

Preparing for Large Group Mediations **Alan E. Gross, Ph.D.**

Much of the success of any mediation session, not necessarily defined by whether or not a resolution is achieved¹, depends on the effectiveness of the mediator and the motivation of the parties. However, preparation before the session begins is often less emphasized in mediation training and practice. Some of the activities that precede the parties' arrival at the table/telephone/computer are handled by case managers and other administrators for those mediators fortunate enough to be supported by staff. Even for mediators that do utilize staff, there are many situations where interventions performed by the mediator her/himself before the parties arrive may smooth the process and avoid difficulties at the table.

At the risk of stating the obvious to experienced mediators who already practice serious and even extensive preparation for their sessions, I will be specific about the pre-mediation steps I typically go through with my parties. As I will indicate in examples below, some kinds of preparation are more critical in large groups; however, I will not cover here some of the very special preparation, such as preparing agendas and arranging activities, that are often used by facilitators as contrasted with mediators. There is not always a bright line dividing large mediations from group facilitations; however In general, mediations deal with conflicts between the parties , while facilitation often is aimed at clarifying common goals mostly for work groups and attempting to find and build consensus. For more on this and the special skills required for facilitation see <https://en.wikipedia.org/wiki/Facilitator> or check "core competencies" for facilitators on the site of the International Association of Facilitators: https://www.iaf-world.org/site/sites/default/files/IAF%20Core%20Competencies_1.pdf

Many articles and videos on "how to prepare" are aimed at parties who are considering or have already scheduled mediation, however my focus here is on the mediator, who in addition to preparing her/himself, can also help to prepare the parties. For example, Stacy Roberts' excellent video "5 Tips to Prepare for Mediation"² instructs parties to get ready for sessions by listing their issues and goals, gathering relevant information, seeking professional and friendly advice, scheduling adequate session time and even getting enough sleep and bringing snacks to the session. The American Bar Association's Section of Dispute Resolution (2012) has produced an excellent guide "Preparing for complex civil mediation"

¹ "Is Agreement the Gold Standard for Mediation Success?" at <http://www.mediate.com/articles/GrossA3.cfm>.

² "Five Tips to Prepare for Mediation" at <https://www.youtube.com/watch?v=55YPjMYuPYk>

which is designed to be distributed to mediation clients who are represented by attorneys.

This kind of advice, and much more, can and often should be provided by the mediator via in-person pre-session meetings or phone and video communication. Of course, any information intended to prepare the parties, especially those inexperienced with mediation, and information obtained from the parties for the benefit of the mediator, require communication well before the session begins. These pre-sessions can be scheduled as part of the initial contract or agreement with the parties.

Recently, the Mediator Reflective Practice Project (2015) has developed and tested an instrument, the “Pre-Mediation Reflection Tool”, that is designed to encourage mediators to hone their skills by reflecting on their work immediately before (and after) mediating cases. This instrument, among other things, focuses on guiding principles like self-determination, and specific actions that can uphold such principles. More information on this project can be obtained from Rochelle Arms at George Mason University rarms@gmu.edu.

The first and most important task in planning for any mediation, especially with large groups, is to identify all of those involved or affected. The participant identification process often requires intense interviewing and networking to make sure that all of the critical players are invited to the table and strongly encouraged to attend. This important preparation activity insures that ALL relevant parties including decision makers and any persons who could be affected by potential agreements at the session are included. When there is a dispute, stakeholders from all factions/groups/sides must be represented. Without participation and buy-in for the process and for any agreed upon outcomes, compliance for those not present is likely to be greatly diminished or non-existent, and any agreements may be actively opposed by “spoilers.”

For groups facing complex or multi-issue conflicts, determining whom to include can be very difficult. Not only is it important to identify representatives of all possible viewpoints and interests, but it can be critical to balance participation so that no group is over or underrepresented. In addition to including the strong proponents of various attitudes, interests, or actions, it can also be useful to include parties who are not directly involved in resolving the existing problem or conflict, but who might be part of a supportive community or network that will follow up and help to preserve and implement any agreements after the session.

An effective way of guaranteeing inclusion of all relevant parties can be labeled “fanning out,” by which I mean asking the parties who were originally identified to provide contacts for others involved in the situation that includes both supporters and opponents. It is often also possible for the mediator or case manager to obtain membership lists of organizations to use in soliciting participation. If there is doubt

about whether any individual or organizational representatives should be included, I believe it is best to err on the side of inclusion.

Even if a party is unavailable or decides to reject an invitation to be included, the mediator might indicate that they were invited, especially should concerns about inclusion be expressed by others. Closely related to inviting parties is using mediator skills to describe the benefits of the process to potential invitees in order to persuade them of the advantages of attendance and participation. One part of this invitation/persuasion contact can be to emphasize that attendance is voluntary and that a party may choose to withdraw without penalty at any time. Laura Athens (2015) has reviewed sources of resistance to participating and has offered suggestions about how to increase compliance. Some of the concerns she covers are related to cost, understanding the process, who the mediator is, and underestimating the benefits of mediation compared with other means of resolving disputes.

Inclusion of relevant stakeholders has almost become a standard practice, but this was not always the case. My consciousness for this critical factor had been raised by a classic experiment assigned in my first year of social psychology grad school! Although some have criticized the interpretation of its results, the study at Harwood Mills (Coch & French 1948) indicates that decisions reached with full group participation were more likely to be accepted and implemented.

The Coch and French results are not directly relevant to conflict situations, but there is a strong implication that people not present or even those represented by others are less likely to buy into whatever agreements or decisions are made during group meetings. As a consequence of the Harwood Mills research, combined with considerable group experience, I now delay, reschedule, move venues, and take whatever actions are necessary to encourage full attendance of all who are involved in a conflict.

After or concurrent with the critical work of assuring inclusion of all relevant parties is accomplished, it is often beneficial for the mediator to interview the parties individually. One purpose of such pre-session interviews, most conveniently done by phone, is to allow the parties to question the mediator about the process and what is likely to happen at the scheduled session. In addition to prepping parties about the process in what can be labeled a “pre-opening statement,” and emphasizing basic principles and norms like confidentiality, voluntary participation, and self-determination, such interviews often provide valuable information for the mediator. Individuals can be asked to list which agenda items they would like to propose. Later at the session, the mediator can refer to this list to insure that all items are invited for discussion, and that all parties have equal opportunities to propose agenda items and to participate. Such information can sometimes help the mediator to anticipate critical issues and problems that may develop when the parties are assembled.

Another useful pre-mediation strategy borrowed from social psychological theory and research is closely related to the popular and widely tested contact hypothesis and the renowned Robber's Cave study (Allport, 1954, Sherif, M, Harvey, O.J., White, B.J. Hood, W.R. & Sherif, C.W., 1969/1988) that predict when parties work on a common problem, they often develop more positive attitudes towards each other. Allport and others have proposed and demonstrated that properly managed contact between adversarial groups working on a common problem can lead to better interactions. Some necessary conditions for the effectiveness of intergroup contact include equal status between groups or parties; common superordinate goals for the task at hand; and an interdependent task structure that requires cooperation between groups to perform the task well.

Because of the potential benefits of such contact, I sometimes introduce pre-mediation trainings as warm-up exercises in large multi-party conflicts. In addition to the usual advantages of trainings, especially those that include interactive skill exercises, these exercises also offer benefits derived from simply engaging disputants in a common task not directly related to the conflict that brought them to the table. This method has been employed successfully among groups involved in New York City community disputes and in a Mediators Beyond Borders intervention between two potentially violent student groups at a West African University.

In the West African sessions, we successfully risked including some content material in the training exercises that related to issues at conflict. After the training, which included tasty food, videos, handouts with major take-away points and certificates of completion, the participants recognized that they had survived, tolerated, and in many cases enjoyed mutual activities with others previously identified only as adversaries. In a sense we had successfully channeled the spirit of the camp boys at Robber's Cave (Sherif et al., 1948) who had first despised and shunned boys assigned to competing teams, but later learned to cooperate with them after collaborating on common tasks. Elsewhere, I have described how other major principles borrowed from social psychological research have benefitted international mediations (Gross, 2011). Interestingly, Jay Folberg (2016) has invoked the contact hypothesis in discussing why some mediators insist on joint sessions at least initially.

Ian MacDuff (2015) uses two apt metaphors in arguing for the importance, even indispensability, of pre-mediation contact with the parties. He first likens early contact with the parties to his days of scuba diving when he and fellow divers surveyed the expected dive area from the shore to observe current and other potential problems before actually diving in. Later he switches to "laying the table" for planning a special dinner party where such elements as who will be present; if there is a seating plan; who might be offended if not invited; if there are cultural and dietary requirements; are carefully considered. Among the concerns that MacDuff believes can and should be handled before the parties arrive at the table are whether any "representatives" have clear mandates from constituents, the various interests of the parties, and working out a formal "agreement to mediate" that

includes allocation of fees and scheduling. MacDuff's article advocates for a balance between the extremes of trying to deal with all uncertainties before the session and facing them "cold" at the first meeting.

A few mediators, notably Paula Young (2007), have emphasized the importance of selecting the best location when preparing for a mediation session. Young sees traditional advice such as alternating between opposing attorney offices or choosing a courthouse as superficial, and therefore she advocates for careful location selection that takes into account emotional impact on the parties. Among many other considerations, Young focuses on such variables as arrangement and height of chairs at the table, providing maps and directions to the location, approximate equal travel distance for all parties, parking information, safety considerations including separate waiting rooms, and staggered departure times, good lighting, temperature control, freedom from noise and interruption, tranquil wall coloring, nice artwork, food/drink, ADA accommodations, and sometimes even toys/games in the waiting rooms! Other suggestions included scented candles, fragrant plants, round tables, and comfy chairs. On the importance of food, Young cites Sharon Press, former director of the Florida Dispute Resolution Center, reporting a formal complaint from a woman suffering from low blood sugar who didn't believe she had received an adequate meal! And she also cites Prof. Carol Leibman on how food was an important factor in resolving a student-administration dispute at Columbia University. There already exists considerable writing and some research that indicates food can be an important part of successful mediation. e.g. see Steven Lagoy on the "Importance of Food in Mediation

<http://www.utbf.com/mediation/2015/12/cookies-and-compromise-the-role-of-food-in-mediation/>

A few years ago two colleagues (Christine Schmidt, Glen Parker) and I utilized smaller mediation groups in preparing to facilitate large shareholder meetings during a cooperative apartment dispute in a large metropolitan area. The shareholders had become deeply divided into two opposing groups. The issues were complex/philosophical and included how to calculate a sales price formula, qualified purchaser income, resale policy, family size and much more. Even when ground rules about talking time, interruptions, etc., were agreed upon, the shareholder meetings, which included more than 50 participants, became fractious and unproductive. The intervention that finally functioned to move the group to a final decision required each faction to appoint three representatives.

These six shareholders then attended a series of three smaller mediated discussions. Following each small group mediation, minutes were composed and distributed to all shareholders in preparation for the large group meeting. Although the disagreements between the groups did not completely dissolve, this innovation did result in each side at least attempting to understand their opponents. Finally when each side had exhausted their arguments, the group agreed to vote and accept a decision. At one point I asked the large group if anyone would like to hear

additional facts or points, but only one man raised his hand. After another few minutes, during which he was the recipient of more attempts to sway him, both he and the people attempting to persuade him recognized that further arguments would not be useful.

Not all large group mediations go well even with adequate preparation, so to be fair and complete, here's a report of a preparation that didn't go well. A few years ago I was engaged by a dean at a large urban campus to deal with a serious long lasting conflict between two faculty groups in one of the academic departments. I may have been hired because of my previous experience as a department chair at a major university.

There were a number of specific issues dividing the two factions, one of which included the chair and her allies, and the other including chair aspirants and others who opposed various department policies. On my first visit to the campus, I convened almost all of the professors and a few others to inform them about the mediation process, to schedule individual interviews with all of them, to invite them to consider sub-group discussions/mediations, and to respond to any questions. The individual interviews, approximately 40, consumed many trips to the campus over more than three weeks. The interviewees provided a lot of information, history of the conflicts, and many of them displayed considerable emotion, mainly frustration.

After the interviews were complete and I had compiled copious notes, I made perhaps the most egregious error of my conflict resolution career. Believing that the faculty deserved a summary of the interviews as an indication of the present state of their department together with possibilities for resolution, I drafted an email that was addressed to all of those who had participated. I attempted to balance the space devoted to comments of both factions and also attempted to present the comments I had received without distortion in a "neutral/objective" manner.

I had naively assumed that what appeared "neutral" to me would be received well by strongly partisan groups whom, I later recognized, wanted support much more than objectivity. I heard nothing for a few days after sending my summary; then the main advocate/agitator for the out-of-power group sent an email to the entire group broadly praising my account followed soon thereafter by a note from the chair and an ally suggesting that I could not be trusted to remain neutral and that I should step down. I immediately wrote to the chair requesting a meeting; however she rejected my offer and the damage was done. I reluctantly resigned and later heard that another facilitator had achieved some resolution. I have not made the same mistake again!

It has been my intent here to suggest some general and major elements for effective preparation. Many others here on Mediate.com and elsewhere have made suggestions for specific kinds of preparation, such as for family or commercial cases, and some have aimed advice at specific audiences such as Nancy Hudgins (2008) who has posted at least 15 articles targeted at attorneys preparing to represent mediation clients. To access some of these many specific articles, insert “preparation” into the “topic” search box at www.mediate.com.

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