

Appendix II

Contributions of Caucusing and Pre-Caucusing to Mediation

Wherever choices exist, there is potential for disagreement. Such differences, when handled properly, can result in richer, more effective, creative solutions. But, alas, it is difficult to consistently turn differences into opportunities. When disagreement is poorly dealt with, the outcome can be *contention*. Contention creates a sense of psychological distance between people, such as feelings of dislike, alienation, and disregard. Such feelings can get in the way of effective communication and resolution of even the most minute perceived differences (Billikopf 2000).

Deep-seated interpersonal conflict requires an enormous amount of skill to mediate, even when the best of present-day theory is put into practice by trained and skilled mediators. Yet others who may have little mediation training, such as facilitators, may at times find themselves in the role of mediator.

Despite years of experience as an admired and skillful facilitator, a colleague confessed that mediation required specialized skills. He described a recent intervention as a *third-party neutral*, one in which he felt thrown into a lion's den. The parties became involved in an ugly escalation right in front of him. As a mediator, he felt impotent to help and was even threatened by one irate party.

There are a number of subtle differences between what facilitators and mediators do. Although they both draw from a

subset of common tools, there are important distinctions. Generally speaking, facilitators tend to help groups through the process of problem solving and creative decision making. Mediators often deal with disputants who may be more openly antagonistic towards each other.

Facilitators, in many cases, work with situations in which people may not know the way but are excited about finding a common direction. Mediators, in contrast, often work with those who have lost faith in the other party as well as any hope of resolving the challenges in a mutually positive or amicable fashion. Having made such broad generalizations, it is important to note that individual mediators and facilitators vary enormously both in philosophy and approach.

There are times when interpersonal conflict may force a facilitator to concentrate on individual or group antagonisms. At times like this, the facilitator may benefit from additional mediation skills.

The focus of this paper is on the contributions of caucusing as a mediation tool and, more specifically, the use of pre-caucusing (or pre-mediation). In caucusing, the third-party neutral meets separately with each disputant, in the absence of the other contending party. In pre-caucusing, these separate meetings take place before the mediator brings the contenders into a joint session (Billikopf 1994; Billikopf 2000).

While countless factors are involved in successful mediation, some are so compelling that they may be called pillars of mediation. Pre-caucusing may well be such a pillar.

With notable exceptions, caucusing has received a somewhat uneven and often shallow treatment in the literature. Little is said explicitly about pre-caucusing. Certain value assumptions about mediation further complicate some of the controversy surrounding the topic. One of the most important of these values involves mediator choice between a *transformative* (Bush & Folger 1994) and a more traditional *directive* mediation.

The *directive* approach tends to focus on finding an acceptable agreement—one that may involve *settling* or *compromising*—between the contending parties. It is sometimes called directive

because of the large amount of power and responsibility placed on the mediator. Some mediators may come close to acting as arbitrators, imposing a solution on the participants. Of course, mediators do not normally start out thinking that they will impose a solution. As situations become more difficult and emotional, however, it is increasingly likely that directive tactics will be utilized (Bush & Folger 1994; Folger, Marshall, & Stutman 1997; Lewicki et al., 1994).

Transformative mediation (1) allows parties to retain maximum control over the process; (2) creates an atmosphere in which disputants can begin to connect interpersonally (i.e., provide mutual recognition or support); (3) helps contenders become better negotiators and reduce dependence on neutrals; and (4) seeks solutions that are based on a careful understanding of the problem, rather than rushing into agreements that may be short-lived.

A study on self-esteem found that people prefer conflict management situations in which they have added control over the results, even when such control may mean making greater concessions (Swann 1996). My own preference towards transformative mediation affects how I see and utilize caucusings.

We shall first review what is said about pre-caucusing in the literature. The positive and negative attributes often associated with caucusings, and, particularly, the special contribution played by pre-caucusing, are mentioned next. Examples of pre-caucusing are drawn from my involvement as a researcher and mediation practitioner in organizational settings.

Pre-Caucusing in the Literature

Little is said in the literature about either pre-caucusing or the timing of caucusings in general. For instance, Moore suggests, "Mediators should take care not to schedule caucuses prematurely, when parties are still capable of working productively in joint session, nor too late, after unproductive hostile exchanges or actions have hardened positions" (1996, p. 320).

Bush and Folger are more explicit about the benefits of early caucusings: "Exploring delicate relational issues and laying further

groundwork for recognition is sometimes easier in caucus, especially in the early stages of the process. Parties often find it difficult at first to give recognition directly to the other party, because it is difficult to give recognition to another person when feeling vulnerable oneself” (1994, p. 153). Having said that, however, they warn that breaking into caucus too early may interrupt the “transformative momentum” or positive conversation flow between disputants that may involve positive acts of mutual recognition (Bush & Folger 1994, p. 271).

There is one veiled reference to pre-caucusing, mentioned almost as an aside by Folger, Marshall, and Stutman. In a sidebar case, a mediator was using computer technology as an aid to conflict resolution. The mediator is reported to have met with the parties “separately prior to the session to help them clarify their needs and positions” (1997, p. 285).

Volkema comes close to suggesting a pre-caucus: “The first contact between the mediator and the contenders provides the first opportunity to establish public images. If this contact is between the mediator and one other person, only two identities need to be negotiated, although groundwork for others can be laid at the same time” (1988, p. 8).

Winslade and Monk (2000) are clear proponents of the pre-caucus, especially in cases involving entrenched disputes, although they studiously avoid the word *caucus*, given its negative associations:

One of the first steps we prefer to take in a mediation is to meet with each of the parties separately . . . In our experience, it is in these separate meetings that a lot of the major work of the mediator is done . . . the separate meetings are a venue for significant developments in the mediation as a whole, not an optional adjunct to the process, to be used only when things are getting sticky. In our approach, they are central to what gets achieved. (2000, p. 137)

Despite Winslade and Monk’s use of the pre-caucus, I found they failed to take advantage of all of the pre-caucus’s transformative possibilities. In the joint session, parties tend to address the mediator rather than each other. In fairness to

Winslade and Monk, this happens even in the approach used by Bush and Folger (1994).

Positive Contributions of Caucusing

Positive attributes usually associated with caucusing include: deciding whether to bring the disputants together into a joint session (Moore 1987; Moore 1996); giving the opportunity for contenders to vent (Blades 1984; Emery & Jackson 1989; Hobbs 1999; Hohlt 1996; Moore 1987; Moore 1996; Pruitt et al. 1989; Welton, Pruitt, & McGillicuddy 1988); helping each party feel understood by the mediator (Emery & Jackson 1989; Hobbs 1999; Hohlt 1996; Moore 1987; Moore 1996; Pruitt et al. 1989; Volkema 1988; Welton, Pruitt, & McGillicuddy 1988); exploring positions and needs (Blades 1984; Castrey & Castrey 1987; Emery & Jackson 1989; Hobbs 1999; Hohlt 1996; Moore 1987; Moore 1996; Pruitt et al. 1989; Volkema 1988; Welton, Pruitt, & McGillicuddy 1988); reminding parties of the benefits of mediation (Moore 1987; Moore 1996; Volkema 1988); coaching parties on effective communication and negotiation techniques (Hobbs 1999; Moore 1987; Moore 1996; Volkema 1988); and appealing to parties' higher principles (Blades, 1984; Hobbs 1999; Hohlt 1996; Moore 1987; Moore 1996; Pruitt et al. 1989; Volkema 1988; Welton, Pruitt, & McGillicuddy 1988; Winslade & Monk 2000).

Each of the next several sections (1) presents a key decision or outcome of mediation, then (2) underscores the contributions of caucusing followed by (3) the additional benefits of pre-caucusing.

Deciding to Bring Parties Together

The ideal is to bring the disputants together so they can make a joint decision and retain maximum control over the situation. An important outcome of effective mediation is to enable contenders to handle future challenges without a mediator.

While the results of mediation can be markedly superior to those obtained through other third-party interventions (such as arbitration), this is not necessarily so with substandard mediation

(Castrey & Castrey 1987). When things go wrong in mediation, parties may take advantage of the sense of safety they feel in order to escalate the contention to even higher levels than before. It is possible that the mediator can do *more harm than good* by bringing the parties together.

Contributions of Caucusing

Moore suggests that a mediator may use caucusing to deal with relationship problems and that at times a neutral third party may want to “discourage or prevent the parties from returning to joint session . . . when extremely strong emotions [might] be a major stumbling block to further negotiations” (1987, p. 88).

Further Contributions of Pre-Caucusing

A central aim of the pre-caucus is for the mediator to assess the potential benefits and harm of bringing contenders together, before any damage is done. When contention is allowed to come into the mediation session, the opportunity for disputants to start with a clean slate is compromised. Emotional escalation, as Moore (1987) suggests, may also have a negative effect on reaching agreement.

In one of my early efforts as a mediator, a manager not only refused to look at his assistant in the joint session but turned his chair so as to present his back to her. After this experience I developed a litmus test to better help me gauge the likelihood that a joint session would be successful: asking a party for what he or she values in the other (Billikopf 2000). This question is telling because people involved in deep-seated conflict may have trouble finding anything positive to say about each other (Bush & Folger 1994). This is not a question to ask at the outset, as parties may be in too much pain to see very clearly. Nor should the mediator take the first negative expression as final. (For additional tests, see Lewicki et al. 1994, p. 360–361.)

In one difficult case, a top manager could not make a single positive remark about a subordinate, despite the positive things that had been said about him. I shared with the top manager my experience that there was little likelihood of mediation success

when an individual could find nothing positive to say about another and suggested a short break. When we resumed our conversation, the recalcitrant manager was waiting for me with a list of sincere, positive feelings about the other party.

Opportunity to Vent

Two couples sat on either side of the table, glaring hostilely at each other. At the head of the table, a schoolteacher in her thirties was explaining the service. “First you, Mr. and Mrs. A, will have a chance to tell your side of the story and Mr. and Mrs. Z will listen quietly. Then you, Mr. and Mrs. Z, will have the same opportunity. After that we will discuss the situation and try to find a way to resolve it.” . . . While each side was telling its story, there were outbursts from the other of “that’s not true” or “wait a minute,” which the mediator strove to contain. (Pruitt et al. 1989, p. 202)

Mediators often struggle unsuccessfully to maintain control over conflict escalation. Early joint session phases—in which parties share their stories, come up with ground rules, or begin to interact—frequently lead to unconstructive exchanges. “After each parent has voiced concerns, the two parents are encouraged to discuss the issues freely. In the majority of cases, an argument ensues,” say Emery & Jackson, who discuss child custody disputes. “The fight is almost always unproductive . . .” (1989, p. 6).

Kenneth Kressel explains that it is a “common theme in the mediation canon” (p. 25) to let each party tell his or her side of the story in front of the other. He then shares the destructive effect of this approach:

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. (1994, p. 26)

Some mediators feel that such loss of control is unavoidable, part of the process, or even necessary (Emery & Jackson 1989; Rothman 1997). I contend, however, that there is a better way; that parties have already experienced what does not work and remember it well. It is hardly necessary for them to re-experience it now in front of the mediator. Most third-party neutrals would probably welcome an approach in which such dysfunctional escalations were either greatly reduced or completely eliminated.

Some have suggested strategies for reducing such futile outbursts, including telling one party to remain silent or focus on listening (Hobbs 1999) while the other speaks. To make the point, the listening party may be given a notepad and asked to take notes (Emery & Jackson 1989). It has also been suggested that joint sessions be held in a public place to help contenders tone down their emotions (Folger, Marshall, & Stutman 1997). While the note-taking suggestion has some merits, in this context such artifacts may delay contentious outbursts rather than prevent them.

Contributions of Caucusing

Disputants may have some very poignant and deeply antagonistic feelings towards each other. When these can be vented in front of the mediator, the party often has less need to vent in a destructive manner in front of the opposing party. Defensiveness is reduced and creativity increased as the mediator protects parties from further mutual abuse.

There is little disagreement on this point: while involved in caucusing, disputants are less hostile than in joint sessions (Welton, Pruitt, & McGillicuddy 1988). When conflict escalates into contentiousness, as in these episodes, the mediator not only permits contenders to lose face, but just as importantly, she or he loses both control (Butler 1994) and face (Volkema 1988) in front of the parties.

Further Contributions of Pre-Caucusing

When dealing with acquaintances or strangers, individuals often go out of their way to make an effort to project their best possible behavior. This is especially true in what could be called a “courting period.” This honeymoon period may last years, when parties view their relationship as fair and equitable. When the rules of proper interpersonal exchange are violated (Brown, 1986) and someone feels taken advantage of, the situation can change quickly.

Similarly, in a party’s relationship with a mediator—assuming the mediator is a stranger and/or has the respect of the disputants—individuals often try extra hard to be on their best behavior (Folger, Marshall, & Stutman 1997), lest the mediator think that they are culpable. Parties are more likely to want to continue to make a good impression on the mediator after they have established themselves as reasonable people in the pre-caucus. Volkema suggests that “it is not unlikely that the parties will have established one image with each other and another image with the mediator” (1988, p. 11).

People also attempt to be consistent: “Consistency gives actors a desirable degree of predictability and trustworthiness, and it generates liking and respect” (Schlenker 1980, p. 232). Contenders are likely to feel a greater need to be seen as consistently reasonable by a mediator who has had sufficient time to meet with them individually. Effective listening is a very powerful tool, and people tend to respect those mediators who can listen with care and empathy.

Once the parties have exchanged insults in front of a third-party neutral in traditional mediation, on the other hand, much of the damage has been done. Disputants feel less motivated to show their best after exposing their worst behavior.

It is not that parties pretend to be people they are not. Because parties meeting with the mediator in the pre-caucus know they will be meeting with the other party in a joint session, it is my experience that they are likely to share their own shortcomings, rather than wait for the other party to bring these out. It is this new *facework* (in part, the practice of allowing another to save

face) between contenders that the mediator wants to encourage in order to give parties an opportunity for a fresh start that is not based on blame.

Helping Each Party Feel Understood by the Mediator

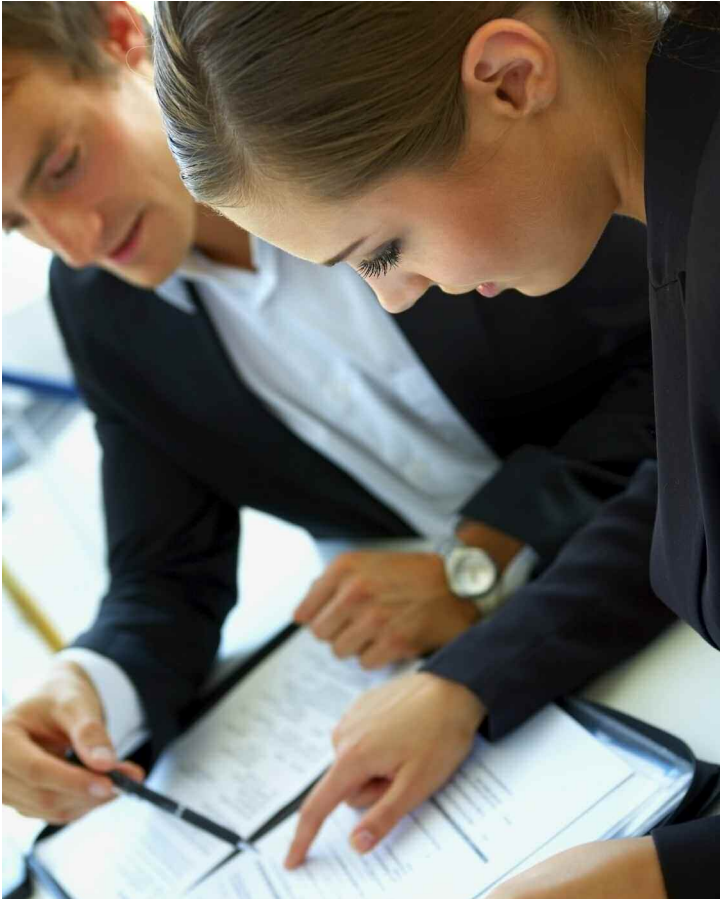
It is difficult to expect disputants who have been involved in deep-seated conflict to put aside their own needs and listen to and focus on the needs of the other party (Bush & Folger, 1994). The natural tendency is for parties to want to express their own perspectives first. The more deep-seated and emotional the conflict, the greater this tendency.

At times, tension in deep-seated interpersonal conflict situations can reach almost unbearable levels. In mediating such conflicts within organizations, it is common for parties to strongly contemplate withdrawal from the enterprise. Psychological separation from the other party and possibly from the organization has already taken place. For instance, in child custody mediation, contenders have already separated physically and psychologically from each other, yet need to work together for the benefit of the children involved.

Contributions of Caucusing

Because parties have the opportunity to meet separately with the mediator, each gets the opportunity to explain his or her perspective first, before having to attend to the other participant. When the party feels understood, an enormous emotional burden is lifted, thus making him or her more receptive to listen to others (Covey 1989). It is true that disputants have a special need to be understood by the other party in the contention, but being understood by the mediator contributes much. Often, it is a necessary step in terms of a party gaining enough confidence to proceed further.

Some individuals tend to be more silent than others. Caucusing increases the chances that an individual will talk (Hohlt 1996) and express his or her feelings. It is hardly possible for the mediator to help individuals who refuse to speak about



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Most criticisms associated with pre-caucusing are really attacks on directive mediation rather than on caucusing itself.

“where it hurts.” Mediators have the opportunity to show empathy to one party in a caucus situation without arousing jealousies in the other disputant.

Further Contributions of Pre-Caucusing

It is at the start of mediation that parties are perhaps most apprehensive as to what mediation may bring. Contenders often come to the table armed with and ready to deploy every defensive mechanism (such as sulking silence, angry outbursts, and combative body language). They may have trouble looking at the mediator, let alone the other party.

When a pre-caucus is used and the other contender is not present, this frustration and despair is re-directed in more positive ways. To have an empathic ear to listen to a party in such a nonjudgmental way is powerful medicine indeed. I have seen people who were supposed to be “silent types” open up and talk freely. Men and women have wept openly as they released tension. Such emotional releases are not available to disputants in more traditional mediation.

The Exploration of Needs and the Benefits of Mediation

The mediator attempts to understand individual items under dispute, as well as the general perspectives of parties, and helps disputants keep alive the benefits of mediation (in contrast to other alternatives, such as arbitration).

Contributions of Caucusing

An important benefit of caucusing is being able to explore beyond positional bargaining, into party interests and needs (Fisher, Ury, & Patton 1991). Parties can also be reminded that mediation confers tangible benefits over interventions in which they have less control. This is more likely to happen when individuals feel less vulnerable and defensive and are more willing to think aloud without feeling forced into making concessions. A mediator can increase her or his understanding of the situation through such exploration, but more important yet, the self-awareness of each party increases. For instance, it may become clear that a party desires an apology rather than some other remedy.

Further Contributions of Pre-Caucusing

When disputants enter the joint session with the benefit of a pre-caucus, the mediator can often take a less visible role. Each party comes to the joint session possessing enhanced clarity about the issues and self-confidence.

In one situation, after I listened to the contenders during a pre-caucus, they were able to go on and solve the problem on their own. Bad feelings had developed between them concerning how each introduced the other to visitors and the media. Not only did they solve this problem on their own; they also dealt with related underlying issues and even went on to discuss opportunities for future career growth and cooperation (Billikopf 2000).

As a neutral party, I sometimes do little more than introduce topics brought up during the pre-caucus. Allowing the parties to solve an easier problem early on may give them the needed boost to deal with more challenging issues later (Blades 1984; Emery & Jackson 1989). Furthermore, a mediator who understands the issues involved can make sure that significant matters are not ignored. Despite previous antagonisms, communication between disputants during joint sessions is sometimes so fast-paced that I have to scramble to understand and note their agreements. At times like these I feel like an unneeded observer. Setting up a situation in which parties address each other with little mediator interference takes transformative mediation to the next level. Although not all cases achieve this ultimate success, mediators can count on better communication flow and reduced contentiousness between parties.

Educate Parties on Effective Negotiation Skills

One measure of mediation success is when it equips contenders to handle future challenges on their own. While this may not necessarily happen after a single experience with mediation, the disputants can take with them increased self-awareness and conflict management skills.

Parties may be shown how they can present a perspective using neutral or nonprovocative language (Hobbs 1999) and without causing the other to lose face. An important part of conflict management is helping contenders recognize the need for the other party to build and save face (Ting-Toomey 1999; Volkema 1988; Blades 1984; Moore 1996). In the absence of these skills, people are likely to revert to a more dysfunctional and emotional approach to communication. Participants may also develop a better understanding of the nature of conflict—learning how to divide big issues into smaller ones and what constitutes a proper apology, for instance. Both parties gain negotiating power as they improve their ability to communicate in effective ways.

Contributions of Caucusing

Mediators have the opportunity to privately discuss participant behaviors that are working as well as those that are not. This avoids the appearance of favoritism associated with public compliments as well as the loss of face connected with open criticism.

Further Contributions of Pre-Caucusing

It is hard to expect the parties to have a positive mutual conversation when they lack even the most rudimentary notion of how their communication strategies affect the other disputants. Those who grasp new insights into the negotiation process early on are more likely to enter the joint session feeling confident and prepared, with some control over the results.

Among the potential positive outcomes of transformative mediation is giving parties the opportunity to apologize and to accept an apology (Bush & Folger 1994). One party had a history of vitriolic temper outbreaks when I first met with him. His anger often manifested itself in shouting and profanity. During the pre-caucus, it became increasingly clear that this party felt no regret about his temper tantrums. He was quick both to minimize the extent of his anger and to justify his bullying behavior. Had he defended such behavior in a joint session, his credibility would

have been greatly damaged. Through a series of role-plays and conversations during the pre-caucus, he came to understand the importance of offering an apology for his profanity and anger. Furthermore, he suggested that the topic be brought up early in the joint session so he could have a chance to apologize. During the first role-play his words had sounded shallow at best. The actual apology offered during the joint session was moving and sincere.

Regular caucusing has one advantage over pre-caucusing here. While the mediator can observe and coach a party during a pre-caucus, some dysfunctional communication approaches manifest themselves only during the joint session. This is not a fatal flaw of pre-caucusing, because a regular caucus can be utilized later to deal with such issues.

Much of what has been said here also applies to the idea of appealing to a party's higher principles. Many transformative opportunities that could otherwise be lost present themselves during the pre-caucus. For instance, an owner-operator said something touchingly positive about one of his managers during the pre-caucus. I suggested that it would be magnificent if he could share that thought with the other party during the joint session. The owner explained that he would never do so. I challenged him to reconsider but left the ultimate decision up to him. The individual chose to share the affirming comment during the joint session, taking ownership for that decision, thus making it his own.

NEGATIVE CONNOTATIONS OF CAUCUSING

A number of challenges are associated with caucusing, including: lack of party truthfulness (Pruitt et al. 1989; Volkema 1988; Welton, Pruitt, & McGillicuddy 1988); mediator bias (Blades 1984; Engram & Markowitz 1985; Moore 1987, 1996; Pruitt et al. 1989; Volkema 1988; Welton, Pruitt, & McGillicuddy 1988); mediator control or abuse of power (Blades 1984; Folger, Marshall, & Stutman 1997; Keltner 1996; Moore 1987; Moore 1996; Pruitt et al. 1989; Volkema 1988); reduced likelihood that

disputants will know how to handle future challenges (Pruitt et al. 1989); mediator violation of confidentiality (Blades 1984; Moore 1987; Moore 1996); interruption of positive movement (Moore 1996; Welton 1988); and free time for the other party to use in an effort to build his or her own case (Welton 1988).

Attacks on Directive Mediation

As we shall see, most criticisms associated with caucusing are really attacks on directive mediation, rather than on caucusing itself. When caucusing is instead used to increase party control through transformative mediation, most of these objections melt away.

As positive as mediator empathy towards a party may be, some fear that this may lead to party untruthfulness. They reason that the absence of the other contender during the caucus leaves the party free to exaggerate. Others argue that caucusing may lead to deals between the neutral party and one of the contenders. “Disputants often fear that clandestine deals or coalitions [may take place] between the other party and the mediator” (Moore 1996, p. 200).

Yet others suggest that caucusing simply gives the mediator too much control, lends itself to abuse of mediator power, and does little to equip contenders for future conflict in life. Instead, they argue, parties may become more dependent on mediation. “Caucuses . . . are explicit attempts to narrow issues, to push for compromise, and to synthesize arguments and positions” (Folger, Marshall, & Stutman 1997, p. 262). We even read that “caucuses provide mediators with the greatest opportunity to manipulate parties into agreement” (Moore 1996, p. 325). Volkema (1988) warns that mediators with a vested interest may promote one outcome over another. The assumption, in all these cases, is that agreement is reached during caucusing.

There is nothing inherent in caucusing itself, however, that leads to these difficulties. Quite the contrary, Engram and Markowitz suggest that “the judicious use of caucusing in . . . mediation can even enhance the perception of neutrality and will result in increased trust in the process of mediation”

(1985, p. 25). Likewise, when transformative mediation is used, caucusing may be seen as a tool to help disputants become better negotiators (Bush & Folger 1994).

In transformative mediation, *the parties solve their own disputes*, and there is little to be gained by attempts to influence the mediator. Contenders need not be concerned that the mediator will make a secret agreement with the other disputant. Caucusing is used to teach negotiation skills to parties rather than to circumvent individual empowerment.

Violation of Confidentiality

Another negative associated with caucusing is the potential for sharing confidential information obtained from one party, either purposely or through a slip. Certainly, mediators need to be careful not to divulge confidential information. Yet it should be clear that the purpose of caucusing is to help parties better understand their own needs and prepare to communicate these to the other party in the joint session—not to talk about issues a party wants to keep secret from the other participant. True, some subjects are originally brought up in a somewhat raw manner. These are translated into more effective messages that tend to reduce defensiveness. For instance, if a party feels the other is inconsiderate or selfish, the mediator helps the party better understand critical incidents that may have led to this evaluation. During the joint session, the incidents and behaviors are discussed without the labels.

As a mediator, I note all the issues that are important to disputants during the pre-caucus and give them a chance to expose these during the joint session: “A, could you share with B the story you told me about X?” Opportunities are balanced for both parties to bring up issues that are then jointly discussed.

Sometimes ethical issues require disclosure, such as when a spouse is hiding an asset from the other during a divorce settlement. In those situations, Blades (1984) suggests that the mediator make it clear to the pertinent party that the neutral’s continued involvement in the mediation depends on the contender disclosing this information to the other party. Standards have been

suggested for issues with and limits to confidentiality (Milne 1985; Moore 1987). Caucusing does not cause an inherently unethical situation to develop, however. It simply affords the mediator an opportunity to help correct an unfair situation. “Much of the controversy surrounding the issue of caucusing . . . stems from differences in training or orientation rather than from a real debate about ethics” (Engram & Markowitz 1985, pp. 24–25).

Interruption of Positive Movement

Caucusing may be called at any time, by contenders or by the mediator. Parties may even wish to caucus within their own team or with stakeholders, without the mediator. Alternatively, the mediator may need time alone and call for a “mediator caucus” (Castrey & Castrey 1987, p. 15). Any type of caucusing may interrupt the flow of the conversation. The great advantage of pre-caucusing is that it does not interrupt the positive flow of communication that may be established during the joint session. Furthermore, pre-caucusing probably reduces interruptions after the joint meeting has begun.

Free Time to Solidify Stance

The concern that caucusing permits one party time to further solidify her or his own stance while the other is engaged in caucusing is simply not an issue. In transformative mediation one of the roles of the mediator is to help disputants consider potential pitfalls. Mediators help contenders truly understand the problem and thus avoid quick, unworkable solutions.

CONCLUSIONS

Contention creates a sense of psychological distance between people, making even minute differences seem insurmountable. A tool of particular value is the caucus, in which the mediator meets separately with parties. The literature has shed light on both the positive and the negative contributions of caucusing. Positive aspects of caucusing include giving contenders an opportunity to

tell their story and be heard, explore needs, and vent privately. Mediators may also take advantage of caucusing to coach parties and help them understand the tools that will help them become better negotiators in the future.

Interestingly, most of the criticisms associated with caucusing derive from a directive mediation approach. When caucusing is used within a transformative framework, most of the potential shortcomings disappear. In transformative mediation, the disputants remain the primary actors. Not only do the contending parties retain control over the outcome, but they are also equipped with many of the tools they will need to solve future problems: “A skillful transformative mediator can use caucuses in a manner that not only avoids the problem-solving pitfalls [found in the directive approach] but actually builds transformative momentum over the course of a session” (Bush & Folger, 1994, p. 270).

Although in the literature we find some allusions to the benefits of the pre-caucus, very little is said explicitly about it. When pre-caucusing is used with a transformative approach to mediation, the benefits of caucusing are multiplied, and the potential negatives are further reduced.

The main reason why pre-caucusing is effective is that the mediator affords each party the opportunity to be heard when he or she needs it the most. A conflict situation that calls for mediation, almost by definition, is a difficult one. Parties are most often focused internally and have little capacity to listen to someone else at the beginning of mediation. This internal focus tends to extinguish creativity by increasing negative emotion and defensiveness. A party who feels heard in the pre-caucus is better able to listen to the other disputant and to connect in a more positive way. The groundwork laid out during the pre-caucus allows parties to address each other with little mediator interference.

Mediation has the potential to do much good. Poorly carried out mediation, in which contenders feel they can exchange insults in a psychologically safe environment, can do more harm than other forms of neutral-party interventions. The pre-caucus affords mediators the opportunity to make difficult decisions as to whether to bring contenders into a joint session.

Sometimes the most productive approaches are the simplest, and this is certainly true with the pre-caucus. Caucusing as a mediation tool has been partially misunderstood and certainly has not been used to its potential.

APPENDIX II—REFERENCES

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2009 UPDATE

Two additional books that promote pre-caucusing have since been brought to my attention:

- Umbreit, M.S. (1995). *Mediating interpersonal conflicts: A pathway to peace*. West Concord, MN: CPI Publishing.
- Weeks, D. (1992). *The eight essential steps to conflict resolution: Preserving relationships at work, at home, and in the community*. New York: Tarcher/Putnam.

2014 UPDATE

I wrote the original paper in 2002, at a time when I had not yet named my mediation models. 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 Party-Directed Mediation (PDM) and Negotiated Performance Appraisal (NPA). In these models, the burden of solving interpersonal conflicts remains with those who are most likely to be able to do so: the contenders. PDM and NPA provide for a positive and elegant use of the pre-caucus in a transformative setting—with a reduction of the associated dangers. This is because the mediator truly plays a support role.

Traditional mediators—who continue to be weary of pre-caucusing—would benefit by employing skilled individuals who could provide parties with: (1) empathic listening and (2) interpersonal negotiation skills coaching. These services could be contributed by someone *other* than the case mediator.

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