

UC San Diego

Conflict Case Studies

Title

Case Study #8: Empowered Process: Multicultural Collaboration

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Publication Date

2019-04-22

CIAS WORKING PAPER

Cover Sheet

Readers are encouraged to send comments and critiques directly to the author. Because of this text's deliberate "one-of-a-kind" format, detailed page-by-page comments and questions are welcome. This paper represents Case Series #8, in a set of case studies for a future conflict resolution textbook. An "Introduction to Conflict Case Studies" is also available to guide use.

The text has been successfully piloted with several international classes. Those, who benefit most, stress the importance of carefully studying the introduction. Because the case study format is intentionally unique, written in an interactive and non-linear workbook style, unlike many introductions, the information provided is required for understanding. The introduction is so critical to effective use, the most important paragraphs are repeated at the beginning of each case study. Confused readers are encouraged to read the "Introduction to Conflict Case Studies" in its entirety.

Readers report rich reward when they approach the case studies in the interactive workbook style recommended, and, for example, take time to reflect on questions; add their own opinions and interpretations. They also do activities, applying conflict research, theory and approaches presented, to the case study and personal experience. Their main challenge is accepting that thorough analysis and practice can take a lifetime.

The author is particularly interested in comments that will help instructors and individual users around the world fully understand and effectively use the text's curriculum for important social change. For example, would you suggest an instructor's guide?

Please also let the author know what you appreciated most and would like to see "more of" in future texts. These case studies are part of a larger vision for evaluating and sharing effectiveness with leading non-violent peace and conflict resolution. The author would appreciate hearing your "success stories" and the most troubling challenges (including ethical and cultural) you face. Thank you and best wishes.

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Title: Holding These Truths: Empowerment and Recognition in Action

(Applied ethics & diverse cultural perspectives for advanced conflict resolution)

Source: Proposed textbook prepared for William and Flora Hewlett Foundation

Sponsors: UCSB Global Peace & Security Program (part of IGCC), William and Flora Hewlett Foundation

“Introduction to Case Studies:” Excerpts

A teaching case is a story, describing or based on actual events and circumstances, that is told with a definite teaching purpose in mind and that rewards careful study and analysis...

In the real world, the solutions to complex problems cannot be found in textbooks nor will everyone agree on the “right answers” to difficult questions. The case method prepares learners for a world that demands critical thinking skills and the ability to create convincing arguments, often with little time and incomplete information.

Laurence E. Lynn Jr. Teaching & Learning **With** Cases (1999).

Readers may feel somewhat disoriented, confused, and even a little anxious, when they first read case studies, especially if they are accustomed to texts that present information and linear logic. In the latter, points are described step-by-step and connected with explanations.

Here, however, each case study deliberately goes back and forth between describing 1) important case study facts, 2) conflict and resolution theory, 3) ethical perspective, 4) cultural views, 5) questions for the reader, and 6) application---opportunities for reader analysis. No explanation is provided. Readers are likely to miss valuable learning unless they carefully read and respect the interactive suggestions. The reader is expected to develop her or his own thinking by, for example, actively asking: What is the possible connection or relevance of this information? What do I think? What are my reasons? What options exist here? What criteria do I propose for evaluating alternatives?

(I)ntermediaries can learn from experiences in dealing with past conflicts, but there is no model that can be applied to all cases. The unique features of each must be examined carefully and adjustments in strategy made throughout the process, which is invariably complex and sensitive.

WHAT TO DO WITH MISSING OR VAGUE INFORMATION

Case studies are often open-ended, or incomplete, to emulate real life ambiguity and complexity, and helps users develop critical thinking and confidence required in the face of challenge and uncertainty---particularly these cases. These are concept, principle and process application cases, rather than decision-forcing, policy making or illustrative cases. For readers new to case studies, decision-forcing cases require actual decision, with simulated pressure. Lynn, *supra*. Policy making cases direct the creation of framework or processes for policy making. Illustrative cases record historical success and failure. Application cases, however, focus on increasing student skill, without necessarily requiring decision. Decision-forcing, policy making and illustrative cases necessarily contain more descriptive and substantive detail than application cases. *Id.*

These cases are deliberately even more open-ended than many application cases, with sparse facts, for several reasons. First, they intend to teach and guide advanced conflict resolution skills, including the ability to identify important information gaps and “fill them” through, for example, framing excellent questions and acute observation. In real circumstances, particularly complex ones, conflict intervenors, like detectives, face many unknowns. They must be willing and have the courage to navigate uncharted waters. Often times only seasoned judgment (their own and respected colleagues) is available for determining whether understanding is sufficient.

I wanted more specifics about the original conflict to begin with, but I also understand that some of the ambiguity is simply how one has to enter conflict scenarios. We will probably never hold all the pieces of information when we start. Discovery is part of the process.

This is definitely a powerful process. (Anonymous student)

Second, responses to complex ethical and cultural dilemmas evolve. They are not solutions to be described or finalized, with simple logic or reference to expert authority. As one student commented, these are the questions with “no answers.” They require extended, perhaps life-long, reflection and dialogue, and, most importantly, consciousness of real world consequences, after attempted practice. Readers should feel no pressure to reach conclusions or provide answers. Questioning, reflection, discussion and awareness are the desired results.

to (P)eacemaking is marked by experimentation. There is no way
go about creating peaceful communities and a peaceful world..
Working for peace will differ according to context. Herr & Herr,
Transforming Violence: Linking Local and Global
Peacemaking (1998).

With cultural issues, majority and minority are used to avoid the stereotyping that unfortunately still too often accompanies specific labels. The open-ended cases allow readers to introduce, discuss and show their own cultural expectations and preferences with each other. With my students, this has been a much appreciated opportunity to create multicultural community and interdisciplinary dialogue, in relatively low-risk environments (at least in contrast to discussions in the heat of conflict.)

In my last multicultural conflict resolution class at the University of California, Berkeley, more than eighty percent of my students identified with one or more minority groups within and outside the United States. Several have dual citizenship. They are citizens of Argentina, Australia, Belize, Bulgaria, China, Costa Rica, Cyprus, Finland, French Polynesia, India, Iran, Mexico, Nigeria, Pakistan, Peru, Romania, Thailand, Turkey, and more than forty additional countries.

Everyone attempts to identify, describe and explain their own cultural experience, assumptions, values and preferences as they participate in conflict resolution. Ideally, the result is truly inclusive. At least, participants empower themselves.

The ideal response is like one elicited with a Hmong student. One of the case studies resonated with her experience in the United States as a first generation immigrant and the first member of her family to feel comfortable speaking English. As a result, she spoke in great detail about her family's many cultural challenges and conflicts.

Readers are invited to reference and consider their own life experience with conflict whenever analyzing and discussing case studies. This engagement raises readers to the level of "peer partners" or "experts" with cases, and prepares them for whole-hearted participation in future role-play simulations.

The text is written so that no particular background or training is required or has an advantage. This is important with multicultural dialogue, where members of various cultural groups may be sensitive to others "speaking for them." Others may simply stay quiet in the presence of authority. Still others might react with offense, angry accusation and heated debate. None of these responses promote the open, reflective and inclusive dialogue and learning desired here.

Once again, the purposes of this collaborative partnering are to fully engage readers in true-to-life dynamics and maximize development of advanced skill

and awareness. Unlike simpler negotiations exercises, where participants can be given a factual, even mathematical, formula, for resolution, complex intergroup exercises require participant creativity, prolonged discussion, initiative and persistence. Developing necessary skills and attitudes may be the most realistic and important outcomes with complex, tough case studies.

These case studies have been field-tested with many different groups, ages eighteen to sixty, representing diverse groups within and outside the United States, and a wide range of interests, disciplines and professions. They include peace and conflict studies, social welfare, various sciences, public health and policy, psychology, pre-medicine, nursing, law, environmental and development studies, engineering, ethnic and area studies, education, communications, business and political science. The issues raised in these cases are relevant and meaningful to most, partially because the detail provided is only what is essential to introduce the issues for exploration. More technical detail risks excluding less knowledgeable participants and narrowing the audience, while “cluttering” the ethical and cultural issues shared across the conflict resolution continuum.

Readers are free to adapt the cases to their own interests through integrating their knowledge and experience, or researching topics of interest. Some students have done interviews regarding culture, conflict and values. Others incorporate library and internet research.

Commentary is provided throughout the cases to help readers consider, apply and integrate relevant interdisciplinary approaches to and diverse perspectives regarding conflict resolution. An attempt is made to highlight and introduce some of the richest resources for advanced practice from a practitioner perspective. Commentary, questions and exercises are interwoven throughout the cases, rather than at the end, to further engage readers, simulate real world reflection and analysis, and guide readers in regular application of conflict theory, research and material---also a habit and practice of advanced intervenors, popularly called reflective practice.

Like the cases, commentary is provided without explicit guidance or explanation. Readers are encouraged to continue proactively developing their own questions and thinking as they would in real circumstances, imagining ways of connecting the commentary to case material. At the very least, articulating one or more questions, regarding how the material relates to the case study, will engage the reader in necessary critical thinking, initiative and information gathering. The more complex the case, the more important these skills become.

In some ways, conflict resolution cases are analogous to business administration cases. Unlike law or medical cases, business and conflict cases lack a well-defined professional knowledge base and formal logical processes for application.

Business case analysis may draw on virtually the entire body of knowledge of behavior and social science and may make use of

it

in virtually limitless variety of ways. Originally, cases were just about anything...faculty could find to provide a basis for provocative discussion...(T)he reasoning process is more experiential and associative, involving pattern recognition and intuition, than it is logical reasoning, as in the teaching of law, or scientific reasoning.

Lynn, *supra* at 10-11 (citing Christensen with Hansen 1987, 25.) (“In less institutionalized domains, such as administration, social work, planning and education, the question of what constitutes “essential knowledge” is far less clear; indeed, it may be difficult to rule out any but the most esoteric or specialized knowledge as relevant to practice. In such domains, “structuring” a well-defined body of knowledge is a less essential skill than identifying knowledge potentially relevant to resolving the problem at hand. *Id.*”

IV. EMPOWERED PROCESS: MULTICULTURAL COLLABORATION

Case Study Topics (In Order Presented)

Cultural Competence

Recognizing & Examining Assumptions

Cultural Assessment

Research Models (Hofstede)

High versus low context

communication (Edward Hall)

Individualism versus collectivism

Self-determination

Alternative Dispute Resolution

Negotiated Rulemaking

Necessary Parties: Intergroup Representation

Good Faith Agreements

Conflict Resolution Review

Mediator Checklists:

Careful Listening

Interest Identification, Constructive

Framing & Agenda Setting

Intergroup Ratification

**Creative Problem-Solving
Option Generation
Brainstorming (with guidelines)**

**Option Evaluation
Criteria
Cost/Risk/Benefit Analysis
Single Text Document**

Case Study

A minority student is suspended. During mediation, he rarely makes eye contact with the others present---all adult authorities of various ethnic backgrounds and identities other than his own. He speaks quietly, and only when asked a question. At one point a teacher says "That's part of the problem. He disrespects authority and doesn't care."

Questions

- **What assumptions are present? Are you aware of possible cultural factors? How would you investigate?**
- **Whose cultural standards regarding respect govern a conflict resolution process? Should? How does this relate to power?**

Case Study

A woman approaches you for advice regarding conflict within her local African community. Her concerns involve relationships with family and community in Africa.

You worked with one other case involving people from this African country. Otherwise, you are unfamiliar with its culture, politics and history.

You quickly learn from the woman that she acts as some kind of leader within her local group. She identifies herself with a tribal name and points out one of her relatives as an elder in a book.

The woman mentions much grief, feelings of powerlessness, and even despair, from deaths within her family. The local challenges she wishes to discuss involve her own community and people from tribes other than her own. She asks to meet. The day of your meeting she arrives in African dress.

Questions

- **How do you proceed? What are your options? Do you see any ethical issues/dilemmas?**
- **Do you need any information before answering the above? Before proceeding? How would you seek it?**

- **How do you respond to the information that there are 100+ ethnic groups in this African country?**
- **What do you know about “African” (including tribal) perspectives regarding conflict? Communication? Problem-Solving?**

Case Study

You practice alternative dispute resolution of lawsuits, with a specialty in health care. One day a local hospital asks for help. An illegal immigrant just gave birth to a premature infant. Her husband awaits deportation. Soon after her husband’s apprehension, the mother disappeared, leaving her child in the “premie” care unit. Hospital social services immediately reported abandonment. Criminal charges were filed. After attempting to see her baby, the mother was detained. You are asked to mediate a resolution satisfactory to all parties.

CONFLICT RESOLUTION/MEDIATION PROCESS

Alternative dispute resolution...is a recent and explosively growing movement which seeks to reduce litigation, increase participant satisfaction, and control court congestion...Dispute resolution alternatives run a broad gamut of forms and functions (and include all alternatives to litigation with lawsuits.)

Mark D. Bennett and Michelle S.G. Hermann, *The Art of Mediation* (1996).

Case Study (continued)

The only information you have about the mother’s culture is one attorney’s statement that a husband’s being willing to mediate with his wife present “would be enough without expecting the wife to speak.” (This attorney shares citizenship and ethnic identity with the parents.)

Questions

- **What ethical issues/dilemmas arise? Discuss options and consequences.**

Cultural Exploration

The importance of culture to conflict resolution may not be immediately or readily apparent. Its significance can be quite distinct from popular or political discussions emphasizing cultural identity. Students of and parties to conflict resolution, particularly in the United States, may not be aware of or able to articulate a clear or single cultural identity. Others may not wish to acknowledge cultural difference because of negative experience with cultural politics, prejudice, and discrimination. Regardless, culture is pervasive in conflict and its resolution.

We do not need to have a conscious, clear or single cultural identity to assess cultural influences and dynamics. In fact, students and parties with multiple cultural identities, who have actively experienced the challenges and conflicts of bridging cultures for themselves, are often the best prepared to see and discuss how cultures conflict in all their details. Their awareness of concrete difference, in values, expectations, assumptions, communication, approach to conflict (and to life in general), relationships, authority and problem-solving, mirrors what a cultural assessment in conflict resolution observes and investigates. Cultural identity is an important variable, along with power dynamics--- but only a few of the important factors to study.

Failure to do a cultural assessment for a conflict process, and to acknowledge important cultural difference, risks perpetuating unconscious (and conscious) prejudice and discrimination. Such common neglect with mediation and other popular Western conflict models allows a certain approach to dominate without discussion or question. It may preclude going forward if participants refuse to consider or join the process. In contrast, an inclusive democratic, or multicultural, process requires preliminary and on-going examination of cultural difference and design of process, honoring preferences present.

Ethical Perspective

Consider this Proposed Standard Of Practice For Mediators:

B. ***The mediator's role*** is (1) to encourage and assist in the parties' exercise of their autonomy and self-determination in deciding whether and how to resolve their dispute, and (2) to promote the parties' mutual recognition of each other as fellow human beings despite their conflict Baruch Bush, *supra*.

Cultural Exploration

Various research models compare and contrast styles of communication and other variables important to conflict resolution. Such models are rigorously critiqued; even qualified by their own authors. They risk being used to promote prejudice and unfair, inaccurate generalization. See, e.g. Hofstede, *supra*. ("...it is doubtful practice to use instruments developed in one country...in another cultural environment, assuming they carry the same meaning there.")

...the values of the researcher determine to a large extent the way he or she observes, describes, classifies, understands and predicts reality. There is no way out of this dilemma but to (1) expose oneself and one's work to the work of others with different value systems and (2) try to be explicit as possible about one's own value system. .. The cultural component in all kinds of behavior is difficult to grasp for people who remain embedded in the same cultural environment; it takes a prolonged stay abroad and mixing with nationals there to recognize the numerous and often subtle differences in the way they and we behave because that is how our society has programmed us. Id.

With these reservations and risks in mind, my students find models comparing cultures helpful. My students to-date have represented over fifty different countries.

In my last Multicultural Conflict Resolution course, about eighty-three percent spoke for one or more minority communities within the United States. Several have dual citizenship. They live multicultural conflict and challenge. These students use popular cultural research models for insight and language. Concrete description helps them articulate their personal values, communication style(s) and other cultural differences.

Ethical Reflection

Geert Hofstede approaches culture with values as key--- programmed early in lives to influence

preferences and expectations, and so much a part of us that we believe our subjective choices to be rational, even though we inevitably hold conflicting values within ourselves. Culture is the collective introducing and reinforcing shared values through its institutions. Hofstede also sees values as rarely imposed or changed from “without,” but, instead, through shifts in collective conditions, or, most effectively, behavior change.

- **It is common to hear that value disputes cannot be negotiated or mediated. If one accepts Hofstede’s approach to culture, however, all, or most disputes, are value disputes. Discuss.**
- **Attempt to describe a conflict that is not a value dispute.**

Cultural Exploration

Students of conflict resolution particularly appreciate 1) Edward Hall’s and others’ exploration of what they call high versus low context communication, 2) various studies of orientations to time, 3) elaboration of cultural expectations and practices regarding touch, space, eye contact and other communication/relationship differences, and 4) Hofstede’s studies of cultural differences in work-related value orientations such as power distance or hierarchy, uncertainty avoidance, and individualism versus collectivism. A few examples follow.

Social anthropologist E.T. Hall introduced high context versus low context culture, and the related difference, between cultures that practice and value public admission of problems and errors, and those which act to “save face” by keeping criticism and problem discussion private. For example, a traditional Korean party, engaging in, or even witnessing, mediation’s public disclosure of criticism would likely be extremely uncomfortable and even “pained.”

Korean interpersonal relationships operate on the principle of harmony. Maintaining a peaceful, comfortable atmosphere is more important than attaining immediate goals or telling the absolute truth. Koreans believe that to accomplish something while causing unhappiness or discomfort to individuals, is to accomplish nothing at all. If relationships are not kept harmonious, it is difficult, if not impossible, to work toward any goal...To Koreans, to put greater emphasis on efficiency, honesty or some other form of moral integrity is to be cold and unfeeling.

Vegdahl Hur, Seunghwa Hur (1988).

High context cultures are characterized as communicating more covertly than low context cultures. They rely on non-verbal communication and implicit understandings. See, e.g. Silent Language, *supra*.

Several of my students have mentioned attention to subtle cues and non-verbal communication as important to cultural competence in conflict process. Creating a safe environment that encourages increasingly honest, open disclosure of vital information requires sensitivity to party (cultural) values, norms, expectations. In certain instances, disclosure will not occur. Some cultures avoid giving opinions. Party silence may communicate disagreement. Some cultures and circumstances may require greater privacy. One student suggests treating these circumstances “gently and tactfully while fully respecting the cultural rule.”

Pragmatic concerns also arise with the cultural contrast Hofstede and others name individualism versus collectivism, especially since the concept and value of self-determination are core to popular conflict resolution. Related is the social relations orientation--- whether cultural group members perceive themselves as independent social agents or as part of a collective, where members act out of a sense of duty/obligation/loyalty, and conformity to collective norms is expected.

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely on the parties’ ability to reach a voluntary,uncoerced agreement (emphasis added)

Model Standards of Conduct for Mediators, *supra*.

Many assimilated North Americans assume self-determination means the concept of a separate, autonomous and assertive self. Yet in other circles, self-determination refers to the rights of a group. That perceptions, values and definitions of self-determination are not universally shared or understood is demonstrated by the international debate regarding human rights. Cultures defining individuals’ identity in relation to their primary groups are often offended, or at least confused, with the North American primacy of the individual.

Questions

- **How can communication and problem-solving processes, relying on individual self-determination, involve and engage those who define their identity in relation to their group(s) rather than a separate self?**

Ethical Perspective

- **Contrast “alienation of the individual” with “tyranny of the collective,” or the benefits, opportunities, risks, costs and limitations of both individualism and collectivism.**

People’s family and personal stories will bring greater sense of conciliation than historical ones.

Barbara Tint Alon, *Collective Memory, Cultural Identity and Conflict Resolution* (2001).

- **Discuss. Is the above a US cultural perspective? Don’t many cultures consider family stories absolutely private? Do you know of cultures more comfortable with communicating by analogy, history or myth?**

Cultural Exploration

Cultural research models and assessment statements (like those in earlier case studies) guide multicultural assessment of conflict. My students of advanced conflict resolution have used these tools to gather information--- through anonymous surveys, focus groups, process observation of communication and problem-solving styles, and private interviews of conflict parties regarding values, expectations and preferences with conflict and resolution process. Sometimes parties to conflict actually complete and discuss cultural assessment statements themselves.

Effective cultural assessment must be creative and sensitive. It is more of an art than a science.

Openness increases learning.

Many of my students believe that suspending judgment and treating all equally and fairly, so that no one is offended and favored, or facilitating “equivalence of voices,” is the most important guideline for cultural competence. Practically, of course, prejudice and discrimination of any kind cannot be a part of a process that seeks voluntary participation.

Students’ second most popular recommendation is to have and show a true desire to understand cultures in depth and complexity. “No detail is too small.” Related is the ability to encourage others to share “their uniqueness.” Third parties can do both with attentiveness, sensitivity, and sincere appreciation.

If something confuses you, there is nothing wrong with asking!! Cultural competence is cultural understanding. You might not understand most things that are done in a certain culture but the other person will appreciate (your willingness) to try to understand. All it takes is a little bit of enthusiasm. Being enthusiastic about differences and the wonder of another’s culture is a wonderful thing. The feelings will...be reciprocated. Anonymous Student from India.

“Gratitude at being heard transcends all cultures...this recognition leads to party empowerment.” *Id.*_(from Africa)

A tie for second place with these students is facilitating “ground rules” with everyone’s input. Ground rules can respect and include all individual and community (cultural) norms equally. Thus they create a solid multicultural foundation and help everyone feel comfortable. From this perspective, my diverse students see self-determination “crossing cultural barriers,” allowing parties to structure and implement a process comfortable and appropriate for them. Other recommendations include: 1) giving speakers, whose first language is not English, sufficient time and patient attention, and 2) noticing possible discomforts; gracefully eliciting enough information to respond, holding a private meeting, or recognizing that eliciting may feel intrusive. An assistant or colleague well-respected by a cultural group may be a necessary partner for sensitivity and knowledge. With complex and long-standing disputes, historical research and cultural immersion can be required.

Several students conclude that popular mediation process promotes cultural competence. Its emphasis on personal (cultural) storytelling humanizes and naturally increases appreciation of “the other.” Careful paraphrasing checks accuracy and completeness of understanding. Detoxifying, through reframing culturally charged language without losing essential meaning, helps parties continue---highlighting the benefits of communicating and problem-solving together. Focus on interests that leads to some sense of shared need, or commonality, transcends and bridges culture. Last, but most exciting for many students, difference enhances creative option generation.

While multicultural exploration is complex and challenging, those working with cultural difference appreciate its necessity and rewards.

(Intercultural transformation is the process) by which individuals move beyond the thoughts, feelings and behaviors of their initial cultural framework to incorporate other cultural realities with a cognitive structure that enables a broadened and deepened understanding of human conditions and cultural differences...The increased cognitive depth and breadth is in turn likely to facilitate corresponding emotional and behavioral capacities as well.

Young Yun Kim, Ruben (1988).

APPLICATION

Excellent Multicultural Assessment:

_____ **Considers, consults, and, when appropriate and helpful, incorporates relevant resources, within and without;**

_____ **Addresses the “basics” of culture and conflict resolution:**

_____ **Norms/Values;**

_____ **Assumptions/Expectations;**

_____ **Communication;**

Approach to and Perspective regarding Conflict & Problem-solving;

 Uses Multiple Means:

 Observation;

 Interviews: Individual & Group;

 Consultation with Expert Resources;

 Confidential Surveys;

 Considers culture in its rich diversity, e.g., socio-economic, geographic, gender, as well as ethnic and religious difference, and intra-diversity: difference within cultural groups, e.g., voices and styles;

 Approaches culture as dynamic, with openness to change;

 Identifies “missing” data, e.g. questions to be researched;

 Describes concrete supporting detail and data (while suspending evaluative judgment);

 Continues and evolves throughout entire process.

Proposed Working Assumptions to Guide and Promote Openness, Honesty & Understanding in Multicultural Process

That participants commit to:

Valuing difference & genuine contact and communication;

Acknowledging diversity in depth and dynamism: allowing and respecting individual voices within as well as without “cultural groups,” and respecting changes in opinion;

Surfacing and examining the details of their own assumptions, generalizations and ignorance regarding difference; reducing any and all prejudice and dogma regarding ability, gender, class & status, sexuality, ethnicity and religion, and any other practice nurturing hatred and oppression;

Being sensitive, considerate, and compassionate with historical and present pain and struggle: “This is not just an abstract or intellectual discussion.”

“Speaking truth to power” (including anger, disappointment and hurt) without attack or blame: expressing experience in ways that help others stay open to hearing and understanding.

Case Study

Background

A State Commission asks you to facilitate negotiated rule-making regarding religious practice in state prisons with representatives from religious communities throughout the state and the State Department of Corrections. The Commission identifies and invites religious spokespersons. Corrections selects their own employee-representatives.

CONFLICT RESOLUTION/MEDIATION PROCESS

Negotiated rule-making is an alternative means of conflict resolution used by public agencies, at all levels of government. It is most likely to be suggested and used when agreeing to administrative rules and procedures may otherwise require or involve litigation. See, e.g. E. Franklin Dukes, *Resolving public conflict: Transforming community and governance* (1996).

APPLICATION

- **Are you comfortable with the process for identifying and inviting necessary parties? If not, what would you do differently?**

Preparation

You fax all identified parties (representatives) three pages of proposed agreements to ensure confidentiality, honest, open disclosure, and other conditions necessary for a good faith proceeding.

Meeting #1

You begin with introductions around a large circular table, review the proposed “ground rules,” ask for questions, and discuss them. You ask each person present to share their reasons for participation.

All agree to proposed parameters. You suggest the practical ground rules of one person speaking at a time and no interruptions. Everyone appears to agree.

Shortly after you start, one of the religious representatives produces a document he has prepared with proposed rules. When you ask for information to help you and others connect his document with other working documents, he does not respond. You repeat your request. Again, he appears to ignore you and insists that his proposal be adopted.

During this time, another religious representative, identified as a spiritual leader, arrives. He quickly changes the subject of discussion, asking about the state's willingness to allow spiritual advisors into the prisons. He becomes visibly upset when he hears that all prison visitors, including spiritual/religious advisors called for emergencies, must give notice to the prison and go through security clearance.

Somehow the meeting proceeds around the table so that everyone expresses themselves. Based on initial statements, you identify:

- 1) security concerns regarding religious/spiritual advisors entering prisons to lead services, ceremonies and rituals, particularly if they are carrying materials into prisons on a regular basis, i.e., outside people and materials entering prisons must pass security measures;
- 2) questions about which inmates should be allowed to participate in various religious/spiritual practices and how these decisions are made;
- 3) security concerns regarding certain spiritual/religious traditions;
- 4) the timing of ceremonies and security procedures, such as cell checks, and
- 5) security concerns regarding inmates keeping religious/spiritual items in prison cells.

You end the meeting with concern, particularly regarding the representative who ignored your requests. You wonder whether he is comfortable with the Commission's choice of you as facilitator and whether he will respect and work with you.

Questions

- **Do you see possible cultural issues affecting the process? How would you investigate your questions and gather the information needed to understand party expectations? Otherwise, how would you proceed?**

CONFLICT RESOLUTION PROCESS REVIEW/APPLICATION

“putting it all together”

As you read the case study, you are encouraged to apply or practice the conflict skills learned to date, including:

- 1) paraphrasing at the levels of substance, emotion and meaning:
- 2) framing open-ended and penetrating (in-depth) inquiry:
- 3) identifying interests (spoken and unspoken) and noting shared (commonalities):
- 4) framing issues and collaborative questions to encourage option exploration/generation:

Mediator Checklist: Careful Listening

Builds needed rapport & trust:

Possibilities:

___ **Validates;**

___ **Encourages;**

___ **Other: _____;**

___ **Listens actively:**

response;

___ **Asks questions for free & complete**

___ **Clarifies;**

___ **Shows heartfelt response;**

___ **Searches for speaker's essential**

concerns:

**What is most important? Spoken?
Unspoken? What needs to be
adequately addressed for genuine,
lasting buy-in?**

parties to

___ **Summarizes what is heard and asks**

correct, change, and continue.

Meeting #2

You resolve all concerns from your first meeting (through a few phone conversations). You begin the second meeting by caucusing, or meeting separately, with each group present. When you meet with one of the religious groups, a member raises a concern. Two other representatives (part of the same religion) circulated a letter since the last meeting, allegedly misrepresenting facts from that meeting to the larger religious community. The concerned representative expresses anger, a sense of betrayal, and mistrust about proceeding. After detailed discussion, all present are apparently satisfied.

The groups come together. New representatives from religious and ethnic communities appear. A few participants arrive as the meeting begins. They introduce themselves, but you do not know their reasons for joining the process. One speaks strongly for a few minutes and leaves.

A Corrections lawyer is present to answer and clarify legal issues. The religious representatives include a law student who does volunteer religious advocacy.

CONFLICT RESOLUTION/MEDIATION PROCESS

With community conflict process, where representatives speak for larger groups and communities, the choice of representatives is a critical early step. A specific method for selecting representatives, or spokespeople, needs to be agreed upon by those represented. Possibilities include the range of decision-making methods, such as majority vote, consensus or selection by a respected authority, like what may have happened here.

APPLICATION

- **Are you comfortable with the representation described here? If not, what would you do differently?**
- **How do you view the power dynamics here? Are they adequately balanced? If not, what do you propose?**

Meeting #2: Issues are articulated and prioritized (based on review of minutes from the last meeting.) Each is discussed.

APPLICATION/REVIEW

Analyze the information provided in this case study and write in the categories listed below.

Mediator Checklist: Interest Identification, Constructive Framing &

Agenda Setting

_____ **Complete, accurate interest (need/concern)**

identification:

Religious Communities

State Commission

Corrections

Anything else you need to know? Understand?

_____ **Cooperative framing:**

_____ **Detoxifying language to emphasize most important message;**

_____ **Recognizing & reinforcing commonalities; describing shared interest to each and every party's satisfaction;**

_____ **Framing issues as collaborative questions to enhance creative option generation;**

Examples

- **Directions: Complete with case study information.**

Can anyone think of ways that we can consider _____'s interest in _____ and _____'s need for _____?

How might we respond to these interests: _____, and _____?

_____ **Agenda setting:**

_____ **Foundation first (or "first necessary steps or building blocks");**

_____ **Most important first;**

_____ **Easiest first.**

- **Case Study: What type of agenda would you propose? Explain your reasoning.**

Meeting (continued)

At one point the director of Corrections expresses frustration. He has participated in such a process before--- a few different times. Apparently, whenever agreement is reached, the representation and leadership of the state's religious communities change. He would like to be promised consistency and stability over time. In response, the director of the State Commission leads a discussion regarding the process of disseminating, publicizing, and ratifying the results of these negotiated rulemaking sessions with the state's religious communities at large.

CONFLICT RESOLUTION/MEDIATION PROCESS

To build the necessary foundation for a complex intergroup dispute like this one, the third party must lead design of a group approval process. Good faith ratification ensures that the opinions and concerns of those represented are actually considered throughout the process. Obtaining groups' response and feedback, regarding the conflict resolution process and any agreements being negotiated, is critical with a political process like the negotiated rule-making here.

Even if group “buy-in” and support are not required, they are often wise. Ratification hopefully prevents future conflict and discontent. At least, it solicits valuable perspectives and information.

APPLICATION

- **Based on the information provided, propose one or more processes for ratification.**

Meeting #2 (continued)

Facilitated negotiations of issues continue, with apparent progress and some agreement. At one point, though, one of the spiritual leaders starts to repeat himself and appears to digress from the current agenda item. After allowing him to speak for several minutes and sensing some of the Corrections staff’s impatience, you attempt to interrupt and re-direct. You are apparently ignored.

When you interrupt again, the speaker becomes angry. Most, perhaps all, of his religious community appear upset. One member informs you that it is extremely disrespectful to interrupt an elder even “if he talks a whole day or more.”

Questions

- **How would you describe and learn what is important about the cultural issues here?**
- **Is it “cultural” to expect focus on one issue at a time? To expect a pre-determined agenda? To expect non-repetition of substance?**
- **Are you aware of different cultural expectations, perceptions, beliefs and practice regarding “interruption”?**
- **How does a third party respect different cultural norms and preferences without promoting one group over another, i.e., remain neutral/impartial?**

Note: Time is an interesting issue, raised by many in the international survey of third party competence mentioned earlier (surveying the Balkans, Cameroon, Nepal and Ukraine.) In contrast to cultural models that divide cultures by orientation to time, these survey responses crossed and joined diverse cultures. Several within each cultural group requested a faster process, while several within the same groups requested the opposite---a slower process.

CONFLICT RESOLUTION/MEDIATION PROCESS: OPTION GENERATION

Now we arrive at the “fun part”---creative generation of party options for the issue being considered. I put quotation marks around “fun” because, despite the popularity of creative problem-solving in corporate design, and many parties’ familiarity with brainstorming and other creative tools, transferring these approaches to sensitive, tough conflict is a sophisticated challenge.

Cultural differences may compound difficulties. All mediators need to be prepared to adapt the ideas presented below or design new option generation processes in response to party needs, cultural preferences, and the nature and context of the particular conflict.

Even without considering culture, the optimal climate for maximum creativity is created by relationships of trust built over time. A third party with strong rapport is in the best position to guide creative process.

Brainstorming is the most common next step in a mediation process. The author of brainstorming, Osborn (1953), proposed these guidelines: 1) suspend judgment (or put it aside temporarily for later evaluation), 2) the more unique the ideas, the better, 3) go for quantity and speed, 4) have fun, and 5) “piggyback:” build on others’ ideas and use them to stimulate your own. Speed and fun are practical process suggestions to help suspend judgment and promote new ideas. When offering ideas, tentativeness and openness to possibility are recommended. Framing might sound like: “How about...?” “What if...?” “Has anyone considered?” and “Has anyone heard what they did with...”

Being tentative and open also helps with building ideas. One of the regular losses of escalated aggressive conflict is failure to recognize opportunities and assets. A myopic focus on negativity, threat and fear hurts self-interest as much if not more than “the other.” Once again, parties risk becoming their own worst enemy.

When my students are shy about brainstorming or sense that it may be inappropriate, they have asked parties to privately create wish lists or visions of ideal and desired outcomes; then they have facilitated sharing and exchange with each other. This can also be a necessary first step to discovering best alternatives to negotiated agreement (along with researching possibilities.)

The essential goal, whatever process is used, is the same---to maximize creative generation of options, and hopefully see new possibilities. Skilled negotiators consider “twice as wide a range of options and outcomes as less skilled negotiators. Tubbs, *supra*.

SOME POINTERS FOR BUILDING IDEAS

Recognize existing areas of agreement and shared interest.

Start with areas where agreement seems most or more likely.

Appreciate “small agreements.”

APPLICATION

- **How do you propose generating ideas and discovery of new possibilities with the circumstances described here?**

CONFLICT RESOLUTION/MEDIATION PROCESS

Once parties create options, they evaluate them. Several tools are available.

One was mentioned earlier---developing evaluation criteria based on what is most important to each and every party. Suspending judgment during new idea generation can be challenging for many parties, particularly those trained in critique more than creation. It is helpful, if a party forgets or ignores the “no judgment” guideline, for the mediator to audibly reframe judgments, reflecting them back to the speaker as values heard. Next s/he lists values heard under “evaluation criteria ” (where parties can see them), and reassures the speaker that the value will not be forgotten. Simultaneously, the third party reminds and redirects the speaking party to “suspend judgment.” This will result in a strong initial evaluation criteria list, while moving the process forward. Note: The final list, in the interest of collaboration, will need to be approved or adopted by all parties.

Another popular Western evaluation approach is detailed, in-depth cost/benefit/risk comparisons of options. The most sophisticated approach includes “best alternatives to negotiated agreement” to determine the “real world” intelligence of proceeding and agreeing. Party research and consultation with experts may be important, but, again, this is often more of an art of imperfect prediction and probabilities than a science. Depending on the case, much research and expert consultation may be required.

Meeting #3

(A detailed summary of the agreements reached in meetings have been prepared and circulated for review prior to the meeting.) The meeting begins with discussion and negotiation of two remaining issues. Finally it is time to review the final agreement. The Department of Corrections has drafted (substituted?) its own agreement, which it now circulates. As you compare it to the draft you prepared and circulated, you quickly realize that the Corrections draft omits several important details.

Ethical Perspective

➤ **What ethical concerns arise? How do you respond?**

CONFLICT RESOLUTION /MEDIATION PROCESS

Another option evaluation tool is the “single text document” used by President Jimmy Carter in the Camp David Middle East negotiations. Apparently inspired by architecture’s use of draft designs to solicit specific client criticism, a detailed document is prepared of the agreements to-date and circulated for party review and revision. (Possible Research: the details regarding the use and form of single text documents in various political processes.)

Meeting #4:

A new member of one of the state’s religious communities arrives a few minutes after the review process starts. He is elderly and identified as a spiritual leader. He sits next to you. A few minutes after his arrival, he turns to you, looking perplexed and says “ Strange how they don’t seem to appreciate or consider Divine Law.” He appears to be asking you for an explanation or permission to add his perspective to the process.

Case Study Postscript

One of the religious representatives carefully compares the document first drafted with the one circulated by Corrections to ensure that agreements are accurately and fully described. When done, she circulates the document to all concerned. They agree to its contents.

Third Party Conflict Intervenor Competencies

Information Gathering Skills and Knowledge

Demonstrates cultural appropriate interviewing techniques that consider level of intrusiveness, directness, social distance, formality and forms of address. (University of California, Berkeley, School of Social Welfare)

Relationship Skills and Knowledge

Promotes party recognition of each other as human beings despite their conflict. (Model Standards)

Interaction & Conflict Management Knowledge & Skills

Consistently demonstrates alert, attentive observation of process dynamics and accurate detailed description, while consciously separating sensory data from assumptions, evaluations and conclusions; regularly checks latter with parties;

Demonstrates ability to diagnose process need, identify or design appropriate intervention(s), implement and evaluate with a variety of challenges, including impasse.

Communication Skills & Knowledge (Model Standards; California Training)

Demonstrates awareness of different cultural communication styles, explores appropriately with parties, and effectively integrates into process;

Gives constructive feedback, i.e., specific concrete and nonevaluative description of perceived dynamics, with focus on ways of improving communication and problem-solving.

Problem-Solving Skills and Knowledge

A. Demonstrates critical thinking:

Active, continuing commitment to inquiry, exploration and understanding
(See, SPIDR
Qualifications) including

Growing awareness of personal (cultural) filters, expectations, values, assumptions and interpretations, particularly those that may hinder effectiveness, e.g. prejudice;

on-going assessment of perspectives' validity through careful examination of underlying

concrete data, openness to data that may call perceptions into question, and demonstrated

ability to integrate new information and change perspective;

seeking, receiving, and gaining insight into ideas, perspectives, assumptions and beliefs different from own;

B. Actively evaluates:

Identifies and articulates specific process challenges and questions, with explanation of importance;

Develops alternative action hypotheses explaining and with potential for improving process;

Articulates rationale for process choices;

Investigates actual consequences of applying action hypotheses and process choices, and revises accordingly.

C. Facilitates and promotes party critical thinking and problem-solving through (See, SPIDR Qualifications)

Recognizing and effectively responding to different cognitive and cultural problem-solving styles;

Promoting careful, rigorous and realistic party evaluation of options, including

1. Investigating BATNAs (SPIDR Qualifications);
2. Suggesting "homework" to obtain necessary information and consult with expert resources (Id., AFM, VIII, Lawyer Mediators, Model Standards, CCMMO, Maryland);
3. Developing evaluation criteria (SPIDR Qualifications; See, Maryland);
4. Facilitating detailed option cost/risk/benefit analysis, considering short and long-term consequences and workability (Id.)

Persistently encouraging exploration of ways to maximize all parties' gain.

Reformulating issues in ways that allow new orientations to solutions to emerge;

Demonstrating enthusiastic engagement, using creative tools, e.g. inductive reasoning, and otherwise creating climate that encourages divergent thinking and persistent problem-solving;

D. Demonstrates, promotes and encourages creative process (Model Standards):

Tolerating ambiguity, cognitive dissonance and uncertainty, with frustration, tension and discomfort; even encouraging incubation ("time off") when necessary to generate novel ideas;

Leading spontaneous and investigated generation of several options (e.g. 5+) for every negotiable issue, including some not previously considered. (AFM, SPIDR Qualifications, California Training, Maryland);

Modeling creative progress (benefit) through collaboration between different, even opposing, perspectives, e.g., building on ideas, combining, or synthesizing, “the best” ideas, into new and varied patterns, and otherwise leveraging process opportunities and assets;

Creating atmosphere where parties feel comfortable challenging each other’s perspective and reasoning, openly disagreeing and expressing all doubts, and channeling results to enhance creativity and responsiveness.

Note: If no source is indicated with above competencies, they are proposed by the author of this text.

ROLE-PLAY SIMULATION



Cast of Characters

1. State Commission
2. Department of Corrections Representatives
3. Religious Community Representatives
4. Corrections Lawyer
5. Law Student From and For Religious Community