

# PARTY-DIRECTED MEDIATION



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## PARTY-DIRECTED MEDIATION

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# PARTY-DIRECTED MEDIATION

## HELPING OTHERS RESOLVE DIFFERENCES

(On-Line 2<sup>nd</sup> Edition)

GREGORIO BILLIKOPF  
UNIVERSITY OF CALIFORNIA



## PARTY-DIRECTED MEDIATION: HELPING OTHERS RESOLVE DIFFERENCES

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## PREFACE

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We live in a troubled world with conflicts near and far. Interpersonal issues play a large role in many, if not most, conflicts.

This book is primarily directed to mediators, facilitators, leaders, and helping professionals who assist others in managing deep-seated interpersonal conflict. Many of its concepts can also be of value to those who are seeking to better understand or solve their own interpersonal discords. Some of its key principles may apply to the management of intergroup conflict.

The objective of this book is to make the *Party-Directed Mediation* approach more widely available to mediators. The approach is simple: (1) mediators listen to and coach each party separately in a *pre-caucus* (or pre-mediation) before bringing them together; and eventually, (2) when disputants do meet in a *joint session*, the contenders address each other rather than the third party. The burden of solving the conflict remains with those who are most likely to be able to do so: the contenders.

Parties gain the skills that will permit them to solve future conflicts without a mediator. Furthermore, Party-Directed Mediation is designed to allow individuals to save face and preserve dignity to a greater extent than allowed by more traditional approaches. Some ethnicities and cultures place a great value on *facework*, and so Party-Directed Mediation is especially effective for resolving multicultural conflicts. The need to save face, of course, transcends nationalities.

More traditional mediators bring the parties into a joint session without employing a pre-caucus. And in the joint session, contenders address the mediator rather than each other.

A number of reasons have been advanced to defend the traditional method. The lack of pre-caucusing is mostly born of the fear that the mediator may collude with one of the parties ahead of time. After all, in the traditional approach, mediators retain a position of power and can wield considerable influence over the parties by imposing solutions. They can often resemble arbiters more than mediators.

In Party-Directed Mediation, contenders learn how to negotiate for themselves, so concerns about favoritism and collusion are all but eliminated.

Mediators are beginning to recognize that the traditional method is fraught with challenges. In *When Talk Works*, Kenneth Kressel explains that it is a “common theme in the mediation canon” (1994, p. 25) to let parties tell their sides of the story in front of each other. Kressel goes on to share how destructive such an approach can be (for the full quote, see Appendix II in this book, pp. 255–256). The contenders end up insulting each other in front of the mediator, and neither is able to save face. Furthermore, the mediator fails to keep the parties psychologically safe.

It has been said that “there is no new thing under the sun” (Ecclesiastes 1:9 KJV). Since the publication of the first edition of this book in 2004, several models have come to my attention that make effective use of the pre-caucus, such as *victim-offender mediation*. Depending on the severity of the cases, victim-offender mediation may require months of pre-caucuses, as incremental steps are taken to prepare the parties to meet in a joint session. Two excellent books, Dudley Weeks’ *The Eight Essential Steps to Conflict Resolution* (1992) and Mark S. Umbreit’s *Mediating Interpersonal Conflicts: A Pathway to Peace* (1995), describe successful pre-caucusing.

Perhaps the contribution of Party-Directed Mediation is the more explicit organization of mediation around the pre-caucus and subsequent joint session. Furthermore, while a few authors suggest parties face each other during the joint session, in Party-Directed Mediation the facilitator moves away from the contenders, underscoring the fact that a mediator is present to facilitate a conversation between the parties rather than to decide who is right.

It takes a greater leap of faith to prepare individuals to negotiate for themselves and then to step away from the contenders, but this is precisely what strengthens the process and leaves no doubt that we are dealing with *mediation* rather than *arbitration*.



Another innovative contribution of this approach has been long-distance international mediation. Third parties can work with the help of less experienced co-mediators in another country. The seasoned mediator may listen in and assist from a different location because most of the difficult work is carried out during the pre-caucus. Much of the negative emotion is dissipated before the joint session.

The reduced level of contention between the disputants in the joint session of Party-Directed Mediation, furthermore, allows apprentice mediators to gain the needed proficiencies with more ease and under less stressful circumstances.

The original title of this book was *Helping Others Resolve Differences: Empowering Stakeholders*. The Party-Directed Mediation approach was described in detail in that work, but had not yet been named. Also, the word *stakeholder* was incorrectly used as a synonym for *party*, or a contender involved in the mediation.

I am indebted to fellow mediator Jon Linden for suggesting the name of the new approach and for his pointed questions that forced me to clarify the model. Linden has an extensive mediation practice that includes work for the Special Civil Part of the New Jersey Superior Court Law Division and for the U.S. Equal Employment Opportunity Commission. It was a great satisfaction to me when Linden successfully incorporated principles discussed in this book in a workplace mediation.

Most of the chapters in the book have been restructured, and there is a new section on preventive mediation, based on the *Negotiated Performance Appraisal* model. This approach may serve as an alternative conflict resolution model for superior-subordinate relationships.

Chapter 1 provides an overview of the Party-Directed Mediation procedure. We look at the philosophy as well as the general mechanics of this unique mediation approach. Chapter 2 focuses on one of the major skills needed by the mediator as well as the contenders: *empathic listening*. It is the type of listening that permits others to vent their frustrations and begin to hear themselves. Chapter 3 covers other preparatory steps carried out

during the pre-caucus and describes a litmus test as to whether it is safe to proceed to the joint session in which the parties confront each other. Chapter 4 details tips on interpersonal negotiation skills. Chapter 5 prepares mediators for handling the joint session.

Chapters 6 through 11 introduce the reader to Rebecca and Nora, based on videotape transcripts of their pre-caucuses and joint session. Nora and Rebecca had been involved in a workplace dispute spanning over two decades.

Chapter 12 covers the Negotiated Performance Appraisal model, which is an excellent tool to improve interpersonal communication and thus avoid conflict escalation early on. The approach foments talking about things we often do not talk about. Chapter 13 contains transcripts of portions of several negotiated appraisals. Most of the skills required for successful Party-Directed Mediation are transferable to the facilitation of Negotiated Performance Appraisals.

Appendix I revolves around cultural differences. An understanding of these is vital when interacting with individuals from other cultures or mediating multicultural disputes.

Appendix II contains an article that was included in the first edition of this book: “Contributions of Caucusing and Pre-Caucusing to Mediation.” It points out why so many mediators were resistant to the pre-caucus. The paper I presented at the 2005 Annual Meeting of the International Association for Conflict Management in Seville, Spain, has been incorporated into the main manuscript.

Our website (<http://www.cnr.berkeley.edu/ucce50/ag-labor/7conflict/>) includes audio seminars on both *empathic listening skills* and *interpersonal negotiation skills*—as well as chapters 2, 4, or any other chapters of interest—that can be downloaded and distributed at no cost to clients, students, or others (see p. iv).

Over the years, there have been many important contributions towards the resolution of conflicts. We shall incorporate some of the key principles in the context of Party-Directed Mediation. This book does not purport to displace other writings on the

subject of mediation, nor is it a complete handbook on mediation. Rather, it introduces two models that have made positive contributions to the field and have helped empower affected parties. I began work on Party-Directed Mediation in the U.S. in January 1992 and work on the Negotiated Performance Appraisal model during a trip to Uganda in May 1996.

It has been gratifying to know that papers on these models have been widely reprinted. International interest has been shown not only by the academic community (for courses in organizational behavior, conflict management, and human resource management) but also by women's shelters, attorneys, churches, and mediation centers.

## ACKNOWLEDGMENTS

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Special thanks go to all those who have permitted me to mediate their disputes throughout the years. I am particularly grateful to Rebecca and Nora for allowing us to videotape the mediation dialogue included in this book, as well as to the mediation team who participated. Also, special thanks go to facilitators Macarena Pons and Rodrigo López for the negotiated performance appraisal clips in Chapter 13, as well as to the supervisors and subordinates who so graciously permitted their use.

Linda Marsing Billikopf, my wife, offered helpful suggestions for handling the videotape transcripts and did much to improve the overall logic of the presentation within chapters in the first edition. Portions of this book were published previously in a different form, and I am particularly grateful to those who helped edit these. Marie Harter and Debbie LaBarbera helped proof an early revision of the manuscript. Robin Mizell, copyeditor, and Rick Huard, proofreader, offered numerous suggestions for the second edition. Thérèse Shere was the indexer. I also wish to thank Frank Parks, of Parks Printing, and all of his staff, as well as those at Roswell Bookbinding for the high-quality printing and binding process.

As the author, I take responsibility for the opinions expressed as well as any errors that may remain. I am especially appreciative to the University of California for the opportunity to hold a job where creativity is encouraged.



David Marsing Billikopf

#### ABOUT THE AUTHOR

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Gregorio Billikopf (Gregory Encina Billikopf) was born and raised in Chile. His agricultural extension research and teaching efforts at the University of California have focused on such topics as conflict resolution, negotiation skills, employee selection, compensation, quality control, performance appraisal, discipline and termination, supervision, and interpersonal relations. Billikopf has been a frequent national and international speaker in the field of agricultural labor management and has had the opportunity to give presentations in the United States, México, Canada, Russia, Uganda, Colombia, and Chile. Gregorio has worked closely with the University of Chile since 1988, and in 2005 was named Visiting Professor.

Gregorio and Linda Billikopf have four children. He has also been a dressage rider and instructor, an amateur radio operator, and a soccer referee. More recently, his deep love for the Scriptures has occupied much of his free time. Billikopf is the grandson of the early American labor mediator and arbitrator Jacob Billikopf (1883–1950).