Conflict Negotiation Skills

The Cornerstone of Mediation Therapy

Janet Miller Wiseman

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> Conflict lies not in objective reality, but in people's heads. . . . The reality as each side sees it constitutes the problem in a negotiation and opens the way to a solution.
>
> —Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement Without Giving In*[1]

Seeing One's Own and the Other's Point of View

If the central problem in a negotiation is the way in which each partner sees the conflict, then helping the partners see the other's point of view is the solution.

This is a central goal in mediation therapy—to help an individual see the other's perceptions. Psychotherapy skills alone, without conflict-resolution skills, are not enough to help couples learn to see and understand each other's viewpoints, nor are they enough to assist couples in intense conflict to make important once-in-a-lifetime decisions for their families.

The family therapist Yetta Bernard illustrates the importance of point of

view in the following case.

"Now tell me . . . how *do you see* the problem in your relationship?" the psychotherapist asks the wife in the couple she is just beginning to meet with. The woman responds that her husband does not want to discuss issues about how the children from his first marriage don't listen to her. The psychotherapist paraphrases what the woman has said, asking her if she, the therapist, has heard the woman correctly.

When the woman nods affirmatively, the therapist turns to the husband, querying, "And, is how she puts it congruent with how you see the problem?"

"No!" responds the husband. It isn't that he doesn't want to discuss his children's behavior; but for him, it is a matter of timing. He would prefer not to discuss the matter every evening just as he is arriving home from work.[2]

As Bernard's case shows so well, the problem in conflict is how people see the issues, not what the issues are or are not about. This couple both wanted to discuss his children's treatment of her; they differed in when to do so. Initially, she believed that he wasn't interested in discussing the children's treatment of her. After Bernard reframed the issue to be how each person separately saw the problem, the couple began to see the commonality in their interests.[3]

Because how individuals see the issues is critical for couples, many strategies in mediation therapy are perceptual/visual/seeing techniques, designed to assist individuals in finding and defining their own points of view. The techniques obviously must also help individuals see how their partner views a myriad of situations.

The mediation therapist needs to translate some of the perceptual techniques into auditory or kinesthetic equivalents so that a large number of people who process information in ways that aren't visual may understand their partner's point of view. Regardless of the dominant sense through which people process information, "seeing" in mediation therapy is a process of uncovering, then discovering how one views an issue or a problem oneself.

After an initial self-discovery, seeing means assertive communication of one's viewpoint without accusation to the partner. Communication continues until the partner sees and thoroughly understands one's viewpoint, as the above couple finally understood that they each wanted very much to discuss an issue about the children, but that they were in disagreement about when to do so.

Basic Techniques of Conflict Resolution

Symmetry and Neutrality

Even before couples like the above are seen in the office for the first time, the mediation therapist begins using basic techniques of conflict negotiation and mediation. The development of a neutral stance (see chapter 2) is begun when the mediation therapist requests that the caller's mate or significant other also place a call (making a total of two phone calls) to the therapist to find out about the intervention and to ask any questions. As previously stated, the therapist is not contaminated as being the choice of the first caller.

This symmetrical balance and neutral stance are mediation techniques. When equipoise is achieved before the couple even arrives in the office, their mediation therapist is indicating that discussion and negotiation needs to be between equal partners and that to facilitate discussion she or he needs to be neutral, receiving symmetrical input from each of them.

The foundation for the resolution of conflicts in mediation therapy is equal, balanced, information giving, with equal time and attention devoted to each partner. Some clients in mediation therapy take longer than others to realize that their monopolizing time throws the entire process off-balance.

Speaking with both individuals prior to the session, the mediation therapist implicitly conveys to her or his clients that they will be empowered equally to participate fully and democratically in the process. Each will know

that he or she is expected to be an active and equal participant in the process. This expectation of equality has often not been the case within the relationship. It will take many minor and major corrective actions within the sessions before a balance between the individuals even comes close to being achieved. The most obvious correction is the mediation therapist's stopping a loquacious person, over and over again, in order to achieve some symmetry in the volume of communication between individuals. The mediation therapist must risk the appearance of impoliteness to address the assymmetry. She or he must be firm: one of them is talking more than the other. She or he asks both of them to practice suspending their thoughts, to listen attentively, actively, and receptively to the other.

Symmetry in the volume of verbal communication is probably more important than symmetry in any other aspect of mediation therapy. When one person's excessive talking is felt as domination or control, the other mate is likely to be furious and inattentive. Excessive talking may also be intellectualization, having little to do with a person's true feelings, and it may consequently result in the partner's not paying attention. These locked-in patterns of unequal communication are interrupted by the mediation therapist's conviction that this kind of assymmetry in verbal production obviates mutuality, reciprocity, and real dialogue between intimate partners.

As a neutral professional, the mediation therapist must intrinsically

understand that partners very often have oppositional positions and viewpoints, which may have truth for each individual. For a mediation therapist, looking for right or wrong positions, or better or worse positions, is fatal. Neutrality would be lost from the outset. The mediation therapist must be able to think in nuances, grays, individual truths, and trade-offs.

Neutrality is necessary in order to not get caught in a couple's polarizations, in their black and white thinking. The mediation therapist needs to help couples understand that she or he is not with or for individuals, but for a good, workable solution for both people and for their family. Stating each individual's goal at the outset of the process serves the function of establishing symmetry and equality and helps the mediation therapist preserve a neutral stance.

Developing Improved Communication

"I" Statements. The mediation therapist carefully structures the beginning phase of the process to avoid starting on the wrong foot. As previously mentioned, it is not desirable to begin the process with what is wrong with one person or the relationship. It is desirable to begin with nonaccusatory "I" statements, which are an integral part of this conflict negotiation approach: what each individual, for her or himself, wants to accomplish in this process. The person who has said, "You never take

vacations with me!" might translate the accusation into "Will you come to the Seychelles with me this summer?" From the inception of the process, the mediation therapist explicitly conveys a basic principle of mediation therapy —not to blame, not to accuse. However, accusations do get made. That is why turning accusations into requests is necessary.

We ask a great deal of mediation therapy clients. We ask that they become aware of their goals, their theories, their asymmetrical communications, and we ask the individuals to reach into a probable morass of intense feelings of rage, disappointment, sadness, and revenge—to articulate what they, as individuals, want to accomplish in the present. We ask them to step back into the rational parts of themselves, for the time being, to be an advocate for what they now need. We begin with hope, with what individuals want for themselves, not with their problems.

Paraphrasing. The mediation therapist is advised to frequently check out whether a second partner has heard what the first individual is saying. From the beginning, each partner is asked for his or her understanding of the other's goal for this intervention. When the goal is repeated, does the first partner agree with how the second one has restated his or her goal for the intervention?

Initially, funneling information through the mediation therapist has the

advantage, with a couple in intense conflict, of allowing each individual to hear the other's viewpoint without the anger, negative body language, and repetitious negative meanings, which over time have come to be associated with the words. Many couples need the funneling of information through a therapist in the initial stages. Funneling of information means not allowing intensely angry individuals to talk directly to one another, initially. The mediation therapist functions as a fulcrum channeling the chaotic energy of the couple into constructive energy to help them move forward.

If individuals cannot talk without fighting, basic instruction is given in communication—in listening, hearing, acknowledging— and in assertiveness, the positive statement of a message. Most couples, not long after the instruction, can safely talk with each other without the funneling of information through the mediation therapist. Some couples speak directly to one another, clearly hearing one another from the inception of the process. Many couples fall somewhere in between, sometimes hearing one another, sometimes not. When the direct engagement of the couple in communication is counterproductive, the mediation therapist may ask them to wait a while, to learn some basic principles before attempting to communicate directly with one another. She or he indicates that she or he will paraphrase for them, checking out her correctness, until direct communication becomes possible.

For example, through the mediation therapist's use of the paraphrase,

each member of one couple heard something new from the other that neither had heard in thirty years of marriage. The gentleman, in his fifties, was the only child of elderly parents. He had spent much time in reverie as a child and had developed an active imagination. No one in his childhood and adolescence had ever explicitly asked him to share his ideas or thoughts, let alone feelings. He was surprised to hear, through the paraphrase, that his wife had repeatedly been asking him to share his imaginations, thoughts, and feelings with her. He said to her: "I honestly didn't have a clue that you want to hear my thoughts."

She said to him, after hearing the therapist's paraphrase, "You know, in thirty years of marriage, I never understood that you feel intimidated by the amount that I talk. You've never said that before. You also never have said that you feel so inadequate verbally in comparison with me, nor have you ever said that you feel frightened nearly every time we talk. I am amazed." Paraphrasing often reveals basic, important misunderstandings and miscommunications.

When the mediation therapist paraphrases, she says what she believes reflects the fundamental core of truth in what a person has said, checking out after she paraphrases if the meaning she conveyed was correct. The person who has spoken and has been paraphrased then indicates whether the paraphrase indicated his meaning or how he would modify the paraphrase to

represent his own exact meaning.

Often enough, a spouse will reply, in response to a paraphrase, “Is that really what you have been trying to say all these years?” or, “I never knew you felt that way!” Paraphrasing is different from reframing, which gives a positive connotation to a statement in an effort to help people to hear. Paraphrasing adheres to the meaning exactly and attempts to refine the statement so that it becomes more clear to the listener.

To distinguish reframing from paraphrasing, the remark “You are such a slob,” reframed might be “I love you in so many ways. I would feel much better about you if you tried to be neater”—a positive reframing. The same remark, paraphrased more literally by the mediation therapist, might be “Jon, Alice is saying that she feels you are not as neat as you might be.”

Toward the outset of the intervention the mediation therapist explains that blaming and accusation are literally outlawed in this intervention. When they occurs she asks that the individuals turn those accusations or blaming into requests. When one partner says, “You never give my mother a call!” he is asked to turn that accusation into a request. He may say, “Could you please give my mother a call sometime this week?”

What so often blocks comprehension between mates? This most likely comes from a person feeling defensive, blamed, or accused by the other’s

statements, combined with a feeling of powerlessness to do anything about a situation the partner is describing. Why hear, if there is nothing one can do about the situation? Over time, people may make a habit of being inattentive to one another. Often people who have heard an abundance of negative statements in the past automatically hear statements as having negative tones in the present. People constantly criticized in the past tend to hear criticism in the present. Some people fear genuine intimacy with one another so that not hearing what could connect them to the other accomplishes a lack of intimacy. Hearing one another with empathy and understanding may be unconsciously feared, as, not only do hearing and understanding potentially move the partners toward intimacy, they also move them toward losses of other things important to the individual: control, identity, ego-boundaries, privacy, space.

Finally, the need to control the other's behavior, in lieu of self- control, or the attempt to clone one's own exquisite self-control onto the other, may interfere with people hearing their partners as distinct individuals. It is small wonder that paraphrasing is so frequently necessary to help related people hear what they are saying to one another.

The initial use of paraphrasing by mediation therapists may be experienced by those therapists as audacious, as taking over for or speaking for their clients, possibly disempowering them. Experience proves the

contrary. In mediation therapy a couple and their college-age daughter were discussing the parameters of their obligations, including financial responsibilities, with one another. Their conversation required extensive paraphrasing, to the point of literal exhaustion of the mediation therapist.

The immediate reaction of the mediation therapist, after the session, was to question: "What have I done? Have I spoken for all of them? Have I said what they meant?" Yet, each of the three of them had shaken hands with the mediation therapist as they left the office, expressing gratitude at having been able to understand one another for the first time. Paraphrasing can be like sign language, the tool that bridges between two modes of understanding. It may well prove to be the single most powerful tool in mediation therapy. It defuses anger, thereby allowing a couple to hear one another, and also proscribes old, repetitive, destructive patterns of communication, which impede the resolution of the conflict. The visible relief that occurs when a person perceives that she or he has been interpreted in a way her or his partner can hear is visual demonstration of the power of the paraphrase.

Instruction in Disagreement

Paraphrasing frequently reveals early in the process that the individuals are not in accord in their beliefs. This discordance frequently causes discomfort for the partners. For this reason, education about disagreement

begins almost immediately in mediation therapy. The mediation therapist will establish what the individuals believe to be true about disagreement in couples: Is any disagreement between partners acceptable or not? If it is not acceptable to either partner, an educational process about disagreement begins. I often make the following points:

> We are not striving for consensus here, nor do we expect it.
>
> We are striving for each of you to understand the other, his or her viewpoints and attitudes.
>
> From understanding each other, I hope to help you learn to negotiate to some mutually acceptable solutions.
>
> For one of you to get your needs met, the other absolutely does not have to sacrifice his or her needs.
>
> You both win, in terms of getting your needs met and being understood.

When a couple is able to constructively state their disagreement, the mediation therapist shows them that they now have the option of learning to negotiate those differences. Or they may put the disagreement on the record, opting simply to register it or put a disagreement on the back burner for later negotiation. Where putting aside of disagreement methods are used, the mediation therapist may point out that the couple has together reached an agreement about what to do: the disagreement will not be immediately

negotiated. This instruction in disagreement is one of five instructional methods used in mediation therapy. Others on assertiveness, communication, negotiation, and decision making are detailed in other chapters.

The actual subject being discussed when instruction in disagreement seems appropriate may be almost any subject: answering the rational inquiries; the individuals' looking at themselves; dealing with intense feelings that have accumulated over a long period of time. These instructional techniques are used throughout the mediation therapy process.

Radical Conflict Resolution Techniques

Radical conflict resolution techniques are used when emotions run high.

1. The mediation therapist may insist on only one person speaking at a time.

2. She or he may suggest taking a quarter-hour break for coffee or until the next session, saying, "The heat in the office is too high, let's break until X time."

3. She or he may say, "You're right on your toes, thinking fast, but let's take some time out to spell out some ground rules for our discussions."

4. Sometimes the mediation therapist might wisely rise, walk around the room, sit between the partners or may even leave the

office until the “temperature” decreases.

The process of mediation therapy obviously will not require these basic conflict negotiation techniques or instructions at all times. Throughout the entire process, outbursts of conflict will occur that necessitate the use of these techniques.

Case Study in Negotiation: Peter and Sonja Andrews

Taking a look at the negotiation process—from the vantage point of a specific couple and their mediation therapist, who are in the process of mediating some important conflicts—will serve to bring alive the above discussion of the basic conflict negotiation techniques in mediation therapy.

At the point when we enter their process, Peter Andrews is making it clear that he has indeed understood that the mediation therapy is a neutral process. He is saying that he is aware that his wife also spoke on the telephone to the mediation therapist prior to the first appointment, sharing her own perception of their situation. He continues by saying that his goal for the mediation therapy is to understand whether there is any hope of salvaging their marriage. He believes that Sonja, his wife of one year from whom he has been separated for one month, has heard his goal and he understands that she is terribly threatened by it.

Likewise, he has heard that her goal is a different one: she wants very much to be married, to resume living together immediately, a goal that feels threatening to Peter's autonomous sense of himself. The mediation therapist has said repetitively that it is fine for couples to have different goals. It is of primary importance to understand the other person's goal and how the other is looking at a variety of issues.

Peter Andrews outwardly seems perplexed and irritated that his wife is declaring so boldly that she wants to be married to him; inwardly he is pleased to be wanted. He appeared grateful for the opportunity to tell his wife that the reasons he left her were irrational and unfounded jealousy and her powerful attempts to control him; from what kind of soup he should order in the Japanese restaurant, to forceful attempts on Sonja Andrews's part to prevent him from going out socially with his male friends.

The mediation therapist asked Sonja to repeat why her husband left, and what feelings he had demonstrated upon leaving. Her initial understanding wasn't close to her husband's reasoning, but became closer each time she stated his motivation. Peter finally looked certain that his wife understood why he left and how angry he was about her attempts to control him, as well as how provoked he became by her unfounded jealousy. He learned, for the first time, that she had many times before been left by boyfriends who had become infuriated by her self-avowed manipulative

jealousy.

Peter heard, and wanted to believe, that his wife was genuinely interested in working hard to discontinue her jealous responses. The biggest surprise for Peter, however, was in learning that Sonja considered many of her controlling actions to be the kinds of caring directives one gives to the loved ones in one's family and in the culture in which she grew up: if you care about someone, you advise them of the best soup on the menu. To Peter, if you care about someone, you refrain from any suggestion that would even appear to interfere with a person's individual rights.

Peter's head was spinning after the initial round of discussion. He felt Sonja understood his goal for mediation therapy and he knew that he understood hers. He was clear that she finally understood why he left, and that she understood he was furious. He was surprised that she acknowledged responsibility for what was primarily angering him, her unfounded jealousy. And he was surprised that she claimed she wanted to change. The confusing part to him was that he and Sonja were not experiencing the "controlling" behaviors in the same way: Sonja felt she was expressing caring in a way her cultural background prescribes when telling him, for example, which soup to order. He felt this behavior as powerful attempts to control him and felt that his autonomy was being threatened.

The mediation therapist has bent over backwards to make disagreements in perception acceptable. Peter Andrews decides to go along with this formulation about the controlling behaviors, even though he is feeling fairly hopeless about Sonja's actions changing enough for him to feel comfortable with her. Nothing has changed to this point for Peter, but he feels that he and Sonja better understand each other's behavior in the marriage and both understand why they are living separately.

At a similar point, Sonja Andrews is relieved to acknowledge her irrational jealousy, to acknowledge her desire to work on her behavior and to save the marriage. Sonja is very frightened; the man she has chosen "for life" is saying that he is not at all sure he wants the marriage. She is sure that her goal is to stay married; down deep she is furious that he could even question being married to her. This is just one more time in her life when her hard-working attempts to control another person are simply not working. She feels impotent and scared. She feels as though the sky is falling down upon her when her husband talks about her jealousy.

This manipulative pattern of jealousy unquestionably exists, has manifested itself in many previous relationships and is finally acknowledged by Sonja. At first, she feels cornered, then relieved. However, the controlling behaviors that her husband talks about are the same behaviors her mother and grandmother exhibited to show their husbands their caring. And, if she

weren't feeling so guilty about her jealousy, she would have expressed how frustrating her husband's excessive need for space and privacy were for her. (This she eloquently expressed later on.)

Sonja Andrews believes that her viewpoint is the right way to look at the matter, and believes that her whole cultural group perceives directives as construing caring. She is now hearing from the mediation therapist that there is no right way or wrong way of viewing issues, only his way and her way, which need to be understood by the other. Sonja hears the mediation therapist saying that every couple disagrees, and hears her extolling the value of disagreement, which may be negotiated to solutions that Sonja and her husband both can contribute to and both may accept.

It sounds better to Sonja to simply have the same point of view about everything: maybe her parents had been right after all about the preference for, even necessity of, marriage within the same cultural group. Gradually, over time, Sonja comprehends that her husband, given his professional orientation, his own ethnic and cultural background, and so forth, simply does see things differently than she does. She finally, legitimately, understands how he might have come to those different viewpoints, and accepts that she might have to indicate her caring in a more direct way, along with clearly stating a "mere suggestion" regarding the best soup in the house.

Parenthetically, Peter also, over time, honestly begins to understand that his wife's behaviors, which he experiences as controlling, are positively connoted behaviors in the cultural milieu in which his wife grew up. When she slips and says, "Have the miso soup," he understands she is being caring and not controlling.

After seeing and accepting the other's viewpoint, as the Andrews did, the need arises for the development of a mutually acceptable solution, an "our viewpoint." To get from point A, seeing the other's viewpoint, to point Z, a mutually acceptable solution, instruction in communication and negotiation were required.

Acknowledgment, a fundamental principle in communication, is modeled by the mediation therapist and explicitly explained to each couple. After instruction, when Sonja says "Have the miso soup!" Peter acknowledges that he hears her suggestion, is grateful for her expertise in Japanese cuisine and for her caring that he order something he will like. Sonja, knowing that her intentions have been heard and understood through her husband's acknowledgment, then demonstrated a repeated ability to attend to her husband's thoughts and positions.

Along with paraphrasing, teaching individuals communication skills is one of the most important tools in mediation therapy. These communication

skills may include:

slowing down and acknowledging what the other is saying

becoming aware of behaviors that are habitual

practicing discipline, sacrificing personal responses such as interruption

attending and being present with the other.

Very important for couples to understand is that being receptive to hearing one another is, indeed, an active, powerful response. Each individual is requested to practice timing his or her responses to when the other would most likely be able to hear them—that is, to hold off communication until fertile ground is available on which to plant the seeds.

Teaching Negotiation Skills

Some modicum of listening and communication skills is critical for people to even begin using a verbal intervention to make a decision about the future of their relationship or other important matter. At a point at which couples can hear one another, can acknowledge what they've heard, and can communicate their thoughts and feelings back and forth without accusation, the mediation therapist begins to teach negotiation skills. Many of these skills will already have been modeled by the mediation therapist in an attempt to

manage the couple's conflicts. The mediation therapist prefaces the formal instruction in negotiation by acknowledging that the couple, in all likelihood, already knows and employs some of these same techniques in other areas of their lives.

Preliminary to the negotiation, I begin conflict negotiation instruction by sharing with the couple my self-knowledge equation:

Self-Knowledge Equation

	O	=	*optimal* solution for me
–	N/A	=	*not acceptable* solutions for me
	A	=	development of *acceptable* solutions

To negotiate, each person needs to be in touch with him or herself, knowing which solution would be optimal for him or her. He or she needs to know, as well, the solutions he or she could not live with. Too often, people negotiate only with optimals, not understanding that there might be acceptable solutions. Going head to head with optimal solutions is to say "This has got to go my way." Under the line, in the equation, on the bottom-line position, each person will develop a series of acceptable solutions. Armed with this self-knowledge, and not before, an individual can begin to make proposals to the other in an effort to reach mutual solutions. He can accept her proposal, or make counterproposals, then add modifications, ad infinitum, until a mutually

acceptable solution or several acceptables are found. To offer an image of this process: a new raindrop is formed that combines several raindrops from the now-melting icicles of the impasse.

Often brainstorming—exploring many and diverse, even ridiculous-sounding options—will lead to a solution with which both individuals can live. As stated by Ira Gorman, "the most important part of the process is for the brainstormer to let down his [or her] censor and put down everything that comes to mind. Any good list of brainstormed ideas will contain many wild ones."[4] Gorman illustrates the brainstorming process used with a single individual attempting to determine his future direction:

Mr. Black's Options or Ideas

1. Divorce
2. Live alone for trial separation
3. Move in with an old friend
4. Six-month marriage counseling contract
5. Separate bedrooms
6. Strict contract with rules to live at home
7. Have employer transfer [him] to another city for three months

8. Work in Europe for a year and bring family

9. Individual therapy for both partners

10. Family therapy with a well-known family therapist

11. Make clear commitment to act differently

12. Join commune

13. Suicide

This man ranked his considerations for making his decisions as follows:

Considerations	*Importance in Numbers*
Children's welfare	5
Financial security	2
End the fighting	4
Freedom to pursue interests	3
Not hurting spouse	4

After weighting his considerations, Mr. Black correlates his options with these important considerations. This assigning of numerical weights to the considerations is originally seen in the work of Robin Dawes in *Rational Choices in an Uncertain World*.[5]

The mediation therapist may or may not want to contribute ideas and options to the brainstorming process. When introducing brainstorming, Fisher and Ury's *Getting to Yes: Negotiating Agreement Without Giving In* is an excellent reference for couples. The mediation therapist may choose to share with clients sections from books and articles about brainstorming and the negotiation process in general. Since emotions are often very high at this point, some people readily use intellectual information to defuse intensity, to gain distance through information. For other people, the last thing they want to do at this juncture is to read any books, let alone one on conflict, in which they are already amply immersed. Those who do take the recommendation to incorporate reading into their process generally report highly favorably about its efficacy for them.

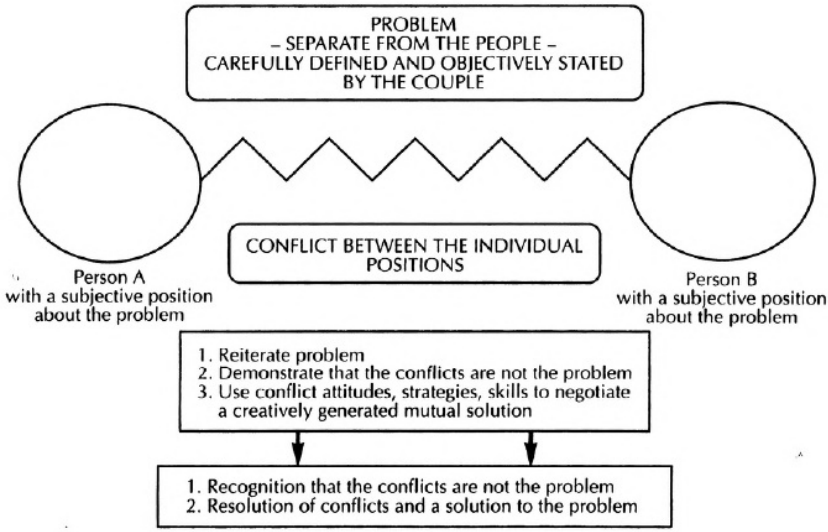
As I have stated repeatedly, it is important for couples to understand that one person doesn't have to be wrong for the other person to be right; often enough, people have oppositional positions, both with veracity. One person doesn't need to lose, or to be deprived, for the other to have his or her needs met. These are essential attitudes for individuals to have for negotiations to be successful. Couples need to understand at the outset that mediation therapy can mostly be a process of mutual gain. In coming to the process, they have already reached a fundamental decision together: they have agreed to end a state of limbo, agreed to make a decision about the future direction of their relationship. Additionally, the couple needs to see the

conflict that brought them to this point as an opportunity to reach a decision, to move forward constructively with their lives, together or apart, at home or away.

I request a change in perspective of the person who is feeling that he or she is "giving in" by giving up an original position: "Can you see this change as *not giving up*, but as creating something new, a new solution together? Can you see this finding of a mutual solution as generating not just one concrete solution, but as generating *a process* that will be concrete stepping stones to the resolution of many future conflicts?

The diagram shown in figure 6—1, which hangs in my office, was worked out with a class in conflict resolution. It illustrates an important distinction between conflicts and problems. As is evident in this diagram, understanding that the conflicts are not the problem helps those in conflict address the problem directly without becoming mired in their conflicting positions.

Figure 6.1 Differentiating the Problem from the Conflict



To illustrate the negotiation process further, a second couple beginning mediation therapy, Chris and Bill, were polarized around strong positions; she wanted to be married soon, he definitely did not want to get married soon. Ferreting out their underlying interests revealed that neither wanted to marry before they were both really sure of their decision. Through the mediation therapy process they decided to live together for one year, which she had initially opposed as implying a lack of commitment. She accepted the living together plan, with the proviso that at the one-year point they would decide whether to become engaged. This plan staged a commitment over time. The negotiation outcome addressed their joint interest in feeling a larger degree of certainty in making their marriage commitment.

Separation and divorce are frequently seen as defeat. Having a family member live in an institutional residence is also frequently seen as defeat. Some other ways of looking at these situations are as opportunities for independent growth; for appropriate socialization with peers of one's age; or as a way of understanding that there are needs and responsibilities that could not be met in the marriage or at home.

The mediation therapist helps the couple to see conflict and their options constructively. She or he teaches the couple conflict resolution techniques and attitudes, directly and indirectly, by using them. Using the concepts of Fisher and Ury, the mediation therapist looks beneath the couple's stated positions, to their interests, helping them look for opportunities for mutual gain.

Being fair and reasonable with each other and themselves is an option the mediation therapist keeps in full view, especially when a couple seems to be competing for control or for the "goods" in their relationship. Phrases such as "one fair solution might be" put ownership of an idea into the fairness camp, not into either one of the individual's camps.[6] People are taught that they can get back to the other, that they don't have to make decisions exactly at the time that proposals are made. Decisions and conflicts can be shelved or put on the back burner.

To use another example, during the initial stages of an initial interview, while a couple was sharing their essential lists, the wife suddenly brought up an affair her husband had had fifteen years ago. I asked if such a critical, very important issue could be postponed until after the rational discussion of their needs was finished. If the wife had felt it was paramount to discuss the issue immediately, then her need would have been met. In this situation the wife was able to say she could postpone the discussion of the affair, and later seemed to bring a component of rationality into the discussion.

"Backing right out of that one for the moment, let's take up the matter of X," is a technique the mediation therapist may use to interrupt destructive communication. Couples in mediation therapy are often in high conflict. When one partner brings something up, the issue need not, as illustrated above, be discussed at that very moment.

On the other hand, Fisher and Ury's ventilation suggestion, encouraging an individual or an intensely angry person to continue until he or she is done, is the opposite strategy and is also frequently useful.[7] With this technique, people are encouraged to picture themselves on the same side of the table together, problem solving, with the problem on the opposite side of the table. As mentioned previously in the section on radical conflict resolution techniques, if badgering or antagonism gets too high, the mediation therapist may want to call for a short break, end the session, or stand up and leave the

room, saying that when the heat decreases in the room it will be appropriate to continue.

Very occasionally, people posture to strike one another, or actually get up to do so. The mediation therapist, if brave, can stand between the couple, explaining that physical violence is out of the question. He or she can state that if it seems that it might arise again, the session will have to be discontinued. These radical conflict management techniques need rarely be used.

To a couple at loggerheads, the mediation therapist often explains that when we are in crisis we all typically think more narrowly and rigidly than usual. At this juncture of intense crisis the use of humorous brainstorming often helps loosen the rigidity in the thinking of partners: "What are your ideas, even very ridiculous ones, for breaking the logjam, or getting your thinking out of such tight boxes?"

Basic Principles for Conflict Resolution

All of the conflict approaches that combine into the mediation therapy conflict segment—Fisher and Ury's, Fisher and Brown's, Bernard's, Miller Wiseman's—seem to have some basic principles in common:

1. Each process gives people a chance to save face, preserving their

individual dignity.

2. Each process helps people to identify their problems and to separate those problems from themselves as respected individuals.

3. Each process encourages brainstorming or the development of creative options.

4. In order to make decisions, each process requires some development and clarification of information.

5. Each approach also asks people to be specific: If she claims her partner is demented, she is asked to be specific about how her partner exactly manifests being demented.

6. Each conflict approach demands that individuals find their own position or viewpoint and acknowledge the other's point of view.

7. Each approach uses some version of the paraphrase in an effort to help supposed antagonists better hear one another.

In some manner all the approaches use the following techniques:

"I" statements

active, receptive listening

explicit/specific statements (be specific!)

acknowledgment of all feelings as legitimate

double-checking what was said

outlawing the blaming of others.

Yet the approaches also have distinct differences. One distinction between Yetta Bernard's and my own approach from Fisher and Ury's principled negotiation is that in Bernard's and my approaches, the differences between couples are often emphasized, while Fisher and Ury emphasize shared interests and look for commonalities. The question asked in mediation therapy, originally Bernard's question, "Are the differences between you a threat to your relationship?" seems an unlikely question for principled negotiators to ask. But, in mediation therapy, an assessment of differences between people, as well as their similarities, needs to take place before looking for joint interests.

Each of the conflict negotiation approaches imply commitment, but each has a different bottom line of commitment. For Yetta Bernard's approach the couples must have a bottom-line commitment to one another; for my approach the couples must have a commitment to the process of decision making; for Fisher and Ury's the couple must have a commitment to finding a solution for mutual gain.

Mediation therapy is different from principled negotiation in that it

looks for differences between members of a couple, as well as commonalities. Mediation therapy has therapeutic aspects; it looks at resistances to resolving conflicts, at what people have invested in not resolving conflict, by virtue of unconscious needs, identity requirements, pride, or self-definition. The analysis of resistances, especially on an unconscious level, is not a part of principled negotiation.

Bernard's Contributions

Yetta Bernard's unique contributions to the mediation therapy conflict management approach have been the concepts of:

bottom-line and non-negotiable positions

inalienable rights

ground rules

role responsibilities

aches, gripes, conflicts, and anxieties

In addition, her suggestion to parents that they each have the power when they are dealing alone with their children helps parents act powerfully, alone, on their own authority, while overall policy making done together is the place where parents need to learn to pool their power and decision

making as a united front.

Bernard's question, "Are the differences between you a threat to your relationship?" is a powerful question, which, as stated earlier, has frequent applicability in mediation therapy. It separates out the potentially relationship-destroying differences from real, but not lethal, differences. In addition, Bernard's technique of giving a partner an appointment within twenty-four hours to address a question that the second partner is not prepared to address is an approach needed for all couples, especially those in severe conflict. Bernard illustrates a technique of having a couple set up a time to discuss one person's burning issue when the other person doesn't have time to discuss it on the spot. For example, the couple mentioned early in this section learned to set up times to discuss her burning issues regarding the children other than when her husband arrived home in the evening.

Bernard's question: "Just *how far* apart do you think you are?" helps couples realistically assess the degree of difference between them.[8]

Principled Negotiation's Contributions

All of Fisher's and Ury's principled negotiation techniques and Fisher and Brown's many techniques are helpful for mediation therapists and their clients. The mediation therapist and sometimes her or his clients can benefit by reading *Getting to Yes: Negotiating Agreement Without Giving In*. The range

of techniques and attitudes in principled negotiation is too broad to delineate here, but this range includes:

active listening

acknowledging what is said

positive framing and reframing

respect for the other

finding joint interests for mutual gain

generating multiple options

brainstorming

hearing a position as one option

personally supporting the other person

One very important principle in principled negotiation, also central to mediation therapy, is that completely understanding another's point of view is not the same as agreeing with that viewpoint. Far too many people seem to believe that if they acknowledge that they've understood another, agreement with the other's person's position has been signaled. Not so. One can say: "I understand what you're saying, I agree with this part, but I take a different view on Y."

Fisher and Brown's book *Getting Together: Building a Relationship Which Gets to Yes* has, at minimum, two important principles for mediation therapy clients. The first principle is to do what is good for oneself and the relationship, without the expectation of return—that is, without expecting reciprocal behavior. For example, one partner might say, "I want to take us both to the museum for the exhibition," without expecting the other partner to reciprocate in any way at any other time.

The other principle useful for mediation therapy clients is to understand that the best way to be understood by the partner is to give up trying to be understood and to attempt to understand the partner.[9] Instead of saying "But, you're not understanding me, I mean ..." say "Please tell me what you mean exactly by . ..."

Miller Wiseman's Contributions

Some of my unique contributions to my own conflict management integrated approach are:

the essential lists, which help individuals step back from the morass of fighting, where they feel deprived and depleted, to identify what they want and need in any good, long-term relationship, what they will not tolerate, as well as what problems and strengths they bring to any good long-term relationship

asking individuals to convert accusations, criticisms, and blaming into requests

identifying the realistic scope of a problem, large or small, as a way to accurately define problems and solutions

using imagery, metaphors, and drawing pictures

asking couples how their own families—and the cultural- ethnic groups they grew up in—handled conflict, divorce, separation, anger, sadness, and disagreement

the self-knowledge equation.

With regard to questions about individual's cultural influences, individuals frequently respond, "I didn't exactly grow up in family of problem solvers. Come to think of it, neither did my parents or my grandparents." People at this stage may become sympathetic toward themselves regarding their feelings of not knowing the first thing about handling differences in opinion, belief, or values. Reviewing their familial, cultural models or context for the resolution of conflict may be helpful if they have good models or if they have had poor or no models for conflict resolution in their families. When they're asked to remember the first time they experienced another person satisfactorily resolving conflict, they often cite contemporaries, colleagues, or friends, in the recent past or present. For example, one mediation therapy client related that the first time she remembered seeing a

conflict negotiated well was when she accompanied a colleague to a store, where the colleague was intent upon exchanging a dress. The colleague knew there was a no-return/no-exchange policy in this exclusive shop. After the colleague found a more expensive dress that she liked, the colleague convinced the store manager of the mutual gain they would experience in his making a larger sale and in her getting the dress she wanted. This was the mediation therapy client's first memory of an effective resolution to a conflictual experience.

Some people who haven't seen positive conflict resolution in their families remember parents of friends who impressively negotiated their differences. Important to our process is that people realize that just because they haven't grown up in families of problem solvers doesn't mean they haven't had surrogate conflict negotiation mentors or models in their environments. It is important to be able to say, "I want to resolve conflicts as effectively, smoothly, or graciously as my friend Andrea does. I've seen what I want to be able to do."

If people know and admire couples who effectively resolve their conflicts, or if they watch "The Cosby Show," for example, where negotiation is done regularly, these models will reinforce a couple's notions that effective conflict negotiation for them might well be possible. It is important to be able to visualize effective conflict resolution.

Resisting Conflict Resolution

Is this instruction in conflict negotiation, plus the instruction people get in their daily lives, enough to start couples negotiating effectively? For some couples it may be enough. For others, tapping into their resistances to resolving conflicts will be necessary. There must be myriad reasons why people resist resolving conflicts. Asking the bold question, "What is positive about keeping these conflicts going?" often nets an answer like Erik, a mediation therapy client, gave: "For me, the positive is that I get a sense of independence and space of my own. I think Ellen would manipulate me out of my space and independence if we were together on things and not in conflict all of the time."

Ellen also described the positives in being in conflict with Erik all the time: "I don't want to lose my own personal identity like I did in my first marriage. We were all 'wavy and mergy' but not as positively as Ward and June Cleaver. I'd rather be in conflict all the time than be the perfect couple with no individual identity."

The mediation therapist may comment compassionately and genuinely on the stake each member of the couple has in their conflict, perhaps by making a paradoxical statement such as, "From a personal standpoint, Ellen, it sounds as if you want and need very much to be your own person. From this viewpoint, you don't dare resolve these conflicts with Erik." To Erik, the

mediation therapist could comment paradoxically: “It sounds like if you’re going to continue to reassure your independence and have your own space, these conflicts are vital to you.”

If the couple comes to understand the mutually exclusive nature of their thinking—they say they want to resolve conflicts on the one hand, but they have large stakes in not resolving conflicts, on the other hand—they may be ready to explore how to go about protecting individual needs, while achieving interdependence. The necessity of their ongoing repetitive conflicts may be lessened by exposing some of the underlying needs these conflicts serve.

Seeing how the conflict serves a function is an initial step. Actually having the couple close their eyes to see, hear, and feel what their internal and external environment might be like without excessive conflict is a next possible step. It is peaceful, empty, harmonious, boring, energizing? In other words, what do they imagine the ability to resolve conflicts will bring them? If resolving conflicts brings negative results, then their resistance to learning conflict resolution is at least partially understood by them. Why settle conflicts if some great loss will most likely follow?

Finally, the couple may be asked to think about how often they use avoidance, individually and together, as a method, or the primary method, for attempting to deal with conflict. The couple is asked to consider how effective

avoiding conflict has been: does the avoidance method work well? Addressing a couple's resistances and avoidances to dealing with conflict—bringing out what they derive from having the conflicts and what is derived from avoiding them—is often essential to instruction in conflict resolution in mediation therapy.

The Andrews Revisited

To close the discussion of the conflict negotiation approach in mediation therapy, we will return to Peter and Sonja Andrews. When we last saw them, they had each achieved an understanding of how the other saw the problems. Sonja Andrews could understand that her caring directives were actually perceived negatively by her husband—as attempts to control him and limit his freedom. She already knew, too well, that her jealousy and impulsive accusations were her own individual problems, which she began to address by contemplating and beginning individual psychotherapy.

Peter Andrews understood that his wife was bothered by her own impulsive, jealous accusations, and that the caring directives, which he experienced as orders, were behaviors his wife had learned in her family of origin as intended expressions of caring. Nonetheless, as we look in on them, again, Peter still experiences those behaviors as intensely controlling, no matter how they were intended in her family.

Peter and Sonja were able to use instruction and reading about relationships, communication, and negotiation to talk about their relationship. They spent time in their sessions intensely communicating. They began to speak from "I" positions, moving away from their previously high levels of blaming and accusations. The mediation therapist firmly reinforced in a positive way when they began to speak for themselves and not negatively about each other.

Sonja commented very early on that on one occasion, Peter had turned beet red and had declared in vehement tones, "You shrew, you're always so suspicious of me!" Sonja picked up the language of the mediation therapist, asking Peter to put that accusation in the form of a request. He responded "Please, will you refrain from sharing your fears with me just as I am about ready to leave to meet my friends?" In so doing, Peter asked his wife to give him the benefit of the doubt. He asked her to assume that he is not sneaking around. He declared he had never and would never be unfaithful in this or any marriage, no matter how controlling she became: he would simply leave, as he had.

Sonja acknowledged that, in her head, she believed her husband is and will be faithful to her. She acknowledged that she herself has a great deal of work to do on an emotional, visceral level to catch up with what her head knows to be true. She pointed out to her husband, however, that his leaving,

experienced by her as abandonment, was not much better a prospect for her than his being unfaithful.

On his part, Peter's anger penetrated so deeply that it took him a considerable amount of time (much longer than it had taken Sonja) to acknowledge anything she had said. Initially, he would shake his head and look bitterly away when she spoke. It was noticeable when he said one day, "I know what you're saying, Sonja."

Very early on in the mediation therapy, the therapist addressed the asymmetry in the volume of their communication. Sonja initially appeared traumatized by the degree of rage she felt at having been left; she was unable to speak. (Far more typical is a wife who talks nonstop, with a husband furious on the sidelines.) The mediation therapist repeatedly told Peter and Sonja how very important it is for them to speak equally—for the sake of mutuality, symmetry, and neutrality. In this case, the therapist actually stopped Peter many times to obtain an equivalent communication from Sonja.

To this end, employing the rational structures from chapter 4 is useful, since they require a straightforward answer from each member of the couple. For example, when asked the question, "What did your partner bring to your unit, which you felt you lacked?" Peter mused that the same thing that bothers him so much now, Sonja's controllingness, seemed like the

directiveness she had when he met her, which he so lacked initially. “If every sword has two edges, just make sure this one is lying with the directiveness side, not the controlling side, on top,” remarked the mediation therapist.

As nearly every other couple does, the Andrews needed anger instruction. They labeled Sonja the angry one since she expressed her anger externally by yelling, throwing things—once even a whole frozen chicken. The couple polarized, by labeling her the angry one and him the quiet one; however, they were simply what Jurg Willi calls “polar variants” on the same theme.[10] Peter internalized his anger, avoiding overt expression until he could no longer stand it, then walking out of the marriage entirely, a very angry expression.

In learning the two-step process of anger expression discussed previously, first toxic-affective release, then more effective expression, Peter borrowed moderately from his wife’s direct expression for his first stage, expressing more physically and verbally, while Sonja modeled herself on his ability to hold back on the extreme overt expression of anger for her second stage. The two polar variants then met somewhere in the middle by more effectively expressing angry feelings verbally. Sonja learned particularly well the technique of visualizing having feelings such as jealousy or fear of being abandoned without letting them consume her, so that she no longer became those feelings. She voiced pride in her new ability to keep her feelings in

proper proportion.

Through a joint process of brainstorming options, Peter and Sonja and the mediation therapist devised a process of internal stroking, of gaining good feelings and self-praise when either of them successfully dealt with feelings that had previously been destructive. Sonja and her husband agreed that, initially, when she omitted sharing a jealous thought, with attendant good feeling, she could purchase an additional piece of her favorite antique stemware as she acquired a number of these omissions. And, initially, when Peter was able to identify a statement from his wife such as "Mr. G. certainly did give you a terrible haircut" as being one of having his best interests in mind, he similarly rewarded himself with good feelings, which were noted and led to his acquiring favorite household tools over a period of time.

During the mediation therapy process, Peter and Sonja had to journey to the Pacific Northwest to help care for Peter's elderly father. In the past, Sonja had been very uncomfortable staying in his parents' home because of some of the side effects of the elderly Mr. Andrews's disease. She was able to use techniques she had learned in negotiation instruction to bargain with Peter to stay with other relatives part of the time. He negotiated with Sonja to come with him, even though the future duration of their relationship was unknown.

Over the course of the mediation therapy, there were noticeable

changes in the Andrews' behavior and communication. Both Sonja and Peter were able to quickly put aside needing to be right or wrong. They were thoroughly accustomed to blaming and accusing, but quickly began to say, for example, "I don't see it the way you do" and "I feel that my integrity is being questioned when you are suspicious of me."

As has been mentioned, Sonja and Peter came from radically different family and cultural backgrounds. In Peter's family conflict was expressed by acting out, by somatization, or not at all, and in Sonja's family conflict was dramatically expressed, then resolved, not by negotiation but by kissing and making up with dramatic resolutions never to fight again. To witness Peter and Sonja heatedly, skillfully, negotiating a difference, without any of the prior paroxysms of rage or walking away, was rewarding for the mediation therapist. The final and most rewarding witnessing by the mediation therapist was being in attendance while the Andrews negotiated returning to live with one another. They remain together today, with their three sons, their mediation therapy having taken place well over ten years ago.

Conclusion:
Negotiating Requires Two Unmerged Partners

The use of conflict negotiation techniques involves both intervention in the couple's conflict before they even come to the office, and teaching them assertive communication skills, conflict negotiation attitudes, and conflict

negotiation techniques. Structures or questions, which help the couple see themselves more clearly, help couples obtain the distance needed for resolution of conflicts. These techniques, designed to help people build bridges to one another, inevitably throw people back upon themselves in self-discovery. The road to the other inevitably involves finding the path to the self. Conflict between people and disturbance in a relationship may be seen as partially stemming from individuals' not taking responsibility for themselves, from their blaming the other for not providing what the self needs to provide.

Standing by while people learn to negotiate conflict is to witness individuals' taking themselves back as separate entities, entities that require separateness before they may ever negotiate a oneness or a further separateness for continuing growth. The essence of helping people to pragmatically resolve their interpersonal conflict is to aid them in ensuring that there are not one but two distinct parties to the conflict.

Notes

[1] Fisher and Ury, *Getting to Yes*, 23.

[2] Bernard, *Conflict Resolution with a Couple*.

[3] Ibid.

[4] Gorman, Ira, "Decision Making Workshop"

[5] Dawes, 227.

[6] Fisher and Ury, *Getting to Yes*, 131.

[7] Ibid

[8] Bernard

[9] Ibid, 32..

[10] Willi, Couples in Collusion, 56.

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