



The Mediation Dictionary

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A

Abeance --- The condition of being undetermined. To hold in abeyance is to place a pending motion (e.g. grievance) outside the time limits until some future time when it may be taken up and processed.

Accessibility --- The process of mediation should always be committed to ensuring accessibility for all persons. Special arrangements, as deemed necessary or appropriate should be made available for any person with special needs.

Accommodate --- Refers to a "conflict-handling mode" as per the Thomas-Kilmann Conflict Mode Instrument. In this context, an individual who accommodates another, neglects their own needs to satisfy those of the other person. This is the opposite of compete; putting a high value on relationship and a low value on outcome.

ACR --- The Association for Conflict Resolution (ACR) is a professional organization dedicated to enhancing the practice and public understanding of conflict resolution. ACR represents and serves a diverse national and international audience that includes more than 6,000 mediators, arbitrators, facilitators, educators, and others involved in the field of conflict resolution and collaborative decision-making. [see <http://www.acrnet.org/> for more information }

Action Lines --- The telephone complaint processing services, provided by individuals or organizations. Most commonly, action line programs are referred to as "offices of information and complaint" within government agencies, private industries, and the media.

Active Listening --- Active listening is a way of listening that focuses entirely on what the other person is saying and confirms understanding of both the content of the message and the emotions and feelings underlying the message to ensure that understanding is accurate.

Adding Value --- Is a technique used by some mediators to increase the value of an agreement between parties to help the parties in their determination to keep to the terms of the agreement.

Add-on --- Is a standard negotiation strategy whereby one person just as an agreement is about to be reached, raises another topic for discussion. ("There's just one more thing..."). This is sometimes a sub-conscious strategy used by a person whose life is given meaning by the continuation of the conflict.

Ad hoc --- A Latin phrase meaning "for this," as in for this special purpose. An ad hoc committee, for instance, is not a permanent or standing committee, but exists only as long as the committee's special job remains to be done.

Adjustive dissonance --- This is the phenomena whereby people adjust to loss at different rates. For example, one is in shock/anger/denial at the loss of a farm; child; spouse; health, while the other has accepted the loss and "wants to get on with his/her life". Outwardly, the disputants are negotiating about money; but really, they are miscommunicating about their different rates of emotional adjustment.

Administrative law judge --- Official who conducts hearings and makes recommendations to the government agency.

ADR -- Alternative Dispute Resolution. Sometimes called Appropriate Dispute Resolution. This is a generic term referring to all methods of conflict resolution other than court, or some would say, arbitration.

Adjudication --- This term is most frequently encountered in the construction industry. Adjudication is a binding decision made by an appointed neutral, often a quantity surveyor, either by deciding on the basis of submitted documents, or as is increasingly the case, after a hearing. It is designed to provide a speedy, if not always elegant, resolution to enable work to continue on site without interruption. Either party may appeal the adjudicator's decision to court or arbitration, or indeed settle the dispute by mediation. The Housing, Grants, Regeneration Act 1996 has greatly increased the use of adjudication.



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Adult Peer Mediation --- This refers to an organized system of dispute resolution within an organization or group that is operated and manned by ADR trained members of the same organization or group. [See also Peer Mediation]

Adversarial Approach --- The adversarial approach to a conflict sees the other party or parties as an enemy to be defeated. It can be compared to the problem-solving approach which views the other party or parties as people who have a common problem that needs to be jointly solved. The adversarial approach typically leads to competitive confrontation strategies, while the problem-solving approach leads to cooperative or integrative strategies for approaching the conflict situation.

Adversary/Adversaries --- Adversaries are people who oppose each other in a conflict. They are also called opponents, parties, or disputants.

Advocacy --- Advocacy is the process of taking and working for a particular side's interests in a conflict. Lawyers engage in advocacy when they represent a client in a legal proceeding. Disputants can also engage in advocacy themselves--arguing for their own position in negotiation, mediation, or a political debate. Any attempt to persuade another side to agree to your demands is advocacy.

Affidavit --- A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the person making it.

Agreement to Mediate --- A document setting down the conditions under which the mediation will take place, including confidentiality, authority to settle and privilege. [see EEOC for their universal "Agreement to Mediate" forms; <http://www.eeoc.gov/mediate/uam.html>]

Alter ego --- A Latin phrase meaning another self. An alter ego company may result when the same owner and manager of one company shuts down operations and reopens with a new name, when it is actually the same business.

Alternative Dispute Resolution (ADR) --- Decision making processes to resolve conflicts that do not involve litigation or violence.

American Bar Association (dispute resolution section) --- The American Bar Association Section of Dispute Resolution provides its members and the public with creative leadership in the dispute resolution field by fostering diversity, developing and offering educational programs, providing technical assistance, and producing publications that promote problem-solving and excellence in the provision of dispute resolution services. [see <http://www.abanet.org/dispute/> for more information.]

Amicus curiae --- A Latin phrase meaning a friend of the court. A person who has no right to appear in a suit but is allowed to introduce argument or evidence, usually in the form of a brief, to protect his interests.

Amnesty --- The granting of a pardon for past offenses--especially political offenses--including, for example, human rights violations and war crimes.

Anchoring --- Anchoring is an attempt to establish a reference point (anchor) around which a negotiation will revolve and will often use this reference point to make negotiation adjustments. Anchoring often occurs when the first offer is presented at the beginning of a negotiation.

Analytical Problem Solving --- This is an approach to deep-rooted or intractable conflicts that brings disputants together to analyze the underlying human needs that cause their conflict, and then helping them work together to develop ways to provide the necessary needs to resolve the problem.



A

Animus, Anti-union --- Animus is a Latin term meaning mind, attitude, intention or disposition. Anti-union animus is the official term for anti-union sentiments that may affect various management actions and result in union organizers, members or representatives being harassed.

Appellate ADR --- Mediation programs have become increasingly popular among the nation's appeals courts. Each of the 12 federal circuits either has a settlement office or plans to open one shortly. On the state level, at least 50 appeals courts have used mediation at some time, and approximately 25 courts currently have active programs. Unlike trial-level ADR, which ranges from mandatory arbitration to multi-door courthouses, appellate programs tend to look very similar. In most programs, staff attorneys or outside lawyers conduct mandatory, pre-argument conferences in those cases that seem most likely to settle. Some appellate programs are geared exclusively toward settlement, while other programs also address case management and procedural issues.

Arbitrary --- A phrase describing an action or decision which is made without cause or without consideration of an objective standard, and is fundamentally random in nature

Arbitration --- An arbitrator is appointed by the parties to make a binding decision from which there are very limited grounds of appeal. [See also International Commercial Arbitration.]

Arbitration /Counsel or Arbitration Administrator --- The person at the sponsoring organization who handles administrative matters in arbitration proceedings.

Area-wide Bargaining --- Collective bargaining agreement which covers all the unionized employers and their employees in a specific geographical and industrial setting.

Assignment --- A transfer of all or part of the contractual rights and/or obligations to another party.

Assistant Mediator --- A newly trained mediator attending a mediation session to gain experience of the process and act as a companion to the lead mediator. The specific role of the Assistant is determined by the lead mediator but often includes note-taking, observing, drafting, co-mediating and running messages.

Assisted Stakeholder Dialogue --- The use of practical and flexible processes to improve relationships between stakeholders in order to achieve clear consensus, clarify issues or resolve an existing conflict.

ATNA --- This is a variation of Fisher and Ury's concept of BATNA--which stands for best alternative to a negotiated agreement. "ATNA" refers to any alternative to a negotiated agreement, not just the best one.

At-will --- Under common-law, this phrase describes the relationship between employer and employee that exists without a written contract or other agreement guaranteeing job security. An at-will employee may be terminated at the will of the employer without reason or cause. [See also Wrongful Termination.]

Authorized Signature --- The signature by a person with authority and power to represent and legally bind a party to a written agreement.

Avoidance ---The simplest form of dispute resolution in which the aggrieved party takes no steps to resolve the dispute.

Award --- Decision of an arbitrator which is enforceable in court.



B

Backlash --- Backlash is a negative response to an action. When someone or a group is forced to do something against their will they will often resist or try to get back at the person or group who forced them in the first place. This can result in a reversal of an apparently resolved situation, and may even escalate the conflict further.

Bad Faith --- When parties attend a mediation with undisclosed motives and without a willingness or ability to come to an agreement.

Bargaining Unit --- Which employees are to be represented if the union wins a representation election and who may vote in the election are initially proposed by the union starting the campaign. If the employer disagrees, the Board may have to investigate and conduct a hearing to determine the coverage by job classifications of the unit in question.

BATNA -- (Best Alternative To Negotiated Agreement) A measure developed by Roger Fisher and William Ury of the Harvard Negotiation Project which enables negotiating parties to evaluate their options. The BATNA is the best result that a party could hope for if it called off the negotiations.

Bachelors Degree in Mediation --- Cloverdale College has developed a Bachelor of Art Degree program with a concentration in mediation. They review candidate students career history and determine if any portion may be used on a transcript towards a Bachelors degree. [ref. <http://www.cloverdalecollege.org>]

Baseball or Final-Offer Arbitration --- In this process, used increasingly in commercial disputes, each party submits a proposed monetary award to the arbitrator. At the conclusion of the hearing, the arbitrator chooses one award without modification. This approach imposes limits on the arbitrator's discretion and gives each party an incentive to offer a reasonable proposal, in the hope that it will be accepted by the decision-maker. A related variation, referred to as "night baseball" arbitration, requires the arbitrator to make a decision without the benefit of the parties' proposals and then to make the award to the party whose proposal is closest to that of the arbitrator.

Binding Arbitration --- A private adversarial process in which the disputing parties choose a neutral person or a panel of three neutrals to hear their dispute and to render a final and binding decision or award. The process is less formal than litigation; the parties can craft their own procedures and determine if any formal rules of evidence will apply. Unless there has been fraud or some other defect in the arbitration procedure, binding arbitration awards typically are enforceable by courts and not subject to appellate review. [See also Non binding Arbitration.]

Blacklist --- A list of names or persons or firms to be discriminated against, either in employment or patronage.

Bona fide --- Latin phrase meaning "good faith." Normally it is used to mean real, actual or genuine; not feigned. [see also Good Faith"]

Bounded or High-Low Arbitration --- The parties agree privately without informing the arbitrator that the arbitrator's final award will be adjusted to a bounded range. Example: P wants \$200,000. D is willing to pay \$70,000. Their high-low agreement would provide that if the award is below \$70,000, D will pay at least \$70,000; if the award exceeds \$200,000, the payment will be reduced to \$200,000. If the award is within the range, the parties are bound by the figure in the award.

Boycott --- The refusal to deal with, buy, supply or handle the products of a business as a means of exerting pressure in a labor dispute.

Broadbanding --- The replacement of a salary schedule or pay classification system that has numerous salary grades or levels with one that has only a few "bands" that each carry wider pay-range spreads.

Brokered Talks --- Talks are often deadlocked because of the number of parties involved and the myriad of sensitive issues that run between some or all of them. Brokered talks can act as an impartial, creative force to kick start 'talks about talks', providing momentum towards optimal results.

Bumping --- A contractual right whereby employees scheduled for layoff are permitted to displace less senior employees in other jobs for which they are qualified.

Buyers Remorse --- Is a term that refers to doubts following a settlement or purchase where in the party or purchaser begins to wonder that he/she got the best deal. [See also Post Settlement Blues.]



C

CEDR Accredited Mediator --- Refers to those mediators who have reached the required standard for passing CEDR's five-day mediator training course. [See below "Certified Mediator."]

Capricious --- A phrase describing an action or decision which is made without cause or without consideration of an objective standard, and is totally subject to the whim or pleasure of the person or party in power.

Case management --- Case management refers to control of the movement of cases through a court, or a method of managing cases within the litigation process. Case management is not usually considered an ADR process, but ADR systems are often designed to be integrated with case management systems.

Case Valuation --- This hybrid ADR process provides litigants in trial-ready cases with a written, non-binding assessment of the case's judgment value, delivered by a panel of three attorneys with subject-matter expertise after a very short hearing. If the panel's valuation is accepted by all parties, the case is settled for that amount. If any party rejects the panel's assessment, the case proceeds to trial. Used only in the federal and state courts in Michigan, the arbitration-like valuation process is known widely by the misnomer "Michigan Mediation." Established in the Michigan state courts almost 20 years ago, today the process is used mainly for money-only contract, personal injury and civil rights cases.

Caucus --- Private meetings in which a mediator talks with the parties individually to discuss the issues and to define his or her positions and true interests in the outcome.

CBA --- Collective Bargaining Agreement; also known as "Labor Agreement" or "Union Contract". [see below on this page "Collective bargaining"]

Certified Mediator (Mediator Certification Programs) --- This is an arbitrary and non regulated process by which a private organization seeks to examine a mediator's qualifications, experience and abilities as a mediator. Because these programs are not usually sanctioned by a state or local government, the value of them to the public or indeed to the mediators who may consider applying for them, is questionable.

Charging Party --- The party who initiates and files a complaint usually in respect of some discrimination. This is a term used in EEOC (USA) cases to identify the plaintiff. [See also Plaintiff]

Checkoff --- An arrangement under which an employer deducts from the pay of employees the amount of union dues they owe and turns over the proceeds directly to the treasurer of the union.

Citizen Diplomacy --- Citizen diplomacy [see also Track Two Diplomacy] refers to unofficial contacts between people of different nations, as differentiated from official contacts between governmental representatives. Citizen diplomacy includes exchanges of people (such as student exchanges), international religious, scientific and cultural activities, as well as unofficial dialogues, discussions, or negotiations between citizens of opposing nations.

Class action --- A lawsuit in which the plaintiffs proceed not only on their own behalf, but on behalf of all others similarly situated or affected. Class action status can only be accorded by a court after certain requirements have been met.

Coercion --- Economic or other pressure exerted by an employer to prevent the free exercise by employees of their right to self-organization and collective bargaining; also, intimidation by a union or fellow workers to compel affiliation with the union.

Co-Existence --- Co-existence means living together peacefully in the same geographical area.

Cognitive Dissonance --- Is a tension experienced by most people when their behavior, feelings and beliefs are out of harmony. This phenomenon has a profound effect on conflict. For example, young lawyers who are required culturally to act aggressively, soon develop hostile emotions and belief systems about the "opposition." People who have "won" in the past using aggressive behavior may continue to use the same technique throughout their lives in dealing with conflict.

Collaborative Divorce --- A system for the dissolution of marriage that involves collaborative divorce trained attorneys, child specialists, divorce coaches, and financial professionals. All professionals who agree to act within the confines of 'collaborative divorce' agree not to proceed to litigation if the collaborative process fails.

Collaborative problem-solving --- The process of resolving a dispute or potential dispute through co-operative, face-to-face interaction between the affected parties.



C

Collaborative Planning --- Collaborative planning is like collaborative problem solving, but it allows the parties to anticipate a conflict and to work collaboratively to plan and manage ways to avoid the conflict.

Collective bargaining --- Workers agree to be represented as a group in negotiating contracts covering wages, benefits, and other conditions of employment. The TAA collectively bargains with the state of Wisconsin and the University every two years. Collective bargaining is the reason we have good health benefits, the tuition waiver, and increasing PA/TA pay equity.

Color of law --- The appearance of semblance, without the substance, of legal right. Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action taken under "color of state law."

Co-Med-Arb --- Addresses a problem that may occur in med-arb, in which a party may not believe that the arbitrator will be able to discount unfavorable information learned in mediation when making the arbitration decision. In co-med-arb two different people perform the roles of mediator and arbitrator. Jointly, they preside over an information exchange between the parties, after which the mediator works with the parties in the absence of the arbitrator. If mediation fails to achieve a settlement, the case (or any unresolved issues) can be submitted to the arbitrator for a binding decision.

Co-mediate --- When two mediators with different areas of expertise work on the same file. For example, if there is a family break-up and farmland is involved, a family mediator and an agricultural mediator might work on the file together.

Common law --- The body of laws and legal principles derived from English legal history that was accepted and, therefore, served as the framework for early American law. Different from any specific law enacted by the government, common law justice derives its authority from the usages and customs of immemorial antiquity.

Community Dispute Resolution Centers (CDRC) --- A generic name used to describe various kinds of community-based dispute resolution programs most of which offer mediation services by using trained volunteers. They deal primarily with disputes between individuals with ongoing relationships (landlord-tenant, employer-employee, domestic, and neighborhood conflicts.) The largest centers draw much of their caseload from police referrals or from local courts and prosecutors' offices. [see <http://www.nysdra.org> in NY State for more information on how CDRC's work]

Common courtesy --- When you agree to mediate using common courtesy, you are agreeing not to interrupt another speaker, and to avoid using inflammatory language.

Common Ground/Commonalities --- Common ground or commonalities refers to the things two people or groups share, or hold in common. These may include living in the same place, having similar values, interests, or needs, or even similar experiences or fears. Although disputants often assume they have nothing in common with their opponents, they almost always have some common ground--even if it is only a common desire to live in peace and security without having to fear the other.

Communication Channels --- Communication channels are the means available to communicate with another person or group. They may include direct face-to-face communication, telecommunications, or indirect communication--through third parties or the media.

Competition/Competitive Approach --- One side attempts to win and have the other side lose. [See also Adversarial Approach.]

Complicating Factors --- Conflict complicating factors are dynamics such as communication problems or escalation which, while common, are usually extraneous parts of the conflict which confuse the core issues in the conflict and make them more difficult to understand and deal with.

Comprehensive Mediation --- Mediation on all, rather than selected, issues, particularly in family disputes.

Compromise --- The settlement of a dispute by mutual concession. A compromise often results in both parties giving something up and meeting midway.

Concerted activity --- Action taken by an employee or employees (generally on behalf of fellow-workers) in order to improve their working conditions or benefits. Bargaining law considers this type of activity protected from retaliation or reprisal.



C

Concessions --- Concessions are things one side gives up to try to de-escalate or resolve a conflict. They may simply be points in an argument, a reduction in demands, or a softening of one side's position.

Conciliator / Conciliation --- The settlement of a dispute by mutual and friendly agreement with a view to avoiding litigation. A term often associated with ACAS and employment disputes. It can be used to mean the same process as mediation, although in some jurisdictions it suggests a different approach by the neutral.

Conflict --- When two or more people disagree. It has been said, "Anywhere people gather is an occasion for conflict."

Conflict Analysis --- Or conflict diagnosis, is an attempt intuitively or systematically to analyse confidently or speculatively at what are the causes of a dispute; and how far the dispute has changed in nature due to escalation. Analysis is then usually followed by an intuitive or systematic listing of possible methods to respond to the conflict.

Conflict Avoidance --- This is a concept that is growing in theory for workplace dispute resolution. It is a methodology of preventing unnecessary damage from dispute by putting in place a system to address issues early and thereby avoid conflict. [see <http://www.conflictavoidance.com>]

Conflict Resolution --- This term (along with dispute resolution) usually refers to the process of resolving a dispute or a conflict permanently, by providing each sides' needs, and adequately addressing their interests so that they are satisfied with the outcome.

Confidentiality Agreement --- All parties, observers and mediators that participate or witness a mediation will be required to sign a 'confidentiality agreement' This agreement assures that all information disclosed within the body of the mediation may not be disclosed outside the mediation discussion or used later in a legal proceeding. The mediator is protected within the agreement in that he or she may not be subpoenaed in a related legal matter. [See <http://www.mediationagency.com/pdf/confidentiality.pdf>]

Confidential Listener --- The parties submit their confidential settlement positions to a third-party neutral, who without relaying one side's confidential offer to the other, informs them whether their positions are within a negotiable range. The parties may agree that if the proposed settlement figures overlap, with the plaintiff citing a lower figure, they will settle at a level that splits the difference. If the proposed figures are within a specified range of each other (for example 10 percent), the parties may direct the neutral to so inform them and help them negotiate to narrow the gap. And if the submitted numbers are not within the set range, the parties might repeat the process.

Conflict Management --- This term refers to the long-term management of intractable conflicts and the people involved in them so that they do not escalate out of control and become violent. [See also Conflict avoidance <http://www.conflictavoidance.com>]

Conflict Transformation --- This term is being used more and more to refer to a change (usually an improvement) in the nature of a conflict; a de-escalation or a reconciliation between people or groups. Unlike conflict resolution, which denies the long-term nature of conflict, or conflict management, which assumes that people and relationships can be managed as though they were physical objects, the concept of conflict transformation reflects the notion that conflicts go on for long periods of time, changing the nature of the relationships between the people involved, and themselves changing as people's response to the situation develops over time. [See also Transformative Mediation.]

Conflicts of Interest --- This term refers to the situation in which a person has a vested interest in the outcome of a decision, but tries to influence the decision making process as if they did not. In other words, they stand to benefit from a decision if it goes a particular way, but they participate in the decision making process as if they were neutral.



C

Constructive Conflict/Confrontation --- This approach is based on the assumption that intense, long-term confrontations over important and difficult issues are inevitable. To limit destructiveness, parties and intermediaries involved in intractable conflicts should move away from the unrealistic goal of resolution, and focus, instead, on how these conflicts can be conducted more constructively. [See also Destructive Conflict Confrontation.]

Constructive discharge --- In some cases, a resignation provoked by management harassment so unbearable that the resignation may be construed by the court or an arbitrator as a form of discharge, restoring the employee's right to grieve or hold the employer liable for violating the employee's due process rights.

Consensus --- A mutually acceptable agreement that integrates the interests of all concerned parties. Consensus is different from decisions reached through voting or an individual or body making a unilateral decision. Consensus does not require unanimous consent. An agreement reached through consensus may not satisfy each participant's interests equally or receive a similar level of support from all participants. Once an agreement is reached through consensus, all parties will be committed to its implementation.

Constituents/Constituency --- Constituents or one's constituency refers to the people a decision maker represents. The constituents of a governmental leader are the citizens he or she represents in Parliament or other legislative body. The constituents of a negotiator are the people he or she is negotiating for; members of a union, perhaps, or of an interest group or business.

Constructive Conflict/Confrontation --- The term "constructive" refers to a conflict which has more benefits than costs--one that pulls people together, strengthens and/or improves their relationship (by redefining it in a more appropriate or useful way) and one that leads to positive change in all of the parties involved. It is contrasted with destructive conflict which has largely negative results--pushing people apart, destroying relationships, and leading to negative changes including an escalation of violence, fear, and distrust.

Contingency fee --- An arrangement made with a lawyer who thereby agrees not to require any fees or retainer, but will take payment from the client only if and when a settlement or award is won.

Contract-bar rules --- Rules applied by the labor board which prevent or bar a union representation election for the period of time during which an existing contract between a union and the employer is in effect, or for one year after a valid election has taken place.

Convening --- Helps to identify issues in controversy and the affected interests. The convener, usually a neutral party, generally determines whether direct negotiations among the parties would be a suitable means to resolve the issues; educates the parties about the dispute resolution process; and brings the parties together to determine negotiating ground rules.

Cooperative Problem-Solving --- This informal process usually does not use the services of a third party and typically takes place when the concerned parties agree to resolve a question or issue of mutual concern. It is a positive effort by the parties to collaborate rather than compete to resolve a dispute. Cooperative problem-solving may be the procedure of first resort when the parties recognize that a problem or dispute exists and that they may be affected negatively if the matter is not resolved. It is most commonly used when a conflict is not highly polarized and prior to the parties forming "hard line" positions. This method is a key element of labor-management cooperation programs.

Coordinator --- A neutral third-party, separate from the mediator, who organizes the mediation by contacting all parties to arrange times, dates and a location for the mediation to take place.

Cooperation/Cooperative Approach --- In cooperation, disputants work together to solve a mutual problem. According to Morton Deutsch, (Resolution of Conflict, 1973) a cooperative situation is one in which the goals of the participants are so linked that any participant can attain his goal if, and only if, the others with whom he is linked can attain their goals. It is contrasted with a competitive approach in which it is assumed that it is impossible to win, unless the other side loses.

Co-parenting --- A modern term for child custody which implies a cooperative style of parenting for parents who are no longer married or living together but who wish to maintain a good relationship for the sake of their children.

Core Issues --- We distinguish between core issues in a conflict, which are the fundamental interests, values, and needs which are in conflict with each other, and complicating factors, which are dynamics such as communication problems or escalation which, while common, are usually extraneous parts of the conflict which confuse the core issues and make them more difficult to understand and deal with.



C

Costing --- Costing is the process of assessing the costs and benefits of a particular action; not only in monetary terms, but in terms of time, resources, emotional energy, and other intangible effects on people's lives.

Counseling --- Counseling is a process where clients are helped in dealing with their personal and interpersonal conflicts by a third party therapist.

Counterclaims --- Are counterdemands made by a respondent in his or her favor against a claimant. They are not mere answers or denials of the claimant's allegations.

Court Annexed ADR --- Any ADR process which parties may be required or advised to undertake by the court, or an ADR facility which is offered by the court.

Court Annexed Arbitration --- A form of court annexed ADR in which an "arbitrator" gives a preliminary decision which, in some circumstances, may thereafter become binding upon the parties.

Creating Doubt --- This is the fundamental umbrella strategy of all negotiators, especially against positional bargainers. Doubts can be raised gently or assertively about alleged facts, evidence, rules, procedures, delays, costs and the range of possible or probable outcomes.

Credibility --- Credibility refers to whether or not a person or a statement is believed or trusted.

D

Damages --- Cash which may be recovered in the courts by any person who has suffered a loss or injury as a result of another's unlawful or negligent act or omission.

Data Conflict --- Is conflict caused by disputants having different information, or the belief that their information is irrefutable. Eg: "We have to continue logging because the economy of the town and it's citizens depend upon it - trees are not as important as the people." [See also Value Conflict.]

Decertification --- The withdrawal by the labor board of a union's designation as exclusive representative usually as a result of the loss of an election called for by employee petition.

Decision making process --- The decision making process is the process that is used to make a decision. It can be an expert process, where the decision is made by one or more "experts" who look at the "facts" and make the decision based on those facts; it can be a political process through which a political representative or body makes the decision based on political considerations, or it might be a judicial process where a judge or a jury makes a decision based on an examination of legal evidence and the law.

Declaratory Relief --- A controversy where the plaintiff, or charging party, is in doubt as to his legal rights and seeks a declaration from the court regarding those rights. [See also Charging Party and Plaintiff]

De-escalation --- De-escalation is the opposite of escalation. It is the ratcheting down of the intensity of a conflict which occurs as parties tire out, or begin to realize that the conflict is doing them more harm than good. They then may begin to make concessions, or reduce the intensity of their attacks, moving slowly toward an eventual negotiated resolution.

Defamation --- Injury to a person's character, fame or reputation, by false and malicious statements (may be libel and/or slander). In some cases an employer's blacklist or poor reference may be defamatory.

Defendant --- The party against which an action of complaint is brought against a party in a mediation or court of law. [see also Plaintiff]

De-humanization --- Is a psychological state and linguistic transition which occurs during conflict which both justifies past behavior; and encourages future aggressive conflict (eg policemen are "pigs"; Bill is "the manager", Mary is "that bimbo" etc)

De minimis --- Short for the latin phrase, de minimis non curat lex, which means the law does not concern itself about trifles. This phrase may be used to describe a violation of law which is so small that it is not worth litigating.



D

De novo --- Latin for anew or afresh. An appeal hearing is de novo when all evidence and proof considered at the prior hearing must be reintroduced and reconsidered.

Destructive Conflict/Confrontation --- Destructive conflict and confrontation has largely negative results--it pushes people apart, destroys relationships, and leads to a host of negative personal and social changes including an escalation of violence, fear, and distrust. [See also Constructive Conflict Confrontation.]

Dialogue --- Dialogue is a process for sharing and learning about another group's beliefs, feelings, interests, and/or needs in a non-adversarial, open way, usually with the help of a third party facilitator. Unlike mediation, in which the goal is usually reaching a resolution or settlement of a dispute, the goal of dialogue is usually simply improving interpersonal understanding and trust.

Discovery Master/Referee --- A neutral third party who assists in discovery disputes.

Dictatorial Process --- This term refers to authoritarian decision making processes in which one person (or a small group of people) make arbitrary decisions, supposedly on behalf of their people, but without any meaningful input from the people, nor any institutionalized process for reversing the decision if it is disliked by a majority of the people it affects. It is the opposite of democratic decision making processes, in which duly elected or appointed representatives or decision makers make decisions based on public input on behalf of their constituencies.

Diplomacy --- Generally, diplomacy refers to the interaction between two or more nation-states. Traditionally carried out by government officials, who negotiate treaties, trade policies, and other international agreements, the term has been extended to include unofficial exchanges of private citizens (such as cultural, scientific, and religious exchanges) as well as unofficial (sometimes called "citizen" or "track-two") diplomacy in which private citizens actually try to develop solutions to international diplomatic problems.

Disarming Strategies --- Disarming strategies are actions that are designed to break down or challenge negative stereotypes. If one person or group is seen by another as extremely threatening and hostile, a gesture of friendship and goodwill is a disarming move, which will alter perceptions of the other and can significantly de-escalate the conflict.

Disclosure --- The mediation process is based on full disclosure and it is important that all information relevant to the dispute is shared by the parties at mediation. However, if the need arises to have private discussions with each or either of the parties separately [see [page:// 4:C">Caucus](#)] from the other, that party may supply information which he or she will request be kept in confidence and not shared with the other party.

Discovery Process in Mediation --- Effectively, this is knowledge of information that would otherwise not be known outside the confines of a closed mediation. Discovery, or information acquired during a mediation is protected by the confidentiality agreement whether or not the mediation is successful. i.e. The California Supreme Court has held that disclosure of written materials, including witness statements, reports, analyses of test data and photographs, prepared for or used in a mediation cannot be compelled in subsequent litigation and that there are no good cause exceptions to this rule. *Rojas v. Superior Court*, 33 Cal.4th 407 (2004).

Dispute --- In mediation terms this is the point of contention between two or more parties.

Dispute Resolution --- Dispute resolution is the settling of conflict by what ever means the participants agree to help aid their resolution. [See also Conflict Resolution.]

Disputants --- Disputants are the people, groups, or organizations who are in conflict with each other. They are often also called "parties." (Third parties, however, are not disputants, but rather people who intercede to try to help the disputants resolve the dispute.) [See also Parties.]

Dispute Review Panel or Board --- A panel set up under the terms of a contract to adjudicate, mediate, or settle claims, disputes of controversies referred them, either on an interim or a final and binding basis.

Dispute System Design --- A studied approach or procedural framework that analyzes the means by which disputes are handled within an organization. Appropriate dispute resolution processes are then instituted to handle the specific types of issues that arise in an organization. [find more information at; <http://www.mediationagency.com/consultancy.html> and <http://www.conflictavoidance.com>]



D

Distributive Negotiation --- A negotiation type or process that normally entails a single issue to be negotiated. The single issue often involves price and frequently relates to the bargaining process. Also referred to as 'Win - Lose', or 'Fixed - Pie' negotiation because one party generally gains at the expense of another party. [See also Win-Lose]

Doctorate Degree in Mediation --- Offered through Graduate Theological Foundation (GTF), the degree of Doctor of Mediation (D.Med.) is designed for professionals actively engaged in mediation and/or conflict resolution within the framework of pastoral care and nurture. As an ecumenical program, the D.Med. will prove valuable to professionals working in cognates of ministry including the various forms of mediation such as working with the courts, family life programs, child care and juvenile facilities, health care institutions, professional organizations, chaplaincy programs, and in ecclesiastical settings. Professional mediators will find the program designed to enhance their work within the judicial system by elevating their professional status as peers among attorneys, judges, legislative administrators, and other members of the legal profession. Ministry professionals will, likewise, find their profile elevated owing to the specialized training offered in this degree whether serving in health care, ecclesiastical, judicial, or educational institutions.

[See <http://www.gtfeducation.org/html/Academics/Degrees/DMed.html>]

Domination Conflicts --- These are conflicts over placement in the social hierarchy-who has more status and power in a society or environment, and who has less; such as employer / employee disputes.

Double-breasted --- An employer (most often a construction contractor) who runs two operations, only one of which is unionized.

Double jeopardy --- A principle of constitutional justice that prohibits imposing two or more punishments for the same offense, and protects defendants from being tried twice for the same crime.

Duelling Experts Syndrome --- Is a common pattern of behavior which usually escalates, rather than resolves, conflict. Each disputant employs a different expert (lawyer, mediator, appraiser, engineer, psychologist), tells different stories to each expert, expressly or impliedly hints at the advice she wants from the expert, and the expert in order to gain favor tells the client what (s)he wants to hear (without additional qualifications). The professional egos of the experts then make it difficult for either expert to change his/her advice. The disputants then pay large amounts of money to resolve an avoidable conflict between the two experts rather than between themselves.

Due process --- The constitutional guarantee that no person shall be deprived of his life, liberty or property without due process of law, meaning ordinarily the right to a fair and objective hearing, or trial by jury as provided by whatever rules or laws are governing.

E

EATNA --- This is a variation of Fisher and Ury's concept of BATNA--which stands for best alternative to a negotiated agreement. "EATNA" refers to one's estimated alternative to a negotiated agreement, meaning what you think you can get, which may be different from what you really can get if you use a power strategy other than negotiation to pursue your goals. [See also, BATNA and WATNA.]

EDR (Effective Dispute Resolution) --- A body of dispute resolution techniques which avoid the inflexibility of litigation and arbitration, and focus instead on enabling the parties to achieve a better or similar result, with the minimum of direct and indirect cost. The term EDR is used in place of ADR to demonstrate that these techniques have become mainstream, alongside litigation and arbitration.

EEOC --- Equal Employment Opportunities Commissions describes mediation as; Mediation is a fair and efficient process to help you resolve your employment disputes and reach an agreement. A neutral mediator assists you in reaching a voluntary, negotiated agreement. Choosing mediation to resolve employment discrimination disputes promotes a better work environment, reduces costs and works for the employer and the employee. [learn more about EEOC mediation by visiting their web site; <http://www.eeoc.gov/mediate/> also includes a very good free video]

Early Expert Evaluation -- The use of an independent Expert to investigate and give his Expert opinion on any matter referred to him by the parties. Normally this will be used by the parties to assist them in reaching a settle or narrowing the issue.



E

Early Neutral Case --- A conference where the parties and their counsel present the factual and legal bases of their case and receive a non-binding assessment by an experienced neutral with subject-matter expertise and/or with significant trial experience in the jurisdiction. This assessment can form the basis for settlement discussions facilitated by the evaluator if the parties so choose. Early neutral evaluation is appropriate when the dispute involves technical or factual issues that lend themselves to expert evaluation. It is also used when the parties disagree significantly about the value of their cases and when the top decision makers of one or more of the parties could be better informed about the real strengths and weaknesses of

their cases. Finally, it is used when the parties are seeking an alternative to the expensive and time-consuming process of following discovery procedures.

Early Neutral Evaluation --- The use of a neutral to give his opinion on a matter often of the potential outcome of the dispute. An expert is appointed to review the case then tell the parties what the likely outcome would be if they went to trial. ENE is not binding and enables the parties to negotiate a settlement having heard the evaluation.

EDR --- (Effective Dispute Resolution) A body of dispute resolution techniques which avoid the inflexibility of litigation and arbitration, and focus instead on enabling the parties to achieve a better or similar result, with the minimum of direct and indirect cost. The term EDR is used in place of ADR to demonstrate that these techniques have become mainstream, alongside litigation and arbitration.

Ego --- A term that describes a person's tendency to present him or herself as correct and knowledgeable of the truth.

Elder Care Mediation --- Refers to mediation to deal with conflict between older people and their family members or custodial care givers in relation to decisions made about property, physical welfare, and other issues.

Emotions --- Emotions are psychological feelings that people have that usually result from and contribute to a conflict. Examples are anger, shame, fear, distrust, and a sense of powerlessness. If emotions are effectively managed, they can become a resource for effective conflict resolution. If they are not effectively managed, however, they can intensify a conflict, heightening tensions and making the situation more difficult to resolve.

Empowerment --- Empowerment means giving a person or group more power. This may be done by the party alone, through education, coalition building, community organizing, resource development, or advocacy assistance. It can also be done by a mediator, who can work with the lower power person or group to help them represent themselves more effectively.

Environmental Mediation --- The engagement of a neutral third party as mediator, whose first task is to undertake a preliminary assessment of whether direct negotiation is feasible, through discussion with the various stakeholders. A mediation approach that is close to facilitation, encouraging multi-party meetings, group discussion and exploration of issues. Mediators are sometimes wary of Environmental cases as they can be a tool for corporations and attorneys to cloak an incident with a signed confidentiality document.

Entrapment --- Is a psychological state whereby a disputant is apparently unable to weigh up the costs of a conflict because (s)he has become so committed to the vaguely defined concept of "winning", or at least "not losing". (eg the war with Iraq, "we have already lost so many soldiers we can't give up or their sacrifice will have been for nothing".)

Escalation --- Escalation is an increase in intensity of a conflict. According to Dean Pruitt and Jeffery Rubin (1986, 7-8), as a conflict escalates, the disputants change from relatively gentle opposition to heavier, more confrontational tactics. The number of parties tends to increase, as do the number of issues, and the breadth of the issues (that is, issues change from ones which are very specific to more global concerns). Lastly disputants change from not only wanting to win themselves, but also wanting to hurt the opponent. While conflicts escalate quickly and easily, de-escalation, a diminishing of intensity, is often much harder to achieve.

Evaluative Mediation / Mediator --- Evaluative mediation is a process modeled on settlement conferences held by judges. As the name 'evaluative' implies, it is a method used by professionals such as judges or attorneys to use their experience with the law to instruct during a mediation to guide the outcome or help the parties assess the true value of choices made during a mediation. [see also, Transformative and Facilitative]

Executive Tribunal --- Representatives who have previously not been involved in the dispute, usually senior management, act as a representative for each party. These 'representatives' sit as a panel together with a neutral facilitator. They hear argument from all parties then discuss a settlement in the absence of the parties. Not widely used and suitable only where the senior management of all parties are genuinely distant from the dispute. [See also Mini-trial]



E

Executive Hearing --- A without prejudice formalized settlement procedure in which advocates present their clients best case and reasons for settlement within strict time limits to a panel composed of one executive decision-maker representing each party. It is followed immediately by direct negotiation. The parties are often assisted by a neutral retained, he may be requested to preside and maintain the rules and an agreed timetable, to assist with negotiations and, if so agreed, to give an opinion as to the likely outcome of litigation. [see also Mini-Trial, Executive Tribunal]

Expert Determination --- The use of an independent Expert to investigate the referred matters and to give his opinion which becomes binding on the parties. Not strictly an ADR process.

Experts Meeting --- These can be either be arranged by Attorney, Court or Tribunal ordered, The object is to enable the Experts to determine those matters upon which they agree and those upon which they disagree. Not strictly an ADR process.

Extremists --- Extremists are people who take extreme views which are much stronger, and often more fixed than other people's views of the same situation. In escalated conflicts, extremists may advocate violent responses, while more moderate disputants will advocate less extreme measures.

F

Face Saving --- "Face" refers to one's image, both to oneself and to others. A face-saving approach is an approach that does not damage one's own or the other side's image. It does not make oneself or the other side appear weak, inept, or otherwise as a failure, but makes them look like they are wise and victorious, even when they are not. By allowing all disputants to save face, a negotiated settlement is much more likely to be reached. [See Golden Bridge.]

Facilitation --- A collaborative process used to help parties discuss issues, identify and achieve goals and complete tasks in a mutually-satisfactory manner. This process uses an impartial third party, the facilitator, who focuses on the processes and procedures of dispute resolution and decision-making. The facilitator is impartial to the issues being discussed, rarely contributes substantive ideas and has no decision-making authority.

Facilitative Mediation --- The mediator directs or guides the process of the mediation but does not 'evaluate' its outcome or advise the parties on a course of action to resolve their dispute. [see also Evaluative and Transformative mediation styles]

Facilitator --- An impartial leader / organizer of a meeting who provides structure and leadership to keep all participants on track and helps to focus parties on goals and objectives.

Fact-based disputes --- Fact-based disputes are disputes about what has occurred or is occurring. Such disputes can be generated from misunderstandings or inaccurate rumors (when someone is accused of doing something they did not actually do.) Facts-based disputes can also be generated by differing perceptions or judgements about what has occurred or is now occurring. For example, a dispute over the level of threat caused by the ozone hole or the greenhouse effect is a "facts-based dispute," even though all the scientific facts are not readily discernable or agreed by everyone involved.

Fact Finding Expert --- Independent expert appointed by agreement of the parties to investigate and report to them on all or any specified issues of fact and/or opinion in dispute between them, either to assist them in reaching a settlement by and ADR process or, as may be agreed, to determine those issues for the purposes of any on-going litigation or arbitration.

Featherbedding --- Controversial practices which tend to limit productivity and create an increased demand for workers, such as demanding payment for work no longer performed by workers because of automation or robotification.

Fiduciary obligation --- The obligation or trust imposed by law on officials of an organization making them liable for the proper use and disbursement of the organization's money, funds and property. As applied to a pension fund trustee or a union officer, the duty to act exclusively for the benefit of the plan participants, or union members, respectively.

Force --- The term "force" in dispute resolution refers to any situation when one disputant is made to do something against their will through threat.

Forcing Power Shortcuts --- Forcing Power Shortcuts are ways to measure relative power without having a protracted (and destructive) power struggle.



F

Frames --- Frames are ways of defining a problem. Some people may define a problem in terms of rights, while others may define it in terms of interests or relative power. These different positions are sometimes referred to as different "frames."

Framing --- Framing is the process of defining what a problem is about. Just as a frame can be placed around a photograph, including some portions of the picture, but cropping other portions out, people can define some aspects of a problem as important, while they ignore (or are unaware of) other issues that do not concern them. [See also Reframing.]

Free Riders --- A term used by unions to designate non-members within the bargaining unit who obtain, without cost, the benefits of a contract gained through the efforts of the dues-paying members. [see also "Bargaining Unit"]

Front pay --- A remedy sometimes awarded by the courts to victims of discrimination where it is impractical to order reinstatement. A front pay award leaves the incumbent in place and orders the employer to pay the discriminate an amount equivalent to what it is reasonable to estimate he or she would otherwise have earned in future employment.

G

Garnishment --- A procedure, usually resulting from court action, whereby a portion of an employee's wages is deducted and paid directly to a creditor.

Golden Bridge --- This is a phrase coined by William Ury in his book, *Getting Past No*. It refers to the act of finding a face-saving path for a party within a dispute to retreat from his or her formerly irrefragable position.
[www.amazon.com/Getting-Past-Negotiating-Confrontation-Cooperation/dp/0553371312]

Good Cop / Bad Cop routine --- Is a very effective and common team negotiation strategy whereby one member (A) is pleasant and the other (B) unpleasant. Thereby the opposition negotiators are constantly encouraged to talk to the pleasant person, as otherwise they will have to deal with the angry, irrational, crazy and out-of-control other team member.

Good Faith Bargaining --- A legal requirement arising out of Section 8(d) of the (USA) National Labor Relations Act on both the Union and the Employer (where the Union is certified as the exclusive representative). Enforced by the National Labor Relations Board the parties are required: *"To bargain collectively to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession..."*

Grandfather --- An exception provided in a contract article that either exempts or continues a prior benefit to those covered employees who were employed prior to the negotiation of that article.

GTF --- Masters and Doctorate Degree in Mediation program offered through Graduate Theological Foundation [ref. <http://www.gtfeducation.org/html/masters.html>]

Grievance Procedure --- A prescribed procedure agreed by a public or private body which it and/or its members are normally obliged to follow for the consideration and redress complaints or grievance brought against it or them by employees, client or members of the public.

GRIT (Gradual Reduction in Tension) --- This is a term invented by Charles Osgood to refer to a gradual de-escalation process, in which one side makes a unilateral, minor concession in the hopes that the other side will then be encouraged to do the same. This is then followed by a second concession, which hopefully is matched, and a de-escalation process then continues with matched concessions and disarming moves.

Good Faith --- - A concept of values that each party who participates in a mediation comes with an ideal to resolve the dispute in 'good faith'

Grievance --- A formal complaint usually lodged by an employee or the union alleging a complaint, or the misinterpretation or improper application of one or more terms in a collective bargaining contract.

Guardian ad Litem (GAL) --- Guardians ad litem are special advocates for children involved in the court process either through Juvenile, Civil or Family Court. A GAL may be a state employee, a state contract employee, or a trained volunteer. All GAL's must meet state requirements for training and competency.



H

Hard approach --- Use of physical or verbal aggression to resolve a dispute. See power for additional information. [Also called Hard bargaining, see below.]

Hard bargaining --- This is a term used to refer to adversarial, competitive bargaining that assumes that the opponent is an enemy to be defeated, rather than a partner to be worked with cooperatively. Fisher and Ury contrast hard bargaining with soft bargaining (which is highly conciliatory to the point of giving in on important points). They contrast both these approaches with a third approach, principled negotiation, which is neither hard, nor soft, but rather integrative in its approach. [See Soft Bargaining.]

Heads of Agreement --- The section of the settlement agreement in which the principal terms of the agreement are set forth.

High/soft; low/soft --- This is a culturally common way to begin negotiations by offering a solution which is considerably outside the range of expected eventual objective solutions.

Hot cargo --- Goods or products that come from a plant or production facility where there is a labor dispute in progress.

Hostile Environment --- Continuous, low level discriminatory remarks or behaviors that cumulatively 'poison' the workplace for the aggrieved victim enough to alter the terms, conditions or privileges of the workplace, and are commonly considered by the courts and the EEOC as equivalently unlawful to more overt forms of discrimination.

Human needs --- Human needs are things that all humans need for normal growth, development and happiness. Some conflict theorists--referred to as "human needs theorists" argue that the most difficult and intense conflicts, such as racial and ethnic conflicts, are caused by the denial of one or both groups' fundamental human needs: the need for identity, security, and/or recognition. In order to resolve such conflicts, ways must be found to provide these needs for all individuals and groups without compromise--as human needs "are not for trading."

Hybrid Process --- This term refers to any ADR process that incorporates elements from different processes into a unified proceeding. [See example, Med-Arb]

I

I-statements / You-Statements --- An I-statement expresses a feeling or a point of view that a person has. A You-Statement attacks or blames another person for causing a problem or doing something wrong. I-Statements are important ways to communicate in a dispute, because You-Statements often cause hostility and make resolution more difficult to reach.

IAM --- The mission of the International Academy of Mediators is to define standards and qualifications for the professional mediator of commercial disputes and to promote the mediation process as the preferred means of resolving disputes. [see also <http://www.iamed.org/>]

Incentive Arbitration --- In non-binding arbitration, the parties agree to a penalty if one of them rejects the arbitrator's decision, resorts to litigation, and fails to improve his position by some specified percentage or formula. Penalties may include payment of attorneys' fees incurred in the litigation.

Identity --- Identity refers to the way people see themselves or as groups they feel represent them.

Identity Conflicts --- Identity conflicts are conflicts that develop when a person or group feels that their sense of self is threatened or denied legitimacy or respect. Religious, ethnic, and racial conflicts are examples of identity conflicts.

Impartiality --- This refers to the attitude of the third party. An impartial third party will not prefer one side or one side's position to another side's position, but will approach them both as equally valid. In principle, this objective can be hard to achieve, although a third party can make an active effort to treat each side the same, even if he or she tends to prefer one party or one party's argument over the other. [See also Neutrality.]

Impasse --- Parties within a mediation are unable or unwilling to release their respective 'positions' in favor of compromise. Experienced mediators may employ question asking techniques to illustrate to the parties a fuller understanding of the possible consequence of their unyielding positions. [See also Stalemate]



Incompatible Interests --- Incompatible interests are things that people want that cannot be simultaneously achieved by all the owners of a dispute.

Independent Chairing --- An independent chairman will manage the process rather than dictate content. Independent chairing can be an end in itself, or it may lead to a more structured approach through formally brokered talks or another form of effective dispute resolution.

Independent Review --- An impartial investigator to set up terms of reference for an inquiry into facts, a problem or a difficult set of circumstances and to make recommendations or to report findings according to the terms of reference agreed.

Indictment --- A document prepared by the District or Prosecuting Attorney and approved by the grand jury which charges a person with the commission of a crime.

Injunction --- An order of a court or agency requiring a person to do or not do a certain act. Failure to abide by the terms of a court injunction may result in the court arresting and jailing the person for contempt of court.

Integrative Power and the Integrative System --- Integrative power is the power of social ties and the power of identity.

Interest --- The needs, desires, hopes and fears of the parties that lead them to take a particular position. The parties' interests serve as the motive for their positions. [see also Position]

Interest Arbitration --- The arbitrator, instead of interpreting and applying the terms of an agreement to decide a grievance, is authorized to determine what provisions the parties are to have in their collective bargaining agreement.

Interest-based bargaining --- A negotiating process where parties focus on their combined interests. Through an exchange of information the parties gain a greater understanding of their own and the other party's needs. The problem is defined in a way that allows the parties to approach a mutually-satisfactory solution. [See also below.]

Interest-Based Problem Solving --- Interest-based problem solving defines problems in terms of interests (not positions--see immediately below) and works to reconcile the interests to obtain a mutually-satisfactory solution. [See also above.]

Interest groups --- Interest groups are advocacy groups, groups of people who join together to work for a common cause. Environmental groups, groups defending human rights, and groups working for social causes are all interest groups.

International Commercial Arbitration --- Has been the key area of growth in arbitration since the 1960's. This growth reflects the parallel growth in international trade and the ease of having an arbitral award enforced in most countries compared with the difficulties that can arise in attempting to enforce a court judgement. (Arbitral awards are enforceable under the New York Convention of 1958.) Commercial arbitration is 'international' at its simplest when the parties are nationals of different countries. Arbitration allows the parties to select a tribunal that reflects both their cultures and to avoid the national courts of either party. [See also Arbitration]

International Public Arbitration --- Whilst International Commercial Arbitration is involved with private international law issues, International Public Arbitration involves issues of public international law, or more simply disputes between sovereign states. Whilst states have used arbitration to peacefully settle their disputes for millennia, it remains the great achievement of the Hague peace conference of 1899 that a Permanent Court of Arbitration was established in The Hague.

Intolerance --- Intolerance is the unwillingness to accept the legitimacy of another person, group, or idea that differs from one's own. It may result in an effort to get rid of the "objectionable" person or idea, or it may simply result in treating them in a subservient way, as occurs when people of certain racial or ethnic groups are discriminated against by the dominant group in a society.

Intractable Conflicts --- This term refers to conflicts that go on for a long time and resist most, if not all, attempts to resolve them. Typically they involve fundamental value disagreements, high stakes distributional questions, domination issues, and/or denied human needs--all of which are non-negotiable problems. They often involve unavoidable win-lose situations.

Intra-psycho conflict --- Is a conflict which has been mainly caused by a deep hurt carried by an individual (or group) whether (s)he goes. It is sometimes expressed that "we all carry baggage from our past" For example "my mother used to ignore me like you are doing". The conflict may at first present as having entirely different causes than such hidden causes.



J

Joint Legal Custody --- This means that both parents have equal rights and responsibilities, including the right to participate in major decisions determining the child's upbringing, including education, health care and religious training. [see also Legal Custody and Physical Custody.]

Joint Fact-Finding --- Joint fact finding is a process in which two or more disputants work together to clarify disputed facts in a conflict.

Joint Sessions --- Phases in a mediation when the negotiating parties are brought together. The Opening Joint Session takes the form of an introduction by the mediator and brief presentations by each party of their case at a round table meeting.

Judicial Appraisal --- A procedure, sometimes known as 'Rent-a-judge' where the parties appoint a judge to receive written representations from each side and make an appraisal of the likely result if the case goes to court. The parties must agree the form and extent of submissions and whether the appraisal is to be binding or not.

Judicial review --- A case brought before a court to determine if the decisions made by a labor board or other government agency are legal.

Judge Hosted Settlement Conferences --- The most common form of ADR used in federal and state courts in the USA is the settlement conference presided over by a judge or magistrate judge. Almost 94 of the federal district courts use judicial settlement conferences routinely, and nearly one-third of the courts assign this role almost exclusively to magistrate judges. The classic role of the settlement judge is to articulate judgments about the merits of the case and to facilitate the trading of settlement offers. Some settlement judges and magistrate judges also use mediation techniques in the settlement conference to improve communication among the parties, probe barriers to settlement, and assist in formulating resolutions. In some courts, a specific judge or magistrate judge is designated as settlement judge. In others, the assigned judge (or another judicial officer who will not hear the case) hosts settlement conferences at various points during the litigation, often directly before trial.

Just Cause --- A "due process" provision commonly negotiated into a collective bargaining agreement that requires the employer to demonstrate proof of an employee's guilt before taking disciplinary action like suspension, or termination. Without such a protection, common law generally allows employers to terminate employees "at-will" (without cause).

K

Kangaroo court --- A mock court set up without legal basis, such as a fraternity, sports team or army squad might set up to punish minor violations of organizational decorum.

L

Legal Advocates --- Legal Advocates work or volunteer at community programs, providing support to victims of domestic abuse. They explain the legal process, provide information and give referrals to legal or social service agencies. Although an advocate may accompany you to court he/she cannot speak for you. If you use an advocate, you are acting as your own attorney.

Legal Custody --- This means the right to determine the child's upbringing, including education, health care and religious training. [see also Joint Legal Custody and Physical Custody.]

Litigation --- Conducting a case through the courts. Litigation is started by the Claimant against the Defendant with each party instructing attorneys.

Legitimacy --- Legitimacy refers to the perceived fairness of a dispute resolution process.

Liquidated damages --- A court award available under some laws (Equal Pay Act) where the employer's violation was either willful or in reckless disregard of the law or the employee's rights thereunder. Such award generally provides for attorney fees and an amount equal to and in addition to the lost wages and benefits.

Lockout --- Shutdown of a worksite by the employer to discourage union membership or activity or to force employees to meet the demands or economic terms of the employer.



L

Logrolling --- Or Log Rolling, it is a negotiation strategy that involves making concessions or the 'trading-off' of issues so as to capitalize on their own respective and different strengths of preference for the issues involved in a negotiation.

Lose-Lose Situations --- This is a conflict or competition in which one side wins only if another side loses. [See also Win-Win.]

"Lumping it"; "giving up" or "yielding" --- Is probably the most common way of handling grievances in all cultures. ("That's life; don't complain; no-one will listen to you; it's not worth the hassle" etc)

M

Mandatory Mediation --- Some jurisdictions or court systems have established mandatory mediation programs in which parties to all court actions, or groups or classes of actions, are required to mediate. The goal of mandatory mediation is to provide support for early and collaborative settlement of disputes, thereby reducing cost, delay and overloading of the courts.

Master of Mediation (M.Med.) --- A degree program offered through Graduate Theological Foundation (GFT) is designed for professionals working in the various ministry fields of counseling and mediation in such settings as schools, parishes, health care facilities, judicial systems, police and fire departments, industrial and personnel relations and counseling institutions. Short-term residencies, written papers, and an exit project are required. [ref. <http://www.gtfeducation.org/html/masters.html> and <http://www.gtfeducation.org/html/masters.html>]

Med-Arb / Mediation-Arbitration --- Commonly known as "med-arb," a variation of the arbitration procedure in which an impartial or neutral third party is authorized by the disputing parties to mediate their dispute until such time as they reach an impasse. As part of the process, when impasse is reached, the third party is authorized by the parties to issue a binding opinion on the cause of the impasse or the remaining issue(s) in dispute. In some cases, med-arb utilizes two outside parties--one to mediate the dispute and another to arbitrate any remaining issues after the mediation process is completed. This is done to address some parties' concerns that the process, if handled by one third party, mixes and confuses procedural assistance (a characteristic of mediation) with binding decision making (a characteristic of arbitration). The concern is that parties might be less likely to disclose necessary information for a settlement or are more likely to present extreme arguments during the mediation stage if they know that the same third party will ultimately make a decision on the dispute. Mediated arbitration is useful in narrowing issues more quickly than under arbitration alone and helps parties focus their resources on the truly difficult issues involved in a dispute in a more efficient and effective manner.

Mediator --- A highly trained professional neutral that assists participants during the mediation process to reach a mutually agreeable solution.

Mediation --- A guided process where an impartial, or neutral 3rd party helps the participants of a mediation to negotiate a solution. The process is not binding unless or until the parties reach agreement, after which the final agreement can be enforced as a contract if need be. [ref. Frank Hanna, "<http://www.mediationagency.com/>]

Mediation Agreement --- A document setting down the terms of agreement between parties including all components of settlement such as; who, when, where, what and how clauses agreed to will be finalized. A mediated agreement may or may not be legally binding according to the type of agreement and the disposition of the parties.

Mediation Training --- When training in the principles of alternatives to dispute resolution, or ADR, mediation is the format most often instructed. The reason why mediation training has become so popular is because, with the right instructor, it encompasses all forms of ADR and seeks to define and understand the root of conflict at every angle. [ref. <http://www.mediationagency.com/training.html> The Mediation Agency's 40-Hour Mediation Training Program]

Mini-trial --- Representatives who have previously not been involved in the dispute, usually senior management, act as a representative for each party. These 'representatives' sit as a panel together with a neutral facilitator. They hear argument from all parties then discuss a settlement in the absence of the parties. Not widely used and suitable only where the senior management of all parties are genuinely distant from the dispute. [see also Executive Tribunal]

Multi-door Courthouse --- As dispute resolution options proliferate, choosing the correct option becomes a problem in itself. The multi-door courthouse has been proposed as an answer to this problem. This approach to managing civil cases recognizes that particular disputes may be suited to particular dispute resolution options. Disputes are analyzed and diverted to the appropriate dispute resolution option. The multi-door courthouse is a fundamental ADR model that is common in the U.S.



M

Multiparty Coordinated Defense --- A coordinated joint defense strategy in which a neutral facilitator helps multiple defendants negotiate, organize, and manage cooperative joint-party arrangements that are ancillary to the main dispute. In the process, they streamline the steps toward resolution. Coordinate defense efforts include agreements to: limit infighting among defendants; use joint counsel and experts. Assign and share discovery and research tasks; coordinate and share the results of procedural maneuvers; and apportion liability payments, should they be imposed.

Multi-Step --- (Also called Multi-Step Clause) Parties may agree, either when a specific dispute arises, or earlier in a contract clause between business venturers, to engage in a progressive series of dispute resolution procedures. One step typically is some form of negotiation, preferably face-to-face between the parties. If unsuccessful, a second tier of negotiation between higher levels of executives may resolve the matter. The next step may be mediation or another facilitated settlement effort. If no resolution has been reached at any of the earlier stages, the agreement can provide for a binding resolution through arbitration, private adjudication or litigation. One form of multi-step ADR is the wise man procedure, typically used when problems arise in long-term partnerships such as those in the oil and gas industry. Sometimes called "progressive negotiation" or "mutual escalation," this procedure refers matters first to a partnership committee which oversees the day-to-day operations of the project. If the problem cannot be resolved at that level, the wise-man option the next ADR step is employed.

Multi-track Diplomacy --- This term has been developed recently to reflect the idea that international exchanges can take many forms beyond official negotiations between diplomats. Examples of multi-track diplomacy include official and unofficial conflict resolution efforts, citizen and scientific exchanges, international business negotiations, international cultural and athletic activities and other international contacts and cooperative efforts.

N

NLRB --- The National Labor Relations Board is a USA government agency that administers union elections and arbitrates disputes between labor and management. Its judges are appointed by the Administration and tend therefore to be more or less helpful to workers depending on the politics of the administration that appointed them. In particular, Reagan and Bush made some anti-union appointments to the NLRB, which contribute to the difficulty for unions of achieving justice through the NLRB.

Negative Intimacy --- Is the psychological state of enjoying the conflict. Someone who is negatively intimate will undermine settlement, and continue the conflict at almost any cost. [See also, Bad Faith.]

Negotiation --- A process in which disputants communicate their differences to one another and use this knowledge attempt to resolve them.

Negotiated Investments Strategy --- A mediation process which has been used on a limited basis to bring together federal, state, and local officials, and community members to resolve differences of opinion, disputes, and problems related to the allocation and use of public resources. Examples of applications include urban redevelopment, historic preservations, and planning for the allocation of public resources in the face of major financial cutbacks.

Negotiation Loopbacks --- This term refers to the return to negotiation after rights-based and power-based processes are used to clarify respective rights and relative levels of power. These tests of rights and power determine the parties best alternatives to a negotiated agreement (their "BATNA"s). Once these are known, the parties can "loopback" to negotiation to avoid a protracted and costly struggle, while usually obtaining the same result.

Negotiated Rule Making --- Also known as regulatory negotiation, this ADR method is an alternative to the traditional approach of U.S. government agencies to issue regulations after a lengthy notice and comment period. In reg-neg, as it is called, agency officials and affected private parties meet under the guidance of a neutral facilitator to engage in joint negotiation and drafting of the rule. The public is then asked to comment on the resulting, proposed rule. By encouraging participation by interested stakeholders, the process makes use of private parties' perspectives and expertise, and can help avoid subsequent litigation over the resulting rule.

Neutrality --- The act of remaining impartial to one side or another. Having no vested interest; either emotional or real, in the outcome of a situation. [See also Impartiality.]

Neutral --- Independent third party who acts as mediator, conciliator or chairman in various ADR procedures.

Neutral Fact Finding --- Similar to Expert Determination but restricted to the clarification of particular issues and non-binding in that the neutral does not normally make an award.



N

Newsletter (Mediation) --- Many organizations offer newsletters to promote the concepts of mediation to the public and to keep mediation professionals informed about legislative updates and world-wide news. [see also The Caucus - a mediation newsletter published 4 times yearly; <http://www.mediationagency.com/pdf/thecaucusfall2005.pdf>]

New York State Dispute Resolution Association (NYSdra) --- A private not-for-profit professional membership organization committed to the use and promotion of peaceful dispute resolution.

Through leadership, education, promotion of professional standards and training, and development of innovative statewide programs, NYSDRA provides opportunities for people, communities, organizations and businesses to effectively respond to conflict. [see <http://www.nysdra.org/> for more information on how to support this organization]

Non-Binding Arbitration --- The parties can decide not to abide by the arbitrator's decision. [See also, Binding Arbitration.]

Nonviolent direct action/nonviolent struggle --- Nonviolent direct action is action, usually undertaken by a group of people, to persuade someone else to change their behavior. Examples include strikes, boycotts, marches, and demonstrations

O

The Orange and the Two Sisters --- This story is credited to the mediation training from Harvard Law School. It goes like this; There were two sisters and they had a dispute over an orange. The first sister felt it was her orange because she'd gone to the market and bought the orange. The second sister felt it was her orange because she'd lent her sister \$5.00 before she went to purchase the orange. If the dispute went to court, the first sister would probably be given the orange because when she purchased the orange, she acquired title to it. If the dispute went before arbitration, the arbitrator would most likely cut the orange in two giving each sister half of what they wanted. In mediation, a good mediator would find out what was the "interest" each sister had in the orange; what if one sister wanted the peel to bake a cake and didn't want the fruit, and the other wanted only to eat the fruit, and discard the peel? This story explains the importance of getting past the parties positions and uncovering their interests within a dispute and the power of mediation as a form of dispute resolution. [See also Win-Win.]

Ombudsman --- Usually an independent person whose role is to deal with complaints by the public against administrative (and, in some countries, corporate) injustice and maladministration, with the power to investigate, criticise and publish reports on his findings. He will normally have some power to recommended the payment of compensation.

On-Line Dispute Resolution (ODR) --- ODR takes existing dispute resolution mechanisms, applies technical resources and expertise over the Internet and can be delivered from any distance. All or part of the process can be online.

On-Line Mediation Training --- Cloverdale College offers an introductory level e-course on mediation as a required credit towards their B.A. degree.

[see also Mediation Bachelors Degree; B.Med. <http://www.cloverdalecollege.org/html/Courses/Coursework.html>]

Open Shop --- A bargaining unit in a company or workplace at which the workers, though represented by a duly-elected union, are not required to pay the union dues or service fees for representation which the union is nevertheless legally required to provide.

Opening Statements --- Oral presentations which are given after the Mediator's address and allow each party the chance to present an uninterrupted narrative of their case with the full force of feeling and certainty.

Overlay Problems --- The term refers to complicating issues within a dispute containing dynamics such as communication problems or escalation which are usually extraneous parts of the conflict which can confuse the core issues and make them more difficult to understand and deal with.



P

Paralegals --- Paralegals and legal assistants are non-lawyers who perform work usually done by a lawyer. They may research the law, draft documents, determine facts and provide procedural information. A paralegal who offers a legal opinion or advice without attorney supervision is breaking the law by practicing law without a license.

Parenting Consultant --- Individual appointed by stipulation of the parties or order of the court to assist the parties with communication and cooperation regarding parenting issues, meeting the children's needs and addressing the best interests of the children. This individual may consult with other professionals working with the parents and children. Parents will mutually agree upon the selection of the consultant and will sign an independent contract with the consultant that outlines the duties and authority of the consultant.

Parenting Plan --- A written agreement between parents not living together who have a child or children in common, dealing with parenting decision-making, disagreement resolution, residential arrangements and parenting time.

Participant --- Is any individual taking part in the mediation.

Partnering --- A long-term commitment between two or more organizations for the purpose of achieving specific business objectives by maximizing the effectiveness of each participant's resources. This requires changing traditional relationships and practices to a shared culture without regard to organizational boundaries. The relationship is based on trust, communication, dedication to common goals, and an understanding of each other's individual expectations and values. Expected benefits include improved efficiency and cost effectiveness, increased opportunity for innovation, and continuous improvement of quality of services and outcomes.

Party or Parties --- An individual, entity or group taking part in a mediation as a disputant. [See also Stakeholders.]

Past practice --- A particular working condition, benefit or custom that has been in existence and deeply ingrained over a period of time such that it is regarded as a part of the whole agreement.

Pattern Bargaining --- Collective bargaining in which the union tries to apply identical terms, conditions, or demands to a number of employers in an industry although the employers act individually rather than as a group.

Pathfinder Mediation --- The use of an appointed mediator to help parties clarify the real differences or information requirements they need to address in a dispute before the stage of formal settlement discussions.

Peace Building --- Peace building is the process of restoring normal relations between people. It requires the reconciliation of differences, apology and forgiveness of past harm, and the establishment of a cooperative relationship between groups, replacing the adversarial or competitive relationship that used to exist.

Peacekeeping --- Peacekeeping is the prevention or ending of violence within or between nation-states through the intervention of an outside third party that keeps the warring parties apart. Unlike peacemaking, which involves negotiating a resolution to the issues in conflict, the goal of peacekeeping is simply preventing further violence.

Peacemaking --- Peacemaking is the term often used to refer to negotiating the resolution of a conflict between people, groups, or nations. It goes beyond peacekeeping to actually deal with the issues in dispute, but falls short of peace building, which aims toward reconciliation and normalization of relations between ordinary people, not just the formal resolution which is written on paper.

Peer Mediation --- The use of a trained neutral contemporary or student mediator to bring about the resolution of conflict between parties. [See also Adult Peer Mediation.]



P

Peer Review --- A problem-solving process where an employee takes a dispute to a group or panel of fellow employees and managers for a decision. The decision may or may not be binding on the employee and/or the employer, depending on the conditions of the particular process. If it is not binding on the employee, he or she would be able to seek relief in traditional forums for dispute resolution if dissatisfied with the decision under peer review. The principle objective of the method is to resolve disputes early before they become formal complaints or grievances.

Typically, the panel is made up of employees and managers who volunteer for this duty and who are trained in listening, questioning, and problem-solving skills as well as the specific policies and guidelines of the panel. Peer review panels may be standing groups of individuals who are available to address whatever disputes employees might bring to the panel at any given time. Other panels may be formed on an ad hoc basis through some selection process initiated by the employee, e.g., blind selection of a certain number of names from a pool of qualified employees and managers.

Persuasion --- Persuasion involves convincing another party to change their attitude and/or their behavior. Although this can be done through coercion, we generally use the term "persuasion" in a more positive sense--to refer to emotional or rational appeals based on common values and understandings.

Physical custody --- Including residence, means the routine daily care and control and the residence of the child. [see also Joint Custody and Legal Custody.]

Pie card members --- Old union slang and term of contempt to describe people for whom the union card was just a source of income and who did not actually believe in union principles. For this reason, the term would sometimes be used to describe union employees or staff who held union membership by virtue of their employment.

Plaintiff --- A person, or charging party, who brings an action of complaint in a mediation of court of law. [see also Defendant, Responding party and charging party]

Polarization --- Polarization of a conflict occurs as a conflict rises in intensity (that is, escalates). Often as escalation occurs, more and more people get involved, and take strong positions either on one side or the other. "Polarization" refers to this process in which people move toward extreme positions ("poles"), leaving fewer and fewer people "in the middle."

Policy Dialogue --- Informal discussion of public policy issues incorporating many different interested parties. This process usually clarifies key issues, and increases understanding between groups that are often publicly opposed to one another. Not to be confused with a formalized process used to decide policy.

Position --- In the context of a dispute, a position is the ground upon which a party maintains their right to hold the belief that they are right and the outcome of the dispute should favor them. [See also Interests]

Post-Settlement Blues --- This term describes the feelings of regret experienced by some negotiators soon after agreeing to a settlement. They have difficulty remembering events during the negotiation that caused them to relent on certain terms within the agreement and afterwards wonder if they may have given away too much. [See also Buyers Remorse.]

Practitioners --- Practitioners are people who engage in conflict resolution as a profession--mediators, arbitrators, facilitators, and diplomats, for example.

Precedent --- An adjudged case or decision of a court of justice, considered as furnishing an example or authority for an identical or similar case arising later. A lower court is expected to follow the precedents set in the higher courts.

Predispute ADR Contract Clause --- A clause included in the parties' business agreement to specify a method for resolving disputes that may arise under that agreement. It may refer to one or more ADR techniques, even naming the third party that will serve as an arbitrator or mediator in the case. Predispute agreements requiring arbitration of consumer disputes, or entered into as a condition of employment, have generated substantial backlash lately from people who argue that these clauses are adhesion contracts.

Pre-hearing Review --- In arbitration - as for pre trial review.

Preliminary Meeting --- In arbitration - as for Pre Trial review.



P

Pre-trial Review --- In litigation the preliminary consideration of a case with a view to giving directions as to its speedy future handling.

Preemption --- The right of one law over another in circumstances where the rights or remedies of the one law conflict with the other. Generally, federal laws preempt state laws.

Pre-negotiation --- The process of preparing for negotiation. It includes assessing the conflict and designing the process as well as anything else necessary to bring disputing parties together to begin resolving their differences. May be used interchangeably with convening.

Preponderance --- A greater weight of evidence, or evidence which is more believable and convincing in comparison to that which has been presented by the other party in a suit or grievance.

Presumption --- An advantage of proof legally accorded to one side in a suit or trial that in the absence of any evidence or without convincing evidence to the contrary that party's argument or version of the facts shall be accepted as true, and the burden of proof rests with the opposite side.

Pretext --- A legal excuse to do something which otherwise would be illegal. In discrimination cases, for instance, it may be shown that the apparently innocent motive behind an action may conceal a discriminatory intention.

Prima facie case --- A Latin expression meaning "at first appearance," it is the minimum threshold amount of evidence or proof sufficient for the accuser or plaintiff to win the case if there were no defenses or additional evidence presented by the accused/respondent.

Principled Negotiation --- This approach to negotiation was developed by Fisher and Ury and first presented in their best-selling book, *Getting to Yes*, in 1981. Basically an integrative negotiation strategy calls for "separating the people from the problem," negotiating on the basis of interests rather than positions, identifying options for mutual gain, and using objective criteria to judge fairness of any proposed settlement.

Private Judges or Rent-A-Judge --- A fairly new innovation by some private dispute resolution firms and some courts. Retired judges typically are used to hear these cases which would have been taken to real court, and the parties agree in advance to accept the decision as if it were a real court decision. The advantages of this process are speed, privacy, and the ability of the parties to select a judge with expertise in the disputed matter.

Private Judging --- The popular name given to the procedure in which the court can (on stipulation of the parties) refer a pending lawsuit to a private neutral for trial with the same effect as though the case were tried in court. The verdict can be appealed through the regular appellate court system.

Problem Solving --- This term is sometimes used to refer to analytical problem solving workshops that seek to analyze and resolve conflicts based on identifying and providing the underlying human needs. In other situations, it refers to an approach to mediation that focuses primarily on resolving the conflict (as opposed to transforming the relationships of the people involved).

Problem Solving Approach --- The problem solving approach to conflict involves working cooperatively with the other disputants to solve a common problem. It can be contrasted with the adversarial approach which views the other disputants as opponents or enemies to be defeated, not cooperated with.

Pro bono --- A Latin phrase meaning "for the good," short form of "for the public good. An arrangement whereby a lawyer will accept a client for representation without charging the client any fees or retainer at all.

Project Mediation --- A dispute prevention mechanism where a mediator is appointed at the outset of a long project or major business relationship, to act as the point of contact when communication problems are anticipated or arise.

Pro se --- A Latin phrase meaning 'for oneself.' An arrangement in which a party to a law suit is represented by him or herself.

Protected Class --- Anti-discrimination laws only regard unequal or unfair treatment as unlawful discrimination when the victim is a member of a defined group known as a protected class. The first civil rights laws protected only race and color. As the principle of discrimination evolved over the years more laws were passed and more groups were added. Federal protected classes now include race, color, national origin, religion, sex (or gender), age (over 40), and disability. State law (HEPA) further protects ancestry, marital status, sexual orientation, as well as arrest and court record (in most cases).



P

Positional Bargaining --- A negotiating process where each party puts forth its ideal view or demand of how the dispute will be resolved. Each side then states, restates and refines its position in the hope of moving towards a solution acceptable to all parties. Often, the positions are so contrary and each party's view of the dispute so mutually-exclusive that the only hope is for one or more parties to compromise. With the parties each conceding their interests or "compromising," the solution is reduced to a level that is unsatisfactory for all.

Punitive damages --- A Monetary award made by the court that goes beyond simple reimbursement for losses suffered (actual or compensatory damages) and, in the manner of a fine, assesses the defendant an amount of cash designed to punish the defendant for his evil behavior or to make an example of him/her.

Power Balancing --- The mediator has a duty to ensure balanced negotiation and to prevent manipulative or intimidating negotiation techniques.

Public Policy Mediation --- A form of mediation that brings together representatives of business, public interest groups, and government to negotiate agreements on policy development implementation, or enforcement. Facilitators or mediators are usually used to organize and guide the process.

Q

Quid pro quo --- A Latin phrase meaning literally, "What for what." The phrase describes an implied or expressed expectation that one party will get something for something else given up. "Quid pro quo sexual harassment, for example, is the most overt form of harassment in which the harasser makes it clear that failure to submit to the sexual demands will result in loss of employment or some other right, opportunity or benefit.

Quorum -- The minimal number of officers and members of a committee or organization, usually a majority, who must be present for valid transaction of business.

R

Racketeering --- Formerly, an organized conspiracy to commit the crimes of extortion or coercion. Under the provisions of RICO, two or more crimes (including illegal use of the phone or mail) related to one criminal purpose and committed within the same (ten year) period.

Rank and File --- The membership of a union or similar organization as distinct from the organization's leadership, officers and/or staff.

Reality Testing --- A tool used by mediators that involves displaying to a party the picture they have drawn of their position, and encouraging them to test what they see. Whilst use of the tool requires particular sensitivity, it can be vital for helping parties to adjust their position and become more flexible.

Reasonable firm --- This is a less common method of beginning negotiations. The speaker gives a long explanation how (s) he used objective criteria from several reliable sources to calculate an offer; ("reasonable") warns that (s)he will not be able to move off this offer ("firm"); then eventually makes the offer.

Recognition --- The employer's acknowledgment of a union as the exclusive bargaining agent for the employees, given either voluntarily upon evidence of an employee petition, or by legal requirement after an election conducted by the government.

Reconciliation --- Reconciliation is the normalization of relationships between people or groups.

Reflective Listening --- Paraphrasing (putting into one's own words) what someone has said, including the content and the feelings. This technique is used to let another person know you have really heard when she or he said. [See also Reframing.]

Reframing -- A tool used by mediators that involves changing words, the complexion on words and circumstances and the order in which ideas are presented in order to allow a situation to be viewed more positively. [See also Framing.]

Regulatory Negotiation --- A form of public policy mediation where parties having a stake in the proposed government regulations reach agreement on key provisions through the assistance of a mediator or mediators.

Resolution --- An agreement or partial agreement that may or may not require binding with a Mediated Agreement.



R

Resolution-Resistant Conflict --- This term refers to conflicts that are highly difficult, but not impossible, to resolve.

Restitution --- Restitution involves paying a person or group back for harm that was done to them.

Restorative Process --- Any course of action in which those harmed, those causing the harm and/or any other individual or community member affected by the act actively participate together in the resolution of matters arising from the act, often with the help of a fair and impartial third party. Examples of restorative processes include mediation, conferencing, and sentencing circles. United Nations Economic Council, 2002
'Any process in which the victim, the offender and/or any other individuals or community members affected by a crime participate actively together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party'.

Restorative Justice --- Restorative justice is justice that is not designed to punish the wrong-doer, but rather to restore the victim and the relationship to the way they were before the offence. Thus, restorative justice requires an apology from the offender, restitution for the offense, and forgiveness from the victim. Often this is accomplished through victim-offender reconciliation programs which may operate at either the interpersonal or intergroup level.

Responding Party --- Any party, or defendant, who files a response to the mediation request and attends the mediation. [See also Charging party.]

Retribution --- Retribution is retaliation--getting back at someone for something they did to hurt you.

Retroactive pay --- Wages paid to workers either for time worked under contract extension, and therefore without a new raise; or for time during which a worker was paid at an incorrect (lower) rate. The latter occurs following a successful grievance. Retroactive pay is sometimes called "back pay."

Rights-Based Mediation --- An approach to mediation where the neutral takes a relatively proactive role, ensuring that settlements reflect statutory rights and legal entitlements.

Rights arbitration --- The appeal of an unresolved grievance to an impartial arbitrator for final and binding determination. Sometimes called "grievance arbitration." The arbitrator determines the meaning of the contract and clarifies and interprets its terms. Arbitration, where it is available, is usually the last step in the grievance procedure.

Right-to-work state --- This is a deceptively wholesome title to a union-busting law that makes it illegal for a union to have an election to instate Fair Share Fees. This means that only union members provide financial support to the union that works for better wages and working conditions for all of the workers who are represented by the union. [see At will work state.]

S

Satisfaction Triangle --- Is a symbol used to remind ADR practitioners and judges, that settlements are more likely to be reached and to last if they reflect three elements of satisfaction - procedural (eg "we were listened to") emotional (eg "my sense of despair was acknowledged and legitimated"); substantive ("the outcome was in the range of feasible results if the conflict was not settled")

Scoping --- Scoping is the process of determining and locating all the parties, or owners of, a dispute. [See Stakeholders below.]

Settlement --- If agreement is reached between the parties the mediator prepares a written contractual record of the terms of the settlement. A draft copy of the proposed settlement is issued to each party before the final mediation session. When each party is satisfied with the final terms of the settlement, it is signed by both parties with a copy provided to each. The settlement once signed may be legally binding if it needs to be. [see also, Agreement]

Settlement Conference --- A Pre-Trial review by a judge who acts as a mediator, in the event the Mediation is not successful the matter is tried by a different judge. Note: Although "suggestions" may be made by a trial judge that the parties should settle this should not be confused with Mediation.

Settlement Agreement --- A brief document designed to set forth in clear and understandable language the salient terms of a negotiated agreement. See also Heads of Agreement.



S

Settlement Week --- In a typical settlement week, a court suspends normal trial activity and, aided by bar groups and volunteer lawyers, devotes itself to the mediation of long-pending civil cases. Mediation is the mainstay ADR method in a typical settlement week. Volunteer lawyers conduct mediations in courtrooms, conference rooms and other areas of the courthouse. Sessions may last an hour or two, with additional sessions held as needed. Unresolved cases return to the court's docket. Settlement weeks are used regularly only in two federal district courts. The process is used more widely in state courts and a few federal courts send cases to settlement weeks sponsored by local state courts.

SICA® -FICA® --- A charitable foundation, based in The Hague, for the promotion and maintenance of best standards in international commercial conflict management, including good governance. [see also <http://www.sica-fica.org/> for more information]

Simply Mediation --- A UK mediation facility dedicated to offering the best mediation services for people in the United Kingdom [See also <http://www.simplymediation.com>]

Special Masters --- Judicial adjuncts appointed by a judge to conduct mediation, arbitration, fact finding, or settlement negotiation. A special master may develop an agreement, implement one, or help enforce an agreement or a judge's decision.

Social context --- The term "social context" refers to the social relationships that exist in a community at the time the conflict occurs.

Soft Bargaining --- In their book, *Getting to Yes*, Fisher, Ury, and Patton compare three kinds of negotiation or bargaining: soft, hard, and principled. Like hard bargaining, soft bargaining involves the negotiation of positions, rather than interests. However, to avoid the common problems associated with bargaining over positions, the negotiators will take a "soft" approach: treating the participants as friends, seeking agreement at almost any cost, and offering concessions easily in the interests of preserving (or creating) a good relationship with the other side. [See also Hard Bargaining.]

Stable Peace --- Stable peace is the situation in which two countries do not even consider war to be an acceptable or possible option for dispute resolution between them. It is contrasted with unstable peace (in which countries are at peace but think that war is possible at a future time).

Stakeholders --- Stakeholders (or parties to a dispute) are people who will be affected by a conflict or the resolution of that conflict. It includes current disputants, and also people who are not currently involved in the conflict but might become involved because they are likely to be affected by the conflict or its outcome sometime in the future. [See Scoping above, or Parties.]

Stalemate --- A stalemate is a standoff; a situation in which neither side can prevail in a conflict, no matter how hard they try. Often parties must reach a stalemate before they are willing to negotiate an end to their conflict. [See also Impasse.]

Statute of limitations --- The provisions in any law or laws that limit the time when a plaintiff may bring suit or the time before which the defendant may be liable for losses or damages.

Stereotyping --- Stereotyping is the process of assuming a person or group has one or more characteristics because most members of that group have (or are thought to have) the same characteristics.

Stipulation --- An agreement between the parties to mutually accept some facts or evidence as true and undisputed.

Stipulation for Certification --- In an organizing campaign, this is an agreement between the union and the employer.

Structural Conflict --- Is conflict caused by patterns or structures of actual or perceived power which create perceived inequality of bargaining power. (eg "banks always beat customers"; "women always win in Family Court"; "the legal system requires us to draw up inflammatory documents" etc).

Structured Settlement Conference --- In some territories is an Executive Hearing but in others it is a specialist process in personal injury litigation.

Subpoena --- A process document issued out of court requiring a witness to attend. A subpoena duces tecum further requires the witness to bring relevant books or records.



S

Substantial evidence --- A considerable weight of relevant evidence that a reasonable mind would accept as adequate to support a conclusion.

Summary Bench Trial --- A pretrial procedure used in non-jury cases intended to facilitate settlement, consisting of a summarized presentation of a case to a Judicial Officer whose decision and subsequent factual and legal analysis serves as an aid to settlement negotiations.

Summary Jury Trial --- A non-binding, abbreviated mock trial using a panel of actual jurors. Rules of evidence and testimony are usually modified to expedite the process, and negotiations or a mediation generally follow the trial.

S.W.O.T. --- A useful tool for helping people to identify and analyse their Strengths - Weakness' - Opportunities - and Threats during a mediation or negotiation. [See also ZOPA]

T

Tactical Escalation --- This is intentional escalation, when one (or multiple) parties escalate a conflict on purpose to try to mobilize support for their own side.

Third Parties --- Third parties (e.g. an advisor or representative) should always be welcomed at a mediation and could even be considered an asset in certain situations where their presence may be a comfort or support to one of the parties. All witnesses to the mediation will be required to sign the confidentiality agreement so their presence should not be a concern to opposing parties.

Third Party Intervention --- The term "third party" [see above] usually refers to a person who gets involved in a dispute in an effort to help the disputing parties resolve the problem. This third party can be a neutral outsider, or he or she may be a person already involved in the conflict (an insider) who takes on the role of a mediator to help work out a mutually-acceptable resolution.

Threat --- A threat is any intimidatory statement or action that causes another person emotional or physical damage by limiting their options either real or perceived.

Tool-box of Interventions --- Is a colloquial phrase to describe the range of possible interventions, or styles of mediation, that practitioners use to help parties during a mediation. Professional dispute resolvers tend to spend a lifetime expanding the number of tools in their toolbox; and enjoy swapping anecdotes and theories about interventions. Creating doubt is the fundamental umbrella strategy of all negotiators, especially against positional bargainers. Doubts can be raised gently or assertively about alleged facts, evidence, rules, procedures, delays, costs and the range of possible or probable outcomes. [See also "types" of mediation; Evaluative, Facilitative and Transformative.]

Tort --- A wrongful act that violates a person's private or civil rights and creates a liability under which the victim of the violation may sue the person or persons responsible in civil court.

Track Two Diplomacy --- As originally conceived by Joe Montville, the term "track two diplomacy" refers to private citizens negotiating topics that are usually reserved for official negotiations-the formal resolution of an ongoing conflict or arms reductions [see also Citizen Diplomacy]

Transformative Mediation --- Transformative mediation is based on the values of empowerment of each of the parties as much as possible. This process tries to help the parties empathise with the each others needs, interests, values and points of view. [see also, Facilitative and Evaluative.]

Training, The 40 or 60 Hour Mediation Course --- When training in the principles of alternatives to dispute resolution, or ADR, mediation is the format most often instructed. The reason why mediation training has become so popular is because, with the right instructor, it encompasses all forms of ADR and seeks to define and understand the root of conflict at every angle. [ref. <http://www.mediationagency.com/next40hourclass.html>]

Trial --- A process where a judge or a jury makes a binding decision based on the merits after a full public hearing of the case.

Tribal Conflict --- Is an analysis of the main cause of conflict is emanating from people who are in the "background". The conflict is being driven mainly by the comments, money and expectations of tribal members including relatives, friends, bosses, next-door-neighbors and lawyers.



T

Triggering Events --- A triggering event is an event that initiates a conflict.

Twenty-Four Hour Rule --- Employers and Unions are prohibited from making election speeches on company time to massed assemblies of employees within 24 hours before the scheduled time for conducting an election [Peerless Plywood Co. 107 NLRB 427, 33 LRRM 1151 (1953)].

Two-Track Approach --- Involves use of ADR processes or traditional settlement negotiations in conjunction with litigation. Representatives of the disputing parties who are not involved in the litigation are used to conduct the settlement negotiations or ADR procedure. The negotiation or ADR efforts may proceed concurrently with litigation or during an agreed-upon cessation of litigation. This approach is particularly useful in cases when: it may not be feasible to abandon litigation while the parties explore settlement possibilities; or as a practical matter, the specter of litigation must be present in order for the opposing party to consider or agree to an alternative mechanism. It also is useful when the litigation has become acrimonious or when a suggestion of settlement would be construed as a sign of weakness.

U

Union Shop --- A bargaining unit in a company or workplace in which all the workers whom the union is legally required to represent must either pay the union dues or a service fee for its representation.

V

Values --- Values are the ideas we have about what is good and what is bad, and how things should be.

Value Conflict --- Is conflict caused by different beliefs on what is true or important (eg "lying is wrong"; "trees are more important than logging." [See also Data Conflict.]

Value Differences --- Value differences are differences in people's fundamental beliefs about what is good and bad, right and wrong.

Venue --- In the context of a mediation, a 'venue' is a neutral location that provides confidence in the proceedings towards resolution.

Verbal --- Communication using words. Its opposite, "non-verbal," refers to gestures and grunts. Verbal communication may be oral or written. (NOTE: Do not use "verbal" when you mean "oral" as in an 'oral warning').

Verbal Sleight of Hand --- A methodology for controlling anger and extreme emotions in mediation. From the book, Conflict Resolution and Mediation in the Real World by Frank Hanna. [<http://www.frankhanna.com>]

Vesting --- A contractual right by which an employee, after a designated period of employment, is entitled to the pension benefits earned once his/her service is terminated.

Victim / Offender Mediation --- A process in which victim(s) and offender(s) communicate with the help of an impartial third party, either directly (face-to-face), or indirectly a third party, enabling the victim(s) the opportunity to express their needs and feelings, and offender(s) the opportunity to accept and act on their responsibilities. This may be used in place of the criminal justice process, or during or after it. [see <http://www.voma.org>]



W

Waiver --- The intentional (knowing) and voluntary relinquishment of a known right.

WATNA --- A measure developed by Roger Fisher and William Ury of the Harvard Negotiation Project which enables negotiating parties to evaluate their options with the worst possible scenario. The reverse of BATNA, or The Worst Alternative To A Negotiated Agreement. People evolved in negotiation should always have both their BATNA and WATNA prepared in advance.

Weingarten rights --- So called after a 1974 U.S. Supreme Court decision (420 US 251) which ruled that an employee has the right to a union representative in any interview the employer might hold that is intended to investigate a possible discipline charge against the employee.

Whistleblower --- An employee or former employee who reports misconduct to government agencies, organizations or companies that have the authority to take corrective action.

Wildcat strike --- A spontaneously organized strike triggered by an incident on the job, usually unauthorized by the union leadership and of short duration.

Win-Lose (Adversarial) Approach --- This is the approach to conflict taken by people who view the opponent as an adversary to be defeated. It assumes that in order to win, the opponent must lose. This is opposite to the win-win approach to conflict that assumes that if the disputants cooperate, a solution which provides a victory for all sides can be found. [See also Distributive Negotiation]

Win-Win --- A situation in which both sides to a dispute gain 100% of what they wanted. [See Orange and Two Sisters.]

[The] Wise Men or Women --- Are respected senior executives of each company who are uninvolved in the conflict. These officials are given a fairly short time frame (sometimes just 30 days) to investigate the dispute. If that fails, the matter goes to a third step, usually binding arbitration. While pioneered in the oil industry, the wise man approach could also be useful in the high-technology field and other areas involving close and continuing business relationships.

Without prejudice --- Used when a case or grievance is being dismissed this phrase means that the right or privilege of the complainant to sue again on the same cause of action is not thereby lost or waived. The phrase is used expressly to prevent the dismissal from operating as a bar to a subsequent suit or grievance.

Writ --- A process (document) of a court ordering a public officer or a private person to do a certain act.

Workplace Mediation --- Workplace mediation came about in answer to conflict that can occur between employees, employers, staff members or even entire departments. Occasionally trained "peer mediators" are asked to mediate. These peer mediators are contemporaries and colleagues and often to assure their neutrality, they may come from unrelated departments to that in which the conflict occurred. However, more often than not a professional mediator is required to assure the sanctity of the mediation's neutrality. [ref. <http://www.conflictavoidance.com>]

Wrongful Termination --- A civil action or lawsuit brought by a discharged employee against the employer, alleging that the termination violated or breached a statutory right, express public policy, or an employment contract. [see also At Will.]



Z

Zipper Clause --- A standard contract clause which precludes any renegotiation of conditions covered in the contract during the life of the contract. This clause is designed to prevent the employer from trying to change the contract before the next round of bargaining.

ZOPA --- An acronym which means Zone of Possible Agreement. It is the range or area in which an agreement is satisfactory to both parties involved in the negotiation process. It is essentially the zone between each parties real base or bottom line and is the overlap area in the low and high range that each party is willing to pay or find acceptable in a



About the author, Nancy Peterson

Co-founder of The Mediation Agency, Nancy Peterson, M.Med, has many years of experience mediating with the Arizona Superior Court Mediation Program, the office of the Attorney General, Maricopa County Adult Probation Program and in private practice. As well as being an accomplished mediator, Nancy is a teacher of mediation techniques. With a business background in counselling, marketing, teaching, public relations and mediation, Nancy is an invaluable source of reference to students seeking to expand their career in mediation.

Nancy offers in-depth guidance to all her mediation students: from helping them to gain real-time experience as mediators and promoting them in the marketplace as professional mediators, through to advising them on using their new skills in mediation to enhance their career.

Having earned her Masters Degree in Mediation from the Graduate Theological Foundation in 2006, Nancy has designed a number of on-line courses, presentations and a bachelors degree course in mediation. In 2004 Nancy's mediation students prompted her to write an on-line mediation dictionary as a ready resource for advanced education and to acquaint the public with mediation terminology; <http://www.mediationdictionary.com>.

Nancy held the prestigious title of Director of Education and Professional Development with New York State Dispute Resolution Association (NYSRA) and continues as a consultant to the executive director and serves on their certification and training committees.

In Spring 2007, Nancy will be appearing on Legal TV on a program entitled, The Alternative Dispute Show hosted by Dr. Frank Hanna. For more information on this program, <http://www.mediationagency.com/legaltv>

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