

General and Special Techniques of Mediation

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ABSTRACT

This chapter explores the fundamental and specialized techniques mediators employ to facilitate constructive conflict resolution, focusing particularly on the principles of transformative mediation. Emphasizing self-determination, empowerment, and mutual recognition, it presents mediation as a process that enables parties to remain owners of their conflicts while enhancing their communication and understanding. The text distinguishes between general techniques – such as active listening, questioning, paraphrasing, reframing, summarizing, and recognition – which are essential in all mediation processes, and special techniques – such as caucusing, venting, mirroring, storytelling, and silence – that are used selectively based on contextual and methodological considerations. Each method is explained with practical examples, highlighting the mediator’s skill in choosing and applying them appropriately. By integrating these approaches, the chapter provides a comprehensive framework that supports mediators in promoting clarity, empathy, and cooperation, ultimately leading to sustainable, mutually satisfactory agreements rooted in transformative practice.

KEYWORDS

Mediation Theory, Transformative Mediation, Conflict Resolution Processes, Dispute Resolution, Communication Strategies, Facilitative Mediation, Emotional Regulation, Mediator Skills, Questioning Techniques, Active Listening, Paraphrasing, Neutral Reframing, Summarising Techniques, Recognition in Mediation, Reality Testing, Caucusing, Feedback Methods, Storytelling in Mediation, Empowerment, Self-Determination

1. Executive Summary

This chapter, titled *Special and General Techniques of Mediation*, delves into the various methods employed by mediators to facilitate effective conflict resolution. A significant emphasis is placed on *transformative mediation*, which underscores the importance of parties defining their own identities and maintaining ownership of their problems throughout the process. This approach highlights the crucial role of interactions between parties, with these interactions shaping the methods utilised in transformative mediation.

Tibor Kertész (2025) ‘General and Special Techniques of Mediation’ in Erika Váradi-Csema (ed.) *Interdisciplinary and Child-Friendly Communication*. Miskolc-Budapest: Central European Academic Publishing. pp. 223–244. https://doi.org/10.71009/2025.evcs.iacfc_18



The chapter categorises mediation techniques into *special* and *general* methods, depending on the contexts in which they are applied. *General techniques* are foundational and widely applicable, forming the bedrock of the mediation process. These include active listening, reframing, and summarising, all aimed at enhancing understanding and communication between parties. By fostering a supportive environment, these techniques help parties articulate their needs and concerns more clearly.

In contrast, *special techniques* are tailored to specific situations and may involve more direct intervention by the mediator. These methods might include caucusing, where the mediator meets privately with each party to explore issues in depth, or reality testing, which involves challenging parties' perceptions and assumptions to uncover underlying interests and facilitate realistic solutions. These techniques are crucial when parties face significant communication barriers or when emotions run high.

Through detailed explanations and practical examples, the chapter provides mediators with a comprehensive toolkit to navigate various conflict scenarios effectively. By understanding and applying both general and special techniques, mediators can better support parties in reaching mutually satisfactory resolutions, maintaining the integrity of the transformative approach that values self-determination and constructive interaction.

2. Who is the Mediator? What is Mediation?

Mediators are professionals who use specific methods to assist clients who turn to them. Mediators help to create a dialogue to clarify the situation between the clients, to provide help in the more precise understanding of their emotions, to assist in facilitating a lasting resolution to their conflict, and ideally, to prevent further conflict situations. However, clients often cannot articulate their expectations from mediation precisely; they only know that they need help. Occasionally they expect solutions from the mediator, while at other times, they simply want them to help regulate their conversation within structured frameworks. In fact, several factors may influence what clients expect from mediators, but the most important is how the clients experience the conflict and what it means to them.

Transformative mediation, the presentation of its general and special techniques undertaken in this chapter, essentially poses this question to itself: what is our relationship to conflicts, what role do we assign to them, do we view them as opportunities or rather as annoying actors in our lives?¹ Accordingly, the mediators interpret their own role and see in what way they can meet the clients' expectations. It is quite characteristic that clients, upon arriving for mediation, think in binary

1 Baruch Bush and Folger, 2004.

terms²: to divorce or not, to take responsibility for their actions or not, to stay with the company or to quit. The mediators' responsibility and the impact of the techniques they use ultimately enable the parties to better understand each other's perspectives and motivations, as well as broadens the spectrum of possible solutions during the mediation process.

All of this leads us to a unique set of methods and techniques that transformative mediators employ in their work. In this approach, mediation defines the possibility of self-determination for the parties as the most important value: that is, the parties remain "owners" of their own problem or conflict at every point in the process. Furthermore, the development of the interaction between the parties or its positive change is an important element, as is their active participation in the process. These principles will guide us through the mediation process; they determine the manner and purpose of the mediator's intervention and thus the mediation techniques employed.

3. What are Mediation Techniques?

In this section, we elaborate on the techniques of transformative mediation that the mediator must apply with proficiency during the process. Let us start by defining the concept of "mediation technique."

If we were to define the term, we might say that a technique or mediation method is a specific action or series of actions, or the application of a systematic process in a given situation. It is important to note that none of the methods presented here as mediation techniques are exclusively characteristic of mediation. However, what defines them as mediation techniques is that they are applied in a specific sequence and with a specific purpose during the process. The ability to apply these techniques appropriately in the right situation is specifically a question of mediator skills and expertise. Inexperienced mediators often fall into the misconception that questioning is the sole method of mediation. While it is true that the mediator does ask many questions and employs specific types of questions, questioning alone is not the only tool at our disposal.

4. The Possible Classifications of Mediation Techniques

4.1. Based on the Nature of Techniques

Let us first take a broader look at the nature of techniques:

The mediator plays multiple roles simultaneously in the process because the parties have turned to a mediator due to issues in their communication, they are emotionally involved in the conflict situation, and for these reasons, they are not

| 2 Lempereur et al., 2021. |

able to negotiate effectively with each other. The process that would allow them to handle their problems without external assistance is not functioning between them. If an agreement is reached between the parties, the mediator will again need his/her facilitative skills in formulating the agreement: he/she must assist the parties in reaching an agreement that complies with all their interests and needs, effectively addresses the problem between them, and to which they are committed during and after the mediation process.

Accordingly, we can fundamentally divide our conflict resolution techniques into four groups: facilitative techniques, communication techniques, techniques that facilitate the handling and processing of emotions and techniques that generate agreement options. First, let us take a closer look at these.

4.1.1. Facilitative Techniques

The mediator first utilises his/her facilitative skills in guiding the process. The mediator's facilitative skills are required even before the mediation session itself, as the parties often do not understand what mediation entails, have many questions about the process, and may be uncertain or resistant about whether they want to participate in such an emotionally challenging process. If all parties decide to participate in the mediation, then it is the mediator's responsibility to organise the mediation session, regulate the communication between the parties (giving them the floor, obliging certain rules). Furthermore, the mediator occasionally summarises what the parties have said, directs attention to needs and interests, and ensures that the parties have discussed all important issues they wanted to clarify within the framework of the mediation.

4.1.2. Communication Techniques

Throughout the entire process of transformative mediation, it is the mediator's task to improve and facilitate communication between the parties and address communication breakdowns. Enhancing communication between the parties is defined as one of the goals of transformative mediation. Transformative mediation starts from the premise that the parties will need effective communication to uphold any agreements reached during mediation: if their relationship persists after the conflict resolution process, effective communication will be indispensable. Therefore, communication techniques are those techniques that facilitate the improvement of communication between the parties.

Communication techniques include questioning techniques, primarily reflective questioning, but also active listening – techniques that encourage the parties to engage more actively and understand each other better.

4.1.3. Handling Emotions, Reframing

Managing emotions is an important objective of the transformative mediation approach. Clients involved in conflict often come to mediation with strong emotions, as conflicts emotionally affect them. However, as mediators, we know that behind

emotions, there are always needs and interests. Therefore, it is important to work with emotions, ensuring that all emerging needs and interests are addressed in mediation. Techniques in this category include exploring needs and interests, such as neutral reframing or paraphrasing.

4.1.4. Generating Agreement Options

After uncovering and discussing emotional needs, the mediator moves on to the phase of developing the agreement. Mediators do not create the agreement themselves; instead, after identifying and discussing the clients' emotional needs, they merely facilitate the process of developing an agreement that reflects those needs. In this phase, various consensus-building techniques can be applied, with brainstorming being the most well-known. Generating options helps the parties identify creative decision-making possibilities that meet all their interests, thus determining the content of the agreement that will serve as the outcome of their dispute.

4.2. Classification of Mediation Techniques Based on their Application Conditions

The behaviour and attitudes of the various participants in mediation sessions can vary significantly. Since the mediator determines the depth of the mediation approach and intervention based on the needs of the parties, mediation techniques can fundamentally be divided into two groups. If we classify mediation techniques based on when and under what conditions their application becomes necessary, we arrive at the following:

4.2.1. General Techniques of Mediation

This category includes mediation techniques that should take place in every mediation, regardless of the complexity of the case. Therefore, we use them universally in every mediation because these techniques elevate mediation beyond mere negotiation or facilitated discussion.

4.2.2. Special Techniques of Mediation

The other group comprises techniques whose application is not universal and only arises in specific situations where their use is essential. We apply techniques in this category when there is a specific methodological justification. We will elaborate on these methodological justifications later, but to put it simply for now: we do not apply special techniques in "simple" cases; otherwise, the situation may become difficult for the parties to interpret.

5. General Techniques of Mediation

First, let us look at the communication, facilitative methods, and techniques for handling emotions, which constitute the "mandatory" elements of mediation, and determine how to apply them.

5.1. Questions, Questioning Techniques

In mediation training, novice mediators often hear the situation assessment: “I did not know what to ask.”

Indeed, asking the right questions is the foundation of mediation and is not as simple as one might think. However, a well-directed question can reverse an extremely difficult mediation situation, giving the parties the feeling that the mediator truly understands the situation and can handle it. If nothing comes to mind, however, the parties quickly take control, and amidst a barrage of insults, we find ourselves at a loss. Questions are of paramount importance at every stage of the mediation process, but as Duve points out³, by asking questions, the mediator strongly directs the process. And although one significant advantage of mediator questions is that the mediator asks questions that the parties themselves would not ask each other, the mediator still significantly influences the flow of information in the process. So let us make sure that our questions help but do not “interrogate” the clients.

5.1.1. Types of Questions

Let us explore what we need to know about the types of questions that can be used in mediation. This overview is by no means exhaustive; we’ll only review the most common and effective questions: A) Closed-Ended Questions; B) Open-Ended Questions.

1. Closed-Ended Questions

Closed-ended questions are those that do not begin with a question word and can be answered with a simple “yes” or “no” or with a single piece of information. E.g.: Did you know each other before?; Do you live in a house with a garden? ; Do you enjoy living here?; Do you like soccer?

Closed-ended questions are not necessarily advantageous in mediation. Since parties tend to provide short, straightforward answers or respond with a “yes” or “no” to closed-ended questions, both the mediator and the other party obtain limited information. Closed-ended questions often give the clients the feeling of being “interrogated,” and soon their behaviour in the process will reflect this: instead of communicating with each other, they simply answer the mediator’s questions. The greatest problem with this approach is that it hinders the process of exploring needs, eventually causing the mediation process to stall. Another characteristic of closed-ended questions is that they are extremely labour-intensive: the mediator tires quickly, runs out of questions, and the process reaches an impasse. Additionally, closed-ended questions allow the mediator to strongly direct the process, as they ask questions and expect answers, so the conversation does not necessarily go in the direction the parties or the mediator would prefer.

3 Duve et al., 2019.

Closed-ended questions can also begin with question words, but in terms of the quality of the question, they do not add much. Let's look at two examples: E.g.: How long have you known each other?; How long have you been living in a house with a garden?

The response to these questions is likely to be a brief answer, providing only a single piece of information.

Of course, this does not mean that closed-ended questions are unacceptable in mediation. There are situations where their use is appropriate, for example when we want to find out if the parties have reached a decision on the issue being discussed. Appropriate closed-ended questions include: So, am I understanding correctly that the solution proposed by John is acceptable to you?; Is it suitable for you if we continue the discussion tomorrow at 2.00 p.m.?

However, we should make sure that the ratio of closed-ended questions to open-ended questions is lower, and we should only use them when a short, straightforward answer is actually needed.

2. Open-Ended Questions

Open-ended questions are those that begin with a question word and encourage the parties to provide elaborative answers. If we take the above examples as a basis, the same questions in the form of open-ended questions would look like this: E.g.: What was your relationship like?; What are your living conditions like?; How do you feel in this living environment?; What is your relationship with sports like?

From the perspective of the mediation process, open-ended questions are clearly beneficial. When comparing the examples referred to above, it becomes evident that open-ended questions allow for more detailed, informative answers and open the door to further questions because they contain additional information that the mediator probably would not have asked for otherwise. Additionally, it is harder to pose open-ended questions that include suggestions or reflect the mediator's opinion, making them impartial and more effective by encouraging the parties to think, reframe their opinions, and not directing the process, as it was mentioned earlier. Thus, the parties do not expect the mediator to provide the solution but see the conflict as their own problem to solve.

Open-ended questions have various types from the perspective of mediation:

1. Informational Questions
2. Motivational Questions
3. Reflective Questions
4. Circular Questions
5. BATNA/WATNA

Now let us briefly review the most important types of questions with some examples.

1. Informational Questions

This question type encourages the sharing of information related to understanding the conflict. It is typically used at the beginning of the mediation process or when transitioning to a new, previously unexplored topic. Typical question words include: Who? What? When? Where? How many? With whom? Since when? E.g.: How long have you known each other?; How long have you had this contract?; With whom do you usually discuss these issues?

While the purpose of informational questions is to enhance understanding and gather information, it is advisable to ask them as openly as possible, as this has clear methodological advantages.

By posing an open-ended informational question, we obtain additional information, thus aiding the mediator's work and mutual understanding between the parties.

2. Motivational Questions

Questions related to the parties' emotions and motivations are essential tools in the empowerment process. They help the parties understand each other's perspectives and interpret emotions correctly. However, they must be used cautiously because, although they can have a very positive impact on the parties, they can easily be interpreted as accusatory questions. Typical question word: "Why?" E.g.: Why was this relationship important to you?; Why would you like things to be resolved between you again?

However, we never ask questions in a way that blames the parties. An inappropriate "why" question, for example, would be: "Why did you have to leave your wife?"

3. Reflective Questions

This question type works with the parties' empathetic abilities and aims to enable them to understand the other party's situation, role, and needs. Reflective questions are most commonly used in role reversal, a mediation technique. There are no typical question words; instead, the typical formulation looks like the mediator always addresses questions about the other party's emotions, situation, etc., to one party. E.g.: What do you think is important to Peter?; How do you think Eva feels?; What do you think the neighbour's attitude would be towards such a proposal?; How do you think Eva would react to such a suggestion?

4. Circular Questions

There are also no typical question words for circular questions; only the typical formulation. Circular questions are posed by addressing the question to every

participant. Circular questions are appropriate when the parties already interpret the problem in such a way that they understand that it needs to be solved through their cooperation, and they are clear about the responsibilities and lessons learned. Typically, these questions are raised towards the end of the mediation process. E.g.: What did each of you learn from this case?; What does each of you think about their role in the situation?; What does each of you need to do differently to prevent a similar situation?

5. BATNA / WATNA

These two types of questions are characteristic when we feel that the mediation process has stalled. The mediator asks these questions to motivate the parties to consider the consequences of ending the mediation and thereby motivates them to participate in the mediation process and make further efforts to resolve the situation. It is crucial to note that these two types of questions can only be applied in separate negotiations, the so called caucuses. Otherwise, this may mean the end of the process. The reason for this is that the BATNA / WATNA question types refer to the weakest points of the parties' positions, and in the case of a stalled process, the parties will not be honest in each other's presence.

BATNA stands for "Best Alternatives To Negotiated Agreement," and typically these questions probe the best outcome that could be achieved without negotiation. E.g.: What do you think would be the best outcome of this conflict if there is no agreement today?; What is the best outcome that can be achieved in this situation from your perspective? What would the benefits be for you by continuing the discussion?

WATNA, on the other hand, is the opposite, standing for "Worst Alternatives To Negotiated Agreement."

WATNA questions aim to focus on what the parties stand to lose if there is no agreement or if negotiations fail. E.g.: What do you lose if there is no agreement now?; How long will it take for you to receive money if the case continues in court?; What costs and inconveniences will you incur if there is no agreement now?

The types of questions presented above are related to the dynamics of mediation and the process of empowerment. Accordingly, the sequence of asking questions is as presented in this chapter. At the beginning of mediation, when we are occupied with understanding the situation, we typically ask informational questions. Then, when we also want the parties to understand who did what and why, the proportion of motivational questions increases, followed by reflective questions when we focus on the impact of the conflict on the other. Circular questions help the parties draw lessons together from the discussion. If the process is stuck, BATNA/WATNA questions come into play.

5.2. *Paraphrasing*

Paraphrasing is often considered one of the least “intrusive” mediation techniques in the literature, yet it is extremely important from the perspective of the mediation process, because the consistent use of paraphrasing can prevent misunderstandings between the parties⁴. This technique has several objectives. Firstly, its application ensures that the parties understand that the mediator not only heard but also precisely comprehends what they said, allowing them to clarify the conveyed information. Additionally, the technique helps the parties to hear the other party’s viewpoint more accurately and formulated in a different way, thereby contributing to a better understanding of each other’s positions⁵, through the examination of several mediation sessions, concluded that clients are often more inclined to accept paraphrased information when it comes from the mediator rather than directly from the other party. Thus, its goal is to clarify what has been said or present it to the parties in a way interpreted by the mediator. However, this interpretation can also be wrong, just as the other party can misinterpret what was said. Therefore, the use of the paraphrasing technique not only facilitates the mediator’s but also the other party’s better understanding, by correcting falsely understood information.⁶

Paraphrasing is applied by the mediator rephrasing an information heard from the parties in his/her own words, and then asking for its accuracy.

For example:

Client: Well, I can not take it anymore. I have waited too long, my patience has run out.

Mediator: So, waiting is difficult for you.

Client: The problem with all this is that when he turns up the volume of that awful music, the windows vibrate, it is as if someone is banging on all the walls simultaneously.

Mediator: So, loud music is a problem for you.

Excessive use of paraphrasing can make mediation monotonous and time-consuming as it may seem like everything is being repeated twice. Therefore, even in this case, strive to apply paraphrasing when deemed necessary for a more accurate understanding.

5.3. *Neutral Reframing*

Neutral reframing is one of the most commonly used techniques for exploring needs and is an indispensable mediation tool. When parties are involved in a conflict, they often become so focused on their own positions and emotions that they are unable to listen effectively or pay attention to the other party.⁷ Consequently, it is the mediator’s

4 Garcia, 2019.

5 Ibid.

6 Duve et al., 2019.

7 Stitt, 2016.

task to clarify the needs and interests underlying the party's emotions through the effective use of the neutral reframing technique.

By reframing the emotions behind insults and accusations into the language of needs and by using neutral language in the process, the mediator helps the parties maintain their composure. Essentially, by consciously applying this method, the mediator simultaneously assists in reducing the intensity of emotions, enhancing mutual understanding, and addressing emotional needs and topics to be clarified during the mediation.

Neutral reframing also holds strategic importance in mediation. Parties become truly capable of modifying their perceptions and evaluations of the conflict when they genuinely understand each other's perspectives⁸. By defining the topics of mediation and positively formulating needs, we facilitate this process of capability enhancement, shifting the focus from positions to needs and interests.

When applying this technique, the mediator observes the emotion associated with the message formulated as an insult and identifies the actual need behind it. Once identified, the mediator asks whether they understood what was expressed correctly.

For example:

Client: This constant, stupid fuss coming from the neighbour is unbearable.
(peace, quiet)

Mediator: So if I understand correctly, you need peace and quiet at home?

or

Client: He is just rude. He is such a lout that he thinks saying hello is some kind of sexual disease. (Respect)

Mediator: So if I understand correctly, you would need respect?

or

Client: He never shuts up when I'm speaking. Since I have known him, there has not been a sentence I could finish. (Listening)

Mediator: So if I understand correctly, you would like the other person to listen to you?

We use this technique when we see real emotions and related needs behind the spoken statement. Use it boldly, as it is hard to go wrong or miss with this method: the worst that can happen is that the client clarifies and, rejecting the mediator's question, accurately formulates his/her own needs.

Client: He does not tell me anything. No matter what happens, I am the last one he talks to. (Honesty)

Mediator: So if I understand correctly, you would like him to be honest with you?

Client: No, I am not saying he is lying, but that he tells me everything last.
I just want to feel important.

As we saw in this example, in the first instance, the mediator connects the complaint with honesty. However, the client corrects and articulates very precisely what she expects from the other person.

Essentially, the mediator in this situation does nothing but separate the person from the problem and the criticised attitude⁹, and reframes the situation: it is not the other person who is the problem, but the situation we are facing.

This method essentially forms the basis of every mediation process: it brings out the needs and achieves that the parties talk about their needs and interests instead of blaming each other for the conflict. We assist them in redefining the problem and seeing it not as a conflict caused by the other, but as a situation with a possible solution to which both can contribute, even if in different ways.

A successful mediation process eventually reaches the point where the parties recognise: there is no conflict between them at the level of expressed needs. Who would answer “no” to the question, “Do you want a reliable, honest partner?” Perhaps honesty and reliability mean different things to the parties, yet they agree on the need itself, which provides a good starting point for discussing how to satisfy these needs, what needs to be done differently so that both can get what they want. Often, this method may seem strange to the parties because they do not understand why it is necessary to delve so deeply into examining and uncovering the root causes of the conflict. However, by delving deeper, we can find the real causes of the problem and deal with them, thereby preventing the problem from recurring.¹⁰

Keeping the eye contact or making notes

Eye contact, as a nonverbal signal, is crucial for the dynamics of the process. It expresses the mediator’s impartiality, encourages the parties, and builds trust. It indicates to the parties that the mediator is genuinely interested in what they are expressing, pays attention to them, and values what they say. Therefore, maintaining a balanced eye contact is important for mediation.

We should be mindful of when we replace maintaining eye contact with note-taking. Note-taking often raises suspicions and may give the impression to the parties that the mediator is preparing to breach confidentiality commitments. When we take notes, we lose eye contact with the parties, which can have an unfavourable effect. Our clients primarily expect our undivided attention¹¹, which can be much more important to them in the initial stages of mediation than facts, details, or anything else. Therefore, we should carefully consider when and what we write down. It is most practical if the mediator only writes down the topics that arise and will be discussed during the mediation, and even then, only in a single word. This minimises the unpleasant effects of losing eye contact and does not raise suspicion among the parties.

9 Haynes, Haynes and and Sun Fong, 2012.

10 Lempereur et al., 2021.

11 Whatling, 2012.

5.4. Summarising

The technique of summarising helps the parties to precisely understand what has been said during the discussion. It also contributes to better focus on the current topic, clarifies the main points of the debate for them, and can help the mediator shed light on their common ground. In doing so, the mediator can serve as a liaison between the parties.¹²

It also helps the parties avoid repetitions, as they have heard in the mediator's summary that the given information has already been discussed. The mediator's summary allows the parties to supplement the previously stated information if needed. For example: "So far, it has been mentioned that... Is there anything you would like to add to this?"

Summarising should be used when it is sensed that the parties are starting to repeat themselves regarding the discussion of a particular issue, and when transitioning to discussing the next topic is desired. Summarising also helps when we need to organise our own thoughts, pause the mediation process for a moment, or refocus the parties on the current topic.

5.5. Recognition

Recognition as a method receives undeservedly little attention in the literature of mediation. Yet, a well-timed recognition can save the process and is essential for the parties to become capable of changing their opinions about each other.

Recognition can come from the mediator when acknowledging the parties' willingness to participate in the process.

For example: "Thank you for coming and taking the time to discuss the situation with each other."

However, it is even more effective when the parties recognise each other. In this case, it is the mediator's task to ensure that the recognition from one party is heard by the other.

Client: "I know he is a good soccer player. I was really proud of him when they won that match."

Mediator: "Did you hear how X spoke positively about your talent in soccer? What does it mean to you when you hear this?"

Recognising a positive attribute in the other party and being able to respond to this acknowledgement is not a simple task for parties in conflict, but it has immense power when achieved. Beyond assisting the parties in emotionally processing the conflict, the ability to respond to recognition sends an important message to the mediator as well: it demonstrates that the parties are turning towards each other and want to hear one another.

12 Garcia, 2019.

5.6. Reality Check

We are discussing this technique last among the general techniques. The use of reality testing is the responsibility of the mediator: it is used to examine with the parties the feasibility of a proposed solution.

Examples: You both mentioned that a quick resolution is important to you. How well does this proposal meet that requirement? What costs do you think this would entail? How do you think your surroundings would react to this solution?

Its application helps ensure that the parties consider all important circumstances before making a decision and signing the agreement.

6. Special Techniques in Mediation

These specific techniques in mediation, as I mentioned earlier, are employed when the mediator has methodological reasons for doing so. The explanation for this is that each of the mediation methods to be presented next has an impact on the process that we must be prepared to handle. These methods either disrupt the communication process between the parties or place the mediator's previously impartial role in a different light. Sometimes, by assuming the role of the "devil's advocate," they ask the clients uncomfortable questions that they may not be ready to answer, or they confront the parties with information that they themselves did not want to acknowledge. Therefore, we must also consider what methodological reasons we may have for employing these special techniques, as well as what potential "dangers" they may pose from the perspective of the process or the parties.

6.1. Caucus

During a caucus, we move the clients from the joint session into a separate room and continue the discussion there with each of them until we deem it necessary or possible to return to the joint session. A caucus is advisable when we feel that the parties are avoiding an important emotional issue, and we sense that they will not discuss it until the other party is present. Additionally, we can use it when we observe that the conversation has stalled, or when we start to detect signs of positional negotiation styles in the parties again. Caucusing is one of the rather debated techniques within mediation practice. Advocates of the caucus often emphasise its advantage in handling emotional outbursts of the parties and effectively addressing processual and emotional impasses in mediation. Opponents of the caucus argue that its use elevates the mediator above the parties, moving him/her out of his/her neutral role. One of the most important points of critique is that when the mediator caucuses with one party or the other, the mediator is the only one among all participants who has access to all available information. The parties share all confidential information with the mediator, and – it is up to the mediator to decide what, when, and in what order to pass

on this information, thus influencing the parties with “managing” extra information. However, neither influencing the parties nor managing the information can be justified from the perspective of transformative mediation.

In my approach, the technique of caucus is limited but applicable. As previously discussed, we describe the caucus as a “special” technique, which also implies that it is not applied in every mediation situation. If we do decide to use a caucus, we should have a proper methodological justification. What could be our methodological justification?

Let us consider these reasons:

1. If we feel that the parties are stuck on some emotional issue.
2. If the parties are skirting around an important emotional issue and react sensitively to it in each other’s presence.
3. If the parties ask to share certain information with us only.
4. If the parties are reverting to positional bargaining.
5. Following an emotional “peak” when we want to de-escalate a heated emotional reaction.
6. When a specific mediation method is recommended to be used only in caucus (such as venting or BATNA/WATNA).
7. If a weaker or less assertive client needs to collect themselves, organise their thoughts, or seek advice from their supporters.
8. To regain the cooperation and commitment of the parties, typically when we feel that their trust in the mediation process has been compromised.
9. If we want to prompt the parties’ advisors to reconsider their roles and behaviours.
10. If we want to analyse the risks of the available solution options.

The unjustified or excessive use of the caucus technique is always harmful because with the transformative mediation method, we aim to enable the parties to communicate effectively with each other, understand each other’s perspectives better, respect each other, recognise each other, and become capable of treating each other with “tactful honesty”. But how should they do it if they are not even in the same room?

6.1.1. *Types of Caucuses*

When opting for a caucus, there are various ways¹³ of conducting it, depending on which participant in the process is encountering the above-mentioned obstacles.

1. *Simple Caucus*

Separate discussions with representatives from one side or the other of the conflict. So, if one side comprises a minor client with a parent, a counsellor, and a lawyer, and the other side comprises two clients and a lawyer, in the first round of the caucus, we speak separately with the minor-parent-counsellor-lawyer group, and then with the other side, i.e. the two clients and their lawyer.

13 Boulle and Alexander, 2008.

2. *Caucus with the Parties*

In this case, we only meet with the directly involved parties in the conflict, so they remain in the room, and we ask the counsellors, observers, and lawyers to step out. In the first round, only the two clients are in the room. If necessary, in the second round, we meet with one party and their supporters, and in the third round, with the other party and their supporters. The second and third rounds do not always ensue.

It is worth choosing this method in cases where the parties need to discuss an emotional issue that they would find difficult to talk about in front of the “audience.” However, a mediation conversation held in a smaller circle can help in communication. It is also advisable when the parties disagree about the role of the supporters. (One party insists on being in, and the other party insists on being out.) If we want to speak with the parties without their supporters or lawyers, this often poses difficulties, especially if the lawyers react sensitively, which is understandable considering their role. Therefore, it is important to precisely communicate the purpose, timeframe, and procedure of such caucus sessions.

3. *Caucus with the Supporters*

We only meet with the supporters (e.g., the lawyer), and the parties do not participate in the discussion, so we ask them to wait while we talk to their supporters. It is advisable to use this method when we want to motivate the supporters (e.g., the lawyer) to reconsider their roles. E.g., we want to achieve a more positive attitude from the lawyer.

4. *Caucus with Each Client*

In this case, we ask both supporters and the other client to wait while we speak with one client. Only one client and the mediator remain in the mediation room. In the second round, the other client remains in the mediation room with the mediator, without supporters.

It is advisable to use this method when: We need to address the parties’ strong emotional reactions; We need to share some confidential information with a specific client; We request some confidential information from one of the clients.

In all cases, it is crucial to communicate every step of the caucus to the clients: they need to know how long each step will take, precisely what will happen, and what will occur with the information they share with us. Failure to do so risks the clients questioning our impartial helper role and jeopardises the process itself.

6.2. Silence

It may seem surprising that silence is a technique, but indeed it is. In situations where we ask embarrassing questions from one party or when the parties are formulating an answer which is difficult, it is advisable to wait until the response is framed. Let us accept that the parties do not have ready answers to all our questions. There are

times when it is really necessary for them to reconsider their position and have time to verbalise their response. In such cases, silence is an appropriate method. Another situation may arise where our client does not want to answer the question posed and would be very grateful if the mediator would help them out of the situation with another question. But we wait for the answer... Haynes even suggests that the longer the silence, the better the quality of the mediator's previous question¹⁴.

During the application of the silence technique, the mediator must keep in mind why he/she is doing what he/she is doing. If he/she knows that he/she is using silence as a technique, then the situation will not be uncomfortable for him/her; it will be the client who will want to break the awkward silence. However, we should be careful that the parties do not start playing games with this or think that the mediator cannot ask questions or has lost control over the process.

6.3. Testing

Testing, in essence, is simply the intentional application of the summarisation technique with deliberately poor content. So, some information is conveyed, but the clients are not very cooperative, the information conveyed is insufficient, unclear, or for any other reason, incomprehensible. The mediator, by applying this technique, draws attention to the fact that the communication of the parties is unclear or prone to misunderstanding, thereby motivating them towards a more precise articulation of the issue.

Our methodological justification for using this method may be that we have noticed that the clients constantly misunderstand each other, so it is like watching two separate movies, the stories do not connect. If the parties visibly talk past each other, the mediator could point this out and clarify, but let us remember: our goal is to transform, "correct," and restore their communication, rather than taking over the role from them and acting as interpreters of what the other has said. Its excessive use may also give the impression that the mediator is not in control of the situation.

For example:

Mediator: So, then what happened was that Peter gave you an assignment to install blinds.

Client: No, I said it was not blinds, it was an awning. You know, the thing you can install in front of a window, and you can roll it out with a handle. It blocks the sun from the window and is much better than blinds because the sun does not hit the window. So, the apartment does not heat up as much.

As the example demonstrates, by asking the question, the mediator awakened the client to the fact that they misunderstood what was said, so in their response, they were more precise.

14 Haynes, Haynes and and Sun Fong, 2012.

6.4. Feedback

This method can be specifically applied in situations where the parties are not paying attention to each other properly, and it is obvious to the mediator that they do not understand what the other has said. It is typically used in situations where we see that certain information is repeated multiple times, but the other party seems to ignore it for some reason.

For example:

Peter: This pig did not even pick up the phone. I called day and night, but no response, he never called back.

Paul: I was in the hospital, and I had surgery. I did not have my phone with me. I would have picked it up if I could, but please understand that it was impossible then.

Peter: And why was it that when I sent a message, there was no response either? This whole situation is unacceptable. He disregarded me completely!

Paul: Please understand that I was in the hospital. I had a car accident, I was post-surgery, lying helpless. How could I have answered the phone?

Mediator: Peter, could you please repeat to me what Paul has just said?

As seen in the example, one client is emotionally involved in the conflict situation to the extent that he can only repeat himself, but he does not hear the important information that was actually said by the other party. It is typical in these situations that the client cannot answer the question because he did not actually hear what the other party said.

How does the dialogue continue?

Peter: Well, I do not know, he said so many things.

Mediator: I see, could you repeat what Paul said about why he did not call you on the phone?

Peter: Well, I do not really know.

Mediator: Paul, could you please repeat what you said about this?

Paul: Yes, I ended up in the hospital, I had surgery...

What the mediator accomplishes with this is that Peter, in this moment, pays attention to the other party's words for the first time and will react to them. This helps us guide the clients to not talk past each other and ensure that the information conveyed actually reaches the clients.

Use this technique with moderation. Some clients may find this situation uncomfortable, feeling as if they are being "quizzed" or feel embarrassed. In this case, their commitment to mediation may decrease, or they may lose trust in the mediator.

6.5. Venting

Venting is a rarely used technique and can be quite risky. Its use is only recommended if we feel capable and prepared to handle the situation that develops. It is preferable

to use venting in separate negotiations, and its application in joint discussions is only recommended for more courageous mediators. Consider its use when you see that one or all of the parties are emotionally involved in the conflict to an extent that it hinders their participation in the process. A typical situation is when, regardless of the question we ask, the response solely paints the other party's vile nature, diabolical essence, and character flaws.

In this situation, in separate negotiations, we ask one party and then the other to describe how they see the other person. In these cases, the parties often use unqualifiable words to describe each other, assuming the worst about the other and presenting them as evil, corrupt individuals. By providing sufficient time, the steam often comes out with the insults, and after the individual has "let off steam," it becomes easier to sit back down at the negotiating table.

However, it may also happen that emotions run wild in such situations, and the parties are not willing to continue participating in the process afterward. So, once again – only use it if you can handle the situation it generates.

6.6. Mirroring

The purpose of mirroring is to confront the parties with the fact that they did not hear something, misunderstood something, or there is some contradiction in what they said. When using "mirroring," be mindful that an ill-formulated statement can be misunderstood by the parties, or it can create the impression that you are agreeing with one party or representing their position.

Mirroring can be applied in several ways:

1. The mediator, turning to one party, recalls what the other party said.

For example:

Peter: "I have changed a lot lately. I realised that what I was doing could not go on like that. Maybe this case was needed for me to come to my senses. Since then, I have been going back to school, learning a profession, working, and I know I am going to get back on my feet. Simply because I have to."

Mediator: "What do you think about this?"

Paul: "Peter's problem is that he grew up like this. He does not know the value of work. Lazy, irresponsible, and he does not learn from his mistakes. He has always been like this, and he will never understand it."

Mediator: „Well, actually, I just heard from Peter earlier that, according to his own assessment, he has changed a lot, he is working, studying, and he is convinced he will get back on his feet. What do you think about that?"

In this application, mirroring is essentially an alternative to feedback, used when feedback is not effective.

2. Another application of mirroring is when we draw attention to contradictions or changes in the content of statements made by one client. When doing this, be careful to phrase it as a question rather than making statements. Not using statements is crucial to the mediator's impartiality.

For example:

"If I remember correctly, we have been discussing some form of financial compensation so far, but now you have mentioned that you would rather rely on Peter's active participation in restoring his business reputation. Am I seeing a change in this?"

3. We can also use mirroring to provide feedback on the client's emotional state.

For example:

"It seems to me that you are having a hard time talking about this?"
or "I see that this is emotionally touching you deeply."

6.7. Storytelling

"Storytelling" proves to be excellent in situations where we deal with clients who have difficulty communicating or are uncertain. Based on experience, it can be most effectively applied in situations involving adolescents or cases where emotions are so deeply involved that they hinder effective communication.

In the storytelling method, we ask one client to express his/her statement as a story, and then we invite the other party to share his/her thoughts and recollections related to the story.

For example:

"Husband": "I miss the sense of freedom I used to feel around her."

Mediator: "What do you mean by the sense of freedom?"

"Husband": "Well, I do not really know, it is just a liberating feeling."

Mediator: "Could you tell us a story of a time when you felt that sense of freedom with your wife, the one that you now miss?"

"Husband": "Sure. I remember when we were walking in that big park once. And we bought an ice cream..."

In this example, the "husband" narrates the story at length, and then the "wife" recalls her related memories. The act of storytelling helps individuals articulate their emotions more easily and concretely.

Let's look at another example:

Wife: "My husband is basically a good person. But it is very difficult with him."

Mediator: "What do you mean by that?"

Wife: "Well, I do not know exactly. It is just hard."

Mediator: "Could you tell us a story that demonstrates why your husband is a good person?"

And later: "And would you share with us a story that shows why it is difficult with him?"

Storytelling can be great help for clients who have difficulty communicating or for adolescent clients. Stories are often clearer and more comprehensible than examples.

7. Summary

In this chapter, we have reviewed the main techniques that a mediator can employ during the mediation process. Some of these techniques form the basis of mediation, and indeed, a mediation process is unimaginable without their application. We have looked at some methods that serve to improve understanding between the parties, as well as those techniques that are suitable for enhancing communication between the parties.

We have also discussed some special techniques of mediation that intervene more radically in the process or in the communication between the parties. We have explored their areas of application and the potential difficulties in their use, elaborating in detail on the methodological reasons for their application.

Although the basic techniques of a mediator are indispensable for an effective mediation process, the key to success often lies in how consciously the mediator applies them. Behind the application of each method, there are always important methodological justifications, the thorough understanding of which are essential.

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