Chapter Eight

Beginning the Mediation Session

In this stage of intervention, the mediator assists the negotiators in beginning a productive exchange of information about issues in dispute and, when appropriate, feelings resulting from them. If the parties have been meeting before the mediator's entry, the intermediary may abbreviate some of the component moves of this stage. Nevertheless, most of these moves will appear near the start of the first joint meeting held in the mediator's presence. My discussion of the various moves and strategies mediators use in this stage will assume that the parties have not yet held a joint meeting.

The mediator's major tasks in this phase of intervention parallel those of the negotiators. The mediator wants to:

- Begin establishing a positive tone of trust and common concern
- Externally offer, or assist the parties in developing, a procedure that encourages emotional expression but prevents the destructive expression of emotions
- Externally provide, or assist the parties in developing, a structure for mutual education about their key interests and the issues they would like to discuss
- Develop a structure that enhances the possibility of accurate and productive communication

In Chapter Six, I discussed the general strategy or conceptual plan that mediators pursue when opening negotiations. I will now examine implementation of the plan in more detail.

OPENING STATEMENT BY MEDIATOR

Disputants usually enter negotiations in various states of emotional stress. Argyris (1970) notes that people are more likely to accept change—and negotiation means change—voluntarily if the negotiating climate enhances self-acceptance, a confirmation of personal worth, feelings of essentiality, and a psychological sense of success. Maslow (1968) points out that an individual's safety needs must be met before higher needs can be addressed.

The mediator's first activities in this phase of intervention should set a positive tone and meet the basic needs of the parties for comfort and safety. A mediator accomplishes this nonverbally through the physical arrangement of the parties in the room and verbally with his or her opening statement. The opening statement usually contains about eleven elements:

1. Introduction of the mediator and, if appropriate, the parties
2. Commendation of the willingness of the parties to cooperate and seek a solution to their problems and to address relationship issues
3. Definition of mediation and the mediator's role
4. Statement of impartiality and neutrality (when appropriate)
5. Description of the proposed mediation procedures
6. Explanation of the concept of the caucus (private meetings)
7. Definition of the parameters of confidentiality (when appropriate)
8. Description of logistics, scheduling, and length of meetings
9. Suggestions for behavioral guidelines or ground rules
10. Answers to questions posed by the parties
11. Securing a joint commitment to begin

In Chapter Six, I discussed the general content of the mediator's opening statement. I will now explain how it is presented in practice, using as an example the Singson-Whittamore case presented in Chapter One.

Mediator Introduction

First, the mediator introduces himself or herself and the parties (if applicable) and explains how he or she became the mediator in this negotiation:

Good morning, Dr. Whittamore and Dr. Singson. My name is Rita Montoya, and I have been asked to be your mediator and to assist you in discussing the issues that have brought you to mediation. I work as a mediator for CDR Associates and have a background in helping people work out their own solutions to situations they would like to change.

The mediator, by choosing to refer to herself with a social or professional title such as *Ms.* or *Dr.*, to give her full name, or to use only the first name, sets the tone for the degree of formality in the proceeding.

Affirmation of Willingness to Cooperate

Second, the mediator should commend the willingness of the parties to cooperate and to try mediation to settle their differences:

I would like to congratulate you both for coming here today and trying to reach your own agreement on some issues that may have been hard in the past to discuss. It is an affirmative indication on your part that you want to take responsibility for making your own decisions.

The mediator may want to ask people how they feel (if culturally appropriate), ascertain their emotions through their verbal or nonverbal messages, and acknowledge their emotional condition. The mediator may acknowledge or restate what she sees and hears to test perceptual accuracy and demonstrate that she understands the emotions of the disputants. The point of recognizing emotions here is not to make a therapeutic intervention but to release stress by talking about emotions. Early acknowledgment that disputants are uncomfortable often helps them dissipate tension so that they can relax and focus on the substance of negotiations.

Definition of Mediation and the Mediator's Role

Third, the mediator should define mediation and the mediator's role in dispute resolution. The mediator may have discussed this with each party in prenegotiation interviews, but it is psychologically important for all parties to hear the same information from the mediator in the presence of other disputants. This ensures that everyone has the same information and minimizes the risk of differing interpretations of what the mediator has previously said.

If the parties are extremely tense at the start of negotiations, they may not be able to hear or retain all the mediator's comments. Although this is a drawback to presenting the information at this time, the mediator should still explain to the parties why she is there and what she proposes to do. This can protect the mediator from later charges of having brought the parties together under false pretenses and outlines precisely what the parties can expect from the intervenor. An explanation of mediation and the mediator's role at this stage may also give the mediator leverage later in negotiations, when she can refer to the role definition or procedures presented at the start of the session.

Mediators in the community sector and in interpersonal disputes usually try to explain mediation and the mediator's role in the most informal language possible. Explanations vary considerably, but they usually cover (1) a brief description of what the parties will do during the current session; (2) what a mediator is; (3) what the mediator can do for the parties; and (4) the potential outcome of mediation. For example:

During the next meeting or two, you will be engaging in discussions and searching for a joint solution that will meet your needs and satisfy your interests. We will also be discussing how your mutual relationship, and your individual relationships with other clinic staff, can best be handled so that the current situation does not adversely affect other people, the functioning of the clinic, or the provision of quality services to patients, which both of you mentioned in premediation discussions as being important. My role as mediator will be to help you identify problems or issues that you want to talk about, help you clarify needs that must be met, assist you in developing a problem-solving process that will enable you to reach your goals, keep you focused and on the right track, and generally help you define a new relationship that each of you will find more comfortable and acceptable.

Next, the mediator should describe her authority relationship with the disputants:

As I mentioned to each of you previously, mediation is a voluntary process. You are here because you want to see if you can find solutions to issues that concern you and to discuss your future relationship. My role is to assist you in doing this. I do not have the authority, nor will I attempt, to make decisions for you. I will try to stay out of discussions of specific substance or content. My role is to advise you on procedure, and on how you might best talk about these issues. If you reach an agreement, we (or I) will write it down in the form of a memorandum of understanding. This agreement can become legally binding if it involves issues covered by law, or it may be left as an informal agreement. If you want to make your settlement legally binding, you may want to consult a lawyer at the end of mediation. He or she can draft the agreement and put it into the form of a contract. If you do not reach a settlement, you are free to pursue other means of dispute resolution that you feel are appropriate. You do not lose any rights to go to court if you use mediation and are unable to reach an agreement.

Statement of Impartiality and Neutrality

When acting as an independent mediator, the intermediary should explain that she is impartial in her views and neutral in her relationship to the parties:

Before proceeding, I would like to clarify both my position on the issues at hand and what my relationship has been with both of you. During this mediation, I will be impartial toward the substance of issues. I do not have any preconceived biases toward any one solution or toward one of you over the other. My relationship with each of you has consisted of [preconference meetings, business association, a previous advisory role, and so on]. I do not believe that this relationship will jeopardize my capacity to act as an impartial assistant to you in resolving this dispute. If at any time you feel that I am acting in a partial or one-sided manner, please bring this behavior to my attention, and I will try to change it. If at any time you feel that I am not able to remain impartial and am unable to assist you, you may cease negotiations, find another mediator, or pursue another means of settlement.

In claiming impartiality toward issues and neutrality toward the parties, the mediator should disclose any relationship with one or more disputants that might bias her behavior or raise a question in the minds of the disputants as to whether the mediator can in fact remain impartial while assisting in discussions of the issues at hand. If disputants feel uncomfortable about the mediator's relationship with one or more parties, the mediator's past experience

with similar issues, or a known aspect of the mediator's private life (political activity, professional or economic relations, or social affiliations that might jeopardize neutrality), they should have the opportunity to ask questions, obtain clear answers, and select a replacement mediator if necessary.

Disputants may not initially believe a claim of impartiality in a highly polarized conflict. There is a tendency to see the dispute in bipolar terms—"You are either for us or against us"—and anyone not taking a vocal position toward one side or another is suspect. Naturally, the parties will have to see impartial behavior before they believe that a mediator is unbiased in attitude. The goal of the mediator at this point is to gain nominal approval from the parties to proceed with negotiations.

Description of Mediation Procedures

Next, the mediator should describe the procedures to be followed. If she has worked these out with the disputants in the prenegotiation interviews, this description is no more than a reiteration of what has been previously agreed. However, if the mediator has taken the initiative to design negotiation and mediation procedures independently of the parties, she should present the proposal in a way that the parties are most likely to accept. The strategy, of course, must be adjusted to meet the idiosyncrasies of the particular parties. Here is a common description of negotiation procedures:

At this time, I would like to briefly describe the process that I propose you follow to begin the session. This proposal is based on your suggestions in our premeeting discussions. Both of you have a significant amount of information about the situation that you are responding to. Although I have briefly spoken with each of you about these matters, I do not have the detailed understanding that each of you does. I suggest that we begin the discussion today with a brief description from each of you about the situation and issues that brought you to mediation. This will educate all of us about the issues you want to discuss and the interests that are important to you and give us a common perception of the problem. Each of you will have a chance, roughly fifteen to twenty minutes [or other specified time], to present your view of the situation. I request that you not interrupt the other while he is explaining a viewpoint, and that you hold your questions until the end of the presentation. A pencil and a pad have been provided for each of you. I would suggest that you note observations or questions as they arise so that they do not get lost prior to the question-and-answer time.

During your presentations, I may ask some clarifying questions or probe your description so that I can gain a greater understanding of how you perceive the situation. My probing is not to put you on the spot but rather to broaden our mutual understanding of the problem. At the end of each of your presentations, there will be a time for the other person (or parties) to ask questions of clarification. This is not a time to debate the issues, but an opportunity to clarify issues and perceptions about the problem(s) at hand.

At the end of the presentation and questions, we will turn to the other [or next] person [or party] to repeat the process until a representative of each view has had an opportunity to speak. At that point, we will clearly identify both the issues that you would like to discuss in more depth and the interests that you would like to have satisfied. Once we are clear on the interests and have described our task in terms of meeting as many of your individual and joint interests as possible, we will develop some potential solutions and assess whether one or more of these options will meet your needs. Note that your goals will be to develop mutually acceptable options that will address the issues at hand and your current and future relationship. Mine will be to assist you with a process that will help you accomplish this end.

The mediator should clearly explain the stages of the problem-solving process and should take care not to present herself as an authority figure. It is the disputants' process, not the mediator's. The process description is a procedural suggestion, not an order.

Explanation of the Caucus or Private Meetings

Next, the mediator should explain the concept of the caucus with each party:

There may be a need, at some time in the course of our meetings, for each of you to take some time for yourself away from the joint meeting [and confer with other members of your group, if it is a group dispute] or to meet with me individually as a mediator. This type of break or meeting is not unusual. It allows you time to refocus and reflect on your short-term and long-term

goals, handle strong emotions, explore options or proposals, gather your facts to develop new settlement options, or reach a consensus within your group [if applicable]. At times, I may call such a meeting, but you may initiate one also. If I call a separate meeting, it is not to make a deal but to explore issues that might be more comfortable for you to discuss in private. What is discussed in these separate meetings will be considered by me to be confidential. I will not reveal what we have talked about with the other party [or parties] unless you instruct me to do so.

Little more is said about caucuses at this time because in some situations the thought of private meetings may make one or more of the parties uncomfortable. Disputants often fear a clandestine deal or coalition between the other party and the mediator. I will explain the use of caucuses in more detail in Chapter Fifteen.

Definition of Confidentiality Parameters

At this point, the mediator should describe her understanding of the confidential nature of the negotiation session. Confidentiality, though often considered to be both an important aspect and indeed a functional necessity of mediation, is not universally guaranteed or necessary. Some states in the United States make legal guarantees of confidentiality between disputants and mediator (Freedman, Haile, and Bookstaff, 1985; Comeau, 1982; Folberg and Taylor, 1984). Other states do not provide for confidentiality and on occasion may request data or subpoena mediators to testify in postmediation court proceedings if the parties have failed to reach an agreement. Mediators should describe the limits of confidentiality as it is provided for in their state or agency so that disputants know the limits of their privacy. Here is an example of a statement concerning confidentiality:

These sessions will be considered by me to be confidential in that I will not discuss them publicly with any person not involved in this dispute. I will attempt to maintain this confidentiality to the best of my ability. On occasion, I may want to discuss this problem confidentially with a colleague so that I may gain greater insight into the conflict. I request that you grant me this privilege as it will enable me to better assist you in reaching an agreement. If I do so, I will not use either of your names in describing the situation.

At this point, some mediators ask parties to sign a confidentiality statement or a waiver and consent form (see Resource B) designed to protect the mediator from a future subpoena demanding either an appearance in court or the presentation of her notes as evidence in a lawsuit.

Description of Logistics

The mediator should now describe any relevant logistics: the time schedule for the entire process, the length of sessions, and note taking. The mediator often estimates how much time will be necessary to settle the dispute. Parties need to know this in order to assess the costs and benefits of mediated negotiations. An initial commitment should be gained from the parties for allotting a specific period of time to the first session. Later meeting dates and times can be established and defined as needed. Some mediators in complicated cases have obtained a time commitment for several sessions, as such cases require more time for data collection and for educating the parties about the issues in dispute. It may also take several sessions to achieve any substantive progress or to lower the psychological barriers to settlement.

The mediator should seek permission from the parties to take notes, explaining that the notes are for her own reference and that they will remain confidential. The notes are not an official transcript of the meeting but might at a later time be used to construct a written memorandum of understanding or a settlement document.

Suggestions for Behavioral Guidelines

At this time, the mediator should shift her focus to behavioral guidelines that will facilitate an orderly discussion. Guidelines that mediators may suggest include procedures to handle interruptions, agreements about the role of witnesses and relationships with the press, conditions for smoking, identification of those with whom disputants may discuss negotiations, delineation of what can or should be disclosed by the parties, and so on:

At this point, I would like to suggest several procedural guidelines that other negotiators have found helpful in their discussions. I would like to suggest that each of you have some uninterrupted time to talk. If one of you

has a question about what is said, I request that you hold it until the question period. If you agree to this procedure, I request your permission to hold you to it. Is this acceptable? Do you have other guidelines that might help you discuss more productively?

Some mediators who wish to establish behavioral guidelines for negotiations list the rules under which they will work and are inflexible on changing them, whereas others ask the disputants to identify and generate their own guidelines to aid them in holding productive discussions. The latter strategy is a first step toward making mutual procedural decisions and developing habits of agreement.

There is clearly no one way to establish behavioral guidelines. In tense situations, disputants may need the mediator to be more directive, whereas in less polarized disputes, the parties themselves may be in total control. Mediators, in establishing guidelines, should be careful not to use authoritarian or command-ridden language. Terms such as *rules* or *terms for negotiation* or even *behavioral ground rules,* which imply regulations that are being forced on the group, should generally be avoided. Noncommanding terms such as *guidelines* or *suggestions for procedure* are often more acceptable to the parties and avoid putting the mediator in an authoritarian position. Once guidelines are established, the mediator should secure an agreement that she will be empowered to enforce the agreed terms or procedure.

Answers to Questions

The mediator is now nearing the end of her opening statement. At this point, she should answer any questions that the parties may have about the procedure to be followed. Questions should be answered to the satisfaction of the disputants before proceeding further. Lack of understanding by a disputant or dissatisfaction with a mediator's answer may lead to a decreased commitment to the process or later resistance.

Commitment to Begin Mediation

Gaining a commitment to begin is the mediator's last move before turning the session over to the parties. The mediator's concluding remarks should outline what has been discussed, set the information-sharing process in motion in a positive way, and motivate the parties to begin discussing their issues. Here is a sample statement concerning commitment and consent:

If there are no more questions about the process, I suggest that we are ready to move on to discuss the issues at hand. It is my understanding that you are both [or all] here voluntarily, and that you are committed to bargain in good faith, explore and develop settlement options that will be mutually acceptable, and to try to achieve a settlement. I also assume that your discussions will help redefine your relationships. We will explore ways that they can be improved if there are to be ongoing relationships, and if not how to end them with as much respect and comfort as possible. Are you ready to begin?

After gaining either verbal or nonverbal assent, the mediator should turn the session over to the disputants.

OPENING STATEMENTS BY PARTIES

Parties in dispute generally start with opening statements of their own. These statements are usually designed to outline their substantive interests, establish a bargaining procedure, and build rapport with the other side.

Disputants enter negotiations with a variety of levels of information about their own and other parties' issues and preferred solutions. In some disputes, issues and outcome possibilities may be very clear, and negotiators will have to spend little time exploring details of contested issues. In other conflicts, the parties may lack information on a number of dimensions.

Young (1972, p. 57) notes that at the beginning of negotiations, a negotiator may be unclear about:

- "The basic issue(s) at stake"
- The "range of alternative choices or strategies" available
- The solutions that will best meet his or her interests or needs
- The number and identity of people who should be involved in the negotiations (or whom they will affect)
- The way that other negotiators will make decisions

The degree of clarity at the start of negotiations varies greatly. At one end of the spectrum are disputant relationships that are very ill defined. At the other are situations in which strategies, issues, options, and potential outcomes are well known to all negotiators.

Parties use opening statements to present and test their views and assumptions at the onset of negotiations.

Mediators should be familiar with the variety of ways in which parties make opening statements so that they are ready to respond. Parties may open negotiations by focusing on substantive issues, negotiation procedures, or moves designed to improve the psychological conditions of disputants.

Openings Focused on Substance

The most common (but not necessarily the most effective) way to open negotiations is to focus immediately on the substantive issues of the dispute. In this approach, the negotiator usually selects several variables—the history of the problem, the reasons for seeking change, the issues, and possibly interests or positions—and orders them in a way that will have the maximum positive effect on the opposing party or parties. Moore (1982b) and Lincoln (1981) list possible combinations:

- *Focus on history, need, and position.* This combination is quite common in many situations and cultures. The negotiator reviews the background of the dispute, outlines how the status quo has caused damage, tells why change is needed, and then proceeds to detail an opening position that he or she feels would solve the problem. This type of opening frequently forces the parties into hard positional bargaining. Singson might use this approach for opening and detail the history of the Whittamores' coming to the clinic, the legal basis for their contract, and a statement that the contract should be enforced.
- *Focus on issues.* The negotiator may dispense with the history of the problem and proceed directly to a discussion of the issues. The issues may be presented in several ways:
  - They may be left to each side to identify through a verbal presentation of the development of the dispute.
  - They may be outlined by the negotiator in the form of a list that presents the most important issues first, indicating which items deserve the most attention.
  - They may be outlined by the negotiator in an order that places simple and small issues first.
  - They may be presented in random order so that the parties may later jointly organize them.
  - They may be presented in an exhaustive manner that includes the stated or expected issues of the other side—an approach that demonstrates an interest in the opponent's viewpoint.

Whittamore might take the last approach to opening and list all of the issues that he wants to discuss, as he wants Singson to be aware of all the potential ramifications of the latter's actions.

- *Focus on merit.* In this approach, the negotiator tries to educate the other party about the need for change without disclosing or proposing a position. The major assumption behind this strategy is that if a party can make a convincing case that his or her situation is intolerable and that change is needed, it will be easier to reach an agreement later on a particular solution.
- *Focus on interests.* In this strategy, the negotiator discusses the interests or needs he or she seeks to have satisfied through negotiation. By focusing on interests instead of positions, the groundwork is prepared, but not guaranteed, for possible interest-based negotiations. This approach could be taken by either or both negotiators on their own initiative but might also be initiated by a suggestion from the mediator.
- *Focus on nonnegotiable position.* In cases in which parties are extremely polarized or feel that they have little room for bargaining, the negotiator may dispense with the history of a conflict and the issues involved and present an extreme position instead. This position may or may not be reasonable or negotiable. The tactic can often stalemate negotiations and may force parties to pursue other means of dispute resolution, such as litigation or direct action. If either of the parties in the Whittamore-Singson dispute took this approach, the mediator would probably have to caucus and help him back off of his initial position.

Openings Focused on Procedure

Another way of opening negotiations, which is not as common as substantive openings, is to focus on the negotiation procedure. With this strategy, the time in which the disputants focus on behavioral guidelines is expanded into an extended discussion of procedural

steps that the parties will take to resolve their dispute. As discussed in Moore (1982b) and Lincoln (1981), advantages to opening negotiations in this way are that such a focus:

- Presents a jointly developed sequence for the negotiation to which all parties are committed
- Allows the parties to practice making decisions as a team
- Provides information about the behavior, attitudes, and trustworthiness of other parties
- Allows parties to practice making agreements on problems that are neither substantively important nor as emotionally charged as the issues in dispute
- Creates an opportunity to build "habits" of agreement
- Demonstrates that agreement is possible and that the situation is not hopeless

Central areas of procedure in which parties may make agreements include these (Moore, 1982b; Lincoln, 1981):

- How an agenda will be developed
- Negotiation procedures to be followed
- Time frame and schedule for sessions, including beginning and ending times
- How information will be shared among disputants
- Information sharing procedures with constituents or nonparticipating parties
- How legal rights and administrative mandates will be recognized and protected
- Parties' relationships with lawyers
- Parties' relationships with media
- Acceptable and unacceptable behavior (for example, respect for values, personal attacks, attribution of motivation, emotional displays, attitudes toward win-lose solutions)
- How commitment to the procedure and to potential agreements will be maintained
- Determination of participants
- Role of substitutes and observers
- Role of task forces or small work groups

- Size of negotiating teams
- Location of meeting sites
- Maintenance of meeting records
- How procedural and substantive agreements will be enforced

Mediators sometimes encourage negotiators, implicitly or explicitly, to focus on procedural agreements before delving into substance. This is done if the intervenor feels that parties need to build trust or experience in working with one another or would benefit from a more extensive set of procedural guidelines. Parties occasionally begin with this type of opening on their own.

Opening Focused on the Relationships of Disputants

In formal negotiations, the opening that is focused on the psychological conditions of disputants is not as common as substantive or procedural openings. It is more frequently observed in transformative mediation (Bush and Folger, 1994), a form of third-party consultation practiced by organization development specialists (Blake and Mouton, 1984) and by social scientists working in international peace making (Rothman, 1992; Kelman, 1991; Burton, 1969; Fisher, 1982; Walton, 1969).

This approach aims to improve the relationship of the disputants before, or as a major element in, discussions of substantive issues or procedure. In its most informal mode, some of the conciliation techniques mentioned in Chapter Seven may be initiated. If the process is conducted more formally, experiences may be planned in which disputants engage in unstructured social activities or take field trips that focus on the topic under discussion, thereby gaining an opportunity to establish and build personal connections. Other means of drawing disputants closer are general personal-sharing groups (Dubois and Mew, 1963), focused-topic discussion groups (Levinson, 1954; Levinson and Schermerhorn, 1951), intergroup training laboratories (Blake and Mouton, 1984), joint-skill training (Hunter and McKersie, 1992), discussions oriented toward mutual recognition and empowerment (Bush and Folger, 1994), and performance of common tasks unrelated to the issues in dispute (Fisher, 1978). For example, in one mediation of a public policy dispute, the mediators arranged for all parties to

meet the night before the opening session for a casual dinner. The negotiators rode atop a double-decker bus to a Mexican restaurant, where they ate, drank, and came to know each other as individuals and not representatives of an interest group. In another dispute involving timber cutting on national forest land, the parties participated in a weekend retreat in which they hiked on land earmarked for a timber harvest. The hike built interpersonal relationships and raised awareness of the land involved in the dispute.

Mediators in marital disputes occasionally spend time before formal divorce negotiations discussing and processing courtship and the beginning, development, and decline of the marriage (Milne, 1981). It is argued that this procedure helps the couple adjust to the fact that they are divorcing.

In their attempts to build more flexible and open attitudes in disputants, mediators often initiate informal moves to promote conciliation. They might encourage active listening, affirmation of some quality of a party that is not related to the issues in conflict, a communication structure that promotes safety, or a deliberate focus on feelings.

Choice of Opening

The choice to focus on substance, process, or the psychological conditions of the disputants depends on:

- The type of dispute
- The abilities of the disputants to focus on substantive issues
- The level of emotional intensity of disputants
- The degree of authority the disputants have given to the mediator to design and regulate the process of the meeting and opening procedures or statements
- The internal and external pressures that are on the negotiators to settle promptly

The mediator should work with the parties to focus on an opening process that will be most successful for them. If the internal or external pressures to reach agreement are high or moderate and emotional tensions are high, the mediator will usually encourage procedural or psychological openings. Parties will often accept this

emphasis if they can be convinced that such moves will later enhance the possibility of reaching a substantive settlement.

Transition to Parties' Opening Statements

The mediator now shifts from her opening statement to a focus on the disputants with a transition statement. Here is a sample transition statement from the Singson-Whittamore case in which the mediator proposes a focus on substance:

At this time, I propose that we move into a discussion of the situation that brought you to mediation. [The mediator turns to the party that she has previously decided should begin presenting first.] *Dr. Whittamore, will you please begin by describing the situation as you see it? Please include some of the historical background of the problem, the issues that you would like to discuss, and the interests or needs you want to have satisfied. At this point, it will be helpful not to identify specific solutions but to merely focus on defining the problem.*

The mediator now turns the session over to the first party, who begins his opening statement.

FACILITATION OF COMMUNICATION AND INFORMATION EXCHANGE

The most critical task for disputants making opening statements is to maximize accurate information exchange. They may be hindered in doing so by a number of factors:

- Excessive posturing
- Extreme demands designed to signal how intensely the parties feel about the issues or how much they want the other party or party to move
- Jumbled or unstructured communication
- Inaccurate listening
- Intense emotional outbursts
- Total dysfunction of one or more parties

The mediator's main tasks, therefore, are to help the parties communicate about substantive issues in dispute and positive aspects

of their relationship and minimize the psychological damage resulting from emotional exchanges. To facilitate this communication, mediators use a variety of communication techniques, some of which were described in Chapters Five and Seven. Additional communication techniques are:

Restatement. The mediator listens to what has been said and feeds back the content to the party in the party's own words.

Paraphrase. The mediator listens to what has been said and restates the content back to the party using different words that have the same meaning as the original statement. This is often called reframing.

Active listening. The mediator decodes a spoken message and then feeds back to the speaker the emotions of the message. This is commonly used in conciliation.

Summarization. The mediator condenses the message of a speaker.

Expansion. The mediator receives a message, feeds it back to the listener in an expanded and elaborated form, and then checks to verify accurate perception.

Ordering. The mediator helps a speaker order ideas into some form of sequence (historical, size, importance, amount, and so on).

Grouping. The mediator helps a speaker identify common ideas or issues and combine them into logical units.

Structuring. The mediator assists a speaker in organizing and arranging his or her thoughts and speech into a coherent message.

Separating or fractionating. The mediator divides an idea or an issue into smaller component parts.

Generalization. The mediator identifies general points or principles in a speaker's presentation.

Probing questions. The mediator asks either open-ended or focused questions to encourage a speaker to elaborate on an idea.

Questions of clarification. The mediator asks questions to obtain clarification of particular points.

Mediators use these communication tools to help parties communicate more accurately with each other. Ideally, the parties use them too. Mediators may encourage them to do so by explaining how the tools are used and by commending parties whenever they apply them.

CREATION OF A POSITIVE EMOTIONAL CLIMATE

In addition to facilitating communication, the mediator often must create an emotional climate conducive to clear communication and joint problem solving. Interventions related to promoting a positive emotional climate include:

- Preventing interruptions or verbal attacks
- Encouraging parties to focus on the problem and not on each other
- Translating value-laden or judgmental language of disputants into less emotionally charged language
- Affirming clear descriptions or statements, procedural suggestions, or gestures of good faith while not taking sides on substantive issues
- Accepting the expression of feelings and being empathic, though not taking sides
- Reminding parties about behavioral guidelines that they have established
- Defusing specific threats by restating them in terms of general pressure to change
- Intervening to prevent conflict escalation

CULTURAL VARIATIONS

The cultural context—professional, educational, ethnic, gender, and national—may significantly influence the process of beginning the mediation process. It is important for an intermediary to start the discussions in a manner that will be both culturally appropriate and acceptable to the parties. Although it is impossible to describe the range of procedures that are used in this stage, there are some approaches that appear quite frequently.

In situations and cultures in which social network mediators play a predominant role, more time may be allocated at the beginning of the mediation session for informal conversation, which is often focused on building connections between the mediator

and the parties and between the parties themselves. This time helps to establish or reestablish the relationship between the parties and may also identify mutual bonds or obligations that will encourage settlement. In some cultures, such as many in Latin America and the Middle East, the opening of mediation or negotiations is also accompanied by the consumption of a beverage (and in other cultures, food), which may be provided by the mediator. For example, drinking tea is common in the Middle East, Iran, Pakistan, India, Sri Lanka, and in many societies in Africa (Senger, 2002). In a number of cultures, such as China, Japan, and Indonesia, this opening or social phase of the mediation may actually be separated in time and space from the later focus on substantive issue identification and problem solving (Graham and Sano, 1984).

In situations where the mediator is in a hierarchical relationship with the parties, or the parties are in a vertical relationship with each other, the opening statement and corresponding process may be more formal and emphasize the authority of the mediator, the superior-subordinate relationship of the parties to the intermediary, and the differences between the parties themselves. This formality may be seen as a means of leveraging the parties toward an agreement. In some cultures, such an approach may also be necessary to demonstrate respect for the positions of the parties. Although this may go against norms of more egalitarian societies, it is both acceptable and expected in more hierarchically organized cultures.

The level of detail in which the process and behavioral ground rules are spelled out also varies across cultures. In high-context and fairly homogeneous cultures, where members have many common and unspoken assumptions about how the negotiation process will be conducted, the degree of process explicitness will be less than in low-context cultures composed of members from diverse backgrounds, where parties expect and require detailed descriptions of procedures (Hall and Hall, 1987). For example, intermediaries in Japan, a high-context society, may be less procedurally explicit than U.S., Canadian, or Australian mediators, who often work in multicultural settings. In intercultural mediations, the mediator will have to decide how explicit he or she needs to be to adequately inform the parties about how they will proceed.

Patterns of communication may also differ across cultures. Some cultures, such as the majority culture of the United States, are monochronic (as described in Chapter Seven), in that events or activities within a human group occur one at time (Hall, 1983). One person talks and the other listens. A number of other cultures, such as many found around the Mediterranean, are polychronic, in that multiple activities and conversations may occur at once. These communication patterns can significantly affect the type of dialogue that occurs between the mediator and the parties during the opening statement, as well as the discussion or argumentation between the parties. What for one culture appears to be rudeness, interruption, and poor listening will be acceptable overlapping discussion in another. Mediators may need to adjust their communication patterns when working within or between monochronic and polychronic cultures by adopting or adapting to the culture of the parties, by openly discussing and reaching an agreement on communication norms that will be used in the session, or by switching cultures as different parties are related to.

TRANSITION TO THE NEXT STAGE

If the parties and the mediator have communicated successfully and built some positive feelings between them in this first stage of joint meetings, the groundwork for productive future dialogue has been established. This stage terminates as soon as the parties or the mediator focuses on building an agenda or on a particular issue or sphere of discussion and moves to explore it in depth. Shifts between stages of negotiations are often the most difficult for parties and mediators (Wildau, 1987). As we move to the next chapters, we will explore how mediators can help smooth these transitions and promote productive problem solving.