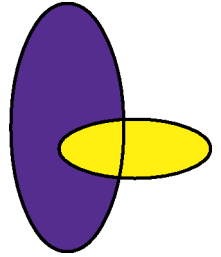


Social Justice Mediation Institute



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Preface

After almost ten years of use, this training manual was in need of revision. Much has changed in the practice and understanding of mediation both in the field and in my own thinking during this time. In particular, the research on mediation as a storytelling practice and a transformative process and the research on mediation and identity have made their mark on the way I practice mediation and train others to intervene.

A dilemma remains—no matter which approach to mediation one takes, it is culturally bound. So, when *you mediate*, feel free to alter and to interpret the approach presented in this manual in ways that reflect the cultural needs of the participants. For the goal, in the end, is that mediation will be able to help enfranchise all participants regardless of their backgrounds to tell their stories, explore their options, and make empowering choices for their futures; and in this way contribute to a socially just process of mediating.

I hope that this revised manual provides a helpful overview of the frameworks and skills needed to mediate. It is informed by the many rich experiences I have with my co-trainers and with training participants. I wish to thank Janet Rifkin, Deepika Marya, Richard Ford, Pilar Hernandez, Martha Wharton, Vilmarie Sanchez, and Lucia Nunez for their insights and friendship during hundreds of hours of preparation and training over the years. And I wish to say a special thanks to my first training partner, Holly Marden-Cruz, who co-wrote the first edition of this manual and with whom I began this journey.

Leah Wing
Amherst, Massachusetts
U.S.A.
1999

Welcome to Mediation Training!

This is your training manual to keep. Please be sure to bring it to every session because we will refer to the manual often. You can write in it to help you remember things that were talked about during the training sessions.

This manual contains a lot of information about mediation as it has been practiced in the West and as it is commonly practiced in White Anglo cultures. This is only one way of mediating; mediation as a process for dealing with conflict is practiced differently all over the world. We are dedicated to respecting diversity and differences while working to improve relationships and solving problems and we will be discussing this during the training and welcome your contributions in this area.

You do not have to memorize the manual. You will learn the mediation ideas and techniques through experience during the training. The manual is a helpful guide to follow what we will be discussing and practicing and it will be helpful to review before you do an actual mediation.

During the training we hope you will work hard to explore new ideas and *new* approaches. We also hope you will have a great time getting to know other people interested in mediation.

Mediating conflicts between people is challenging but it is also gratifying because you can see real changes when people around you in your school or organization choose to solve their problems together with your help.

**Holly Marden-Cruz
Leah Wing
1991**

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Mediation: A Description

Mediation is a process in which people involved in a conflict discuss it with the help of (a) person(s) in a multipartial role; the goals and outcomes of the process can be determined by the participants. Frequently disputing parties use the process to increase communication, understanding and improve relations. Some use mediation to design a mutually acceptable agreement together.

Mediation is a process, not an end result. Mediators play a facilitative role in the process and the participants make the choices regarding an agreement.

Mediation works in many different settings, with different problems, participants and outcomes. It is possible for mediation to help transform relations and conditions for participants if the mediators behave in a trustworthy manner, remain multipartial and have faith in the process and in the creativity of the participants.

Handling Conflict

What is "conflict"? The word may cause us think of war, violence, and fighting; of arguments, anger, misunderstandings, hurt feelings. We might also see conflict as a natural, necessary part of life which creates tension and which results in change. In mediation, conflict is a disagreement, clash or difference of opinion between two or more people.

Are disagreements or differences of opinion bad? Of course not, but how conflict is HANDLED can be negative or positive. Unfortunately, we are frequently taught that conflict itself is negative and that if we are involved in a conflict, that we, others, or our relationships have failed. At the same time, we are not often taught to deal with conflict constructively at home, in school or in society.

There are three general ways people tend to deal with conflict:

1. IGNORING or AVOIDING the conflict

By pretending the conflict isn't happening, people hold the feelings inside, turn the anger in on themselves, or act angry towards others not involved. Unless the person in the dispute truly lets go of their conflictual feelings or the situation changes around them to eliminate the conflict, it will remain.

2. FIGHT

By attacking the other person verbally with insults, threats, or by attacking physically, the root of problem is not worked out. In fact, the dispute might even escalate.

3. ENGAGING IN PROBLEM-SOLVING

By discussing the conflict and its roots either directly with the people involved or with the help of people who can act as intermediaries—mediators, the conflict can be eliminated. Oftentimes, the relationship even improves as a result of the successful resolution and increased understanding that can occur.

We all use each of these ways sometimes, we're human! But what way really gets us closer to WHAT WE NEED? Talking out a conflict is not always easy to do and sometimes people need to have another person to facilitate the conversation or act as an intermediary. Being a MEDIATOR fits into this category. We work with conflict to increase understanding and improve relationships. We are part of a process that demonstrates that conflict, while difficult, is also an ongoing, natural part of life that, when managed well, can benefit us. It can be used to our advantage, to make changes for the better.

Portrait of a Mediator

What does it take to be a mediator? A successful mediator possesses certain qualities and abilities that s/he learns to use in mediation. These qualities and abilities are a special combination of the mediator's character/personality and specific skills that the mediator learns and develops.

A Successful Mediator is:

A LISTENER

**knowing the importance of listening and practicing
"Active Listening"**

MULTIPARTIAL

helping each to tell their story

A STORYGATHER

**using questions, summarization, and other techniques to gather
each participant's story**

TRUSTWORTHY

understanding the importance of confidentiality

RELAXED AND CONFIDENT

**able to help the participants to feel comfortable and to trust the
mediators and the mediation process**

PROFESSIONAL

acting respectfully at all times and taking the work of mediation seriously

PATIENT

willing to "stick with it"

Storytelling and Multipartiality*

Storytelling and multipartiality are important concepts in mediation. They are at the foundation of a mediator's practice, guiding all choices made about how to engage with the participants.

A useful way to look at mediation is to see it as a storytelling session. It is an opportunity to tell about relationships and conditions that include and are related to the description of the conflict. Furthermore, it is a chance for participants to explore options and make plans for what will occur after the mediation (storytelling about the future). This approach to mediation is based on the research of Cobb and Rifkin (1991). Their groundbreaking work revealed that successful mediation practice is based on assisting all participants in the telling of their stories. The experiences of constructing a story about what has happened, having other participants and mediators build on one's story, and co-constructing a future story (which may be an agreement) are all fundamental attributes of a successful mediation.

As a result, mediators need to focus on how to elicit participation in the storytelling process from all participants. This involves responding to the needs of each participant regarding the narrative process. This motive of helping all participants is captured in the concept of "multipartiality", which means favoring all.

Since participants have different life experiences and different cultural and personal styles of storytelling, being multipartial is likely to involve asymmetrical interventions by mediators. This means multipartial mediators do not treat each participant the same, but rather work with them in a manner that helps them tell their story effectively. For example, if mediators are meeting in a private session with one participant who speaks quickly and finds it easy to tell their story then their session may end up being short. However, if another participant needs a longer time to give their narrative, then the mediators need to offer them each the time that they need. The goal, again, is not *equal* time or attention, but the *type* of time and attention necessary to enfranchise each participant to partake in the narrative process.

You will learn how to manage the differing narrative needs of participants during the mediation training so as not to enfranchise one participant at the expense of the other. This delicate process is at the core of mediating.

Aspects of Multipartiality:

Remember that you are helping the participants tell their stories: to paint a picture of what has occurred and to explore what future stories are feared, desired, and possible

Think of yourself as on each person's side

**Use whatever storygathering techniques help each participant tell their story, ie:
ask open-ended questions, summarize, build trust, maintain
confidentiality, use their first language**

**Put your own opinions aside as much as possible and if necessary have a mediators' caucus
to contemplate or discuss with a co-mediator strategies to maintain multipartiality**

Do not assume that your opinions or values are the same as the participants'

**Assume that issues of identity are intrinsic to the remembering, telling, and
understanding of each person's story****

**Make it clear that you are someone with whom a participant can talk about difficult
subject matter—issues that are not often easy to discuss in society at large; ie:
concerns regarding racism, homophobia, or alcohol****

***For further reading about storytelling and multipartiality in mediation see:**

**Cobb, S. (1994). A narrative perspective on mediation: Toward the materialization of the
"storytelling" metaphor. J.P. Folger & T.S. Jones (Eds.), New Directions in
mediation: Communication research and perspectives (pp.48-63). Thousand Oaks,
California: Sage Publications.**

**Cobb, S. & Rifkin, J. (1991). Practice and paradox: Deconstructing neutrality in
mediation. Journal of Social Inquiry, 16, 201-227.**

****For further reading about this and its relationship to storytelling and multipartiality see:**

**Wing, L. & Rifkin, J. (1999). "Racial identity development and the mediation of conflicts."
C. Wijeyesinghe & B. Jackson (Eds.), Reflections on racial identity development:
Essays on Theory, Practice, and Discourse. New York: New York University Press.**

Diversity, Assumptions, Points of View

Diversity:

Diversity the differences between people—is exciting and often makes life challenging. At times, differences can be what draw people together, at other times, they seem threatening and lead to conflicts.

Assumptions:

When we believe that others think as we do and value what we value, we miss an opportunity to learn about who others really are. When we believe that people are automatically thinking and feeling differently than we are because of their skin color, their language, their religion or other differences between us, we lose an opportunity to see how much we have in common with them.

Points of View:

Our points of view come from our heritage, our upbringing, our environment, our personality, our education (both inside school and outside of school) and what choices we have made. With so much contributing to the makeup of each person's perspective, it is not surprising that conflicts often arise from clashing points of view.

It is important as mediators to be aware of your feelings about differences; to examine your assumptions; to understand your perspectives and where they came from; and to manage your feelings, assumptions and beliefs in ways that can allow you to mediate.

Aspects of Responding to Differences:

Consider your values, assumptions and beliefs

Acknowledge differences when participants do; raise them if you believe it is a way to open the door to storytelling

Model respect for diversity

Speak to your co-mediator and coordinator if your beliefs clash with participants' and get in the way of your mediating

You can choose not mediate a situation if you can not be multipartial

Structure of A Mediation Session

<u>STAGE</u>		<u>WHAT MEDIATOR DOES</u>
BEGINNING		
PREPARE FOR THE SESSION		meet your co-mediator divide opening statement prepare yourself, setting
BEGIN THE SESSION	(Joint Session)	welcome & opening statement begin to storygather active listen, question, summarize
	(Mediators' Caucus)	discuss who to see 1' in private session
MIDDLE		
GATHER THE STORIES ABOUT THE PAST	(Private Sessions)	active listen, question, summarize
	(Mediators' Caucus)	list, sort out issues: 1-party, overlapping, non-mediatable
TRANSMIT STORIES	(Private Sessions)	transmit stories, discuss new insights, reactions
CO-CONSTRUCT FUTURE STORY together	(Private Sessions)	question, facilitate weaving of story/agreement, ask "what ifs"
DEVELOP POINTS OF AGREEMENT/OPTIONS	(Private Sessions)	review choices and how they will work
END		
CLARIFY THE FUTURE PLAN	(Joint Session)	say or write down agreement/future plan, (all sign)
END THE SESSION		say closing statement

The Opening Statement

The first thing that is said to the participants at the beginning of the mediation session is called the opening statement. The opening statement

1. allows the mediators to introduce themselves and describe their role in mediation
2. tells the participants how mediation works and what to expect during the mediation session
3. helps to make the participants begin to feel comfortable and to set the tone for the session
4. presents the "ground rules" for the session - what is expected of the participants and mediators with regard to their behavior toward each other

There are several points of information which are important to be included in the opening statement. A list of these points is given on the "Opening Statement Checklist" to follow as well as an example of how an opening statement might be said. It is important that you memorize the key points so that you can say the opening without reading it. With practice, you will develop your own "style" of saying the opening statement. As long as all the important information is given and as long as you say it in a way that makes the participants feel most comfortable, you can say it any way you choose.

Remember, this is the "first impression" of mediation you are giving the participants. If you do your opening clearly, understandably and with confidence, the participants will have confidence in you and will be more likely to trust you with their story, their concerns, and feelings.

Sample Opening Statement

Mediator 1

Hi, and thanks for coming. My name is _____

Mediator 2

And I'm _____

Mediator 1

We are going to be your mediators today. What are your names?

Although we know that mediation was explained to by the coordinator, we'd like to tell you what we will do here today, so that everyone is clear about what to expect. If you have any questions at all, please feel free to ask us.

As you know, mediation is voluntary. We are here to listen to each of you, to find out what happened and what you would like to have happen in the future. Often in mediation, people choose to make an agreement about what will happen in the future, if you choose to do this each of you will be the ones deciding what is included in the agreement. We will not be the ones making these decisions nor will we pass judgment on what has happened or will happen. We are the facilitators and you are the decision makers.

We would also like to tell you that we will keep everything you say to us in mediation confidential; nothing that is said here will be shared with anyone outside the mediation program. The only exception to this is if you tell us something that could threaten your life, someone else's life, or if it involves child abuse or neglect. Otherwise, our discussion in mediation is absolutely private. Do you have any questions so far?

Mediator 2

O.K., now there are a few more things we'd like to tell you before we start. We'll be taking notes during the session; this is just to help us remember what you have said. These notes will be destroyed at the end of the session. The only paper we would keep is a copy of an agreement if you decide to write one up and this would be kept in a locked file.

You see that there is also paper and pen here for you so that you can write down anything you want to remember to say while someone else is talking. We ask you to do this instead of interrupting and we ask you to speak to us rather than to each other. This helps us follow what each of you are saying.

Here is what we are going to do: We will meet together first and briefly hear your views. We may ask to meet with each of you alone later on. We will then all get back together to finish the session. Any questions before we start? Okay then, let's begin. Who would like to begin briefly telling us about the situation?

Opening Statement Checklist

WELCOME AND INTRODUCTIONS

Thanks for coming

Our names are _____, what are your names?

GOAL OF MEDIATION

To help you talk about your situation, explore your options (for resolution and) for the future

VOLUNTARY

Mediation is voluntary, we are glad you have decided to come

MEDIATOR ROLE

Our role is to listen and facilitate the conversation between you

We are not here to take sides, judge you (or tell you what to do)

CONFIDENTIALITY

All information is kept private by us and the coordinator

Only situations which threaten your life or someone else's or describe child abuse or neglect will be reported

Only paper kept from the mediation is a written agreement if you choose to write one

NOTES

We take notes to remember what you

say You can write down thoughts, too

GUIDELINES

Please speak to us instead of to each other

Please write down thoughts instead of interrupting

WHAT WILL HAPPEN

We will all meet together, each of you will get a chance to speak

There may be private meetings: both of us meeting with each of you, one at a time

We may also meet alone, just the mediators

We will come together to end when you decide we are ready to end or to make another meeting time

QUESTIONS

"Any questions?"

"Who would like to begin by briefly telling us why you are here?"

Setting the Tone

"Setting the Tone" means creating the right kind of feeling for something to work. We all know how important it is when we come into a new situation to be made to feel comfortable and at ease. This is especially true in mediation when people are already feeling upset, angry or nervous about the conflict that is bringing them to the session.

Aspects of Setting the Tone:

Present yourself as a warm, concerned, caring person (and don't be afraid to smile!)

Show that you know what you're doing by being prepared and confident; know our opening statement!

Be respectful to the participants and to your co-mediator at all times

Demonstrate your multipartiality right from the start: make it clear to each participant that you will work to ensure their ability to tell you their story

Facilitate the process in a way that helps each participant tell their story: their perspective, concerns, and needs

Maintain responsibility for facilitating--don't let a session get out of hand by allowing behavior that is threatening or shuts a participant's storytelling down

Be consistent and thorough, following up on the discussion of all the key points in each participant's story

Active Listening

Listening is probably one of the most important skills you will use as a mediator. People in mediation need to know that they are not only listened to, but **THAT THEY ARE HEARD**. The way mediators assure this is through utilizing a skill called **ACTIVE LISTENING**.

When you are active listening, you are actually **DOING** certain things to make sure you have not only heard what has been said but also that you have understood what was meant by the words. This helps the mediators really understand what is said and it helps the participants know that what they are saying is being taken seriously.

Aspects of Active Listening:

Pay Attention to Your "Body Language"

Make sure the participants sense even by your body movements that you are paying attention to them

Sit facing the participants, be aware of your posture

Encourage the Participants to Speak

"Please tell me more about what happened..." or

"Thanks for sharing that with us, would you like to add anything?"

Summarize Back What is Being Said

Repeat-back the information: "So you're saying she showed a lack of faith in you by...?"

Repeat-back the feelings: "So you feel sad that your friendship has been affected by this situation..."

Listen for Positive Comments

These are important pieces of every story: what has worked well in the past, what positive relations used to exist

Pay Attention to What is Not Being Said

Observe the body language of the participants, their tone of voice, when silences occur, and what is said just before the silences

Questioning

Questioning is a way of encouraging storytelling. It is also one way in which you can check to see if you understand what has been said.

Aspects of Questioning:

Open-Ended Questions

Questions which need more than a "yes" or "no" to answer.

Example: "Please tell me more about what happened."

Questions to Discover Feelings

"How did you feel when that happened?"

Questions to Learn More About Underlying Issues

"You have told us that what concerns you is the recent change in your friendship. Please tell us more about what has changed and how it has affected the friendship."

Questions Related to "Offers" Made By the Participants

"You said you would be willing to wash the paint off her locker, is that correct?"

"What if?" Questions (These are Particularly Helpful for Exploring Future Options and Realities)

"What if you and Joy can't come to a resolution today, what do you think it will be like to continue to work together on this project?"

Some Useful Questions for Building a Future Story

"What do you want to see happen?"

"How do you think this could be resolved?"

"What would you be willing to do?"

Summarizing

Summarizing is repeating back to participants a shortened version of what the mediator heard them say. One purpose of summarizing is to check that the mediators heard all the feelings, issues, needs, and wishes that that person expressed as important to them.

Summarizing also helps the participants hear what *they* have said. Sometimes this is a reality check for them and they decide to ask for something different or to rephrase their comments.

Often, summarizing can help participants hear what *each other* is saying more easily than if they had just been listening to the other person express him/herself directly.

Aspects of Summarizing:

When summarizing, list the key points, including feelings

Try to use the words the participant used

Keep your summary brief, and do not add your own opinions or assumptions

Confidentiality

Confidentiality is important to building and maintaining trust between the mediators and the participants in a mediation.

Aspects of Confidentiality:

In the end, the participants will trust you most if you keep your commitment to uphold confidentiality, even if they are disappointed that you do not violate confidentiality to tell them what someone else has said

Do not share information from a private session if the participant requests that you do not

Tear up all your notes in front of the participants at the end of the mediation session

If a participant states that s/he intends to hurt her/himself or someone else or mentions child abuse or neglect you must notify your coordinator

If you do not have a coordinator, report life threatening situations or allegations of child abuse and neglect to appropriate authorities

Notetaking

Taking down a few brief notes can be helpful in mediation. However, focusing too much on the notes can make the mediation slow and cumbersome and you will end up spending more time with your notes than interacting with the participants! Therefore, take minimal notes, using abbreviations or symbols whenever possible.

Take notes on:

Important issues, interests, wants,
needs what a participant is offering
to do Positive comments

There are two common formats used for notetaking.

Format I

Party 1

Party 2

Format II

Party 1

Party 2

Mediators' Caucuses

Mediators need time to meet just by themselves or with the case coordinator to organize, strategize, and sometimes just take a break.

Aspects of Mediators' Caucuses:

**Wait until an appropriate pause to request a mediators' caucus; then say:
"We'd like to meet alone for a few minutes--would you wait until we call you back again? Thanks."**

Use the meeting to get support and to check that you are working well as a team with your co-mediator

Meet with your co-mediator if you are concerned about what s/he is doing, because you do not want to disagree with your co-mediator in front of the participants

Have a mediators' caucus if you feel anyone is in danger or if you feel you are taking sides and losing your multipartiality

Use the caucuses to check that you and your co-mediator are understanding the participants' stories similarly and to plan next steps

If the participants seem unable to wait together during the mediators' caucus, find them separate waiting areas

If you need advice invite your coordinator into the mediators' caucus

Working As A Team With Your Co-Mediator

When you mediate, you will often work with a partner, your "co-mediator." Working with a co-mediator provides you support because you can share the responsibility of the mediation session and inspire each other with your ideas on how to facilitate the process of the storytelling. Co-mediating also presents challenges because all mediators have different styles and strengths and you have to fit these together to be able to work as an effective team.

Aspects of Co-mediating:

Always share the workload; don't take over the session, nor leave all the work for your co-mediator

Discuss your strengths and weaknesses with your co-mediator so s/he is aware of them and so you each can focus on doing what you do best and support each other when trying to improve in a particular area

Listen to each other during the session; follow-up on each other's line of questioning

Present yourselves as a team: always show respect to each other, put your disagreements on hold until you speak privately in a mediators' caucus

Remember that you each may have different identities and when you work well together and share the load, you are rolemodeling teamwork across differences

Giving Feedback

"Feedback" is what we call the observations we make about someone else's behavior that we tell them in order to help them improve at something. This is very important during mediation training because we will all be learning from each other. It can be helpful to see how others see and experience us as we practice mediating. Feedback will also be very important when you begin mediating, because you will need to give feedback to, and receive feedback from, your co-mediator to continue to improve and work well together as a team.

Aspects of Giving Useful Feedback:

Base Your Feedback on How You Were Impacted

State what you saw and how it made *you* feel

Make it Specific

Comments that are precise are more helpful than general comments

Make it Accessible

State your comments in a way that they can easily be understood and utilized

Make it Realistic

Comment on things within a person's control and about things s/he might want to change

Give Feedback as Soon After the Observation as Possible

This will make it easier to remember and incorporate

Remember, your feedback comes from *your* observations and feelings. It is up to the person receiving the feedback to use and accept all, part or none of it.

Receiving Feedback

When practicing mediation skills and when co-mediating, feedback can be extremely useful in making us more aware of ways to improve what we are doing. The person giving the feedback sees the situation from a different point of view and may be observing things of which we are unaware. It's like having an extra set of eyes, ears and senses. So, use feedback as a tool!

Aspects of Receiving Feedback:

Use feedback to improve your skills, not to criticize yourself

Remember that feedback comes from another person's point of

view Use the feedback that you feel helps you (put the rest aside)

The Case Coordinator

The case coordinator meets with potential mediation participants and during the intake process learns about their situation and explains mediation to them. The case coordinator can help the potential participants determine if mediation might be a useful process for them at that time. S/he can also help them determine what other avenues may be available to assist them in handling the situation.

The case coordinator oversees the mediation process from the beginning to the end and is available to provide support and strategic advice to the mediators.

After the mediation ends the case coordinator can provide referrals to additional services that the participants make seek (ie: counseling) and provides follow up support for agreements if they are reached in the mediation.

It is the case coordinator who is responsible for handling issues regarding life threatening situations or allegations of child abuse and neglect.

Aspects of a Case Coordinator's Role:

Know that the coordinator will not give details of the case to mediators prior to the mediation

The coordinator will be available to give mediators advice during the mediation: do not hesitate to call for a mediators' caucus with the coordinator if you need help

The coordinator will have ideas and information to give to participants after a mediation to help with issues such as substance abuse, counseling needs, medical help, etc.

The coordinator will be able to meet with the mediators after a mediation to help them give each other feedback to improve their skills and talk about the session

Private Sessions

Mediators use private sessions to learn more from a participant. These meetings can be confidential and provide participants with a chance to talk without having other participants respond to or hear what they are saying. This setting is often conducive to gathering a participant's full story.

When to Call a Private Session:

It is good practice to have a private meeting with each participant at least once in every mediation

It is fine to hold numerous private sessions with each participant if that helps with story gathering

If one participant is hesitant to speak in front of another or if you believe that one participant may agree to something in private that is too difficult to agree to in front of the other participant, hold private sessions

If the agreement the participants are making contradicts the stated needs of a participant, you may want to discuss in individual sessions

Wait until an appropriate pause to request private sessions and say "If you would grant us a few moments, we will meet together briefly in a mediators' caucus and then we will meet with you each separately..."

If you are working with a co-mediator, always take a brief mediators' caucus to determine together with whom you will meet next. Make this determination based on the following factors: who seems to trust you/the process least, who seems to have more difficulty telling their story, who is positioned in society to have less access to power

What to Say in a Private Session:

When you begin a private session, first remind the participant: "What you share with us we can hold confidential from the other participant(s); we will check with at the end of this session to hear what you would like us to keep private."

Then engage them in their storytelling process; work to help the participants to tell *their* own story. Commonly participants focus on reacting to the other participants' story. This is most often the case for the participant who spoke second in the joint

session. If this occurs, after hearing the reaction and summarizing it, help the participant describe his/her story not constructed out of a reaction.

At the End of a Private Session Remember:

Ask: "Is there anything you do not want us to share with the other participant(s)?"

When you meet with the second participant in a private session, begin talking first about *this* participant's story before sharing any information from the first participant's private session (that you are allowed to share)

If you use private sessions offer them to all participants

Gathering the Stories in Mediation*

Each person in mediation has their own experience and their own view on what has occurred and why. A fundamental role of a mediator is to elicit each person's story. Every story has similar features: chronology (timeline), characters, plot, and meanings. Mediators can help participants tell their stories by trying to understand each of these aspects of every story.

There are dynamics that commonly occur in storytelling about conflicts and conflictual relationships. People describe their story by framing themselves as the victim and the other participant(s) as the offender(s) creating the pain and conflict. Knowing this, mediators need to make it possible for participants to first tell their own story and not be required to begin with a focus on a responding to the other participant's story. The easiest way to manage this is for mediators to do most of the storygathering in private sessions. This way, each participant can describe their situation without having to focus on defending themselves from being situated as the offender in the other's story.

After each participant has described their situation (a story of the past), the next step is for the mediators to help facilitate the telling of one participant's story to the other. This can take planning and the mediators' caucus is helpful for this. Mediators should take time to consider the common concerns and meanings reflected in the different participants' stories and also the different concerns and interpretations that each participant's story demonstrates. Mediators need to be careful not to add their own view of a when they tell it to another participant. Instead, they should do their best to only pass on what the participant had told them. When transmitting one participant's story to another use private sessions; since it is easier for someone to listen to another participant's story without becoming defensive or losing face if it occurs in private.

Following the transmission of stories, mediators can then ask what each participant wants and needs. This can be done in an effort to facilitate storytelling about the future. Again, this involves all aspects of a story: chronology, characters, plot, and meaning. Mediators can help each participant explore their needs, desires, and options in relation to the situation and relationship. As participants discuss these aspects they may be able to co-construct a future story (an agreement). Mediators can assist with this by facilitating the discussion either in private or joint sessions, whichever aids the story development most effectively for all participants.

This approach to mediating is based directly on research by Professors Sara Cobb and Janet Rifkin. Cobb, S. & Rifkin, J. (1991). Practice and paradox: Deconstructing neutrality in mediation. Journal of Social Inquiry, 16, 201-227.

Identifying and Working with Issues

As mediators are listening to the stories participants told they should pay attention to those concerns that participants see as the root of the conflict or misunderstanding. Think for a minute about the types of situations people might bring to mediation and the underlying concerns they represent. For example, someone might come to mediation and describe anger they have because a friend lied to them. A mediator would want to learn more from this participant about what this part of their story meant; what is the underlying concern or issue. Is it a *lack of trust*? Is it a sign of *disrespect* to be lied to?

Trust, respect, privacy, and isolation are just some examples of the ways mediators might list in their notes or in their memories what participants' issues are. This provides mediators and participants a way to understand some of the shared issues and also the different interpretations and meanings participants may give to the same event.

Aspects of Finding the Issues:

The participants may bring only one issue to mediation, or each participant may have several issues of differing importance. They may not even have thought about what all of their issues are; often people come to mediation because of an incident or argument and all they are sure of is that they want to "work it out".

There are several things mediators can do to find the issues. At the end of the opening statement, ask each participant questions to elicit their story:

"What brings you to mediation?"

"Please tell us your views about the situation."

This helps the participants to present their points of view and allows the mediators to get a sense of the importance of each issue to the participants and to hear about the feelings behind the issues.

Ask "Open-Ended" Questions

Open-ended questions require more than a "yes" or "no" answer and encourage the participants to speak freely.

"What is your understanding about what went on?"

"How did this situation get started?"

If the participants do not express clearly what they really want, ask **WHY** they want what they want to find out more.

"You said that you want him to apologize to you publicly. Tell us more about what you want to happen in this public apology and why that will help you feel better."

As the participants speak, listen for the issues and note them; note the feelings as well. This will help you construct a list of each participants' issues.

Summarizing the Issues and the Feelings

This is to make sure you understand their issues and how they feel about them. Then you can begin to sort out the issues and find out more about what they want and what they are willing to do.

"So you feel angry that Katie ruined the sweater you let her borrow last week?"

"You're saying that you would like Mr. Jones to speak to you privately about your handwriting, because you feel embarrassed when this is talked about in front of the class, right?"

Giving Overall Summary

Be sure to review each participant's issues.

"So you're concerned about three things: Getting the borrowed book back, having the gossip stopped, and you would like to receive an apology. Am I leaving anything out?"

Issues: Once You Find Them, What Do You Do With Them?

Once you have found all the issues you can sort them out and begin to make a plan to help resolve them. This is called organizing the issues. You can begin by putting the issues into categories:

1-Party Issues

Those issues of concern to only one participant.

"Edwin believes Jose owes him an apology."

Overlapping Issues

Those issues that are a concern to all participants.

"Both Edwin and Jose believe the other person has been dishonest."

Non-mediatable Issues

Participants can discuss a wide variety of issues and topics in their storytelling. However, there are some issues which may not be safe or productive to discuss or cannot be resolved in mediation. For example, there are many who believe that domestic violence should not be brought to mediation by the batterer and person being battered. Such issues cannot be handled productively in an environment in which both participants are expected to have the power to determine the outcome of their mediation.

Additional Reasons Why Some Issues Cannot Be Mediated:

One participant is unwilling to discuss a particular issue:

"I am not willing to discuss that with him."

The issue concerns something that cannot be changed:

"I wish she were richer right now!"

The issue involves someone who is not in the session:

"I want her friend to apologize to me."

The issue involves actions that are outside the parties' control:

"I want to be skipped from the 9th to the 12' grade."

The issue involves information that is not available at the session:

"I want to know what her friend was thinking then."

However, participants can agree to take action in the future regarding some of these situations even if they will not reach resolution at the mediation. For example, participants can agree to invite an additional person to join mediate with them in the future.

Transmitting Stories

The purpose of transmitting stories is to improve the communication and understanding between the participants. The information is going through you, the mediator.

After mediators have heard the stories of all the participants, they should meet in a mediators' caucus to prepare how they will transmit each participant's story to the other(s). Story transmission is often best done in private sessions. Mediators will want to convey the story in a way that reflects the storyteller's perspective, values, and concerns. In preparing to convey stories, mediators should look for ways to highlight areas of overlap between the participants' stories as well as making clear their differing wants and needs.

How and When You Transmit Stories:

Remember to check with the participant at the close of every private session to see if there is anything you cannot share at that point with another participant

Gather the entire story from each participant before you transmit them

Types of Information to Transmit:

The types of information helpful to transmit are related to issues, interests, feelings and behaviors—all the aspects of the participants' stories that hold meaning for them regarding the conflict and the future of the relationship/situation

Transmit all the positive information you are allowed to share

Remember:

You should make it clear that you are telling the other participant's story--their perspective, needs, concerns, and requests; be careful not to pass on information without making it clear from whom it is coming

You are transmitting information when you summarize one participant's story in front of another

When you transmit information you may summarize but do not add your opinion

Never break confidentiality in order to transmit information

Facilitating The Discussion of Stories

Once each participant's story has been told, the mediators guide the discussion of *each* story.

Aspects of Facilitating the Discussion of Stories:

Make use of mediators' caucuses to strategize and plan

Summarize back to each participant the parts of their story and the issues that they have emphasized

Double-check your summary with participants to make sure you understood the meaning they have given and that you did not leave out anything important to them

Discuss with each participant the summary of the other participant's (s') story (ies); (however, do not break confidentiality if it is requested)

Help each person discuss their reactions to and understanding of the other's (s') story (ies) Point out to the participants the common issues and concerns

Explore with participants whether there are issues that can not be fully mediated at this point, such as those which involve people who are not present at the mediation

Mistakes

All of us make mistakes—we say or do things we wish we hadn't. However, these moments can be dealt with effectively and do not have to result in undermining a mediation.

Aspects of Handling Mistakes:

Know that every mediator makes mistakes

If no harm is done and the mistake is not noticed by the participants, (which is often the case since they most likely do not know the mediation procedure as well as you do), just go ahead with the mediation

If you make a mistake that obviously affects the participants, acknowledge it, apologize, and then go ahead; use humor to handle it, if that feels appropriate

If your co-mediator makes a mistake and does not notice or apologize and you are concerned about it, request a mediators' caucus at a good breaking point; do not embarrass your co-mediator--you are a team

Have a mediators' caucus whenever you need to plan how to handle a mistake

Writing Agreements

Many mediations end with participants designing a mutually agreeable plan that they would like written down. Such plans can be seen as a co-constructed story about the future. This outlook can assist mediators as they work with participants to word an agreement.

Agreements should reflect, in their own words, exactly what the participants have agreed to do. Mediators can help them check for clarity, specificity, and workability to make sure the agreement is something they can realistically carry out in the timeframe they are intending it to cover.

Aspects of Agreement Writing:

Ask each participant to articulate what they want the future to look like: who will be doing what and when?

After participants have mutually designed a future story, summarize to all participants the points agreed upon before writing them out to be signed; this can be done in private sessions if necessary

Check to see that the participants are willing and able to do what they are agreeing to do--that the agreement can work

Design each sentence in the agreement only to include one point

Use the participants' names on each of the points for which they are responsible

Alternate between writing down a point which one participant will follow and a point for which another will be responsible

Write the agreement points in specific and clear language, use the participants' words to describe the points of agreement

Write the points in the future tense

Whenever possible, write points out which both/all parties have agreed to follow

Do not make agreements points depend on each other, for example, "Jack agrees to change his work schedule to Sam-4pm if Lila takes lunch from noon-1pm."

Read the agreement to each participant when it is completed to double-check for any mistakes or any missing points

Ending A Session

This can be a good moment for mediators to mention to and ask participants about the benefits of having come to mediation, whether or not they are leaving with an agreement or a shared understanding. Perhaps they have more clarity on their options, on their relationship, or on their own perspectives.

Aspects of Ending A Session:

If it feels appropriate you can mention that mediating shows effort and dedication to working things out

Congratulate the parties on their agreement or highlight their newly shared understanding if one was reached

Summarize the points that were agreed upon or were of common concern if a written agreement was not reached

Thank the participants for coming to mediation

Sample Closing Statements
When Participants Worked to Reach An Agreement

With An Agreement:

"We are happy that you have reached an agreement that you believe will resolve the situation and make things better. Please remember it is your agreement, it is up to you to follow the points you agreed upon in order to make this work. You have worked hard and you deserve congratulations! Thanks for coming."

Without An Agreement:

"It seems that you were not able to come up with an agreement that was mutually acceptable today. Sometimes this happens. Your hard work, your willingness to share your feelings and to try to work things out is a positive step towards improving things. You were able to agree on _____ and it seems you both are clearer about your options now. We hope things will be easier for you in the future because you came to mediation. You can always come back for another session in the future if you decide that it would be helpful. We wish you the best. Thanks for coming."

Cooling Down and Evaluation

At the end of a mediation mediators can benefit from taking time to "cool down" and to give and receive feedback with their co-mediator about how they worked together and about the mediation session.

Remember:

Sitting with hurt and angry people can make you stressed and tense; even if you help them reach an agreement or shared understanding you might want a chance to unwind with your co-mediator and coordinator

Your co-mediator just experienced the same mediation: share with her or him your thoughts, feelings, a laugh or two, ideas about what went well and what was hard—this can not be done as easily later, with others, since you must maintain confidentiality

Sharing feedback with your co-mediator can be a helpful way to improve your skills, see how you have improved and become a closer co-mediation team

If a mediation was particularly hard or tense, spend extra time unwinding, do something special for yourself—you deserve it!!

APPENDIX I

Substance Abuse, Addiction and Mediation*

In approaching the topic of addiction and mediation the most important point to keep in mind is that addiction is a form of disease or, as some call it, a type of chemical or mental enslavement. This is the case whether the addiction is to alcohol or drugs.

People with addictions need assistance and compassion since they are trapped and fighting a disease whether they admit or deny their addictions.

Addictions are very complicated and there are varying degrees to which people can be addicted. Use, abuse and addiction are not the same thing and yet the boundaries between them can be blurred.

Use Abuse. and Addiction:

Commonly, use of a substance involves the occasional or one time contact with a substance. Abuse of a substance occurs when it is used frequently and taken for purposes other than for what it was made or when an individual uses a substance to escape reality, particularly pain in their life.

Addiction occurs when the individual can not control their urge to abuse a substance. Addiction can often be detected when a person frequently abuses a substance. However, it is not merely the frequency that defines addiction but rather the inability to control the urge to abuse a substance that does.

Diagnosing someone as having an addiction is not the role of the mediator and is best left to professionals and to those aware individuals who choose to identify themselves as addicts.

Co-dependency:

It is common for people to support someone else's addiction or abuse by preventing them from experiencing the consequences of their behavior. For example, if someone steals money from their friend to buy crack, (to which they are addicted), and the friend does not confront them, does not end the friendship, does not ask them to get help or in any other way hold them responsible for their actions, this friend is helping the addict stay addicted. This is called "codependency". Codependents also need support and help to change their behaviors.

It is important for mediators to know how to help participants who raise concerns about substance addiction and abuse. You will also want to know how to help participants who do not raise such issues but about whom you are concerned because you sense that they may have problems with substance addiction or abuse.

Strategies For Dealing With Substance Abuse and Addiction Issues In Mediation

Things to Remember:

Remember your role as a multipartial mediator

In a mediators' caucus share with your co-mediator and your case coordinator any concerns you may have

Know that it often takes about twenty significant interventions (discussions, job loss, relationship loss, fights, offers of assistance, etc.) before an addict will recognize that they have a problem; your mediation may be the twentieth, but most likely it is not; however, it may still help in the long-run

The coordinator can offer referrals for places where the codependent, friend, family member, addict or abuser can seek assistance

Do not offer advice or a referral if none of the participants have raised the concern of abuse or addiction

Things You Can Do:

Find out from Participant A who is concerned about Participant B's possible addiction: 1) What behaviors Participant B exhibits that Participant A does not like and 2) What "A" himself/herself is willing to do differently

If you can transmit this information to the person who may have an addiction, (Participant_B), explain only what the first person, (Participant A), has stated about what "A" wants and what "A" intends to do; do not ask the second person, "B", if they have an addiction or any other question that may put them on the defensive

Following this transmission of information ask Participant B what s/he is feeling and what s/he wants and is willing to do

***This approach to mediating when issues of substance abuse and addiction may be involved comes from the work of Marge Henderson, mediator and health educator, Boston, Massachusetts.**

APPENDIX H

Mediation Glossary

Agent of Reality: The role mediator's use to help a participant explore the consequences of their comments and options and to explore if an option is realistic or workable.

Agreement: A resolution that both participants feel is acceptable and are willing to follow in the future. Some agreements are oral, others written. If a written agreement is desired, the different points agreed upon are written down and signed by the participants; often mediators sign as well.

BATNA: The "Best Alternative To a Negotiated Agreement"; this is the best option that a participant has if a mediation agreement is not negotiated and reached. (See Fisher, R. and thy, W. 1981. Getting to yes: Negotiating agreement without giving in. New York: Penguin Books.)

Case Coordinator: The person who conducts intakes with potential participants, sets up the mediation, acts as a consultant to the mediators during mediation, and provides follow ups after the mediation and provides referrals to participants as necessary.

Closing Statement: What the mediators say to the participants at the end of a mediation.

Confidentiality: The assurance that mediators provide not to share any information that is learned during the mediation session.

Conflict: A disagreement, problem or fight; this is also known as a "dispute".

Feedback: Observations that are given to the people who were observed; the purpose is to help mediators see how others experience working with them. This is a technique used to improve mediation skills during mediation training.

Hypothetical: A possible future situation; also known to mediators as "what if". This is a key tool to use in questioning during mediation.

Intake: A meeting for the case coordinator to talk with the potential mediation participants. The participants describe their conflict and the coordinator describes the mediation process. It is at this point that it is determined if mediation is the best course of action at that time.

Issues: What participants really want; their concerns and needs. These are also referred to as "interests".

Joint Session: When the mediators meet with all the participants together. This is also called a "public session".

Mediation: A process in which one or more people in a multipartial role help others who are in conflict tell their stories; participants are the decision makers for the future, often creating together a mutually agreeable resolution.

Mediator: A person in a multipartial role in a mediation.

Mediators' Caucus: A meeting during the mediation process where mediators discuss and strategize privately, sometimes with the assistance of the case coordinator.

Multipartiality: The mediator's position of being partial to all the participants in a manner that helps each of them tell their story of what has happened and discuss and design their future relationships and resolutions with the other participants.

Negotiation: The process of discussing and bargaining in order to reach agreement.

One-Party Issue: A topic that is of concern to only one of the participants.

Opening Statement: The welcome and the description of mediation process that the mediators offer at the beginning of a mediation.

Overlapping Issues: Topics of concern that the participants have in common.

Participants: The people involved in a conflict or dispute; they are also known as the "parties" to a dispute or as "disputants".

Positions: What participants say they will or will not do; threats and stances.

Private Session: A meeting during the mediation process in which the mediators meet with only one of the participants.

Referrals: The names of services which are needed or recommended, such as a substance abuse clinic. Also, the names of potential mediation participants are call referrals.

Roleplay: An exercise in which people act out the parts of participants and mediators in order to practice mediating.

