

PARTY-DIRECTED MEDIATION: FACILITATING DIALOGUE BETWEEN INDIVIDUALS
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PART I – INTRODUCTION

Party-Directed Mediation Model Overview



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The two pillars of *Party-Directed Mediation* (PDM) are: (1) a pre-caucus—a preliminary, separate meeting between the mediator and each of the parties prior to the joint session (sometimes called pre-mediation) and (2) a joint session in which parties speak directly to each other rather than through the mediator. Both of these supporting pillars are somewhat controversial.

I intend to examine the nature of the controversy and suggest which types of conflicts lend themselves to PDM—and perhaps just as importantly, which do not. Another objective is to clearly describe the model so mediators can apply it in a consistent, positive fashion. What I say about PDM also applies to the Negotiated Performance Appraisal (NPA).

The aims of the *pre-caucus* are to: (1) permit parties to vent freely and reduce negative emotions and (2) teach contenders to communicate and negotiate more effectively. Armed with these skills, parties are more likely to arrive at satisfying and enduring outcomes.

The initial focus of the pre-caucus is to attend to each party through *empathic listening* (Chapter 2). Through the process the mediator hardly speaks, but lets the affected persons feel accompanied while they share their conflict narratives. Although the neutral's role is that of an attentive listener who does not interrupt, we ought not think the mediator is distracted or detached from the process.

In the second phase of the pre-caucus, mediators prepare disputants for the joint session. To be ready, individuals must: (1) be *emotionally equipped* to deal with their adversaries and

During the pre-caucus, parties can vent and reduce negative emotions.





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It is not surprising that individuals who have been listened to and coached in a pre-caucus may go on to resolve their dispute without a mediated joint session.

(2) have acquired some of the tools for effective *interpersonal negotiation*.

As people become capable negotiators, they can handle discord more effectively. When brought to the table, differences in perspective present opportunities to find more elegant, satisfying, and lasting solutions.

When the contenders arrive at the *joint session*, they speak directly to each other with minimal third-party interference. By sitting at quite a *distance* from the disputants, mediators underscore their own reduced role in the dialogue.

Some situations may call for a different conflict resolution strategy, as it may not be psychologically safe to bring parties

together for a face-to-face confrontation. During the pre-caucus an experienced mediator can gauge if it is prudent to proceed into the joint session.

The application of PDM principles, then, depends on the degree to which: (1) the case lends itself to them and (2) the contenders wish to acquire the requisite interpersonal negotiation skills.

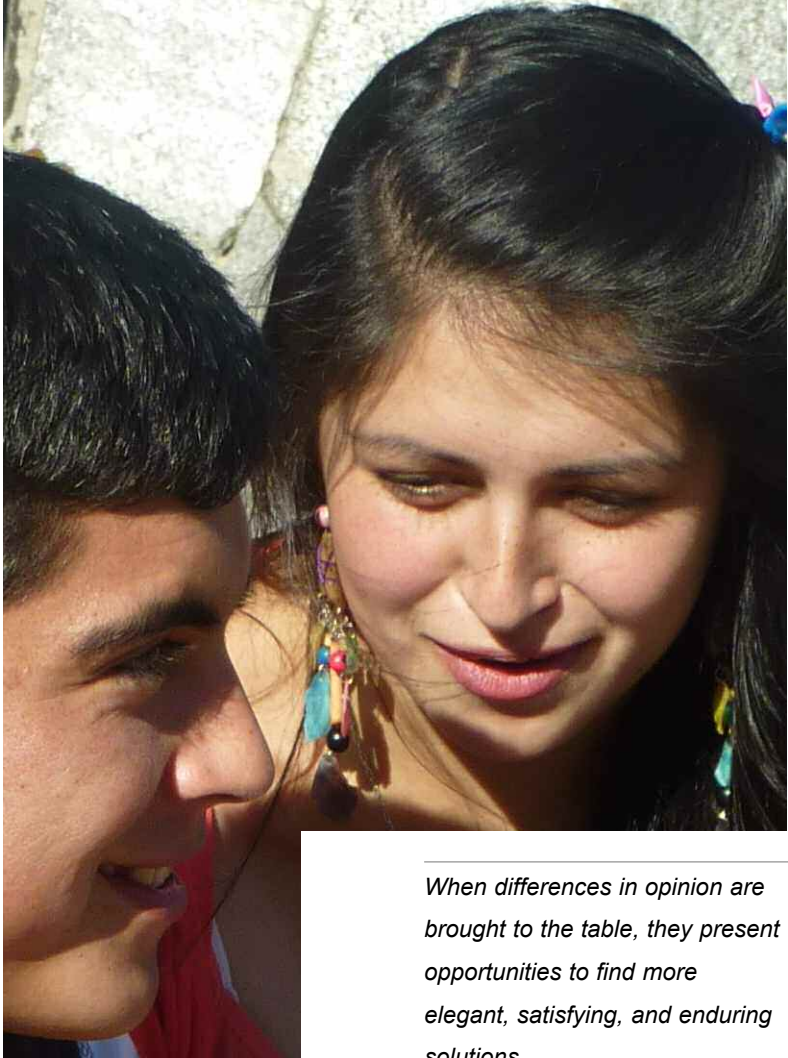
Some cases—as in certain restorative justice programs—call for months of preparation before parties come together for a joint session in which they face and speak directly to each other. Yet, other situations are solved by the parties themselves after a friend lends an ear to one or both, allowing them to gain the necessary confidence to approach each other on their own.

People tend to sort out most of their differences *without* a mediator. It is not surprising that individuals who have been listened to and coached in a pre-caucus may go on to resolve their dispute without a mediated joint session. Certainly, one of the objectives of PDM is to help people resolve future differences without outside help. At times, however, the assistance of a mediator is crucial.

Talk of empowering disputants sometimes elicits a negative—if not defensive—reaction among mediators and scholars. This resentment is partly justified. In their fervor for empowerment, some have come to imply the inferiority of other approaches. Empowerment is not automatically the only, or the best, mediation approach.¹

For instance, a year and a half after one of my sabbaticals in Chile, I received a threatening letter from a collection agency on behalf of the car insurance enterprise I had utilized. I was accused of not paying my last installment. Unfortunately, I had long since discarded proof of payment. This was the first and only note forwarded to me. It was difficult to deal with this situation from so far away.

I was relieved when one of my brothers, who lives in Chile, contacted the insurance agency and mediated between us. I hardly knew the people involved and had no interest in mutual validation, transformative opportunities, or the like. I simply



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When differences in opinion are brought to the table, they present opportunities to find more elegant, satisfying, and enduring solutions.

wanted the problem to go away without having to pay twice. Also, not everyone wishes to have a greater hand in solving their own disputes.

I know mediators who are very gifted at seeing solutions that the affected parties simply cannot perceive. These skilled practitioners are able to discern potential agreements, know exactly when to speak, find the right tone of voice to use, recognize when humor would be helpful, and get people to agree. They are virtuoso artists within the profession. In my opinion, such skills and abilities will always be needed, especially in the resolution of certain types of conflicts.

There are other types of disputes, especially those of an interpersonal nature—involving people who will continue to live with each other, work together, or interact *after* the mediator leaves—that can greatly benefit from a style that empowers each disputant. This is where PDM can play a key role.

The PDM model is particularly useful in the resolution of deep-seated interpersonal discord as well as multicultural or ethnic clashes. While its primary focus is on contention affecting two individuals, most of its tools may be profitably applied to disputes among groups.

CHAPTER 1—REFERENCES

1. Focusing on mediations that are *not* interpersonal in nature, Freund effectively shows that empowerment is not always the best approach. Freund prefers to negotiate directly with each disputant, rather than permitting them to confront each other, because the parties may get in the way of a positive resolution. (Freund, J. C. (2012). *Anatomy of a mediation: A dealmaker's distinctive approach to resolving dollar disputes*. New York: Practising Law Institute.) Interestingly, other authors make similar claims about not addressing *relational* conflicts, yet often the cases discussed would greatly benefit from PDM, precisely because of the *interpersonal* components of the disputes.