Mediation may be defined as a process in which disputants attempt to resolve their differences with the assistance of an acceptable third party. The mediator’s objectives are typically to help the parties search for a mutually acceptable solution to their conflict and to counter tendencies toward competitive win-lose strategies and objectives. Mediators are most commonly single individuals, but they also can be twosomes, threesomes, or even larger groups.

Although mediation is a pervasive and fundamental human activity—try to imagine family life devoid of parents’ interceding in their children’s squabbles—in the last two decades formal mediation has begun to play a role at all levels of society and in virtually every significant area of social conflict. Some of the most prominent examples are divorce mediation, peer mediation in the schools, community mediation, mediation of public-resource disputes, judicial mediation, mediation of disputes within organizations, and increasing visibility for mediation in international conflicts between and within nations.

**THEORY AND RESEARCH**

Use of mediation in its myriad forms far outstrips systematic research on the process. Nonetheless, with increased use has come widening understanding. Our knowledge of mediation as a social psychological process has three major sources: extrapolation from theories of conflict (for example, Deutsch, 1973; Fisher, Ury, and Patton, 1981), empirical research (for example, Kressel and Pruitt, 1989), and the in-depth “case wisdom” of practitioners (Kolb and Associates, 1994; Moore, 1996).

In this chapter, my primary goal is to give a concise account of what this collective literature has to tell us about the factors influencing use of mediation and what happens during the mediation process, particularly in terms of mediator behavior. I begin with what is known about the efficacy of mediation and the types of conflict for which it appears most (and least) effective.

**The Efficacy of Mediation**

The rise in mediation services over the last two decades has generally occurred in the context of offering disputing parties an alternative to traditional use of lawyers and the courts, particularly in disputes between divorcing parents, neighbors, and disputants who file in small-claims court. The proponents of mediation have argued that it should provide superior outcomes in settings such as these because it is based on a model of cooperative conflict, rather than the win-lose orientation of the adversarial legal system, and because it involves the parties directly and actively in searching for solutions to their differences rather than imposing a solution on them. This intensive participation, it is argued, should lead to psychological commitment to whatever agreements are reached, as well as to agreements that are enduring because they well reflect the needs and circumstances of the disputants. Much of the research on mediation has sought to evaluate whether these and other presumed advantages of mediation reliably occur. The results are generally favorable to mediation, but not unequivocally.

The most positive results are in terms of client satisfaction, settlement rates, and compliance with the agreements reached. On the order of 70–90 percent of disputing parties who have tried mediation say they were pleased with the process, would recommend it to a friend, think it should be available to others in similar circumstances, and things of this kind. Even for those who fail to reach agreement in mediation, the satisfaction rate is typically above 75 percent. These results compare favorably with public satisfaction with kindred services, such as use of attorneys (66 percent) and the role of the courts (40–50 percent).

Mediation also fares reasonably well in terms of its ability to produce a formal settlement agreement, with settlements occurring in the 40–70 percent range across a variety of settings, the
median being about 60 percent. These may appear modest figures in contrast with the 90 percent settlement rate achieved by attorneys without recourse to judicial intervention, but it is important to remember that the settlement figures for mediation include many intractable cases in which attorneys have already tried and failed to produce settlement.

Evidence on the rate of compliance with mediated agreement is also generally favorable. For example, in small-claims disputes, compliance with mediated agreements has been reported at 81 percent of the cases, compared to 48 percent for those using traditional adjudication. Similar findings have been reported in management of disputes between divorcing parents.

Although there are occasional nonconfirmatory, contradictory findings, there is also evidence that compared to adjudication mediation produces more compromise and more equal sharing of resources; produces settlements more quickly; and is less costly, both to the parties and the courts that provide the service.

The most consistent negative evidence about mediation is that it typically has little power to alter long-standing, deeply entrenched negative patterns of relating. Results of this kind come from studies of neighborhood justice centers, divorce mediation, and international conflict. The evidence on mediation’s effects also suffers from a number of methodological problems common to most new areas of inquiry, and it ignores almost entirely the types of informal mediation that occur outside of traditional legal settings, such as within families or friendship circles or among coworkers. On balance, however, it is clear from a large number of empirical studies that mediation is a helpful and satisfying procedure for many people in a variety of disputes.

Conditions for Effective Mediation

Mediation is not a magic bullet for resolving any and all conflicts. The accumulating evidence suggests that mediation is most apt to be successful in conflicts occupying a general middle range of difficulty. I have selected six factors from among those associated with decreased probability that mediation will produce agreement.

High Levels of Conflict. In empirical studies of mediation, a high level of conflict is the most consistent factor associated with mediator difficulty in helping the parties reach agreement. The measures of conflict intensity that correlate negatively with settlement include the severity of the prior conflict between the parties; a perception that the other is untrustworthy, unreasonable, angry, or impossible to communicate with; and the existence of strong ideological or cultural differences.

Low Motivation to Reach Agreement. In industrial mediation, mediator perceptions that the parties have low motivation to resolve the conflict have been found negatively associated with the probability of settlement; mediation of disputes between nation-states has been closely linked to what is referred to as a “hurting stalemate” (Touval and Zartman, 1989). There is evidence that divorce mediation tends to fail if one spouse has a high level of continuing psychological attachment to the partner or refuses to accept the decision to divorce.

Low Commitment to Mediation. It is a widespread conviction among experienced labor mediators that the chances for agreement are reduced if only one of the parties requests mediation services; empirical studies confirm this. The settlement rate is also lower if the chief negotiators are unenthusiastic about mediation or do not trust the mediator.

Shortage of Resources. Mediation is especially unlikely to succeed under conditions of resource scarcity, as studies of labor and divorce mediation have documented. Resource scarcity presumably limits the range of mutually acceptable solutions that can be found and may reduce the motivation of both the parties and the mediator to search for them.

Disputes Involving “Fundamental Principles.” Several lines of evidence support the long-cherished notion of experienced mediators that disputes involving matters of “principle” are especially difficult to resolve. This has been documented for international disputes (when ideology is at stake), for labor mediation (when the dispute is about union recognition as opposed to wages), and in mediation of environmental conflict (where disputes about general policies are half as likely to be resolved compared to site-specific conflict).

Parties of Unequal Power. It is widely felt by practitioners that disputes in which one side is much more powerful than the other (more articulate, more self-confident, better able to withstand the economic and political consequences of a stalemate) are among the most difficult to mediate. The
belief is given a measure of support from studies of the mediation of conflicts as disparate as those between warring states and between warring spouses.

It is important to note that mediation often succeeds in disputes with one or more of these characteristics. This is because the skillful mediator may be able to modify some of them in a favorable direction. It is also true that parties in such disputes may attain notable benefit from mediation even if they do not succeed in reaching an agreement: issues may be clarified, the opponent may be humanized, or partial agreement may be reached. Nonetheless, even in isolation, these factors are bound to present the mediator with serious challenges. Collectively, they suggest why the practice of mediation is so stressful and why mediator burnout is a well-recognized phenomenon.

Factors Determining Use of Mediation

Conceptually, mediation should be helpful in any conflict in which the basic framework for negotiation is present (Moore, 1996). The framework includes these elements:

- The parties can be identified.
- They are interdependent.
- They have the basic cognitive, interpersonal, and emotional capabilities to represent themselves.
- They have interests that are not entirely incompatible.
- They face alternatives to consensual agreement that are undesirable (for example, a costly trial).

Mediation is especially likely to prove useful whenever there are additional obstacles that would make unassisted negotiations likely to fail:

- Interpersonal barriers (intense negative feelings, a dysfunctional pattern of communicating)
- Substantive barriers (strong disagreement over the issues, perceived incompatibility of interests, serious differences about the “facts” or circumstances)
- Procedural barriers (existence of impasse, absence of a forum for negotiating)

Although many disputes meet these formal criteria, getting mediation started turns out to be something of a challenge. In interpersonal disputes of all kinds, one-third to two-thirds of those given the opportunity to use formal mediation decline it. It is also apparent that in work settings where informal mediation could be used (as by a manager), the would-be mediator declines to intervene, looks the other way, or chooses to employ power and authority rather than the skills of facilitation. Characteristics of the social environment, the disputing parties, and the potential mediator are among the variables that determine whether or not mediation occurs.

Characteristics of the Social Environment. Anthropologists have shown that in many nonindustrial societies the community is frequently unwilling to tolerate the disruption in social life that would be triggered by intense conflicts between clans having many cross-cutting kinship ties. In such cases, much social pressure may be brought to bear for the parties to mediate, and powerful community leaders are likely to be involved in making sure that mediation occurs and that the parties take it seriously.

There are, of course, notable instances in our own society in which mediation is socially mandated, as in labor laws that require mediation once bargaining has reached an impasse. Less formal but equally powerful mandates occur, as when a judge to a small-claims or divorce dispute “suggests” to the parties that they try mediation before proceeding to a judicial hearing. One of the important research findings is that such pressure does not appear to decrease the effectiveness of divorce, small claims, or neighborhood mediation.

In work settings, the environment may work for and against the use of mediation. Support for the process comes from, say, an organization’s need to get work done by means of a task force comprising individuals or groups with equal standing and no common superior. Conflict frequently erupts in such a group and poses an opportunity for informal mediation for a manager with conflict
resolution skills. On the other hand, although the modern organization is comfortable with the notion of conflict with its competitors, it is often much less disposed to acknowledge that conflict exists within the organization. Managers often behave accordingly, preferring conflict-avoidant strategies to mediation. They are inclined to bolster these approaches by defining conflicts as being rooted in the parties’ personalities and thus not amenable to resolution.

Perceptions of the Disputants. A decision to mediate often depends on the parties’ attitudes toward alternative means of attaining their objectives. Thus, a nation may choose to mediate when the human and financial costs of continuing conflict become too high; divorcing parents may mediate as a preferred alternative to the expense and unpredictability of relying entirely on lawyers and the court. In divorce mediation, a modicum of goodwill also appears helpful in making the commitment to mediate. Compared to nonmediating divorcing couples, those who choose mediation have a more positive view of their spouse, more optimism about the prospects for cooperating as parents, and greater willingness to accept responsibility for the marital breakup.

The choice of mediation may also hinge on whether a party perceives that the mediator has leverage with the adversary. Thus, industrial mediators report that management sometimes prefers a mediator with whom the union is very comfortable if they perceive that the union is being inflexible. In the sphere of international mediation, the classic illustration is Egypt’s eagerness to have its 1974 dispute with Israel mediated by the United States because of its known affiliations with and strong economic influence over Israel. Receptivity to mediation may also be a function of the justice orientation of the party; a disputant with a strong desire for revenge is likely to find mediation unappealing because of the wish to retaliate.

Characteristics of the Potential Mediator. The crucial distinction here is between contractual and emergent mediation. In contractual mediation, the mediator is an outsider with whom the parties contract for the specific purpose of helping them resolve their dispute. The contractual mediator’s relationship with the parties usually ends when the mediation ends. Moore (1996) points out that this form of mediation is common in cultures with an independent judiciary that provides a model of fair procedures and use of third parties as impartial decision makers.

In emergent mediation, the parties and the mediator are part of a continuing relational set with enduring ties to one another. Emergent mediation is found in families, friendship groups, organizations of all kinds, and international relations. Emergent mediators often have a strong vested interest in the outcome of the dispute (for example, family stability), are usually willing and able to mobilize considerable social and other pressure toward resolving the conflict, and maintain ongoing ties to the parties after the mediation effort ends.

In the contractual case, getting mediation started is comparatively straightforward. All that is required is that the disputants (or a party such as the court that controls their interests) decide on mediation. In emergent mediation, by contrast, potential mediators may decline to serve even if the parties wish assistance, or the parties themselves may need to be persuaded to mediate. For these reasons, mediator characteristics are especially important in determining whether emergent mediation occurs.

Third parties may choose to mediate if important interests of their own are at stake. Thus, in organizational settings managers are willing to take on the mediational role if an important agreement between organizational task forces is being negotiated; in an international conflict, nation-states are willing to mediate to protect or extend their own spheres of influence. Whether in international politics or in communal affairs, powerful mediators with self-interested motives for mediating a conflict are more likely than less powerful ones to be able to convince (or oblige) the disputants to make use of their services.

There is also some evidence about variables that deter third parties from mediating. In organizational settings, mediation does not appear to be a popular choice among managers, despite some lip service to the contrary. Speculation about why this is so includes lack of training in mediational skills for managers and the perception that the informal mediational role is not generally valued in organizations or may not be highly visible to the would-be mediator’s superiors. There is also evidence that third parties decline to mediate if they feel there is little likelihood of a win-win solution (little common ground) or if they are not concerned about whether the parties attain their aspirations.

Mediator Behavior

It is impossible to give a universally accurate account of what transpires in mediation since the process occurs across so many domains of conflict and since mediators often strive for quite
contrasting goals, ranging from settling the substantive issues narrowly defined to accomplishing broad relational, psychological, or social objectives.

Despite these differences, researchers and reflective practitioners have captured certain regularities in mediator behavior. Most of the knowledge on this subject is derived from studying the contractual mediator operating in what may be loosely described as a problem-solving model, oriented to ending a dispute with legal or quasi-legal overtones, as in a labor conflict or divorce.

In describing mediator behavior, I use a typology that I first developed while studying experienced labor mediators. With modifications, the typology has also been used to describe other forms of mediation (Kressel, 1972, 1985; Kressel and Deutsch, 1977; Kressel and Pruitt, 1985; Carnevale, Lim, and McLaughlin, 1989). It divides mediator behavior into reflexive, contextual, and substantive strategies. Mediator behavior also varies in the degree of assertiveness, a dimension that cuts across these three categories. Here I am not attempting a comprehensive catalogue in each area but rather trying to convey the overall flavor. The reader wishing detailed accounts may consult the works cited in this paragraph.

Before proceeding, I want to make two preliminary observations that may be helpful. First, any categorizing schema of mediator behavior is an obvious oversimplification. Mediation is a fluid, multifaceted activity in which the same act may serve several purposes. Second, it is commonplace among practitioners that successful mediation is a structured activity proceeding in distinctive stages, with various mediator behaviors predominating in each stage. Empirical evidence supports this general proposition, although the precise number and characteristics of such stages may vary considerably, depending on the nature of the parties involved, the complexity of the conflict, and the skills of the mediator. Thus, Figure 25.1 presents Moore’s twelve-stage model (1996) for professional mediators dealing with complex conflicts, while Exhibit 25.1 (Deutsch and Brickman, 1994) presents a simpler stage model for students, parents, or other nonprofessionals to use in mediating simple conflicts.

Reflexive Interventions. By reflexive intervention, I refer to mediators’ efforts to orient themselves to the dispute and to establish the groundwork on which later activities will be built. Of necessity, they are of primary importance early in mediation, although they occur throughout. Establishing rapport and diagnosis are the most important of the reflexive strategies.

Absent rapport with the parties, mediators can hope to accomplish little. Among the many things mediators can do to establish rapport, we may include giving a convincing and credible introduction to the mediation process and the role of the mediator, conveying sincere concern about the dispute, showing empathic understanding of each side, and behaving evenhandedly. Although rapport building is a central tenet of the practitioner community, it does not receive wide attention from researchers. Such strategies are associated with favorable outcomes in studies of labor mediation and mediation of interpersonal disputes in a community justice center.

Maintaining neutrality toward the parties and impartiality about the issues is often invoked as the sine qua non of rapport building and effective mediation generally, but as we have seen, many mediators (especially those of the emergent variety) hold decided preferences and biases and are often selected by the parties for precisely this reason. Perhaps more crucial than neutrality and impartiality is mediator acceptability, the route to which appears to be through rapport-building activities.

Exhibit 25.1. A Mediation Outline for Parents.

I. Introduction
1. Get the quarreling children’s or adolescents’ attention.
2. Ask them if they want help in solving their problem.
3. If they do, move to a “quiet area” to talk.
4. Explain and get their agreement to four rules:

Figure 25.1. Twelve Stages of Mediator Moves.

• Agree to solve the problem.
• Do not use name calling.
• Do not interrupt.
• Be as honest as possible.

II. Listening
5. Decide which child will speak first.
6. Ask Child #1 what happened, how he or she feels, and his or her reasons.
7. Repeat what Child #1 said so that Child #2 can understand.
8. Ask Child #2 what happened, how he or she feels, and his or her reasons.
9. Repeat what Child #2 said so that Child #1 can understand.

III. Solution
10. Ask Child #1 what he or she can do here and now.
11. Ask Child #2 what he or she can do here and now.
12. Ask Child #1 what he or she can do differently in the future if the same problem arises.
13. Ask Child #2 what he or she can do differently in the future if the same problem arises.
14. Help the children agree on a solution they both think is fair.

IV. Wrap up
15. Put the agreement in writing, read agreement out loud if necessary, and have both sign it.
16. Congratulate them both.


Before they can intervene effectively, mediators must also educate themselves about the dispute and the disputing parties. Among the diagnostic tasks we may count deciding—with the parties’ input—whether or not mediation is an appropriate and mutually acceptable forum (in a case of extreme power imbalance or where there is a history of violence and intimidation, it may not be), separating the manifest from the latent (and more genuine) issues, identifying the real leaders and power brokers (in complex, multiparty disputes), and understanding the relationship dynamics between the parties. Among the mediator’s common diagnostic tactics are use of sustained interrogatories (often in conjunction with separate caucuses with each side, where “sensitive” questions can be asked easily) and keen observation of the parties’ behavior in joint sessions. Contextual Interventions. Contextual interventions refer to the mediator’s attempts to produce a climate conducive to constructive dialogue and problem solving. This class of strategy embodies the traditional view that a mediator ought to be a catalyst and facilitator, not an arm-twister or proponent of a specific solution. Among the contextual strategies, we may include improving communications, establishing norms for respectful listening and language, managing anger constructively, maintaining the privacy of negotiations, educating the parties about the negotiating process, and establishing mutually acceptable procedures for fact finding. There is evidence that many of these behaviors, especially those associated with improving communication flow, are associated with favorable mediation outcome.

Structural intervention, such as deciding who should be present at negotiation sessions and conducting separate meetings with the parties (caucusing), may also be used as a method of “climate control.” Using the caucus is both common and somewhat controversial. The majority of practitioners see caucusing as an essential mediation tool for managing intense emotions, getting at sensitive information, and overcoming impasse. But some mediators avoid the caucus on the grounds that it fosters distrust between the parties, places an undue burden on the mediator for maintaining confidentiality, and engenders secrecy and scheming. Research on mediation of interpersonal disputes in a community justice center (Pruitt, Mccgillicuddy, Welton, and Fry, 1989) documents that mediators spent approximately one-third of their time in caucus and tended to do so when hostility was high and positions rigid. Although the caucus was used by many disputants as an occasion to
bad-mouth the other side to the mediator, the results were a strong decline in direct hostility between
the parties and an increase in problem-solving activity. More equivocal results for the caucus have
been reported in labor mediation under particularly unfavorable conditions (unmotivated parties,
large positional differences, and high hostility), where mediators sometimes fared better by
eschewing the caucus altogether.

Substantive Interventions. Substantive interventions refer to tactics by which the mediator deals
directly with the issues in dispute. All mediators are obliged to deal with the issues in some way,
although some philosophies of the mediator’s role deemphasize a substantive, problem-solving focus
in favor of relational objectives, such as increased understanding of self and other (Bush and Folger,
1994). Competence at formulating an overarching strategic direction for the negotiations—a flexible
plan for reaching agreement informed by a sound understanding of each party’s interests, constraints,
and limitations—is considered a central cognitive ability for the mediator in models that emphasize a
problem-solving focus (Honoroff, Matz, and O’Connor, 1990). Certain contexts appear to promote a
substantive focus for the mediator. This appears to be the case for mediators who work directly in the
shadow of the law, such as divorce mediators or judges who elect to play a mediational role as part of
pretrial conferencing.

Research on mediator behavior suggests three distinct but overlapping substantive domains for
mediator activity: issue identification and agenda setting, proposal shaping, and proposal making.
Mediator interventions in all of these domains have been associated with favorable mediation
outcomes, although the pattern is not always uniform.

There is also increasing awareness of the importance of substantive activities aimed at increasing
the probability that agreements reached in mediation are implemented and complied with. The risk of
noncompliance may rise with increasing number and complexity of the issues, the number of parties
involved, the level of tension and distrust between the disputants, the strength and number of internal
factions within each party whose cooperation is needed to implement the agreement, and the length
of time during which the obligations set forth in the agreement must be performed (Moore, 1996).
Among the important substantive activities of the mediator in this final stage of agreement
implementation, we may include assistance in selling the agreement to various constituencies, help in
developing criteria and procedures for monitoring and evaluating compliance, procedures for dealing
with intentional or unwitting noncompliance, encouraging a return to mediation if disagreements
arise during the implementation stage, and preparing the parties to maintain their agreements in the
face of opposition and resistance from extremist factions (Coleman and Deutsch, 1995).

Assertiveness. Assertiveness refers to how forcefully the mediator behaves in the reflexive,
contextual, or substantive domain. It describes a continuum ranging from mild and nondirective at
one end to forceful and highly directive at the other. Assertive behavior is most common in the
substantive domain. Mediators frequently engage in arm-twisting to persuade reluctant parties to
accept particular agreements, particularly during the later phases of mediation. Reflexive and
contextual activities are not generally insistent, but even here mediators can act forcefully to
overcome obstacles. Thus, judicious diagnostic questioning can yield to demanding and pointed
interrogatories if the mediator suspects dishonesty or concealment; interventions aimed at improving
the flow of communications and fostering mutual understanding can become stern and
confrontational if one or both parties persist abrasively or provocatively.

Although the practitioner literature conveys a decidedly ambivalent attitude about behaviors at the
assertive end of the spectrum, it is clear that pressure tactics are commonly used, especially if the
dispute involves very high levels of tension and hostility, if a mediator’s own interests or values are
at stake, if the mediator is under strong institutional pressure to avoid the costs of adjudication, or if
the mediator wields power over the disputants (a far-from-rare occurrence in some settings, as with
judicial mediators). It is also clear from the research literature and more than a few case studies that
assertive and even downright heavy-handed and coercive mediator tactics are often effective in
producing settlements, particularly if conflict is intense and positions badly polarized. What is not yet
clear are the long-term effects of exercising such pressure, particularly on compliance and future
willingness to use mediation.

**Mediator Style**

Although most empirical studies of mediator behavior have focused on discrete intervention of the
kinds just summarized, it is clear that mediators also have distinctive stylistic leanings. Mediator style
refers to a cohesive set of strategies that characterize the conduct of a case. There is evidence that
mediators are often unaware of their stylistic inclinations, even though they tend to enact the same style from case to case, despite variety in issues and dynamics.

Most stylistic accounts portray the mediator acting in either a task-oriented or a socioemotional style. The task-oriented style gives priority to active grappling with the issues in the form of shaping and making proposals and liberal use of pressure tactics. The style is often combined with skepticism about the parties’ ability to deal with each other and a corresponding sense that the mediator needs to do the lion’s share of the work, often through caucusing. The task-oriented approach frequently characterizes mediation of highly polarized disputes in which the costs of unabated conflict are onerous or where the time available for mediation is limited.

Within the broad task-oriented category there appear to be stylistic subtypes. (This may be true for the socioemotional style as well.) My colleagues and I have identified two contrasting approaches to court-annexed divorce mediation, both of which are of the task-oriented variety, but they work on quite different implicit assumptions about the goal of mediation and the role of the mediator (Kressel and others, 1994).

The first subtype, the so-called settlement-oriented mediator, is primarily interested in reaching agreement on any terms acceptable to the parties, attaches great salience to maintaining neutrality, and acts in a manner that suggests that the primary responsibility for problem solving rests with the parties. By contrast, a mediator enacting what is called the problem-solving subtype attaches greater importance to sound problem solving than to settlement per se, subordinates neutrality to the task of correctly identifying the relevant sources of the conflict, and acts in a manner suggesting that leadership of the problem-solving effort rests with the mediator rather than the parties. Both - settlement-oriented and problem-solving substyles are able to resolve disputes in a relatively low-level conflict, but the problem-solving style tends to produce structured and thorough problem solving, frequent and durable settlements (especially with high-conflict cases), and favorable attitudes toward the mediation experience.

In contrast to task-oriented styles, socioemotional styles focus less on the issues and more on opening lines of communication and clarifying underlying feelings and perceptions. Mediators with this orientation tend to be optimistic about the parties’ ability to manage their own affairs and emphasize the need of the parties to work through to their own solution. The orientation is ordinarily combined with interest in improving the parties’ long-term relationship.

Transformational mediation, as proposed by Bush and Folger (1994), is perhaps the best articulated, and certainly the most popular, of the socioemotional approaches to the mediation role. The transformational mediator’s allegiance is to the twin objectives of empowerment and recognition. Empowerment refers to strengthening each party’s ability to analyze its respective needs in the conflict and to make effective decisions; recognition refers to improving the capacity of the disputants to become responsive to the needs and perspectives of the other (Folger and Bush, 1996). The approach is avowedly critical of mediator activities to produce settlement, direct problem solving, or substitute mediator judgment or analysis for that of the parties. All of these activities are felt to narrow the parties’ opportunity for self-reflection, mutual recognition, and enhancement of autonomy.

The unique virtues claimed for the transformative approach may be more apparent than real, however. For example, the ten “hallmarks” of transformative mediation outlined by Folger and Bush (1996) are, in many ways, remarkably consistent with the mediator attitudes and behavior characteristic of the problem-solving style of divorce mediation and other well-grounded variants of the task orientation. The hallmarks include leaving responsibility for the outcome with the parties, remaining nonjudgmental about the parties’ views and decisions, taking an optimistic view of the parties’ competence and motives, and allowing for and exploring the parties’ uncertainty. Polemical claims notwithstanding, there is no empirical evidence for preferring one mediation style over another. Comparative studies, pitting well-defined stylistic models against each other in disputes with well-delineated characteristics, have yet to be conducted.

IMPLICATIONS FOR UNDERSTANDING AND MANAGING CONFLICT

I divide my thoughts on the practical meaning of our knowledge about mediation into two segments: the relevance of this knowledge for the user (or would-be user) of mediation, and its relevance for the mediation practitioner.
Implications for the Mediation User

Although mediation has become more familiar in recent years, this chapter reviews evidence that its use is often hindered by ignorance, resistance, and a lack of social support. Embroiled parties and the individuals with formal or informal authority over them can do a number of things to offset these tendencies.

Encourage Use of Mediation. Whereas research indicates that mediation is effective in many conflicts, parties are often reluctant to try it because they are unfamiliar with the process and distrustful of their adversary. For this reason, exercising tactful but firm pressure on antagonists to try mediation is often extremely helpful. Those in a position to exercise such pressure can take comfort from the evidence that it has not been found damaging to the mediation process, so long as the parties retain the right to withdraw from mediation at any time.

A more pervasive issue is the unavailability of mediation in many settings, particularly in the workplace. There are at least two things that people with organizational authority can do in this regard. The first is to promote establishment of formal mediation services. Typical settings for such services are as part of a human resource department or ombuds office, but other creative locations can be found (in one university, a faculty development center became the locus for informal mediation of faculty disputes). Such services need to be careful to respect confidentiality and privacy, and the employee mediators need assurances that their work is valued.

A second way to foster use of mediation in the workplace is to give managers mediation training. Such education can be useful in helping them make informed and appropriate referrals to mediation. Mediation training can also empower managers and other emergent mediators to intervene directly in conflict between subordinates in new and productive ways. Although managers often fear to mediate the conflicts of their subordinates on the grounds that they are not “neutral,” it is clear that neutrality is not a sine qua non for effective mediation. More important is acceptability built on rapport and the mediator’s evenhandedness. These qualities depend on skills and attitudes basic to all good human interaction: active listening, patient inquiry, respect for differences, skepticism about win-lose solutions, and avoidance of premature closure whenever complex issues and feelings are involved. People taught such skills and attitudes as part of a mediation training program often report general improvement in their interactions with others, quite apart from their usefulness in mediation proper.

Be Prepared to Participate. Voluntarily seeking or accepting referral to mediation is almost always a sensible thing to do in any conflict. Disputants should enter mediation willing to suspend distrust and competitive stratagems at least long enough to give the process a chance. It is also important to keep in mind that active participation in the mediation process is likely to produce benefits even if a comprehensive settlement is not reached. Benefits include such things as gaining a clearer perspective on your interests and objectives as well as those of the other, making progress toward agreement on some issues, and the satisfaction of knowing that a thorough and sincere effort to work collaboratively has been made. In addition, parties who have made a good-faith initial effort at mediation often return to the process later in the trajectory of their dispute, with positive results.

For managers or others with authority over the disputants, active participation in the mediation process can mean a number of things. Making appropriate referrals is one. Disputants who are given an enthusiastic, informed referral are likely to derive greater benefit than those referred to mediation in a less knowledgeable or lukewarm way or by managers using mediation as a dumping ground for conflicts they do not wish to deal with. Authoritative third parties should also be receptive to participating directly in the mediation process if invited to do so, since many conflicts are a reflection of broad dynamics that the parties alone may have limited ability to influence. Managers and similar authorities often have knowledge or resources that can greatly expand the opportunities for creative problem solving in such circumstances. The failure of mediation in organizational settings is often an indicator that the focal conflict was only a symptom of wider group or organizational problems. In some “failed” mediations of this type, the parties and the mediator may have important information on these matters, and disputants sometimes authorize a “mediator report” on the subject. Encourage this where possible—and take such reports seriously.

Accept a Broad Definition of the Mediation Role. Mediation comes in a great range of strategies and styles, and all appear useful under some circumstances. This fact contrasts with the mythic belief—strangely persistent, even among many mediators—that a proper mediator must be neutral, nondirective, and impartial. From the evidence at hand, strong departures from this mythic ideal are not only common but particularly needed in highly polarized conflicts. The consumer of mediation services needs to be aware of this pluralistic world of practice and be prepared to evaluate proffered mediation services accordingly. The important thing in judging the suitability of a given
mediator—and we are always talking about that, not some abstract process—is to be able to give positive answers to some basic questions: Does the mediator communicate a reasonable definition of his or her role? appear evenhanded? make you feel safe? understood? free to make your own decisions?

Implications for the Practitioner

Mediation is an inordinately stressful social role. Mediators work under conditions that are often emotionally unpleasant, and they typically work in isolation. The role also contains contradictory and ill-defined elements and is often poorly understood by disputants and referral sources alike. (Detailed discussion of the nature and consequences of role stress for the mediator may be found in Kressel, 1985; and Kolb and Associates, 1994). Mediator stress is further compounded by the lack of proven theory on many central issues of professional behavior. Three practical implications for avoiding mediator burnout can be drawn: maintain realistic expectations, develop awareness of your own role and stylistic preferences, and become a reflective practitioner.

Maintain Realistic Expectations. Like the participants in mediation, the mediator too should have realistic expectations for success. Since so much depends on the motivation and circumstances of the parties, do not expect every case to settle; as many as one-third or more do not, regardless of your best efforts. Settlement mania is an unfortunate occupational hazard among mediators, who need to bear in mind that disputants often derive benefits from mediation independent of their ability to reach agreement, and that parties leaving mediation without an agreement but with a good feeling about the process and the mediator often return at a later point when their motivation and circumstances are more suitable to using the process effectively.

Know Your Own Style and Role Preferences. Mediator activity is driven by strong, if sometimes unarticulated, ideas about how the mediation role should be enacted. There is evidence that some of these role interpretations may be superior to others for certain types of conflict, but our knowledge about these matters is sketchy. It is important that mediators become aware of their own role predilections. A mediator without this kind of self-awareness may be particularly vulnerable to unrealistic expectations for success and to social pressure from referral sources and others to produce settlements. Being clear about your own vision of the role also helps you give the parties appropriate expectations of what mediation requires of them—a crucial matter since disputants often enter the process with notions that are either vague or unacceptable (to you) of what will happen. For example, my colleagues and I tried to be clear with the divorcing couples referred to us by the family court that we saw our primary role as helping orchestrate a good problem-solving process, more or less independent of the goal of settlement (the problem-solving style discussed earlier). We did our best to socialize the parties to this version of the mediation role, but if they had other motives from which they could not be dissuaded (to reach a speedy agreement, or to give cover to a behind-the-scenes deal, or to extract revenge or expiate guilt), we learned to tactfully refer the case back to the attorneys and the court.

Become a Reflective Practitioner. Although not every case can reach resolution, every case can be an occasion for reflective learning. A reflective practitioner can also make an important contribution to conflict theory since practitioners often have much intuitive wisdom about the dynamics of conflict that inform their strategic choices. Cultivating habits of systematic reflection can make these intuitions explicit and available for systematic verification.

Reflective learning can be done in many ways, but a number of suggestions may be helpful (a detailed account of these ideas is found in Kressel, 1997). First, be systematic. Try to think reflectively after every session where possible, or certainly at the conclusion of mediation. Reflection can be made systematic with the help of even very simple debriefing protocols. Among the items that such a protocol might include are questions about the characteristics of the parties or their circumstances that appeared to facilitate or inhibit the mediation process, and interventions or strategies that were particularly helpful or unhelpful. Much of what occurs in mediation is relatively familiar and uneventful. Periodically, however, puzzling, unanticipated, vexatious, or transforming episodes occur for which training and prior experience provide no ready answers. These “indeterminate zones of practice” (Schön, 1983) represent the greatest challenge to professional competence. Reflective case study protocols can be tailored to help identify and understand them.

Second, reflect with others. Interaction with others can enrich reflective learning; indeed, it may be a precondition for it. A reflective partner or team can also serve as at least a provisional check on wishful or incomplete thinking and extend emotional as well as intellectual support. There are many ways to structure the interaction with teammates. Ideally, team meetings should be regular and give
each member of the team an equal opportunity to debrief using the same reflective protocol to organize dialogue. A useful approach is to build the dialogue around persistent questioning of each other’s tactical choices. The best interrogatory moments are those in which the team is able to simultaneously convey a supportive stance toward the mediator whose case is being discussed, while pushing for articulation of hidden hunches about the conflict or the mediation role that produced the intervention being scrutinized. A typical series of queries might ask: “Why did you do (or not do) X?” “What were you thinking when you did X?” “Can you say more about the cues in the situation that led you to do that?” “Why didn’t you do Y or Z?”

Interestingly, team discourse of this kind relies on the same sort of skill that mediation requires: empathy, persistent questioning, attentive listening, curiosity about underlying ideas, and willingness to tactfully challenge positions. In this sense, a reflective team can help develop an explicit understanding of mediation theories-in-action, while simultaneously presenting an opportunity to practice the interpersonal skills needed in mediation.

The third suggestion is to formulate and test reflective hypotheses. No reflective method is immune to subjective bias or distortion, but the insights of reflection can be subject to a crude but useful verification procedure. The approach is essentially this: first, establish a reflective hypothesis based on observed similarities over a number of sessions or cases; second, at the next appropriate occasion, use the hypothesis to fashion a relevant mediation strategy; third, evaluate the consequences of the intervention strategy. Did it make sense to the parties? reduce tensions? lead to creative problem solving?

My colleagues and I used this procedure to identify the central role of mediator question asking in divorce mediation. We noticed that even though we experienced a strong press to control conflict by using exhortations and advice, they appeared far less useful than persistent and focused queries on topics directly related to the focal conflict. A mediation strategy was formulated reflecting this possibility (“In the next session, try to avoid exhortations and suggestions. Instead, ask as many open-ended, relevant questions as you can think of”) and its effects observed. Several things became apparent. Asking good questions was easier said than done, there were distinctive types of question that were useful for different purposes, and question asking was indeed a powerful vehicle for reducing tensions and moving the parties toward problem solving. Here again, the team discourse reinforced skills needed in mediation itself. In both contexts, it is important to develop hypotheses about underlying phenomena by persistent questioning, and to devise strategies to test them.

**IMPLICATIONS FOR TRAINING**

The ability to effectively manage conflict may well be considered one of the basic characteristics of the truly educated person. Training in mediation is an important subset of this ability. There is evidence that such training may profitably begin as early as the elementary school years. Ironically, although there is an extensive cottage industry in mediation skills training, much of it is geared to preparing contractual mediators to handle formalized conflict of the kind that typically ends up in court. Relatively speaking, training in generic mediation skills for the nonspecialist has been left to languish. This is doubly unfortunate, since conflict in the workplace, school, home, and community is ubiquitous and would often respond well to mediation—if only there were a mediator prepared to handle it! Several implications for training the nonspecialist in mediation may be derived from the material presented in this chapter.

**Train Leadership**

The most effective way to multiply the benefits of mediation training is to offer the training first and foremost to the leaders of a group or organization. Leaders who understand the mediation process can make effective and meaningful referrals to mediation within the organization, can stimulate others within the organization to acquire and use such training, and are likely to turn to mediation in the event that serious conflict arises. In addition, leaders often need the skills of mediation as much as others in an organization or group, if not more, because the power and authority that leaders possess often leads them away from collaborative modes of influence for resolving their differences with others. Mediation training can, in theory, reduce this tendency. In sum, organizations wishing to convey to the rank and file their serious commitment to collaborative conflict management can send no clearer message than to train their leaders.
Teach a Hierarchy of Mediation Concepts and Skills

We are still far from a complete understanding of which mediator activities and styles are most appropriate under which conditions of conflict, but for training purposes it is obviously useful to distinguish between two broad classes of intervention: foundational and higher-order activities. Foundational activities are the reflexive and contextual interventions by which mediators establish rapport and provide a meaningful negotiating structure within a collaborative (rather than adversarial) set of norms. Skill in active listening and the ability to gather information about the dispute and the parties’ perspectives on it are the most salient foundational activities. Foundational activities also rest on mastery of certain basic concepts, such as the importance of distinguishing interests from positions and the primacy of situational forces rather than personality attributes in fostering destructive conflict. The higher-order activities are substantive and assertive behaviors by which mediators interject themselves forcefully into a conflict and play an active role in the problem-solving process, including imparting strategic direction to negotiations and shaping the substantive proposals.

Although the more vigorous higher-order activities are often necessary in an intensely polarized dispute, the foundational skills and concepts are often sufficient to produce a collaborative orientation in the low-to-moderate-intensity conflict that permeates organizational and group life. They also have broad general utility for trainees, quite apart from their usefulness in mediation. For these reasons, the foundational skills should be emphasized in mediation training programs where training time is limited, as is especially likely if the trainees are organizational or community leaders.

Create a Supportive Environment for Reflective Learning

Learning the skills of mediation, including the foundational skills, requires direct practice and active learning through role play and simulation. These are often done to greatest collective profit in a fishbowl setting, where the entire group can share the same experience and compare ideas and reactions. Practicing skills in front of others also duplicates some of the tension associated with actual practice; for this reason it is often highly valued by trainees for its verisimilitude. However, such a context also stirs anxiety and evaluation apprehension, which can be inimical to skill development and inhibit a reflective stance toward the learning experience. There are many ways to conduct experiential learning to produce a supportive and reflective learning environment. A four-stage schema for debriefing mediation role play has proved useful in this regard, and I describe it here for illustrative purposes.

Reflective debriefing of a role play begins with a “ventilation” stage, during which the person who has been the mediator is encouraged to describe immediate feelings and impressions associated with the role play. The trainee is instructed to emphasize spontaneity (“here and now” feelings) and to deemphasize cerebral analysis. It is meant partly to be cathartic and partly to begin the reflective process. The other trainees are encouraged to respond to the target person by exercising empathic listening skills; they are also instructed to avoid critical evaluation or advice giving.

There then follows a stage of supportive feedback, during which members of the training group are asked to praise the mediator for things that were done well during the role play, with the injunction to be as specific and concrete in their remarks as possible (not “You were calm” but “When one of the parties challenged your lack of experience as a mediator, you answered nondefensively and reasonably”).

Once all supportive feedback has been given, a third, reflective, stage begins. The target person is instructed to describe any source of puzzlement, frustration, or surprise that occurred during the role play. Once again, the other trainees are required to respond in an empathic, nonevaluative manner. They are also encouraged to ask questions that may help clarify the underlying issues raised, and to offer suggestions to the mediator role player on strategies for handling them.

A final, implementation, stage follows, with a return to the role play and an attempt to make use of any lessons learned from the reflective debriefing. Throughout the process, the trainer (1) ensures that trainees adhere to the debriefing procedures and (2) models appropriate behavior and attitude.

CONCLUSION

The empirical and practitioner literatures of more than two decades make clear that mediation is an important and useful instrument for managing many forms of social and interpersonal conflict. Mediation is of documented value for conflicts occupying a broad middle range of difficulty, but for
highly polarized disputes as well it can bring distinctive benefits even if settlement is not reached. They include reducing tension, clarifying issues, and humanizing the adversary. Research and practice have also identified the structured, if never precisely predictable, stages that constitute the mediation process and the skills, attitudes, and behaviors characterizing the mediator’s art. Certain of these skills and attributes (such as the ability to establish rapport with angry parties, gather information through sustained questioning, listen actively and empathetically to contending points of view, suspend judgment, and foster norms of collaboration) would seem of such demonstrable value that training in mediation can well be justified as part of the learning experience of the well-educated person.

My review also suggests some intriguing ironies. Thus, even though mediation is an empirically validated process, getting disputants to use it often amounts to a hard sell, requiring the persuasive powers of a court or application of other powerful social and cultural pressures. A second irony: most of our knowledge about mediation comes from the formal arena of legally definable conflicts; about use of mediation in the informal and ubiquitous conflicts of everyday life we know a good deal less. Here too, there is evidence that the process is underused. It also appears to be the case that for all its established value, those who assume the mediation role enter a world of significant ambiguity and stress, where the potential for burnout seems high. A final irony, or perhaps merely the inevitable result of a field still in its relative infancy, is that the successful mediation process is still something of a mystery, as is illustrated by argument over such things as the meaning and importance of mediator neutrality, the appropriateness of highly assertive mediator tactics, and the relative merits of problem-solving versus transformative approaches to the mediation role.

This blend of positive findings, intriguing ironies, and demonstrable role stresses and ambiguities amounts to a rich opportunity for researchers and practitioners, especially those of the reflective variety, who can approach the conundrums and debates of the field in the same tolerant, focused, and inquisitive manner that characterizes the constructive mediation process itself. My broad overview also suggests a seminal role for the friends and supporters of mediation. By familiarizing themselves with mediation and encouraging its use, managers, parents, and leaders (of a community, an institution, a group) can transform mediation from a frequently untapped resource to a familiar and common instrument for resolving the disputes of everyday life.

References


