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# The Role of Caucusing in Community Mediation

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A theory is presented about the functions of caucusing (private meetings between the mediator and disputant) in mediation. Empirical results that confirm and extend a number of propositions from the theory are also presented. Two coders, content analyzing both mediator and disputant behavior, observed 51 hearings at the Dispute Settlement Center of Western New York. Results indicated that disputants in caucus sessions employed less direct hostility, provided more information, and proposed more new alternatives than in joint sessions. Mediators, in parallel fashion, were more likely to request information and to challenge the disputants to come up with new alternatives. Mediators also exhibited more freedom to violate the neutrality norms during caucus sessions, giving greater support to the side that originally filed the complaint. These results support the use of caucusing as a route to issue identification and problem solving. However, other results showed that disputants were especially likely to boost their own position and put the other party down during caucus sessions, suggesting that mediators must be wary of what they learn from one party when the other is out of the room.

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Mediation can be defined as any effort by a third party to help disputants reach an agreement in a controversy. A major tactic employed by many mediators is "caucusing," that is, meeting separately with each disputant. Kressel (1972) describes caucusing as "the most

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frequently discussed tactic of mediation.” Mediators differ with respect to whether and how caucusing should be employed (Markowitz and Engram, 1983; Silbey and Merry, 1986). Hence the impact of caucusing on the process and outcome of mediation would appear to be a pressing candidate for research.

The aim of this article is twofold: (a) to present a theoretical discussion of the functions of caucusing that will help understand when caucusing takes place, what is done in caucusing, and what effect these actions have; (b) to present some results from a study that tests certain aspects of this theory.

### THE COMPONENTS OF SUCCESSFUL MEDIATION

To understand the functions of caucusing, it is necessary to gain an initial understanding of the components of successful mediation. First and foremost, for mediation to be successful, there is a need for a trusting and empathic relationship between the mediator and each disputant. Thus an important task in the beginning of the hearing, and, to a somewhat lesser degree, throughout the hearing, is to build and maintain rapport with the disputing parties. According to Kolb (1985), there are two elements of rapport building. The mediator must (a) establish his or her credentials and expertise, and (b) establish a positive relationship with the disputants so that they have a sense of his or her “empathic concern” (Kressel, 1972). The first element creates faith that the mediator has the ability to deal with the problem; the second element creates faith that the mediator will invest the necessary effort to deal with the problem.

Rapport contributes to successful mediation in several ways. It facilitates mediator influence over the disputants and makes the disputants more committed to the mediation process (Kelman and Cohen, 1979). Rapport may even contribute to one disputant’s taking the needs of the other disputant more seriously, since the mediator, who is trusted, is seen to take these needs seriously (Burton, 1982; de Reuck, 1983).

Once rapport has been established, successful mediation ordinarily goes through four phases: issue identification, generation and evaluation of alternatives, selection of an alternative, and development of an implementation plan (similar stages have been identified by Sheppard, 1984). Movement through these phases is generally forward, though it is

possible to go back to an earlier phase if the decisions made at that time were inadequate.

Issue identification involves understanding a party's position and the interests and assumptions underlying it. Good mediators are often deeply involved in this activity since disputants so frequently lack perspective about what they are demanding and why they are demanding it.

After issue identification, the next step is the generation and evaluation of alternatives. For disputants to generate alternatives, three requirements usually must be met. First, they must be flexible about the means of achieving their interests so that the two sets of interests can be meshed (Pruitt and Rubin, 1986). Second, they must develop a sense of shared responsibility for the problem, instead of considering the other entirely to blame (Sillars, 1981; Syna, 1985). This allows them to shift their attention from who was responsible for past difficulties to the satisfaction of both parties' future interests. Third, they must be able to put up trial balloons without fear of the consequences—that is, to throw out tentative new alternatives without fear of looking weak or of seeming to concede (Pruitt, 1981).

It is best if the two disputants can work together on generating alternatives—that is, if joint problem solving can develop. However, antagonism toward and suspicion of the other party frequently stand in the way of such a development. Alternatively, one party (or both parties) may engage in problem solving separately with the mediator, who hopefully has some grasp of the other party's viewpoint. If all else fails, the responsibility for generating new alternatives may fall exclusively on the shoulders of the mediator.

Having generated and evaluated alternatives, the next step is the selection of an alternative that all parties can accept. When this is accomplished, an additional step, in some but not all hearings, is to develop an implementation plan. Implementation issues must be identified, alternatives generated and evaluated, and a selection made. Hence, when implementation issues arise, it is often necessary to proceed once again through the stages identified above.

## ADVANTAGES OF CAUCUSING

Problems often arise in enacting the components of successful mediation discussed in the prior section, especially when the disputants

are antagonistic toward one another. These problems can frequently be resolved in caucus sessions because of four characteristics of these sessions. First, the other party is not present as a stimulus. Hence disputants have less cause to be tense, angry, and defensive and, as a result, should be more flexible and creative. This is especially important when relations are more hostile, as joint sessions tend to become unproductive when hostility levels are high. Second, the other party is not present to hear the disputant. Hence, the mediator should be able to get more information about underlying interests and assumptions, because the other is not there to misinterpret or misuse this information. Also, with the other unable to hear, there should be more willingness to throw out ideas for possible solutions, because the discussion can be kept on a tentative basis without commitment. Third, the other party is not present to see and hear the mediator. This allows the mediator to interact more intimately and warmly with the disputant without appearing partial, which encourages increased rapport and sharing of information. It also allows the mediator to make positive remarks about the other without seeming to curry favor or emboldening the other. Fourth, the other party is not available as a target for the diffusion of responsibility. Hence, the mediator can more effectively challenge the disputant with whom he or she is meeting to take personal responsibility for solving the problem.

Details about the positive benefits of caucusing will be presented in the next two sections, the first dealing with disputant behavior, and the second with mediator behavior.

## **DISPUTANT BEHAVIOR**

There is a consensus in the theoretical literature that caucus (as opposed to joint) sessions are the best place to obtain information about underlying issues, that is, about the interests and assumptions on which the initial demands and the behavior in question are based (Blades, 1984; Evarts et al., 1983; Kolb, 1983; Witty, 1980). The same point has been made about efforts to obtain information about bottom lines, fall-back positions, and priorities among the issues (McGillis, 1981). There are three reasons for this. One is that a close interaction between mediator and disputant may be required to flush out this information. The other party may feel left out if he or she witnesses this interaction. A second is that disputants may be reluctant to provide such information

within earshot of the other for fear of being exploited (e.g., the other may commit himself or herself to the disputant's bottom line) or of being embarrassed, as the other may be critical or spread the stories in the disputant's society. A third is that the motion and defensiveness engendered by having the other in the room may stand in the way of increased self-understanding and understanding of the other. Joint sessions encourage disputants to simply repeat their official positions over and over rather than to explore these positions or listen to one another.

Caucusing can also contribute to problem solving and the development of new alternatives. The reduction in tension and defensiveness occasioned by the other party's departure from the room allows many people to move beyond their initial rigid postures to a more flexible and creative stance (Carnevale et al., 1984). In addition, it is frequently easier for a mediator to focus the responsibility for developing creative alternatives onto a disputant when the other is not in the room as a target for the diffusion of such responsibility. In joint sessions, disputants can more easily tell themselves, "The mediator doesn't mean me, the mediator means the other person because he [or she] is the one to blame for this mess." Finally, it is often much easier for a disputant to mention possible concessions and new alternatives and to respond positively to similar proposals by the mediator in a caucus than in a joint session because the other party is not there to say "I told you so" or to require the disputant to adhere to remarks that were intended to be strictly tentative (Evarts et al., 1983; Haynes, 1981; Kerr, 1954; Kolb, 1983; Markowitz and Engram, 1983; Pruitt, 1981; Witty, 1980).

## MEDIATOR BEHAVIOR

Caucus sessions allow the mediator to use tactics that are not especially appropriate in joint sessions. For example, rapport building is aided by sympathetic attention to and empathic concern for a disputant. Sometimes it is necessary to build more rapport with one disputant (e.g., the party who feels more aggrieved or more suspicious) than with the other. This is difficult in a joint session, because the other may interpret unequal sympathetic attention as an official recognition of the opponent's position, leading to a perception of the mediator as biased. Hence it is often better to pursue this in caucus.

In addition to the issue of unequal sympathetic attention, even equal sympathetic attention that is provided to both parties in joint session

might result in both parties' selectively perceiving that the mediator was biased in favor of the other side (see Vallone et al., 1985).

It is sometimes valuable for the mediator to make positive remarks about the other party and his or her position so as to encourage a party to have concern about the other's needs. Such statements are more appropriate in caucus sessions, as otherwise the target of these remarks may regard them as attempts to curry favor with the other party and hence as signs of mediator bias (Pruitt, 1981). Caucusing also allows the mediator to question the assumptions and perspectives of the disputant.

Caucus sessions are probably also the best place to challenge disputants to devise new alternatives. One reason is that disputants are likely to be less emotional and defensive and hence more flexible in caucus than in joint sessions. The other is that, with only one disputant in the room, there is less likelihood of a diffusion of responsibility for thinking up new ideas.

Caucus sessions also allow the mediator to encourage a disputant to make concession or to accept a particular alternative without emboldening the other party or risking the mediator's image of impartiality (Bercovich, 1984; Blades, 1984; Kolb, 1983). Such a strategy in joint session would tend to cause resentment in the party who is being pressed and rigidity in the other party because the mediator seemed to be legitimizing his or her position. It is particularly important for mediators to employ caucus sessions when it appears that one party must make most of the concessions, because otherwise their image of impartiality will be questioned (Shapiro et al., 1985).

Mediators also have more influence in caucus sessions. This is because they can capitalize on the interpersonal bond and press for concessions without emboldening the other party or appearing to be acting in consort with the other.

Caucus sessions also allow the mediator to pass ideas from one disputant to the other without revealing the source of these ideas. This makes it possible for a tentative concession to be explored with the other party without emboldening that person. If the other does not reciprocate, the concession may be withdrawn.

Finally, caucusing provides mediators with an opportunity to empower a weak disputant. When one side is weaker than the other, there is danger of a one-sided agreement that will benefit neither side in the long run. Mediators can avoid this outcome by encouraging the weaker side to stick to its guns. But this can be done only in caucus, because otherwise it would alienate the stronger side.

## DISADVANTAGES OF CAUCUSING

While many benefits of caucusing can be enumerated, the picture is not entirely rosy. Caucusing can backfire. One problem is that disputant statements in caucus sessions are more likely to be inaccurate than those in joint sessions, because the opponent is not there to correct them. A disputant can make wild accusations or employ specious arguments without fear of rebuttal from the other side. A second problem is that the caucusee may coopt the mediator, unduly impressing the latter with the strength of his or her resolve or the correctness of his or her position. In other words, the caucusee, like the mediator, can have more influence than in a joint session.

A third problem is that the party who is not in caucus may be meeting with friends, relatives, or other supporters, or developing new arguments, resulting in the solidification of this position. Finally, caucusing may interrupt a joint problem-solving discussion between the disputants. Hence mediators must be careful not to caucus prematurely.

## METHOD

The data were gathered as part of an experimental study that investigated the impact of three types of third-party intervention on the process of mediation at the Dispute Settlement Center (DSC) of Western New York, a division of the Better Business Bureau Foundation of Western New York, Inc. This data enables many, but not all, of the above hypotheses to be tested.

The DSC, under contract with the Unified Courts System of the State of New York, provides low-cost, confidential, and informal hearings as a practical alternative for dispute resolution. The service is made available for individuals who have some type of ongoing relationship. This includes relations between neighbors, friends, family members, housemates, workmates, and so forth. The DSC provides a trained volunteer mediator to assist the parties to work out a settlement. The parties are encouraged to go beyond the original charge through a discussion of the underlying issues at the root of the problem. High levels of compliance with the decisions have been reported (Syna et al., 1983).

Most cases are referred from Buffalo City Court and Buffalo Family Court. The center also is available for walk-ins. The typical case in our sample came as a result of one party (the complainant) going to Buffalo



City Court and attempting to take out a warrant against a second party (the respondent). Both parties then appeared at a short hearing during which a prewarrant officer decided on the appropriateness of the case for the DSC. Disputants chose whether or not to participate in the DSC program.

The disputes in our sample concerned such matters as financial restitution, complaints about behavior, return of property, and visitation schedules. The relationships included friends and ex-friends, ex-lovers, neighbors, family, coworkers, and, in two cases, strangers.

Once the disputants had agreed to mediation, the DSC scheduled the hearing and then assigned a mediator who could appear at the time. Mediators had an opportunity to refuse to participate in the study at the time they were called, and two did so. At the beginning of the hearing, the disputants were also given an opportunity to refuse to participate in the study, which they did in three hearings.

The mediator began the hearing by introducing him- or herself to the parties and explaining the ground rules. The hearing was then conducted. The typical hearing began with a venting stage, in which each side told his or her story. The mediator then worked at identifying the issues. Next, the mediator tried to develop a solution or to persuade the parties to do so. When an agreement was reached, a consent decision was written. The hearings varied in length from 20 to 160 minutes.

The volunteer mediators ranged in experience from three months to six years. All had participated in a 40-hour training session prior to becoming a mediator. As part of their training, they had been observed in at least one hearing and judged to be competent. They were heterogeneous in race, ethnic background, and sex.

## **RECORDING PROCEDURE**

During the hearing, the two observers sat in a corner of the room as quietly and inconspicuously as possible. They coded the statements of the mediator and disputants into categories on an "OS 3" electronic event recorder with two response pads. Coding took place in both joint sessions and caucus sessions. Altogether there were 26 categories for the disputants (e.g., asks a hostile question, proposes a new idea) and 28 for the mediator (e.g., requests a proposal, threatens to terminate the session). In the 15 reliability hearings, both observers coded for the same set of categories (the mediator was observed in eight hearings and the disputants in seven). For the 36 experimental hearings, the observers

coded separate categories, one being assigned to the mediator and the other to the disputants.

Of the 26 disputant codes, 5 were rare and 6 others were not related to these hypotheses. Therefore, only 15 codes will be discussed. Of the 28 mediator codes, 2 were very rare. All of the remaining 26 codes were related to the hypotheses. One subset of 5 codes concerned behavior by the mediator directed toward the complainant, and another parallel subset of 5 codes concerned behavior directed toward the disputant. For many of the analyses, these codes were summed across the target (complainant and respondent), resulting in 5 codes rather than 10. Hence much of the analysis involved 21 mediator codes.

## SUBJECTS

The original sample included 51 mediation hearings, 2 of which had to be excluded from the analysis because they were so long that they exceeded the memory of the recording apparatus, resulting in the loss of some data. Each hearing included one mediator, at least one complainant ( $M = 1.22$ ), and at least one respondent ( $M = 1.22$ ). The primary disputant on each side was an adult. The disputants were also heterogeneous in race, ethnic background, and sex. Four hearings included one or two attorneys, and five included one or more witnesses who were brought in to testify for a brief time.

Some of these 49 hearings, however, did not employ any caucuses, the use of which depended on the judgment of the mediator about its need or potential benefit. At least one caucus was employed in 32 of the remaining 49 hearings. (In every hearing that employed a caucus, at least one caucus was held with each side.) These caucuses typically included the mediator and all members of one side (including an attorney, if one was involved) but did not include any witnesses. In these 32 hearings, 65% of the statements were made in joint session and 35% in caucus. The percentage of statements made in caucus for these hearings ranged from as little as 12% to as much as 77%.

Since most of our questions concerned how behavior in the caucus sessions differed from that in the joint sessions, it was appropriate to compare only those hearings that employed both joint and caucus sessions. Based on this requirement, our final sample for most of the analyses included two overlapping subsets of the 32 hearings that employed caucuses: 28 hearings with complete data on the mediator (5 from the reliability set and 23 from the experimental set) and 27 with

complete data on the disputants (4 from the reliability set and 23 from the experimental set).

### DEPENDENT MEASURES

The on-site coding of verbal statements was done as follows: The coding unit was everything said by one party (whether disputant or mediator) between statements of another party or parties, provided that the statement did not exceed 30 seconds. If a party spoke for more than 30 seconds, a unit was initiated, and so on for every 30-second interval. A unit could receive several different codes if it contained the appropriate themes. However, a single unit could not receive the same code twice.

Several questionnaire measures were included at the end of the hearing, largely for the purpose of the experimental study. Of interest in this context are responses to an open-ended question asking those mediators who caucused what they had hoped to achieve in the caucus sessions.

While it would be useful to have an outcome measure to use as a criterion variable, attempts to measure satisfaction and compliance were hampered by the refusal of many disputants to complete questionnaires and the difficulty of contacting disputants several months later to interview them about compliance with the agreement. Alternative measures of outcome have been developed for use in a follow-up study.

### STATISTICAL ANALYSIS

Of primary interest was the difference between participants' behavior in joint versus caucus sessions. On the assumption that these differences might be moderated by the phase of the mediation process, the hearing was divided into three equal time periods, which we call "stages."

This procedure might seem to imply the use of a 2 (joint vs. caucus)  $\times$  3 (early, middle, late) within-group factorial analysis of variance. The design was rejected, however, since there were very different *N*'s in each cell owing to the fact that caucuses came at different points in different sessions. For example, only 13 hearings employed a caucus during the first stage, and only five hearings employed both a joint and a caucus session in each of the three stages. Hence, the following procedure was used for the primary analysis. All hearings (28 for mediator behavior, 27

for disputant behavior) were included in tests of the main effects of joint versus caucus and of stages (the latter of which will not be reported in this article). Tests of the simple effects of joint versus caucus sessions at each stage were made using only those hearings that had both joint and caucus sessions during that stage.

Relative frequency scores were used throughout the analysis. Mediator scores were constructed by dividing the frequency of each code in each cell by the number of mediator units in that cell. Similarly, disputant scores were constructed by dividing the frequency of each code in each cell (summed across disputants) by the number of disputant units in that cell (summed across disputants). Complainant and respondent scores were combined for most analyses because the recording methods did not permit distinguishing between these two parties in joint sessions. Since a distinction could be made in caucus, additional analyses were done to compare complainant versus respondent statements in caucus and to compare mediator statements directed to the complainant with those directed to the respondent.

The conditions that led to the use of caucusing were also of interest. This analysis employed the 34 experimental hearings for which there was complete data on both the disputants and the mediator. Comparisons were made between the 23 hearings that employed caucusing and the 11 that did not. Only data from the first stage were employed, as it seemed reasonable that the events of this stage would largely determine whether the mediator would choose to call a caucus.

#### **INTERCODER RELIABILITY**

Pearson product-moment correlation coefficients were calculated for each of the mediator and disputant codes using data from the reliability hearings. A total of 24 of the 28 mediator codes and 13 of the 15 disputant codes reached a criterion level of .70. Analyses were conducted on all of the codes. Findings associated with the unreliable codes will be so identified and should be considered highly tentative.

### **RESULTS AND DISCUSSION**

The primary aim of the current article is to explore possible mechanisms whereby caucusing may have an impact on disputant and

mediator behavior. To ensure that findings on the 21 mediator codes and 15 disputant categories did not simply result from chance, four multivariate analyses were conducted, with joint versus caucus as the within-group factor.

The first analysis was conducted on the entire group of 21 mediator codes. The results indicated that mediators behaved differently in caucus than in joint sessions,  $F(21,7) = 29.26, p < .001$ .

The 15 disputant codes were divided into three sets of 5 codes each. The first set included measures of problem-solving behavior (giving information, giving priority information, requesting the other's reaction to a proposal, offering a new proposal, making a concession). The results indicated a trend in the data,  $F(5,22) = 2.234, p < .09$ . The second set included measures of contentious behavior (comparisons between self and other, self-enhancement, threats, heavy commitments, and miscellaneous persuasive arguments). The results indicated a nonsignificant trend in the data,  $F(5,22) = 2.025, p < .12$ . The third set included measures of hostility (hostile questions, complaints about the other's character, complaints about the other's behavior, sarcasm, and swearing and angry displays). The results indicated a difference in hostility between the joint and the caucus sessions,  $F(5,22) = 3.628, p < .02$ .

## REDUCED DIRECT HOSTILITY

Results from two disputant codes indicate that direct emotion-laden hostility was reduced in caucus sessions. Swearing and angry displays, which included swearing at or about the other disputant, screaming and yelling, and hitting the table, occurred more frequently (per coding unit) during joint sessions ( $M = .0308$ ) than during caucus sessions ( $M = .0114$ ),  $t(26) = 2.04, p < .06$ . Hostile questions, which included any question asked in a hostile tone, also occurred more frequently during joint sessions ( $M = .0142$ ) than during caucus sessions ( $M = .0017$ ),  $t(26) = 3.32, p < .01$ . These findings suggest, as hypothesized earlier, that emotional tension goes down when the other party leaves the room.

Two mediator codes associated with social control provide additional evidence of reduced direct hostility in caucus sessions. Negative evaluation of the parties' behavior occurred more frequently during joint sessions ( $M = .0336$ ) than during caucus sessions ( $M = .0039$ ),  $t(27) = 3.34, p < .010$ . Efforts to reduce the level of hostility also occurred more frequently during joint sessions ( $M = .0038$ ) than during caucus

sessions ( $M = .0004$ ),  $t(27) = 1.95$ ,  $p < .07$ . These two tactics were used primarily during the first stage of the hearing, when the discussion was usually the most heated.

These findings provide evidence that caucus sessions are an effective way of reducing direct emotion-laden hostility. Several mediators, in fact, reported that hostility control was one of their major reasons for caucusing. One hearing that included very high levels of hostility employed caucusing almost exclusively (77%), presumably so as to avoid this direct hostility.

### INCREASED INDIRECT HOSTILITY AND PERSUASIVE ARGUMENTS

Though direct hostility was diminished in caucus sessions, "indirect" types of hostility were on the increase. The disputants tried harder to impress the mediator with the wrongness of their opponent's cause. Behavioral putdowns, in which a disputant criticized the other party's behavior (e.g., "He cheated me last month."), occurred more frequently during caucus sessions ( $M = .1460$ ) than during joint sessions ( $M = .1120$ ),  $t(26) = 1.71$ ,  $p < .10$ . Character putdowns, in which disputants criticized some character trait of the other party (e.g., "He is a cheater."), also occurred more frequently during caucus sessions ( $M = .0197$ ) than during joint sessions ( $M = .0103$ ),  $t(26) = 2.52$ ,  $p < .05$ .

Two contentious codes demonstrated a similar pattern to these two hostile codes. Self-enhancement, in which disputants tried to put themselves in a better light by emphasizing their own good qualities, occurred more frequently during caucus sessions ( $M = .0666$ ) than during joint sessions ( $M = .0322$ ),  $t(26) = 3.68$ ,  $p < .001$ . Miscellaneous persuasive arguments, which included other statements used to support one's position, were also more frequent during caucus sessions ( $M = .2990$ ) than during joint sessions ( $M = .2139$ ),  $t(26) = 3.82$ ,  $p < .001$ . (This final result is largely due to a decrease in usage over time in joint sessions, compared to a constant use in caucus sessions.)

In short, the disputants used the caucus sessions disproportionately to praise themselves and criticize their adversaries. This can probably be explained by the fact that the other party was not present in caucus sessions to make disclaimers. Though we cannot be sure from the data, it seems likely that many of these statements were less than truthful, as suggested in the earlier theoretical discussion. That such statements could nevertheless have an impact on the mediator is suggested by the

finding that mediators tend to recommend solutions that favor the side that has been most vigorous in presenting his or her position (Harnett and Wall, 1983).

#### INCREASED SOLICITATION AND GENERATION OF NEW ALTERNATIVES

As anticipated in the earlier theoretical discussion, the mediator asked the parties to present a new alternative more often during caucus sessions ( $M = .1212$ ) than during joint sessions ( $M = .0744$ ),  $t(27) = 2.47$ ,  $p < .05$ . Moreover, the mediators were granted what they requested in that the disputants offered more new alternatives, (or new variants of an old alternative) during caucus sessions ( $M = .0558$ ) than during joint sessions ( $M = .0322$ ),  $t(26) = 2.43$ ,  $p < .05$ . This supports the hypothesis that there is less rigidity and more capacity for creative thinking in caucus than in joint sessions. A possible explanation for this effect is that emotion and defensiveness are reduced in caucus sessions due to the absence of the other party. In addition, it may be easier for a disputant to put forward a tentative new idea in caucus than in joint session because the other is not there to view it as a sign of weakness.

#### ASKING AND GIVING INFORMATION

The mediator asking for information code, which included a request by the mediator for any kind of information from one or both parties, declined rapidly over time in joint sessions, but remained fairly constant in caucus sessions (see Table 1 for means). In the first stage, asking for information occurred more frequently during joint than during caucus sessions,  $t(10) = 2.64$ ,  $p < .05$ . In the last stage, however, asking for information occurred more frequently during caucus than during joint sessions,  $t(23) = 2.56$ ,  $p < .05$ . The differences in pattern over time suggest that the information sought in caucus is probably very different from that sought in joint sessions. In support of this interpretation, several mediators reported that information gathering was an important reason for their use of caucusing, and that they believed that more information about disputants' bottom lines could be obtained in caucus as opposed to joint sessions. The decline during joint sessions presumably reflects a shift in goals away from defining the issues. The steady use in

TABLE 1  
Information Exchange

Mediator Code		
Asking for information (proportion of units)		
	<i>Joint</i>	<i>Caucus</i>
First stage	.3382	.1988
Middle stage	.2011	.1681
Final stage	.0522	.1421
Disputant Code		
Giving information (proportion of units)		
	<i>Joint</i>	<i>Caucus</i>
First stage	.5816	.5507
Middle stage	.4960	.5673
Final stage	.3261	.5433

caucus sessions may indicate that an important element of caucuses at all stages is a request for information relating to the nature of the impasse in the joint session that occasioned calling the caucus. These interpretations are speculative inasmuch as our measure of information requested did not permit a fine-grained analysis of the kinds of information sought.

The "disputant giving information" code, assigned to disputant statements that provided information of any kind, was a frequently used category. The pattern for this measure was similar to that for the "mediator requesting information," in that giving information remained constant in caucus but declined in joint sessions (see Table 1). In this case, however, the means were not different during the first stage, but became increasingly discrepant. This resulted in a main effect, such that giving information occurred more frequently during caucus sessions ( $M = .5458$ ) than during joint sessions ( $M = .4783$ ),  $t(26) = 2.39, p < .03$ , a result that was mainly apparent in the last stage,  $t(21) = 4.26, p < .001$ . Again, the on-site coding methodology did not permit a fine-grained analysis of the kinds of information being provided, though it seems likely that the information in caucus more often concerned interests, principles, bottom lines, and priorities among the issues.



## THE EVOLUTION OF PROBLEM SOLVING

Several codes provide evidence that certain forms of problem solving tended to originate in middle-stage caucus sessions and to be carried over into the joint session in the final stage. The analysis employed here was a  $2 \times 2$  within-groups factorial analysis of variance, with the first factor being joint versus caucus session and the second factor being middle versus final stage. This analysis used only the 15 hearings that employed a joint and a caucus session in both the middle and the final stages, resulting in a limited number of degrees of freedom.

Requests for reaction, in which a disputant asked the mediator or the other disputant to react to an alternative, occurred most frequently in middle-stage caucus sessions and final-stage joint sessions,  $F(1,14) = 4.60$ ,  $p < .05$  (see Table 2). Such requests are an element of problem solving. A second disputant problem-solving code, offering new alternatives, showed a similar pattern, but the interaction did not approach significance.

A similar pattern can be seen in the data for mediators offering new alternatives. Mediators tended to offer new alternatives in caucus sessions during the middle stage and then in joint sessions during the final stage,  $F(1,14) = 2.87$ ,  $p < .12$  (see Table 2).

These findings suggest that new ideas tend to be tested first in caucus to be sure they are acceptable to the individual parties and then introduced into the joint session. The new alternatives suggested by the mediator in the joint session were presumably a combination of the individual alternatives discussed with the two parties in the caucus sessions.

All of this suggests that, as indicated earlier, caucusing can be a route into problem solving. Caucusing permits the exploration of new ideas, generated by both the mediator and the disputants, which can then be more fully developed in joint session.

## MEDIATOR DIFFERENTIAL SUPPORT FOR DISPUTANTS

Two related mediator codes, positive evaluation of the complainant's position and positive evaluation of the respondent's position, were analyzed by means of a  $2$  (joint vs. caucus session) by  $2$  (complainant vs. respondent) analysis of variance (see Table 3 for means). The interaction between these factors was nearly significant,  $F(1,27) = 4.04$ ,  $p < .06$ .

TABLE 2  
Problem Solving

		<i>Joint Sessions</i>	<i>Caucus Sessions</i>
Mediator Code			
New proposals	Middle stage	.0195	.0400
( $p < .12$ )	Final stage	.0600	.0217
Disputant Code			
Request reaction	Middle stage	.0084	.0097
( $p < .05$ )	Final stage	.0143	.0042

Positive evaluation of the two parties was equal in joint session. In caucus, however, the complainant was evaluated positively more often than the respondent, regardless of which disputant was present in the caucus. This suggests, as proposed earlier, that it is safer for mediators to side with one of the parties in caucus than in joint session. The problem with doing so in joint session is that it becomes obvious that the mediator is taking such a stance, which is likely to hurt his or her empathic relationship with the party not favored.

Why would the mediator tend to favor the complainant over the respondent? There are several possible explanations. One is that the mediator may be better able to empathize and identify with the complainant, who usually claims to be a victim, than with the respondent, who is alleged to be the perpetrator. A second explanation is that the structure may dictate this stance, in that the mediator must lean toward the complainant (who is usually trying to effect some change) in order to balance the force of the status quo, since the latter usually favors the respondent. A third possible explanation is that the complainant has a stronger case than the respondent, causing the mediator to come down on his or her side more frequently.

#### TACTICS MORE COMMON IN JOINT SESSIONS

Three types of mediator behavior—procedural suggestions, threats, and urging agreement—were more common in joint than in caucus sessions.

TABLE 3  
Mediator Differential Support for Disputants

	<i>Joint Sessions</i>	<i>Caucus Sessions</i>
Mediator Codes		
Positive evaluation of complainant's position	.0071	.0140
Positive evaluation of respondent's position	.0065	.0045
		$p < .06$

*Procedural suggestions.* These suggestions were coded in two ways: those that were related to the agenda (concerning how the agenda would be ordered, what issue would be discussed next, etc.) and those that were not related to the agenda (concerning who would speak next, when a caucus would begin or end, who would sign the legal document first, etc.). Note that intercoder reliability did not meet the criterion for either of these codes. With that in mind, the results demonstrated that both types of procedural suggestions occurred more frequently during joint sessions than during caucus sessions (agenda/joint  $M = .0112$ , agenda/caucus  $M = .0017$ ,  $t(27) = 2.60$ ,  $p < .05$ ; nonagenda/joint  $M = .0976$ , nonagenda/caucus  $M = .0628$ ,  $t(27) = 2.99$ ,  $p < .01$ ). These findings probably result from the fact that procedural suggestions are devices for coordinating the two disputants' activities. It is logical that coordination suggestions be introduced in joint sessions because they are more likely to work if each party has reason to believe that the other party has heard the same suggestion.

*Mediator threats to withdraw.* The mediator sometimes threatened to end the hearing as a device to encourage concessions. These threats occurred more frequently during joint sessions ( $M = .0115$ ) than during caucus sessions ( $M = .0021$ ),  $t(27) = 1.86$ ,  $p < .10$ , perhaps because such statements would weaken rapport if one believed the mediator was threatening him or her without threatening the other party.

*Urging agreement.* Mediator statements urging the parties to come to an agreement occurred more frequently during joint sessions ( $M =$

TABLE 4  
Conditions That Lead to the Use of Caucusing

	<i>p</i> <	<i>Joint Only</i>	<i>Joint w/Caucus</i>
<b>Mediator Codes</b>			
Positive evaluation of position	.08	.060	.004
Negative evaluation of behavior	.08	.013	.088
<b>Disputant Codes</b>			
Request reaction	.06	.017	.002
New proposals	.02	.054	.013
Misc. persuasive arguments	.01	.142	.283

.0058) than during caucus sessions ( $M = .0024$ ),  $t(27) = 1.91$ ,  $p < .10$ , perhaps because the same goals that led to the mediator to urge the parties to reach an agreement in joint sessions instead led the mediator to encourage the development of new alternatives in caucus sessions.

#### CONDITIONS LEADING TO THE USE OF CAUCUSING

Five codes, as measured during the first stage, distinguished the cases that employed a caucus from those that did not (see Table 4 for means). In cases that employed a caucus, disputants used more persuasive arguments, made fewer requests for reaction to an alternative, and generated fewer new alternatives. Mediators employed more negative evaluations of the parties' behavior and less positive evaluations of their positions during these cases. These findings suggest that mediators tend to call caucuses when disputants are taking a contentious, as opposed to problem-solving, approach.

#### CONCLUSIONS

The use of caucus sessions is an important tool in the mediation process. To the extent that we can increase our understanding of the potential benefits and costs of caucusing, we can increase the usefulness of this form of dispute resolution.

The results of the study described in the latter half of this article support and help to elaborate a number of hypotheses mentioned in the

earlier theoretical discussion: (1) Direct, emotion-laden hostility is less prominent in caucus than in joint sessions. (2) Disputants make more effort in caucus than in joint sessions to advance their interests by means of self-enhancing statements and statements that put the other down. This is compatible with the hypothesis that the mediator receives more false information in caucus than in joint sessions. (3) Disputants are more likely to propose new alternatives in caucus than in joint sessions. This may reflect a lower level of psychological tension or a reduced danger of appearing weak in caucus as opposed to joint sessions. (4) Mediators are more likely to request new alternatives from the disputants in caucus than in joint sessions. This may reflect an awareness that disputants are more capable of generating such alternatives or a perception that it will be easier to persuade the disputants to take responsibility for doing so during caucus. (5) In the final stage of mediation, mediators tend to request and disputants to give more information during caucus than during joint sessions. (6) Caucusing allows mediators to take sides with one party in order to move the process along. Thus it appears that caucusing somewhat relieves the third party of the requirement of being strictly neutral between the two parties. (7) Problem solving tends to start in caucus sessions and then migrate to joint sessions. (8) Mediators make more procedural suggestions and exert more pressure to reach agreement in joint than in caucus sessions.

These findings suggest that mediators should and do find caucus sessions useful for pushing the process of dispute resolution along when little progress is being made in joint session. However, since disputants tend to be especially critical of the adversary when the latter is out of earshot, mediators must be wary of information obtained during caucus sessions.

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