. Other issues included the owner's wish to expand the regular season from 16 to 18 games, a rookie wage scale, and benefits for retired players.

The first mediation was conducted by FMCS director George H. Cohen who had extensive experience with sports mediation. Nonetheless, the mediation did not reach a settlement and was followed by player lawsuits against the NFL. The second mediation was conducted by a judge who was also an experienced mediator. While that mediation did not reach a settlement, the parties continued to talk without the mediator. A final mediation resulted in an agreement.

Although the parties began their discussions as polar opposites, they eventually came to a resolution. Though the effectiveness of mediation was unclear during the dispute, by its end, mediation had helped the parties frame the important issues and move toward a settlement. (Bucher, 2011, pp. 219–220)

Source: Bucher, T. J. (2011). Inside the huddle: Analyzing the mediation efforts in the NFL's Brady settlement and its effectiveness for future professional sports disputes. *Marquette Sports Law Review*, 22(1), 211–234. <http://scholarship.law.marquette.edu/sportslaw/vol22/iss1/8>

In its early days, the FMCS conducted mediations with a panel composed of a chair, an associate, and a secretary. Proceedings were somewhat formal. By the end of World War II, the procedure became much less formal. By the mid-1950s, the panel was replaced by a team of two mediators and later by single mediators who were as likely to work in the field as in conference rooms (Maggiolo, 1971). The FMCS model had three underlying assumptions that were also carried forward into other settings:

- First: All conflicts have two sides. In the case of the FMCS mediations, this was a given; the disputes were between labor and management.
- Second: The mediator should be an impartial and neutral third party. In the FMCS mediations, the mediator was a federal employee whose salary was not paid by either disputing party.
- Third: The mediation should be completely confidential. In the case of the FMCS mediations, it was assumed that confidentiality was critical, and the negotiating parties needed assurance that any tentative proposals they might make in the mediation should not be communicated to others outside the mediation. It was assumed, for example, that if a

labor representative demanded a 5% raise for employees but in the mediation settled for 2%, the concession might be perceived as weak or a failure even if it was in fact a necessary first step.

To see the counterpoint to these three assumptions, let's briefly look at mediation in indigenous societies.

MEDIATION IN INDIGENOUS SOCIETIES

Sally Engle Merry (1982b) has described mediation in several small indigenous and nonindustrial societies, such as the Nuer (Sudanese pastoralists), the Ifugao (Philippine agriculturalists), the Walgali of Afghanistan, and the Zinacantecos of Mexico. The shared characteristics of mediation in these societies include the following:

- The mediator. Mediators are respected community members with acknowledged expertise in handling disputes. They have status from wealth, political power, religious merit, and position in kinship networks.
- The process. The mediation is public. Often, neighbors and kinsfolk participate and offer opinions. The mediation typically ends with some sort of ritual of reconciliation.

Similar characteristics can be seen in the traditional Hawaiian practice of **ho'oponopono**, a word meaning to make right or to restore. As described by Shook (2002), *ho'oponopono* developed as a family conference led by a respected senior family member to restore harmonious relationships through a process that includes prayer, a statement of the problem, discussion, confession of wrongdoing, determination of restitution when necessary, mutual forgiveness, and a formal release of the problem that reaffirms the spiritual and emotional ties of the family.

Taken together, indigenous forms of mediation have underlying assumptions that contrast with those underlying the FMCS model:

- First: Conflicts can have more than two sides. Even in labor and management disputes, there are other concerned parties, including consumers. In the NFL mediations, retired players were eventually acknowledged to be interested parties, but the interests of fans were not represented.
- Second: The mediator should be a respected third party who may know and be known by the disputing parties. In fact, international observers of U.S. mediations find it difficult to understand how a stranger (the U.S. mediator) who does not know the disputing parties can function as a mediator.
- Third: The mediation should be public. The mediation is important for restoring relationships in communities. The community can benefit from the mediation.

Figure 7.1 *Ho'oponopono* Mantra

I Love you
I'm Sorry
Please forgive me
Thank you

These underlying assumptions clearly show that mediation in indigenous societies functions to restore harmony so individuals in communities can continue to live and work together. The assumptions describe the peacemaker—a person who brings about peace by reconciling adversaries.

Sample opening prayer from a *ho'oponopono* session

Let's join our hands and pray. Dear Heavenly Father, Creator of heaven and earth and to His only Son Jesu Cristo; Dear Lord, we thank thee for this opportunity to get together as an 'ohana, a family. It was obvious during this morning that many things were happening to our family. People were getting at one another and things weren't right. As You know, we need to restore harmony within our family in order for us to continue on. Dear Lord, as we get together in his *ho'oponopono*, give us the strength and wisdom and understanding to be able to lay the problems out and identify what the problems are. Give us also the understanding and the know-how to be able to discuss things freely without hurting one another, and to say things in a way that makes for understanding. And, dear Lord, give us the opportunity, so that as one is talking about the problem, that the others will sit quietly and listen with an open ear, so that they can understand as to how the other one perceives what is happening. And, dear Lord, after we've identified it all, may we be able to open our hearts to one another, to forgive each other, so that we can then carry on. Always, we ask in Thy holy name. Amen.

Source: Shook, E. V. (2002). *Ho'oponopono: Contemporary uses of a Hawaiian problem-solving process*. Honolulu: University of Hawai'i Press, p. 14.

STYLES OF MEDIATION

Community mediation programs in the United States grew to meet two very distinct needs. One need grew out of dissatisfactions with the justice system; the other grew out of the social and political activism of the 1960s.

Abraham Lincoln's Notes for a Law Lecture dated July 1, 1850:

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time."

Source: Basler, R. P. (Ed.). (1953). *Collected works*. New Brunswick, NJ: Rutgers University Press.

Evaluative Mediation

The court system has long been criticized for delay, cost, and decision process. Litigants have found that years could elapse between filing a suit and appearing in court, delaying any resolution of the conflict. Escalating attorney fees put litigation out of the reach of even much of the middle class. And because courts are bound to make narrow decisions in applying the law, some litigants found that decisions did little to change the situation that led to the litigation in the first place. The goals of court reform in the 1960s and 1970s were to divert cases from the courts to more appropriate dispute resolution processes. To achieve these goals, various forms of **alternative dispute resolution (ADR)** were introduced into the courts and into communities. These alternatives ranged from privately funded judging to arbitration to settlement conferences to summary jury trials to mediation (Jandt, 1997).

Evaluative Mediation Example

Mr. and Mrs. Clark owned and ran a bed-and-breakfast for 15 years, but Mr. Clark's poor health forced them to sell. With few potential buyers interested, the Clarks sold to George Johnson for \$850,000, accepting only a \$25,000 down payment and financing the balance. In order to keep the sale costs down, the Clarks verbally explained to Johnson that the spa room was added without a building permit and suggested "they not let the building inspector see the room." In the closing documents, the Clarks made no mention of the spa.

Shortly after the purchase, Johnson decided to add another bathroom to the B&B. After construction was under way, the building inspector refused to allow construction, citing the spa as illegal. After that, the code enforcement officer shut the B&B down for unsafe conditions.

Johnson believed the cost to correct the spa, to complete the new bathroom, and to cover the loss of revenue from the business closing totaled \$80,000 and demanded that amount from the Clarks. The Clarks refused to pay because they had explained the situation to him before the sale. The conflict between the parties continued to escalate to the point that the Clarks were "calling Johnson's note," meaning that if he didn't pay them what was owed, they would take the property back, and Johnson would lose everything he put into the property.

CASE STUDY 7.1

Both parties were reluctant to sue and get attorneys involved, so they agreed to hire a mediator who had experience in real estate transactions. Judy had over 20 years' experience as a real estate broker and 10 years' experience as a mediator. The parties explained to her that they wanted her to tell them how to handle the situation. Judy explained what evaluative mediation is, and the parties agreed.

She first met privately with the sellers and listened to their case. The Clarks appeared to genuinely believe that they had not misrepresented anything to Johnson and that now Johnson was extorting them by trying to get money from them. In a private caucus with Johnson, he told Judy that the Clarks were guilty of misrepresentation and that he was being forced into bankruptcy from the loss of income while the B&B was closed.

Then, speaking as an evaluative mediator, Judy explained to the Clarks in caucus that the B&B shutdown was a result of the spa enclosure that they had installed. The fact that they had discussed it with Johnson did not fix the problem. The Clarks then said that they would take the property back and resell it. Judy asked a series of questions: How long would it take? What is the probability that they would locate a new buyer? Could they find a buyer that would take on the expense and responsibility of correcting numerous code violation issues as well as the city's closure of what was once a very prosperous, well-known B&B? How would either party bringing a lawsuit benefit them for their immediate needs? How much would it cost? Did they think they would win? The Clarks proposed paying Johnson \$35,000 to do all the spa corrections and restore the city license to operate. They stated this was all they were willing to do.

Judy then presented the Clarks' offer and comments to Johnson in a caucus. He accepted the \$35,000 offer but argued that the closure meant he would be unable to make monthly payments for at least six months. He wanted those payments deferred to the end of his loan. Judy told him that he would still owe the interest during the grace period, which would also be collected at the end.

Judy presented the offer to the Clarks. They asked for three months. A final agreement was reached that Johnson would commence payments within six months or 30 days of reopening if that was sooner.

Source: Author created.

DISCUSSION:

1. Trace the steps Judy took in this mediation.
2. Do you believe that by guiding the mediation she forced a particular decision? Why or why not?

The style of mediation frequently used in court-referred mediation such as Case Study 7.1 is **evaluative mediation**. Litigants' attorneys typically cooperate with the courts to select the mediator, who typically has substantive expertise or legal expertise in the area of the dispute. Most evaluative mediators are retired judges or attorneys. The evaluative mediator assumes the disputants want him or her to provide guidance as to reasonable grounds for settlement (Riskin, 1996) and so structures the process and is heavily involved in the outcome of the mediation. The evaluative mediator might point out weaknesses

in disputants' cases, predict what a judge or jury would likely decide in the dispute, and recommend settlements (Zumeta, 2000).

Facilitative Mediation

Community mediation centers were established in response to the urban disorders of the 1960s. Early centers included the Rochester American Arbitration Association Community Dispute Service Project (1973), which was formed in response to race-based conflicts in the city, and the San Francisco Community Board Program (1977). The goals of the community mediation centers were to create a community-based justice system that addressed disputes before they entered the court system; to strengthen the capacity of church, civic, school, and social service organizations to address conflicts; and, by decentralizing community decision making, to strengthen the ability of citizens to participate in local self-governance. To achieve these goals, mediation was employed to help disputing parties better understand each other, reducing the levels of interpersonal and intergroup conflicts. The National Association for Community Mediation estimated that in 2011 there were some 400 active community mediation programs.

CASE STUDY 7.2

Facilitative Mediation Example

Sally called her community mediation program seeking help with a dispute with her neighbor Patrick. Sally alleges that Patrick displays a Nazi swastika flag posted to the wall of his garage. If Patrick's garage door is open when Sally goes for a run, she feels intimidated and scared when seeing the flag. A program representative agreed to contact Patrick to invite him to a mediation with Sally.

The mediation was scheduled for a Monday evening. Dana, the mediator, welcomed them and explained the mediation process. She asked Sally to explain why she sought mediation. Sally was able to address Patrick directly and said, "When I take a run and see your Nazi flag in your garage, I feel scared by what it represents. Do you understand what that flag represents for Jews?"

Patrick seemed to be taken aback by Sally's statement. The mediator asked Patrick what he would like to say. Patrick reacted defensively: "Well, how about not looking into my garage? It's not like I'm flying the flag on a pole in my front yard. It's not on display for anybody to see; it's hung on the back wall in my garage."

The mediator encouraged both parties to continue talking with each other. The mediator asked Patrick to say why he has the flag on display. Eventually, Patrick said that his grandfather brought the flag home with him from World War II as a war relic. Patrick then began to speak with pride of his grandfather's World War II service.

The mediator then asked them if they saw any way to deal with the situation. Sally asked Patrick what the flag symbolized to him. Patrick answered, "It reminds me of my grandfather's service." Sally responded,

"It reminds me of what your grandfather fought against." The two disputants then looked at each other in different lights and sat in silence.

Source: Author created.

DISCUSSION:

1. Compare and contrast the mediator behavior in Case Study 7.1 with the mediator behavior in this case study.
2. Would the parties come to the same conclusion with an evaluative mediator? Does mediator style affect the parties' decision making? Why or why not?

The style of mediation frequently used in community mediation programs, such as Case Study 7.2, is **facilitative mediation**. In community mediation programs, the mediators are typically volunteers from all walks of life and are not required to have substantive expertise in the area of the dispute. The facilitative mediator encourages the disputing parties to communicate with one another. Joint sessions are typical so that the parties can hear each other's points of view. The facilitative mediator's objective is to have the parties reach a mutually agreeable solution. The facilitative mediator asks questions, summarizes issues, and encourages the parties to develop options for an agreement. The facilitative mediator does not make recommendations, does not give advice or opinions, and does not predict what might happen if no agreement is reached. The facilitative mediator is very much in control of the process, while the disputants own the problem and the outcome (Zumeta, 2000).

Transformative Mediation

Robert A. Baruch Bush and Joseph P. Foger first articulated transformative mediation in 1994 in their book *The Promise of Mediation*. **Transformative mediation** presents opportunities for individuals to change their communication with others. The disputants set their own agenda and decide what to discuss, and the transformative mediator follows their lead, supporting the process by summarizing, reflecting, checking in, and asking open-ended questions. Transformative mediators do not evaluate the parties' cases or take a role in the decision-making process, nor do they push the parties to a settlement. The mediation is considered successful when the parties develop a better understanding of their situation and each other's perspective (Zumeta, 2000).

Transformative Mediation Example

Mrs. Garcia filed for a temporary restraining order on behalf of her 17-year-old daughter Maria Garcia against Manuel Gonzalez, charging that Manuel had been calling, following, and otherwise harassing Maria. In a court diversion program designed to refer family and neighborhood disputes to mediation, the parties were offered mediation.

The mediator, Dana, invited the parties to an evening mediation at a community center. Mrs. Garcia arrived with her daughter, and Manuel arrived with his father. Dana explained what mediation is and offered them a style of mediation where they would not be pressured to come to a resolution but rather be given an opportunity to speak openly with one another in a safe environment. She then asked who would like to speak first.

Mrs. Garcia did not hesitate. "My daughter is underage, and I don't want her seeing this young man. They go behind my back to do who knows what. My daughter is going to graduate from high school and marry a proper young man."

Manuel's father couldn't wait to respond. "My son is a responsible man. He has a job. I'm very proud of him."

During this exchange, Maria and Manuel sat quietly at the table. Dana listened carefully to the parents and encouraged them to continue talking. Eventually, Mrs. Garcia said, "I'm not going to stand by and let Maria get pregnant like her sister did. Her sister is at home with two babies with no man to take care of them."

The room became quiet. Finally, Manuel, looking at Maria's mother and speaking respectfully, said, "I am in my second year at community college and work part-time. I love Maria. I want to make a good life for the two of us and would not consider a family without marriage and not that before she is 20. I want us both to finish our education first."

Maria looks up at Manuel and says she loves him very much. She then looks at her mother. After a few moments, she tells her mother that she is tired of her always saying she is going to wind up just like her sister. It is because of the hardships of her sister that she and Manuel will wait to have children and marry when she is 20—before beginning their family. Sadly, she looks into her mother's eyes and says, "Besides, I will soon be 18, and I will be able to see Manuel anytime we want then. If you want me to be happy and have a better life with a man who is trying to do the right thing, you will not do this."

Mrs. Garcia says she will drop her petition for a restraining order provided the mediator writes up an agreement with this promise to be signed by Maria and Manuel as well as by both parents.

Source: Author created.

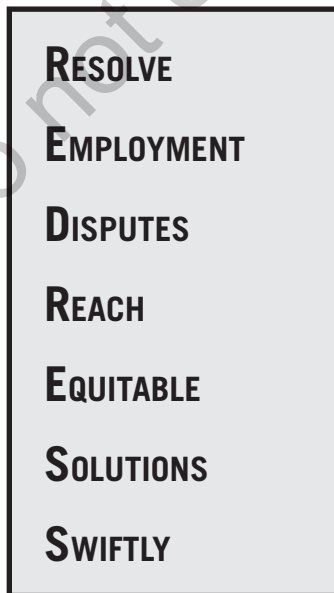
DISCUSSION:

1. Contrast the mediator behavior in Case Studies 7.1 and 7.2 with the mediator behavior in this case study.

The underlying belief in transformative mediation such as in Case Study 7.3 is that the disputing parties are best able to decide whether and how to resolve their dispute, and that their conflict is primarily a crisis in communication. The crisis destabilizes the parties' experience of both themselves and each other, intensifying each party's sense of weakness and self-absorption. Communication becomes destructive, alienating, and dehumanizing. Transformative mediation assumes that the parties have the capacity to change the quality of their communication to be more constructive and humanizing (Della Noce, Bush, & Folger, 2002). Transforming the communication between the disputing parties is believed to matter more to the parties than a settlement (Bush & Pope, 2002).

Transformative mediation became popular when the U.S. Postal Service adopted that style for its REDRESS® program. The USPS had been experiencing complaints that its equal employment opportunity (EEO) process was slow and ineffective in addressing workplace disputes. EEO complaints may be based on discrimination because of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. REDRESS® mediation began as a pilot program in 1994. Implemented in 1998, it became the largest mediation program in the world, mediating more than 1,000 disputes a month. In it, a nonpostal employee provides mediation using the transformative model with the objective of making a positive change in the communication between the parties. Bingham and Pitts (2002) reviewed evaluations of the process and reported that over 90% of employees and supervisors rated it satisfactory or highly satisfactory.

Figure 7.2 The USPS REDRESS® Program



The U.S. Department of Homeland Security has also instituted a mediation program for EEO complaints. The mediation style used in these mediations is facilitative. Next, we examine how a facilitative mediation is conducted.

CONDUCTING A FACILITATIVE MEDIATION

As you've read, evaluative mediation is most likely conducted by an attorney or someone with expertise in the area of the dispute. Transformative mediation requires advanced training. And since most mediation today uses the facilitative style, this section details the steps in conducting a facilitative mediation (Moore, 2014). Throughout this section, the term *mediator* refers to one who is using the facilitative style.

Collection and Analysis of Background Information

How much should the mediator know about the dispute before the mediation? Should the mediator be an expert in the area of the dispute? Review the definition of mediation. The disputants “own” the



► Programs in schools teach conflict resolution and peer mediation skills. Students learn how to mediate their classmates' conflicts.

dispute, the disputants will be the ones who agree on any solution or not, and the disputants will live with the outcome. The mediator, on the other hand, “owns” the process. The mediator should be skilled in the process of mediation.

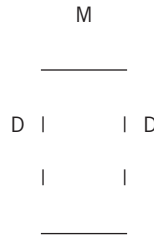
Community mediation programs and volunteer mediators in small claims courts are not selected for their knowledge of law, or real estate, or consumer affairs. Mediators in these programs reflect the diversity of the community and include people of all ages and all backgrounds. A facilitative mediator is able to conduct a mediation without analyzing the dispute in advance as the mediator will work with what the disputants present in the mediation.

Location and Physical Arrangement

The mediation session could take place anywhere—courtrooms, police stations, churches, community centers, schools, schoolyards, workplace conference rooms, workplace job sites. The only cautionary note is that the mediator should consider the safety of all parties. Locations with security are preferred.

The physical arrangement of the mediation space can be a critical factor. Figure 7.3 shows what is preferred—a conference room table with the mediator (M) at the end and the disputants (D) seated across from one another.

Figure 7.3 Ideal Physical Arrangement for Mediation



Many people associate a conference room table with a meeting, or with working together. This seating arrangement is conducive to the disputants speaking one-on-one with the mediator and later face-to-face with each other. At the same time, the table offers a protective physical barrier between the parties.

Figure 7.4 shows a less desirable physical arrangement. In this figure, the mediator sits behind a desk.

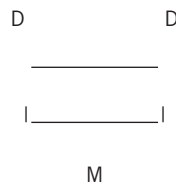
The disadvantages of this arrangement is that the disputants might associate the person behind the desk with power and may expect the mediator to be the problem solver. Seated on the front side of the desk, the disputants are less likely to feel free to interact with each other than they are to interact with the mediator.

The reality is that mediation is a robust process, and a skilled mediator can make any setting work. The mediator should, however, consider how to make the physical arrangement support communication in the mediation.

Participants

How many people can participate in a mediation session? The answer is not so simple. It's possible that one or more mediators, two or more disputants, family and friends of the disputants, interpreters, attorneys, and witnesses may all be present.

Figure 7.4 Less Desirable Physical Arrangement for Mediation



While mediators can work independently, many mediations are conducted by comediators. Comediation is a typical on-the-job training opportunity for new mediators, giving them the opportunity to work with more experienced colleagues. But even many experienced mediators comediate. Working cooperatively, comediators bring additional experiences and insights to the session.

In facilitative mediation, the mediator controls the process including who is in the mediation room. He or she therefore needs to clarify that the only people who can speak in the mediation are the disputants. Because the disputants must reach an agreement themselves, they need to be at their most competent. This may mean having a family member or friend present for support. But if one of the disputants would like to confer with a family member or friend during the mediation, he or she must ask for a break. Some mediators will not allow children in the mediation; others do so in the belief that the parents may act more responsibly in front of their children and that the children themselves may learn something from the process.

Another factor to be considered, however, is how the presence of one party's family members, friends, and children affects the other parties in the mediation. It is most appropriate to discuss this with all parties before the mediation begins.

There is no law in the United States that restricts mediation to one language. One or more participants may feel more comfortable using a language the others do not speak. Mediation can proceed with the assistance of an interpreter, but this cannot be the mediator. A mediator who also interprets might raise questions as to his or her neutrality. When using an interpreter, the mediator must remember to maintain eye contact and speak to the disputant—not to the interpreter.

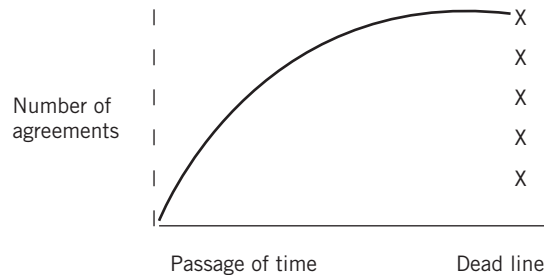
The mediator cannot restrict participants' access to their attorney, accountant, or other professional adviser who can help disputants to act in their own best interest. The mediator can, however, control how the adviser participates in the mediation. The mediator needs to confirm that it is the disputants themselves who are making the decisions with the advice of their advisers.

Finally, while participants may want to bring witnesses with them to mediation, doing so represents a misunderstanding of the mediation process. Witnesses are critical in a trial where evidence is critical, but the purpose of mediation is not retrospectively to determine the facts or guilt; it is to determine how the parties will go forward. Mediators may ask participants to say in their own words what any witness might say. Disputants may also bring files and boxes of documents. Again, this may represent a misunderstanding of mediation. There are no rules of evidence in mediation, and mediators may permit disputants to share documents, but, again, the mediator works to keep the discussion focused on a solution, not on proving guilt.

Time Frame

A very frequently asked question is “How long will the mediation take?” There is no easy answer other than “It depends.” In a community mediation setting, a mediation that begins at 10:00 a.m. will probably

Figure 7.5 Hypothetical Settlement Curve



conclude by lunch. But if in another room a second mediation with a similar issue with similar disputants begins at 11:00 a.m., it, too, will probably conclude by lunch. What made the difference? A deadline.

In so many contexts, decision making is a function of the deadline. Consider Figure 7.5.

Figure 7.5 shows that most agreements are reached as the deadline approaches. Shoppers rush to a store before a sale ends under the belief that prices will never again be so low; sign-ups for insurance under the Affordable Care Act (Obamacare) were slow at the start but overloaded the system as the deadline approached. In mediation, the mediator controls the deadline: “Let’s see what we can do in the next hour. . . . We only have a few minutes left; does anyone have a final proposal to make?” The mediator can also extend the deadline: “We’re making such good progress; will everyone agree to continue working for 30 more minutes?”

Mediator’s Opening Statement

This chapter began with a story illustrating that many people do not know exactly what mediation is. Not knowing what to expect can be a source of stress. It is the mediator who must reduce that stress by providing a complete introduction that builds confidence in the process. In his or her opening statement, the mediator is sharing information, explaining, and motivating the disputants to enter the mediation with a positive attitude.

Some of the specific points the mediator may wish to include in the introduction to the mediation are as follows:

- Brief introduction to the mediator
- Congratulations to the disputants for their choosing mediation to resolve their differences

- If there is an ongoing relationship between the parties, reinforcement of that relationship
- Explanation of the mediator's impartiality and neutrality
- Explanation of the use of caucuses
- Explanation of confidentiality
- Description of the mediation process itself
- If necessary, behavior guidelines
- Answers to any questions
- The parties' commitment to work at resolving the problem

Put yourself in the position of a person who knows nothing about mediation and read the sample mediation introduction in Case Study 7.4. How many of the points listed above does the mediator cover? Do you think the introduction would build your confidence as you began trying to mediate a dispute?

CASE STUDY 7.4

Sample Mediator Opening Statement

Good morning! My name is Fred. I am your mediator today. Let me begin by congratulating you both for choosing mediation as the process to attempt to find a mutually agreeable solution to your dispute.

As your mediator, I want you to know that I am not a lawyer; I am not a judge. I do not have any connection to this case, nor have I reviewed any material connected to this case other than the materials submitted by the parties. I have not met either one of you before; therefore, I have no preconceived opinions as to who is right or wrong or how this dispute should be resolved.

Let me explain the mediation process, and please feel free to ask any questions you may have after I am done. I am a neutral third party. My job is to facilitate communication between the parties with the hope that you will come to a mutually agreeable solution to your dispute on your own. The beauty of mediation is that, because the dispute belongs to you, you control the outcome as well. As mediator, I control the process. You have the power to come up with your own solution, however creative, and one that satisfies both of you.

Let me share with you that the mediation process is strictly confidential except as provided by law. All notes I take during the process I will destroy in your presence at the conclusion of the mediation. I suggest that both of you do the same.

We have limited time to mediate the case, so it is very important that we stay focused on the issue. We will open the mediation by allowing each of you to make an opening statement. I have found the flow of communication works best when we start with the party who initiated the complaint. You may explain the history of the issue and share your thoughts along with what you believe would be a satisfactory solution. We will then hear the respondent's opening statement.

Please understand this is a professional meeting, and I fully expect both parties to conduct themselves in a professional manner. In the interest of open and fair communication without threat of harm, I will ask both parties to refrain from using threatening comments, gestures, aggressive body language and finger pointing, rolling of eyes, or making of disdainful sounds meant to annoy and demean the other party. As your mediator, I have the right to terminate this process at any time I believe either party is not conducting him- or herself in the manner and spirit of open and respectful communication. Do I have both parties' commitment to this code of conduct? Thank you.

Now, during the course of our discussion, I may have the need to speak to one of you in private to gain clarity or add insight on the issue. At this time, I will ask the other party to leave the room. This is called a caucus. I may need to caucus several times during the mediation process, and I may spend a little longer with one party than the other. Please do not feel that I am taking sides or suggesting strategies to aid the other party. It merely means that I may have more questions to ask at any given time. During the caucus, you may want to disclose information to me that you don't necessarily want the other party to know. Rest assured all information will remain confidential. If I believe sharing the information you disclose to me during caucus would help move the negotiation process along, I will do so only with your expressed permission.

If both parties reach a mutually agreeable settlement, I will transcribe the terms of your agreement.

At this time, I will answer any questions you may have for me before we begin. . . . If there are no further questions, I would like your permission to begin.

DISCUSSION:

The mediator's introduction should remove the disputants' "fears of the unknown." Assuming you knew nothing about mediation, what else would you have wanted to know before agreeing to mediate?

The mediator's introduction should also motivate the disputants to want to participate in the process. What else could the mediator have said, without making any promises of the outcome, that might motivate the disputants?

The concept of confidentiality in mediation has evolved. In the FMCS mediation, confidentiality between the disputants and the mediator was considered critical for the dispute resolution process. As the use of mediation expanded out of the labor-management arena, the concern for strict confidentiality remained. Traditionally, mediators have said that everything said in mediation is confidential. Then, in a landmark court case, *Olam v. Congress Mortgage Co.*, U.S. Magistrate Judge Wayne Brazil ruled that not to

be the case. Donna Olam defaulted on a loan from Congress Mortgage Company. In a very complicated case, the dispute eventually went to mediation in which, after a very long session, an agreement was finally reached in the early morning hours. Later, Olam disavowed the agreement, claiming that at that hour she was physically, intellectually, and emotionally incapable of giving consent. Because the only evidence of her mental state during the mediation was the word of the mediator, both parties agreed to waive confidentiality and asked the court to compel the mediator to break confidentiality and testify. The court determined it needed the evidence (Bailey, 2000).

Other limitations on confidentiality are mandated reporter laws and the *Tarasoff* decision. State laws require certain categories of people, including social workers, health care professionals, and teachers, to report concerns about child and elder abuse and neglect. At least some states include mediators in that category. And some believe mediators should be held to the same standards as psychotherapists in the *Tarasoff* decision, which requires reporting of threats of violence (*Tarasoff v. Regents of the University of California*, 1976).

Behavior guidelines or ground rules are frequently made explicit by the mediator. How much he or she makes explicit is a judgment call. Sometimes it is sufficient to say that professional behavior is expected. In other situations, the mediator may need to make explicit some or all of these concerns:

- Do not interrupt each other.
- Listen respectfully.
- Use parties' names, not "he" or "she."
- Use appropriate language and do not swear.
- Do not use confrontational nonverbals such as pointing.

Disputants' Opening Statements

The mediation flows entirely from what the parties bring to the table. In this part of the mediation, the mediator's communication behavior changes. Now he or she listens, asks questions, restates and summarizes, and acknowledges feelings when appropriate in order to help the parties identify and agree on the issues of the dispute.

Some mediators ask the complaining or originating party to begin. Others let the parties decide themselves who would like to begin. The first party then tells the story as he or she would like to tell it. This statement should not be interrupted. The other party must sit and listen. Then the mediator may ask questions, but not in interrogation style to determine the "truth" or uncover all the details of what really happened. Instead, the mediator asks probing questions to clarify what the disputant said and to encourage him or her to share more information. This style of questioning helps ensure clarity and understanding. But also critical to the process is the mediator's restating and summarizing what was said, in a way that clarifies the issues for the disputants and helps them focus on the issues throughout the mediation.

It is also appropriate for the mediator to acknowledge the feelings being expressed by the disputants. The mediator is not a counselor but a sympathetic listener who can say, “I can see you are upset by what happened.” While maintaining neutrality, the mediator should show an understanding of how both parties feel.

Disputants’ statements will not agree—after all, it is a conflict situation. Does that mean one of them is lying? All parties in a dispute believe they are right, but that doesn’t mean one is lying. It does mean the parties perceive the situation differently.

The Caucus

Many mediators use a **caucus**, or a private meeting between the mediator and only one of the parties, after the disputants’ opening statements. One or more caucuses may be necessary if the parties are hostile and not yet able to deal with each other face-to-face.

If the mediator does use a caucus, he or she communicates differently yet again. In the caucus, the mediator becomes more of a coach or teacher, helping the disputant explore settlement options and planning how to present these to the opponent later in the mediation. Note that the caucus is not an opportunity for the mediator to solve the problem with one disputant or to suggest ways for the disputant to solve the problem with the opponent. By convention, the caucus is confidential, and what one party shares with the mediator there may not be revealed to the other without the disclosing party’s permission.

Case Study 7.5 shows how a mediator coached one party in negotiation without suggesting a solution.

Sample Mediation Caucus

Christopher is at home Friday evening before New Year’s Eve. Late at night, he hears a car crash on the street. He goes outside and finds that Jessica has run into the rear driver’s side of his car, which was legally parked on the street. Jessica says that she was coming home from a party at work and must have just fallen asleep at the wheel for an instant. She says she will accept the responsibility if Christopher won’t call the police or his insurance company. Because the damage is minor, Christopher agrees and copies down her address, cell number, and driver’s license number.

The next week, Christopher gets three estimates for the repairs—\$800, \$900, and \$1,250. He calls Jessica and says he will settle for the middle of the three estimates. Jessica says she knows she is responsible but doesn’t have the money right now. Jessica and Christopher eventually go to mediation.

CASE STUDY 7.5

In a caucus, the mediator, Warren, asks Christopher what he wants to have happen in the mediation. Christopher says, “I asked for \$900, but I’ll settle for the lower bid of \$800. What I need is to get my car repaired.” In her caucus, Jessica answers the same question with “I know I’m responsible, but I don’t have the money.”

Warren needs to get Jessica prepared to negotiate. He asks her questions to get her to begin to open up her thinking. He asks, “If you absolutely had to give Christopher something today, how much could you give him?” “Do you think you could divide the amount up into partial payments?” “If you absolutely had to get some cash by the end of month, how do you think you could do that?” “Why do you think Christopher needs the money?” “Do you know of any other ways to help him get his car repaired?” “If Christopher isn’t able to get his car repaired, what might he be forced to do?”

Warren also prepares Christopher to negotiate. He reminds him that Jessica said she doesn’t have the \$900 now. “Let’s assume she doesn’t have the money today. What can you settle for to get your car fixed?”

The parties come together after the caucuses. Jessica begins for saying she works as a waitress, and her tips vary greatly month by month. “I’ll promise you a minimum of \$100 a month, but if tips are good, I’ll give you whatever extra I get.” Warren counters, “How much can you pull together now? If you can get \$200 or \$300 together now, I think I can knock out the dents myself and just have to pay for the lamp and the paint touch-up. Then, can you cover the balance at \$100 a month so I’m not out anything in the end?”

Source: Author created.

DISCUSSION:

1. In Chapter 5, you read about “What . . . if” statements. Identify the “What . . . if” statements Warren uses.
2. Both Christopher and Jessica came into the mediation with an idea of their ideal solutions. How does Warren get them both to consider other possible solutions?

The mediator may coach the disputants in negotiation skills described in Chapter 5. The following five are particularly useful:

1. *Setting an objective for the mediation.* As a conflict grows and continues, the parties often lose sight of their original objectives and can even replace them with a desire to keep the other party from winning. The mediator can help bring the parties back to reality by asking, “What would you like to see happen in the mediation?”
2. *Identifying the Worst Alternative to a Negotiated Agreement (WATNA, introduced in Chapter 5).* People in conflict rarely consider what will happen if the conflict is not resolved, and some cannot imagine losing.

The mediator wants the parties to keep in mind what is going to happen if the conflict is not resolved, the unpleasant consequences of not settling. A sample WATNA is continuing to have a strained relationship with your neighbor.

3. *Using deadline pressure.* Earlier, you read that to some extent the mediator can control the deadline. The mediator certainly can remind the disputants about the deadline and about the consequences of not settling and not obtaining their objective. For example, the mediator can say, “It looks like we only have about 15 minutes before lunch. What can you both do to bring this to a resolution?” The mediator can always reset that deadline if, for example, progress is being made: “Good, we have agreement on two of the three issues. Should we take a 30-minute break and then come back to wrap this up before 1?”

4. *Separating demands from problems.* Disputants typically decide on what they feel they need to resolve the problem and make that determination their demand in mediation without the possibility of compromise. One of the most effective negotiation skills the mediator can help disputants use is understanding the problem that originally led to their demand and accepting that there may be several ways to solve it, not just the one they have fixated on. In Case Study 7.5, for example, Christopher is demanding \$900, but he might be willing to consider that his problem is getting his car repaired and that there might be other ways to accomplish that than waiting for \$900 from Jessica.

5. *Reframing.* The idea behind **reframing** is that a person can understand a situation as a frame. When the frame is changed, the meaning of the situation changes. For example, reframing a problem as an opportunity changes its meaning. The mediation in Case Study 7.2 demonstrates how each disputant had a significantly different frame. Understanding each other’s frame made it possible for them to engage in cross-talk, which we look at next.

Cross-Talk

Ideally, the disputants negotiate with one another face-to-face in the portion of the mediation identified as **cross-talk**. It is here that the disputants are working together to find solutions satisfactory to all parties. Once again, the mediator is communicating differently. Now he or she relies heavily on summaries and encouragement to help the parties come together to reach their resolution.

Whenever possible in this stage of the mediation, the parties should be communicating with each other—not the mediator. Some mediators even try to reinforce that communication pattern by physically moving back a bit.

In court-referred mediations (for which data are more readily available), approximately 70% of mediations result in an agreement. While no agreement may have been reached in the remainder, these are not considered failures; disputants consistently report that the mediation helped them better understand the conflict, the issues, and the other party.

The Agreement

Typically, when disputing parties reach an agreement, they have in fact reached two agreements—each party’s understanding of what the agreement is. That is why it is important to document the agreement.

It is not recommended that the mediator draft a written version of the agreement. Rather, he or she should act as a recorder of what the parties agree on. The mediator now communicates in such a way as to help the parties work out the details so they do in fact have one shared agreement, perhaps by asking more questions. For example, a contractor and a homeowner disputing the quality of work to be done in refinishing floors in the home may agree that the contractor will call before coming back to do the work. The mediator may then ask, “How far in advance—a week, an hour?” As the parties work with the mediator to finalize their agreement, they continue to work with each other, too, and take on increased ownership of the agreement.

Some mediators would like to have a ceremonial ending for the mediation. Often, the signing of the agreement can serve that purpose. Some mediators may ask the parties whether they would like to shake hands. It is not unusual for the parties themselves to say something to each other at the conclusion of the mediation to repair and rebuild their relationship.

MEDIATION ETHICS

The American Bar Association, the American Arbitration Association, and the Association for Conflict Resolution (2005) adopted a joint statement of “Model Standards of Conduct” for mediators. These standards help disputants understand the process as well as guide the conduct of mediators themselves.

Standard I. Self-determination. The mediator must conduct a mediation to ensure that the disputing parties come to a voluntary, uncoerced, and informed decision. This means ensuring that one party does not feel threatened by the other party to settle, and for that matter that no party feels coerced by the mediator to accept a settlement.

Standard II. Impartiality. The mediator must conduct the mediation without favoritism, bias, or prejudice.

The mediator must avoid any conduct that could give the appearance of partiality. Even speaking to one party in a language the other party does not understand after the mediation could give the appearance of favoritism.

Standard III. Conflicts of interest. The mediator must avoid any **conflict of interest** and any appearance of a conflict of interest during or after the mediation. Conflicts of interest are situations in which the mediator is in a position to exploit a professional capacity in some way for his or her personal benefit. A person should not mediate a dispute, for example, if he or she has or had a relationship of any kind with one of the disputants.

Case Studies 7.6 and 7.7 raise ethical issues.

Impartiality in Mediation

Elizabeth completed a mediation with Manfred and Al to resolve a dispute over the sale of real estate. The parties agreed, a written agreement was signed, and clearly everyone was very happy to have settled the dispute. Manfred had a German accent. Elizabeth made no comment about his accent during the mediation, but since she herself was born in Austria, she asked Manfred, “*Wo sind Sie geboren? Ich bin Österreicherin.*” (“Where were you born? I am Austrian.”) Manfred answered in German, and no further comment was made. But later that week, Al filed a prejudice complaint against Elizabeth.

DISCUSSION:

1. How could Elizabeth’s speaking in German appear to be a conflict of interest?
2. Would the situation have been any different if Elizabeth had asked the question in English?

Conflict of Interest in Mediation

Olga was mediating a dispute between Philip and Young over repairs to a car. A few minutes into the mediation, Olga thought she recognized Young. She checked his full name, and it didn’t jog her memory. A few minutes later, it struck her. Young was her son’s orthodontist. Normally, she saw him only for a few brief minutes in his office, when he was wearing his lab coat, and she knew him as Dr. Chun. Dr. Chun had made no personal comment to her before or during the mediation to indicate that he recognized her.

Olga immediately stopped the mediation because of a potential conflict of interest. Philip and Young considered Olga’s disclosure and elected to ask her to continue as mediator.

DISCUSSION:

1. How could Olga’s son being a patient of Dr. Chun represent a conflict of interest for Olga?
2. Even though the parties asked Olga to continue as their mediator, if she felt uncomfortable mediating with her son’s orthodontist, should she have agreed to continue as their mediator?

The mediator must disclose all actual and potential conflicts of interest that could be reasonably known to him or her and be seen as raising any questions about his or her impartiality. After the mediation, he or she should also avoid any contact that could cast doubt on impartiality. A mediator who mediates a dispute

involving a local Walmart and who shops there the next month is in a different situation than a mediator who mediates with a small local contractor and hires that contractor the week following the mediation.

Standard IV. Competence. The mediator should have the competence to satisfy the reasonable expectations of the disputing parties. And the mediator should be able to be fully present during the mediation, not distracted by mobile phone calls and texts or by illness or other commitments.

Standard V. Confidentiality. Refer back to what the mediator should say in the mediation introduction. The mediator must maintain confidentiality of all information obtained during the mediation unless other conditions are agreed to by the disputing parties or required by law.

Standard VI. Quality of the process. The mediator must not misrepresent facts and must not allow the mediation to be used to further criminal conduct. Nor can the mediation continue if the mediator believes one of the disputants is not able to participate competently in the process. The mediator may withdraw from or terminate the mediation at any time.

Standards VII and VIII deal with advertising and fees for mediation. The final standard requires mediators to advance the profession by, among other things, doing pro bono work, informing the public to improve understanding and appreciation of mediation, and assisting in the training of new mediators.

Professional mediators are bound by legal and ethical frameworks. Professional mediators also have instruction, observations of mediations, and comediation of actual dispute resolution services. While no one should hold him- or herself out to be a mediator without meeting such requirements, more people should learn and apply mediation skills to help their friends and family resolve their disputes.

APPLYING MEDIATION SKILLS

Let's look at two examples of individuals who applied mediation skills to help disputing parties reach agreements.

The Camp David Accords

Jimmy Carter, the 39th president of the United States, attended Georgia Southwestern College and the Georgia Institute of Technology and received a BS degree from the U.S. Naval Academy. In the Navy, he became a submariner, and he did graduate work at Union College in reactor technology and nuclear physics. He won election to the Georgia Senate in 1962 and became Georgia's 76th governor in 1971. Carter then served as president from 1977 to 1981. In 1982, he became University Distinguished Professor at Emory University in Atlanta, Georgia, and founded The Carter Center (www.cartercenter.org). The center works to resolve conflict, promote democracy, protect human rights, and prevent disease and other afflictions. In 2002, President Carter was awarded the Nobel Peace Prize for "for his decades of untiring effort to find peaceful solutions to international conflicts, to advance democracy and human rights, and to promote economic and social development" (The Carter Center, 2015).

One of President Carter's most significant foreign policy accomplishments was the Camp David Accords, the treaty of peace between Egypt and Israel. Perhaps no international negotiation has been as fully and as openly documented as the Camp David Accords, which now provide insights into the application of mediation skills.

After assuming office, President Carter restarted the Middle East peace efforts, which had stalled during the U.S. presidential campaign. Carter visited the heads of state whose participation would be critical for any peace agreement. At the same time, the Israelis and the Egyptians were secretly discussing a framework for bilateral talks. President Carter sent then U.S. secretary of state Cyrus Vance to each country with handwritten notes inviting Begin and Sadat to meet at Camp David (Carter, 1982, 1985).

The Setting. Camp David is the presidential country retreat located in wooded hills about 100 kilometers northwest of Washington, D.C. Camp David offers lodges and cabins in a secluded and tranquil, private setting. Camp David has been used to host foreign dignitaries since Prime Minister Winston Churchill of Great Britain in 1943. The rural setting and the separate cabins make the site an ideal venue for extended private and joint meetings (White House, n.d.).

Caucus. On September 6, Begin and Sadat met face-to-face with President Carter to discuss a framework Sadat had proposed. U.S. national security adviser Zbigniew Brzezinski recalled that the meeting "went better than expected." But a joint meeting the next day was much less cordial as Begin refuted each of Sadat's points. Sadat replied that the discussion proved that Begin wanted territory more than he wanted peace. After that, President Carter relied only on individual meetings with the parties. Sadat and Begin didn't meet again except in a social context.

Listening and Issue Identification. President Carter may have made the first use of what has been called the **single negotiating text** method. After his individual meetings, President Carter developed a draft document, which the negotiating parties then rewrote through a back-and-forth critiquing process. This document went through 18 drafts as the parties made edits.

WATNA. A mediator may remind the disputants of the consequences of not settling. At Camp David, President Carter led an excursion to the Gettysburg battlefield. As a military cadet, Sadat had studied the battle and knew its history. While Begin was unfamiliar with the battle, he did recite Lincoln's Gettysburg address from memory. Some feel that the cemetery is a visual reminder of the horror of war.



Handout/MCT/Newscom

► President Carter used his mediation skills with Egyptian president Anwar El Sadat and Israeli prime minister Menachem Begin during 12 days of negotiations at Camp David.

Deadline. By the end of the 10th day, there was still no firm agreement on anything. Finally, President Carter said to the parties, “I have to go back to Washington on Sunday. Either we get something by Sunday, or it’s a failure.”

Mediator Personal Characteristics. You’ll recall that mediators in the United States typically do not know, nor are they typically known by, the disputing parties they work with. You’ll remember that, in contrast, in indigenous forms of mediation, the mediator is a known and respected party.

On September 15, Sadat became frustrated and decided to withdraw from the negotiations and leave Camp David without any agreement. President Carter went alone to Sadat’s cabin and said that if he left Camp David, “our friendship was severed forever.” Sadat walked to the corner of the room, came back, and said, “I’m staying.”

When Begin had decided to withdraw, President Carter brought Begin a group photograph inscribed to each of Begin’s grandchildren signed by Carter, Sadat, and Begin. Carter knew the impact that photograph would have on Begin. Recognizing the impact the negotiations would have on his and generations of grandchildren, Begin returned to the negotiations.

Mediator’s Attitude. The mediator always believes an agreement is possible. At Camp David, President Carter used that skill.

On September 16, President Carter reviewed the entire draft framework, listing all the common positions and detailing the few remaining sticking points. With this review, Carter was able to get Begin to remove a final roadblock.

The Agreement. The next day, the parties returned to the White House, immediately went to the East Room, and signed the accords. The next day, President Carter addressed Congress on the accords with Sadat and Begin in the audience. On the way to the Capitol, President Carter added to his remarks, “Blessed are the peacemakers for they shall be called the children of God.”

The Camp David Accords were historic. The Sinai was returned to Egypt, diplomatic relations were established between Israel and Egypt, and the stage was set for subsequent negotiations on Palestinian self-governance.

QUESTION

1. Mediation in the Middle East has been extremely difficult. What mediation tools did President Carter use in this successful mediation?

The Roommates

David has had the same one-bedroom apartment for the past two school years. Faith and Jada moved into a nearby two-bedroom apartment shortly before the fall term at college. Both are named on the lease,

and each has contributed half the \$1,000 security deposit. David became friends with both Faith and Jada. At the end of the spring term, Faith decides to transfer to another school and tells Jada she will be moving out in June. Jada would like to keep the same apartment next year and starts looking for a new roommate to take over the lease for the summer and the following school year.

Faith and Jada decide on how to divide up the utility bills. Faith easily finds someone to take over Jada's half of the lease. The new roommate, Alyssa, agrees to pay Faith her deposit. The complex owner amends the lease, and everything seems fine. Then, on moving day, Jada is helping Faith pack and sees several stains on the carpet. She says, "What are we going to do about those?" Faith says, "They're not bad; it's fine," and continues moving things to her car.

Jada runs to David's apartment and asks him what to do. Jada and David return to the apartment and encounter Faith.

QUESTION

1. What mediation skills can David use to help Faith and Jada?

DISCUSSION QUESTIONS

1. Early forms of mediation may have served the purpose of facilitating people in small communities to live and work together. Does mediation serve that same purpose in large, modern communities?
while the disputants tell their story, in the caucus, in cross-talk, and in developing the written agreement? Why is it important for the mediator to do so?
2. Who should decide on the style of mediation to use, the mediator or the disputants? Defend your answer.
3. How does the mediator communicate differently in the mediation introduction,
4. Which is more critical for the mediator, to remain neutral or to ensure the mediation process is fair even if doing so means foregoing neutrality? Defend your answer.

KEY TERMS

Alternative dispute resolution (ADR) (p. 150)

Caucus (p. 163)

Child custody mediation (p. 146)

Community mediation centers (p. 146)

Conflict of interest (p. 166)

Court mediation programs (p. 146)

Cross-talk (p. 165)

Evaluative mediation (p. 151)

Facilitative mediation (p. 153)

Federal Mediation and Conciliation
Service (FMCS) (p. 146)

Ho'oponopono (p. 148)

Mediation (p. 146)

Peer mediation programs (p. 145)

Reframing (p. 165)

Single negotiating text (p. 169)

Transformative mediation (p. 153)

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