

UC San Diego

Conflict Case Studies

Title

Case Study #6: Cultural Competence: Ethical and Empowered Response With Discrimination

Permalink

<https://escholarship.org/uc/item/40t6z9x0>

Author

Erbe, Nancy

Publication Date

2019-04-26

CIASWORKINGPAPER
CoverSheet

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 presents Case Study Series #6, in 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 the activities, applying conflict research, theory and approaches presented, to 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 efforts. The author would appreciate hearing your "success stories" and the most troubling challenges (including ethical and cultural) you face. Thank you and best wishes.

Author: Nancy D. Erbe, J.D.
Director, Rotary Center for International Studies in Peace and Conflict Resolution
Lecturer in Conflict Resolution, Peace and Conflict Studies (www.rotary.org)
International and Area Studies
University of California, Berkeley
Berkeley, California 94720
Tel: 510-642-4679
Fax: 510-642-9850
nerbe@socrates.berkeley.edu

Title: **Holding These Truths: Empowerment and Recognition in Action**
(Applied ethics & diverse cultural perspectives for advanced conflict resolution)

Source: Proposed textbook prepared for the William and Flora Hewlett Foundation

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

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 in a 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; so 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 there? 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 help 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. Oftentimes 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 dynamics 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.

(P) Peacemaking is marked by experimentation. There is no way to 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 experience. Ideally, the result is truly inclusive. At least, participants are empowered.

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 simple negotiation 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 eight to sixty, representing diverse groups within and outside the United States, and a wider 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) here 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.*”

SECTION III. ADDRESSING VIOLENCE, CHAPTER 6 CULTURAL COMPETENCE: ETHICAL AND EMPOWERED RESPONSE WITH DISCRIMINATION

Case Study Topics (In Order Presented)

Power Dynamics
Gender
Dynamics of Violence
Defining Violence & Abuse
Use & Abuse of Power

Appropriateness of Alternative Dispute Resolution

“Best Alternatives”

Sources & Types of Party Power Shared Interests (Commonalities)

Power Balancing

Case Study #12: When one negotiator speaks, others laugh, look down and away, interrupt, and eat.

Questions

- How does intimidation look? Sound? Feel?
- Do your assumptions and analysis change if all negotiators are men? Women? One man negotiating with a group of women?
- You are asked to offer ideas for improving negotiations. How would you first check out all perspectives?

Cultural Exploration: Gender Messages

- *List three messages you heard or saw as a child.*
- *"Boys and Girls:"*
 - 1.
 - 2.
 - 3.
- *What did your parents and other important adults show you?*
- *"Women and Men: "*
 - 1.
 - 2.
 - 3.
- *What messages did you receive outside of your home --- from television, movies, schools ?*
- *"Great, strong, popular, successful... men/boys and girls/women:"*
 - 1.
 - 2.
 - 3.
- *When did you receive the most attention (positive and negative) as a child?*
- *List messages and examples of ways women and men communicate, problem -solve, and resolve conflict.*

Men:

Women:

Research compares "male communication" and "male communication culture" with "female communication" and "female communication culture." (Suggested: When reading the following research, notice where you agree and disagree.)

Women

1. Talk to build and keep rapport;
2. Share self and learn through disclosure;
3. Talk to create equality;
4. Match experience with others to show understanding and empathy;
5. Support others by expressing understanding of feelings;
6. Include others in conversation by asking for opinions and encouraging; wait turn to speak;
7. Keep conversation going by asking questions and showing interest;
8. Listen empathetically and actively;
9. Are tentative so others feel free to add.

Men

1. Talk to assert self and ideas;
2. Do not share self; feel vulnerable through disclosure;
3. Talk to create status and power;
4. Match experience to compete and command attention: "I can't do that;"
5. Support others by doing something helpful, like giving advice or solving problem for another;
6. Do not "share stage" with others; interrupt to make points;
7. Assert self and ideas;
8. Build ideas competitively;
9. Are assertive so seen as confident and in command.

Julia T. Wood, *Gender, Communication and Culture*, Intercultural Communication (2000); *see also* Victor D. Wall, Jr. & Marcia L. Dewhurst, Mediator Gender: Communication Differences in Resolved and Unresolved Mediations; Helen R. Weingarten & Elizabeth Douvan, *Male and Female Vision of Mediation*, 4 *Negotiation Journal* 349-358 (1985).

Cultural Exploration

➤ **Observe men and women communicating. Notice what talks most and the following.**

➤ **Are "traditional" men more:**

- Aggressive?**
- Directive?**
- Controlling?**
- Dominating?**
- Goal Oriented?**

➤ **Do they use more:**

Hostile Language?
(profane, sexual...)

Suggestions & Opinions?

➤ Do “traditional” women:

Qualify their language?

Hedge?

➤ Use more:

Disclaimers?

Questions at the end of their statements?

Verbal “Fillers”/Extras?

➤ Laugh More?

➤ Are they more:

Indirect?

Supportive?

➤ Do they give more information?

Cultural Exploration: Conflict Resolution Preferences

➤ What best describes your ideals? Try creating your own.

Masculine/Feminine

1. I am expected to get the “best deal possible.”
2. I am “my own person.” I like people who know their own potential and work to maximize.
3. How you get there is as, perhaps, more important than the end: peace by peaceful means.
4. I believe there are certain problems that should be solved by men.
5. I am confused about modern male-female relationships and rules.
6. Women and children should not be publicly involved.
7. No one owes anyone anything.
8. “Survival of the fittest” (or “every man for himself.”)
9. Survival is the rule when you are poor.
10. The end justifies the means.
11. Some degree of compromise may be necessary with conflict.
12. People should help themselves. Enabling weakens.

Ethical Perspective

Related to male and female approaches to communication and conflict is the ethical debate regarding reason and emotion. Feminist theorists dispute ethical theories promoting reason and rationality over emotion and empathy. *See, e.g., Nel Noddin, Caring: A Feminine Approach to Ethics and Moral Education (1984).*

Many theorists, however, stress the importance of reasoned discourse, even debate of differences, with democratic ideals. Some elaborate the dangers and questionable ethics of emotion appeals *See, e.g., Johannesen, supra.*

I must not agree with or give into the arguments or appeals of others in an unthinking, uncritical, automatic fashion. I must advocate my own position and use my own capacities for persuasion to assess propositions urged by others. *Id.*

Interestingly, Aristotle saw the capacity for reason as a uniquely human capacity, while recognizing our emotional nature. He believed emotional appeal was necessary to motivate good acts, and advocated a balance between the two. *Id.*

➤ Discuss.

Cultural Exploration: Conflict Resolution Preferences

➤ What best describes your approach?

Abstract Principle/Concrete Consequence

1. Logic rules.

2. I consider concrete consequences to real people before political or other abstract principle.
3. I look for the right answer.

Cultural Exploration

To identify the values of several cultures, Geert Hofstede surveyed over 100,000 employees of IBM, with branches in 72 countries. His conclusions involve 50 countries and 3 regions. One of the resulting continuums rates what Hofstede named masculine and feminine societies. According to his model, "masculine" cultures confer strong superior status to men. Men are seen as the appropriate spokespeople in conflict and other public process. Competition, or win-lose, conflict is encouraged. Proper social roles and behaviors are more rigid.

"Feminine" societies confer more democratic equality for men and women, and encourage cooperation. Social roles are more fluid and dynamic. Geert Hofstede, *Culture's Consequences: International Differences in Work-Related Values* (1980); Geert Hofstede & Michael H. Bond, *Hofstede's Culture Dimensions: An Independent Validation using Rokeach's Value Survey*, 15 *Journal of Cross-Cultural Psychology* 417-433 (1984); Geert Hofstede, *Cultures and Organizations: Software of the Mind* (1991).

Related is what Hofstede calls power distance. Societies with high power distance confer superior and inferior status based on age, class and other difference. Superior status is needed to participate and speak in decision making. Lower power distance correlates to equal and inclusive process. *Id.*

Both continuum spark debate. Many of my students around the world, regardless of culture and citizenship, believe that balancing power and treating all parties equally, with respect, may be the most important requirement for multicultural process. All parties must have an equal opportunity to be heard. All should be treated fairly; even equally. Prejudice and discrimination, including preference and favoritism, should not be tolerated.

Students suggest that minorities should be allowed to voice their opinions first. If necessary, process should be private to prevent public harassment and abuse. Those who do not agree with democratic process should be excluded, particularly if they are societal authorities perpetuating discrimination and other wrongs,

Ethical Perspective

A mediator shall work to ensure equality of process and to encourage mutual respect among the parties... There should be adequate opportunity for each party in the mediation to participate in the discussions.

Model Standards, *supra*.

➤ **Discuss.**

Questions

- **How do you respond if: only the male head of household, upper class, government representative or tribal elders speak in conflict process?**
- **A party is stopped from participating?**
- **Mutual respect between parties may be unlikely but some hope for progress and improvement exists if the process proceeds?**
- **The above discussion is criticized as Western (imposing Western values)?**

Cultural Exploration: Conflict Resolution Preferences

- **What best expresses your preferences? Once again, try creating your own.**

Collective/Relationships/Societal Status/Authority

1. Problems and conflicts should be resolved according to relationship.
2. Certain groups and individuals are superior to others.
3. Power must be shared democratically for problem-solving and conflict resolution to be optimal.

4. The person with the most power should have the final say.
5. I am suspicious of those who claim to know all the answers.
6. Everyone has something to say regardless of knowledge or education.
7. Discrimination based on ability, sex, class, race, ethnicity, sexual preference, religion... is wrong.
8. In my family/community/culture, I respect that certain people have greater authority to speak, e.g., elders, experts.
9. All are equal.
10. Respecting societal status and rules (including unspoken) is important. Deferring to authority is the honorable thing to do.
11. I would feel terrible if I broke any rules.
12. Authority should be questioned.
13. We should accept (not challenge) our fate, e.g., place in society.
14. Respect for formal structure, such as a strict agenda, promotes optimal problem-solving.
15. Caring for my family (community, company) is of utmost importance.
16. The expectations and rules within "my group" (family, culture, community) are different than what is expected when I interact with those outside "my group."

Case Study #13: A government agency invites you to do a neutral fact-finding with alleged sexual harassment. You interview those who are complaining.

The first person you interview says the man in question asked her on dates at least three times. She refused. About a month ago she received a card from the same man, expressing dismay, confusion and hurt. She hopes by ignoring him he will "get the message" and leave her alone.

The second report states that this same man has a habit of "ogling" her in the hall, e.g. visually scanning her from head to foot. This makes her uncomfortable. She did not complain, however, until he commented on her "nice ass."

This man and woman have worked together for years. She has been married the entire time.

Questions

- **What is sexual harassment?**
- **Is sexual harassment a form of intimidation?**
- **Do you have all the information you need? If not, how would you obtain?**
- **Do you know the legal definition of sexual harassment? If not, how would you investigate?**

Case Variation:

- **What if: the card includes a picture of a bare-chested man?**
- **The manager who hires you is a citizen of another country (not the United States)?**
- **All parties are men? Women?**

Conflict Theory

It is common to hear conflict resolution professionals agree that mediation and other democratic processes are not appropriate with history, presence or threat of violence. Professionals with expertise in preventing and intervening with violence often define violence to include: 1) assault, 2) abuse (elder, spouse, child, employer/employee), 3) war, 4) torture, 5) suicide, 6) sexual harassment, 7) destruction of property, 8) terrorism, 9) hate crimes, 10) computer, equipment and product sabotage, and 11) property damage.

Questions

- **How do you define violence? What do you include?**

- Is violence/non-violence either/or discussion, or is there a range of aggression and violence?
- What are some of our options in response to violence? Specifically, what can we do in response to violent terrorism, in addition to protesting for peace and going to war?

CONFLICT RESEARCH: DYNAMICS OF VIOLENCE

Serious questions arise if information surfaces that violence is being encouraged (knowingly or unknowingly) by a conflict's system. The too common and dangerous reality for many, however, is that dependence on and desire to stay connected with their important groups limits consciousness and acknowledgment of violence.

Leadership may promote conformity. Too often, leadership rewards and models denial, avoidance and other trained incapacities that allow and cause violence to occur and grow.

For example, consider: "part of this is simply gender. It's a combination of gender and (being a gun owner.) Gun owners and men (who are generally more pro-gun) are more likely to have threatening experiences than women." Tom Smith, Director of the General Social Survey, University of Chicago's National Opinion Research Center General Social Survey (1996).

- Women commit about 2.1 million violent crimes each year in the U.S. (Seventy-five percent are simple assault on other women.)
- Men commit about 13 million violent crimes each year in the U.S. (Just over half are simple assaults, with seventy percent of victims men.)
- There is one violent male offender for every nine males 10 and older, compared with one violent female offender for every 56 women age 10 and older.
- One in ten adults (U.S.) report being shot at. Almost twenty-five percent have been threatened with a gun. Forty-five percent have firearms in their homes.

National Crime Victimization Survey Averages (1993-1997); Washington Post-ABC Survey (2000).

In *Deadly Consequences: How Violence Is Destroying Our Teenage Population and a Plan to Begin Solving The Problem* (1991), Deborah Prothrow-Stith, M.D. cites research concluding that "aggression is a learned behavior, one that can be unlearned." Applying social learning theory, social psychologist Leonard D. Eron suggests that aggressive behavior is modeled and becomes "a part of a child's standard repertoire only if...reinforced. *Id.* In my research, I have found at least twenty-five additional studies connecting parents' punitiveness with children's violence.

The Cultural Spillover Theory states "violence in one area of life tends to engender violence in others, transcending the boundaries between legitimate and criminal use of violence." Countries with higher levels of accepted violence have higher levels of criminal violence. "Crime is not seen as a result of individual pathology or lack of social control, but rather as a result of social integration into groups whose values and norms support criminal behavior. M.A. Straus, *Physical Punishment Of Children And Violence And Other Crime In Adulthood* (1991). When the line between acceptable and illegal violence is blurred, violence becomes "normal" --- seen as a legitimate way to solve problems.

Three major national studies --- the Surgeon General's Commission report (1972), the National Institute of Mental Health Ten Year Follow-Up (1982), and the report of the American Psychological Association (1993), found "a significant relation between exposure to television violence at 8 years of age and antisocial acts, including serious violent crimes and spouse abuse" --- 22 years later. The National Institute of Justice studied over 1500 people from childhood through young adulthood. Those abused or neglected as children were forty percent more likely to commit crimes.

Attention seems now to be focused on our children... It seems as though we are saying they are to blame... Our children are not the problem. The violent behavior of a small percentage do not only ignore the immense goodness... of the majority, but scapegoat kids for as situations successive generations of adults have perpetuated.

Reverend Gilbert J. Horn, Colorado Council of Churches.

Ethical Exploration

- **How do you respond when one's culture is another's oppression?**
- **How do societies/groups reward, teach, and glorify violence, if only by giving it attention?**
- **What mixed or double messages does send?**

As an advocate and teacher working for social justice in the States and around the world, my frustration and disappointment greet activists fueling and exploiting hatred and attack, rather than speaking truth to power. I respond to a lesser degree, with embarrassment, when activists label "blocking and destroying" as success; apparently lacking the leadership needed to fill the holes blasted.

I work with those involved in some of the world's most long-standing, intractable conflicts. We watch flames of stubborn power struggles for superiority and revenge. Some, thankfully, courageously pioneer community leadership.

Pleased not to misunderstand. I do not condone injustice, corruption, oppression and suffering. I think I understand some of the outrage. I have never been inspired or sought faith and reassurance from affluence, especially when it appears blind, deaf and self-centered; particularly when corrupt and criminal. My faith is nurtured and revived by the determination and resilience of those who persist and give despite all odds.

Perhaps one day some scholar will convince me of the positives gained through initiating violent, rather than, non-violent change. Until that day, I am disappointed with those whose methods "beneath them."

(The) optimism that change occurs, on a persuasive, rational basis, and not just out of the physical threat... violence, or political pressure... is one of the reasons the (ombuds) office was created. Donald Hartsock, first ombuds at UCLA --- established during protests of Vietnam war.

- **Discuss.**

Case Study #14

Background: The manager in question was recognized last year as an outstanding community member, having built a successful service program over years of hard work. Her picture and name are in local papers often.

This manager has many friends throughout the community, where she is raising her children. Several serve on her advisory groups. She, in turn, sits on their s.

She has critics, however. Some view her as a difficult, if not impossible, colleague. A small group of professional women see her intent on destroying any powerful and successful woman in her "privileged circle."

This manager's news supervisor has asked you to intervene in the following dispute. You agree to interview involved and concerned parties, and assess mediation's appropriateness. What follows is the content of your interviews.

Concerned Person #1: (Human Resources Director) Employees recently approached you with concerns regarding their manager (introduced above.) This is not the first time employees have complained. This manager has a long history of being "impossible." Long-term employees refuse to work with her. Turnover is predictable every few years, if not sooner.

Of course, she is not the only problem employee within your large government organization. She is unique, however, in her favor with the woman who heads the agency. This manager has brought rare positive acclaim to local government. She appears to be friends with powerful community leaders --- at least she talks as if close friendship exists. It is widely known and appreciated that she has secured large awards of federal, state and local funds over her years of service and speaks as a leading authority at national gatherings related to her field, including events at the renowned school where she graduated.

You are more concerned with this current group than previous employee groups. One of the employees is a lawyer, a recent graduate of a local school, whomaintains contacts with professors and appears to have friendships within the local Bar Association of active lawyers.

She recently called her professor of employment law, and briefed her on employee concerns. In response, she was advised that the employees have legal grounds for proceeding against this manager.

The entire group met with the diversity advisor to your organization's governing group. They were encouraged to document and confront their concerns.

As a result, you are eager for ideas. You are fearful of lawsuits "on all sides" if you proceed unwisely. You are consulting with the organization's legal staff but would like to proceed informally if possible.

APPLICATION

- Create complete lists of interests for every party. Note commonalities, or shared interests.

Manager

Concerned Person #1

Complaining Employees

Other

Concerned Person #2: (Lawyer Employee) You cannot believe your current employment --- a lawsuit waiting to happen. Rumors are that this manager's behavior has been abusive for years, that she only hires and targets women (supposedly so she can "get away with" mistreatment) and continues due to friendships with "local powers."

You observed and heard the following. No employee is allowed to leave the office unless the manager directs them to do so. If they appear to take more time than the manager thinks they should, they are recalled into the manager's office. The door is closed. The manager questions their activity in detail. All performance is questioned and criticized. The manager also calls employees into her office to ask about and criticize other employees. Last, but not least, she regularly asks you to do personal errands, e.g., bring her water, find her car keys. You find this environment exceptionally uncomfortable but have attempted to focus on your work.

You did not consider confronting the manager until a few weeks ago when the manager started to criticize the office secretary loudly enough for you to hear. After a few minutes, you became uncomfortable and looked over. The secretary appeared frozen. Berating continued.

You informed the manager that it was uncomfortable for you to hear her criticism, and mentioned that the secretary appeared quite distressed. The immediate response was: "Stay out. This is not your concern." The manager, however, did stop and return to her office. The secretary started crying (and later told you she was having a hard time sleeping and sought counseling.)

Having worked with cases of domestic abuse in law school, you called a former law professor to see if you had legal basis for confronting this behavior. You do.

APPLICATION

- Concerned Person #2's Interests

Ethical Exploration

- Do you include verbal abuse in your definition of violence? Emotional abuse, e.g. public humiliation?
- What about "velvet violence" (coined by Donald Hartsock, former UCLA ombuds), or abuse of power?

Note: UCLA's School of Medicine recently did an interesting exploration regarding doctors' abuse of power. The school's Gender and Power Abuse Committee created an exhibit with various true-to-life scenarios from medical students' experience, and asked students, administrators and doctors to "draw the line" where abuse begins.
See <http://www.dailybruin.ucla.edu/db.issues/00/02.03/news.medical.html>.

➤ **Is bullying violence? What about bullying by a supervisor or other authority?**

CONFLICT RESEARCH

Bullying is... characterized by the following three criteria: (a) it is aggressive behavior or intentional "harm doing," (b) it is carried out repeatedly and overtime, and (c) it occurs within an interpersonal relationship characterized by an imbalance of power. History and Description of the Bullying Prevention Program, <http://www.Colorado.EDU/cspv/blueprints/model/chapt/BullyExec.htm>.

One survey of 135 adults revealed that forty-two percent had observed yelling or verbal abuse at their workplace, twenty-nine percent had yelled at co-worker themselves, fourteen percent had damaged property, and two percent struck a co-worker. Integra Realty Resources, Business Week 11/27/2000. In another (2000) done by the University of North Carolina, 775 workers nationwide reported some type of rude behavior, including insults, curses, nasty e-mails and denigrating gossip.

Ethical Perspective

(Violence) is not the final act of unthinkable brutality. It is a process, sometimes building up over years before it becomes a crisis... It is the everyday acts of intimidation, harassment, bullying... the disrespectful behavior of one human being against another.

Anonymous Student

➤ **Discuss.**

Concerned Person #3: (Along-term colleague of the manager and professional psychologist) You hope recent events will resolve themselves quickly. You cannot believe an outside consultant has been called --- probably because one of the newest employees is a lawyer and "litigation happy."

You have worked with this manager for many years --- all of her career and much of yours. She has had difficult moments, but who doesn't. A good employee "rolls with the punches." You see no basis for the current level of concern (even though a past employee was hospitalized as suicidal after being the target of the manager's critical screaming.)

APPLICATION

➤ **Concerned Person #3's Interests**

Ethical Perspective

An important relationship exists between violence and possible violence, and party power, along with party capacity to self-determine, or negotiate for oneself. Even if you are ambivalent about whether bullying, abuse and harassment constitute violence, you will agree that issues of power, its use and abuse, are present.

Issues of party power are fundamental to assessing whether mediation or other face-to-face process is appropriate. You will often hear mediator talk about power imbalance and "balancing power."

One of the most critical issues in respect to self-determination --- the answer to which will determine future legitimacy and popularity of "alternative dispute resolution," is what happens when one or more of the parties has more power or is connected with a powerful system.

The problem of mediation is the fact that this kind of negotiations presuppose an equality of disputing parties. Only then can they lead to a just outcome.

In the case of inequality, usually the more powerful party wins;... in divorce this is generally the man. But experience shows that inequality can be compensated for if each party is assisted and advised by an attorney... Anja Zuckmantel, *supra*.

➤ **Discuss.**

Concerned Person #4: (another employee) You agree that you and your fellow employees are in an impossible situation, but you had a hard time finding professional employment before securing this job. In fact, you were unemployed for several months and happy to find any employment.

While challenging and disturbing, you have found your manager easier to please if you listen to her criticize others and remember to flatter her. You dislike these interactions but are willing to participate if she reduces her questioning and criticism of you. You do perform menial tasks for her and personal favors, like watching her children. You are depressed and hope to find a way to leave soon.

You prefer trying mediation. A lawsuit may make everything worse.

APPLICATION

➤ **Concerned Person #4's Interests**

➤ **Considering all interests identified, create the parties' best alternative negotiation or mediation:**

Concerned Person #1:

Concerned Person #2:

Concerned Person #3:

Concerned Person #4:

➤ **Rate above according to actual and perceived power. Describe rationale.**

➤ **In light of the "BATNA" you have described above, list ways that less powerful parties might empower themselves:**

Ethical Perspective

In situations where a power disparity exists, the mediator is advised to attempt to minimize these differences, without compromising mediator neutrality. (Fisher, 1985; Mayer, 1987). If a relative equality of power cannot be achieved, mediation is not considered an appropriate method of dispute resolution for the situation. (Academy of Family Mediators; the Association of Family and Conciliation Courts; American Bar Association, Society of Professionals in Dispute Resolution, & American Arbitration Association, 1994; American Bar Association Family Law Section Task Force, 1997). As Moore (1986) said, in his now classic statement, "The mediator is an advocate of a fair process." (p. 16) When fairness is not possible, mediation is not appropriate.

Jennifer P. Maxwell, *Power Inequality and Dissociated Coercion In The Mediation Of Interpersonal and Domestic Disputes: Recognition And Response*, <http://dept.kent.edu/caciipwrineq>.

Discuss.

Concerned Person #5: (manager's immediate boss) You were recently promoted --- an important milestone in your career and one that you sought for years. You do not want to jeopardize your career in any way.

You have known this manager many years and her notorious reputation for difficulty. You believe employee reports. This manager's interactions have been "time bombs" predicted to explode. You just wish formal complaints had not surfaced so early in your new position.

This will not be an easy situation to confront. You believe these employees are more likely to complain and loudly due to the lawyer in their midst. The manager is intelligent; likely knows or will learn her legal rights. Lawsuits could result on both sides. Furthermore, this manager has long-standing relationships with powerful people. If they are critical of how you proceed, you envision a political nightmare.

APPLICATION

Concerned Person #5's Interests:

□ Questions

Can the parties with more power do anything to balance power? What might motivate them to do so?

CONFLICT RESOLUTION/MEDIATION PROCESS: PARTY POWER

Parties have many sources and types of power: individual and shared. Individual power and influence is reflected in "being at the table," or being included in conflict process, trust, resources (status quo and potential) and persuasive ability. Examples of shared power include the political power of changing alliances and showing unexpected unity; the public relations value of not doing business as usual.

Identifying "commonalities, or shared interests, empowers. In mediation, all interests are first reviewed with each party to verify complete and accurate understanding. Identifying overlapping interests is a natural next step. Some will be obvious --- listed in the same or similar language. Others will require more reflection and analysis. With practice, mediators begin to "see" more subtle or unstated interests as well. One study found skilled negotiators spent over three times as much attention to identifying common ground. Tubbs, *supra*.

Helpful is listing all party interests side-by-side on a board or newsprint; then visually connecting commonalities. Parties who have felt deeply and accurately heard, perhaps for the first time, may enthusiastically assist with identifying more, marking the beginning of necessary collaboration.

This is also a natural point for the mediator to ask and notice what seems and is most important to each party --- perhaps some party values. Detailed notes will help formulate option evaluation criteria later in the problem-solving process.

MEDIATOR POWER & POWER BALANCING

Mediators have power, particularly process influence. Educating parties helps them understand individual and shared power. Some ways that mediators may attempt to balance power include: 1) advising parties to seek information and educate themselves, e.g. talk to lawyers, 2) leading the process so that participation is equal, 3) facilitating option generation and evaluation like the earlier "BATNA" analysis; 4) helping parties recognize shared interests --- how they need each other and may benefit from working together.

Concerned Person #6 (head of manager's division) You are irritated. This manager has been your political ally for many years and has brought positive attention and funding to the organization.

The last thing you need, however, is the publicity of a lawsuit. If employee allegations have any basis in reality, something needs to happen --- quickly.

APPLICATION

➤ Commonalities (Or Shared Interests)

Explicit:

Implicit:

Postscript: The employees described were separated (protected) from the supervisor while human resources oversaw corrective action. After at least a year of warning and working with the supervisor, her employment was terminated.

Proposed Third Party Conflict Intervenor Competencies:

Substantive Knowledge Base

Has and actively acquires necessary substantive knowledge, including that required in specialized area of practice. AFM
Includes awareness of relevant legal standards. “Ensuring Competence and Quality in Dispute Resolution Practices” SPIDR 1995,
SPIDR Qualifications.

Information Gathering Skills and Knowledge

Gathers requisite background information to adequately and effectively diagnose and structure (if possible) appropriateness of proceeding with mediation, e.g., history of violence involving parties, party capacity. Ethics Research, CCMMO. If necessary, consult with expert resources.

Ethical Decision Making

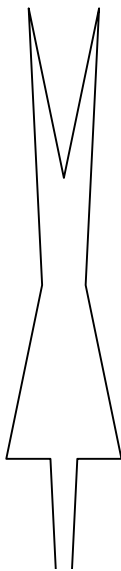
Assessment and Creation of Appropriateness

Demonstrates adequate awareness of conflict’s broader context, or system’s dynamics, including current and historical. See, e.g. SPIDR Qualifications, Ensuring Competence, supra. Appropriately investigate to identify potential and actual power imbalances, (Id., See California Training) and other conditions that must be addressed to prevent party damage, exploitation or coercion — psychological and physical. Lawyer Mediators, Model Standards, Ethics Research, supra.

Ensures balanced negotiations and does not permit manipulative, intimidating or other negotiation techniques that pressure that jeopardize voluntary and informed decision making. AFM, IX, Lawyer Mediators, Model Standards, CCMMO. evidence bad faith or supra, See

Assesses party capacity. Id.

ROLE-PLAY SIMULATION



Cast of Characters

1. Concerned Person #1 (Human Resources Director)
2. Concerned Person #2 (Lawyer -Employee)
3. Concerned Person #3 (Colleague Psychologist)
4. Concerned Person #4 (Employee Who Would To Keep Job)
5. Concerned Person #5 (Manager’s Immediate Boss)
6. Concerned Person #6 (Head of Manager’s Division)

Note: Simulation participants have created additional characters like the manager.