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Mediation has become a well-respected method of conflict resolution. It is currently utilized in a variety of areas including family situations such as divorce and custody concerns, employer and employee disputes, and individual conflicts. Mediation occurs on a global level as well, including intervention with countries engaged in conflict with one another and countries with governments at odds with their constituents. In the United States, mediation is often seen as a way to lower the burden on the courts by having parties resolve issues with the help of a mediator rather than further clogging the judicial system. While this is one way mediation can be useful, true mediation not only resolves conflict, it teaches the parties how to better resolve their conflicts in the future. Mediation has the power to transform individuals and in so doing, transform their relationships in a positive way with lasting impact.

MEDIATION AS AN EFFECTIVE METHOD TO
TRANSFORM RELATIONSHIPS
AND RESOLVE CONFLICT

A Research Paper
Submitted
in Partial Fulfillment
of the Requirements for the Degree
Master of Arts

Julie R. Kneip
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May, 2010

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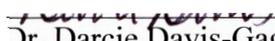
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Abstract

Mediation has become a well-respected method of conflict resolution. It is currently utilized in a variety of areas including family situations such as divorce and custody concerns, employer and employee disputes, and individual conflicts. Mediation occurs on a global level as well, including intervention with countries engaged in conflict with one another and countries with governments at odds with their constituents. In the United States, mediation is often seen as a way to lower the burden on the courts by having parties resolve issues with the help of a mediator rather than further clogging the judicial system. While this is one way mediation can be useful, true mediation not only resolves conflict, it teaches the parties how to better resolve their conflicts in the future. Mediation has the power to transform individuals and in so doing, transform their relationships in a positive way with lasting impact.

Mediation as an Effective Method to Transform Relationships and Resolve Conflict

The term mediation, also known as conflict resolution, refers to a process in which parties work together with the assistance of a neutral third party to resolve their differences, potentially reaching a workable solution. At its best, mediation leads to real transformation for the parties in that they learn new ways to communicate, are able to see the humanity in one another, and resolve their issues while learning conflict can be an opportunity for positive growth.

Conflict

Domenici & Littlejohn (2000) describe conflict as an “expressed struggle between two or more interdependent parties who believe they have incompatible goals, scarce resources, and interference from the other party in achieving their goals.” Common conflicts include divorce, family disagreements, difficulties in the workplace, arguments with neighbors, fights with friends, roommate problems, battles with elected officials, and issues with customer service representatives. Behaviors which indicate people are engaged in conflict include ignoring one another, sniping, gossiping, snubbing, yelling, arguing, physical contact, defensiveness, sarcasm, lying, backstabbing, uncooperative behavior, and exclusion (Dana, 2001).

Conflict can impact parties who are not directly involved in the disagreement. Children are often impacted by conflict in parental relationships whether or not their parents are married to one another. Family members may avoid social events together due to conflict between a few parties. Employees may leave a position they enjoy to escape a negative work environment caused by conflicts between their coworkers.

Friends sever connections because they do not like the negative emotions generated by conflict amongst certain group members. Many family schisms occur due to disagreements over the handling of a parent's estate by one of the family members. It is not pleasant to be around people engaged in conflict. Many people experience a feeling of embarrassment, a desire to escape the setting, a sick feeling in the stomach, and fear of escalation. Because conflict is often seen in a negative light, people may avoid it by physically leaving the area. Others may deal with conflict by giving in to the wishes of another to their own detriment. Parties may reach a compromise which ends the conflict while satisfying neither party fully. When conflict gets out of hand, physical or verbal abuse may occur leading to the injury of one or both of the parties (Stulberg & Love, 2009).

Costs of conflict. If conflict is not resolved appropriately, possible outcomes may include damaged relationships, depletion of financial resources, or poor physical health. Other possible outcomes include increased mental health problems, time lost from work or family activities, a reputation as a difficult person, or violence against others. Conflict in the workplace can affect productivity and job performance through wasted time, bad decisions, lost employees, sabotage, and theft. In the United States, workplace violence is the most important security threat to the largest corporations (Dana, 2001). When viewing conflicts, it is normal to witness strong emotions, entrenched positions, and poor communication. Conflicts escalate due to unmet needs, lack of skills to resolve differences, and weak relationships (Ury, 1999). Conflicts often consume a great deal of time, energy, and money. It is difficult to think clearly and focus when strong emotions are involved.

Fortunately, there are positive ways to handle conflict such as negotiation, arbitration, and mediation. Negotiation involves two parties engaged in discussion to reach an agreement. The parties handle the entire process with no assistance from a third person. Arbitration is a private meeting where a third party makes a decision about the conflict based on the case presented by each side. The arbitrator pays no attention to the relationship between the parties or any of the emotions they express. The emphasis is on reaching a decision. During mediation, a neutral third party facilitates a discussion where parties have the opportunity to express their feelings, identify areas of agreement, and work toward a solution which is amenable to both (Domenici & Littlejohn, 2000).

Appropriate for mediation. Many conflicts may improve with the help of mediation. One of the predictors of potential mediation success is the readiness of the clients to engage in the mediation process (Beer & Stief, 1997). A significant factor which makes a conflict ripe for mediation is the desire of the parties to preserve the relationship. These types of conflicts include custody issues, family disputes, and work disagreements. Mediation is considered appropriate when parties desire more than damages or equitable relief (Bennett & Hermann, 1996).

Not amenable to mediation. Certain relationships may not lend themselves to mediation. A conflict involving a power imbalance may prove difficult to mediate. A situation wherein one party is not interested in preserving the relationship may not be appropriate for mediation. Situations involving physical or sexual abuse may not lend themselves to mediation (Bennett & Hermann, 1996). Beer and Stief (1997) suggest conflict situations involving addictive behaviors and situations requiring a finding of fault and punishment as inappropriate for mediation.

Transformative Process

While conflict seems to bring parties to the mediation table, the goal of mediation is more than problem-solving. It is to give the participants tools to use in future disagreements while instilling confidence in their abilities to handle their own problems. The premise is that everyone is capable of learning new ways of interaction; everyone is teachable (Melamed, 2006). To begin the process, it is necessary to reframe the idea of conflict as a positive opportunity for change. In order for mediation to transform parties, participants must recognize how they can benefit from changing the way they interact. In the case of divorcing parents, the mediator must help them recognize how their ongoing relationship can either positively or negatively affect their children. Once this idea is accepted, parties can appreciate the need to communicate more effectively to best ease their children's transition to a new family dynamic. With any conflict, parties must come to an understanding of what they have to gain through the mediation process. They will then appreciate the need to invest in the process.

Managing a conflict through mediation is a transitional process. It implies change for the parties. Bridges (2003) suggests change is situational, while transition is psychological. To achieve transition, parties must let go of their previous ways of doing, and learn new ways. Mediation can allow the parties to identify their loss and grieve for it. Allowing people to air their emotions in a safe environment is part of the transformation process. "People do not expend intense life energy on something that doesn't matter to them" (Beer & Stief, 1997). Once they air those emotions it is possible for them to make sense of the situation and move forward. This period is identified as the neutral zone. It is a frightening time for those involved, yet it can be an exciting time of

creativity, innovation, and revitalization (Bridges, 2003). It is the responsibility of the mediator to guide the parties through the transition. Domenici & Littlejohn (2000) suggest the mediator must separate the parties from the problem. Doing so allows the parties to deal with the problem on its own merits. For conflict to be transformed, it is necessary for one party to recognize the other as a real person, to see the other person's humanity. If this is not done, the parties may struggle to move forward.

Transitional deficit. Bridges (2003) advised mediators to understand unresolved past losses frequently come to the surface during current transitions. It is necessary for the mediator to understand this may happen and to help the parties identify and separate the past from the present. Moore (2003) also emphasizes the need for parties to resolve past hurts during the mediation process. He stresses parties may not make any forward progress until they can put the past where it belongs and focus on the present.

Face issues. In situations involving heated conflict it is common for parties to become entrenched in the belief they must stick with their initial position or lose the battle. Domenici & Littlejohn (2000) stress the need for mediators to support parties in maintaining face by preserving each party's image and bolstering their positive attributes. Mediators must also assist parties in saving face, helping a party repair an image which has been damaged or attacked. If face issues are not addressed during the mediation process, destructive cycles may arise which could derail resolution of the conflict (Domenici & Littlejohn, 2000).

Skills for clients. Ury (1999) states that people have a choice about how they deal with their conflicts. They can allow them to escalate unchecked or they can attempt to resolve them. Schwarz (2002) suggests the mediation process allows parties to learn

skills to help themselves become self-facilitating. This creates a fundamental change in the parties involved. Mediation is constructive in that it helps parties look at conflict differently and teaches them how to fight better (Melamed, 2006).

Dana (2001) emphasizes the importance of parties learning to own their experiences instead of expecting others to take responsibility. It is important that parties learn to take time to examine and think logically about the situation before taking actions, instead of reacting immediately and often inappropriately, escalating the conflict. Parties must learn to avoid personalization, instead understanding the conflict as situational, not about them as a person. If parties are able to see conflict as caused by misunderstanding of intentions, they are more likely to listen to what the other person has to say instead of reacting emotionally (Dana, 2001).

Mediator

A mediator is a person trained in conflict management who works with parties in conflict to manage a dispute resolution process (Stulberg & Love). According to Malamed (2006) certification may be provided following 40 hours of conflict management training. Training programs are offered through a variety of colleges in the United States including the University of Wisconsin and the University of New Mexico Law School. Lawyers, retired judges, psychologists, social workers, and counselors often work in the mediation field (Melamed, 2006).

Mediators have the opportunity to help parties reverse the negative spiral of conflict. They can take a situation which is negative, destructive, alienating, and demonizing and transform it so that it becomes positive, constructing, connecting and humanizing (Bush & Folger, 2005).

Role. Stulberg & Love (2009) stress the importance of neutrality when acting as a mediator. If a mediator seems to favor one party over the other it will be impossible to build the trusting relationship needed to resolve the conflict. The mediator's responsibility is to manage the mediation process, it is not to save, heal, or create an agreement (Domenici & Littlejohn, 2000). A successful mediator will aid the parties by forging common ground between them. The mediator is seen as a catalyst or a coach who helps motivate and drive the process (Stulberg & Love, 2009).

Skills. Bennett & Hermann (1996) list a variety of skills important in all mediators. However, they believe those skills should be fluid and responsive to each mediation and the parties involved. Each situation is different and there is no formula which will fit every one. The mediator must have a repertoire of skills to call upon as needed in the midst of mediation. Tools which allow the mediator to encourage effective communication between the parties include active listening, reflecting, framing, reframing, attention to nonverbal behavior, and perception checking (Domenici & Littlejohn, 2000). Cultural awareness and understanding of gender issues are necessary attributes of a skilled mediator (Melamed, 2006). Beer & Stief (1997) cite strong people skills, an ability to be directive and confrontational, imaginative at problem solving, empathic and nonjudgmental, impartial, respected and trusted, with a low need for recognition as good qualities in a mediator. "A mediator must be comfortable with high emotions, arguments, interruptions, and tears" (Beer & Stief, 1997). Bennett and Hermann (1996) stress basic values, life experiences, an ability to be present in the midst of conflict, personal style, awareness of potential personal biases, blind spots, hot button issues, cultural identification, and openness of spirit as necessary qualities in a mediator.

They advise practicing mediators to engage in rigorous, honest, and continuing self-examination. Melamed (2006) suggests authenticity as a very important quality for mediators. Elgin (2000) reminds mediators to pay attention to body language. “Words can be concealed by body language; body language can’t be canceled by words” (Elgin, 2000).

Co-mediation. Mediation requires the facilitator to be actively involved and closely observing the interactions of the parties at all times. Even the best and most experienced mediators can have an off day, feel tired, distracted, or experience a strong reaction to one of the parties or the subject matter. In addition, dealing with strong emotions on a regular basis can lead to burn-out (Schwarz, 2002). Partnering with another experienced and compatible leader can enhance the experience of all involved. While co-mediation may increase scheduling difficulties and add to the cost of mediation, the benefits far outweigh the possible disadvantages. Two mediators working in tandem bring double the listening capacity, differing views and perspectives, and more opportunity for helpful insights. Co-mediators often bring different strengths and areas of expertise to the meeting. They also model positive communication skills for the participants (Stulberg & Love, 2009).

Stages

Mediation can be voluntary or court ordered. Research has found that parties prefer mediation to litigation even if they are compelled to participate. It may be less satisfactory than voluntary mediation, however, parties still have a voice in the process (Melamed, 2006). The essential process of mediation consists of dialogue directly between the disputing parties, it is limited by the cardinal rules, it is about the issues to be

resolved, and it is sustained long enough for the parties to find a solution. The cardinal rules are that neither party can walk away and solutions must benefit both parties (Dana, 2001).

The process begins by one or both of the parties contacting a mediator for dispute resolution. The mediator schedules a convenient time for all parties involved. It should be held at a neutral location with adequate physical comforts such as seating, bathrooms, and access to water and other drinks as needed. It must be private with no phone or walk-in interruptions (Dana, 2001).

The introduction phase allows the mediators to introduce themselves and the parties, explain the process of mediation, answer any questions the parties might have, and encourage the parties in their desire to pursue mediation (Domenici & Littlejohn, 2000). Dana, 2001 advises mediators to issue an invitation to the parties “to help us understand you.”

Mediation begins by allowing the parties to explain what they see as the main problem or what brought them to mediation (Domenici & Littlejohn, 2000).

During the process, the mediator must watch for a breakthrough, when the parties engage in conciliatory gestures such as apologizing, taking responsibility, self-disclosing, or expressing positive feeling toward the other party. The mediator should focus on those gestures to prompt the parties to shift toward an “us against the problem” attitude (Dana, 2001).

Mediation is not necessarily an orderly process. It is possible the problem defined by the resolution stage may look nothing like the problem identified during the opening statements. Once partners begin to move toward one another, it is time to have the

parties begin brainstorming their options for resolution (Domenici & Littlejohn, 2000).

The parties must be responsible for generating their own ideas. The opportunity to create their own agreement allows the parties to take responsibility for solving their problem.

Parties who have ownership of the agreement are much more likely to feel positive about it and follow the agreement (Melamed, 2006).

Potential for Abuse

Bennett & Hermann (1996) have some concerns about the mediation process in that it is private, “insulated from scrutiny.” They worry vulnerable parties might be overpowered by a stronger party and forced into unfair agreements. One of the qualities of a good mediator is the awareness of relationship dynamics and ability to assure equal treatment to all parties during the process. In addition, because mediation is a voluntary process, either party has the ability to reject an agreement and opt out of mediation at any time.

Cultural Considerations

Domenici & Littlejohn (2000) remind mediators to expect different expectations of the mediation process from members of different cultures. The mediator should not assume the parties understand what is being said. Instead the mediator must check for understanding by both parties frequently. In addition, use role reversal as a way to have parties validate one another’s concerns. Pay attention to the use of silence by either party. Be prepared to do things differently, follow the lead of the parties, look for similarities instead of differences, and demonstrate a willingness to learn from the parties (Domenici & Littlejohn, 2000).

Conclusion

Bush & Folger (2005) cite the short term benefit of mediation as solving the problem which brought the parties to mediation. The long term benefit of mediation is the increased confidence parties gain in their own ability to solve future conflicts.

Melamed (2006) emphasizes repairing the relationship, not solving the problem as the major benefit of mediation. Conflict management or mediation creates a situation or environment wherein parties can effectively disagree with one another and problem solve while learning new skills which they can use in future disagreements. Ury (1999) suggests prevention is the best medicine for conflict. Dana (2001) reflects that some people think peace involves ignoring problems and disagreements. Instead, true peace means dealing with issues constructively to benefit both parties. Well managed mediation allows parties the best opportunity to respond to current conflict and curtail conflict in the future.

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