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*Party-Directed Mediation: Helping Others Resolve Differences*  
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## PART III – JOINT SESSION

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## Mediating the Joint Session



Mike Poe

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

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

We will examine matters related to:

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

## SEATING ARRANGEMENT

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A mechanical aspect that is extremely influential in Party-Directed Mediation is the seating arrangement: the two parties sit facing each other in a position that promotes good *eye contact*.

Eye contact tends to increase aggression among disputants. Yet, once parties have begun the trajectory towards reconciliation through the process of pre-caucusing, eye contact can help soften feelings of aversion. This is powerful medicine for mutual understanding.

Eye contact serves to remind parties of the positive affect they may have felt for each other at one time, though they have now relegated such feelings to their subconscious. They are ready to begin to see each other as real people.

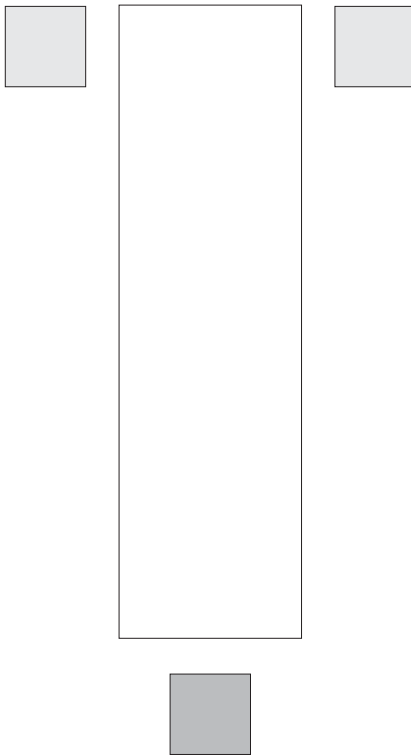
One option is to seat the parties at a table. This allows for a personal safety zone with the additional comfort of a physical barrier between the contenders. The ideal is a long rectangular table. The contenders sit across from each other at one end of the table while the third party sits at the other end, far away from them (Figure 5–1, and Chapter 5 opening photo).

Another alternative is to use a set of comfortable armchairs and do without the table. The chairs should be placed at a distance that permits sufficient personal space between the disputants. I usually place the chairs somewhat farther apart than is probably required. Parties often choose to move closer on their own. The neutral party may, at times, be surprised by the proximity chosen by the disputants.

In Party-Directed Mediation, the mediator sits far enough away that the contenders must turn their heads if they wish to make eye contact with him or her. This way, it is not easy for the parties to check whether they have “scored points” or to enlist the

mediator’s support for an argument. If parties do turn towards the mediator, the intermediary can encourage them to address each other instead. This seating arrangement—in which parties face each other rather than the mediator—underscores the message that parties are there to *talk to each other*. It constitutes the second pillar of the Party-Directed Mediation approach (the pre-caucus being the first).

In more traditional mediation settings, disputants sit facing the third party rather than each other (photo p. ix).



The not-so-subtle message is that the third party will resolve their disagreements.

It will not hurt to mention the seating mechanics before participants arrive at the joint session, as some parties are accustomed to facing the mediator.

The day of the joint session, one of the parties will likely arrive before the other. The mediator may invite individuals to sit down and make themselves comfortable, but remains standing until both contenders have arrived. This detail sends a clear message to the party who is last to arrive—that the joint session has not started without him or her.<sup>1</sup>

FIGURE 5-1

*Seating arrangement during the joint session. The mediator sits at the far end of the table.*

## OPENING THE MEDIATION

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

This is *not* the time, however, to ask the individuals to share these positive comments about each other. Parties are seldom psychologically ready to begin with affirmations. During the joint session, the mediator may underscore transformative comments that come up naturally but generally does not ask contenders to share such validating comments. Doing so weakens the value of transformative discourse. It may appear as if the mediator is (1) manipulating contenders to say something nice about each other or (2) discounting the many unresolved issues that have brought the parties into the dispute. Instead, parties will make their own validating comments when they are ready and without any prompting.

The mediator may wish to remind individuals that they can take breaks, ask to caucus with the mediator, or take time to call a stakeholder at any time. My experience is that pre-caucusing greatly reduces the need for such interruptions.

## GETTING THE DIALOGUE STARTED

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After any additional introductory comments from the mediator, the time has come to turn over the reins to the contenders. Mediators can explain that they will bring up topics—from the lists developed during the pre-caucuses—and ask one party or the other to expand on the subjects and thus begin a dialogue.

Although the mediator may pick the first topic, one option is to permit the parties to continue the conversation from there. When disputants are allowed to bring up their own topics, the mediator ensures all issues are exhausted before the joint session is over. The mediator will easily note when parties move evasively from one subject to another as a defensive or offensive tactic.

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

Generally, I prefer to begin with topics that appear simpler and more substantive, rather than complicated emotive or affective issues.

At times, an individual will have expressed a great desire to apologize to the other contender about some matter, and this also may be a good starting place. What is essential is to give the parties a balanced opportunity to speak and address issues of importance to them.

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

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

Mei shares with Hua her concerns about the letter and gives Hua the opportunity to react. When both have finished the conversation on this matter, the mediator may invite Hua to tell Mei about a specific worry brought up in her pre-caucus.

While the ideal in Party-Directed Mediation is for the contenders to speak to each other with as little interruption as possible, there are times when the mediator must intervene and help parties overcome dysfunctional communication styles. Or deal with power imbalances.

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

At times, it may be tempting, during a joint session, to ignore an area of concern brought up during a pre-caucus. Shortly after

the first edition of this book was published, I was conducting a seminar. One of the participants raised his hand and mentioned that there happened to be two individuals attending the workshop who were involved in a long-term contentious relationship at work. Class participants requested that we incorporate the case into the seminar. The contenders, Keith and James, agreed to have the workshop participants play the role of the mediator with my help.

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

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

The joint session proceeded very well, with both contenders speaking to each other and solving the difficulties that had been raised. The parties were about ready to finish, so I had to decide whether to have them discuss the honesty issue. Inspired by Robert Baruch Bush and Joseph Folger's *transformative* approach to helping contenders apologize or share feelings of regard for each other and the authors' belief that it is more important to have parties come to a better understanding of each other than merely find short-lived agreement,<sup>2</sup> I ventured to bring up the subject.

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

It is good to talk about the past. It can help unravel patterns of conflict and provide transformative opportunities. Without understanding the past, it is hard to prepare for the future. At some point, however, the focus must turn to dealing with future behaviors rather than nursing past injuries. Party-Directed Mediation normally permits disputants to naturally transition from speaking about past behaviors to discussing mutual understanding and required changes for the future.

## AGREEMENTS

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An essential aspect of becoming a good negotiator is to truly understand the challenge being faced. The mediator needs to be especially sensitive to signs that one or both parties are capitulating just to move on. Or out of the mistaken idea that they are pleasing the mediator. Such behaviors can often be noted in the tone of voice and body language of the contenders, but not always. Mediators may ask parties some pointed questions about their agreements, encourage specificity, and question agreements that seem weak and unlikely to endure. When dealing with more difficult challenges, part of the role of the mediator is to keep the parties from becoming overly discouraged. This can be done, at times, by talking about the progress that has already been achieved.

In Chapter 4, we referred to the Harvard negotiation approach introduced by Roger Fisher and William Ury in their seminal work, *Getting to Yes*.<sup>3</sup> They suggested that by concentrating on their *positions* (i.e., proposed solutions) parties accentuate their disagreements. When, instead, people focus on the *needs* and *fears* behind their stated positions, they are more likely to find mutually acceptable solutions that address the needs of all involved. Resolutions based on this approach are not only more acceptable to the parties, but they are also more likely to be long-lasting. When the light goes on, disputants realize that it is not a zero-sum game in which one person must lose for the other to win.

Mediators should not rush to move participants from (1) their position statements and explanations of their fears and needs to (2) problem resolution. It is vital to first truly understand the nature of the difficulty being faced. I find that allowing parties to temporarily maintain their initial positions permits each to feel understood and to retain a sense of control and ownership of the process. At some point, it helps to have each party explain, to the best of his or her ability, the position of the other.

Contenders often discount each other by refusing to acknowledge that the other party has a position worth considering. Years ago, I conducted a communication seminar

hosted by a large enterprise. Without realizing it, I selected two individuals to play roles in a hypothetical conflict that turned out to be all too real. The mediation scenario used a more traditional approach without any pre-caucusing.

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

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

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

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

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

Once he stopped evading the process and described the position of the foreman, and the foreman did the same for the cook, they quickly came to a clever solution that benefited everyone and saved the corporation money.

An intermediate step—one that might have helped smooth the transition between a solely internal focus and stating the other party’s position—would have been to encourage the parties to ask nonjudgmental, fact-finding questions of each other.<sup>4</sup> An agreement was made that the field foreman would call the cook with an exact meal count for the day. Because the cook had an exact count, he had fewer meals to cook and thus could produce them faster.

A structured way to clarify positions versus needs is outlined in Sidebar 5–1.

Sometimes, negotiation is attempted, but people’s needs are incompatible. This may be especially so when no distinction can be made between needs and positions. When negotiation has failed—for whatever reasons—mandate may require the dispute to be resolved through arbitration or the courts. Bush and Folger suggest, however, that if a door is left open for continued conversation, and if individual empowerment and mutual recognition have taken place, then mediation was not a failure.

SIDEBAR 5-1

Positions vs. Needs in Conflict Management

1. Parties divide a paper, chalkboard, or wipe board into four sections as shown below.

2. Parties seek to understand and record each other's *position* (i.e., stance).

3. Parties are free to restate, modify, or further clarify their own positions at any time.

4. Parties then seek to understand and record each other's *needs*. Taking the time to ask effective questions of each other is an important part of reaching such understanding.

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

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

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

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

9. Parties consent to evaluate results at predetermined intervals.

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

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

Much more of a failure, they convincingly argue, is for a mediator to be so focused on having parties come to an agreement that the resolution is forced, reducing the chances that it will be long-lasting.<sup>5</sup>

John Forester suggests that even when there are deep value differences, and basic needs are incompatible, parties may come to an understanding on peripheral issues. People may agree to disagree while recognizing some common goals.<sup>6</sup> For instance, each spouse may have profound religious convictions that are incompatible with those of the other (e.g., values they wish to instill in their children) yet come to an accord on how to live with such variances in such a way as to minimize harm to their offspring.

## SUMMARY

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Party-Directed Mediation requires a certain belief in the inherent goodness of people, as well as confidence in the process itself. In this chapter, we considered the importance of the seating layout for the joint session, one wherein parties can focus on each other rather than on the third party. The seating arrangement underscores the contenders' responsibility for finding a viable solution.

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

Finally, we considered one way to implement Fisher and Ury's negotiation approach, in which individuals separate their positions from their needs.

CHAPTER 5—REFERENCES

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