

Third-Party Approaches to Managing Difficult Negotiations

Objectives

1. Understand the benefits and liabilities of involving a third party to assist in resolving a negotiation.
 2. Explore the major approaches that third parties use: arbitration, mediation, and process consultation.
 3. Consider more informal approaches used by third parties to resolve disputes.
 4. Gain an understanding of alternative dispute resolution systems used by organizations.
-

There is a long history of third parties helping others resolve disputes or reaching decisions for them when they cannot. Third parties may become involved because of a legal requirement (e.g., to manage a labor dispute or strike), diplomacy (to prevent a war between countries), as part of a contractual obligation (e.g., a dispute about a late delivery of merchandise), or because the parties have asked for help. Third parties become involved when negotiators have tried all other options and are not making progress, when mistrust and suspicion are high, or when the parties cannot take actions toward defusing conflict without being misinterpreted and mistrusted by others.

In this chapter we describe the typical roles that third parties play and how they can contribute to resolving conflict. We begin by discussing how the addition of third parties changes the negotiation process. This is followed by an examination of the types of third-party interventions, with special attention paid to three formal third-party roles: arbitration, mediation, and process consultation. We then discuss informal third parties and conclude the chapter with an examination of the institutionalization of third-party processes through the establishment and maintenance of alternative dispute resolution (ADR) systems.

Adding Third Parties to the Two-Party Negotiation Process

Third parties work to manage conflict and help resolve disputes through several different approaches and techniques. Often, third parties only need to implement some of the dispute resolution techniques reviewed in Chapter 17, such as aiding the reduction of tension, controlling the number of issues, enhancing communication, establishing common ground, and highlighting decision options to make them more attractive. As we discuss, some third-party approaches use more of these techniques than others.¹

The negotiation process we have described throughout this book presumes two or more parties working face-to-face without the direct involvement of others. Their personal involvement can create a deep understanding of the issues and a commitment to resolve their differences in a constructive manner. As long as this direct form of negotiation remains productive, it is best to allow it to proceed without the involvement of other parties. As we have described, however, negotiations are often tense and difficult, and they can lead to frustration and anger. Negotiation over critical issues may reach an impasse, leaving the parties unable to move beyond a particularly difficult point. When passions are high and the parties are deadlocked, third-party intervention may be the only way to get negotiations back on track. We believe that third-party intervention should be avoided as long as negotiations have a chance of proceeding unaided—that is, as long as progress is occurring or is likely to occur within reasonable limits of time and other resources. When intervention becomes advisable, however, it should be done in a timely and thoughtful manner.

The negotiators themselves may seek third-party intervention, or it may be imposed from the outside by choice, custom, law, or regulation. In addition, informal third parties may impose themselves on a situation and bring in the perspective of someone who is not part of the dispute *per se*, but is nonetheless interested in its resolution. The third party may be a manager, friend, or peer of the negotiators. As a rule, interventions that are not sanctioned by the parties—or reinforced by a third party's expertise, friendship, or authority—are unwelcome and ineffective (see Arnold and O'Connor, 1999). Uninvited third parties may find themselves bearing the brunt of hostility from one or both parties in a negotiation, regardless of the third party's intention or motivation. For example, law enforcement officers who attempt to intervene in domestic disputes, if only to separate the parties and cool down the situation, often find that the battling parties unite in turning on the officers as unwelcome outsiders. Many law enforcement agencies, in fact, caution officers to respond to domestic disputes in pairs in order to separate the disputants and to protect the officers' safety.

Benefits and Liabilities of Third-Party Intervention

Benefits Third parties can provide and on occasion enforce the stability, civility, and forward momentum that negotiators need to address the problems that remain to be solved—especially those problems that are central to the negotiation and that have stalled or derailed discussions. Third-party interventions can yield several other benefits, including:

- Creating breathing space or a cooling-off period.
- Reestablishing or enhancing communications.
- Refocusing on the substantive issues.
- Remediating or repairing strained relationships.

- Establishing or recommitting to time limits and deadlines.
- Salvaging sunk costs.
- Increasing levels of negotiator satisfaction with and commitment to the conflict resolution process and its outcomes.

Even if the relationship between the parties is so damaged that future exchanges will be extremely difficult, third parties may enable the parties to reduce hostility, manage their emotions, and achieve some closure on the key issues (Jones and Bodtger, 2001). In addition, many organizations adopt and support alternative dispute resolution (ADR) systems and conflict management skills training for their employees. Such commitments may result in a constructive, collaborative work environment, leading to greater individual and organizational effectiveness (Costantino and Merchant, 1996).

Liabilities and Limitations Third-party interventions also have some liabilities and limitations. The involvement of third parties signals that the negotiation process has stalled. Intervention by a third party may signal that the parties have failed to build relationships or to manage their interdependence positively. This is especially true when parties turn to arbitration (see our later discussion) because parties lose control over determining their outcomes. Arbitration can also be viewed as the result of the negotiators' agreement to disagree and a willingness to surrender control over the outcome of their dispute. In contrast, the dominant purpose of other types of third-party interventions such as mediation and process consultation (also discussed later) is to enhance the parties' dispute resolution skills. Their goal is to allow the parties to maintain control over outcomes while the third party manages the process of their interaction. Each type of third-party intervention has its own particular advantages and disadvantages, depending on the context.

When Is Third-Party Involvement Appropriate?

Serious negotiators must make a realistic effort to resolve their own disputes. In labor-management negotiations, for example, failure to bargain in good faith has been codified as an unfair labor practice under U.S. labor law [N.L.R.A., Sections 8(a)(5) and 8(b)(3)]. In general, though, negotiators initiate third-party interventions when they believe they can no longer manage the situation on their own. When one negotiator requests intervention, that process must be acceptable to the other parties. If only one party recognizes a need for third-party intervention, he or she may have to persuade the other party to agree. Someone with power or authority over the negotiators may also impose interventions, particularly when a failure to resolve the dispute threatens to lead to significant costs for the affected organization or individuals. A list of conditions under which negotiators might seek third-party involvement is presented in Table 19.1. Judicial decisions share many characteristics of arbitration, while legislative decisions are heavily influenced by coalitions; further discussion of both, as well as extralegal decisions, is beyond the scope of this book.

Which Type of Intervention Is Appropriate?

Numerous different third-party interventions are available to negotiators. Moore (1996) suggests that approaches to conflict management and resolution can be placed on a single

TABLE 19.1 | Conditions Where Third-Party Intervention May Help

• Intense emotions appear to be preventing a settlement.
• Poor communication is beyond the ability of the negotiators to fix it.
• Misperceptions or stereotypes hinder productive exchanges.
• Repeated negative behaviors (anger, name-calling, blaming others, etc.) create barriers between the parties.
• There is serious disagreement over the importance, collection, or evaluation of data.
• There is disagreement as to the number or type of issues under dispute.
• Actual or perceived incompatible interests exist that the parties are unable to reconcile.
• Unnecessary (but perceived-as-necessary) value differences divide the parties.
• There is an absence of a clear, agreed-on negotiation procedure or protocol, or established procedures (such as caucuses or cooling-off periods) are not being used to their best advantage.
• Severe difficulties occur in getting negotiations started or in bargaining through an impasse.

Source: Adapted from C. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd ed. (San Francisco: Jossey-Bass, 1996), pp. 13–14. Also see Arnold and Carnevale (1997).

continuum (see Figure 19.1), in which the styles are in increasing order according to the amount of coercion used by third parties to convince negotiators to accept and endorse the third-party settlement. Under conditions of very low coercion, the parties don’t engage in the issues themselves, choosing to avoid them or to discuss them informally. At the other extreme, third parties with the force of law of legitimate authority may impose settlements, or the parties may go outside the bounds of the legal and regulatory system by using violent or nonviolent pressure tactics directly on the other.

Thibaut and Walker (1975) presented an important framework suggesting that negotiators may surrender control over neither, either, or both the process of the dispute (the *how*) and the outcome of the dispute (the *what*; see Figure 19.2). Parties are negotiating when they retain both process and outcome control (lower right cell), as addressed in the other chapters of this book. Negotiators who surrender both outcome and process controls have completely withdrawn from the discussion (upper left cell), indicating their willingness to have the dispute managed by an otherwise uninvolved person who will manage the dispute and determine its outcome in whatever manner he or she sees fit. The remaining

FIGURE 19.1 | Continuum of Conflict Management and Resolution Approaches

Decisions Made by Negotiators		Decisions Made by Private Third Parties		Decisions Made by Legal (Authoritative) Third Parties		Extralegal Decisions			
Conflict avoidance	Discussion and problem solving	Informal negotiation	Mediation	Administrative decision	Arbitration	Judicial decision	Legislative decision	Nonviolent direct action	Violence

Source: Adapted from C. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd ed. (San Francisco: Jossey-Bass, 1996), p. 7, Table 1.1.

FIGURE 19.2 | Categories of Third-Party Intervention

		Level of Negotiator Control over Outcome	
		Low	High
Level of Negotiator Control over Procedure	Low	Autocracy	Mediation
	High	Arbitration	Negotiation

Source: Adapted from B. H. Sheppard, "Third Party Conflict Intervention: A Procedural Framework," in B. M. Staw and L. L. Cummings, eds., *Research in Organizational Behavior*, vol. 6 (Greenwich, CT: JAI Publishing, 1984), pp. 141–90; and J. Thibaut and L. Walker, *Procedural Justice: A Psychological Analysis* (Hillsdale, NJ: Lawrence Erlbaum Associates, 1975).

two mixed situations are arbitration and mediation (both discussed in detail later in this chapter). Mediation is the most common third-party intervention and negotiators surrender control over the process while maintaining control over outcomes. Mediation can be highly effective in many disputes,² while helping preserve an important benefit of negotiation: The parties retain control over shaping the actual outcome or solution, which enhances their willingness to implement it. Our corollary to the rule "No third-party involvement unless necessary," then, is "If involvement is necessary, use a minimally intrusive intervention" (one toward the left side of the chart in Figure 19.1), such as mediation.

Procedure-only third-party interventions support the needs of negotiators who want guidance or procedural assistance but wish to maintain control over the choice and implementation of the outcome. Frustrated negotiators may feel they just want an end to the dispute, but completely abdicating control to a third party could have several detrimental effects (see the discussion of arbitration later in this chapter). In addition, negotiators may not know how to screen potential third parties to predict what they will do, or the negotiators may be at the mercy of whatever help is most conveniently available. Failure to use a third-party intervention when appropriate is just as wasteful and damaging to the negotiation process as using the wrong intervention method (e.g., arbitration rather than mediation, when negotiator commitment to outcomes is critical for a lasting resolution), or even using the right method at the wrong time (e.g., before negotiators have exhausted the unassisted methods we outlined in Chapter 17 or after expressed anger and personal attacks have soured one or both parties on the entire process—see also Conlon and Fasolo, 1990).

The same issues of propriety and timeliness apply to uninvited interventions, such as when a manager chooses to intervene in a dispute between two subordinates. The third party has the advantage of being potentially more objective than the disputants about the choices

of whether to intervene and what intervention to use. Naive third parties are less likely to be objective or impartial, however, because they may have a personal feeling or belief about what is right for this situation, as opposed to having a specific or direct interest in helping to resolve the dispute solely by working “to reconcile the competing interests of the two parties” (Moore, 1996, p. 17). Finally, research by Conlon and Ross (1993) suggests that partisan third parties—who lack impartiality due to a prior relationship with one or both parties or who have a clear bias to settle the dispute more in favor of one side than the other—could have a significant negative effect on disputant satisfaction regarding the third-party intervention. The third party must keep in mind the likely effect of the intervention on the negotiators—on their willingness and ability to address and manage disputes more effectively in the future.

Third-party interventions, particularly arbitration, may have strong negative consequences such as decreasing the ability of the parties to negotiate effectively and increasing their dependency on third parties (see Beckhard, 1978). Third parties need to use moderation: (1) to borrow the medical dictum, “First, do no harm,” and (2) to intervene only when necessary and control only as much as necessary to enable the parties to find resolution. In other words, don’t let the intervention make the situation worse, do use surgery when needed, and don’t use surgery when simple first aid would be sufficient. This advice assumes an overriding value in the negotiators’ ability to interact constructively; it also assumes that immediate resolution of the dispute is not critical. To the extent that the negotiators will have little or no interaction in the future or that timeliness is critical, relatively more controlling interventions may be acceptable or necessary (see the midrange of Figure 19.1). Quite often, however, neither of these conditions applies; we discuss choice processes in these less drastic situations in more detail later in this chapter.

Types of Third-Party Intervention

In the following sections, we discuss several different types of third-party intervention. Third-party intervention may be formal or informal. *Formal* interventions are designed intentionally, in advance, and they follow a set of rules or standards; they are used by judges, labor arbitrators, divorce mediators, referees, and group facilitators (e.g., psychologists or organization development practitioners). *Informal* interventions are incidental to the negotiation; a manager or a concerned friend, for example, may become involved in someone else’s dispute. While it is important to know whether the third party is following a clear, public, specified set of procedures or “making it up on his own,” the proliferation of hybrid forms of dispute resolution, both formal and informal, has blurred this traditional separation.

Formal Intervention Methods

There are three fundamental types of formal third-party interventions: arbitration, mediation, and process consultation.³ We review the objectives, style, and procedural impact of each approach and describe how each affects negotiation. This section concludes with an examination of two hybrid types of third-party interventions: mediation-arbitration (med-arb) and arbitration-mediation (arb-med).

The Council of Better Business Bureaus, Inc., offers arbitration of consumer complaints on vehicles manufactured by participating corporations. Under the council's Auto-Line program, local Better Business Bureaus offer arbitration by trained volunteers,

with a twist: the arbitrator's decision is binding on the manufacturer, but not on the consumer-complainant, who is free to pursue other remedies (primarily through litigation) if he or she finds the arbitration decision unacceptable.

Arbitration

Arbitration allows negotiators to have considerable control over the process but they have little or nonexistent control over outcomes (see Figure 19.2). It is the most recognized form of third-party dispute resolution because of its high-profile use in labor relations and the setting of compensation and benefits of professional athletes. The goals of negotiation and arbitration are very different (Posthuma and Dworkin, 2000). Parties negotiate to reach an agreement, while arbitration resolves a disagreement by having a neutral third party impose a decision. The process is very straightforward: parties in dispute, after having reached a deadlock or a time deadline without successful resolution of their differences, present their positions to a neutral third party. The third party listens to both sides and then decides the outcome of the dispute (Elkouri and Elkouri, 1985; Prasow and Peters, 1983). Arbitration is used widely in disputes between organizations (Corley, Black, and Reed, 1977) and management and labor unions (Elkouri and Elkouri, 1985), and it has become the accepted process for resolving global commercial disputes (Beechey, 2000; Swacker, Redden, and Wenger, 2000).

There are several different forms of arbitration. First, arbitrators may hear and rule on a *single issue* under dispute, or on multiple issues in a *total settlement package* (Feigenbaum, 1975). Second, arbitration may be voluntary or binding. Under *voluntary arbitration*, the parties submit their arguments to an arbitrator, but they are not required to comply with the arbitrator's decision. In contrast, *binding arbitration* requires the parties to comply with the decision, either by law or by contractual agreement. In labor-management contract disagreements, the arbitrator's ruling typically amends an existing agreement and becomes part of the agreement for the remaining life of the contract. A third variation concerns the arbitrator's flexibility. At one extreme, arbitrators are free to craft and reach any resolution they deem appropriate; at the other, their choice is severely constrained, as in *final-offer* arbitration, in which the arbitrator must choose, without amendment, one of the positions presented by the disputing parties (see McAndrew, 2003; Pecorino and Van Boening, 2001). In labor-management settings, management frequently attempts to control this situation by requiring the arbitrator to neither add nor detract from the labor contract being interpreted; that is, management tries to curtail the arbitrator's flexibility to change the contract or to rule outside of a strict interpretation of it. The pros and cons of these variations become evident as we examine arbitration in more detail. An interesting twist on arbitrator flexibility is presented in Box 19.1.

Formal arbitration is most commonly used as a dispute resolution mechanism in labor relations or in claims about violations of legal contracts. For example, in most states, "lemon laws"—legal protection given to consumers if they buy a product that does not work and cannot be effectively fixed, such as a car or major appliance—specify that most

In 2000, five law professors formed one of the first organizations to arbitrate disputes over ownership of Internet domain names (domain names, such as yahoo.com, serve as addresses on the Internet for World Wide Web and e-mail accounts). Disputes are commonly over ownership of a specific address or whether the choice of an address infringes on a company's name or trademark.

The law professors arbitrate the disputes entirely online. Operating as Disputes.org, they have the authority to stop the use of a domain name or transfer the name to its rightful owner.

"This new arbitration body will make a useful contribution to the world of the Internet," said Professor Ethan Katsch, a professor of undergraduate legal studies at the University of Massachusetts at Amherst and one of the organization's founders. "Resolving domain-name disputes on-line will be quicker and far less expensive than going to court."

Source: W. R. Leibowitz, "Law Professors Create Group to Arbitrate Disputes over Domain Names," *Chronicle of Higher Education*, January 28, 2000, p. A45.

claims will be resolved through arbitration. Arbitration is also being used in several new areas—for example see Box 19.2 on the use of arbitration to resolve problems on the Internet.⁴ New contracts, typically in the public sector, that cannot be achieved through negotiation are frequently submitted for consideration to an arbitrator. When a new contract is submitted to arbitration this process is called *interest arbitration*. On the other hand, *grievance arbitration* refers to decisions about the interpretation of existing contracts. For instance, a union may grieve management's decision to discipline an employee if they believe that management did not follow the negotiated discipline policy (e.g., did management act in a fair and consistent manner?). While interest and grievance arbitration have many similarities, the fundamental difference between them concerns the types of decisions that they process.

Arbitration initially appears to have two distinct advantages as a resolution procedure: it imposes a clear-cut resolution to the problem in dispute, and it helps the parties avoid the costs of prolonged, unresolved disputes. Arbitration has come under increasing scrutiny and criticism as a dispute resolution mechanism, even in the labor relations area,⁵ and it appears to have several negative consequences, five of which we describe here.

The Chilling Effect When the parties in negotiation anticipate that their own failure to agree will lead to binding arbitration they may stop working seriously for a negotiated settlement. This *chilling effect* occurs as "the parties avoid making compromises they might be otherwise willing to make, because they fear that the fact finder or arbitrator will split the difference between their stated positions" (Kochan, 1980, p. 291). If negotiators anticipate that the arbitrator will split the difference, then it is in their best interest to maintain an extreme, hard-line position because the hard-liner will be favored (Kritikos, 2006). Research suggests that negotiators expecting a split-the-difference rule in the case of impasse may be chilled, and final-offer arbitration is an alternative to reduce the chilling effect.⁶ In *final-offer arbitration*, the arbitrator must choose either one party's position or the other's—nothing in between, no splitting the difference. Given this constraint, negotiators should be more motivated to settle, or to close the gap that will be arbitrated as much as possible, in order to increase the likelihood that the arbitrator will choose their final offer. If both parties

act this way it also minimizes the loss that will occur if the arbitrator picks the other party's submission as the basis for the arbitration award. It also appears that if at least one party is risk averse, then there will be a strong likelihood that agreement will be reached before invoking final-offer arbitration (Hanamy, Kilgour, and Gerchak, 2007).

Research suggests that splitting the difference may not be common practice in professional business arbitration. Keer and Naimark (2001) examined a sample of arbitration cases and found that two-thirds of arbitrators ruled either 100 percent for the claimants or 0 percent for the claimants, while only one-third of the cases involved some form of splitting. A related study cited by these authors showed that 72 percent of a large sample of commercial arbitration awards gave less than 20 percent or greater than 80 percent of the award to the claimant. These findings suggest that the tendency for the arbitrator to split the difference may not be common in commercial contexts, perhaps due to the fundamental characteristics of the issues in dispute or due to the fact that these arbitrators are highly experienced and know an extreme demand when they see it.

The Narcotic Effect When arbitration is anticipated as a result of the failure of parties to agree, negotiators may lose interest in the process of negotiating. Bargaining takes time and effort, especially in complex situations, and there is no guarantee that agreement will be reached. Negotiator passivity, loss of initiative, and dependence on the third party are common results of recurring dispute arbitration and collectively are known as the *narcotic effect* of arbitration. The narcotic effect is even more likely when negotiators are accountable to constituencies because negotiators can take tough, unyielding stands on issues and blame compromise settlements on the arbitrator rather than on their own concessions.

The Half-Life Effect Parents are quite aware that as the demand for arbitration between siblings increases, both the sheer number of decisions required and the likelihood that those decisions will not please one or both sides increase as well. This is known as the *half-life effect*. For example, as one of the authors worked at home on a Sunday afternoon, he was frequently subject to his children's demands to arbitrate disputes over sharing a videogame. After a series of decisions involving both his own children and half of the surrounding neighborhood, he was informed by one of his children that his decisions were generally viewed as outrageous, unfair, and without appropriate compassion for his own children, and that his services were no longer desired. As the frequency of arbitration increases, disenchantment with the adequacy and fairness of the process develops (Anderson and Kochan, 1977), and the parties may resort to other means to resolve their disputes.

The Biasing Effect Arbitrators must be careful that their decisions do not systematically favor one side or the other and that they maintain an image of fairness and impartiality, or they may be perceived as subject to a *biasing effect* (see Conlon and Ross, 1993). Even if each separate decision appears to be a fair settlement of the current situation, perceived patterns of partiality toward one side may jeopardize the arbitrator's acceptability in future disputes. Negotiators anticipating labor arbitration typically review different arbitrators' decisions in an effort to secure one who is likely to favor their own side or to avoid one who may make awards more consistently supportive of the other side. While arbitrators deny that they are subject to a biasing effect, negotiators continue to look for any clue that may help them in arbitration.

The Decision-Acceptance Effect Arbitrated disputes may also engender less commitment to the settlement than alternative forms of dispute resolution, and this is known as the *decision-acceptance effect*. Research on the dynamics of group decision making has demonstrated that commitment to a given solution and willingness to implement it are significantly greater when group members participate in developing that solution than when it is imposed by a single member (Vroom, 1973). Lasting dispute resolution requires timely and effective implementation, and “one of the most powerful drivers of effective implementation is the commitment to [a] decision that derives from prior participation in making it” (Leavitt and Bahrami, 1988, p. 173). For this reason, arbitration is likely to lead to situations in which disputants are less than fully committed to following through, especially if they feel dissatisfied with the arbitrator’s decision.

Section Summary

Arbitration remains an important mechanism for resolving disputes when negotiators cannot reach an agreement on their own. It has many advantages as a dispute resolution mechanism, but also several disadvantages. The largest disadvantage is removal of decision control from the negotiators themselves; this can have very negative consequences when they must implement and live with the decision after the arbitrator has gone home. We now turn to a discussion of mediation, a process that leaves decision control with the negotiators.

Mediation

In contrast to arbitration, mediation has developed considerable support and it has been studied with increasing frequency and intensity.⁷ Brett, Barsness, and Goldberg (1996) found that mediation was less costly and time-consuming, and it produced greater disputant satisfaction than arbitration. Although the ultimate objective of mediation is the same as arbitration—to resolve the dispute—the major difference is that mediation seeks to achieve the objective by having the parties themselves develop and endorse the agreement. In fact, mediation has been called a form of “assisted negotiation” (Susskind and Cruikshank, 1987, p. 136), “an extension and elaboration of the negotiation process” (Moore, 1996, p. 8), and “an informal accompanist of negotiation” (Wall and Blum, 1991, p. 284). Mediation can help reduce or remove barriers to settlements, adding value to the negotiation process because it tends to produce or enhance much of what parties desire and value in negotiation itself (Bush, 1996; Esser and Marriott, 1995a). Mediators may also help resolve the root causes of an ongoing conflict rather than simply solving the dispute (Brown, 1999), an almost impossible outcome for arbitration to achieve. Finally, mediation has the potential to profoundly change relationships. A growing focus on *transformative mediation* has sparked debate in mediation about the extent to which mediation should focus on the issues at hand versus focusing on two transformative dimensions: *empowering* the negotiators to express themselves, and increasing the capacity of negotiators to *recognize* the other’s perspective (Bush and Folger, 1994, 2005; Folger and Bush, 1996; Kuttorer, 2006). Ten hallmarks of transformative mediation are presented in Box 19.3.

As with arbitration, mediation’s modern roots are in the field of labor relations, sometimes as a preliminary step to arbitration in grievance and contractual negotiations. Mediation has also been described, however, as “the second oldest profession,” having been around as long as conflict itself (Kolb, 1983a), and it has become a very popular alternative to the courts—particularly when the parties want low-cost solutions that they can largely

1. Describe the mediator's role and objectives in terms based on empowerment and recognition.
2. Leave responsibility for outcomes with the parties.
3. Consciously refuse to be judgmental about the parties views and decisions.
4. Take an optimistic view of parties' competence and motives.
5. Allow and be responsive to parties' expression of emotions.
6. Allow and explore parties' uncertainty.
7. Remain focused on the here and now of the conflict interaction.
8. Be responsive to parties' statements about past events.
9. View an intervention as one point in a larger sequence of conflict interaction.
10. Feel a sense of success when empowerment and recognition occur, even in small degrees.

Source: J. P. Folger and R. A. Baruch Bush, "Transformative mediation and third-party intervention: Ten hallmarks of a transformative approach to practice." *Mediation Quarterly*, 13, (4), (2004), pp. 263–278.

shape them selves (see Lovenheim, 1989). Singer (1994) has noted the many different contexts in which mediation and alternatives dispute resolution (ADR—see the section later in this chapter) have been used: malpractice suits, tort cases, liability claims, pretrial diversions of alcohol and drug cases to treatment centers rather than criminal proceedings, business disputes, consumer complaints, and community and government disputes, to name a few. Mediation has become an extremely popular alternative in divorce proceedings because the parties must be willing to abide by the terms of the settlement and therefore have the most influence in shaping its terms (Donohue, 1991; Kressel, 1985). Mediation has also become a more common form of resolution for civil and community disputes (D'Alo, 2003; Duffy, Grosch, and Olczak, 1991; Kessler, 1978). Community mediation centers, staffed by trained volunteers, have opened across the United States (Duffy, Grosch, and Olczak, 1991; Lovenheim, 1989; Singer, 1994). Mediation is also used increasingly to avoid costly litigation in business settings (Coulson, 1987) and to resolve business–government disputes, particularly in the area of environmental regulation.⁸ Finally, mediation is being suggested more frequently as a mechanism for the resolution of international disputes (Bebchick, 2002; Butler, 2007; Chayes, 2007). Rubin (1981) documented Henry Kissinger's success as an extremely skilled international mediator, and Jandt and Pedersen (1996) show how mediation is used around the world to resolve both local and cross-border disputes.

It is important to note that formal or contractual mediation is based on established and accepted rules and procedures. When examining informal interventions later in this chapter, we discuss emergent mediation, which is less well defined (Pruitt and Carnevale, 1993). Mediators have no formal power over outcomes, and they cannot resolve the dispute on their own or impose a solution. Instead, their effectiveness comes from their ability to meet with the parties individually, secure an understanding of the issues in dispute, identify areas of potential compromise in the positions of each side, and encourage the parties to make concessions toward agreement.

Mediators come in all shapes and sizes and use several different skills and tactics (Mareschal, 2005). It appears that the most critical skill for successful mediators is their ability to develop rapport with the disputants (Goldberg, 2005; Goldberg and Shaw, 2007). Stephen Goldberg defines rapport as developing "an empathic, trusting relationship with

the parties,” and this appears to be more important to successful mediation than particular mediation tactics (2005, p. 372).

It is important to recognize that mediators are not powerless. Mediators with access to resources that negotiators want, such as preferred trade status with the mediator’s home country in an international dispute, or preferred work assignments in a workplace disagreement, can have considerable power in the mediation process. In addition, mediators can give disputants “face,” a very powerful force in a dispute (van Ginkel, 2004).

When to Use Mediation Two elements of the mediation process are integral to its success: timing and mediator acceptability. Mediation is far more successful if it occurs when the parties are open to receiving help; this phenomenon is known as *ripeness*.⁹ Ripeness refers to a negotiation where an intractable situation is just on the verge of being addressable (Coleman, 1997). There has been considerable research on ripeness, and it appears that the odds of the successful resolution of an intractable negotiation are best if there has been enough pain to inspire motivation to settle but not too much pain to cause lasting animosity.¹⁰

Mediation is frequently a voluntary process—the parties are not forced to enter into mediation—and it cannot be effective if the parties choose not to cooperate. If they believe that they have more to gain by delaying or protracting the dispute, then mediation cannot work. Many parties in disputes do not seek mediation because they don’t really understand the process. They may also get caught up in the momentum of conflict, becoming involved in a *metadispute* (a dispute about the dispute), or they may fear a loss of leverage or advantage at the hands of a third party (McEwen and Milburn, 1993). Mediators who identify that negotiators are not ready for their intervention frequently say, “Call me when you’re ready,” and leave until the parties have achieved a greater willingness to participate in the process. Formal mediation in some settings (e.g., divorce, international hostilities, or certain types of organized labor strikes) may be imposed if doing so might prevent a situation from escalating or deteriorating beyond any hope of reclamation. This imposition is usually a judgment call by an experienced mediator who is empowered by an external agency or authority to intervene (Bercovitch, 1989; Donohue, 1991). Research suggests that even when parties are pressured or required to enter mediation, they generally come away finding it to be a fair and satisfactory process (Brett, Barsness, and Goldberg, 1996; McEwen and Milburn, 1993).

The second element that influences the success of mediation is the mediator’s acceptability to all the parties to the dispute. It is important to note that while mediators may use common language to describe disputes and their interventions, style and behavior vary widely across different mediators (Picard, 2002). The mediator is traditionally viewed as a neutral individual whom the parties recognize as impartial, experienced, and potentially helpful. Some would argue, however, that a completely neutral mediator is virtually impossible to find because any active intervention by a mediator may influence the process and outcome of a negotiation in a way that unintentionally favors one of the parties (see Gibson, Thompson, and Bazerman, 1996). Mediators may be certified by an organization of third parties (such as the Federal Mediation and Conciliation Service of the U.S. Department of Labor) or a local mediation service or dispute settlement center, adding to their credibility. In addition, a variety of qualities such as skill, trustworthiness, integrity, impartiality, and experience in comparable disputes may be required for both sides to view a potential mediator as acceptable. At times, however, the most appropriate or only mediator available is

PEARLS BEFORE SWINE

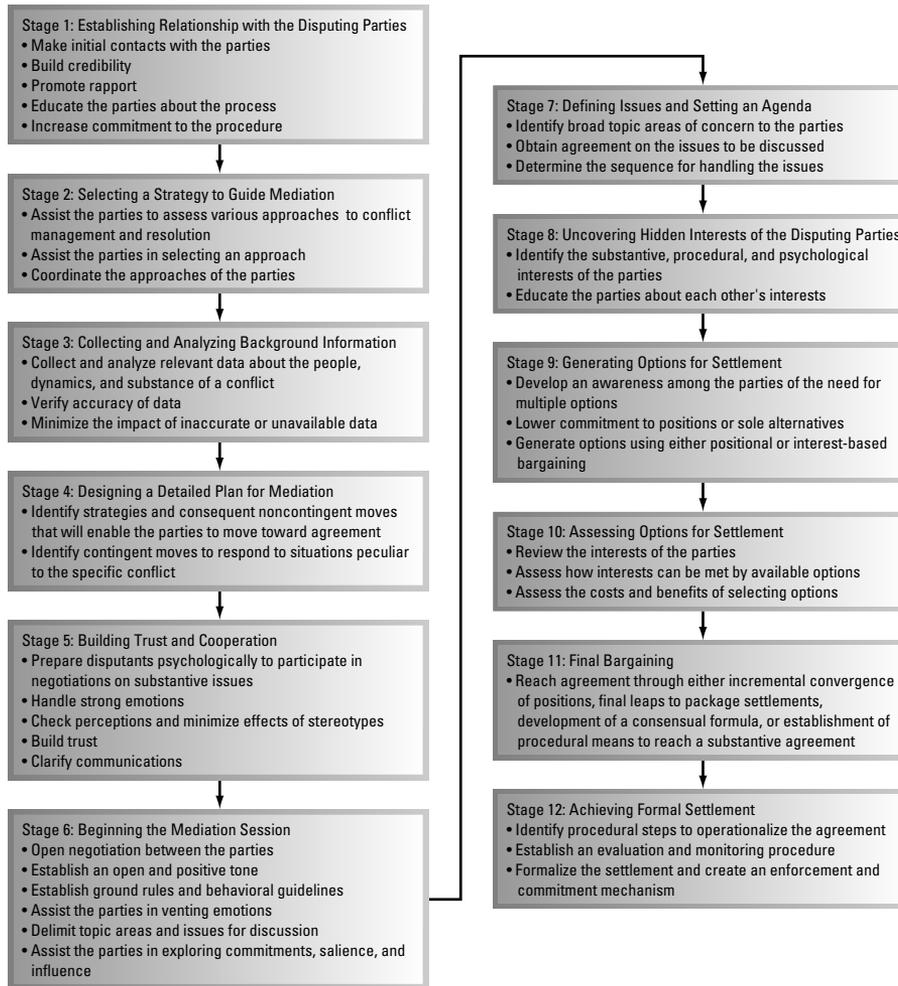
STEPHAN PASTIS



not without some bias. Although mediator bias has usually been thought to be incompatible with mediation effectiveness (Young, 1972), recent research has produced a more complex view of this issue.¹¹ Carnevale and Conlon (1990) suggest that mediator bias has two forms: general alignment or affiliation with parties prior to mediation, or the greater support of one side during mediation. Negotiators may overlook affiliation bias if they are convinced that the mediator mediates evenhandedly and treats both sides fairly during the mediation (Conlon and Ross, 1993; Wall and Stark, 1996).

Mediator Models, Choices, and Behaviors The idea of a neutral individual mediating a dispute between two parties seems simple enough, but the process actually involves a large number of facets.¹² Mediators may choose any of a variety of levels and approaches to accomplish what they think needs to be done. Esser and Marriott (1995b) tested three types of mediator interventions: *content mediation* (helping the parties manage trade-offs), *issue identification* (enabling the parties to prioritize the issues), and *positive framing of the issues* (focusing on desired, positively stated outcomes). While content mediation proved to be the most effective intervention in the study, all three approaches were found to be more satisfying to disputants than no mediation at all. As Rubin (1980) noted, mediators primarily “facilitate concession-making without loss of face by the parties, and thereby promote more rapid and effective conflict resolution than would otherwise occur” (p. 380).

A powerful way to conceptualize the mediation process is to understand the key stages or phases of a mediation. Several stage models of mediation have been proposed, most often as important tools for training mediators.¹³ Figure 19.3 presents a model described by Moore (1996). Stages in the mediation process can be roughly grouped into four categories: premediation preparation (Stages 1–5); beginning stages of the mediation (Stages 6 and 7); middle stages of the mediation (Stages 8, 9, and 10); and ending stages of the mediation (Stages 11 and 12). In the premediation stages, the mediator attempts to get to know the parties, help them understand the process that will be followed, and gain their confidence. The mediator is most concerned with understanding the nature of the dispute and with securing acceptance by the parties. Mediator strategies may include separating the parties, questioning them about the issues, and actively listening to each side. The mediator must

FIGURE 19.3 | Twelve Stages of Mediator Moves

Source: C. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd ed. (San Francisco, CA: Jossey-Bass, 1996), pp. 66–67.

be able to separate rhetoric from true interest in order to identify each side's priorities, and often they keep the negotiators separate during the prenegotiation stage.

Inspiring parties at impasse to begin to speak to each other and to engage in discussions is an important activity of mediators early in the process. Poitras, Bowen, and Byrne (2003) propose a two-phase strategy to motivate parties to negotiate.¹⁴ The first stage works to improve the relationship between the parties and concentrates on building trust through conflict analysis workshops. The second stage concentrates on understanding the benefits of entering discussions and works to bridge those benefits with the relationship between the parties.

Once the parties have moved beyond the prenegotiation stage, the mediator may then begin managing the exchange of proposals and counterproposals, testing each side for areas where concessions may be possible. As mediation progresses, mediators often become increasingly active and aggressive. They may bring the parties together for face-to-face deliberations, or they may continue to keep them separate. They may press one or both sides to make concessions that the mediator judges to be essential. At this stage, mediators use many of the tactics we described in Chapter 17—in essence, doing them for the disputants. They may invent proposals and solutions they think will be acceptable, testing them with each side or even announcing them publicly. Mediators may also use electronic decision support systems to organize the needs and positions of the disputing parties (Ehtamo, Kettunen, and Hamalainen, 2001; Mumpower and Rohrbaugh, 1996). The mediator will try to get the parties to agree in private before announcing anything to the public, so that the parties may consult with their constituencies if necessary. If the mediation effort has been successful, the mediator will ultimately bring the parties together to endorse a final agreement or to announce their settlement publicly. Cobb (1993) suggests that effective mediators empower bargainers by balancing power, controlling the process, and being neutral—and that their ability to repackage otherwise thorny exchanges into less confrontational verbiage helps create “descriptions of responsibility without blame” (p. 256).

The appropriate sequence of issues to be discussed in the negotiation is another strategic choice that mediators need to consider. Weiss (2003) suggests that there are three general sequences: (1) *gradualism*, where the mediator starts by addressing simpler issues and moves to more complex issues as the discussion progresses; (2) *boulder-in-the-road*, where the mediator begins with the most complex issues in order to identify if the conflict is ripe for resolution; and (3) the *committee strategy*, where parties are divided into subgroups to deal with different issues. Weiss examined intractable communal conflicts and found that mediators used all three sequences successfully, although gradualism was used most frequently.

The influence of *mediator style* has been studied extensively (e.g., Bowling and Hoffman, 2001). In the field of divorce and child custody mediation, Kressel and his associates identified two distinct mediator orientations: a *settlement orientation*, marked by strict neutrality and a narrow focus on arriving at a specific resolution; and a *problem-solving orientation*, marked by attempts to deal with underlying problems and including departures from strict neutrality. Participants found the problem-solving orientation to be a more structured, active approach to resolving conflict, and one that leads to more frequent and desirable outcomes. It also seemed to produce more positive attitudes toward mediation (Kressel, Frontera, Forlenza, Butler, and Fish, 1994; also see Alberts, Heisterkamp, and McPhee, 2005). As mediators involve the parties in more joint problem solving, disputant hostility—especially with regard to intangible issues such as fairness, face-saving, and pride—seems to decrease (Zubek, Pruitt, Pierce, McGillicuddy, and Syna, 1992).

Kolb's (1983a) study of mediator styles identified two main types of mediators: *deal makers*, whose style was marked by a high degree of issue management, issue packaging, and coordination of exchanges between the parties, and *orchestrators*, whose style was less issue-specific but more oriented toward sequencing conversations between the parties. Research that has tested and extended Kolb's model suggests that the two mediator styles vary as a function of the degree of third-party control exercised over (1) the process, (2) the

outcome, or (3) the motivation of the parties to continue deliberations. Field studies revealed four types of mediator approaches: parties who controlled all three, those who controlled only outcome and motivation, those who controlled only process and outcome, and—interestingly enough—those who controlled none of these (Baker and Ross, 1992). Research on mediator style reveals that mediators vary tremendously in terms of the degree of process and outcome control, with all types and variations depending on the individual and the context in which he or she is mediating (Kolb and Associates, 1994). Botes and Mitchell (1995) suggest that mediator flexibility is a prerequisite for effective mediators, just as it is for negotiators. In this case, mediator flexibility is defined as decreased constraints, increased freedom of action, increased autonomy, and increased ability to entertain imaginative ideas (see Botes and Mitchell, 1995; Druckman and Mitchell, 1995; also see Balachandra, Barrett, Bellman, Fisher and Susskind, 2005).

Recognizing that mediators deal with a variety of situations and choose their behaviors based on what a given situation warrants, Carnevale (1986) developed a *strategic choice model* of mediator behavior. Carnevale proposes that the mixture of high or low levels of two variables—concern for the disputing parties' aspirations and perception of parties' common ground (i.e., areas of agreement)—will produce four basic mediation strategies: problem solving, compensation, pressure, or inaction (see Figure 19.4). *Problem solving* (high concern for parties' aspirations, high perception of common ground) takes the form of assisting the parties to engage in integrative negotiation and search for solutions with integrative potential (see Chapter 3). *Compensation* (high concern for aspirations, low perception of common ground) involves mediator application of rewards and inducements to entice the parties into making concessions and agreements. *Pressure* (low concern for aspirations, low perception of common ground) involves trying to force the parties to reduce their levels of aspiration in the absence of perceived potential for an integrative (win–win) resolution. Finally, *inaction* (low concern for aspirations, high perception of common ground) involves standing back from the dispute, leaving the parties to work things out on their own. Subsequent research has provided support and additional

FIGURE 19.4 | Carnevale's Strategic Choice Model of Mediator Behavior

		Mediator's Perception of "Common Ground"	
		Low	High
Mediator's Concern for Parties' Aspirations	High	Compensation	Problem solving
	Low	Pressure	Inaction

Source: Adapted from P. J. D. Carnevale, "Strategic Choice in Negotiation," *Negotiation Journal* 2 (1986), pp. 41–56.

evidence for the model.¹⁵ Carnevale's (1986) model may not be complete, however, because it does not take into account power imbalances between parties or the mediator's aspirations (Carnevale, 1992; van de Vliert, 1992). Possible effects of mediator aspirations and preferences on negotiators' perceptions and behaviors raise interesting questions about the nature of mediator bias and flexibility (see Botes and Mitchell, 1995). The results of one study suggested that disputants distrusted even favorable recommendations from mediators whom they saw as biased, while a perceived favorable bias was sufficient to offset unfavorable recommendations (Wittmer, Carnevale, and Walker, 1991). On the other hand, mediators who have high levels of insight are perceived as more credible, and perceptions of mediator credibility were related to more positive perceptions of the mediator (Arnold, 2000).

Mediator-applied pressure seems to interact with the type of situation being mediated. Parties who are in disputes marked by high intensity (e.g., major conflicts involving many issues and disagreement over major priorities) and high levels of interparty hostility tend to respond well to forceful, proactive mediation behaviors. In contrast, disputants in low-hostility situations tend to respond better to a less active, more facilitative mediator approach.¹⁶ When high hostility was accompanied by high levels of problem-solving behavior by the negotiators, mediators assisted best by posing problems, challenging negotiators to solve them, and suggesting new ideas and soliciting negotiator responses to them (Zubek, Pruitt, Pierce, McGillicuddy, and Syna, 1992). This suggests that mediators may get in the way when negotiators are capable of solving their own problems; although a mediator's forceful intervention and a proactive style may be appropriate when hostility is high, these same qualities may be counterproductive when hostility is low, or even when high hostility is accompanied by high negotiator problem-solving skill (see Hiltrop and Rubin, 1982). In such situations, process consultation (which we discuss later) may be a better intervention choice.

When Is Mediation Effective? Kressel and Pruitt (1989) report that mediation was effective in about 60 percent of the cases studied, ranging from 20 to 80 percent across a variety of settings. Wall, Stark, and Standifer (2001) found similar support for mediation effectiveness, and they also reported numerous benefits to disputant satisfaction and improved relationships between negotiators. Carnevale and Pruitt (1992) suggest

NON SEQUITUR



TABLE 19.2 | Aspects of Effective Mediation

<p>Mediator–parties relationship</p> <p>Improve acceptance of mediation by the parties.</p> <p>Increase parties' trust in the mediator.</p>
<p>Relationship between the parties</p> <p>Control communication between the parties.</p> <p>Have separate meetings with the parties to influence them.</p>
<p>The issues</p> <p>Uncover the underlying interests and concerns.</p> <p>Set agendas.</p> <p>Package, sequence, and prioritize agenda items.</p> <p>Interpret and shape proposals.</p> <p>Make suggestions for possible settlements.</p>
<p>The parties</p> <p>Help parties save face when making concessions.</p> <p>Help parties resolve internal disagreements.</p> <p>Help parties deal with constituents.</p> <p>Apply positive incentives for agreement or concession making.</p>

Source: Adapted from P. J. D. Carnevale and Dean G. Pruitt, "Negotiation and Mediation," *Annual Review of Psychology* 43 (1992), pp. 531–42.

that mediation effectiveness can be viewed from a variety of perspectives, including the mediator–parties relationship, the relationship between the parties, the issues, and the parties themselves (see Table 19.2). Mediation appears to be more effective in situations marked by moderate levels of conflict (see Glasl, 1982; Hiltrop and Rubin, 1982). By *moderate conflict*, we mean situations in which tension is apparent and tempers are beginning to fray, but negotiations have not deteriorated to the point of physical violence or irrevocably damaging threats and actions. Disputes beyond the moderate stage are often characterized by drastic actions and reactions, through which the parties harm the relationship beyond repair. Other research suggests that mediation is more effective when negotiators experience a *hurting stalemate* (Touval and Zartman, 1985). Several other studies have shown that mediation is effective only in certain kinds of disputes (see Carnevale and Pruitt, 1992; and Posthuma, Dworkin, and Swift, 2002). Kochan and Jick (1978), for example, in their review of mediation in the public sector, report that mediation was most successful in conflicts that involved a breakdown in negotiations due to bargainers' inexperience or over commitment to their positions. In contrast, mediation was less effective when one or both of the negotiating parties had internal conflict; for example, when major differences existed between the demands of a union's rank-and-file and their chief negotiator's belief about what was attainable at the negotiating table. Mediation was also less effective as a strategy when the parties differed on important economic issues or had major differences in their expectations for a settlement.

When the resistance points of the two sides don't overlap, mediators may have to exert greater direct and indirect pressure on the negotiators to create a positive bargaining zone (see Chapter 2). Direct pressure occurs when the mediator uses tactics to encourage the parties

to soften their positions; indirect pressure typically comes through wearing the parties down over time and increasing the cost of holding out. Some mediators achieve results by being aggressive and applying pressure on the negotiators to settle or to consider options (Johnson, 1993; Kolb, 1983a, 1983b). It appears that mediation is not always effective in highly intense conflicts, such as those in which many issues are at stake or the parties disagree on major priorities (Rubin, 1980). Under such conditions, mediation tactics may not be sufficient to move the parties toward mutual agreement.

Zubek, Pruitt, Pierce, McGillicuddy, and Syna (1992) examined the process and outcome of 73 hearings at two community dispute resolution centers. They found that some mediator behaviors were perceived as positively related to mediation success, some as negatively related, and others as unrelated. For instance, mediator behaviors positively related to successful mediation included demonstrating empathy; structuring discussions by creating and controlling the agenda; helping the parties establish priorities; and maintaining calm, friendly, but firm control over the mediation process. On the other hand, mediator behaviors negatively related to mediation success included displaying expertise, criticizing, and asking embarrassing questions. Finally, mediator behaviors unrelated to mediation success included providing reassurance, order keeping, and mediator experience.

Gibson, Thompson, and Bazerman (1996) took a different approach to examining mediator effectiveness by analyzing common cognitive errors made by mediators. The results of their analysis led them to advise mediators to:

- Push for agreement only when a positive bargaining zone exists (see Chapter 2).
- Search for “fully efficient” agreements (i.e., “there exists no other outcome or set of outcomes that at least one party prefers and toward which the other party would at least be indifferent,” p. 74).
- Help the parties think through the issue(s) of fairness.
- Avoid reaching an agreement for “agreement’s sake” (the agreement-is-good bias).
- Avoid accepting the first agreement discovered (the first acceptable agreement may not be the best agreement).
- Avoid the 50–50 split if it doesn’t treat both parties equally.

More recently, researchers have surveyed mediators in order to understand their perspectives of successful mediation (Goldberg, 2005; Goldberg and Shaw, 2007; Mareschal, 2005). This research shows that mediators believe that their skill base, ability to create rapport, and a collaborative orientation are critical aspects of mediating successfully, while mediator tactics were not related to mediation success.

Section Summary

A great deal of theory and research has examined mediation in the past 20 years and provided considerable evidence for its effectiveness in resolving disputes. Mediation has its disadvantages as well, however, in that it can take a large investment of time and resources, and it is not always effective. In a sense, the advantages and disadvantages of mediation and arbitration are complementary, so it is not surprising that they have also been linked together as hybrid procedures. In the next section, we examine the third major type of third-party intervention, process consultation, and then in the following section we examine mediation-arbitration hybrid procedures.

Process Consultation

The third formal approach to the resolution of disputes is *process consultation* (Walton, 1987), which has been defined as “a set of activities on the part of the consultant that helps the client to perceive, understand, and act upon the process events which occur in the client’s environment” (Schein, 1987, p. 34). The objective of process consultation is to defuse the emotional aspect of conflict and improve communication between the parties, leaving them with renewed or enhanced ability to manage future disputes.

The difference between mediation and process consultation is that mediators are at least somewhat concerned with addressing the substantive issues in the dispute, whereas process consultants focus only on improving communication and conflict management procedures (see Cross and Rosenthal, 1999). Process consultants work under the assumption that teaching the parties how to manage conflict more productively and effectively will lead them to produce better outcomes. The purpose of third-party interventions is to create the foundation for productive dialogue over substantive issues and to teach the parties how to prevent conflicts from escalating destructively in the future.

Process Consultation Behaviors Process consultants employ a variety of tactics. Their first step is usually to separate the parties and interview them to determine each side’s view of the other party, positions, and history of the relationship. The consultant uses the information gathered in this diagnostic phase to structure a series of dialogues or confrontations between the parties (Walton, 1987). These meetings are designed to address the causes of past conflicts and each side’s perceptions of the other. Meetings are held in a neutral area, and the issues to be discussed and who is attending the meetings are planned ahead of time. The purpose of the third party is to encourage the negotiators to confront their differences and the reasons for them. The process consultant is the referee, timekeeper, and gatekeeper of the process, working to keep the parties on track while also ensuring that the conflict does not escalate. The process consultant also directs all sides toward problem solving and integration, assuming that by confronting and airing their differences the parties can create a method for working on their substantive differences in the future and can pursue this approach without unproductive escalation recurring. The process consultant works to change the climate for conflict management, promote constructive dialogue around differences of opinion, and create the capacity for people in the relationship to act as their own third parties.

Process consultants should possess many of the same attributes that we have outlined for other third parties. First, they should be perceived as experts in the technique, knowledgeable about conflict and its dynamics, able to be emotionally supportive while confronting the parties, and skilled in diagnosing the dispute. Second, they should be perceived as clearly neutral, without bias toward one side or the other. Third, they should be authoritative—that is, able to establish power over the process that the conflicting parties are pursuing, so they may intervene in and control it. Although they do not attempt to impose a particular solution or outcome, process consultants must be able to shape how the parties interact, separating them or bringing them together, and to control the agenda that they follow when interaction occurs (the shadow negotiation; see Chapter 18). Without such control, the parties will resort to their earlier pattern of destructive hostility.

The primary focus of process consultation is to teach the parties how to resolve substantive differences themselves, not to resolve their differences for them. Process consultation puts the issues under dispute into the hands of the disputing parties. To make process consultation work, however, the parties must be able to manage their own potentially destructive conflict processes in order to be able to work through their substantive differences—something that is frequently very hard for them to do.

Process consultation has been most frequently used to improve longstanding relationships that the parties want to continue. Marital and family therapy are forms of process consultation, as are organizational development and team building among work groups. Process consultation has also been tried in labor–management relationships and in international conflict among ethnic, political, and cultural groups such as Protestants and Catholics in Northern Ireland and Palestinians and Israelis in the Middle East (Kelman, 1996). Many of the early efforts at process consultation in these environments were not completely successful.¹⁷ Research studies have contributed to a better understanding of process consultation in the following ways:

1. *Process consultation is less likely to work as an intervention when the parties are deeply locked in a dispute over one or more major unresolved issue(s).* Because process consultation seeks to change the nature of the working relationship between the parties, it may only work before the parties are in open conflict or between major outbreaks of hostility (Walton, 1987).
2. *Process consultation may be an ineffective technique when dealing with short-term relationships.* There is little need to teach parties to resolve disputes effectively when they will not be working together in the future.
3. *Process consultation may be ineffective when the substantive issues in the dispute are distributive, or zero-sum.* The objectives of process consultation are to improve both the relationship and the skills for integrative negotiation. If the nature of the dispute or constituency pressures on the negotiators do not encourage and support the integrative process, then process consultation is not likely to be effective. Divisive issues or constituency pressures to maintain a hard-line stance will undermine efforts at process consultation.
4. *Process consultation may be ineffective when the level of conflict is so high that the parties are more intent on revenge or retribution than reconciliation.* Process consultation may only work when sustained conflict has worn the parties out, making them want resolution more than continued fighting, or when the parties sincerely want to coexist but do not know how to act. If the parties do not have sufficient incentive to work together, they will undermine efforts at process consultation. One side will exploit trust, cooperation, and honesty, and the dispute will quickly escalate.

Several leading practitioners have detailed procedures for using facilitation to structure dialogue between parties, move them toward problem solving, and transform their relationship. Kelman (1996) conducted a large number of interactive problem-solving workshops between Israelis and Palestinians and describes how these experiences not only improved the relationship between the parties but also improved the basis for larger negotiations between the two groups. Mitchell and Banks (1996) provide a useful road map for

how the workshop model can be used and offer several exercises and activities that can bring very adversarial groups together. Finally, Bunker and Alban (1997) reviewed different large group interventions, in which the objective is to bring together many diverse groups, stakeholders, or constituencies in order to coordinate and facilitate systemwide planning and change. Bunker and Alban show how facilitation and process consultation can be applied to organizational development in order to enhance the ability of large groups and systems to coordinate change efforts in a single planning initiative.

Combining Formal Intervention Methods

It is clear that mediation and arbitration have their advantages and disadvantages. Some work has been done to try to ameliorate the disadvantages of each. The disadvantages of arbitration include:

- Negative consequences for negotiators when they anticipate a third-party intervention (e.g., chilling and narcotic effects).
- Removal of outcome control from negotiators.
- Possible lack of commitment to implementing the imposed outcome.

The disadvantages of mediation include:

- Lack of impetus or initiative to adhere to any particular settlement or to settle at all.
- Possible perpetuation of the dispute, perhaps indefinitely.
- Possible escalation of the dispute into more damaging, more costly forms.

Several researchers have proposed that combining mediation and arbitration into a two-stage dispute resolution model may minimize the disadvantages of each.¹⁸

Mediation-Arbitration (med-arb) Starke and Notz (1981) proposed that mediation as a preliminary step to arbitration, known as *mediation-arbitration* or *med-arb* for short, should have a complementary and facilitating effect on dispute resolution, but only for final-offer arbitration. This is because in conventional arbitration the parties expect a compromise ruling by the arbitrator; because mediation also promises a compromise, the parties may choose to wait for the arbitration ruling rather than make concessions during mediation. In contrast, when expecting final-offer arbitration, mediation provides the parties with an incentive to evaluate the reasonableness of their current positions. As a result, they may be more willing to modify their positions prior to arbitration in order to improve their chances that the arbitrator will rule in favor of their side. In a laboratory study of arbitration and negotiation, Grigsby and Bigoness (1982; also see Grigsby, 1981) found that anticipated mediation reduced the chilling effect in negotiators expecting final-offer-by-issue arbitration, but negotiators expecting conventional arbitration, final-offer-by-package arbitration, or no arbitration were more subject to the chilling effect when they were anticipating mediation as an intervening step.

Arbitration-Mediation (arb-med) Another hybrid approach is *arbitration-mediation* (*arb-med*), and it has three stages. First, the arbitrator holds a hearing and reaches a decision

“which is placed in a sealed envelope and is not revealed to the parties” (Conlon, Moon and Ng, 2002, p. 979). Mediation occurs at stage 2. If an agreement is not reached, in stage 3 the arbitration ruling is revealed and is binding on both parties. In a simulation study examining the effectiveness of arb-med, Conlon et. al (2002) found that arb-med led to a higher resolution rate and higher joint outcomes compared to med-arb (also see Ross and Conlon, 2000).

Informal Intervention Methods

In this chapter we have reviewed the three major formal approaches third parties use to resolve disputes: arbitration, mediation, and process consultation. Other third-party approaches are possible, and managers, parents, counselors, and others who become involved in other people’s disputes, use many of them informally. Sheppard (1984) proposed a generic classification of third-party intervention procedures. Rather than prescribing how managers should intervene in conflicts, Sheppard’s model describes how they actually intervene. The model is an extension of Thibaut and Walker’s (1975) work on procedural justice systems. As noted earlier in this chapter, Thibaut and Walker conceived of dispute resolution as involving two stages: a procedural or process stage, in which evidence and arguments are gathered and presented, and an outcome or decision stage, in which the evidence is evaluated to determine which party it favors. They distinguished among conflict intervention styles based on the amount of process control, decision control, or both used by the third party. These two approaches to control may be thought of as independent dimensions of conflict intervention, and a third party may exert varying amounts of each in handling a dispute. We shall refer to situations where a third party exerts high or low amounts of process or decision control and represent the possibilities in matrix form (refer back to Figure 19.2). Sheppard (1983) asked practicing managers to describe the last time they intervened in a dispute between their subordinates and then coded their responses according to the amount of process and decision control the third party used. He concluded that managers use one of three dominant styles when they intervene in a subordinate conflict (see Figure 19.5).

- 1. Inquisitorial intervention.** This was the most common style. A manager using an inquisitorial intervention exerts high control over both the process and the decision. She tells both sides to present their cases, asks several questions to probe each side’s position, and frequently controls who is allowed to speak and what topics they may discuss. She then invents a solution that she thinks will resolve the dispute and imposes that solution on both parties. Inquisitorial intervention is a judicial style of handling conflicts that is found most commonly in European courtrooms.
- 2. Adversarial intervention.** Managers who use adversarial intervention exert high control over the decision but not the process. The manager does not ask questions, try to get the whole story, or control the destructive aspects of the conflict between the parties. Instead, he passively listens to what each side chooses to tell him and then tells the parties how to solve the conflict based on their presentations. This style is most similar to arbitration and to the style used by most American courtroom judges.
- 3. Providing impetus.** Managers who provide impetus typically do not exert control over the decision, and they exert only a small amount of control over the process. The

FIGURE 19.5 | Managerial Third-Party Intervention Styles

		Degree of Managerial Outcome Control	
		High	Low
Degree of Managerial Process Control	High	Inquisitorial Intervention	Mediational Intervention
	Low	Adversarial Intervention	Providing Impetus

Source: Adapted from B. H. Sheppard, "Managers as Inquisitors: Some Lessons from the Law," in M. Bazerman and R. J. Lewicki, Eds., *Negotiating in Organizations* (Beverly Hills, CA: Sage Publications, 1983).

manager typically tries to make a quick diagnosis of what the conflict is about and then tells the parties that if they don't find a solution, she will impose one on them. In short, the manager first asks, "What's going on here?" When she finds out what's going on, she says, "You'd better solve this problem, or else I'll solve it for you, and neither of you will like the solution!"

Which Approach Is More Effective?

Sheppard's research indicates that managers spontaneously act like an inquisitorial judge or an arbitrator, or they threaten to settle the dispute for the parties in an undesirable way if they can't settle it themselves. Note that the remaining cell in Figure 19.5, which we have labeled "mediational intervention," is the same as formal mediation, but it is not a style commonly observed among managers. While subsequent research examining how managers behave has shown that they claim to prefer mediation as a third-party style, it is not clear that managers actually use mediation unless they are specifically trained in the process (Lewicki and Sheppard, 1985). When managing a conflict, managers seem to assume that because the parties cannot resolve the dispute on their own, the manager must primarily deal with deciding the outcome (see Sheppard, Blumenfeld-Jones, Minton, and Hyder, 1994). Managers appear to think they mediate, but when observed in actual situations they typically exert far more control over the outcome than mediators; their actual behavior is more like an inquisitor than a mediator.

Sheppard's work has generated a growing body of research on informal managerial dispute intervention. Elangovan (1995a; 1998) has developed a prescriptive model to guide managers in choosing intervention strategies (see Figure 19.6).¹⁹ The model provides a decision tree in which potential third parties ask a series of diagnostic questions about the dispute (see the questions at the top of Figure 19.6). Based on whether the dispute is judged to be high or low on each of these questions, the potential third party arrives at an end point on the decision tree that suggests a particular style. These styles—described as means-control,

TABLE 19.3 | Managerial Dispute Intervention Strategies

Means-control strategy (MCS)	Manager intervenes in the dispute by influencing the process of resolution (i.e., facilitates interaction, assists in communication, explains one disputant's views to another, clarifies issues, lays down rules for dealing with the dispute, maintains order during talks) but does not attempt to dictate or impose a resolution (though he or she might suggest solutions); the final decision is left to the disputants; high on process control but low on outcome control (e.g., mediation, conciliation).
Ends-control strategy (ECS)	Manager intervenes in the dispute by influencing the outcome (i.e., takes full control of the final resolution, decides what the final decision will be, imposes the resolution on the disputants) but does not attempt to influence the process; the disputants have control over what information is presented and how it is presented; high on outcome control but low on process control (e.g., arbitration, adjudication, adversarial intervention).
Low-control strategy (LCS)	Manager does not intervene actively in resolving the dispute; he or she either urges the parties to settle the dispute on their own or merely stays away from the dispute; low on both process and outcome control (e.g., encouraging or telling the parties to negotiate or settle the dispute by themselves, providing impetus).
Full-control strategy (FCS)	Manager intervenes in the dispute by influencing the process and outcome (i.e., decides what information is to be presented and how it should be presented and also decides on the final resolution); he or she asks the disputants specific questions about the dispute to obtain information and imposes a resolution; manager has full control of the resolution of the dispute; high on both process and outcome control (e.g., inquisitorial intervention, autocratic intervention).
Part-control strategy (PCS)	Manager intervenes in the dispute by sharing control over the process and outcome with the disputants (i.e., manager and disputants jointly agree on the process of resolution as well as strive for a consensus on the settlement decision); he or she works with the disputants to help them arrive at a solution by facilitating interaction, assisting in communication, discussing the issues, and so on. In addition, he or she takes an active role in evaluating options, recommending solutions, persuading the disputants to accept solutions, pushing for a settlement; moderate on managerial process and outcome control (e.g., group problem solving, mediation-arbitration).

Source: Reprinted with permission of Academy of Management, P. O. Box 3020, Briarcliff Manor, NY 10510-8020. From A. R. Elangovan, "Managerial Third-Party Dispute Intervention: A Prescriptive Model of Strategy Selection," *Academy of Management Review* 20, no. 4 (1995), p. 807. Reproduced by permission of the publisher via Copyright Clearance Center.

ends-control, full-control, part-control, and low-control—are similar to the styles described in Figures 19.2 and 19.5, except Elangovan explicitly chooses not to use the more common terms *mediation* and *arbitration* to describe these styles (see Table 19.3 for his description of the styles). Elangovan prefers to describe the degree of outcome and process control, which provides more precision about what the third party should do, while avoiding

value-laden terms like *mediation* and *arbitration*, which may be confusing because of their numerous variations and forms. Extending his thinking to the global environment, Elangovan (1995b) has also done preliminary work on the role that culture plays in third-party intervention processes. His studies show that preferences for third-party intervention vary as a function of cultural differences, as one might predict from Hofstede's categories of cross-cultural differences (see Chapter 16).

Pinkley and her colleagues have also examined the key factors that motivate a third party to assume a particular style (Pinkley, Brittain, Neale, and Northcraft, 1995). They found evidence that judgments along five key dimensions could account for a manager's choice of intervention:

1. The amount of attention the manager gives to the parties' statements of the issues in dispute rather than to underlying problems.
2. The degree of voluntary (versus mandated) acceptance of the solution proposed by the third party.
3. Third-party versus disputant control over shaping the outcomes.
4. The third party's personal approach to conflict.
5. Whether the dispute is to be handled publicly or privately.

It is clear that managers and others in authority usually have the right to intervene in disputes. Not only are they interested in workplace disputes and their resolutions, but they usually have the power to involve themselves. Research by Conlon, Carnevale, and Murnighan (1994) found that managers-as-third-parties chose to impose outcomes about two-thirds of the time, and even more often when they perceived the disputants as being uncooperative. This is consistent with other empirical findings related to managerial dispute intervention (Sheppard et al., 1994), and Watkins and Winters (1997) have extended the model to illustrate some of the dilemmas associated with each intervention style.

There is good evidence that mediation should be used more often as an informal third-party intervention style. Karambayya and Brett (1989), studying classroom simulations, found that managers assume different roles depending on how they diagnose the situation. They found general support for Sheppard's (1983, 1984) model and reported that mediation in particular led to fairer outcomes than other forms of dispute resolution. Mediation was also perceived to be a fairer process by disputants, lending support to Brett and Rognes's (1986) advice that managers should act as mediators when acting as third parties. Karambayya, Brett, and Lytle (1992), again using a classroom simulation, found that managers were most likely to intervene in autocratic or mediational styles, but that relative authority and experience had distinct effects. Experience aside, third parties in authority over the disputants were more likely to be autocratic than those who were not in authority, and peer interveners were no more likely to act like mediators. Autocratic interventions tended to produce one-sided outcomes and impasses, whereas mediational interventions tended to produce compromises. It is likely that managers' failure to use mediation more extensively is due to beliefs about the managerial role, in that managers have a tendency to frame conflicts as hands-on opportunities, which this may cause them to decide not to mediate (Sheppard et al., 1994). Intervenors with greater managerial experience, though, were significantly

less likely to be autocratic than those with less experience, and third parties with both authority and more experience tended to exhibit the most mediational behavior in the study group.

Finally, research by Conlon and Fasolo (1990) suggests that while mediational interventions may be preferable to autocratic ones, timing appears to be critical. The timing of the mediator's intervention (i.e., earlier versus later in the dispute) was found to influence disputant perceptions of procedural fairness. Quick interventions tended to produce disputant feelings of lack of control and loss of voice—that is, the negotiators felt they had lost their ability to have a say and present their case to their satisfaction. Disputants also expressed lower satisfaction with third-party interventions that they perceived were inappropriate due to violations of due process; that is, negotiators were not satisfied when they perceived that they were denied access to normal procedural steps and safeguards.

The most extensive treatment of the role that third parties can play in informal dispute resolution and conflict management can be found in William Ury's (2000) book *The Third Side*. Ury suggests that third parties can influence conflict at three general stages: they can (1) *prevent conflicts*, where interventions inhibit latent conflict from emerging; (2) *resolve conflict*, where conflicts that have emerged are managed; and (3) *contain conflict*, where ongoing conflicts that have been a challenge to resolve are contained (see Table 19.4). Ury describes 10 roles that third parties can play to help others resolve their disputes. Each of these stages and potential third-party roles is discussed in more detail herein.

Conflict may escalate at the “prevent” stage for three reasons: (1) frustrated needs, (2) poor skills, and (3) weak relationships (see Table 19.4). Humans have several fundamental needs (e.g., security, love, recognition), and the blocking of these needs can lead to conflict. The role of the Provider is to enable others to fulfill their needs. For instance, good manager should ensure that her staff receives positive recognition for their work with regular

TABLE 19.4 | Ten Roles Third Parties Play

Why Conflict Escalates	Ways to Transform Conflict
Prevent	
Frustrated needs	The Provider
Poor skills	The Teacher
Weak relationships	The Bridge-Builder
Resolve	
Conflicting interests	The Mediator
Disputed rights	The Arbiter
Unequal power	The Equalizer
Injured relationships	The Healer
Contain	
No attention	The Witness
No limitation	The Referee
No protection	The Peacekeeper

Source: From William Ury, *The Third Side* (New York: Penguin, 2000), p. 190.

merit increments or promotions so that staff members do not become disgruntled and create conflict at work. Conflicts also result from poor conflict management skills and intolerance of differences of opinion. The role of the Teacher is to educate people in the skills of managing differences and conflict. Weak relationships are another source of conflict that third parties may help to prevent from escalating. The role of the Bridge-Builder is to find ways to bring parties together to improve relationships in order to avoid conflict escalation. For instance, a manager may assign members of two office factions to the same project team in order to create ties across the office.

Conflict may escalate at the “resolve” stage for four reasons: (1) conflicting interests, (2) disputed rights, (3) unequal power, and (4) injured relationships (see Table 19.4). The role of the Mediator is to help parties reconcile their differences of opinion by opening channels of communication between parties and helping them search for their own solution. The role of the Arbiter is to choose from opposing positions when disputing parties are unable to decide for themselves. For instance, a manager may choose which of two marketing plans the organization will adopt when her subordinates are divided on which to support. The role of the Equalizer is to ensure that the voices of weaker parties are heard when resolving conflicts. For instance, the influence of quiet members of a project team may be minimized unless the Equalizer takes action to ensure that they are heard. The role of the Healer is to ensure that the emotional aftermath of a conflict is managed so that it does not become the source of a future conflict. For instance, after an angry dispute between two co-workers has been settled, the Healer may still need to listen to both parties and help them deal with residual hurt feelings that could lead to further conflict.

Conflict may escalate at the “contain” stage for three reasons: (1) lack of attention, (2) lack of limitation, and (3) lack of protection (see Table 19.4). The role of the Witness is to contain escalating conflict by watching and remembering the events that occur in his or her presence. The mere presence of a neutral witness can act to contain conflict because people are often less willing to escalate a conflict when witnesses are present. The role of the Referee is to place limits on the extent to which behaviors are tolerated. For instance, the Referee may endorse harsh, pointed words but not sanction physical violence in an argument. The role of the Peacekeeper is to intervene in a dispute to prevent violence or to stop it once it occurs. The United Nations plays this role between warring states, but it is also a role that people may play between hostile individuals.

Taken as a whole, Ury’s model is a very creative way of looking at formal and informal third-party interventions in any kind of conflict. This is not a stage model in the sense that third parties should act in a prescribed order when dealing with conflict. Rather, Ury notes that different disputes will require different interventions, and that third parties will find themselves using different interventions in different sequences depending on the challenges they face. Ury does offer one clear piece of advice that is appropriate for all third parties, however: “Contain if necessary, resolve if possible, best of all prevent” (2000, p. 113).

Although research findings suggest that negotiators should increase their use of mediation as an informal third-party intervention, further research is necessary. More attention needs to be focused on determining how managers can better identify mediational opportunities, how they can learn to mediate more effectively, and whether the managerial findings

of recent research are true for third parties in other conflict situations (e.g., among peers or friends). For instance, a recent study by Shestowsky (2004) found that disputants in civil disputes prefer neutral third parties who facilitate the disputants reaching their own solution over third parties who assume control of the process, outcome, or decision rule. More research is needed to identify which type of informal third parties are preferred and effective in both legal and nonlegal situations and to identify what situational factors drive those outcomes.

Alternative Dispute Resolution Systems

From an organizational standpoint conflict seems inevitable, and a certain type and level of conflict is healthy and advisable. We strongly believe that conflict resolution is best left to the disputants. This chapter has addressed a variety of situations, though, that call for a departure from that standard—such as when disputants are incapable of self-resolution or when the consequences of ongoing, unresolved conflict become damaging. A similar concern exists with many different organizations including businesses, courts, and not-for-profits. Conflict costs for organizations include:

- Wasted time and money, emotional damage, drained energy, and lost opportunities.
- Low levels of disputant satisfaction.
- Damage to necessary relationships.
- The likelihood of conflict spreading and/or recurring (Brett, Goldberg, and Ury, 1990).

The inspiration for alternative dispute resolution (ADR) systems may be traced to a speech by Frank Sander in 1976 (Moffitt, 2006). Addressing legal professionals at the Pound Conference, Sander noted that litigation was only effective for certain types of disputes and mused about the creation of other mechanisms to manage a wide variety of disputes (Moffitt, 2006).

Beginning in the 1980s, many large American organizations introduced ADR systems, and their popularity has increased consistently (Bingham, 1999). Since then, ADR has spread to other countries (see Jackson and Caligari, 2007) and to online dispute resolution (Miller-Moore and Jennings, 2007). We present an interesting example in Box. 19.4. ADR has also been defined by the United States court system as “any process or procedure, other than an adjudication by a presiding judge” (28 U.S.C. 651, 1998) to resolve a dispute. We limit our discussion of ADR systems in this section to the *formal ADR procedures* that organizations adopt to manage their disputes. These procedures have been found to provide several benefits to organizations and individual disputants, including faster and more economical resolution of disputes.²⁰

Costantino and Merchant (1996) suggest six broad categories of ADR systems (see Figure 19.7):

1. *Preventive ADR systems* are those that companies adopt to prevent disputes. For example, companies can build clauses into contracts so that any dispute automatically goes to ADR; the company can also specify ways for parties to meet and problem-solve if disputes occur.

A waitress in a Red Lobster restaurant was accused of stealing a guest comment card from the comment card box at the restaurant where she worked. The comment card complained that the prime rib was “rare” and their waitress had been “uncooperative.” Ms. Hatton, a 19-year veteran of the restaurant, said she intended to show the comment card to her boss, not to steal it. But because the boss discovered the card missing when the customers verbally complained as well, she fired Ms. Hatton. In Ms. Hatton’s words, being fired felt like “a knife going through me.”

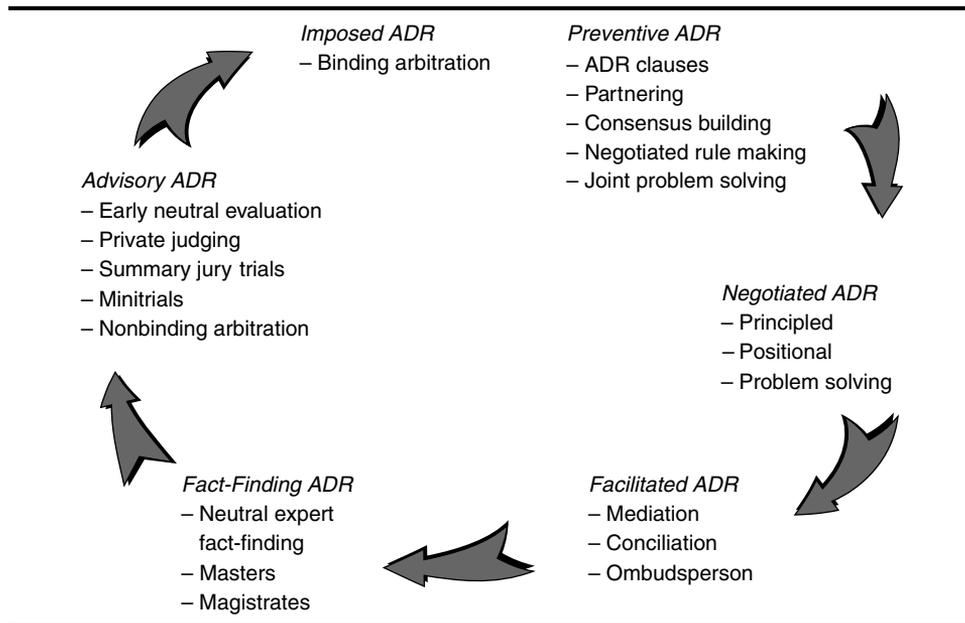
Normally, workers who feel that they have been unjustly treated will take legal action and sue the restaurant. But Red Lobster is one of a growing number of employers who permit fired or disciplined workers to appeal to a peer review panel of co-workers, who can hear testimony, overturn management decisions, and even award damages. So a general manager, an assistant manager, a server, a hostess, and a bartender, all of whom worked for other Red Lobster restaurants, met to decide Ms. Hatton’s fate. And Ms. Hatton enthusiastically chose the peer review procedure because she said it was a lot cheaper and she felt better being judged by people who knew how things work in a small restaurant. The panel interviewed the

general manager, Ms. Hatton, and the hostess, reconstructing the events that occurred and what the parties had said and done that day. After an hour and a half of deliberation, they unanimously restored Ms. Hatton’s job. They said she had done all she could in trying to placate the unhappy customers and that the unofficial policy against reading the contents of a comment card box had not been enforced at the restaurant. But because the policy had been violated, they decided to punish Ms. Hatton by not granting her the three weeks of lost wages she also sought. The waitress was happy with the decision, the restaurant counsel said that the panel had made the right choice, and the restaurant manager was cooperative and helpful when Ms. Hatton returned to her job.

Darden Industries, the company that owns the Red Lobster chain, adopted peer reviews in 1994. In four years, the company estimates that it saved \$1 million in legal fees set aside for handling employee disputes. They said about 100 cases per year went to peer review. The program has also been credited with reducing racial tension between workers and customers.

Source: Adapted from Margaret A. Jacobs, “Red Lobster Tale: Peers Decide Fired Waitress’s Fate,” *The Wall Street Journal*, January 20, 1998, pp. B1, B6.

2. *Negotiated ADR systems* are mechanisms that allow the parties to resolve their own disputes without the help of any third party, using the negotiation processes we discussed earlier in this book.
3. *Facilitated ADR systems* provide a third-party neutral (an ombudsperson) who assists the parties in negotiating a resolution. An ombudsperson is like a mediator but frequently takes a strong advocacy position on behalf of weaker parties to ensure they are heard.
4. *Fact-finding ADR systems* use the technical expertise of third parties to determine the facts in a specific situation and how the facts should be interpreted. The parties usually agree in advance about whether they are going to abide by the information or conclusion provided by the fact-finder.
5. *Advisory ADR systems* use the expertise of a third party to determine what the resolution would likely be if the dispute went to arbitration, court, and so on. In this approach, each party can get a realistic idea of how strong the other’s case is and what

FIGURE 19.7 | Dynamics of ADR Techniques

Source: From C. A. Costantino and C. S. Merchant, *Designing Conflict Management Systems* (San Francisco: Jossey-Bass, 1996), p. 38.

the arbitrator or judge might do, without having to pay the full cost of that process or actually live with the outcome.

6. *Imposed ADR systems* are those in which the third party makes a binding decision that the parties must live with. Binding arbitration is the most common form of imposed ADR.

The growth of alternative dispute resolution systems over the past 30 years has been remarkable. The good news is that many companies have learned to use ADR effectively and that they are reaping the benefits of the process: an immense savings of time and money and relationships that are not destroyed and may in fact be improved by the process (e.g., see Bourdeaux, O’Leary, and Thorburgh, 2001). What makes ADR effective is the commitment of the company to make it work as an alternative to litigation with employees, customers, suppliers, regulators, and so on. The bad news is that many systems that start out as well-intended efforts to handle employee conflict are poorly designed and poorly operated, often mutating “into a private judicial system that looks and costs like the litigation it’s supposed to prevent” (p. 120).

In addition, some professionals have expressed concerns about unequal access to ADR, the lack of diversity of ADR professionals, and the uneven ability of ADR professionals (Hoffman, 2006). It is also clear that there are numerous types of ADR systems, and the design of the overall system is a critical aspect of its effectiveness (Bendersky, 2003, 2007).

Carver and Vondra (1994) identify the following factors that can undermine ADR systems:

- The belief that winning is the only thing that matters, rather than settling disputes (or, conversely, some people use ADR only when they believe that they cannot win in court).
- The perception of ADR as an alternative to litigation, rather than the preferred alternative.
- The perception that ADR is nothing more than litigation in disguise.

There are several key factors that should drive the design of an effective dispute resolution system.²¹ One is to ensure that the parties understand their choices before they begin using a particular procedure, that disputants understand the chosen procedure well, and that they try low-cost options first. Second, it appears that users may need to be involved in the design of alternative dispute resolution systems in order for them to be effective (Carter, 1999). A third factor in ADR success is to appoint, train, and support people (e.g., ombudsmen) to advise and assist disputants in dispute resolution (Gadlin, 2000; Stieber, 2000). An ombudsman is typically charged with being “a confidential and informed information resource, communications channel, complaint-handler, and a person who helps an organization work for change” (Rowe, 1995, p. 103). Ombudsmen traditionally are generators of options, working in strict confidentiality to assist disputants by serving as “mediators, counselors, and third-party interveners” (Rowe, 1995, p. 105). Finally, McEwen (1999) suggests that the way to improve alternative dispute resolution systems is through systematic research and suggests several directions that this research should take.

Should the organization decide to take a more expansive approach, Brett, Goldberg, and Ury (1990) suggest following key principles in designing and operating such a system:

1. Consult before disputing, and give feedback after (i.e., attempt to air issues and decisions that are potential conflict creators and make sure that the lessons learned in handling the dispute are recorded and reported).
2. Keep the focus on interests, not positions or personalities (per Fisher, Ury, and Patton, 1991).
3. Build in “loop-backs” to disputants (i.e., make sure the disputing process is informed by the lessons learned through system operations).
4. Develop and use cost-efficient mechanisms for protection of rights and for restoring power imbalances.
5. Arrange and pursue remedies in a cost-efficient manner by using and exhausting low-cost remedies before trying higher-cost approaches.
6. Provide disputants with the necessary skills, resources, and motivation to use the system easily and constructively.
7. Work with all concerned parties to make the system design viable and valuable.

Lynch (2001) suggests that ADR systems need to be evaluated differently than conflict managed on a case-by-case basis. According to Lynch, healthy ADR systems share five features across organizations: (1) they are *all-encompassing*, so they are available for use by

all people and for all types of problems; (2) there is a *conflict competent culture*, with a positive atmosphere where conflict can be surfaced and managed safely; (3) there are *multiple access points* to the system with knowledgeable people to support it; (4) there are *options and choices* that allow disputants access to coaches and mediators if they choose to involve them; and (5) *support structures* such as support from top management and educational programs that institutionalize the ADR system as well as provide safeguards.

Chapter Summary

When negotiators are unable to reach an agreement or resolve a conflict, a third-party intervention may help. In this chapter, we reviewed three formal types of third-party intervention: arbitration, mediation, and process consultation. Each of these types has its strengths and weaknesses as an intervention and approach to dispute resolution. The styles differ in the degree to which the disputants surrender control to the third party over the negotiation process and/or the outcome. Arbitration involves a structured process in which disputing parties have relatively free rein to present their stories, while the arbitrators decide the outcome, often imposing a resolution on the disputants. Mediators exert a great deal of control over how the parties interact, both in terms of their physical presence and their communication; although mediators may point the parties toward possible resolutions through suggestions and guidance, they typically do not choose the resolution for the disputants. Finally, process consultants are less involved in the disputed issues than arbitrators or mediators, but they are heavily involved in helping to establish or enhance communication and dispute resolution skills that the parties can then apply to the immediate dispute and future communication.

Other third-party roles and types, including informal versions of the three formal approaches we addressed, are increasingly being studied systematically to determine their application and impact. Organizational support for alternative dispute resolution procedures promises great dividends for organizations willing to invest the necessary resources in system design and operations. A great deal remains to be done to determine the mastery and propriety of particular informal third-party styles and techniques for various types of conflict and to achieve a better understanding of how third parties—individually and organizationally—can effectively assist in resolving disputes.

Finally, we briefly reviewed some of the emerging work on alternative dispute resolution (ADR). ADR encompasses a variety of techniques that employers adopt to handle workplace disputes and avoid litigation with employees and with others outside the organization. ADR can include not only mediation and arbitration but also several hybrid methods that use neutral third parties to hear employees' concerns. The purpose of ADR is to find dispute resolution processes that reduce costs, minimize lawsuits and court cases, and allow organizations to handle employee conflicts efficiently and effectively.

Endnotes

¹ For a broad treatment of these and related issues, see Lewicki, Weiss, and Lewin (1992); Mayer (2000); Singer (1990, 1994); and Ury (2000).

² See Bingham, Chesmore, Moon, and Napoli (2000); Carnevale and Pruitt (1992); Moore (1996); Nabatchi and Bingham (2001); Sulzner (2003); and Ury, Brett, and Goldberg (1988).

³ We have described the three most frequent third-party roles, but several authors have suggested numerous other formal roles (for instance, see Diehl, Druckman, and Wall, 1998; and Ury, 2000). Interested readers should consult the references cited throughout this chapter to explore the research and practice on third parties in greater detail.

- ⁴ Further discussion of dispute resolution and the Internet may be found in Clark (2003), Hagedwood (2001), and Katsh and Rifkin (2001).
- ⁵ For instance, see Brett and Goldberg (1983), Devinatz and Budd (1997), Kanowitz (1985), and Kochan (1980).
- ⁶ See Grigsby and Bigoness (1982), Kritikos (2006), Long and Feuille (1974), Neale and Bazerman (1983), and Starke and Notz (1981).
- ⁷ See Bush (1996); Carnevale and Pruitt (1992); Kochan (1980); Kochan and Jick (1978); Lewicki, Weiss, and Lewin (1992); Wall and Lynn (1993), and Wall, Stark, and Standifer (2001).
- ⁸ See Drayton (1981), Reich (1981), and Susskind and Cruikshank (1987).
- ⁹ See Kriesberg (1991), Rubin (1981), and Zartman (1989).
- ¹⁰ Further discussion of ripeness can be found in Coleman (2000a), Eliasson (2002), and Greig (2001).
- ¹¹ See Carnevale and Conlon (1990), Conlon and Ross (1993), Kaufman and Duncan (1992), Smith (1985), Touval and Zartman (1985), and van de Vliert (1992).
- ¹² A complete framework for understanding mediation must take into consideration a very large number of factors, and a complete understanding of the role and impact of these factors is beyond the scope of this book. For more detail, see Barrett (1999); Herrman, Hollett, Gale, and Foster (2001); and Wall and Lynn (1993).
- ¹³ See Folberg and Taylor (1984), Holaday (2002), Kochan (1980), Kressel (1972), Lovenheim (1989), Moore (1996), Poitras and Bowen (2002), Saunders (2003), and Wall (1981).
- ¹⁴ Poitras, Bowen, and Byrne's (2002) model applies to negotiations that have reached impasse or that have yet to start; "prenegotiation" is similar to the early stages of mediation in Moore's model.
- ¹⁵ See Carnevale and Conlon (1988), Chaudrhy and Ross (1989), and Harris and Carnevale (1990).
- ¹⁶ See Donohue (1989), Hiltrop (1989), and Lim and Carnevale (1990).
- ¹⁷ See Benjamin and Levi (1979); Boehringer, Zeruolis, Bayley and Boehringer (1974); Brown (1977); Cohen, Kelman, Miller, and Smith (1977); Hill (1982); and Lewicki and Alderfer (1973).
- ¹⁸ See Grigsby (1981), Grigsby and Bigoness (1982), Ross and Conlon (2000), and Starke and Notz (1981).
- ¹⁹ Elangovan's model is based on a model of managerial decision making developed by Vroom and Yetton (1973).
- ²⁰ For discussion of the benefits of ADR systems see Bingham (1999), Bingham and Napoli (2001), Loomis (2001), and Lynch (2001). For discussion about ADR design issues see Bordwin (1999) and Levy (1999).
- ²¹ For further discussion see Brett, Goldberg, and Ury (1990); Costantino and Merchant (1996); Lynch (2001); Sheppard, Lewicki, and Minton (1992); and Ury, Brett, and Goldberg (1988).