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PRAGMATIC TACTICS IN MEDIATION¹

Abstract

Mediation is the process by which a neutral third-party works with disputing parties to assist them in reaching an acceptable, voluntary settlement of their dispute. Mediators are often faced with competing demands over and above those of the dispute itself. For example, establishing and maintaining control of the mediation process without appearing to bully the disputants, persuading a party to reexamine its position without appearing to lose their neutrality, and convincing a party that the present offer of settlement is the best possible, given the circumstances, without appearing to be determined to reach closure at all costs.

The present paper examines data from labor, divorce, and community mediations (both transcripts and reports from the mediators) to show how mediators reduce tensions like those mentioned above through various devices such as establishing common ground, reframing the issue, use of metaphorical examples, and reliance on innuendo, ambiguity, and equivocation.

Keywords

Mediation, pragmatic gambits, conflict/dispute resolution, negotiation, arbitration, settlement.

There once was a poor devout man, his old blind mother, and his barren wife. After many years of prayer, God inquired of him what one thing he truly desired. He went home to discuss the matter with his mother and his wife. They could not agree on a single request: his mother wanted her sight back; his wife wanted a son; and he wanted a job so he could support his family. The poor man left the house and consulted with a mediator, telling him of his dilemma: "My mother wants eyesight, my wife wants a son, and I, I would like a bit of money so we can eat everyday. What shall I ask? Whose needs come first?" The mediator thought for a moment, then he answered: "You must not choose for any one of your family alone, but for the good of all. Say, 'Oh Lord, I ask nothing for myself; my wife asks nothing

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for herself; but my mother is blind, and her desire is, before she dies, to see her grandson eating milk and rice from a golden bowl’.”
(Adapted from the folk tale: *Wisdom of the Mediator* – Trinidad)

1. Introduction

I will be concerned in this paper with a range of situations which arise during a mediation in which the mediator might find it useful, perhaps even necessary, to employ pragmatics tactics (pragmatic gambits) in the course of pursuing a settlement between disputing parties. By “pragmatic tactics” I mean the use of language which, because of the context in which the utterance is made, (1) conveys a message in addition to that directly interpretable from what is said, *and*, (2) has been intentionally used by the mediator to do some “work” in the mediation process, work which the mediator perhaps did not wish to do explicitly. Rather than focusing on the type of pragmatic tactics that are used (for example, linguistic devices such as implication, irony, metaphor, rhetorical questions, ambiguous or vague statements, reframing what has just been said, hedging, equivocating, mitigating, self-effacement, scolding, challenging, etc.), I shall focus on the sort of situations faced by a mediator in which the employment of pragmatic tactics is called for. Both the situations and the tactics described are intended to be illustrative, not exhaustive, with the intention that this paper might open up for research in mediation, a rich but virtually untapped area for discourse analysis.

I will begin by providing a brief overview of dispute resolution in general, then describe mediation in particular. Following this, I will explore different situations which occur in the mediation process in which pragmatic tactics might be used by mediators.

2. Overview of dispute resolution²

There are three major approaches to conflict resolution. The first, the NON-SETTLEMENT APPROACH, consists of ways for simply ending the dispute unresolved. Here we find several tactics: choosing to take what the other offers, to “lump it,” and move forward (e.g., a landlord accepting a sum much less than the damage to his apartment rather than go to court and fight a long battle); opting to avoid a potential confrontation (e.g., staying in the library studying rather than going to your apartment and arguing with your roommate about who gets to use the only easy chair); selecting a tactic that will postpone the dispute until a more

² Note that I am using *conflict* and *dispute* interchangeably and *resolution*, *management* and *settlement* interchangeably although there are some who would make distinctions between the terms.

propitious time (e.g., a father telling his son, after an argument, that they will discuss in the morning whether he should get a car when they both have had a chance to sleep on it); or some combination of these. Indeed, in some disputes, particularly where the parties know one another quite well, it is often preferable to just let the dispute rest unresolved, until it dies of natural causes or is of only marginal importance.

The second approach, the NON-VERBAL APPROACH to settlement, consists usually of confrontation, either coercion (e.g., when the US forced Microsoft back to the bargaining table under threat of going to court) or actual hostilities (e.g., when US forces invaded Iraq to end the dispute over the alleged presence of WMD). There are also a variety of other non-verbal tactics designed at resolution such as psychological harassment (e.g., giving one or both parties the silent treatment until they behave in accordance with group norms), appeal to the supernatural (e.g., the use of voodoo or sorcery, whether or not it is truly effective), a strike or picketing, when a contract settlement cannot be reached (e.g., the Teamsters striking UPS two years ago that brought the company to heel very quickly), a boycott or threat of a boycott (e.g., when activists argued for a boycott of Nike sports products that were made by “slave labor” in China), civil disobedience (e.g., when Rosa Parks sat in the front of the bus in 1964 in Alabama), and of course demonstrations (e.g., when the teachers in Boston demonstrated at the State House protesting the cutback in funding for bilingual education).

The third category, the VERBAL APPROACH to settlement, also has a range of alternatives for ending the dispute. Not frequent in Western society but used elsewhere, are verbal contests between the disputants such as verbal duels between the parties, sometimes only symbolic in nature (cf. Nader et al. 1978). There is also the “guilt trip,” whereby one party heaps such “shame” on the other’s head that they give in rather than suffer more verbal abuse. But the most well-known is settlement-directed, fact-oriented talk.

These talk-oriented approaches ran the gamut from negotiation (bargaining), conciliation, and mediation, which are voluntary approaches in which the parties alone determine the outcome, to quasi-decision-making approaches such as factfinding and grievance mediation where the parties are encouraged by a third party to settle their disputes, to decision-imposing approaches such as grievance arbitration, where a third party decides for the parties the resolution of the dispute, and finally to adjudication by a court, where a judge or a jury is the decision maker.³ Disputes may be personal, institutional, international, they may involve a practical matter, a policy issue, contractual terms, a legal statute, and, interestingly,

³ There are many texts on the various types of dispute resolution processes. For a good concise presentation, see Goldberg et al. (1985).

the dispute may be a real dispute or only a contrived matter. Since my interest here is mediation, let us now turn there.

3. Mediation

In order to understand mediation, we first have to lay the groundwork by considering NEGOTIATION, a process in which two or more parties

voluntarily join in a temporary relationship designed to educate one another about their needs and interests, to exchange specific resources, or to resolve one or more intangible issues such as the form their relationship will take in the future... (Moore 1996: 6).

Negotiation is part of being alive: everyone is familiar with it and everyone engages in it daily. It may occur between individuals, groups, institutions, states, or some combination of these. It may be formal or informal, and the issues range from the most trivial to the most critical: who has the right to drive a truck in the sandbox; the selection of which restaurant you and your spouse will go to for dinner; the legitimacy of the ticket being written out by the police officer; the determination of a hockey player's salary; the merger of two mega-companies; and the ruptured peace agreement in Northern Ireland are all disputes in which negotiation may occur.

Significantly, the purpose of negotiation is not necessarily to reach agreement. Agreement is only a means to an end, that of satisfying your interests. The purpose of negotiation is to explore whether you can satisfy your interests better through a negotiated agreement than you can by other alternatives such as by letting the dispute take its course or by taking the dispute to court. Negotiation almost always entails a power asymmetry: "... absolute weak parties do not negotiate, they surrender. And, absolutely strong parties do not negotiate, they conquer" (Nicolaidis 1999: 103). For better or worse, negotiation is often an exercise of power, or lack thereof, tempered by a party's decision whether to exercise the power they have. But negotiation success depends critically on parties who believe they will satisfy their interest better by working together rather than by operating apart, perhaps even failing to exercise some of the power they have.

MEDIATION is a form of negotiation, where two or more disputing parties engage in negotiation with the presence of a neutral third party, a mediator, who assists them in their effort to arrive at a settlement. Like negotiation, it is not suitable for every dispute. Mediation is most effective in resolving a dispute when there is a previous history of cooperation, there is only moderate hostility between the parties because of this dispute, there is little psychological attachment, there are only a small number of issues in dispute, there is external pressure to settle, the

goals of the disputants are reasonable, the real issues at stake are known, and there are adequate resources that can be divided.

Like negotiation, mediation is present in everyone's life, ranging from the informal to formal process, the trivial to the critical dispute. A fight between two school children mediated by a student mediator, a law suit alleging damages for slander, a community dispute over fence boundaries, a divorcing couple who cannot decide on anything, a claim for insurance money for an injury sustained at a party, a misunderstanding over a stock transaction, a next-agreement between the school board and the teacher's union, or a boundary dispute between neighboring states are but a few of the myriad of disputes amenable to mediation.

Mediation is typically voluntary. It can be arranged quickly, and it usually takes relatively short time if settlement is reached. It is for parties who *want* to settle, *want* the privacy of a confidential mediation process, and *see* this process as a way of resolving their dispute more quickly and on their own terms, than would be possible by going to court, the principal's office, a discipline board, a grievance process, or some other alternative.

Mediation differs from negotiation in that the mediator controls the agenda, controls the interaction, and controls the flow of information which is transmitted and it goes through the mediator rather than directly from party to party. There is no theory of mediation, just as there is no theory of medicine. Rather, there are various practices which are more or less effective for a given dispute. In addition, the range of mediation styles runs from the passive, laid-back mediators (Orchestrators, who set up conditions for settlement, assist in educating the parties of the real issues underlying the dispute, and who help the parties understand the problem if not settle it), to the very interactive, assertive mediator (Deal-makers, who lead the parties to a resolution, who see their role as extracting possible solutions from the parties as well as proposing solutions themselves, and attempting to convince both parties that they would be better off adopting some version of the solution). The nature of the dispute and the people involved typically dictate what sort of mediator will be most effective.

Mediators must be acceptable to the parties throughout a mediation, lest one party withdraw. Mediators walk a fine line between trying, on the one hand, to convince each party that a mediated settlement would be in their best interests (as opposed to submitting the dispute to a higher authority) and, on the other hand, being an acceptable third party. Moreover, in addition to handling of the dispute in an acceptable fashion, acceptable mediators must show that they are in command of the relevant facts, must establish that they are in control of the mediation, must establish a trust and rapport so the parties can hear unwelcome news, must redress a power imbalance if it is detrimental to the resolution of the dispute, and must empower the parties by giving them a choice. All the time, moving the process towards settlement.

A mediation has a set of rules, usually imposed by the mediator, which normally include the rules by which the parties will conduct themselves (e.g., refrain from interrupting the other party, abstain from harsh, insulting, angry, or threatening comments, make only truthful statements, etc.), rules by which the mediation session will proceed (e.g., joint sessions followed by caucuses with each of the parties, followed by joint session, followed by other caucuses, etc.), rules of confidentiality that surround the mediation (e.g., mediators pledge not to divulge what a party says to them in a caucus, when the other side is not present, unless agreed to)⁴ and rules of the form of a settlement (e.g., for child custody dispute, the welfare of the child must be considered).

Mediators are typically trained neutrals, knowledgeable but not necessarily expert in the facts of the dispute. It has been said that a successful mediator is part investigator, part therapist, part entertainer, part inventor, and part salesperson.⁵ While mediators do not have the power to impose a settlement on the parties, since it is the stakeholders who ultimately decide upon the details of a settlement if one occurs, they do have considerable power to “encourage” the parties to settle. The test of a successful mediation is the mutual, informed satisfaction of the parties, whatever that turns out to be.⁶ There is usually not a winner and loser, but each side perceives a partial win for itself. After all, if there were going to be a clear winner, the parties presumably wouldn’t take the time to engage in mediation.⁷

4. Pragmatic tactics

Let us now examine instances which occur in mediations in which the mediator finds the use of pragmatic tactics valuable. The critical point of these tactics is that they are a means of conveying a message indirectly and, at the same time, rendering the message deniable, if challenged.

⁴ There may be several joint meetings and many caucuses in a given mediation. The purpose of the caucus is to permit the mediator to talk candidly with each party without the other overhearing.

⁵ Although there are some states and some forums which require training and credentialization to serve as a mediator, this is the exception rather than the rule, although this is changing. Essentially, a person is a mediator if the disputing parties find him/her acceptable to serve as their mediator.

⁶ There is an ethical question surrounding an outcome which seems to unfairly favor one party at the expense of the other. While I do not have time to address this issue, I think most mediators take the position that as long as both parties are fully aware of the settlement and its implications, they have fulfilled their responsibility.

⁷ I hasten to point out that there is no theory of mediation (or for that matter, of negotiation), just a set of practices which are more or less successful as a function of the particular mediation: the issues in dispute, the parties, and the skill of the mediator.

At the beginning of the mediating session, the mediator has the task of setting the rules by which the mediation will proceed. Here is a typical introduction.

Good morning:

I will try to help you come to a settlement. But bear in mind one thing, please: I cannot work miracles. If we're going to get a settlement, you will have to do the hard work. You will have to be creative. You will have to make the compromise. You understand that a settlement is usually the result of each side doing something it doesn't want to do. But if you want to avoid the risk and the cost of litigation, that's what I'm going to ask you to do. Ok?

Mediation is very informal. We will talk, and I want the fullest participation from each of you. But please do not interrupt the other when they are talking. You'll both get your turns. If you have any ideas of what will settle this matter, please suggest it. I don't want you to hold back. Come out with it. You never can tell; that might be the seed to settlement. I will ask each of you to present your position, then I will want to talk with you separately, after which we can get together again and begin settlement talk.

Everything you tell me will be confidential and I will not reveal anything to the other side unless you give me permission. Finally, should you decide that this process is not working for you, you are free to withdraw at any time.

Do either of you have any questions?

This introduction is short, matter-of-fact, given in direct statements, and leaves no room for argument. This is the mediator's way of establishing the authority that may be needed during the mediation. Because of the context—the parties need to resolve their dispute and have voluntarily invested in the process—they are willing to be told what they can and cannot do, when ordinarily they would bridle at such “orders.” Though each mediator has their own way of setting the stage, the essential pragmatic tactic is to present the ground rules in a direct, unequivocal way that sets out what is expected. From the above, the parties are aware that they face a challenge and that there is a definite process that will be followed, for example, they will talk privately with the mediator, they are expected to let the other party have a full, uninterrupted say, and what they say in private will remain confidential. When, in the course of the mediation they appear to forget these “duties,” the mediator can remind them of what they “agreed to” at the opening.

Typically, a mediator tries early on to establish rapport with the parties. Sometimes it succeeds; sometimes, it doesn't, as the following excerpt illustrates.

Mediator (to wife): What do you want me to call you?

Wife: Lynette would be fine.

Mediator (to husband): And you?

Husband: Dr. Johnson.

As the mediation progresses, exchanges may become heated and the comments more *ad hominem*. At this point, the mediator may decide that one party needs to be reined in, to be reminded of the ground rules. This is a delicate point, since outright scolding of a party, if recognized as such, may evoke anger and withdrawal from the session.

If both parties are present, the mediator may gently chastise the offending party but, at the same time, reinforce the point the mediator is trying to achieve which is in that party's interest. This is illustrated in the following excerpt, where a divorcing couple has been arguing for some time over their daughter's custody arrangement.

Wife: All you have to do is ask him [nodding towards husband] how much insulin she has to take. How it's given to her? How often? What kind of food she has to eat? He doesn't know any of those things. He has no idea of any of those things. He hasn't taken an interest in her medical condition at all. It's been five years since she got diabetes.

Husband: You're exaggerating a little, aren't you.

Wife: (voice loud and rising angrily) Exaggerating! Do you even know what she is suffering from? Do you know the long-term effects of her disease? DO YOU? YOU DIDN'T...

Mediator (interrupting): Whoa. Slow down. Remember we agreed not to say anything insulting to each other. Look I'm just trying to help you figure out how you can make your move to your new home that meets your career needs and Tom's fathering needs. Isn't this what you want?

In another case, a wife is talking privately with the mediator about her husband's treatment of their child, Bryan, and her concern with his temper. This has been going on for some time, and it's obvious the mediator's his patience wearing thin.

Wife: Well anyhow Bryan's rather hesitant of Brad, he's a little afraid of him, and I'll have to bring up the past because the past...

Mediator (interrupting): Let me just say, there are some things about the past that are important to understanding your situation, but further than that, I'm simply not

interested. It's not a matter of whose right or wrong, good or bad, moral or immoral, of any of those things. I really don't care. What I care about is how we are going to work out the custody arrangement for David.

The mediator chastises the wife for her irrelevant comments, though his rebuke is general in nature, and he emphasizes that "I really don't care," and that the comments are getting the way of the work to be done. The wife experiences some face-loss in front of the mediator but, because the husband is not present, the mediator felt this would not upset the stability of the mediation.

Sometimes, the mediator chides both of the parties, as illustrated in the following excerpt.

Wife: He's threatened to sell whatever valuables he has and take her away so that I will not see her again. He made the threat to me, and I'm scared.

Mediator (to husband): Do you want to speak to that?

Husband: Yeah, I said it, but I said it in anger. It's now true. It was anger because of all that's happening...I mean I'm not gonna leave my family or all my friends...I would never want to take Vanessa away from her mother.

Wife: I think it's a little more than anger involved if you take into consideration the monetary value of the things that you own...

[continued bickering]

Mediator: I mean you're trying to tell the other one and change the other one's view of how things are, but neither one of you listens to the other one in order for that to happen...that's why I suggest to you, if you you're going to get anywhere, you really are going to need to listen to each other...and I suggest that you are likely to learn something you didn't know if you really do listen. Besides, just because you've listened to the other doesn't mean you got to change your mind or agree with them. You can have your own point of view but you'll have a more informed point of view.

Here, the mediator did not single out one party but made a general comment on their listening behavior. They are unlikely to withdraw from mediation, having both been scolded.

Of course, scolding a party doesn't always have the desired results. In a private meeting with the husband to discuss Jason's visiting arrangements, the mediator in the excerpt below is criticizing the husband, and is clearly taking the side of the wife:

Mediator: To help Karen understand what you have in mind, where would Jason sleep when he's with you?

Husband: Probably sleep in my bed. I don't have money to out and buy a crib.

Mediator: That's not really the point, you know, because if you felt Jason really needed a crib you would find the money. The point is that Karen's afraid Jason will get up and you won't realize it....And if your girlfriend sleeps overnight, then where is he going to sleep?

Husband: He'll still sleep with me, I guess.

Mediator: I don't think it's a good idea having him sleep between you and your girlfriend. You should have another room for him.

Husband: Now listen, Jason is MY son. What I do with my son is MY business, not your, or anybody else's as long as he's well taken care of.

Mediator: Well, I'm sort of talking for her. I'm trying to get you to give her some idea of what's going on, something definite she can understand. I admit it's your private business, but you two aren't doing much talking these days. It isn't her business if your girlfriend sleeps there or not, but it IS her business if she sleeps there and Jason's there as well....just the same as you have a right to know the sleeping arrangement between Karen and her boyfriend. I don't think it's a proper atmosphere for your child...

Husband: Well, I don't have to sit here and take this. THIS IS RIDICULOUS.

Mediator: Why? It gives you and Karen a chance to know what is going on.

Husband: Nah, we argued about this over and over. I'M OUTTA HERE. [Husband leaves]

The mediator had to go after the husband and bring him back to finish the mediation session.

There are times in a mediation when the mediator feels it is necessary to challenge the position of a party, sort of a reality check for them. For example, during a dispute over the laying of some carpet in Karen's home, she is dissatisfied with the way the seams lined up when installed by a new man with the company. Dan, the company's owner, is unwilling to replace the carpet but is willing to send someone out to fix the seams. Karen insists on the carpet being replaced. The discussion has been going on for a while.

Karen: They also told me that whoever laid the living room would be the one to come back and lay the bedroom.

Mediator: Well, should it make a difference about the people that lay the carpet?

Karen: No, I suppose you're right.

Mediator: I mean, one should be as good as another, right?

Karen: Mmmmm.

Mediator: So we have the situation where Dan is willing to fix the seams in your bedroom but you're not willing let him try. Is this correct?

Notice that the mediator asks questions of Karen, although the effect is as if statement had been made. Of course, if challenged, he can say he was only questioning.

At other times, a mediator may speculate about an outstanding problem in what might be termed a collegial way in an attempt to cause a party to rethink his position. The following excerpt involves a legal dispute where a teenage boy, Ronnie, damaged a car by running nails down the side making unsightly gauges in the paint. The mediator here is attempting to work out a plan for resolving the dispute short of having the matter go to trial.

Mediator: Now, could we drop the discussion of the payment schedule for a while and turn to the matter of who is going to arrange for the repairs to the car. Have you thought how this should be done, Ronnie?

Ronnie: Nah.

Mediator: Well, let's think about it together. Remember, the judge said that if we couldn't work out these details, he would be happy to see you again and decide them for you.

Other times, the mediator asks for a clarification of what has already been said, not necessarily because of the initial unclarity, but to reinforce what has been said to the other side, but couching it as if it is for the mediator and equivocating, so as not to take sides.

Mediator: Ok, I think I understand. Would you mind elaborating on that so I can be sure I fully understand what you're proposing. It sounds like it's got some good points as well as some troublesome issues. I just want to make sure I understand. Could you go over that again, please.

And still other times, the mediator will challenge one side with a reality check. The excerpt below occurred during a mediation session in which the Union was trying to get the employer to give an employee, who was a confirmed alcoholic, another chance:

Union: Look. We've got a good case for taking her back to work immediately. She was an outstanding worker until she starting drinking, she had numerous awards for efficiency and productivity, and she has no other discipline on her record. What's more, she is now sober and has been for some time.

Mediator: How long has she been sober? Completely without drinking?

Union (to grievant): How long?

Employee: 6 days.

Mediator: And are you going to AA? Getting other help to stay sober?

Employee: I go to AA once in a while, maybe once a week. When I have time.

Mediator (to Union, voice rising): And you want the company to take her back after being absent 37 days and drunk most of the time. Now you expect the company to reinstate her when she's been sober a mere 6 days and isn't getting any systematic and consistent help? Would you take her back under these conditions?

Often, after the mediation has been going on for a while and the positions of the parties have been carefully articulated, the mediator will sense that separate meetings with the parties will facilitate progress and avoid unproductive carping. This is the case below, where, because of the special authority the parties have invested in the mediator to decide how the mediation session should proceed, the "I think..." from the mediator is really equivalent to "We are now going to meet in separate sessions."

Servo: The contract has been violated by High Tech's actions and we were defrauded by their entering into an agreement when they knew a major product line was going to be canceled.

High Tech: Servo has failed to live up to the contract, failed to order the required amounts, not met the payment terms, establish distributors, and generally caused us enormous hardship not to mention financial loss.

Mediator: I understand that there is some emotion here, that these matters are very important to you. I think this might be a good time to move into separate sessions where I can talk with you separately.

At other times the mediator will challenge one of the parties, urging a party to not just reject the proposal but to make constructive changes or, in the second case, to specify just what about the situation really bothers him. By doing this, the mediator is not obliged to take responsibility for the subsequent proposal.

Mediator: Ok, you say you aren't too happy with her proposal. Tell me, how would you modify it then to permit you both to be happy. And I emphasize that your response should address both of your concerns.

And of course the mediator may simply reflect impatience with one of the parties.

Mediator: Would you consider a time payment rather than payment of the full amount?

Lender: I would not, under any circumstances.

Mediator: And could you tell me the reason for your strong rejection of what seems to be a perfectly reasonable offer?

Again, the mediator is using his position of authority to seek clarification by both characterizing the nature of the rejection and stating the view that the offer is reasonable.

One of the most effective ways for the mediator to get at the issue underlying a dispute is to ask probing question, where the mediator suggests a number of possibilities, some vague and/or irrelevant, any one of which the respondent can grab and elaborate on. Here, in a landlord-tenant dispute where the issue is the loud parties above the landlord's apartment which last into the early morning hours.

Landlord: The thing that bothers me most is the loudness of the parties upstairs, especially those that last well after 1 am. I have to get up in the morning and they're so loud I can't sleep. And the music is just awful. Terrible. How can you listen to such junk. That sort of trash should be outlawed.

Mediator: I'd be interested in hearing more about what you object to in these parties, Mr. Jenkins. Can you share that with us? I'm particularly interested in whether it's the parties, per se, that you are objecting to, the loudness of the music, or is it the type of music that bothers you? Or is it the fact that you're not invited? What is it you want to change?

At times, the mediator takes on the role of a sympathetic listener, particularly when alone with one party who has expressed a personal issue that is conceivably related to the dispute. However, while the discussion of issue may be of cathartic value and provide the mediator with insight into the dispute, great care must be taken not to take on the role of therapist. In the excerpt below, two co-workers, Fran and Nancy, who previously were very close now can't work together. Fran is talking about her problems in a private caucus.

Fran: It creates a lot of tension for me. My life is problematic right at this moment and June's request is just one additional burden that I don't think I need to have. It's really too much.

Mediator: Could you say a little more about that?

Fran: About what?

Mediator: How your life is problematic. What other things are bothering you. Keep in mind that what you tell me will be kept confidential. Perhaps we can explore this a bit to see how it relates to the overall difficulty you're having with Nancy.

Sometimes, when emotions get out of control, especially in divorce or personal disputes, the mediator has the option of shutting down the interrupting party as in the following excerpt taken from a mediation session between a divorcing husband and wife.

Wife: Yeah, well, I'd like the kids to live with me exclusively. I'm presently living in a house that we jointly own and I don't see why they can't live there.

Husband (Interrupting and raising his voice): A house which I bought, and I paid for, damn it. She hasn't got a job. She can't make the payments. She just comes back time and time again and says she needs more money.

Mediator: Just a second George. I thought we agreed that one person would speak at a time? I'll see that you have plenty of time to respond in a minute, when I'm through talking to Katie. Ok? I know it's difficult for you, as you've explained to me, but please try to listen.

Husband: OK.

Often the mediator is put in the position of re-explaining to the parties why they are in mediation and what the alternatives are. This might be called a reality check.

Mediator: Do you have any idea of why your attorneys have asked you to come here?

Husband: I would assume it's because of state law...I don't see what's to be accomplished.

Mediator: Ok Loretta, what about you?

Wife: I agree with him. What are we here for?

Mediator: Ok, maybe there's a misconception here. I am not here to help you to reconcile your marriage. That's impossible. We're here to help you resolve an issue over the sale of your house. We try to assist you, prior to your going to court, where a resolution will be imposed on you. You know, it's very expensive. Could amount to several thousand dollars before you're all through, what with lawyers fees and all. But, I suppose if you have the money to spend on lawyers and time to spend waiting for the court to hear your case, you ought to try that avenue. On the other hand, it seems to me that there are lots of better things to spend your money on. So, what do you want to do?

As I indicated above, mediators differ on how strong they should be in persuading the parties to reach agreement. Here is an example of the latter type. After several hours of a highly charged mediation session both the School Board and the Teacher's Union would not move an inch on their positions on salary. The Board was offering a 3% increase in wages for each of two years and the teachers were holding firm at 3 1/4%. The mediator brought the parties together, having previously obtained the right to go to the press should mediation fail.

Mediator: Well, I've tried every way I know to convince one of you to move or to find some compromise, but neither of you has budged. Pursuant to our ground rules which provided I could go public with the results at my discretion, I intend to go to the media. I will report the lack of progress. I will tell them that negotiations have broken down over \$2,600, the cost of 1/4% difference per year. I will explain that in spite of the sizable School Department surplus arising from reduced Health Insurance costs, and in spite of the Union's willingness to give up the dental plan, which costs the Board \$4,200 per year, both parties refuse to move. Any comments before I leave.

The mediator may feel responsible for coming up with creative ideas about how to settle the dispute, usually after the parties have exhausted their own ideas. In doing so, mediators often will pose the idea in the form of a question, "Is there any possibility that...?" but must be careful not to appear to side with one party. In the excerpt below, the Company has tentatively fired Joel Harrison for reckless driving. The Union and Company are engaged in mediation to see if some resolution of this situation can be found before going to arbitration.

Company: We don't want to bring Harrison back to work. Three preventable accidents in two months, thousands of dollars in damages to our truck not to mention the adverse publicity.

Mediator: I can sympathize with you. No one needs that sort of grief. However, consider this. Here's a man who has spent 19 years with your company, 18 of them with a perfect driving record. In fact, he was named Driver of the Year three times. And then last year, his wife of 28 years got cancer, she had two operations, his

youngest daughter ran off with her boyfriend and Harrison hasn't heard from her in 6 months. He's had a lot on his mind. No, it doesn't excuse his poor judgment but perhaps explains it.

Union: I've got to tell you, the job is his whole life. He's rejected your offer of \$20,000 to simply resign.

Mediator (to Company advocate): Would you be agreeable to take him back to work if we could find a job for him that didn't involve driving a truck?

Company: We don't want him back driving one of our trucks.

Mediator: I was thinking. What if you took him back as a non-driving mechanic, you know, to work in the warehouse? After all, he's eligible for retirement in less than a year. What do you think?

During the mediation session, the mediator will usually summarize the progress to date and often reframe it in the direction they see to be the most productive. This has to be done with some care lest one or both of the parties not only recognize what is being done but rejects it. In the following excerpt, the dispute is over the alleged racial remark toward Sara by Jim in front of friends.

Sara: Look. I'm really angry at what you said, especially the way in which you said it. You've no business talking to me that way.

Jim: I didn't mean anything by it.

Sara: But you said it, nevertheless.

Jim: Yeah, but I didn't think it would offend you.

Mediator: Could we stop for a minute and let me summarize what you said. You are really saying you're sorry for the way you said this to Sara.

Power is a crucial ingredient in many mediations. Whereas mediators cannot (and should not) do anything to increase the power of the less powerful party, they may take steps to reduce the power imbalance. In the following, Jim and Harry are disputing the boundaries lines for a fence that is being constructed. Jim is a postal service employee while Harry is a lawyer of some repute.

Jim: Well, I don't know what the law is on this, but I know what I want.

Harry: Look, I've been involved with these disputes for nearly 10 years now and have a pretty good idea of where the solution lies. So we can rely on my knowledge, ok?

Mediator (before Jim can respond): I don't think we have to rely on only your experience. I'm an attorney and have been involved in boundary disputes before. So I think we jointly have considerable expertise to draw upon.

Finally, there are people who initially agree to mediation and then change their minds for one reason or another. Below is a letter I received after meeting with this individual and having him agree to mediation. There was nothing to do.

Dear Professor Fraser:

Thank you for taking the time to talk to me about the unhappy situation in my office arrangements. I am sincere in my gratitude for your patience and wisdom. I am also sincere in my pessimism that the kind of intervention you suggested would be adequate. Such a strategy, like a second marriage, represents the triumph of hope over experience. I indict myself for my failure to communicate the seriousness of the problem and why a fireside chat would not be satisfactory from my perspective. I have put up with this nonsense for two years now and the time has come to fix it without the perpetual risk of chronic recidivism. Therefore, I will pursue other avenues of redress. Yours faithfully,

5. Conclusion

In the foregoing, I have presented a variety of mediation situations where the mediator sees the need to convey a message, but, at the same time, is aware of a possible threat to the stability of the mediation process if the message is conveyed explicitly. Hence, the use of pragmatic tactics. The tactics presented are not the only ones available for the situations described, and may not be the most effective. They were, however, what was used. I trust that the examples provided indicate the richness of mediation session for discourse analysis.

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About the author

Bruce Fraser is Professor of Linguistics and Education at Boston University. After receiving a Ph.D. from MIT, he directed the Language Research Foundation for four years and then joined the School of Education faculty in 1971. His research interests lie in semantics, pragmatics, discourse analysis, and conflict resolution. Recently, his work has focused on the area of discourse markers, connectors of discourse which typically signal a relationship between two adjacent segments. In a series of papers beginning in 1990, he has been setting forth a theory of discourse markers, which defines this functional class and distinguishes them from other particles and similar lexical formatives. His research in conflict resolution includes examining pragmatic tactics used in mediation and the role of a neutral as a lie detector. Professor Fraser is involved not only in serving as a mediator for labor, community, and school disputes, but also conducts training programs in the US and overseas to assist groups to become better prepared to resolve their own disputes. He is an editor of *Journal of Pragmatics* (Oxford/Elsevier).