

# TEACHING MEDIATION SKILLS TO MANAGERS: AN EXPERIENTIAL APPROACH TO TEACHING MEDIATION IN ONE CLASS

Edward G. Wertheim  
Northeastern University  
e.wertheim@neu.edu

## ABSTRACT

*Managers today are asked to demonstrate strong skills in conflict resolution in a variety of forms. While this primarily involves negotiation, the most common form of conflict resolution, there is an increased emphasis on mediation or third party assisted negotiation. Managers will find themselves asked to be involved as a neutral to solve problems. This may or may not lead to a formal mediation, but even if not, the skills required of a mediator, are useful skills for any manager. This session (presented by a professor of negotiation and professional mediator) will focus on teaching the basic skills of mediation in one or two classes. The session will involve a role-play used to introduce the topic.*

## INTRODUCTION

Organizations today need managers who are skilled in conflict and dispute resolution. In part this is the result of changes going on in the workplace, with organizations becoming flatter, decision making being pushed down into the organization and a greater reliance on teams. This generates an increased emphasis on horizontal communication compared with the vertical top down command and control structure in traditional organizations.

All this results in a change in the skill mix for managers as there is a greater reliance on influence, persuasion, and negotiation that comes with greater horizontal communication. Conflict is always present (and often helpful) in organizations but in the modern organization, the nature of conflict and conflict resolution can change in subtle ways. In a traditional organization, conflict is typically handled through the hierarchy. In the modern organization where much work involves people without authority over each other, the nature of conflict resolution skills can change as well.

There are many forms of conflict resolution. Negotiation is the most common. Not surprisingly, courses in negotiation, rare a few decades ago, are now quite common in Business Schools as well as other parts of the University, and required in many degree programs.

While certainly not as common as courses in negotiation skills, the topic of mediation skills is increasing in importance not only in business schools, but in other practitioner oriented disciplines. The author teaches the topic of mediation as a module in a negotiation class and also frequently runs workshops on mediation as a standalone topic.

Much mediation takes place informally. Increasingly, however, mediation is being offered as a formal, and often official, alternative to judicial hearings in small claims cases, minor civil and criminal complaints, divorce cases, prison disputes, environmental and regulatory conflicts, and many other contexts.

**Lessons for a class on mediation:** For some of us, mediation comes naturally; we have been doing this much of our life. For others, it is a skill that takes development and

practice. Students are told clearly that for most of them, one brief class or two on mediation will not make them competent mediators; but it will give them a taste of the topic and some self-awareness of areas they could work on so they are prepared for the role.

The objectives of the classroom session on mediation include:

- Why mediation is an important skill
- What does a mediator do; what are the key skills of a mediator
- The basics of mediation, the role of the mediator, the structure of mediation
- Practice skills in mediation and get feedback on strengths and areas for future development

## THE PRESENTATION: TEACHING MEDIATION IN BUSINESS SCHOOLS

Most students will never mediate in the formal setting of a court but will be involved with mediation in a less formal managerial setting. This session will focus on teaching the basics of mediation to future managers in a setting they will likely experience.

Teaching a class on mediation involves the following steps:

1. Introducing the topic with a short lecture
2. Running a demonstration role play in front of the class stopping it frequently for their comments
3. Having students in groups of three, practice mediation
4. Debrief

This presentation will focus on describing these basic steps in teaching a module on mediation and will include running the demonstration “fishbowl” role play cited above.

### **Objectives of the Presentation: The Presentation will focus on the first two items above and will include**

- Why Mediation: why the topic is important
- The Basics of Mediation (See Appendix 1)
- Discussion of how to teach mediation in one or two classes
- Experience an actual running of mediation role play conducted in front of the class (See Appendix 2)
- Discussion of the key takeaways from this exercise

### **Structure of the Session:**

- **Timing:** 45 or 60 minutes
- **Participants:** any number
- **Focus:** Undergraduate, Graduate, or Professional
- **Classroom Management:** When used in a course, the exercise itself takes about two hours including a discussion

## REFERENCES

Wertheim, E. (2016), *Guide to Mediation*, DMSB School of Business, Boston, MA.

### APPENDIX 1 GUIDE TO MEDIATION (NAME OMITTED)

**What is mediation:** Mediation is a process in which a neutral third party assists two or more disputants to reach a voluntary, negotiated settlement of their differences. The mediator uses a variety of skills and techniques to help the parties reach a settlement, but has no power to make a decision.

**Why Use Mediation:** Conflict is dealt with in a variety of ways within organizations. These can include giving in, delaying, avoiding, creating a task force, litigating, negotiating, fighting, threatening, and appealing to authority. Each of us probably has a preferred style of resolving conflict. Many of the conflict resolution modes mentioned above are ineffective and often even very costly in their short and long-term outcomes. Mediation is a form of third party assisted negotiation or conflict resolution that has the far greater potential for yielding positive outcomes from conflict than the forms we usually use. One of the reasons for the popularity of mediation is that it protects people from losing and increases the probability that those involved will comply with outcome by requiring those affected by dispute to participate in developing solutions for it. Mediation is dramatic departure from those standard processes because it makes us think strategically about how to persuade, not force, others to do what we want them to do. Mediation involves the process of convincing others to cooperate with us to achieve our goals.

#### The Mediator Role:

Mediation is only one of many forms of third party intervention in conflict resolution. What distinguishes a mediator from other roles is that the mediator must be neutral or else the process isn't mediation. Furthermore, a mediator has no authority to impose a binding decision on the disputants; the mediator can only persuade. Other characteristics of mediation are:

- disputants resolve concerns in any way acceptable even if the mediator believes that their settlement terms are shortsighted, inefficient, or not in either side's best interests
- mediating demands that we shed our authoritarian and paternalistic instincts; compels us to take seriously our commitment to democratic decision making; we pay a price for this; people sometimes make mistakes, cater to greed or act expediently

The job of the mediator is to manage the dispute resolution process by means of forging a common ground among the disputants, forcing the parties to clarify interests and to transform their rhetoric into proposals. Mediators use a variety of techniques in order to develop a framework for an agreement.

**What is a mediator's authority:** A mediator is not an arbitrator-typically he or she has no legal power to render a judgment. The mediator is not a lawyer acting as an advocate for one side. Rather the mediator is a neutral third party who helps the parties talk about their problems, unrestrained by evidentiary rules. The mediator can help the parties focus more on the true basis for their dispute and on future remedies. The mediator is not a counselor and is not to give advice. The mediator unlike an arbitrator or judge cannot settle the dispute by making and imposing a decision.

A mediator has neither the power nor the responsibility to provide advice. The mediator must depend on communication and influence skills and on gaining the trust of the parties

**Basic Principles:** There are some basic principles that characterize mediation and distinguish it from other forms of conflict resolution. Mediation requires disputants to **assume the major responsibility** for resolving their conflict; all disputants must accept proposed solutions to reach agreement, so it is counterproductive for them to antagonize each other. Mediation is **private** so it promotes candid communication and deflates public posturing. Mediation doesn't require parties to choose the best possible solution or develop a strong factual underpinning to justify their specific terms; mediation is instead aiming at a solution parties can live with whether or not the solution is a "good" one. Finally, the most fundamental value of mediation is **equality**; mediation requires us to treat each person with equal dignity and respect.

**Why Choose Mediation:** Mediation can be very inefficient compared to alternatives and there are many circumstances where mediation is inappropriate. If people think they can prevail without mediation or if people think it is not in their self-interest to engage in mediation, they shouldn't do it. However, be aware that we often don't have as much power as we may think we have and that we may be unclear about what our self-interest really is.

## The mediator's job

The mediator's role involves a number of different jobs and skills including the following:

- **facilitator:** create a positive atmosphere, one that is conducive to problem solving; open communication channels
- **structuring** and managing discussions
- **chairperson**-number, time, place, format, number of person who participate; support services; focus discussion, maintaining control
- **communicator;** parties often don't understand what the other is saying; mediator must transmit ideas, positions, convictions, emotions; if parties don't understand each other, the mediator might "translate."
- **educator:** must empathize with aspirations of respective parties and understand technical aspects of each substance proposal; then convey information to those who lack it
- **translator:** sometimes people use language that triggers hesitation, fear, or some other negative response; function is to translate statements or proposals into language that increases probability of being favorably received; task is to reduce sting of language
- **Resource expander**-help the parties create options; generate additional information that is germane to controversy; suggest new ideas for settlement, setting up meetings, leveraging other services
- **Distinguisher of positions from interests**
- **Agent of reality:** sometimes a mediator needs to make parties more realistic
- **Guardian of durable solutions;** mediator doesn't impose judgment but must consider consequence of what people are agreeing to and try to ensure that the terms of agreement they develop will last
- **Scapegoat**-lightning rod for frustrations and concerns
- protector of the process; example sometimes a person will use mediation as a delay and has no intention of resolving conflict

Mediation in relatively formal settings tends to have a recognizable procedural structure. Although there are a number of variations in theory and ideology, and a plethora of individual styles, the following basic outline is reasonably typical, and reflects the small claims experience of many excellent mediators trained in principled negotiation. This outline is structured chronologically in terms of the major stages and options during a mediation. You should keep in mind, however, that the overall goals of the process remain the same throughout- to help the parties separate relationship from substance, to elucidate their interests, to focus their attention on options that take into account both sides' interests, and to develop independent objective standards for choosing among such options. In other words, the goal is to facilitate the implementation and fruition of a process of principled negotiation by setting the rules, controlling the agenda, and serving as an example.

It is worth emphasizing at the outset that mediation is not arbitration, and settlement is not necessarily the most desirable outcome of the process. The final decision on whether or not to settle is not the parties'. It is your responsibility to see that the parties understand their choice and to explore with them their enlightened self-interest, but not to impose your values on them. Not all parties should settle, or will find settlement satisfactory if you push them into it. On the other hand, there are many troublesome issues of power imbalance, law versus equity, and so on, that may come up, and that you may feel call for a more substantive role for the mediator. In responding to such circumstances, you should consider a refusal to sign and file an agreement with the court to be your basic and ultimate recourse, and coercing the parties into an agreement you approve of to be unacceptable.

## When should mediation be used?

Not all conflicts can or should be mediated (many feel that conflicts like sexual harassment or offenses involving weapons and physical injury should not be mediated). Situations where mediation seems to work include:

- long standing disputes when past efforts at negotiation have failed
- when one disputant feels the other is more powerful or can't be trusted

**The role of the mediator** is to facilitate the parties in the dispute to reach an agreement themselves; guiding and managing the steps of gathering points of view, find common interests, create win-win options, evaluating options. Trust in the mediator is essential; teams may be used to increase chances of matching factors that seem to affect mediation-age, race, sex.

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## APPENDIX 2 ROLE PLAY

Before students mediate on their own, it is helpful to have them watch a mediation in a fishbowl situation. Typically, I play the landlord and ask a student to play the tenant and another student to mediate. The following case works well.

### The Case of the Outage Outrage: The Role of the Tenant (Defendant):

*Your landlord has taken you to Housing Court trying to evict you; the judge has ordered you to try mediation before she will hear the case. Housing Court focuses non-payment of rent issues.*

You are an independent professional computer analyst who rented the first floor unit of a small South End apartment house; this was about a year ago. **You work at home.** The landlord is a nice enough person, a do-it-yourself type who is slowly fixing up this building. He doesn't really have much experience in carpentry, plumbing, or electrical work and this shows; he makes a lot of mistakes, but you give him credit for trying. He doesn't look that well off. The apartment has been OK in general and the landlord is OK except for this do-it-yourself stuff. He warned you about the renovations he would be doing but you didn't realize it would be anything like this. You also wonder if what he is doing is legal, you wonder if he is violating some city codes about plumbing and electricity.

Without any warning, he will shut off the water to do some repair. Or he will spend all morning with that circular saw when you are busy trying to get a report out to an important client.

Three months ago was the last straw. You had gotten up very early to put the finishing touches on this project for your most important client and all of a sudden the power goes out and you lost three hours work. You had to call the client and tell him you would be late. It was embarrassing and unprofessional.

This was the last straw. You called a Tenants Rights Organization you heard about and they said a tenant could sue (in small claims court, not in housing court where you are now) for this problem (including triple damages) and you could withhold rent (\$1200./Mo). You get \$150. An hour, this comes to \$450. And tripled is \$1350. This is what you will ask for in small claims court (**this is housing court, not small claims**) when the case comes up next month. When he pays damages, you will pay the back rent for the past three months.

(My backup position doesn't state this and doesn't move to this position unless there seems to be genuine movement.) *You would be willing to pay the back rent if you get some monetary damages for what he did; You would drop the triple damages issue and perhaps you should have backed up your work more frequently, but he shares a lot of the blame. You need assurance this kind of thing won't happen again. You don't think he can evict you in a situation like this but you are not sure. You don't want to get evicted or have a rent non-payment go on your credit rating. Perhaps you should threaten to call the city about potential code violations.*

### Summary

- **Situation:** Landlord's stupidity cause you major problems and cost you three hours crucial time; you are withholding rent (\$1200 mo.) and asking for damages
- **Goal:** You are asking for 3 hours lost work @ \$150. Per hour = \$450...triple damages \$450.x3=\$1350; also you don't want to get evicted.
- **Problem:** owner/landlord's mistakes caused you to lose 3 hours work; you had no warning; it was embarrassing to have to tell the client.
- **Other issues:** he gives you no warning about his repairs; he has no experience.