

# PARTY-DIRECTED MEDIATION

Facilitating Dialogue Between Individuals

Gregorio Billikopf



University of California  
Agriculture and Natural Resources







## PARTY-DIRECTED MEDIATION

PARTY-DIRECTED MEDIATION: FACILITATING DIALOGUE BETWEEN INDIVIDUALS

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*This book is dedicated to those who foment peace.*

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# PARTY-DIRECTED MEDIATION

## FACILITATING DIALOGUE BETWEEN INDIVIDUALS

(3<sup>rd</sup> Edition)

GREGORIO BILLIKOPF  
UNIVERSITY OF CALIFORNIA

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## PREFACE

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We live in a troubled world with conflicts near and far. Interpersonal issues play a large role in many, if not most, conflicts.

This book is primarily directed to mediators, facilitators, and helping professionals who assist others in managing deep-seated 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. Most of its key principles may apply to the management of intergroup conflict.

The objective of this book is to make the *Party-Directed Mediation* (PDM) approach more widely available to mediators.

*In PDM, individuals are coached in a pre-caucus before the joint session.*

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I introduce two original models to facilitate dialogue between parties—after having tested them very successfully in Chile, Africa, and the United States since the 1990s—hoping to make them available to mediators, facilitators, and organizational psychologists around the world. The first, *Party-Directed Mediation* (PDM), is an ideal tool for conflict resolution between peers. The second model, *Negotiated Performance Appraisal* (NPA), offers a valuable alternative for conflict management between supervisors and subordinates—in addition to being an excellent tool for improving communication between them. What we say about PDM throughout the book is also generally meant for the NPA.

Both models were developed in the agricultural industry, but their application can easily be transferred to all sectors of the economy. I have been encouraged to present them in a broader manner, without focusing on a specific industry.

The approach is simple: (1) mediators listen to and coach each party separately in a *pre-caucus* (or pre-mediation) before bringing them together; and eventually, (2) when disputants do meet in a *joint session*, the contenders address each other rather than the third party. The burden of solving the conflict remains with those who are most likely to be able to do so: the contenders.

Parties gain the skills that will permit them to solve future conflicts without a mediator. Furthermore, PDM is designed to allow individuals to *save face* and *preserve dignity* to a greater extent than allowed by more traditional approaches. Some ethnicities and cultures place a great value on *facework* (concepts of *kao* and *mentsu* in Japanese and *mien-tzu* or *mianzi* in Chinese) and so PDM is especially effective for resolving multicultural or multiethnic conflicts. The need to save face, of course, transcends nationalities.

More *traditional mediators* bring the parties into a joint session without employing a pre-caucus. In the joint session, contenders tend to address the mediator rather than each other. Also, in traditional mediation there is greater use of *caucusing* (in contrast to pre-caucusing), where parties are separated *after* the joint session begins).

A number of reasons have been advanced to defend the traditional method. The lack of pre-caucusing is mostly born of the fear that the mediator may collude with one of the disputants ahead of time. After all, in the traditional approach, mediators retain a position of power and can wield considerable influence over the parties by imposing solutions. They can often resemble arbiters more than mediators.

Despite its many advantages, pre-caucusing continues to be a potentially dangerous procedure (putting in doubt mediator impartiality) *unless* it is coupled with a joint session where parties are prepared to talk directly to each other with little mediation interference, as we see in PDM.

Traditional mediators—who continue to be wary of pre-caucusing, even as it is used in PDM—would benefit by employing skilled individuals who could provide parties with (1) needed *empathic listening* and (2) coaching in interpersonal negotiation skills. These services could be offered by someone *other* than the case mediator.

There are traditional mediators who also worry about caucusing too early or too often, and some would prefer to do away with any caucusing.

In *The Practice of Mediation*, for instance, Douglas N. Frenkel and James H. Stark argue that inexperienced mediators often fall into the trap of *premature caucusing*. This is unfortunate, the authors explain, because the parties do not benefit from the growth that comes from working together on challenges, hearing each other out, and sensing each other’s humanity. As a result, such early caucusing “can interfere with some of the highest goals of mediation.”<sup>1</sup>

As a compromise, providing listening and coaching pre-mediation services to parties would likely: (1) delay premature caucusing, (2) reduce the total amount of caucusing required, and (3) improve the communication between parties during the joint session and after.

In PDM, parties learn how to negotiate for themselves, so concerns about favoritism and collusion are all but eliminated. To date, I have not had to go into caucus while carrying out a PDM case—not that I am completely averse to the idea.



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*More traditional approaches have parties address the mediator rather than each other.*

Mediators are beginning to recognize that the traditional method is fraught with challenges. In *When Talk Works*, Kenneth Kressel explains that it is a “common theme in the mediation canon” to let parties tell their sides of the story in front of each other. Kressel goes on to share how destructive such an approach can be:

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 . . . 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.<sup>2</sup>

The contenders end up insulting each other in front of the mediator, and neither is able to save face. Furthermore, the mediator fails to keep the parties psychologically safe.

It has been said that “there is no new thing under the sun.”<sup>3</sup> Since the publication of the first edition of this book in 2004, several models have come to my attention that make effective use of the pre-caucus, such as *victim-offender mediation*. Depending on the severity of the cases, victim-offender mediation may require months of pre-caucuses as incremental steps are taken to prepare the parties to meet in a joint session. Two excellent books, Dudley Weeks’ *The Eight Essential Steps to Conflict Resolution*<sup>4</sup> and Mark S. Umbreit’s *Mediating Interpersonal Conflicts: A Pathway to Peace*,<sup>5</sup> describe successful pre-caucusing.

I began work on PDM in California in January 1992 and on the NPA model during a trip to Uganda in May 1996. Over the years, there have been many important influences on the field of conflict resolution. I shall incorporate some of the key principles in the context of PDM. This book does not purport to displace other writings on the subject of mediation, nor is it a complete handbook on mediation. Rather, it introduces two models that have made positive contributions to the field and have helped empower affected parties.

Perhaps the contribution of PDM is the more explicit organization of mediation around the pre-caucus and subsequent joint session. Furthermore, while a few authors suggest parties face each other during the joint session, in PDM the neutral moves away from the contenders, underscoring the fact that a mediator is present to *facilitate a conversation between the parties* rather than to decide who is right.

It takes a greater leap of faith to prepare individuals to negotiate for themselves and then to step away, but this is precisely what strengthens the process and leaves no doubt that we are dealing with *mediation* rather than *arbitration*.

Carl R. Rogers Collection, HPA Mss 32, Department of Special Collections, Davidson Library, University of California, Santa Barbara.



*Carl Rogers authored both the empathic listening and active listening models.*

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Another innovative contribution of this approach has been long-distance international mediation. Neutrals can work with less experienced co-mediators in another country. The seasoned mediator may listen in and assist from a

different location because most of the difficult work is carried out during the pre-caucus. Much of the negative emotion is dissipated before the joint session. The reduced level of contention between the disputants in the joint session, furthermore, allows apprentice mediators to gain the needed proficiencies with more ease and under less stressful circumstances.

Now, let us briefly review the contents of this revised and greatly expanded 3<sup>rd</sup> edition. Chapter 1 provides a general overview of PDM. There we look at both the philosophy and the mechanics of this approach.

Chapter 2 focuses on one of the most essential skills needed by the mediator: empathic listening. Very briefly, it is listening that allows others to vent and at the same time begin to hear themselves. Empathic listening is *not* the same as the much better known *active listening*. In active listening the hearer attempts to echo the feelings or unmet needs of the speaker through *empathic reflection*—a tool especially helpful for responding rather than reacting when we are confronted by others (Chapter 4).

While I strongly favor the use of empathic listening—as a mediator’s tool to help parties feel heard—some neutrals may well opt to substitute their own approach while using PDM.

Both of these listening approaches are based on the instrumental work of Carl Rogers. *Empathic listening* was described by Rogers in his renowned 1951 tome, *Client-Centered Therapy*.<sup>6</sup> Much of the subsequent work written about *active listening* seems to be based on a 1957 paper by that name, co-authored by Rogers and Richard Farson.<sup>7</sup>

Chapter 3 covers coaching and *challenging* disputants during the pre-caucus, and offers a good litmus test for knowing if the parties can safely proceed to the joint session. Chapter 4 offers *interpersonal negotiation techniques* to help parties prepare for the joint session—or alternatively, to deal with disagreement *without* a mediator. Chapter 5 details how to carry out a joint session.

Chapters 6 through 11 contain a case study: a dispute between Rebecca and Nora, based on a video transcription of their pre-caucuses and joint session using PDM. Nora and Rebecca were co-workers who had been involved in a conflict that had spanned over two decades at the time of the mediation.

Chapter 12 covers the NPA model, a practical tool to improve interpersonal communication between supervisors and subordinates. The NPA approach encourages speaking about issues that are usually avoided. The stated methodology is also proposed as an alternate model for supervisor-subordinate mediation and is therefore a fundamental part of this book. Chapters 13 and 14 contain transcripts of portions of several NPAs. The latter contains an extensive NPA pre-caucus with Véronique, who had been involved in a painful conflict with her supervisor. In it, we can observe many details about empathic listening discussed in Chapter 2.

The NPA process is carried out in the context of helping subordinates succeed in their jobs, as well as allowing supervisors and subordinates to study their own blind spots. A large part of the responsibility for improving performance falls on those evaluated. We will closely examine the use of this model both as a mediation approach and as a productivity management tool. The role of the third party (whether as a mediator or facilitator) varies depending on the disputants' skills and the existence of

antagonistic feelings between them. During the pre-caucus, the facilitator helps the parties fill out several lists. Each list has a psychological foundation. The empathic listening function is vital, especially when there is a conflict between the individuals.

Appendix I revolves around cultural differences. A sensitivity for these issues is vital when interacting with others and particularly when mediating multicultural disputes.

Appendix II contains the paper, “Contributions of Caucusing and Pre-Caucusing to Mediation.” It points out why so many mediators were at first resistant to caucusing and pre-caucusing.

Appendix III is a case study on intergroup mediation by Diane Clarke. She utilized PDM and elements of the Peacemaking Circle processes to help two disputing groups regain trust.

This book is backed by research I have conducted as an academic of the University of California and a professor of the University of Chile. I have had the opportunity to present the

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*PDM is especially effective for resolving intercultural as well as interethnic conflicts.*

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*PDM is designed to allow individuals to save face and preserve dignity.*

PDM and NPA models at the annual conferences of the International Association for Conflict Management (IACM) in Seville, Spain (2005), and Kyoto, Japan (2009).

It has been gratifying to know that there has been mounting international interest in both the PDM and NPA models shown not only by the academic community (for courses in organizational behavior, conflict management, and human resource management) but also by domestic violence shelters, attorneys, religious organizations, and mediation centers.

This book—as well as the Spanish-language edition, *Mediación Interpersonal*—is available as a free PDF version from our website (<http://www.cnr.berkeley.edu/ucce50/ag-labor/7conflict/>). These PDFs may be downloaded and distributed at no cost to clients, students, or others (see copyright page) as a public service of the University of California.

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6. I highly recommend this book to mediators. I found it to be a page-turner, although not everyone to whom I have recommended it sees it that way.
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As the author, I take responsibility for the opinions expressed as well as any errors that may remain. I am most especially appreciative to the University of California for the opportunity to hold a job where creativity is encouraged.