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Party-Directed Mediation: Helping Others Resolve Differences

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PARTY-DIRECTED MEDIATION
HELPING OTHERS RESOLVE DIFFERENCES
(2nd Edition)

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Agricultural and Natural Resources
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Photo by David Marsing Billikopf

ABOUT THE AUTHOR

Gregorio Billikopf (a.k.a. Gregory Encina Billikopf) was born and raised in Chile. Billikopf's agricultural extension research and teaching efforts at the University of California have focused on such topics as conflict resolution, negotiation skills, employee selection, compensation, performance appraisal, discipline and termination, supervision, and interpersonal relations. Gregorio has been a frequent national and international speaker in the field, and has had the opportunity to give presentations in Russia, Canada, México, Uganda, Colombia and Chile.

Gregorio and Linda Billikopf live in Modesto, California, and have four children. Billikopf has also been a dressage rider (equestrian sports) and instructor, an amateur radio operator, and a soccer referee. More recently, his deep love for the Scriptures has occupied much of his free time. Billikopf is the grandson of the early American labor mediator and arbitrator, Jacob Billikopf (1883-1950).

ACKNOWLEDGMENTS

Special thanks to all those who have permitted me to mediate their disputes throughout the years. I am particularly grateful to Rebecca and Nora for allowing us to videotape the mediation dialogue included in this book, as well as the mediation team who participated. Also, special thanks go to facilitators Macarena Pons and Rodrigo López for the negotiated performance appraisal clips in Chapter 13, as well as the supervisors and subordinates who so gracefully permitted their use.

Linda Marsing Billikopf, my wife, offered helpful suggestions for handling the videotape transcripts and did much to improve the overall logic of the presentation within chapters in the first edition. Portions of this book were published previously in a different form, and I am particularly grateful to those who helped edit these.

The author takes responsibility for the opinions expressed as well as any errors that may remain. I am especially appreciative to the University of California for the opportunity to hold a job where creativity is encouraged.

PREFACE

The purpose of this book is to make the *Party-Directed Mediation* approach more widely available to mediators. This book is primarily directed to mediators, facilitators, managers, and others who help individuals manage interpersonal conflict. Many of its concepts can also be of value to those who are seeking to better understand or solve their own interpersonal discords. There are some key principles that would also be useful for the management of intergroup conflict.

It has been gratifying to know that this approach has already been adopted by varied users, such as women's shelters, attorneys, mediation centers, churches, and educators (for courses in organizational behavior, conflict management and human resource management).

We live in a troubled world where we hear of conflicts near and far. Interpersonal issues play a large role in many, if not most, conflicts. This book provides people in the helping professions a tool to facilitate the resolution of even the most deep-seated interpersonal conflicts. Party-Directed Mediation provides the skills to those who have been involved in a dispute to speak directly to each other.

The need to *save face* is inherently human. Party-Directed Mediation is designed to allow individuals to preserve face and dignity to a greater extent than more traditional approaches. Some ethnicities and cultures place a great value on *facework*, and so it is that Party-Directed Mediation is especially effective for resolving intercultural conflict among such groups.

The approach is simple: 1) mediators meet with each party separately in a pre-caucus (or pre-mediation) before ever bringing them together; and eventually, 2) when parties do meet together in a joint session, those involved in the conflict address each other directly. As a result, the chances that the conflict will be resolved increase, and each participant is better armed to deal with future conflicts

without the aid of a mediator. The responsibility for solving the conflict remains with those who are most likely to be able to do so: the contenders.

In contrast, much of the literature of the past decades has shown that traditional mediators seem to agree on one key imperative: that both parties should immediately be brought together into a joint meeting with the mediator, rather than have the third party convene with them separately, ahead of time. So, for instance, Juan addresses himself to the mediator, rather than to Basseva, with whom he has been at variance. Basseva also responds through the mediator, rather than directly to Juan.

A number of reasons have been advanced to defend the traditional approach. The mandate originates, to a great extent, from fear that the mediator may collude with one of the parties ahead of time. After all, in the traditional approach mediators retain a position of power and can yield considerable influence over the parties by imposing solutions to problems. Mediators, in a mediator-directive approach, can often weigh in with their influence, and it is not uncommon that their role may sometimes look more like an arbiter than a mediator. When mediators, instead, help those involved in the dispute to become better negotiators—and thus learn how to more effectively face each other—concerns about favoritism or collusion are all but eliminated.

Mediators are increasingly beginning to recognize that the traditional approach is fraught with challenges. In *When Talk Works*, Kenneth Kressel explains that it is a “common theme in the mediation cannon” (1994, p. 25) to let parties tell their side of the story in front of the other. Kressel then shares the destructive effect of this method: “Mrs. Smith would accept my invitation [to tell her side of the story] with relish, explaining that they were here because Mr. Smith was a worthless lout who cared nothing for his children or common decency and had been vilifying and humiliating her for years. For all she knew, he might also be

an alcoholic and child abuser. His cross dressing was a matter of record. She was in mediation by order of the court and was certainly willing to do her best to encourage Mr. Smith to ‘finally be a father’ but was, shall we say, skeptical. Whatever the tonic benefits of this outburst for Mrs. Smith, for Mr. Smith and myself the results were clearly unhappy: he would be provoked into an apoplectic rebuttal and I into a dismal contemplation of other lines of work. Yes, I exaggerate. But only a little” (p. 26).

This second edition contains a number of important additions and changes, beginning with the title of the book. The original title was *Helping Others Resolve Differences: Empowering Stakeholders*. The Party-Directed Mediation approach was described in the first edition, but had not been named. The author had mistakenly used the word *stakeholder* as a synonym for ‘party,’ or the individual involved in the mediated contest. Hence the new title, *Party-Directed Mediation: Helping Others Resolve Differences*. I am indebted to fellow mediator Jon Linden for naming the new approach, suggesting the drop of the word *stakeholders*, and for extensive communications which forced me to better explain and defend the Party-Directed Mediation process. Linden has an extensive mediation practice which includes work for the New Jersey Superior Court Special Civil Division and Law Division and for the US Equal Employment Opportunity Commission. It was a great satisfaction to me when Linden successfully incorporated some of the principles discussed in this book in a workplace mediation.

Most of the chapters in the book have been restructured and there is a new section on preventive mediation in the workplace, based on the *negotiated approach to performance appraisal*, also developed by the author. Chapter 1 provides an overview of the Party-Directed Mediation approach. We look at the philosophy as well as general mechanics of this unique mediation approach. Chapter 2 focuses on one of the major mediation skills

needed by the third party: *empathic listening*. It is the type of listening that permits others to vent and hear themselves. Chapter 3 covers a number of matters that need to be dealt with in the pre-caucus, and to determine if it is safe to have the parties confront each other in a joint session. Chapter 4 provides tips on interpersonal negotiation skills that mediators may wish to share with the participants. Chapter 5 deals with issues surrounding the joint session. In Chapters 6 through 11, we introduce the reader to Rebecca and Nora, as these are video transcripts of both the pre-caucuses and joint session of a mediation where the parties had been involved in a workplace dispute spanning over two decades. Chapter 12 covers the *Negotiated Performance Appraisal* model, which is an excellent tool to improve communication and thus avoid interpersonal conflicts in organizations. Chapter 13 contains transcripts of portions of several appraisals, to better illustrate the negotiated approach to performance appraisal. Appendix I revolves around cultural differences. Having an understanding of these is critical when dealing with cross-culture and cross-gender conflicts. Appendix II is the *Group Facilitation: A Research and Applications Journal* article that was included in the first edition. The paper I presented at the 2005 Annual Meeting of the *International Association for Conflict Management* is incorporated into the main manuscript.

Our Website includes audios on both interpersonal negotiation skills and empathic listening skills that can be downloaded and distributed at no cost to clientele, students or others.

Over the years, there have been many important contributions advanced towards the resolution of conflicts. This book does not purport to displace other writings on the subject of mediation, nor does it purport to be a handbook on mediation. Rather, it introduces two models that have made positive contributions to the field and have helped empower affected parties.