

SOLVING PROBLEMS AND TRANSFORMING RELATIONSHIPS

The Bifocal Approach to Mediation

PATRICE M. MARESCHAL
Rutgers University at Camden

Mediation is rapidly becoming the dispute resolution technique of choice in public administration. This research examines the ways in which federal mediators approach dispute resolution in labor-management relations. The analyses are based on semistructured interviews that were conducted with 15 mediators at the Federal Mediation and Conciliation Service (FMCS). Mediators' descriptions of the mediation process are evaluated with respect to three models: problem solving, transformative, and bifocal. Given the success of the FMCS at mediating a widening variety of disputes, the results of this study should generalize to other dispute resolution contexts. Practical implications of this research are as follows: (a) Mediators should adopt a bifocal approach, simultaneously attending to overarching relationship issues as well as the concrete, immediate issues in dispute; (b) the parties to a dispute must be actively engaged in the mediation process; (c) conflict resolution and collaborative problem solving is a long-term affair; and (d) public administrators involved in dispute resolution and collaborative problem solving should be prepared to take small steps.

Keywords: *mediation; conflict resolution; labor relations; qualitative research methods*

People involved in conflict may resolve their disputes in a variety of ways. One method is mediation. Mediation is "the intervention in a negotiation or conflict of an acceptable third party who has limited or no authoritative decision-making power but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute" (Moore, 1996, p. 15).

This research examines the ways in which federal mediators approach dispute resolution between labor and management. The primary goal of this research is to understand reality by exploring the experiences and subjective perceptions of real actors (i.e., mediators), as advocated by Eaton and Keefe (1999). As Kearney and Carnevale (2001) note, the mediation process is informal, private, and highly individualistic. Moreover, records of what transpires during mediation are not kept. Thus, the experiences and perceptions of participants provide valuable insights on the mediation process.

Initial Submission: April 2, 2001

Accepted: July 31, 2003

AMERICAN REVIEW OF PUBLIC ADMINISTRATION, Vol. 33 No. 4, December 2003 423-448

DOI: 10.1177/0275074003258978

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The focus is on mediators with the Federal Mediation and Conciliation Service (FMCS) and the role they play in resolving labor-management disputes. This article evaluates mediators' descriptions of the mediation process with respect to three models: problem solving, transformative, and bifocal. The remainder of the article is structured as follows. The first section explains the relevance of mediation to public administration. The second section reviews mediation theory and research in which mediation is conceptualized as a problem-solving exercise, a relationship-improving exercise, or both. The third section describes the research method used. Finally, the results are presented and the implications for public administrators are discussed.

MEDIATION AND PUBLIC ADMINISTRATION

Public Sector Employment Relations

The rapidly growing practice of mediation makes this topic especially relevant to scholars of public administration. For example, Hebdon (1996) indicates that public sector agencies are implementing various forms of dispute resolution. To illustrate, public sector employers are using mediation to resolve grievances and charges of unfair labor practices (Hebdon, 1996). In fact, grievance mediation has become accepted practice in several states, including California, Massachusetts, Michigan, Pennsylvania, Wisconsin, New York, Minnesota, Oregon, and Washington (Labor-Management Committee, 1992). At the federal level, the Department of Health and Human Services uses grievance mediation procedures with its employees (McKee, 1993). In addition, the use of preventive mediation programs, aimed at improving the relationship between disputing parties, is growing in the public sector (Hebdon, 1996). Indeed, Kriesky (1999) notes that most public sector employees, whether union or nonunion, have access to numerous dispute resolution procedures.

Beyond Labor Relations: Mediation as a Policy Tool

The interviews conducted here focus on federal mediators in the collective-bargaining context. However, in recent years the practice of mediation has expanded into a variety of policy areas. For example, mediation is being used to resolve community disputes, international conflicts, criminal disputes, divorce and child custody disputes, disputes in educational settings, and environmental and public policy disputes. In keeping with these trends, the FMCS currently provides conflict resolution services in regulatory negotiations, social and environmental disputes, schoolyard and youth violence programs, and international disputes (FMCS, 1999). For example, the FMCS has provided alternative dispute resolution (ADR) services to a wide variety of governmental bodies and agencies including the Food and Drug Administration, the Tennessee Valley Authority, the Farm

Credit Administration, the Environmental Protection Agency, the U.S. Air Force, and the Federal Bureau of Investigation, to name just a few.

In addition, the FMCS has facilitated numerous regulatory negotiations and policy disputes. Some of the agencies involved include New York State (dispute over pesticide usage), the state of Tennessee (dispute over the use of waterways), Department of Housing and Urban Development (dispute over vacancy rates for subsidized housing), Railway Safety Administration (Department of Transportation, rail repair safety procedures), and Department of Interior/Health and Human Services (Indian Self-Determination Act) (FMCS, 2002). In brief, what the FMCS knows travels well to other contexts.

As the examples cited above indicate, mediation is rapidly becoming the policy instrument of choice for resolving conflict at various levels of government. Thus, *alternative dispute resolution*, denoting nonjudicial means of settling disagreements, is somewhat of a misnomer. ADR has expanded so rapidly in recent decades that most disputes are now settled this way (LaRue, 2000). Indeed as Lan (1997) notes, public administrators play multiple roles as parties to, observers of, and resolvers of conflict. At the same time, many public administrators lack sufficient conflict resolution knowledge and skills. Although further research is needed on mediation in varied contexts, this topic nonetheless is relevant to policy makers, administrators, and researchers broadly interested in conflict resolution in the public arena.

MEDIATION RESEARCH, THEORIES, AND CONCEPTUAL FRAMEWORKS

Mediation as Problem Solving

Organizations in the private, public, and nonprofit sectors are using a wide variety of conflict resolution systems. Academics and practitioners are increasingly advocating mediation as a form of alternative dispute resolution (Sander & Goldberg, 1994). Existing research indicates that mediation is capable of resolving a wide range of disputes (Bingham & Pitts, 2002; Brett, Barsness, & Goldberg, 1996; Brett & Goldberg, 1983; McEwen 1992; Umbreit 2001). Additionally, mediation has been shown to be less expensive, quicker, and more satisfactory than other forms of dispute resolution (Brett et al., 1996). Furthermore, mediation provides participants with voice, control over the outcome, and fair treatment by a third party (Bingham, Chesmore, Moon, & Napoli, 2000; Brett, 1986; Lind & Tyler, 1988; Shapiro & Brett, 1993; Umbreit, 2001).

Various factors have been proposed to contribute to the success of mediation. For example, Wall, Stark, and Standifer (2001) draw on Lewin's (1951) force field analysis to explain the effectiveness of mediation. According to Wall et al. (2001), conflict is a force that restrains the effectiveness of mediation. Any force that raises conflict, (e.g., disputant anger, commitment to a position, distrust of other, distribu-

tive behavior, status differences, past failures) limits mediation's effectiveness. In contrast, the power of the process is a force that increases mediation effectiveness. Any factor that increases the power of the mediation process (e.g., formalization of mediation, length of time mediation has been practiced, size and power of mediator's constituency, extent of the mediators' network, affability of mediator, absence of other dispute mechanisms) improves the effectiveness of mediation (Wall et al., 2001). Similarly, Kochan and Katz's (1988) model of the mediation process suggests that the following factors influence the success of mediation: the characteristics of the mediators, the sources or nature of the conflict (e.g., economic characteristics, structural characteristics of relationship, organizational characteristics of parties, interpersonal characteristics, personal characteristics, nature of the issues, bargaining behavior of the parties), the situational characteristics of the dispute (e.g., perceived costs of failing to reach agreement, nature of the impasse procedure), the mediators' strategies, and the parties to the dispute.

Empirical research provides support for these models. For example, the following mediator characteristics have been shown to influence the outcome of mediation: self-awareness, presence, and authenticity (Bowling & Hoffman, 2000); power and authority (Conlon, Carnevale, & Ross, 1994; Harris & Carnevale, 1990); experience and tenacity (Briggs & Koys, 1990); status (Keashly & Newberry, 1995); and gender (Carnevale, Conlon, Hanisch, & Harris, 1989). Brett et al. (1996) found two situational characteristics that distinguished cases that settled from those that did not. The first characteristic was the jackpot syndrome (i.e., potential of an extremely large recovery). The second was that it was not in the financial interest of one of the parties to settle (Brett et al., 1996).

With respect to mediators' tactics, previous research indicates that mediators who play an active role in packaging issues, offering solutions, and applying pressure tend to be more effective than those who play a passive role or intervene only when asked to do so (Downie, 1991; Karim & Dilts, 1990; Kochan & Jick, 1978). Similarly, the parties themselves have been found to influence the success of mediation. For instance, Ross and Weiland (1996) found that the degree of trust between the parties influences the outcome of mediation. Wissler (1995) found that the parties' goals played a role in determining the outcome of mediation. Similarly, Karim and Dilts (1990) found the parties' perceptions of others' bargaining behaviors to be important predictors of the success of mediation.

Limitations of the Problem-Solving Model

Bush and Folger (1994) contend that the traditional approach to mediation takes a psychological/economic view of conflict. It is based on the premise that conflicts are problems that need to be resolved. Problems are the result of disputants' competing interests. A mediator's goal in resolving conflict is to develop an agreement that solves tangible problems on fair and realistic terms. Under this conceptualization, good mediation practice is simply a matter of identifying issues, creating options, and persuading parties to close the deal (Bush & Folger, 1994). The prob-

lem-solving framework, with its emphasis on reaching agreements, has guided much of the existing research on mediation.

Thus, problem solving and settlement have been the subject of most mediation research (Nabatchi & Bingham, 2001). Various measures of success in mediation have been identified including reaching agreement, narrowing the number of issues in dispute, getting the parties to make tacit movement from their original positions, and getting the parties to avoid holding back concessions in anticipation of moving to the next level of the dispute resolution process (Kochan & Jick, 1978). However, most researchers measure mediation effectiveness with reaching agreements (Carnevale & Pruitt, 1992).

Not surprisingly, mediators are driven by a desire to achieve settlements. Mediators are willing and able to exert strong influence over the outcomes of cases. Bush and Folger (1994) indicate that mediators play a big role in developing agreements and shaping settlements. More specifically, mediators exert influence by controlling sessions, determining what the case is about and labeling it in a recognizable and manageable way, and moving the parties toward settlement by focusing on areas of agreement and avoiding areas of disagreement (Nabatchi & Bingham, 2001). In doing so, mediators use directive behaviors. For example, Peterson and Peterson (1987) contend that mediators assess the situation, the disputants, and their own conception of the mediator's role. Then mediators select a "theory" of the dispute based on this assessment. The mediator's conception of role determines whether the mediator will take an active or passive approach to the dispute, focus on content or process, and accept differences in negotiating power between the parties or attempt to balance the power differences to achieve a more equitable settlement. The mediator's choice of role in a given dispute limits the tactics he or she can employ (Peterson & Peterson, 1987).

Focusing on Relationships: The Transformative Model

Strengths of the transformative model. Bush and Folger (1994) contend that the problem-solving framework is inadequate for the study and practice of conflict resolution. Instead, they advocate a transformative framework for the study and practice of conflict resolution. The transformative framework represents a shift away from the problem-solving model to a more communicative, interactive model of what conflict is about and what positive outcomes of conflict resolution look like (Folger, 2001). According to the transformative framework, conflict represents a crisis in human interaction. During conflict, negative attitudes feed on each other and disputants' feelings of weakness and self-absorption are intensified. This leads to a downward spiral in which disputants' behaviors become destructive and dehumanizing (Bush & Folger, 1994).

Despite these negative effects of conflict, it is possible to restore disputants' sense of confidence and strength in self and responsiveness to others (Bush & Folger, 1994). The key is the transformative approach to mediation. The primary

goal of the mediator in transformative mediation is to support and facilitate the parties' efforts to shift their conflict toward constructive interaction. Effective mediation practice consists of providing opportunities for empowerment and recognition. Empowerment occurs when the parties "gain greater clarity about their goals, resources, options, and preferences" (Folger & Bush, 1996, p. 264). Recognition occurs when the parties "voluntarily choose to become more open, attentive, sympathetic, and responsive to the situation of the other party, thereby expanding their perspective to include an appreciation of another's situation" (Bush & Folger, 1994, p. 89). By providing repeated opportunities for empowerment and recognition and encouraging deliberation, decision making, and interparty perspective taking, mediators transform the interactions between disputants. This model assumes that transformative interaction is what matters most to parties (even more than settlement). Although empowerment and recognition often result in agreement, this is a secondary effect (Nabatchi & Bingham, 2001). Success is measured not in settlements, but rather in shifts toward strength and responsiveness and constructive interaction (Bush & Folger, 1994; Folger & Bush, 1996).

Various scholars and practitioners have advocated the use of transformative mediation, with its emphasis on process (e.g., teaching disputants new attitudes and decision-making skills) as opposed to outcome (e.g., reaching agreement). According to its supporters, transformative mediation is particularly well suited for use in court-connected mediation programs (Franz, 1998), with youthful offenders who commit low-level crimes (Lucas, 2001), and in employment disputes (Hallberlin, 2001). The appeal of transformative mediation in these contexts is its potential to have a long-term impact on participants' lives.

Empirical research lends support to the transformative model of mediation. For example, Bingham (1997) found that more than 90% of participants in a transformative mediation program rated themselves as either satisfied or highly satisfied with the procedural justice process the program offered. In addition, implementation of a transformative mediation program contributed to a 17% drop annually in the filing of formal equal employment opportunity complaints (Bingham & Novac, 2001). Antes, Folger, and Noce's (2001) study of a transformative mediation program documented that participants gained confidence and competence as the mediation progressed, new insights into the actions of others, and a new understanding of events in conflict. Furthermore, discussions of a particular incident were found to lead participants to discuss additional issues that were significant to their relationship and the workplace (Antes et al., 2001).

Schwerin's (1995) study of community mediation indicates that those trained in transformative mediation processes and skills experience both psychological and social empowerment. That is, they report feeling empowered, euphoric, and enthusiastic as a result of the learning experience. In addition, they gain knowledge and skills they can use in mediation and other professional and personal interactions (Schwerin, 1995).

Previous research on the FMCS indicates that the agency perceives mediation as a tool to improve the relationship between disputing parties. For example, Wells

and Liebman (1996) note that "mediation encourages, educates, and promotes the full engagement" of disputing parties (p. 135). The ultimate goal of mediation is to develop a mature relationship for mutual benefit (Wells & Liebman, 1996). In this sense, the FMCS's approach to conflict resolution may be characterized as transformative. That is, in addition to helping the parties resolve their conflicts, the FMCS mediators also teach the disputing parties new attitudes and skills that they can use in both the current and future disputes. To illustrate, the FMCS provides a variety of preventive mediation services. These services include such programs such as labor-management committees and partnerships, "Relationships by Objectives" (a process for rebuilding broken relationships), "Partners-in-Change" (an organizational change process), and steward and supervisor training (a process for translating the labor agreement into practice).

Shortcomings of the transformative model. However, the transformative model is not without its critics. For instance, Kolb and Kressel (1994) argue that the transformative model creates unrealistic and unrealizable goals. Merry and Milner (1993) acknowledge that the visionary goals of using mediation and community panels to transform communities are appealing in theory. However, in practice these goals are hard to achieve and even harder to replicate across various types of communities (Merry & Milner, 1993). For example, DuBow and McEwen's (1993) study of San Francisco community boards found no evidence of community transformation. Indeed, Nader (1993) argues that rather than empower participants, the community mediation movement has suppressed the interests of weaker parties and limited their access to the law. Similarly, Burns (2001) cautions that transformative mediation is not appropriate in all situations. In particular, Burns suggests that in some cases, using transformative mediation may allow the stronger party in a dispute to take advantage of the weaker party.

Seul (1999) agrees that the transformative approach to mediation can contribute to human compassion, understanding, and moral decision making. Yet Seul questions Bush and Folger's (1994) contention that transformative mediation can promote individual moral development. Using transformative mediation to promote moral development is especially problematic when disputants are at different levels of moral development (Seul, 1999). Furthermore, Seul is critical of Bush and Folger's contention that their approach cannot "cross-fertilize" with other approaches. On the contrary, Seul maintains that the problem solving and transformative approaches can complement one another.

Solving Problems and Improving Relationships: The Bifocal Approach

An alternative to the problem-solving and transformative frameworks is the bifocal model of mediation (Mareschal, 2002b). One of the dictionary definitions of *bifocal* is "embodying two distinct and often conflicting goals, interests, or

courses of action" (*American Heritage Dictionary*, 2000, p. 28). Strategic management literature uses the term *bifocal vision* (Albrecht, 1994; Gogan, 1998; Harari, 1997; Houston, 2000) to describe "the ability to perceive accurately things on the horizon that will inevitably affect the enterprise, as well as the ability to focus on the more immediate, pressing events" (Albrecht, 1994, p. 42).

The concept of simultaneously preparing for the present and the future has a rich history in many areas of strategic management. Some authors explicitly use the term *bifocal vision* to describe this process. For example, an organization's technical communications should support a bifocal vision that facilitates commitment to both an ongoing plan and the necessity to make swift modifications in response to environmental changes (Kryder, 1997). In the context of monitoring and evaluating educational policy, Ayyar (1996) notes that a bifocal vision is required, with both longitudinal and cross-sectional components.

Some authors use other terms to describe bifocal vision. In public administration, Dunoon (2002) defines strategic learning-centered leadership as a process of dealing with current problems while working toward a future goal. In public personnel management, Tompkins (2002) argues that a prerequisite for effective strategic human resources management is that personnel managers must become capable of both supporting strategic initiatives and understanding current personnel problems. Referring to strategic information systems management, Avison, Eardley, and Powell (1998) define vision as information collection about both the organization's current situation and its desired future state of affairs. In the case of organizational transformation, Vandermerwe (1995) stresses that vision must be "relevant to present and future markets" (p. 85). Mintzberg (1994) claims that managers are incapable of effective strategic thought unless they are also intimately involved with the day-to-day operations of the firm. A common thread in all of the above conceptualizations, whether or not they explicitly use the term *bifocal vision*, is that the same people must be in charge of planning for the future and solving short-term crises, if either process is to prove effective.

Earlier attempts to describe this dual focus in the practice of mediation are seen in Riskin's (1993) study of mediation cases with the Farmers Home Administration between farmers and their creditors. Here Riskin distinguishes between the "broad" and "narrow" approaches to mediation. According to Riskin, mediators following the broad approach operate on the assumption that the goal of mediation is to reach an agreement that serves the mutual interests of the parties. The focus is on developing and understanding options. In addition, the broad approach to mediation deals with barriers to negotiation such as emotional or interpersonal problems and communication problems between the parties and outside actors. Under the broad approach, one of the primary objectives of negotiation is improving the relationship between the parties (Riskin, 1993). In brief, Riskin's work suggests that mediators need to both solve problems and improve relationships. Much the same arguments are made by Stepp, Sweeney, and Johnson (1998) in advocating interest-based bargaining.

Thus, the argument can be made that mediators need to take a bifocal approach to resolving conflict. Mediators using the bifocal approach combine elements of both the problem-solving and transformative approaches to mediation. More precisely, they pursue twin goals of reaching an agreement that serves the mutual interests of the parties and improving the parties' relationship. In other words, mediators attend to the "big picture" issues such as emotional, interpersonal, and communication problems facing the parties, while at the same time focusing on resolving the immediate, more concrete issues in dispute such as working conditions, compensation, and benefits. To accomplish these dual objectives, mediators encourage and empower the parties to make their own decisions. Empirical research on FMCS mediators provides support for the bifocal model (Mareschal, 2002a).

METHOD

Given the phenomenal growth in the practice of mediation, further research is warranted. Much of the previous research on mediation consists of anecdotal stories and informal commentary (Wall & Lynn, 1993). Even when empirical research was conducted on mediation in the past, much of it focused on input-output models (Folger, 2001). In this stream of research, there was a heavy emphasis on determining and documenting rates of agreements. One of the primary drawbacks of the stream of research based on the input-output model was that researchers did not study what happened during the mediation session itself (Folger, 2001). As a result, researchers could not answer questions such as, What do mediators do?

To answer this question, semistructured interviews were conducted with federal mediators. The responses were transcribed and then coded according to Folger and Bush's (1996) 10 hallmarks of a transformative approach to mediation. The coding was used to classify mediators' descriptions of the mediation process with respect to three models: problem solving, transformative, and bifocal. The following sections discuss in greater detail the confidential nature of mediation, the advantages of using qualitative methods to study mediation, the research design employed here, and the data analysis/coding procedure.

Confidentiality as an Obstacle to Research

Unfortunately, researchers in the mediation context face a number of obstacles to conducting empirical research. To begin with, in most cases ADR processes are not open to the public, and records of the proceedings are not kept. To illustrate, a U.S. General Accounting Office (GAO) study of ADR practices in the employment context indicates that although most organizations collect some data on dispute resolution rates, more comprehensive data on the results of ADR programs (e.g., time and cost savings, parties' satisfaction with process, quality of outcome, etc.) are lacking (GAO, 1997). The emphasis on confidentiality of mediation processes lim-

its researchers' access to data (Bingham & Chachere, 1999). This is especially true in the employment context, where parties are often barred from discussing the ADR process and outcomes (Marksteiner, 1998). Even if researchers are able to gather data directly from participants in the ADR process, self-reports tend to suffer from problems of memory and self-presentation bias (Esser & Marriott, 1995). These biases can be overcome with observation, but given the confidential nature of mediation, researchers may encounter difficulties securing permission to observe mediation processes.

Using Qualitative Methods to Overcome the Confidentiality Obstacle

Because much of the mediation process is "hidden," qualitative research methods hold great promise for understanding what transpires during mediation. As Marshall and Rossman (1999) note, qualitative research is ideal for studying informal and unstructured processes. Moreover, qualitative research methods are particularly well suited to exploring the nature of parties' experiences with the mediation process and how the participants construct meanings in the mediation process (Marshall & Rossman, 1999; Strauss & Corbin, 1990). In addition, the qualitative approach lends itself to uncovering multiple interpretations of the mediation process. In brief, qualitative methods can provide researchers with an in-depth understanding of the full range of parties' behaviors, as well as their interpretations and understanding of the mediation process.

Research Design: Case Study Method

The research discussed here is based on a case study of the FMCS.¹ It explores federal mediators' interpretations of their experiences with the mediation process. As Yin (1994) notes, the case study method is the preferred research strategy when one wants to investigate a process within a real-world setting, especially when the boundaries of the process and context are not immediately clear.

Data were collected through 15 semistructured interviews conducted with FMCS mediators. Of these, 5 interviews were conducted in person and 10 interviews were conducted over the telephone. The interviews lasted from 20 minutes to an hour, with the average interview lasting about 40 minutes. During all of the interviews, the researcher took notes on a legal pad. Thirteen mediators also permitted the researcher to record the conversations.

Given the confidential nature of mediation, it was not practical to use random sampling. Instead, the researcher used convenience sampling (Trochim, 2001). That is, the interviews began with participants already known to the researcher through previous interactions with the FMCS. Interviewees were then asked to suggest the names of other mediators who would be willing to speak to the researcher. This "snowballing" technique proved especially helpful in gaining the

TABLE 1: Indicators of a Transformative Approach

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1. "The opening statement says it all": The mediator describes his or her role and objectives in terms based on empowerment and recognition.
 2. "It is ultimately the parties' choice": The mediator leaves the parties responsible for outcomes.
 3. "The parties know best": The mediator is nonjudgmental about the parties' views.
 4. "The parties have what it takes": The mediator takes an optimistic view of the parties' competence and motives.
 5. "There are facts in feelings": The mediator allows and is responsive to parties' emotions.
 6. "Clarity emerges from confusion": The mediator allows for and explores parties' uncertainty.
 7. "The action is in the room": The mediator remains focused on the here and now of the conflict interaction.
 8. "Discussing the past has value in the present": The mediator is responsive to statements about past events.
 9. "Conflict can be a long-term affair": The mediator views the intervention as one point in a larger sequence of conflict interaction.
 10. "Small steps count": The mediator feels a sense of success even when progress is made in small degrees.
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SOURCE: Folger and Bush (1996).

cooperation of mediators who were unfamiliar with the researcher (Trochim, 2001, p. 58).

Each interview began with a structured outline (see the appendix). The first question on the outline was what Fetterman (1989) describes as a survey or grand-tour question. That is, it was intended to elicit a response which would provide the researcher with a "big picture" or map of the mediator's world. Specifically, mediators were asked what they thought made mediation successful. After this initial inquiry, mediators were asked more probing questions about specific determinants of success. The probing questions focused on the following determinants of mediation success: mediators' strategies and techniques, mediators' characteristics, the sources and nature of conflict, situational characteristics, and the parties themselves. In addition, mediators were asked how the outcome of a particular mediation case feeds back into the process to influence the parties' future relationship and future problem-solving efforts.

As advocated by Rubin and Rubin (1995) the semistructured interviews began with an outline, but the conversation was allowed to follow natural patterns as suggested by the interviewees. Sometimes a particular area of probing that the researcher considered important, based on the literature review, was not mentioned at all by the interviewee. In other instances, mediators indicated that a particular area the researcher inquired about was not really important and directed the conversation to "what really mattered."

Data Analysis and Coding

Folger and Bush (1996) have developed 10 indicators or "hallmarks" of a transformative approach to mediation. These indicators, presented in Table 1,

TABLE 2: Mediators' Approaches to Resolving Conflict

<i>Approach</i>			
<i>Hallmark^a</i>	<i>Transformative^b</i>	<i>Bifocal^c</i>	<i>Problem Solving^d</i>
1. "The opening statement says it all"	4	0	0
2. "It is ultimately the parties' choice"	4	9	0
3. "The parties know best"	2	4	4
4. "The parties have what it takes"	4	4	5
5. "There are facts in feelings"	8	2	4
6. "Clarity emerges from confusion"	4	1	0
7. "The action is in the room"	1	7	5
8. "Discussing the past has value in the present"	3	0	0
9. "Conflict can be a long-term affair"	13	0	0
10. "Small steps count"	6	0	0

NOTE: $N = 15$.

a. Source: Folger and Bush (1996).

b. Indicates that a mediator's comments relating to this hallmark were purely transformative.

c. Indicates that a mediator's comments relating to this hallmark were bifocal. That is, comments included elements of both the transformative and problem-solving approaches.

d. Indicates that a mediator's comments relating to this hallmark were purely problem solving.

serve as the operational framework within which the interview data were coded and analyzed. Two researchers read through the interview transcripts. Then, following a methodology employed by Nabatchi and Bingham (2001), mediators' descriptions of the mediation process were coded as affirming or contradicting these hallmarks. Specifically, statements affirming the hallmarks were coded as supporting the transformative approach, statements contradicting the hallmarks were coded as supporting the problem-solving approach, and statements that contained elements of both the transformative and the problem-solving approaches were coded as supporting the bifocal approach.

To illustrate, the transformative approach to mediation emphasizes relationships. Under the transformative approach, the mediator plays a relatively passive role and avoids directing the parties. Statements that supported these hallmarks were coded as evidence of the transformative approach. For example, one mediator stated, "I think as to the successes of mediation the parties have to have a sense that they own the outcome." This supported Hallmark 2—responsibility is left with the parties—and was coded as evidence of the transformative approach.

In contrast, the problem-solving approach to mediation emphasizes reaching agreement. Under this approach, the mediator takes an active role in resolving the dispute. The interview data were also coded for problem-solving behaviors. For example, one mediator commented that the parties "may need to feel a little uncomfortable for a while before you offer a suggestion to get out of the mess." This response represented a contra-indicator of Hallmark 2. According to the mediator,

the purpose of the joint session was not to promote recognition and empowerment of the parties but rather to prepare them for the mediator's suggestion. It was coded as evidence of a problem-solving approach.

In describing what they do, some mediators made statements that contained elements of both the transformative and the problem-solving approaches. For example, one mediator stated,

What makes for successful mediation is a mediator who has tremendous active listening skills and tremendous communication skills, one that understands the issues, and understanding that there are two dynamics occurring during the mediation, the process and the content, and it's a unique ability of the mediator to have timing so they know when to drop process and then be able to jump from the process to content interventions and eventually suggesting alternatives.

This statement suggests that the mediator was mindful of the relationship and the importance of the parties' role in the process, while attempting to move the parties toward agreement. It was coded as evidence of the bifocal approach.

RESULTS

Overview

The interview data are summarized in Table 2. Mediator responses are categorized according to the 10 hallmarks of a transformative approach developed by Folger and Bush (1996). For each hallmark, the table indicates whether mediators' comments relating to the hallmark demonstrate a predominantly transformative approach, a predominantly problem-solving approach, or combine elements of the problem-solving and transformative models in a bifocal approach to handling cases. The following sections contain more detailed descriptions of each hallmark, grouped according to the model they support.

As Table 2 indicates, mediators' comments regarding Hallmarks 1, 5, 6, 8, 9, and 10 indicate a purely or predominantly transformative approach. That is, a majority of statements regarding these hallmarks were coded as supporting the transformative approach. Examples of these statements are discussed in more detail in the section labeled "Evidence Supporting the Transformative Approach."

There were no hallmarks for which mediators' comments indicated that the problem-solving approach to resolving conflict was the one most commonly used. For Hallmarks 1, 2, 6, 8, 9, and 10, no statements were coded as supporting the problem-solving approach. For Hallmark 5, the majority of statements supported the transformative approach. For Hallmark 7, the majority of statements supported the bifocal approach. For Hallmark 4, "The parties have what it takes," the statements were fairly evenly split between the three approaches. The fact that there is

no clear-cut preference for one approach suggests that there is value in both believing in the parties and realistically assessing their conflict resolution skills and abilities. Hence, the split responses lend support to the bifocal model.

Mediators' comments regarding Hallmarks 2, 3, and 7 are supportive of the bifocal approach. That is, a majority of statements regarding these hallmarks were coded as supporting the bifocal approach. For reasons noted above, the split responses regarding Hallmark 4 support the bifocal approach. Examples of these statements are discussed in more detail in the section labeled "Evidence Supporting the Bifocal Approach."

Evidence Supporting the Transformative Approach

In sharing their insights on the mediation process, all 15 mediators interviewed made statements supportive of the transformative approach. These statements were categorized according to Folger and Bush's (1996) 10 hallmarks of a transformative approach to mediation. Comments demonstrating a purely transformative approach regarding a particular hallmark are summarized below.

Hallmark 1: "The opening statement says it all." Four of the mediators interviewed indicated that they use an opening statement that describes their role and objectives in terms based on empowerment and recognition. For instance, one mediator commented,

For people who don't know what mediation is, and have never experienced or haven't been involved in it, it's going to be up to the mediator to be able to set a tone that allows the parties to feel comfortable, all the time explaining the voluntary nature of it, the confidentiality of it, and the scope of it, and that it's their process, . . . their method of solving their issues without having to rely on somebody else giving them the decision.

Hallmark 5: "There are facts in feelings." Eight mediators signaled that in handling cases they allow and are responsive to parties' emotions. Specifically, one mediator stated,

Sometimes, the parties are afraid to deal with conflict, they are afraid to raise conflict, they dance around agreement, around the issues. In this situation a mediator needs to start an ugly discussion to get the real issues to the forefront.

Another mediator commented,

When I see that a party needs to see that somebody else understands their plight, feels their pain, or feels their anger, then oftentimes I will take on whatever I believe that party needs to see in the way of an emotion, and I will demonstrate it for that party so that they can feel that somebody else felt it. Oftentimes what I'll hear is a response like, "Well finally, somebody understands what I'm saying.

Finally, somebody feels what I've been feeling. Finally, somebody says what I've been saying. Finally, somebody thinks the way I'm thinking on this."

Hallmark 6: "Clarity emerges from confusion." Four mediators indicated that in resolving conflict they allow for and explore parties' uncertainty. In particular, one mediator noted,

The parties typically will give answers to each other for problems or issues, and mediation I find is more successful if you take that answer and reword it into the form of a question for the other party to answer. That way you've got each party trying to address the issue of the other party, or address the position of the other party, because the mediator then can ask the question about how to resolve an issue rather than give an answer on how to resolve the issue.

Hallmark 8: "Discussing the past has value in the present." Three mediators revealed that they are responsive to statements about past events. As a case in point, one mediator noted that "[the parties] have already had their battles. I ask them to bring me up to speed." In discussing the relevance of past events another mediator said,

It could be something that happened back on the shop floor with some other parties you don't even hear about, you know people are stirred up, there could be some racial things, there could be some religious things, you might not be fully knowledgeable of [it], . . . So you try to discover that.

Hallmark 9: "Conflict can be a long-term affair." Thirteen mediators made it clear that they viewed the intervention as one point in a larger sequence of conflict interaction. To illustrate, one mediator described the nature of mediation as follows:

In labor mediation it's quite unique in that when you finish the day they're going to continue the relationship for the next 3 years or 4 years or 5 years and then they're going to be bargaining again. So the nature of the conflict is not a one time occurrence, it's on a continuum. The conflict is going to be there every day.

Another mediator stated,

We've encouraged companies to be very responsible and they have been, in terms of looking at the total picture, not only at the collective bargaining table but what impact will these negotiations have on productivity, morale after the negotiations are over.

Hallmark 10: "Small steps count." Six mediators indicated that they feel a sense of success even when progress is made in small degrees. One common theme that emerged here is that mediators tend to view "success" along a continuum. For instance, one mediator noted that "there are different levels of success

in mediation." At the one end of the spectrum, success means the parties gain a better understanding of the bargaining process. Sometimes the relationship between the parties is so damaged that not much more than this can be achieved during the course of the mediation. Toward the other end of the spectrum is a negotiated agreement that satisfies the parties' interests and that both sides can live with for the duration of the contract. Under the best of circumstances, the parties indicate that they would use the mediation process again. In this respect, one mediator commented,

It's more a philosophical, long term belief that you're up against, and somehow you have to, in order to get them to come to some kind of an agreement, just philosophically let both sides take one step together, but rarely is the whole problem ever resolved in any one negotiation.

Evidence Supporting the Bifocal Approach

In sharing their insights on the mediation process, 13 mediators interviewed made statements supportive of the bifocal approach. These statements were categorized according to Folger and Bush's (1996) 10 hallmarks of a transformative approach to mediation. Comments regarding a particular hallmark that signal a bifocal approach (i.e., combine elements of the problem-solving and transformative models) to resolving conflict are summarized below.

Hallmark 2: "It is ultimately the parties' choice." Nine mediators made statements demonstrating a bifocal approach of leaving the parties responsible for outcomes. In particular, one mediator commented,

I think that in most of the cases though that I've been the mediator I feel that if I'm patient enough to wait and see where the parties are going and get a feeling more for where they're both coming from, it helps me better to understand and to know if I need to jump in or if I should just lay back and see if the parties can basically work a lot of the things out on their own.

Another mediator combined elements of the problem solving and transformative approaches as follows:

You can maybe start getting in to some what ifs or give them some ideas as to maybe what might resolve it, but always from the standpoint of them feeling like it's their idea or their process. I think that the mediator never wants to be identified with a specific solution, where down the road if that solution doesn't work out they're always going to refer to a mediator problem, and you always need to be careful of that.

Hallmark 3: "The parties know best." Four mediators made statements implying a bifocal approach towards maintaining a nonjudgmental attitude about the parties' views. For instance, one mediator commented,

We can't ever get involved of course in opinions, whether something is a good or a bad offer. But what I do think is important is bringing a dose of realism to negotiations, that is you can assess each party's position in terms of what you feel, in having sat there and listened to both parties, their chances of successful negotiations in maintaining that position. You can bring a real hand, in terms of somebody's asking you for an 8% wage increase you don't want to say that they're wrong but you can say, "Well, you know, in your industry over the last year and a half a typical wage increase has been 4%, or 3%, whatever it is, and if you maintain that position it's going to be very difficult, probably, to get an agreement."

In discussing techniques used, another mediator remarked,

Another technique would be avoiding talking at all, the mediator, while the parties are in joint session and in which dialogue is continuously occurring. And I think also another technique is to explain to them, we observe what's going out in the market, to give them more of a realistic view, and educating them of what type of settlements we're seeing out there, to help them come into line with what the industry is, what the industry practices.

Hallmark 4: "The parties have what it takes." Four of the mediators displayed a mix of optimistic and critical views of the parties' competence and motives. For example, one mediator said the following:

I think if the parties have experience in negotiation that's very helpful, and that goes without saying, because a seasoned, experienced negotiator for both sides is extremely helpful, because not only are they experienced in negotiating with each other, they're more likely to be experienced in how to effectively use a neutral once they call them in, and that helpful tool of a neutral can be very skillfully used by the parties to move the negotiations along. When you have inexperienced parties, you have a tendency for people not to trust, and that is not to trust each other or to question the movement or techniques of the neutral, they're not quite sure first of all what the process is about, and that's where the mediator has to go through some very persistent education as to what it is and what it isn't, and so when you have these inexperienced parties you have to slog through an awful lot of trust building before you get them to reveal information that will help both sides resolve the dispute.

Hallmark 7: "The action is in the room." Seven mediators made statements reflecting a bifocal approach to focusing on the here and now of the conflict interaction. To begin with, in discussing the tactics used, one mediator described her approach as follows:

Tools [that] would be used at the bargaining table could be the tool, of course, of the joint session, and chairing the meetings, . . . Another tool you might use, we do use very commonly, is separate caucuses. . . . Another tool is our sidebar, or our off the record meetings, are primarily with the chief spokespersons, which are the most productive of the techniques in terms of having an opportunity to seek out what ifs and different types of issues that you do not want talked about necessarily in joint session or in separate session.

Another mediator characterized the tactics he uses as follows:

I don't think there's one foolproof way, there are times when I will keep parties together because they're working together and what they need is more of a facilitator than a mediator, and when I recognize that facilitation will be advantageous to them probably more so than mediation, then that's the strategy or the tack that I take. When the parties' dynamics are such that they are hostile to each other, incapable of brainstorming with each other, position themselves on every issue and every word to the point that they become defensive or reactive rather than proactive, then I separate them into caucus.

CONCLUSION: LESSONS FOR POLICY MAKERS AND PUBLIC MANAGERS

The FMCS mediators are public administrators. In their day-to-day work, they engage labor and management in a conflict resolution dialogue and train them to participate in cooperative and collaborative projects more effectively. Therefore, the lessons derived from FMCS mediators' experiences have important practical implications for public administrators.

Implications for Practice

First, the interviewees' descriptions of the mediation process provide empirical support for the utility of the bifocal approach to mediation. More precisely, empowerment, recognition, and problem solving are all important elements of the mediation process. For example, one mediator commented,

If it's truly just a financial problem there's just things you can get at, but if it's to deny the legitimacy, for instance, of somebody to talk about something that's important, or to treat with disrespect, or to [be] callous or unresponsive, to use things that just deny the legitimacy of somebody to talk about something, that's where if you've got a whole host of those things you can get a real problem with conflict resolution.

Another said,

I have never experienced being able to close a deal where one party or the other believed that they had lost all of face. Even when they have lost their entire position, oftentimes it becomes my objective to have them see a way that they can save face. It is sometimes the easiest part of closing a deal, sometimes it's the hardest part of closing a deal, but I have yet to see any party that will actually ratify or approve a contract if they believe that they are the exclusive losers and have gained nothing and have in fact lost face with their respective constituents.

These statements indicate that participants in conflict resolution and collaborative problem-solving efforts must simultaneously attend to overarching relationship issues as well as the concrete, immediate issues in dispute.

Second, the parties to a dispute must be actively engaged in the mediation process. For example, as one mediator commented, “[Mediation] allows the two sides to come to their own agreement. That’s why it’s successful. The parties have to buy into the solution.” Another commented,

The first thing I think that makes mediation successful is the parties’ willingness to mediate the process, they must be willing to engage in the initiative, if they are not attuned to that it runs a high risk of being unsuccessful if the parties aren’t willing to be there, if one party’s willing and the other party’s not willing you’ve got the process of getting them to come forward with the mediation and then too you’ve got the content issue, so I think it’s first and foremost that the parties have got to be willing to do it.

In determining whether a dispute can be resolved through mediation, public administrators need to assess the parties’ willingness to solve the problem and to work cooperatively.

Finally, two closely related implications for practitioners are (a) conflict resolution and collaborative problem solving is a long-term affair, and (b) public administrators involved in dispute resolution and collaborative problem solving should be prepared to take small steps. In starting such efforts, public administrators must first establish their trustworthiness, credibility, and acceptability with the parties. To be successful, the public administrator must convince the parties that he or she has knowledge and skills required to help the parties solve their problems and participate in collaborative projects effectively. For example, one mediator noted, “In a lot of instances mediators will call the parties that have never worked with us before and the response is, ‘you’re from the federal government I don’t really need your help.’ So that becomes an obstacle.”

In such instances, public administrators will need to help the disputing parties feel comfortable with the mediation process. As one interviewee put it, “The mediator must build a relationship with the [parties] to let them know that they can trust the mediator, that whatever they say to the [mediator] is going to be held in the strictest of confidence.” Another commented, “I work on developing a rapport with the parties. This is most important. My goal is to bond with people. The parties need to develop trust. The parties must feel comfortable with the mediator. It is a people based approach.” Similarly, public administrators involved in dispute resolution need to be able to explain the mediation process and its advantages to the parties. As one mediator stated, “We’re not arbitrators, we do not render decisions. We have to educate the [parties] about what we do.”

Once the public administrator is successful in one dispute or collaborative project, this success builds on itself. The parties tend to be more willing to cooperate

and to seek his or her assistance in the future. For example, one interviewee commented, "In mediation, we get a lot of repeat calls." Another interviewee estimated that FMCS mediators are invited back to help the parties in 70% to 80% of the cases they handle.

The mediators interviewed here indicated that they view success as a continuum. Sometimes, just getting parties to sit down in the same room and talk about the problems they are facing or the possibilities for cooperation is an improvement. In fact, one mediator commented that she views the mediation process as successful if the parties make "some progress" in negotiations. Even when a dispute is highly contentious, the parties often decide afterward that "they're tired of beating each other up. Then they bring the mediator in earlier next time, before the fire is over head." Thus, public managers should not be frustrated by an initial lack of success in implementing conflict resolution and collaborative problem-solving projects. The experience of federal mediators indicates that solving problems and improving relationships are attainable goals that, if achieved, can lead to tremendous improvements in the effectiveness of public institutions. Similarly, policy makers should be aware of the need to take small steps when implementing and evaluating dispute resolution programs and collaborative projects.

Limitations and Suggestions for Future Research

The interview data presented here were part of a larger case study designed to identify the determinants of successful mediation. To the extent practical, every effort was made to develop a sound research program. Following the advice of Wall and Lynn (1993), mediations were grouped according to the field of practice (labor relations), and all phases of the mediation process were studied. In addition, the larger case study employed multiple research methods as advocated by Strauss and Whitfield (1998). Nonetheless, the research presented here has two key limitations. These limitations are a focus on mediators (to the exclusion of other participants in the mediation process) and a small sample size.

Ideally, one would like to be able to interview both the mediators and the other participants in the mediation process. Access to both mediators and the parties to a dispute would allow the researcher to develop a more comprehensive picture of what transpires during mediation. However, given the confidential nature of the mediation process, this was not feasible. At the same time, FMCS mediators have established an excellent record and reputation. Indeed, in a recent survey of users of the FMCS services, 91.5% of respondents provided favorable ratings of the mediation services they received (Kochan & Cutcher-Gershenfeld, 1997, p. 11). In addition, 96.8% of respondents who used a mediator indicated that, based on their experience, they would use an FMCS mediator again in the future (Kochan & Cutcher-Gershenfeld, 1997, p. 11). Moreover, FMCS mediators are highly experienced, well-trained, full-time professionals (Dilts & Haber, 1989; Zack, 1985). Thus, their insights can improve researchers', policy makers', and public adminis-

trators' understanding of a process that is increasingly being used in the public arena, but at the same time remains "hidden" from public view.

By definition, case studies typically involve detailed examination of an individual or of a small number of research subjects (Whipp, 1998). In this study, 15 mediators were interviewed. Given the small sample size, researchers should exercise caution in attempting to generalize the results found here to other contexts. To begin with, the labor-relations context is somewhat unique in that the parties to a dispute will continue to work with each other on a daily basis once the dispute is resolved. Thus, it may be more advantageous for mediators to focus on both solving problems and improving relationships in labor disputes than it is in other types of disputes.

To advance our understanding of mediators' approaches to conflict resolution, future researchers should examine the ways in which mediators approach dispute resolution in other settings. For example, mediation is currently being used in the following contexts: youth violence, family disputes, regulatory negotiations, and policy disputes. It would be interesting to see which model of mediation (i.e., problem solving, transformative, or bifocal) best describes mediators' approach to conflict resolution in these contexts.

Finally, it may be suggested that the use of the term *bifocal* is somewhat trendy. As noted earlier, although not everyone uses the label *bifocal*, the concept of simultaneously attending to present needs and preparing for the future has a rich history in the strategic-management literature. Historically in the mediation context, this multitrack approach to conflict resolution may have been termed (if at all) a "broad" approach (Riskin, 1993). Indeed, it was only after Bush and Folger (1994) argued for an exclusively "transformative" approach to mediation that practitioners responded with a contrary emphasis on problem solving. Perhaps the term *bifocal* connotes too stark a contrast between two complementary elements of conflict resolution. Instead, it may be more appropriate to view conflict resolution through a progressive lens. Applying the progressive lens analogy, mediators need to be able to transition seamlessly between solving problems and improving relationships. It is left to future researchers work out the nuances in terminology.

APPENDIX

Interview Outline

In general, what factors do you think make mediation successful?

The following factors have been identified in the literature as influencing the success of mediation. What role do you think they play in determining the success of mediation? Within each category, which specific factors contribute to mediation success?

- mediator characteristics—(especially background in labor relations)
- strategies/techniques
- sources/nature of conflict (e.g., economic, structural characteristics of the relationship, organizational characteristics of the parties)

- situational characteristics (e.g., threat of a strike, nature of the impasse procedure, parties' past experience with mediation)
- the parties (e.g., degree of trust, goals)

How does the outcome of a case influence future mediations?

Is there anything else that I have not covered that you think contributes to mediation success?

NOTE

1. The entire case study is based on data collected through unobtrusive measures, as well as participant observation, qualitative interviews, and a written survey. The case study follows a grounded-theory approach (Strauss & Corbin, 1990). That is, it is inductively derived from the study of mediation in the labor relations context. This study began with a literature review. The literature review was used to develop a rough model of the mediation process. Using the rough model as a starting point, additional data was collected from secondary sources, informal networking with dispute resolution professionals, participant observation of the Federal Mediation and Conciliation Service's (FMCS's) new mediator training program, and qualitative interviews with FMCS mediators. The qualitative data were used to develop a written survey. The written survey was then used to collect quantitative data. For a discussion of the research based on secondary source data, see Mareschal (1998); for a discussion of the survey results, see Mareschal (2002b); for a discussion of the participant observation data, see Mareschal (2002a). The end result is a triangulated research design that makes use of both qualitative and quantitative data. The procedure of using quantitative data to validate qualitative analysis has been well documented by Denzin (1978).

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Patrice M. Mareschal is an assistant professor of public policy and administration at Rutgers University at Camden. Her research interests include conflict resolution, personnel and labor relations, organizational behavior, and public policy. Her most current research projects examine federal mediators' roles in resolving labor disputes, the use of technology in conflict resolution, and the working conditions of home health care aides. She has published in the International Journal of Public Administration, Advances in Industrial and Labor Relations, the Journal of Public Affairs Education, Urban Affairs Review, and Review of Public Personnel Administration.