that he would accrue if he reached a negotiated settlement. The mediator later explained to me that among Sri Lankan Buddhists, storing up merit by doing good deeds was seen as desirable because it enabled one to get off the wheel of life and reach nirvana more rapidly.

These examples illustrate how important it is for mediators to explore with parties the specific standards and criteria they are using when determining the acceptability of an agreement. Understanding their conceptual framework may help the intervenor work successfully within their worldview, interpret one party's logic and rationale to others, and ultimately facilitate agreement.

C Moore
The Mediation Process

Chapter Thirteen

Conducting Final Bargaining and Reaching Closure

Final bargaining involves activities initiated by both the parties and the mediator late in negotiations to reduce the scope and number of substantive and procedural differences between negotiators; move toward a formal agreement and terminate conflict; and assist disputants to reach the greatest psychological closure regarding the people involved, issues in question, and the substantive terms of the settlement.

FINAL BARGAINING ON SUBSTANTIVE AND PROCEDURAL ISSUES

Gulliver (1979, pp. 161–162) identifies four situations in which negotiators find themselves in the final bargaining stage:

> 1. The bargaining range may have been so narrow that the advantages to be gained from bargaining have become small, even trifling, given the agreement already achieved. . . . What remains to be done is a clearing up of minor details and make a joint commitment to the culminating outcome.
>
> 2. The bargaining range may have been narrowed, or the bargaining formula may have already established a number of agreements in principle, but the details of terms need to be worked out.
>
> 3. In a third bargaining situation, although something like a viable bargaining range has been discovered, albeit roughly and with unclear limits, considerable differences may remain between the parties. In principle, any point within the range is mutually

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preferable to no agreement, yet considerable gain or loss of advantage can still result from final agreement on a particular point.

4. No viable range has been discovered, and it may well not exist. Here, although the parties are deliberately working toward agreement and are making "real" proposals for an outcome, their preference sets and expectations are still not altogether clear.

Parties who find themselves in the first situation usually reach agreement easily. Their relationship is cordial, the acceptable options are clear, and the procedural route to completion of the negotiations is uncomplicated and direct. The remaining situations, however, are more problematic for negotiations, and a mediator's intervention may be needed to prevent deadlock. I will focus the discussion in this chapter on procedures negotiators and mediators can use to accomplish final bargaining in the last three situations.

There appear to be four major patterns of moves negotiators use during the final stage of bargaining: (1) incremental convergence (Gulliver, 1979; Walton and McKersie, 1965); (2) a delay of agreement and then a final leap to a package settlement (Zartman and Berman, 1982); (3) development of a consensual formula; and (4) procedural means to reach agreements (Fisher, 1978; Zartman and Berman, 1982). I will first explore these approaches to final settlement and then examine the crucial factor of timing to see how the mediator uses deadlines to bring negotiations to a conclusion.

INCREMENTAL CONVERGENCE

In incremental convergence, the parties make gradual concessions within a positive bargaining range until they reach a mutually satisfactory compromise position. Parties may isolate concessions to offers on a single issue or link issues to balance losses and benefits.

If the disputants have adhered to positional bargaining, the mediator's main task is to assist them in making offers that will be acceptable to the other party, and to prevent them from prematurely committing to a position that will be difficult to back away from later in negotiations.

Offers are the specific terms of a position that a party presents as a possible solution to an issue. Especially in positional bargaining, an offer frequently implies some form of concession or trade

a party is willing to make in exchange for an acceptable reciprocal offer or agreement. Parties engaged in positional bargaining face several problems that may inhibit them from making offers.

Reluctance to Overconcede or Reveal Bargaining Positions

At this point in negotiations, parties may be reluctant to make offers that go beyond their opening positions, even if they have discovered an opponent's settlement range. They do not want to concede more than is necessary, nor do they want to indicate the bargaining positions within their own settlement range. This situation can result in endless avoidance behavior and a lack of commitment to a specific proposal.

In this situation, mediators should assist parties in developing tentative or hypothetical offers that can be used to test for potential agreement while not formally committing a party to a specific solution. A negotiator, the mediator, or both can design tentative or probing offers. Such offers can vary in degree of specificity, resources exchanged, time of performance, and implications if the offer is accepted in a timely manner. This allows a party more flexibility in exploring the settlement range without prematurely committing to a position. The mediator might say, "I'd like to try out a possible settlement option. If you find it to be reasonable, I will explore its acceptability with the other party." Tentative offers can often be explored with the other party by having the mediator shuttle between the parties, testing areas of agreement without formally committing a party to a specific solution.

Fear of Being Perceived as Weak

A second factor that inhibits parties in initiating offers is the fear of being perceived as weak (Rubin and Brown, 1975). People in conflict often do not want others to see them being "forced" to make a concession. They fear that concession making will become—or will be perceived to be—a pattern, and that the opponent will hold out on later issues expecting similar compliant behavior. There is evidence in pure game theory that concession making may be perceived as a sign of weakness (Deutsch, 1974); however, in actual

negotiations in which there is personal interaction, making the first offer or concession can be turned into an asset rather than a liability. The classic case is Anwar Sadat's initiative in proposing to Menachem Begin that they begin discussions on a Middle East peace plan. Sadat's proposal to travel to Israel to talk was a potent first offer, and a definite sign of strength.

Mediators can aid a party in making a first offer by helping to frame the offer in such a way that the concession becomes an initiative of strength, not weakness. Through framing, the party can make explicit the fact that he or she is making an offer or concession to demonstrate good faith, show a willingness to take the other's needs into consideration, encourage the other party or parties to make similar moves, or establish a trading arrangement in which a concession is made on one issue in exchange for a concession on another. The mediator may coach and assist the party in framing the offer so that the other party will perceive it favorably. The mediator may also prime the recipient so that the offer will be accepted or reciprocated.

Negative Transference

Parties often reject an offer not because of its substantive content but because of their attitude toward its initiator. The mediator can help negotiators avoid this pitfall by proposing one party's ideas to the other as if they were his or her own. This eliminates the possibility that the other party will perceive offers as "partial, biased, or tainted more because of their source than because of their substantive content" (Young, 1972).

Fear of Rejection and Impasse

Parties are often discouraged from making offers because they fear rejection and stalemate. They may prefer to continue discussion rather than reach an impasse. Mediators can assist parties in overcoming this obstacle by testing the ideas of the parties in private and bringing to the joint session only those points on which the parties can agree. The mediator can encourage the parties to make the offers, or make the offers that they agree to for them. It is generally preferable for the parties themselves to make the offers as this increases their commitment to proposals and maintains the mediator's impartiality toward the substance of the negotiations.

Public Pressure on Negotiators

In cases in which negotiators represent a constituency, the parties may be constrained from making public offers because of possible personal repercussions from unpopular concessions. This is often the case in labor-management negotiations when a union team feels constrained by the union membership from making an offer that the team may feel is reasonable and acceptable. Here, the mediator can make a proposal and become a negotiator's scapegoat. Negotiators can agree to the concession and later claim that they agreed because the mediator requested concurrence, not because they initiated it or the other party forced them to agree.

Closely related to the scapegoat function of the mediator is the role of mediator or coalition former. The mediator's presence and his or her suggestions of offers can cause the disputants to reevaluate their relationship to each other and the issues that divide them: "One possibility is, of course, that the two original contestants both become antagonistic towards the third person and decide to agree so as not to let the newcomer influence the settlement" (Aubert, 1963, p. 35). The mediator can induce this situation by proposing one or more solutions that are more extreme than either party is willing to accept. In this situation, they may be forced into a coalition to moderate the mediator's exaggerated position.

Loss of Face

Another block to parties initiating offers is the issue of losing or saving face (Brown, 1977). Mediators can assist parties in making new offers by giving them rationalizations for shifts in positions and by reframing the situation so that an offer does not result in a loss of dignity. This strategy also aids parties in abandoning untenable positions.

The six blocks described here can all be impediments to initiating offers that can lead to an incremental convergence of positions

or selection of an interest-based settlement option. Appropriate mediator intervention, however, can minimize the negative effects and ease the decision-making process.

LEAP TO AGREEMENT

The leap-to-agreement approach to final bargaining is characterized by a strategy of opening with a high demand, offering few concessions, and then making a final leap toward a package that meets the negotiators' demands toward the end of negotiations (Zartman and Berman, 1982). Leaps to agreement usually occur when (1) negotiators consciously pursue a hard-line strategy to educate an opponent about a principle; (2) negotiators want to use deadline pressure to force an agreement; or (3) all options are equally acceptable (or unacceptable) and no one proposal has superior merit.

The leap-to-agreement process of negotiation is often characterized by a package deal or "yes-able proposal" that attempts to incorporate the needs of all parties into one acceptable linked package (Fisher, 1969). Advantages to this approach are that:

- It prevents incremental concession making that may result in expectations of more concessions
- It allows a party to make a point about the strength of his or her commitment to an issue or principle
- By turning the task of developing a comprehensive solution over to one party, it attempts to eliminate part of the difficult task of jointly drafting an agreement
- It demonstrates that acceptable trade-offs are possible
- It may incline a party toward agreement when a deadline is close and there is no time to develop a counterproposal

This approach does, however, have some drawbacks. Intransigence on a position and lack of progress early in a negotiation may cause the other party to adhere to its initial position and may also foster increasing hostility over any procedure used to resolve the dispute rather than over the issues themselves. Presenting a package late in negotiations may also cause problems because the opposing party may believe that he or she has not had an opportunity to participate in formulating the terms for settlement. Rejection thus may be based on procedural participatory factors rather than the proposal's substantive content.

The leap-to-agreement approach may have both positive and negative impact for negotiators, as described previously. Mediators can either promote or inhibit the use of this procedure, depending on the dynamics of the negotiation session. If the procedure is being used by a party in final bargaining and is causing damage to negotiations, the mediator can notify the party in caucus of the potential detrimental effect on the other party. If, on the other hand, the hard-line procedure of delaying commitment is serving to educate the other party on a particular principle or point, and if the mediator has learned that the other party is progressing toward agreement, the process can be encouraged.

The mediator can also use the leap-to-agreement tactic by delaying a party's presentation of a solution until the mediator is certain that the other party will agree to a particular proposal. At that time, the mediator can ask one of the parties to make the proposal, or he or she may make it. With agreement ensured, the parties can leap to a one-step settlement.

FORMULAS AND AGREEMENTS IN PRINCIPLE

I have already discussed at some length the procedures used to reach a bargaining formula or an agreement in principle. This strategy is one of progressing from the most general level of agreement to more specific details of a settlement. The mediator may initiate this approach early in negotiations, even as early as the stage of defining dispute parameters, or it may appear as late as final bargaining, after more specific options have been generated and assessed.

The procedures for reaching a formula settlement are somewhat like those used in constructing a puzzle. First, the outside boundary—the general agreement—is constructed. The outside pieces determine the overall boundaries of the settlement. The negotiators then construct various packages that will fit into this framework. The formula-development process is conducted by consensus and usually entails modification, refinement, and synthesis of proposals, or occasionally exchange of small incremental pieces. The

process often involves creating multiple levels of agreements with increasing specificity.

Parties often begin building a formula or attempt to develop agreements in principle early in negotiations. This process usually starts during the stage of defining dispute parameters, when the parties attempt to outline the boundaries, both conceptual and substantive, within which they will negotiate. Development of a formula or agreement in principle may later become much more explicit during the process of defining issues and interests.

In final bargaining, formula development or agreements in principle are primarily useful in preventing deadlocks. Formulas may be designed to define principles by which a limited resource within a bargaining range can be divided or to set forth procedures for combining solutions that meet the needs of all parties. Mutual decision about a formula or agreement in principle "is desirable . . . because a formula or framework of principles helps give structure and coherence to an agreement on details, helps facilitate the search for solutions on component items, and helps create a positive, creative image of negotiation rather than an image of concession and compromise" (Zartman and Berman, 1982, p. 93).

Parties with extensive experience with or bias toward positional bargaining are often not aware of the merits of establishing a bargaining formula or agreements in principle to reach final settlement. Mediators can often assist parties by educating them about the approach and by identifying such a formula in much the same manner as an intervenor is able to help identify interests.

Zartman and Berman (1982) maintain that recognition of a common formula depends on three elements: (1) a shared perception or definition of the conflict, (2) an understanding of the primary and underlying values or interests that give meaning to the issues under discussion, and (3) an applicable criterion of justice. By the final bargaining stage, it is hoped that the parties have developed a shared perception or definition of the conflict. If they have not, the mediator should refer them back to the previous stages of issue and interest identification. Interests and underlying values must be satisfied or be met by a settlement. The formula must contain provisions for responding to both the primary and secondary interests of the disputants, or it will be unacceptable.

The third component of a formula is a mutually accepted standard of justice. Zartman and Berman (1982) identify five types of justice: substantive, procedural, equitable, compensatory, and subtractive. *Substantive justice* refers to a concrete objective outcome that the parties believe is fair. *Procedural justice* refers to the process by which a solution is reached and the settlement is carried out. Most disputants expect the same procedure to be in effect for both parties; if the procedure is to be different, the reasons for the difference should be mutually acceptable. *Equitable justice* refers to the "apportionment of shares on the basis of each party's particular characteristics" (p. 104). The basis of equity will vary from dispute to dispute; it may be based on need, power, historic precedent, or the size or amount of resources available for division.

Compensatory justice refers to payments that remedy an unequal distribution of resources. Compensatory justice is usually an issue when one party has been deprived as a result of a previous relationship with the other. For example, a husband may agree to pay spousal support and fund his ex-wife's school expenses so that she can earn an income and attain a standard of living equal to what she was accustomed to in the marriage. A developer may monetarily compensate the immediate neighbors for potential damages to their lifestyle due to the siting of an unpopular new facility needed by the community (O'Hare, Bacow, and Sanderson, 1983). *Subtractive justice* refers to equal denial to all parties of a resource, so that no one wins. This component of a formula is used when parties attach a higher priority to denying the other parties access to a resource than to possessing it themselves. For example, if in a divorce property settlement the couple cannot decide which of them should have their antique marital brass bed, both may agree to sell it and deny possession to each other rather than agree that one of them should have it.

PROCEDURAL MEANS OF REACHING SUBSTANTIVE DECISIONS

Occasionally, negotiators are unable to make a decision on a particular substantive issue, and the impasse delays the settlement of the entire conflict. Inability to agree may be based on psychological

unwillingness to settle a dispute, reluctance to agree to a point for fear of constituency disapproval, multiple solutions that are equally acceptable (or undesirable), and so on. Regardless of the reason agreement cannot be reached, the parties may still be under pressure to find some solution to their impasse. To break the deadlock, they may turn to a procedural solution to resolve the substantive problem. This process was discussed briefly in Chapter Eleven, on option generation, but it should now be explored in more detail.

Procedural solutions are process decisions that parties make to resolve disputes without directly deciding an issue. Generally, the process selected results in a substantive answer. There are four common types of procedural approaches to resolving substantive impasse: the procedural time line, third-party decision makers, arbitrary decision-making procedures, and postponement or avoidance.

Procedural-Time-Line Approach

The procedural-time-line approach requires negotiators to develop a process and time line for particular substantive agreements and to define specific advantages, consequences, or penalties for parties meeting or failing to meet the agreed deadlines. Time determines the substantive outcome. For example, if parties are negotiating payment, they may agree that if payment is received before a specific date it will be of a certain amount. If payment is received after that date, a penalty charge will be imposed. A party then has a choice about when to pay. The procedural time line approach allows the parties to avoid reaching a specific substantive decision on issues and creates instead a procedural formula governing how the decision will be made.

Third-Party Decision Makers

Parties who reach an impasse on a substantive question can turn the problem over to a third party other than the mediator. The most common form of third-party decision making is performed by a judge or jury; disputants generally agree to be legally bound by the decision of the impartial third party. Another third-party structure is arbitration, which was defined in Chapter One. Mediators often suggest referral to an arbiter or judge of issues over which parties are deadlocked.

Other third-party decision makers who can assist parties in breaking deadlocks are property appraisers, custody evaluators, and similar technical experts. Parties can agree to engage the assistance of third parties and to abide by their recommendations. In one business dispute over the division of common property, the parties disagreed about what the property was worth. They decided to submit the problem to two appraisers who were mutually acceptable and to average the answers received. Thus a mutually acceptable and fair process produced a substantive answer that both parties could accept.

Mechanical Decision-Making Procedures

Parties often wish to make a decision on issues in which there is an equal chance of winning or losing or in which the outcome is of little consequence to the disputants. Negotiators or mediators frequently resort to procedural mechanisms that automatically result in a decision.

Mechanical decision making is appropriate when the difference between the parties is not large, and therefore the loss for either would not be great, or when the probability of reaching a decision by another means has an equal chance of loss or gain for one of the parties. Parties split the *difference* in order to maximize their rewards and minimize their losses.

Negotiators may also choose to take turns in satisfying their interests—for example, by alternating the selection of items to be inherited from an estate—or to use games of chance such as flipping coins or drawing lots or straws. These procedures give each disputant an equal chance to win rewards. The process, not the disputants, decides the outcome. The mediator may impartially supervise the process to ensure fairness.

Postponement, Avoidance, and Issue Abandonment

Parties may also break a deadlock by postponing or avoiding a decision or by abandoning an issue. Postponement may mean delaying a decision until the other party is more psychologically disposed toward an issue or is represented by a different person. Postponement may also be used to allow time for developing new proposals or arguments, mobilizing power or resources, or recon-

figuring external structural variables or influences on the conflict. In one public policy dispute, the parties decided to hold off on making an agreement until an election had occurred and the disposition of the newly elected officials could be determined.

Postponement may be used in conjunction with third-party decision making. In cases in which parties cannot reach agreement on a particular issue and in which failure to agree on that issue might result in total impasse, negotiators may decide to forge a general agreement and defer decision making on the particular issue until the specific conflict arises at a later date. They may designate one component of a dispute for referral to an arbiter or judge for final resolution. This approach avoids total deadlock and allows agreement to be reached in the absence of a full consensus agreement on all issues.

At the start of negotiations, parties raise a number of issues or demands that they want addressed. Each issue can be ranked according to its importance in terms of the overall settlement. It is not unusual for negotiators to include one or more bogus or throwaway issues that are made to appear important so that they can be used for educational or trading purposes. A party uses throwaway issues as part of an initial large demand to educate his or her opponents about how many concessions will have to be made for a settlement to be reached. Throwaway issues are used in final bargaining as chips that are traded for desirable concessions. However, they are useful only if the other party believes that they are genuine and valuable. If this illusion can be maintained throughout negotiations, a bargainer may truly have a tradable commodity.

The manner in which throwaway issues are used varies. They may be used as an early concession to demonstrate goodwill; they may be offered later in exchange for the withdrawal of another negotiator's demand; or they may be deployed as positive tradable items. Negotiators will often mutually agree to abandon issues in an "I'll get rid of mine if you'll get rid of yours" manner.

On occasion, the mediator is in the best position to manage the dropping of issues. He or she should determine with the parties in caucus whether they require acknowledgment in joint session that they have abandoned the demands or issues or whether they prefer merely not to mention them. If they prefer acknowledgment, the mediator can help establish the conditions for abandoning issues or demands.

POSSIBLE SUBSTANTIVE AND PROCEDURAL OUTCOMES TO A CONFLICT

I have listed a range of procedures that can be used to arrive at substantive or procedural agreements, but not every conflict ends with a comprehensive agreement or total satisfaction of all parties' substantive procedural or psychological interests. I now present a range of possible outcomes to conflict. Ideally, the mediator will want to work toward the most comprehensive agreement possible, but for the involved parties even partial settlements may be preferable to no settlement at all (Gibson, 1999).

Spectrum of Possible Negotiated Outcomes to a Conflict

- *The 100 percent solution.* Parties have all substantive, procedural, and psychological interests satisfied.
- *The acceptable-settlement package.* Parties trade satisfaction of interests of different strengths, and the total package is mutually acceptable.
- *Compromise.* Parties share gains and losses in order to reach agreement. Compromise can occur on specific issues or in the negotiations as a whole.
- *Experimental or trial decisions.* Parties are unable to reach a permanent decision and agree on a temporary settlement that will be tested and evaluated at a later date.
- *Creation of spheres of influence.* Parties have defined arenas or issues about which each party has exclusive decision-making authority.
- *Alternate satisfaction.* Parties agree to alternate when they have their interests met so that they can have a high level of satisfaction, but not at the same time.
- *Splitting the difference.* Parties mechanically share equally the gains and losses to reach settlement. This strategy generally occurs when the distance between the parties' positions is slight.
- *Procedural solutions to substantive problems.* Parties devise a *process* by which they can obtain an answer to a substantive issue in dispute. The process mechanically results in an answer to the problem.

- *Mechanical means of deciding.* Parties use mechanical and arbitrary means, such as drawing straws or flipping coins, to reach a decision.
- *Deferred decisions.* Parties decide, either unilaterally or jointly, to delay decision making until a more auspicious time when either additional facts, a more favorable external environment, more power, wider constituent support, and so forth, are available.
- *Partial settlement.* Parties agree on many issues but continue to disagree on others.
- *Agreement to disagree.* Parties mutually agree to disagree. The contested issue is not dropped but is no longer pursued at this time.
- *Mutual dropping of issues.* Parties implicitly or explicitly agree to drop an issue in dispute.
- *Nonbinding decision.* Parties make a nonbinding request of each other for cooperation, but compliance is not promised or guaranteed.
- *Issue avoidance.* One or more parties refuse to join others in negotiating a solution to an issue.
- *Development of multiple choices that are referred to a third-party decision maker.* Parties turn to a judge or arbiter for a decision between two or more settlement options that they have generated.
- *Development of a list of interests or objective criteria that are referred to third-party decision maker.* Parties refer contested interests to a judge or arbiter who is asked to use parties' individual or joint interests or criteria to formulate a decision.
- *Decision referred to a third-party decision maker.* Parties cannot decide, and they defer the decision to a third party for a binding or nonbinding decision.
- *Impasse or stalemate.* Parties cannot decide, and negotiations stall or break down. Neither party has the power to force the issue in his or her favor or to develop a mutually acceptable solution.
- *Continued negotiations.* Parties cannot agree, so they do agree to continue negotiating.
- *Shift to another approach of conflict resolution.* The parties are unable to reach an acceptable negotiated settlement and move to another approach—voting, nonviolent action, violence, and so on—to resolve their differences.

DEADLINES

Timing is a critical component in final bargaining and settlement. Cross (1969, p. 13) notes, "If it did not matter *when* the parties agreed, it would not matter whether they agreed at all." Time is both an important motivational factor for negotiators and a variable that helps determine how well their interests will be met. In final bargaining, time may be managed for the purpose of inducing a settlement. The most common form of time management at this stage is the deadline.

Deadlines are limits that delineate the period of time in which an agreement must be reached. Deadlines perform an important function in settling a variety of issues. For example, lawyers often settle legal cases in the days or hours before trial date. Much of the impetus for out-of-court settlement comes from the unpredictable outcome of court proceedings and the potential for negative consequences if the parties engage in direct litigation. The deadline of a court date motivates parties to settle.

Deadlines play an equally important function in prompting the settlement of labor-management disputes. The eleventh-hour settlement before a strike deadline is well known. The same dynamics are common in nearly all other types of negotiations. Stevens (1963, p. 200) argues: "An approaching deadline puts pressure on the parties to state their true positions and thus does much to squeeze elements of bluff out of the later steps of negotiation. However, an approaching deadline does much more. It brings pressures to bear which actually change the least favorable terms upon which each party is willing to settle; thus, it operates as a force tending to bring about conditions necessary for agreement."

An understanding of deadlines and how they can be used is an invaluable tool for negotiators and mediators. It is beneficial to discuss several characteristics and variables of deadlines that affect their utility in negotiations.

Internally and Externally Established Deadlines

A party can establish his or her own deadline, or outside forces may determine when negotiation ceases. A contract deadline, an ultimatum imposed by an outside agency, and an impending court date are examples of externally imposed constraints.

External deadlines are often important to negotiation strategies. Shapiro (1970, p. 44), in referring to negotiations in which one party represents a constituent group, observes that "any settlement made without the pressure of a last minute crisis leaves the negotiators open to attack by the people they represent, who may feel that they could have gotten a more favorable contract if only their negotiators had bluffed the other side right down to the final moment."

Coordinated and Uncoordinated Deadlines

Deadlines can be symmetrical or asymmetrical in that the parties may have either the same time limits or different ones. For some parties, a delay in decision making may result in increased benefits, whereas for others a rapid decision may be essential (Lake, 1980).

Actual and Artificial Deadlines

Parties may be constrained by deadlines that correspond to particular events beyond which they have little control, or they may be influenced by artificial time constraints that are almost arbitrarily established by one or more parties.

An artificial deadline was created during negotiations between environmentalists, industry representatives, and two U.S. governmental agencies over restrictions on oil and gas development on federal lands. The environmentalists stated that if they did not see progress in the talks within six weeks, they would cease negotiating. They arbitrarily set a deadline in order to encourage industry and government representatives to reach an agreement.

Rigid and Flexible Deadlines

The rigidity-flexibility variable is closely related to the distinction between actual and artificial deadlines. Although rigid deadlines are usually viewed as the stronger impetus for settlement because they set fixed time boundaries that the parties dare not overstep, more flexible deadlines, at least at the eleventh hour, may allow the parties necessary latitude to reach a decision. Parties often

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need additional time to reconsider a last-minute proposal or to gain constituent or bureaucratic approval to reach a final accord. Mutually determined extensions of deadlines may be a prerequisite for a settlement.

Deadlines with and Without Consequences

Deadlines promote settlements primarily because they usually imply negative consequences if the time limit is transgressed. Possible consequences include termination of negotiations, stalemate, loss of gains already achieved, withdrawal of an offer, acceptance of another party's offer, a court suit, a strike, and other undesirable outcomes. Although a deadline does not have to imply dire consequences such as threat or actual imposition of negative sanctions, it must present the possibility of a worse option than if settlement were reached. Negotiators and mediators often manipulate the explicit or implicit consequences of not settling before a deadline because known or unknown consequences may incline another party toward agreement.

Explicit or Vague Deadlines

Deadlines may be explicitly defined, or they may remain vague. The appropriate strategy depends on the particular negotiation. Explicit deadlines create a definite point at which settlement must be reached. Though involving a positive benefit in creating motivation for settlement, explicit deadlines may also create resistance because of a perceived threat of negative consequences; they may promote unwise decisions because there is not enough time to consider all options; and they may encourage an excessive willingness to settle at the sacrifice of an important principle. Negotiators usually argue for explicit deadlines only when all parties will bear the negative consequences of a failure to reach agreement within the prescribed time. An example of this situation is a strike in which both labor and management stand to lose if a new contract is not negotiated.

Nonexplicit deadlines, on the other hand, may be used to imply that the negotiator is willing to talk as long as necessary to reach an acceptable settlement. Such deadlines can be used to the

advantage of negotiators who know that an opponent is under pressure to settle by a certain time. The appearance of unlimited time for discussion may motivate an opponent to settle early in order to curtail rising costs that result from delay. However, even if time is an important factor for negotiators, a party may gain more in the end by concealing his or her deadline. Cohen (1980), a business negotiator, describes a case in which he lost thousands of dollars because he discussed his time constraints too openly and his opponent discovered his settlement deadline. His opponent was willing to talk for a longer period of time than was available to Cohen, and thus forced him to make concessions and reach an agreement just before his deadline—the departure of his plane.

MEDIATORS AND DEADLINE MANAGEMENT

Mediators can significantly assist negotiators in managing deadlines by making them aware of internal or external deadlines or assisting them in setting artificial deadlines when none exist. When appropriate, mediators may also make rigid deadlines more flexible, assist the parties in avoiding negative moves related to time, and enhance the usefulness of deadlines.

Making Parties Aware of Deadlines

Parties are often not aware of the existence or consequences of deadlines. This is especially the case when the deadlines are externally imposed or implicitly assumed. In final bargaining, mediators often remind negotiators that a deadline is approaching and that positive benefits may be lost or negative consequences incurred from a failure to reach an agreement. This function should not be construed to mean that the mediator should reveal a hidden deadline that is crucial for another party to meet his or her interests. Mediators should take great care not to reveal confidential information about a party's time constraints lest they unduly influence the settlement and create a mediator-induced imbalance in the power relationship between the parties. The mediator should, however, bring to the consciousness of the negotiators the explicit time parameters that affect final bargaining.

Assisting Parties in Establishing a Deadline

The presence of a deadline often enhances a negotiation's outcome. Parties who have the capacity to reward or punish other disputants for their performance with respect to time parameters can create deadlines. They can also be established by external constituencies—bureaucratic authorities or collectives of interested parties—or by external events. Finally, the mediator's moves can create deadlines. I will examine each of these means of defining time boundaries for negotiation and the mediator's role in influencing them.

The mediator, if he or she deems it advisable or necessary, may encourage one or more parties in a dispute to establish a deadline. This move may be made in caucus or in joint session and may be developed unilaterally or multilaterally. There are some situations in which it is appropriate for the mediator to suggest that only one party set a deadline, whereas in others a cooperatively established time limit may be necessary to motivate all disputants to reach agreement. However, a mediator's suggestion in a caucus that only one party set a deadline may be seen as undue manipulation of the negotiation process and may represent a loss of neutrality; it may also carry the risk of exposure in joint session. Mediator advice to only one party should be taken with great care.

If a jointly established deadline is desirable, the mediator can assist the parties in deciding the criteria to be used in determining the deadline. Relevant factors may include time needed to learn about or study the issue; time for ratification of an agreement by a constituency; availability of necessary data; and structural constraints such as court dates, business schedules, and even changes of season.

Persons or events external to negotiations may also establish deadlines. Mediators often help parties negotiate with superiors or constituencies not directly involved in the mediation regarding the establishment of time parameters. However, such externally imposed boundaries are often beyond the direct control of negotiators but may be needed to motivate other parties to settle.

Although mediators rarely control external events that impose deadlines on negotiations, they can translate the consequences of these events to the parties to encourage them to settle within an

agreed period of time. For example, if economic forces allow an offer to be made for only a limited period, the mediator may inform the parties of this fact. Raising awareness about an imminent court date that cannot be changed is another means of deadline leverage.

The mediator can also create his or her own deadline if such a move appears to be the only means of settlement. This can be done in several ways. First, the mediator can make all parties aware that a settlement is possible and that he or she thinks it can be accomplished within a specific period of time. The mediator can request that parties reach agreement within these time parameters. Deadlines imposed by the mediator may encourage the parties to negotiate more expeditiously; for example, some commercial mediators structure a limited number of sessions within which the parties must agree or cease mediation.

Second, the mediator can announce that he or she will make a public statement after a certain date that the parties are not negotiating in a timely and serious manner. Third, a mediator may threaten to leave the negotiations at a certain time unless the parties agree to honor a deadline (Kolb, 1983). This threat creates a functional deadline to which the parties must respond if they want to retain the mediator's services.

Mediators can impose deadlines on parties only if (1) the mediator's threat is credible, (2) the parties are willing to agree to the mediator's request or demand, and (3) the services of the mediator are genuinely needed or desired. The mediator's expendability or his or her failure to carry out a threat may lead to either a loss of credibility or the mediator's departure.

Lack of a deadline may not be the problem in a dispute. Deadlines themselves can cause impasse. Parties may believe they face a rigid deadline, and the lack of adequate time to negotiate an acceptable agreement may create a deadlock. The mediator's task in this situation is to create a more flexible time frame, which can be accomplished by several methods.

First, the mediator may find ways to actually extend the time available for negotiation. Specific procedural agreements may be proposed to postpone the deadline so that parties have more time to make a decision. A suggestion to this effect by the mediator rather than by one of the parties often makes the proposal more

palatable to the disputants and also avoids the appearance that if the deadline is extended one party will make a concession. Another mediator tactic, which is often used in labor negotiations, is to "stop the clock." In this maneuver, the mediator obtains agreement to continue negotiations and to temporarily ignore the passage of time and the consequences of exceeding the deadline. Negotiation is extended without publicly disavowing that a deadline exists. This approach works as long as progress toward agreement is being made. If not, a party may unilaterally terminate negotiations after the deadline has passed and thus incur the consequences of deadlocked negotiations. A third strategy mediators can use to create more flexibility in deadlines is to delay the time or date by which a specific component of a decision is to be made or is to go into effect. This allows the parties more time to work out controversial details of a particular problem and still reach general agreement.

Avoiding Deadline Dangers

There are several dangerous but common moves that negotiators may make in conjunction with deadlines. Among them are exposure of another party's deadline, games of "chicken," threats of dire consequences if agreement is not reached before the deadline, unrealistically quick agreements because of false momentum toward the deadline, and manipulation of embarrassment to force an agreement. Mediators can help parties avoid pitfalls in each of these situations.

Chicken is a strategy in which each party delays making concessions until the deadline is imminent. The tension of intransigence will supposedly test another negotiator's will to the extent that he or she will give up and make concessions rather than risk deadlock or negative costs if the deadline passes. Unfortunately, no party may be willing to break the cycle of resistance, and then all parties are forced to carry out threats and endure consequences that no one wanted. Mediators may help parties avoid playing chicken with deadlines by (1) publicly labeling the strategy, (2) privately working with each party to assess the costs of pursuing such a tactic, and (3) figuring out ways that parties can abandon extreme positions and make offers that will allow them to maintain their dignity.

Threats made close to deadlines seem to be especially common when parties experience intransigence from other negotiators and impasse is looming. Generally, mediators discourage parties from making threats and encourage them to make positive offers to induce agreement. This is both a more constructive and a less risky tactic.

The presence of a deadline occasionally forces parties to reach unrealistic and unimplementable agreements. Parties begin a process of agreeing and become so involved in the excitement and dynamics of settlement that they formulate impracticable agreements. When a mediator recognizes this pattern, he or she should temper the enthusiasm of the disputants by using reality testing, asking questions that raise doubts about the viability of an option or settlement, encouraging the parties to seek more information, or physically separating parties into caucuses so that they can more realistically assess the settlement without the stress of the presence of other negotiators.

Kheel, a labor mediator, has used this delaying tactic both to avoid untenable agreements and to psychologically encourage settlement (Shapiro, 1970). Kheel separates parties, assuring them that they are "not ready to settle," until they virtually demand to return to joint session to make an agreement. After the delay, in which the real merits of the settlement are analyzed, the parties are ready to make a solid and realistic agreement.

Parties are often embarrassed if they ask to delay settlement until they can be more certain of a proposal's merits. Other negotiators can manipulate such embarrassment to force an untimely agreement. Mediators can legitimize delay and prevent manipulation of embarrassment by publicly calling for more time to reasonably consider a proposal. As an impartial intervenor, the mediator may even claim a personal lack of understanding of the settlement in order to delay a decision and give the parties more time to educate the mediator or for deliberation.

Enhancing the Usefulness of Deadlines

Mediators can assist parties in enhancing positive use of deadlines in several ways. First, they can help parties to design offers that contain fading opportunities. They can also create artificial mileposts by which to measure progress before the ultimate deadline is

...hed. Each milepost marks a certain number of benefits that ...pponent will receive if he or she settles at that time. The ...er the settlement is delayed, the fewer benefits are offered.

An example of the first strategy occurred at a dinner party I at... ...ded one winter. Parents of several children attending the func... ...on told them that they had had enough hors d'oeuvres for the evening, but the children wanted more. At a certain point, more firewood was needed to heat the room. The children were offered the option of having more hors d'oeuvres if they would each bring in one log. They protested, started delaying tactics, and said they really didn't want to go out into the cold and get the wood. One of the guests changed the terms of the bargaining by saying that if the children did not bring in the wood in five minutes, he would do so; thus the offer of more food would no longer be available. The children decided that the proposed exchange was worthwhile and carried in the wood before the adult could do so.

CULTURE, TIME, AND DEADLINES

Culture often significantly influences how parties view time, and consequently deadlines. Generally, people from cultures that see time as a limited commodity and an item to be saved or spent sparingly value efficiency, rapid agreement, and timeliness. Such cultures frequently expect and allocate shorter periods of time for negotiations and often set hard and fast deadlines.

Many other cultures see time as an unlimited resource; they believe that problem solving should not be rushed and will occur all in good time. It is not that these cultures do not have deadlines; their deadlines are more distant than is common in speedier cultures.

When disputants are out of sync in their sense of time and timeliness, additional conflicts may result. For example, North Americans often complain of the time it takes to reach an agreement in many Latin American and Asian countries and grouse that if deadlines are set, they are ignored. This cultural problem is generally due to differing expectations regarding the meaning, value, and use of time.

When working in intercultural disputes, mediators need to become aware of the expectations that parties may have for the use of time and deadlines (to say nothing of clashes with mediators'

own expectations in this regard). Mediators may need to act as cultural interpreters of time and timing to coordinate parties' activities in the context of time.

PSYCHOLOGICAL CLOSURE AND THE REDEFINITION OF PARTIES' RELATIONSHIPS

Often closure on substantive issues and implementation procedures is not enough to ensure final agreement, compliance, or termination of a conflict. In addition, parties often need a significant degree of psychological closure with the other people who have been involved, the process process itself, and the terms of substantive agreements that have been reached. This psychological aspect of agreement making is often necessary and critical to help disputants end or let go of a dispute.

Psychological closure means that parties to a conflict have gained enough emotional satisfaction as a result of participation in the dispute resolution process that they are willing to emotionally disconnect themselves from the historic antecedents and actions that provoked the dispute, the conflict itself, contested issues, and former opponents. Lack of psychological closure can be caused by any number of factors. Antagonistic or derogatory statements or actions conducted before or during negotiations, perceptions of lack of good-faith bargaining, past efforts by other negotiators to take advantage of a party, lack of being listened to or respected prior to or during negotiations, or feelings that an agreement is being pushed down the throat of a disputant are all grounds for lack of psychological closure.

Psychological closure can be achieved by building increased feelings of comfort on the part of parties with the substantive agreement and implementation process, having them feel that they have been respectfully listened to and accurately heard by other disputants and the mediator, receiving acceptable levels of acknowledgment or ownership by other parties of their role in or consequences of the conflict, allowing participants to hear and accept genuine and meaningful apologies, or increasing levels of trust and respect for the "other side" from productive and meaningful engagement in negotiations and mediation. When there will be a continuation or termination of a relationship, albeit in a new form, psychological closure helps clarify what future interactions the parties expect or desire.

Hopefully, movement toward psychological closure has been happening throughout the mediation process, and communication enhancement and emotional processing procedures (active listening, open-ended questioning, reframing) have helped parties become more comfortable with the other people who have been involved and the terms of the settlement. I examine the issue of psychological and emotional closure here and in detail because it is at this time that it is most crucial for the termination of a conflict. Often, parties may be able to reach acceptable substantive and procedural agreements but without psychological closure will be unable to implement them or end their dispute.

Although a total or high level of psychological closure may not be absolutely necessary to resolve or terminate many disputes—in that people can reach workable agreements without having to trust, respect, like, or love their former opponents—emotional closure often helps people detatch from conflict and can help create the conditions for more postive future interactions between former disputants or other uninvolved parties. Psychological closure can also create some degree of inner peace for former disputants and help prevent continued feelings of uneasiness, frustration, hurt, lack of respect, mistrust, animosity, anger, hate, guilt, unfairness, or the desire for revenge.

Psychological closure often requires mental recognition, verbal expression, or specific actions to address the damage done by a conflict to the parties' relationships. This form of closure can be enhanced by direct or indirect, or unilateral or multilateral statements or actions by the involved partes. It can also be encouraged by mediator interventions.

Psychological closure can often be enhanced by action from one or more parties: (1) acknowledgment of what happened; (2) ownership of roles played, actions that occurred, and negative or positive consequences that resulted: (3) affirmation of, or expectations for, a more positive or productive relationship in the future: (4) acceptable and genuine apologies; (5) requests for, or acts of, forgiveness; and (6) reconciliation. Some disputants require only acknowledgment to achieve psychological closure; others require more from another party.

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Acknowledgment means that a person recognizes and can accurately describe what has occurred. Acknowledgment often indicates a greater (or even a common) understanding of past events, issues, interests, or actions, but not necessarily total agreement with the perceptions of other parties. For example, in a mediation between two co-workers that involved one of them sending "flaming" e-mails (abusive messages transmitted by computer), one party said, "I acknowledge that I did send an inordinate number of very direct e-mails during a short period of time. Both the number and tone of the messages caused and exacerbated problems between us."

Acknowledgments may be initiated unilaterally and unconditionally by a party, or with the expectation of reciprocation by another disputant. If either initial or reciprocal acknowledgments are not forthcoming, and it appears to the mediator that they will be necessary to make progress toward psychological closure, the intermediary may encourage one or more people in the dispute to make them. This encouragement may occur either in private or joint sessions. For example, in a caucus the intermediary might say, "After listening to the other people involved, I believe that it would be very helpful for them to hear from you, that you acknowledge what has happened and the consequences that have occurred. Hearing this directly from you may enable them to let go of their hurt and anger and help them to move forward with the substantive agreement that you want."

Ownership is a step beyond acknowledgment. Ownership means that a person acknowledges what happened, recognizes his or her role, *and* takes responsibility for the potential or actual consequences. For example, in the flaming case, the party who sent the problematic e-mails went on to say: "I recognize that I am a very direct person, and that I often do not stop to think about the possible impacts that the frequency or tone of my messages may have on their recipients. I recognize that the form my e-mails took not only hindered getting our work done, but also damaged our relationship and ability to communicate in a productive manner."

Affirmation refers to positive statements concerning possible or actual future relationship between disputing parties. Affirmation confirms or reconfirms connections, or potentially positive disconnections between people, and helps create an encouraging tone and constructive interaction between them. For example, in

the event that a mediation terminates a relationship, one or more parties might say, or be encouraged by the mediator to say: "The medition process has certainly been a less painful way for us to resolve our strong differences and dissolve our business partnership, and the agreements that we have reached seem to me to be fair and reasonable for both of us. During our discussions, I believe that we have come to understand each other in ways we never did in the past, and learned that we could both be right and not have to be in agreement. My expectation is that although we will not continue to be business partners, and will not be interacting in any way in the future, both of us will be able to put these differences behind us and pursue to the best of our abilities our important work."

If the relationship is continuing, albeit in a different form, an affirmation might sound like this: "This divorce has been tough on both of us, but the process of discussing our concerns about our two children has enabled us to come together on this one aspect of our life—parenting—that we have done well . . . even when we were in conflict. Although we will not continue to be spouses, I have every reason to believe that we will continue to be good parents, and will be able to co-parent effectively with trust and respect for each other."

Apologies are very powerful actions that can significantly help to achieve psychological closure (Schneider, 2000). They are the next level of ownership for what has happened to the people in a conflict. Apologies not only involve ownership for what has happened, roles played, and consequences but are also expressions of regret or remorse. On occasion they may include requests for acceptance of the apology or petitions for forgiveness.

In general, apologies are only effective and accepted when they are (1) given sincerely, (2) voluntary and without coercion, (3) expressed in language that is acceptable to the person to whom they are addressed, (4) made at an appropriate time when the receiver is likely to be most receptive, and (5) are specific about what is being apologized for. Apologies may be given without expectation of acknowledgment, acceptance, or reciprocation. They also may be initiated in the hope that they will be either indirectly or directly accepted, or be reciprocated by a responsive statement of ownership or counterapology from another party.

Apologies involve saying in one form or another "I'm sorry." Ability to acknowledge ownership and make apologies varies tremendously between people, genders, and across cultures. Members of some cultures, such as many Japanese, find acknowledging fault or inconvenience relatively easy. Japanese often apologize for asking a question or putting another party to even a minor inconvenience. Individuals from other cultures, or those in high-conflict situations where the stakes are high, may find it very difficult to make apologies because of fear of being in the wrong, loss of status, or anxiety about the possibility of shifting power relationships. For example, in personal injury lawsuits over medical malpractice in the United States, defense lawyers often advise their clients not to say "I'm sorry for what has happened," for fear that it will be construed as accepting legal liability.

If a party can say "I'm sorry that this happened," or the even stronger "I'm sorry that *my* actions [with a specific description] contributed to this situation, and caused you harm," the parties may be on the road to making reciprocal exchanges, which may help one or more of them reach psychological closure. The latter statement is much stronger than the former because it involves personal ownership of the situation, problem, or dispute; the consequences that occurred; and expression of *personal regret.*

In general, there are at least four possible responses to an apology. The recipient can acknowledge the apology and directly accept it, acknowledge and indirectly accept it, acknowledge but not accept it, or outright reject it. Progress may be made toward psychological closure from the first two responses. If a party says either "I accept your apology" or "If that is really what you truly mean, I can probably live with it," a step has been taken toward a viable psychological exchange. Sometimes receipt of an apology is all that can be expected. In very tense or hurtful situations, the recipient may say, "I've heard what you said, and I will consider it." Often the fact that an apology has been made, even if it is not immediately accepted, helps the recipient move toward more closure.

Outright rejection of an apology is a difficult situation for either the party who has made it or the mediator to manage. Mediators may want to coach parties in caucus on how and when to make, or not make, an apology. If a party or a meditor does not believe that an apology will be accepted by an injured party, it may

be better not to make it all rather than risk the backlash, frustration, hurt, or anger that might occur if it is rejected. In this instance, a party or a mediator may make more progress toward psychological closure by exploring statements of acknowledgment and ownership.

If, however, a party has made an apology and it is rejected, the mediator may decide to intervene to help minimize the negative impact of the rebuff. The intermediary may decide to pursue one or more strategies. First, he or she may initially ignore, and help the other initiating party ignore, the rejection and move on to clarification of other issues involved in finalizing the settlement. Or the mediator may finesse the rejection, by saying something like "Mr. X has made an apology for what has happened, but the timing may not be right for its immediate acceptance. Sometimes it is valuable to take some time to think about what has been said before dismissing it. Perhaps you can consider what has been said, and come back to it later." Or the mediator may restate the apology in the same words used by the giver, or perhaps with only slight modification, to explore whether changing the messenger who gives the appology will help the recipient better hear, understand, and accept it.

If an intermediary believes that an apology is genuine and really should be considered by the party who rejected it, he or she may try to figure out why it was dismissed and develop appropriate strategies to address the specific barriers to acceptance. For example, was it the content of the apology that was unacceptable? Was it not to the point, vague, or too general? Did it not go far enough to meet the recipient's psychologial need, or perhaps it was too extreme to be believable? Were the specific words, wording, or syntax the problem? Was the difficulty the tone or perceived insincerity of the initiator? Was the kind and degree of emotional expression appropriate for the situation, in that it articulated the right level of regret, remorse, or contrition? Was the timing wrong? Was the apology made too early or too late in the mediation process? If it was a group dispute, was the apology given by the wrong person? If the person giving it is changed, would it be more likely to be accepted?

On the basis of a hypothesis for the probable cause of rejection, the mediator may be able to coach either the giver or receiver

of the apology to make it in another way or perhaps hear it differently. An intermediary may reframe an apology in different words to make it more explicit, remove value-laden language, and reframe it to express a more acceptable emotional content. For example, a disputant has said in a rather frustrated and reluctant tone: "Okay, okay, so I'm sorry for bungling the books, and causing you an accounting nightmare. I've said it over and over again. What more do you want? You can't wring water from a stone!" Although this is an apology, it is not likely to be accepted. The mediator might reframe it this way: "You are really sorry that the accounting procedures that you used to report the company's income did not accurately reflect its financial position, and that your method and behavior has caused Steven a number of legal, public relations, and personal problems and stress. If you had known what you know today, this wouldn't have happened, and you strongly regret that you have put Steven and the company in this position. At this time, you are not sure what more you can say to indicate how much you regret your actions, and if you knew what to say, you would say it." If the giver of the apology affirms the mediator's restatement, the recipient may be much more likely to accept it than if it was phrased in the earlier manner. The reframed statement is explicit, takes ownership, shows an appropriate level of emotion and contrition, and opens the door for further conversation.

Forgiveness, whether in interpersonal, intergroup, or international relations, and whether requested or unilaterally given, goes beyond ownership or acknowledgment. It involves one party absolving another for statements, actions, or situations that occurred in the past. Forgiveness is not social amnesia, in that an offended party forgets what went before. It is a way of acknowledging the past and past harms, and "walling off history," so that the forgiver and the forgiven can move on with their lives (Blake and Mouton, 1984).

Forgiveness is often intimately related to reconciliation. However, the two concepts will be discussed seperately because the latter often goes beyond an act of individual forgiveness. Forgiveness has been examined by psychologists, sociologists, theologians, politicians, and a variety of conflict managers. The context for work on forgiveness has been interpersonal and family, victim-offender, organizational, intergroup, political, ethnic, and international relations (Henderson, 1996, 1999; Minow, 1998; Müller-Fahrenholz, 1997; Tutu, 1999; Umbreit, 1985, 1994, and 2000). It can involve, but is not limited to, forgiveness between divorcing spouses, former business partners, patients and doctors, victims and offenders in criminal cases, political rivals, or victims of abuse and torture in intraethnic conflicts, and victors and vanquished in wars.

Forgiveness, even though it may involve apologies, generally moves far beyond them. Forgiveness involves a party in really letting go of a conflict and the resentment, animosity, or anger that has been held toward others. Forgiveness also often includes recognition of the common humanity of the other party, identifies and strengthens commonality of interests, reconnects former adversaries, establishes or renews relationships, lowers anger and heals grief, contributes to the construction of new positive alliances, and breaks the cycle of conflict (Hunter, 1965; Müller-Fahrenholz, 1997).

Forgiveness does not mean or require that there should not be consequences for harmful words or actions in the past. It means a change of feelings by one person or group toward another. The philosopher Jeffrey Murphy explains it this way: "[Because] I have ceased to hate the person who has wronged me it does not follow that I act inconsistently if I still advocate his being forced to pay compensation for the harm he has done or his being forced to undergo punishment for his wrongdoing—that he, in short, gets his just deserts" (Murphy, 1988). But forgiveness does not always require compensation or punishment. Individuals or institutions can forgive a person or group and not require any further negative consequences.

At this time, two questions need to be asked about forgiveness and its relationship to mediation. First, what role should mediators play in trying to promote forgiveness? Second, if forgiveness is an important or desirable goal, how can intermediaries help parties move toward it?

It is clear that achieving substantive and procedural settlement is not necessarily dependent upon one or more parties forgiving each other or achieving a high level of psychological closure. People reach negotiated or mediated agreements every day with others whom they do not trust or who have done them harm. They reach these agreements without forgiveness ever entering into the equation. But it is also true that mediators want to help parties

achieve settlements that are sustainable and do not result in the conflict reemerging later or in another form. Intermediaries also generally desire to assist parties whenever possible, to mend, repair, redefine, or end conflicting relationships in such a manner that the parties retain their emotional balance, self-respect, dignity, and feelings of worth. An even broader concern of third parties may be the desire to improve broader social relationships and society by promoting and achieving the deeper resolution of specific disputes. Many intermediaries see people as being connected in a web of interlocking and interdependent relationships. Successful, positive, and comprehensive settlement of a dispute in one area will inevitably have beneficial ramifications or repercussions in others. Conversely, an incomplete settlement, one that does not address psychological closure or perhaps involve forgiveness, may result in a continuation of negative dynamics or behaviors on the part of one or more parties in interactions with others who are not parties to the current conflict. All of these concerns may lead mediators to consider forgiveness as a valid aspect of mediation.

So, how important is it for a mediator to work with parties toward achieving forgiveness as a factor of psychological closure? Mediators differ widely regarding how critical forgiveness or reestablishment of positive social relationships is when seeking and building durable agreements. They also differ regarding whether mediators should work toward these goals at all, and if so, what priority it should take. Intervenors also have different views on the level or depth of intervention they decide to initiate and the magnitude of change they hope the parties will achieve.

Some mediators, who practice a more therapeutic or transformational approach to mediation, often have as one of their primary goals forgiveness and reconciliation between parties. For example, in the early days of court-based mediation between potentially divorcing spouses, some intermediaries wanted to help the partners forgive each other, reconcile, and continue to be married. Other transformational mediators are more concerned with acknowledgment, empowerment, and recognition (Bush and Folger, 1994).

I believe there are two guidelines that should be applied when deciding how far a mediator should go to encourage or help parties forgive one another. First, if it appears that forgiveness is the

[illegible]ly way, or a key, to an acceptable and durable agreement, the [illegible]diator should discuss with the parties how work on the issues [illegible]at will allow the emergence of this goal. Second, the mediator [illegible]ould work toward the goal of forgiveness *only* if the parties de[illegible]re it. "Forgiveness is a power of the victimized, not a right to be [illegible]laimed by another [such as a mediator or a government entity [illegible]uch as a Truth Commission designed to address past violent in[illegible]teractions between parties]. The ability to dispense, but also withhold, forgiveness is an ennobling capacity and part of the dignity to be reclaimed by those who survive the wrongdoing" (Minow, 1998, p. 17). Consideration of forgiveness may be raised by the mediator, but he or she can only open the door; the parties must choose to walk through it. Pushing for forgiveness or reconciliation when parties do not desire it violates one of the basic tenets of mediation: that the parties define and set their own goals.

So, how can a mediator help explore with parties whether forgiveness is desirable or possible? First, the intermediary can discuss and educate them about desirability, or the need for (or possible value of) forgiveness as an aspect of settling the conflict and moving forward with their lives.

Second, the mediator can explore whether there are any conditions that might merit consideration for forgiveness to occur. Forgiveness can, and probably should, occur only when it is merited—that is, there should be one or more good reasons for a person to forgive another. (The obvious exception to this view may be held by adherents of religions that value forgiveness in and of itself, or who believe that forgiveness will transform the wrongdoer as well as the forgiver.) In reviewing conditions for forgiveness, the intermediary can help parties consider whether one or more actions have occurred that would merit a pardon:

- Acknowledgment and ownership by the perpetrator of the specific wrong that he or she has done, his or her role in what happened, and the negative consequences or harm that has resulted
- A direct request for forgiveness, and possibly an explanation for why it is desired
- Voluntary statements or acts that help make the aggrieved party psychologically whole

- Voluntary and appropriate levels of efforts to materially compensate the aggrieved party for inconvenience, losses, or harm, or acts to make the party whole (restitution)
- Voluntary self-denial of something that is valuable to the person asking for forgiveness, as an indication of his or her willingness to take responsibility for the harm done to the other party
- Willingness to accept a consequence imposed by the aggrieved party
- Tangible demonstrations that the offending party really has changed and will not act in the unacceptable manner again

Third, the mediator can note some of the possible benefits that may be gained by asking for and giving forgiveness. For the person requesting forgiveness, the act itself may be liberating. It acknowledges ownership for a wrong that has been done, involves an apology, requests forgiveness, and may also include a verbal or tangible way to right the wrong (such as compensation). Making a request for forgiveness often helps the wrongdoer feel that he or she has done his or her best to right a wrong, and that it is now in the other parties' hands to decide what is to be done.

Benefits to those doing the forgiving can be both therapeutic and tangible. Forgiving another person can prevent one from becoming a "bitter or resentful person" (Kushner, 1996). The release of anger, which may result during the process of discussing painful issues and moving toward forgiveness, may also be therapeutic and physiologically beneficial. Parties granting forgiveness may also find some comfort in having told their story of what happened; knowing that the truth is finally out, expressed, and known; and having the perpetrator hear about and acknowledge the pain that was caused. Forgivers may also find new freedom to move on with their lives, and not remain caught in the past.

Fourth, the mediator can explore with the parties individually or together whether conditional or unconditional forgiveness is the goal. Conditional forgiveness means a pardon is contingent on the requesting party saying or doing something prior to a pardon being granted—that is, the forgiving party must receive something in exchange for the absolution. If forgiveness is conditional, the intermediary can help the parties identify what actions or ex-

changes will be necessary to achieve this level of forgiveness. For example, a customer in a small-claims mediation has been in conflict with the owner of an auto repair shop. The customer claims that he was the victim of abusive language and behavior by the shop's owner, inconvenienced by the firm keeping his car for a week and not completing the job on time, and charged $200 more for the job than it was projected to cost. The owner of the shop has been going through some hard times—a declining number of customers, a high turnover of mechanics, and a number of other complaints to the consumer protection unit of the district attorney's office. He really wants to keep the customer's business, preserve the good name of his shop, avoid future consumer complaints, and not have to deal with the DA's office ever again. He proposes to drop $200 dollars off the expected bill, agrees to lower the total price for the work to compensate the car owner for lost time, and promises to provide certificates for a free oil change and tune-up in the future—all this in return for forgiveness and an agreement by the customer not to bad-mouth his business. The car owner rejects the offer as being inadequate and says that a substantive deal and forgiveness is only possible after an apology for the abusive language and a promise that the shop owner will try to treat future customers with more respect and contact them if their bill is to be more than $50 dollars over the projected cost for the repairs. The mediator seizes on the apology that is needed regarding the language and the promise of changed behavior, and works in caucus for how these will be stated to the customer. The right statement at the right time leads to a statement of forgiveness.

Reconciliation is often a confusing and contradictory term. Reconciliation can mean coming to terms with or accepting a less-than-desirable situation, as in "I understand what happened and hate it, but now I will just have to reconcile myself to live with the consequences." Reconciliation can also mean a positive change in disputing parties' relationships so that they can interact positively and productively, and with trust and respect in the future.

Both forms of reconciliation can be important in achiving psychological closure in mediation. There are some instances where an intermediary may have to work with a party to accept and live with a less-than-desirable outcome, or acknowledge that what has happened in the past cannot be changed, no matter how hard the

party might try. Talking through issues, interests, and perceptions, and feelings of guilt, frustration, or anger, can often help a party reconcile themselves and help them accept their circumstances. Mediators can also help parties discover an acceptable explanation or rationale for what has happened that will give them some peace of mind. Although not the most desirable psychological outcome of a dispute, this form of reconciliation is sometimes the best that can be achieved.

It is important to examine reconciliation in the second sense, that of changed relationships, in more detail. It should be noted that reconciliation is more of a process than a definable end state. As Lederach (1997, 1999) noted, reconciliation involves an *encounter* between conflicting individuals or groups to address the past and share their trauma, grief, and anger, without getting mired in what has occurred before. It is a process of *knowing, acknowledging,* and *validating* the experiences and feelings of others. The focused encounter is the first step in the process of reconciliation.

In addition to examining and addressing the past, disputants need to develop a positive joint vision for their relationships in the future. This involves envisoning new or redefined relationships, different and more positive forms of and forums for interaction, reciprocal and jointly beneficial exchanges, and development of common and mutually acceptable expectations.

Closing the door on old conflict-ridden relationships and opening the door to future positive ones is not easy; it requires parties to carefully balance and reconcile four interrelated components or goals, which operate in tension with each other and upon which reconcilaition is dependent: (1) truth, which requires revelation, transparency, acknowledgment, and clarity of what has happened in the past; (2) mercy, which entails "acceptance forgiveness, support, compassion and healing"; (3) justice, which requires "equality, right relationships, making things right, and restitution"; and (4) peace, which is characterized by "harmony, unity, well being, security and respect" (Lederach, 1977, p. 30).

Reconciliation requires balancing the needs of conflicting parties for the satisfaction of each of these four components, and addressing the inherent contradictions of achieving one at the expense of another. For example, in a dispute between members of different ethnic groups and races, where the minorty group has undergone years of discrimination, the current conflict over equal

opportunity to advance in an organiztion is only the most current manifestation of ongoing differences. The minority grievants and the majority parties have to value and reconcile tensions between goals or desired outcomes of truth, mercy, justice, and the desire for peace. How much truth and acknowledgment of wrongs do they want to come out about the less-than-complementary behavior of both their side and the other, versus showing mercy and asking for support to spare the feelings of all concerned and begin relationships anew? How much justice, equality, and restitution do they want, if it comes at the expense of peace, respect, and harmony in ongoing relations or the perpetuation of adversarial relationships? How is telling the truth and achieving justice related to the long-term goal of showing mercy and achieving peace?

Developing practical procedures for addressing and resolving tensions between these four elements of reconciliation is on the cutting edge of dispute resolution practice, and it is critical to helping parties achieve psychological closure. Several authors have developed more elaborate and lengthy processes to begin to address these tensions (Blake and Mouton, 1984; Kelman, 1991; Lederach, 1997; Rothman, 1992, 1997), but our concern here is what a mediator can do in the short period of time that he or she works with disputing parties to begin the process of reconciliation. There are a number of brief intervention strategies that can help promote reconciliation, some of which have already been described. Others include creating:

- A safe forum and envrionment where parties feel free to talk about their feelings, views, perceptions, and opinions on what has happened in the past, and openly describe the impact that events have had on them, their friends, colleagues, or identity group members
- Opportunities for acknowledgment and demonstrated understanding by other parties that they have accurately heard the experiences, feelings, and impact the conflict has had on others
- Mutual ownership of roles and responsibility for what has happened
- Time to identify and discuss cross-cutting experiences, interests, activities, relationships, or affiliations that parties share in common

- Opportunities to discuss individual and shared successes in reconciling differences that each side is proud of
- Positive vision(s) for new relationships and new ways of interacting
- Time to identify and discuss what each "side" has done right in their prior relationship, as well as what they have done that is problematic
- Opportunities to identify what has happened in the past, or what is currently happening, that gets in the way or blocks achieving the positive joint vision(s)
- Confidence-building statements, actions, or measures that indicate that the current negative situation can and will change
- Group social activities that create opportunities for positive interactions between contending parties and that minimize possibilities of negative encounters
- Common tasks, the completion of which requires cooperation

Many of these activities can be or are incorporated into stages of the mediation processes. Others may require more structured or extended time to execute but may well contribute substantially to the process of reconciliation.

CULTURAL APPROACHES

Diverse cultures have differences about what constitutes psychological closure, the degree to which it is desirable or needed at the conclusion of a conflict resolution initiative, and how to achieve it. Different kinds of conflicts and relationships between disputants too may require more or less psychological closure. For example, in many legal cultures and lawsuits, lawyers place little or no value on psychological closure; they focus almost exclusively on procedural fairness and mutually acceptable substantive settlements. For other cultures, such as in a village society—especially where disputing parties have to continue to interact, live, or work together—psychological closure may be critical for those involved in a conflict.

Some general cultural and situational considerations can help intermediaries decide how important psychological closure is likely to be for disputants. If certain conditions exist, more emphasis may need to be placed on psychological closure:

- If the parties have no choice but to continue to interact or relate, and there is a low likelihood that they can be permanently separated (as in a traditional family, marriage, or village; inmates in prison; in workplaces where there is not an opportunity to transfer or leave the job; or ex-spouses who may need to continue to co-parent minor children for a number of years, and so on)
- If the culture of the disputants is more collectively oriented than individually oriented (as in many Asian, African, Latin American, and indigenous societies and communities)
- If the harmony of the group and smooth interpersonal relationships take precedence over individual needs or interests (as in many Asian cultures or church communities of believers)
- If the culture of the parties or the parties themselves inherently value forgiveness or reconciliation (as with followers of some religions)

If one or more of these conditions are present, how can a mediator respond in a culturally sensitive or appropriate way? To this question there are no easy answers. A first step is to talk with the parties about how psychological closure happens in their cultures. Getting disputants to tell stories of how others, or they themselves, have been able to let go of a conflict can point the way to both individual and cultural paths of reconciliation. Another approach is for mediators to tell stories (real ones or fables) that illustrate psychological closure, and use them to engage parties in dialogue about how they might begin to move in this direction.