

MICHAEL AND DEBBIE: NOT WHEN THE OTHER WOMAN'S THERE

Michael and Debbie married fifteen years ago and have two children, Sarah and Daniel. Debbie is a doctor sharing a general group practice with two other women. Michael is an orthodontist in solo practice. They have lived apart for one month. The attorneys referred them to mediation because of their high conflict over Michael's access to the children. They are highly competitive and seek to win over the mediator to their respective positions.

This is the first time the couple has met with the mediator and, given the recent separation, the mediator assumes that the behavioral conflicts will dominate the session. The task of the mediator is to help the couple settle the issue of the access, so that the negotiations between the attorneys for the economic settlement can proceed. Counsel recognized that the economic negotiations could not proceed while the couple remained locked in combat over the children. Failure to settle the issue of the children's access to their father could lead to escalating conflict on all the issues. Therefore, the attorneys chose to bifurcate the issues and refer the parenting part to mediation.

This chapter will illustrate four assumptions and the strat-

egies that flow from them. These assumptions are identified in the annotations and discussed in detail following the transcript of the actual session. I deal with separating issue conflict from dynamic behavioral conflict. The mediator's control of the process, leaving control of the content with the couple, is evident throughout. The mediator identifies and legitimates conflict in the section on "Ventilation," demonstrating how stifling Michael's anger would only prolong the agony. The situational nature of the process is illustrated in the last section. The mediator's strategies found in this chapter include good examples of the uses and outcomes of closed and directed questions, problem definition, controlling the competitive couple, and orchestrating the negotiations.

An interesting management issue emerges in the middle of the session: Who should make the initial movement away from the opening position? The mediator's decision on this subject is annotated and then discussed in detail. The mediator's monologues are featured prominently in this case, and a discussion of the purposes of each and how it affects the process follows the transcript.

Several examples of the clients' negotiating behavior are highlighted, including indicating directional information, equity versus equality, conflict expansion, using threats and triangulation.

Transcript and Annotations

MEDIATOR: Well, the counsel has asked you to come today to see if we can work out an agreement that is appropriate for both of you and in the best interest of Sarah and Daniel. I wonder if you could tell me a little bit about what's happened in the last month.¹ Perhaps if I could ask you to begin, Debbie, in terms of where the children are living currently and what the arrangements are.² Then we can see what differences there are between you and see where we go from there.^{3, 4}

DEBBIE: Well, the children are with me in the matrimonial home. Michael left a month ago, and I have let him see the chil-

dren on several occasions.⁵ But the children aren't happy seeing their father. They said they don't want to see him. They are very unhappy about the separation.⁶ When they come home, they're very upset. They're crying, and it takes me hours to settle them down. I just don't know how they're going to cope with this.

MEDIATOR: So they're currently living in the family home with you, and they're spending time with their dad.⁷ Michael, what is your feeling?⁸

MICHAEL: I think that Debra's little . . . ah . . . she doesn't have a grasp on the situation.⁹ I've seen these kids now five times over the past month. They are happy to come with me; we have a good time. We've done a lot of things together; they enjoy being with me. They're obviously at strain, because when I was living at home they were seeing me daily, constantly; in fact, I think they were seeing me more than they were seeing their mother. Now they come and see me, they're apprehensive about their visits. I know that, but I don't think that Debra is helping them at all. I'm having a great difficulty in coming back and watching her dissemble. When I bring the kids back home, she starts crying.¹⁰

The body language (BL) of the couple throughout the session is very revealing. Michael is very closed when I talk to Debbie and tends to open when I talk to him. Debbie looks away from Michael and down on the floor when Michael says something she does not like. Michael frequently turns away from both Debbie and the mediator, gazing at the wall.

1. I open with this information question about the events of the last month to focus on what is current and avoid drifting into the past and the marriage.
2. A focused question, directed at Debbie, is designed to limit the amount of space for a marital fight to develop.
3. This future-oriented question sets the agenda for the session.
4. BL: Michael is not looking at Debbie or the mediator.

His eyes are cast down, and he appears to be in deep thought.

5. "I have let" indicates that Debbie believes she has the power in the situation. If Michael agrees with this assessment, it will provide me with some power-balancing information (Haynes, 1988).
6. Debbie's complaint about Michael is diffuse as she stakes out a tough opening position, defining the problem as the children's unhappiness, which can be solved only by a change in Michael's behavior, as defined by Debbie.
7. This summary of the factual content makes no comment on Debbie's charges, so as not to solidify her position. If the mediator comments or argues with her about this, she will have to defend her position and thereby become more "wedded" to it.
8. "Feeling" is an open question. It is the wrong question form, because it provides Michael with wide latitude in answering.
9. Michael responds to the open question about his feelings by launching a counterattack on Debbie.
10. Michael defines the problem as Debbie's. Therefore, he has the solution—Debbie should change. The task for the mediator is to define the problem in a mutual and neutral way.

MEDIATOR: How old are the children?¹¹

MICHAEL: Five and seven.

MEDIATOR: Five and seven, and the older one is . . .

MICHAEL: Daniel.

MEDIATOR: Daniel is seven and Sarah is five. Okay. It's not unusual for them to have this tension and lots of crying when they go back and forward.¹² They have some apprehension because obviously they're still trying to sort out how to behave in relation to each of you when you're living apart, as distinct from when you were living together. So it's perfectly possible for them to have a good time when they're with you, Michael,

but also express real concerns and reservations when they're with you, Debbie. That's not an unusual situation. Let me just see now what's the difference between you. What is it that brings you here?¹³

MICHAEL: Well, the difference basically is this: Debra says that I can be a part-time parent and I can see my kids every second weekend from Saturday morning until Sunday night, if I see them alone and so long as she maintains control over it.¹⁴

MEDIATOR: What does Michael want?¹⁵

MICHAEL: These are my children. I am one-half of their parents. I want the kids half-time. When we were living together, I was spending most of the time with the children.

MEDIATOR: So you'd like to have the children spend half of the time with you and half the time with Debbie.¹⁶

MICHAEL: I think so. I don't see that it's inappropriate in our circumstance.

DEBBIE: I don't think he wants to see the children. I think he's using that.¹⁷

MEDIATOR: What do you want, Debbie?¹⁸ What do you want?¹⁹

DEBBIE: I want him to come back.²⁰ My children are devastated. I'm devastated. We had these plans. We had plans for us and for our children, and he's destroyed that. He's giving me no reason. All of a sudden, after fifteen years of marriage, he says that's it, I can't stand it any more. And I think you should know he's seeing someone else, and he's exposing our children to that other person.²¹

11. As Michael continues his complaints, I cut through the "feelings" with a factual (closed) question on a different subject. This process interruption breaks the cycle Michael is about to launch.
12. Michael's answer gives me back control. I use it to normalize the children's reaction and suggest mutuality, be-

cause the tension is an indicator of the children's loyalty to both of them. The monologue educates the couple about child development and creates doubt about the validity of their opening positions.

13. An open, focused question returns the couple to the task.
14. Michael answers by telling me what Debbie wants. In almost all cases, clients have difficulty saying what they want. It is easier for them to complain about the constraints they experience because of what they think the other wants.
15. This refocuses on Michael's needs, asking him to speak for himself by answering an open, future-oriented question.
16. The summary of Michael's proposal reframes it, to help Debbie hear that under his proposal she would also have them half of the time. She probably heard only that he wanted them. By pointing out the "half-full glass," the mediator facilitates the bargaining.
17. Debbie ignores the reframing of Michael's statement.
18. I ask her to state her needs. One advantage of asking the wife to speak for herself is that she cannot complain about the husband while stating her needs.
19. BL: During this reply, Michael is slouched down, with his eyes directed toward the wall.
20. Debbie sends two messages: She wants Michael back, and he is seeing another woman.
21. I develop a hypothesis that the fight is over the other woman and devise questions to test my hypothesis.

MEDIATOR: So you've come to see me in the hope that I can help you work something out so that you can get back together.²²

DEBBIE: Well, I don't think he understands what he's doing.²³ I think he's depressed, I think he's going through middle-life crisis . . .²⁴

MEDIATOR: Help me understand, Debbie, what it is you are looking for me to do.²⁵

DEBBIE: I think he has to understand: If he's going to see the children, he has to live properly, he's . . . ²⁶

MEDIATOR: That's something you want Michael to do. What would you want me to do?^{27, 28}

DEBBIE: Well, I'm here because I don't want to go through the court system. If we're going to separate, I don't want a lawyer or judge shoving an agreement down my throat.²⁹

MEDIATOR: That's wise. So, what you want me to do is mediate, right?³⁰

DEBBIE: Yes.

MEDIATOR: Okay. It's clear that I'm not going to work with you to get back together.³¹ If you want to do that, there are other people competent at doing that. That's not my area of expertise. I don't work at putting people back together, and if that's what you want, then clearly I'm the wrong person to work with.

22. I clarify my role, disclaiming responsibility for putting the marriage back together.
23. Debbie ignores the mediator and continues her statement of distress.
24. This is an example of a client's ignoring the mediator's question in her anxiety to tell her story.
25. The "help me" question form takes the responsibility for the digression off the client while focusing her back on the task.
26. Debbie stakes a position for equity.
27. This interruption is designed to focus on Debbie's needs.
28. BL: Michael is paying close attention to Debbie at this point.
29. Debbie's response indicates that she has a grasp on the reality of the separation and the reason for choosing mediation.
30. I compliment Debbie and restate my role in question form, to elicit a specific yes/no response from her.

31. I continue to clarify my role, to be sure that both have heard me and to check that Michael is in the same position regarding the separation.

MICHAEL: John, I would like you to open her eyes.³² I think that it's time now that she realized I'm not going to be at home anymore. I say *home*, it's where the children are living, it's our home, it's still in joint title.

MEDIATOR: Okay, Michael. Just as I said to Debbie, I'm not here to put it back together again—that is, I'm not here to do that for Debbie.³³ I'm not here to do that for you, to open Debbie's eyes. If you want to explain something, I'll create an environment in which you can be heard and you can get your point across.³⁴ What I'm going to do is to help you define the problem between the two of you, see what options there are to solve that problem, and help you solve that problem in a way that's mutually acceptable to you, and in the best interests of Sarah and Daniel.³⁵

MICHAEL: Well, I respect Debbie. I like her, I love her. I don't want to live with her. I have two wonderful children that I love and cherish and want to have with me as much as I possibly can.^{36, 37} My practice is such that I take my appointment book and staple pages together. I don't worry about it. Money isn't an issue. I gave Debra \$1,500 when I left. She knows she can count on me for that sort of sum every month, until the matters are resolved.³⁸ But for me, it's the issue of being able to deal with my children on an honest basis. She . . . she . . . she lies.³⁹

MEDIATOR: So you'd like to have them. Right? You'd like to have them half of the time.⁴⁰

MICHAEL: Yes.

MEDIATOR: Debbie, if you were to structure the arrangement for the parenting, how would you structure it?⁴¹

DEBBIE: Well, I think the children need a home, I think they need one home.⁴² They have to know, they're going to school this year, both of them. They have to sleep in one place every

night. They have to have their books, they need someone consistent to help them with their homework.⁴³ If they're staying one week with me and one week with him, it's going to be too disruptive.⁴⁴

MEDIATOR: Don't tell me what you don't want, tell me what you do want.

DEBBIE: Well, I don't want him to expose his friend to those children.⁴⁵

MEDIATOR: Okay, let me try that one again. Don't tell me what you don't want, tell me what you do want.⁴⁶

DEBBIE: I want my family back.

MEDIATOR: Okay. Now we recognize that's not my job.⁴⁷ Right? If you want to do work on that, you're going to have to work with someone else. If you want to work with me, it's to structure the parenting while you're apart. You may use that time apart to look at how to get back together again; some people do.⁴⁸ But I want you to focus on how I can be helpful, how to structure the parenting if you're living apart.⁴⁹

32. Michael attempts to triangulate by asking the mediator to take his side and convince Debbie for him. If I had fallen into this trap, I would have become his ally and therefore Debbie's adversary.
33. While listening, I decide not to cut Michael off but to use the opportunity to balance my earlier statements to Debbie.
34. This also explains the process to both of them.
35. Gives hope about outcomes and brings the discussion back to the children.
36. BL: Debbie swings her body away from Michael, and her eyes are downcast.
37. This is an indicator of his desire to share in the parenting and represents important information about his perception of his role.
38. This indicates that he is responsible regarding their financial needs.

39. Michael begins to wander again.
40. The restatement of the content of Michael's proposal is designed to redirect the discussion and to emphasize "half."
41. Debbie is asked for the first position statement. Given their respective positions and the fact that hers is unlikely to be supported by the community norms, I decide to look for the first concession from her.
42. Debbie ignores the question. This a common response when a client is not ready to move.
43. BL: Michael slowly tunes out, turning away to face the wall.
44. This redirects Debbie to focus on her needs and to a future orientation.
45. Debbie again raises the issue of the other woman, supporting my hypothesis.
46. My gentle use of humor elicits a smile from Debbie and achieves my goal without putting her down.
47. I join Debbie with the use of "we" and then use "you" in assigning the task of resolving the problem.
48. The mediator provides a face-saver for Debbie.
49. This returns the focus back to the issue of parenting while they are living apart.

(The next series of questions begins with a global query and moves in stages to a specific one, which promotes movement by Debbie.)

DEBBIE: If we have to live apart, then I think that we have to be consistent in what we want for our children.⁵⁰

MEDIATOR: Okay. And that is?⁵¹

DEBBIE: And that is where they're going to live? How much of the time? What kind of a home they're going to live in?⁵² Michael lives in a condominium where there are no children, there's no playground, there's only adults around.

MEDIATOR: Okay. If you were going to organize the week, how would you organize the week?⁵³

DEBBIE: My week?⁵⁴

MEDIATOR: With the children.

DEBBIE: Well, I work during the day, I have a nanny, sometimes I'm on call, sometimes I have meetings.⁵⁵ I basically keep in touch with the nanny and advise her when I'm going to be home, and as much as I can, I try to follow those plans.

MEDIATOR: How much time, if the children were living with you, would they spend with their dad?⁵⁶

DEBBIE: That's the hard one.

MEDIATOR: Uh huh.

DEBBIE: Because I think they have to have a home. And I don't think he's prepared to give them the proper kind of a home.⁵⁷

MEDIATOR: Okay, let's see if we can separate that out for a moment,⁵⁸ assuming that we weren't looking at the kind of home. That's an issue; we will deal with it, because obviously it is an issue between you.⁵⁹ But assuming that was not an issue, then how much time would you want Sarah and Daniel to spend with their daddy?⁶⁰

DEBBIE: The children love their father, and I don't want to keep the children away from their father.⁶¹ I suppose if we could sort out other problems, I would want him to see them as much as he could and as much as their schedules would allow.

MICHAEL: When are you going to tell them the facts of life, when they're sixteen?⁶² I mean, do you know what she told them when I left? She told them that daddy was setting up a new principal residence for tax purposes.⁶³ She's misrepresenting me to the children on a constant basis. She tells them that I'm sick, she tells them that I'm depressed, she tells them that poor daddy doesn't know what he's doing, poor daddy has a mean friend, poor daddy has a friend who's taking your daddy away from you.

MEDIATOR: It's very, very hard when you get divorced, isn't

it?⁶⁴ To deal with all of the emotions and all of the things that happen.

MICHAEL: She's a professional woman, she's a smart lady. I have a lot of respect for her. She moves in those circles, she knows what she's doing.⁶⁵

50. Debbie gives a global response.
51. A general question.
52. Debbie responds with more questions, which are intended to define the issue in her favor. Her response does not concede equal time but seeks to establish an equitable arrangement.
53. A specific, future-oriented question.
54. BL: Debbie leans forward, closer, to understand the mediator.
55. She provides some specifics, but not any "quantity" answers.
56. A "quantity" question, which is most likely to obtain a specific response. I also use "dad" to move Debbie to her parent role.
57. Debbie slips back into defining her "equity" position. This is also her problem definition.
58. I partialize to gain a focus.
59. I promise to cover the second part.
60. Asking Debbie to assume this frees her to look at her children and their father's needs. I keep my language in the parent mode through the use of "daddy."
61. Debbie makes the first significant move, acknowledging Michael's father role. She picks up my language, moving from the spousal to the parenting designation. This movement is the product of the "global" through "quantity" steps that forced change, even though the actual questions were not answered along the way.
62. BL: Michael is not listening, he is thinking of his next attack.
63. I let Michael ventilate, to compensate for the time I spent with Debbie and to engage him in the process.

64. I empathize with Michael and complete the joining to re-engage him in the process.
65. Michael acknowledges Debbie as an adult but not as a parent.

MEDIATOR: Let me see now, Michael, you would like the kids to live with you—what, for a week, or two weeks, and then change around?⁶⁶ Is that . . .

MICHAEL: I think a week or two weeks, and you know, I've talked to Ruth, the nanny. She's prepared to move.⁶⁷ She knows what the situation is. She's got more sense than the kids' mother, I think.

MEDIATOR: So, the children: In your plan of thinking, the nanny would go with the children.⁶⁸

MICHAEL: Sure.

MEDIATOR: Okay. Debbie, you said to me a moment ago that if we could work out some other things, then perhaps you could see your way clear to working out some structure of sharing the parenting in some form or other.⁶⁹ What things do you need to work out?⁷⁰

DEBBIE: Well, I don't think the home, if you can call the high-rise condo Michael is living in that, is appropriate for the children.

MICHAEL: I live in a 3,200-square-foot apartment, which has a beautiful view, which has appropriate facilities, which is not an adult-only apartment.

DEBBIE: There are no other children.

MICHAEL: There are other children.

MEDIATOR: So concern number one is the geography, the apartment.⁷¹ Okay, are there any other concerns?

DEBBIE: I don't think he really wants to see his children.⁷² I think it's just guilt. He bought a Porsche the other day. It doesn't even have a backseat to transport these children.

MEDIATOR: Let Michael tell me about that part. Tell me about what it is you think needs to get resolved.⁷³

66. A "quantity" question designed to begin the negotiation orchestration. I will try to establish some reciprocal concessions based on numbers.
67. Michael provides new information, indicating where his thinking is. This is known as an information exchange. Then he attacks Debbie as a parent. He is not listening to Debbie and has not heard any of her movement.
68. After stating the content of Michael's message, the mediator learns more data regarding the nanny, which suggests an option for the couple.
69. This restatement of Debbie's earlier hints of movement is for Michael to hear. This also clarifies the conflict, Debbie's goals, and possible areas of movement. It facilitates the reciprocal concession process.
70. BL: Each turns away from the other.
71. A summary and identification of one issue. The follow-up question is designed to test my hypothesis.
72. Debbie responds with a global attack. This is her defense against needing to move from "equity." Instead, she seeks movement from Michael's "equality" position.
73. This deflects the marital issue but does not forbid it, thus allowing Michael to respond if it is a "toxic" issue for him.

DEBBIE: Well, I don't see how the children can live one week here and one week there.^{74, 75} I think it will be too hard on them. I don't think he's being fair to them. He's the one that broke up this family.

MEDIATOR: So it's the apartment, and your concern as to whether or not the children can handle going back and forth on a regular basis?⁷⁶

DEBBIE: Yes.

MEDIATOR: Are there any other problems?⁷⁷

DEBBIE: I don't think they should be exposed to this woman.⁷⁸

MEDIATOR: Okay. The woman is . . . you're living with somebody, Michael?^{79, 80}

MICHAEL: No. I have a relationship with a woman I've come to know over the last period of time. And I can honestly say this isn't the reason that I left. The reason I left is that I was sitting at home and dying, waiting to die in that house.⁸¹ I was sitting at home looking after the kids. Mommy's got a meeting. Mommy's at the hospital. Mommy's not coming home tonight. I don't know where Mommy is.⁸² That's what it seemed to me when I was spending my time at home. I'm not going to take two little kids away from their mother.⁸³ They need their mother, they love their mother. But all of a sudden when I decide that I'm drowning and if I don't get out, that's it. All of a sudden I'm a bad bastard, and I'm getting this number from Debbie that I shouldn't see the children, that I upset the children. I'm beginning to wonder if . . . if . . . the children are so upset when they go back to see their mother, maybe they should stay with me most of the time.⁸⁴

MEDIATOR: I'm hearing Debbie say that.⁸⁵ I'm also hearing her say they love their father and they need their father and she would like to work it out so they could be with their father.⁸⁶ That's what I'm hearing on two levels and I'm . . . tell me a little bit about . . .

MICHAEL: She's telling me where I have to live, she's telling me who I'm going to see, she's going to tell me what car I'm going to drive. I might as well move back home and die.⁸⁷

MEDIATOR: So those are the issues of conflict between you, and those are the issues that we need to focus on and get some agreement on, right?⁸⁸

74. This is Debbie's secondary concern.

75. BL: Michael's eyes glaze over at this point.

76. A summary defining the two issues. The second issue is defined as Debbie's concern.

77. I continue probing until all the issues are on the table. This helps to test my hypothesis and determine the order of priority of the issues.
78. Debbie restates an untenable demand, confirming my hypothesis.
79. BL: Michael's fingers are twitching nervously.
80. Checking the data with Michael.
81. Michael moves from talking to me to talking directly to Debbie. Therefore, I permit him to continue . . .
82. . . . even though he begins to ventilate.
83. Michael sends a message to Debbie that she will not be displaced. The mediator considers this directional information, indicating where Michael might move in the negotiations.
84. Michael ends by making a threat and moving to a tougher bargaining position.
85. I ignore the threat and positively reframe Debbie's comment, emphasizing similarities and thus validating Michael. This also helps Michael to hear Debbie's view that he is an okay father.
86. "Two levels" tells Michael I am following him, and I understand that Michael feels he is damned if he does and damned if he doesn't.
87. Michael restates the marital fight.
88. This normalizes the conflict and points out that it is an issue for negotiation.

DEBBIE: Because the children don't understand. What am I to tell them?⁸⁹

MEDIATOR: About what?

DEBBIE: This other woman. They see Daddy kissing this other woman. He lets the woman stay the night. I don't think that's right.

MEDIATOR: How do you know that?⁹⁰

DEBBIE: The children have told me.

MEDIATOR: Why did they tell you that?

DEBBIE: They don't understand. They ask me who she is. Their father hasn't explained it to them.

MICHAEL: What do you mean?⁹¹

MEDIATOR: So you talk to them about the other woman?⁹²

DEBBIE: They volunteered it. They don't understand.

MEDIATOR: That surely is not fair to you, to place that burden on you, is it?⁹³

DEBBIE: Well, they're young, they don't . . .

MEDIATOR: It might be more useful, when they raise those questions, that you tell them to talk to Daddy and let Daddy sort it out.^{94, 95}

DEBBIE: Well, he's obviously not explaining anything to them. He's too guilty about it.

MEDIATOR: Okay, so one concern is that—let me see if I'm right—you'd like them to be clear about the relationship?⁹⁶

DEBBIE: Whatever it is.

MEDIATOR: What would you like?⁹⁷

DEBBIE: Well, I don't think he should be sleeping—letting his girl friend sleep overnight, and sleeping in the same bedroom with her with our children in the house. I don't think it's right.⁹⁸

MEDIATOR: Let me ask you now: A question, if . . . excuse me just one second, but what is her name?⁹⁹

MICHAEL: Jocelyn.

MEDIATOR: Jocelyn.¹⁰⁰ If Jocelyn is not sleeping over, right? would you feel comfortable working out some arrangement for the children?¹⁰¹

DEBBIE: I'd feel more comfortable. I'd be more comfortable, as well, if he had a house not too far from ours, so the children could go back and forth on their bicycles. Something more appropriate.¹⁰²

MEDIATOR: So that, in the long run, you'd like to have some close proximity, so that the children can move back and forth quite easily.¹⁰³

MICHAEL: Tell him about what sort of car I should drive. Tell him about where I should take the kids on the afternoons. Tell him about . . .¹⁰⁴

MEDIATOR: And you, Michael, would like to make your own decisions about these issues?¹⁰⁵

MICHAEL: Of course. This is ridiculous.

MEDIATOR: Okay. All right.

MICHAEL: I mean, she's menu-driven. I end up with a situation at home where it's the same thing.¹⁰⁶ There's notes on the refrigerator: "Michael, when you come home from work, please do the following six things. I'll be home when I can."¹⁰⁷ Finally, I get out of the arrangement, and it's the same thing, but she sends telegrams.

MEDIATOR: Okay, so you've been living apart for a month. You're both angry with each other, and that's perfectly legitimate, and that's perfectly normal, too.¹⁰⁸

MICHAEL: If she was angry with me it would be different. I think she just thinks I'm sick.

MEDIATOR: I think I sense a lot of anger on both sides.¹⁰⁹

89. Debbie again raises her underlying issue of the other woman.
90. This series of questions is designed to enhance Debbie's ability to distinguish between parental and spousal behaviors and recognize her role as a link in the interactional pattern. This is a paradoxical approach, since to keep her current posture, she must also accept the responsibility for putting and keeping the children in the middle of the marriage fight.
91. I keep Michael out of this dialogue.
92. I am using a particularly gentle tone of voice as I pursue this line of questions.

93. The focus is back on Debbie's self-interest.
94. The mediator again provides Debbie with a face-saving way out.
95. This suggests that, even though the children are young, they can understand and deal with the issue with their father. They will have to learn to deal with each parent separately in the future.
96. This summary and reframing is a reality test and helps the wife look at parental and spousal issues and begin to separate the two roles.
97. Focus on positive needs.
98. A first clear, specific demand from Debbie; but is Debbie's agenda to prevent Michael from sleeping with Jocelyn, or just from sleeping with her when the children are with him? If it is the latter, this movement opens the possibility of a reciprocal concession, which raises the need for further hypothesis testing.
99. I decide it is time to bring the other woman into the open.
100. Now I can use her name.
101. Following this slight digression, the mediator continues to orchestrate the negotiations, testing what movement might come from Debbie on the basis of her response at 98.
102. Debbie expands the issues.
103. A reframing into a future goal, not a current impediment, in an effort to decouple the issue from Jocelyn.
104. Debbie's position triggers off the marriage issues for Michael, who responds in kind.
105. This interjection refocuses on the issues and limits Michael's need to respond to Debbie.
106. BL: Debbie has her body turned away from Michael, and her eyes are looking at the floor.
107. Michael returns to the marriage fight and, in the process, indicates important information regarding his parenting role. This is information that I accept, if it is not denied by Debbie.
108. I normalize and . . .
109. . . . mutualize.

MICHAEL: Can't you tell her that what I'm doing is normal, it happens all the time, can't you explain to her where I'm coming from?¹¹⁰

DEBBIE: Not in my book.

MEDIATOR: What I was wondering, Michael, much more, was not so much where you're coming from but where you want to go.¹¹¹ As I understand it, where you want to go is to have an arrangement where you have good access to your children, share in raising them.¹¹² That is difficult for both of you to deal with right now, because you've only been living apart for one month.¹¹³ You're both hurting a lot.¹¹⁴ There's a lot of pain, and it's quite difficult for you at times to separate out the anger you have at each other as spouses and the differences you have with each other as parents. Although, interestingly enough, so far today I've not heard any serious differences emerge between you as father and mother.^{115, 116} There's a lot as wife and husband—there you're way apart—but not as mother and father. I'm wondering now where you want to go.¹¹⁷ Let's see where we fit this one in. My sense is, Debbie, if I'm correct—and check me out, and Michael, you check me out, too—is that if you knew that you didn't have to deal with Jocelyn with the kids when the kids came back, you would be more comfortable at working out some organized way of sharing the parenting.¹¹⁸ Am I right or am I wrong?

DEBBIE: He's a good father. He's been a good father. I can't deny that. The children love him and he loves the children.¹¹⁹

MEDIATOR: And you're a good mother.¹²⁰

DEBBIE: Yes.

(A long silence as the mediator waits for Michael to respond.)

MICHAEL: What am I supposed to do?¹²¹

DEBBIE: But is it fair to the children to have them one week here, one week there?¹²²

MICHAEL: The kids don't mind.

DEBBIE: How would you like to move back and forth?

MICHAEL: The kids are happy. They take their videotapes with them, and they're happy wherever they're staying.

MEDIATOR: Let's make this point.¹²³ The kids are going back and forth between you in some way, even if it's only one week-end a month. They're still going to move back and forth. The issue is not whether they are going to move back and forth, the question is the schedule around which they're going to move back and forth with you both.¹²⁴ So they'll spend time with their dad, and they'll spend time with their mom, and they'll move back and forth.¹²⁵ The issue is the amount of time they'll spend at each of the two houses. Right?¹²⁶

110. Michael again seeks help, which, if given, would triangulate me onto his side. My tone of voice and summary act as a tranquilizer.
111. BL: I lean forward to capture Michael's close attention as I move him from the past to the future.
112. This reframes the issue to Michael's self-interest and focuses him.
113. I provide no support to Michael in his attempts to triangulate me.
114. Normalize and empathize . . .
115. . . . and provide positive reinforcement while emphasizing their similarities.
116. BL: I use my hands to emphasize what I am saying. When talking about the differences as spouses, I hold my hands up and then bring them down, creating a clear division. When talking about the children, I move my hands through a circle, indicating commonality.
117. This separates their parental and spousal roles, educating them about the differences.
118. Return to the process of reciprocal concessions, alerting Michael to listen to this piece and Debbie's reply.
119. Debbie validates Michael's parenting. He does not respond. She has now made it clear that the issue is not whether but when the children will be with their father.

120. I feel that Debbie's comments about Michael's parenting should be validated and wait for Michael to do this.
121. I maintain a long silence, waiting for Michael, but he is unable to do it.
122. Debbie responds with some guilt of her own.
123. BL: As I begin this monologue, Michael focuses on what I am saying. As the monologue continues, he drifts away.
124. Reality testing, and using my hypothesis that the issue is really the other woman. My language shift from "whether" to "how" is designed to move the couple into their parental roles as I take charge of the problem definition.
125. A suggestion of the maximum joint benefits, without taking a position on equity or equality.
126. The monologue ends with a specific, future-oriented question.

MICHAEL: If these children are visiting me, then what's going to happen to me is that I'm going to become a stranger to them. I'm going to be an interrupter.¹²⁷ I'm going to end up with these kids saying to me, "Daddy, if I come and see you, I can't go to Mehitabel's birthday party." It's not . . .

MEDIATOR: Let me ask you a question, Michael.

MICHAEL: . . . it's not fair anymore.

MEDIATOR: Right, and it shouldn't be unfair to either of you, and it certainly should not be unfair to Sarah and Daniel.¹²⁸ What do you think you two could organize so that the kids don't get caught in the middle of your arguments as spouses?¹²⁹ How can you take them out of moving messages between the two of you, for example, around Jocelyn?¹³⁰

MICHAEL: Well, I think the first step would be for Debra not to refer to her as the beast who has taken your daddy away, or words to that effect.¹³¹

MEDIATOR: And if Debbie stopped bad-mouthing you and Jocelyn and your relationship with Jocelyn, what could you then do?¹³²

MICHAEL: Well, I think that what I would like to do, is I would like to be able to establish a routine with my children.¹³³ I know that Debra doesn't want the kids around her, and that it's confusing. I've done my best. I mean, it happened on one occasion that Jocelyn and I got tied up with the kids. I'm not putting her in as a new mama, she's not living with me, she hasn't moved in. We don't have plans to move in.

MEDIATOR: In the short run, Michael, could you agree that Jocelyn would not sleep over when the kids are with you?¹³⁴

MICHAEL: What's the short run?¹³⁵

MEDIATOR: Two months.¹³⁶ It's two months down the pike, and you will have a little more experience about what it's like to live apart. Give the children a sort of chance to settle in.¹³⁷

MICHAEL: I can live with that. I don't know if Jocelyn can, but I can live with that.¹³⁸

MEDIATOR: Okay, so if you could live with that—Debbie, could you live with that?¹³⁹

MICHAEL: But if I'm going to give up something like that, then I want something in return.¹⁴⁰

MEDIATOR: Which is?¹⁴¹

MICHAEL: I want the kids half-time.¹⁴²

MEDIATOR: All right. Debbie, if, for the next two months, when the children were with Michael, Jocelyn did not sleep over.^{143, 144} She might well be around, because obviously she is playing a role in Michael's life, and we all have to come to recognize that at some point.¹⁴⁵ But if she's not sleeping over, at that point, how would you then feel about sharing the parenting?¹⁴⁶

DEBBIE: Well, I don't know if I even want her around. I think when he sees the children, he can not have her there. He can see her when he doesn't have the children.¹⁴⁷

MEDIATOR: That may be asking a little too much, mightn't it?¹⁴⁸

DEBBIE: Well, I don't think it is for two months. He's just trying to set something up here so that the minute it gets working, bang, she's in their life, and they've got a new mother.¹⁴⁹

127. Michael raises a legitimate underlying fear, which must be acknowledged. He also raises the "needs" rule, which provides that "rewards should be proportional to the strength of needs" (Pruitt, 1981, p. 62). His need is to be recognized as an equal parent. His voice has a whine.
128. The response to Michael's "little boy" complaint discusses the fairness issue and the importance of an outcome that is fair to all parties. A reframing from not fair (- +) to not unfair (+ +) mutualizes it.
129. BL: I again use my hands to visually separate the couple as spouses as I continue to move them from the past to the future.
130. Returns their attention to the task, with a future-oriented focused question at the end of the monologue.
131. Michael indicates the first concession he wants from Debbie. He is now engaging in the reciprocal concession process.
132. A restatement of his position to Debbie in adult language to keep the reciprocal concessions moving. This is an example of the summary's filtering out behavioral aspects and focusing on the content.
133. Michael concedes a point on Debbie's concerns and pledges to act on her fears. This is directional information, indicating his willingness to move toward coordination of the negotiations. Coordination takes place when both parties move into problem solving, rather than winning. At that point, the parties begin to look at what the other needs as well as what they themselves need.
134. I test a general reciprocal concession on the basis of Debbie's statement at 92.
135. Michael asks for specifics. This is an example of how the

parties move into negotiations. Now Michael is not simply rejecting all ideas other than his own; he is beginning to explore alternatives. The two-month suggestion is the mediator's, not theirs. It is long enough to give them a chance to experience the change, but not so long that the change appears permanent. This type of input by the mediator—which is, after all, arbitrary—gives the clients a baseline to work from. If the two-month period is unreasonable for either party, they will renegotiate to expand or contract it. Once negotiating its duration, however, they accept the principle of a hiatus.

136. I give a "quantity" answer . . .
137. . . . and plug the children back into the discussion.
138. Michael kills his concession by returning to the marital dynamics, which tends to undermine the negotiations.
139. A focus on the positive content of Michael's statement, to keep them in a negotiating mode and to see if Debbie is ready to reciprocate. By asking whether she "could live with that," the mediator is not asking Debbie to like it or be happy with it. This language helps lower the expectations of total satisfaction with the outcome. It also allows Debbie to view the move as a concession on her part, which opens the way for more concessions later.
140. Michael quickly limits the concession until he hears exactly what the reciprocity will be.
141. I seek a specific answer from Michael, so that Debbie will know exactly to which idea she is responding.
142. Michael restates his "equality" goal.
143. With this clear, I return to Debbie for the next move.
144. BL: Michael is watching the mediator closely throughout this part.
145. This defines and clarifies the limits of what can be achieved, using "we" language.
146. Here, I am still seeking a general response from Debbie. I am not yet looking for a specific amount of time. Since I am not sure that Debbie is ready to move from her opening position, I seek to establish the principle of movement, rather than a specific move.

147. Debbie returns to a tough position, confirming my hypothesis that the issue is Jocelyn.
148. This educates Debbie and warns her that her position is unrealistic, so as to limit the amount of her retreat.
149. Debbie is also defining the limit of her concession.

MICHAEL: How about if you give up half of your do-gooding enterprises, and you spend some time at home at night, instead of running around proselytizing the entire community to left-wing causes?¹⁵⁰ How about if you give that up and spend some time with your kids when they're with you?¹⁵¹

MEDIATOR: You've both lost me.¹⁵² I thought we were talking about whether or not [to Michael] if you agree that Jocelyn would not be sleeping overnight, whether [to Debbie] you could make some movement around the parenting, so the children could share in their dad for a two-month period. We are talking about the next two months.^{153, 154}

DEBBIE: Well, I want the children to see their dad, but why does she have to be along?¹⁵⁵

MEDIATOR: Okay. That may be more than you can impose.¹⁵⁶ If you can get an agreement that she doesn't sleep over, can you then be comfortable about sharing the parenting?¹⁵⁷

DEBBIE: [to Michael] What are you going to tell the children about who she is?

MICHAEL: I've told them. I've told them that she's my friend. She's told them that she's somebody that Daddy likes, Daddy spends time with her. It's an unfortunate situation that you haven't told them the same thing.

DEBBIE: Well, I didn't know.

MEDIATOR: There's a lot of work to be done by all of us in terms of working out all of the details.¹⁵⁸ We're obviously not going to work it all out today; that is clear.¹⁵⁹ We're going to have to have two or three sessions to work it all out. I was looking at whether we could get an agreement on the short run,

which will get you out of the current fix.¹⁶⁰ [to Debbie] You shouldn't have to take all that stuff from the kids when they come in.¹⁶¹ The time when they're with you should be joyful times. [to Michael] You ought not to have to worry about whether or not you see the kids.¹⁶² You ought to be able to see the kids and have joyful times, too.¹⁶³ I'm wondering if we could move for just the next two months, in a sense of trying to get a little space for both of you as we think through all of the issues.

DEBBIE: Well, maybe if he would agree not to hold her hand and kiss her in front of the children—that's just his friend, that's what he's told them. Then, maybe.¹⁶⁴

MEDIATOR: Well, you can't do that in negotiations, Debbie. You can't say "maybe." You can say, "If you do that, I will."¹⁶⁵

DEBBIE: All right, if you do that, I will.

MEDIATOR: Okay, so you're saying that if Michael would agree not to be physically affectionate with Jocelyn while the children are there, you'll feel comfortable moving off your position and sharing time for the children with both of you.¹⁶⁶

DEBBIE: I'm not saying fifty-fifty, but I'd be happier about moving toward Michael spending more time with the children.¹⁶⁷

150. Michael, frustrated by the lack of movement, returns to the marriage fight.

151. Debbie works part time for Planned Parenthood.

152. The "help me" approach is designed to gain their attention and not assign blame for the digression. This approach also elevates the clients' competence immediately and helps offset the way they are devaluing their own competence as parents.

153. BL: Michael listens intently, with hands over his mouth.

154. A summary of the specifics.

155. Debbie tags on an untenable demand.

156. I educate Debbie about what is "real" because I am afraid that the talks may fall apart if she holds on to her

- position. The specific choice of words also indicates to Debbie that she is already imposing on Michael's life and is now risking imposing too much from the mediator's perspective.
157. I then return to the reciprocal concession process.
158. BL: I lean forward and add an urgent emphasis to my voice.
159. This reminds the couple of the small goals I have set for the session . . .
160. . . . and holds out hope for dealing with the issues in the future.
161. I use my hands to differentiate when I am talking to each.
162. These comments reinforce the fairness issue.
163. This language carefully states the similarity of their rights.
164. Debbie tries to protect any possible movement with a "maybe."
165. I educate Debbie on good negotiating behavior.
166. I summarize Debbie's position and note that Michael is not listening.
167. Debbie corrects me, since she has not agreed to a fifty-fifty split yet.

MICHAEL: I don't understand this at all.¹⁶⁸

MEDIATOR: Okay, what's that, Michael?

MICHAEL: I don't understand this at all. I don't think that Debra will be able to tell you why I shouldn't spend at least half the time with my kids. I think that what Debra is telling me . . .¹⁶⁹

MEDIATOR: Well, let me ask you, Michael, if you got the children half of the time, could you agree to those conditions?¹⁷⁰

MICHAEL: Of course, I . . . you know. I don't . . . she's being picky.¹⁷¹ She's dealing with little things . . . she's trying to control my life. The fact of the matter is I'm prepared to say yes. She wants to write it down, I'll say yes. I'm not coming back. I want to see those kids, I'm prepared to do anything to see those kids in a comfortable environment.

MEDIATOR: That's a very responsible position. Okay, so now, Debbie, you've got quite a bit in terms of what you're looking for. Now could you come back and suggest an amount of time you would feel good about?¹⁷²

DEBBIE: Well, I don't know what he wants. I'm still not happy with a week here and a week there.¹⁷³ I would like something more like . . . I would have them during the week, and maybe he would have them on the weekends.

MEDIATOR: Would that be comfortable? That means [to Michael] you would get them all the fun time, and [to Debbie] you would get them all the school time. Do you want that?¹⁷⁴ That's okay; some parents do that.¹⁷⁵

DEBBIE: Well, they're going to school, Sarah's starting grade one, and I want to make sure she does okay.

MICHAEL: I—you know, I'll be frank, Debbie. If you want to do that, I don't have any problem seeing the kids on the weekends. I don't work weekends.¹⁷⁶ At four-thirty on Friday I leave my office. I'm happy with that, but I'm saying to you that maybe it just isn't my plan. My plan is to have my kids share my home, and maybe I don't feel they would share my home if they were only with me on weekends. I don't know what I'd give up on the weekend, but what you're telling me is that I get to see the kids every weekend, and for the next two months I don't get to see Jocelyn every weekend. Pretty smart, Debbie. It doesn't work like that.

168. Michael responds to the fifty-fifty issue by . . .

169. . . . restating the equity-versus-equality issue.

170. Refocus on seeking reciprocal concessions.

171. Michael sends two messages: He will not return to the marriage, and he is willing to do anything to see his kids.

172. I choose to connote (positive reinforcement) the "do anything" and turn back to Debbie for her concession.

173. She slips back into speaking for Michael in order to avoid answering the question. She then makes a specific proposal regarding the amount of time, according to her "equity" position.

174. A reality test of her proposal shows Debbie her legitimate self-interest.
175. While doing this, I carefully normalize the proposal.
176. Michael picks up on the offer and, thinking out loud, figures out what is in the proposal for him. He picks up on my self-interest statement and finally turns it into a jab at Debbie. In this statement, Michael has also provided some directional information about where he might be willing to settle.

MEDIATOR: Okay, so that wouldn't be acceptable to you, Michael.¹⁷⁷

MICHAEL: No.

MEDIATOR: Have any other ideas, Debbie?

DEBBIE: No. I think it's important. Those children are going to school, it's important they do well in school, we both want them . . .¹⁷⁸

MICHAEL: I called the bus service, they'll pick up the kids one week at my place and one week at your place, at no extra cost, Debra. It's the same old thing.

DEBBIE: Well, I can't be sure they'll be getting to bed on time, that they would be getting help with their . . .¹⁷⁹

MEDIATOR: Do you have to?¹⁸⁰

DEBBIE: . . . homework.

MEDIATOR: Do you have to be sure?

DEBBIE: Well . . .

MEDIATOR: What role does the nanny play?¹⁸¹

DEBBIE: She doesn't help them with their homework, she's an immigrant, she doesn't have . . .

MEDIATOR: She gets them to bed?

DEBBIE: She puts them to bed, but . . .

MICHAEL: When I don't put them to bed, she puts them to bed.

MEDIATOR: Okay. Is there space in your apartment, in the condo, for them?¹⁸²

MICHAEL: I've got 3,200 square feet.

MEDIATOR: Okay.

MICHAEL: I got a condo, and it's close by, and I pay a lot of money on a monthly basis . . .

MEDIATOR: Okay. We're just running out of time for the appointment, so I really need to ask you whether or not you can get some agreement in the next two minutes in terms of what to do for the next few weeks, so as to get you out of the current hole.¹⁸³ That gives us some time to look at all of the issues in more detail, in a more leisurely way.

DEBBIE: Well, I would be willing to, again, go along with what I said if he agrees to cool it with his cupcake.¹⁸⁴

MEDIATOR: That's already been agreed.¹⁸⁵

DEBBIE: Then he can see the children every weekend, and we'll see how it goes after two months.

MEDIATOR: Michael said that's not acceptable.¹⁸⁶

MICHAEL: I don't think . . . I don't think it's acceptable.¹⁸⁷

DEBBIE: But I'm saying if it works, if everything goes well in two months, then . . .

MEDIATOR: Let me ask a question. How would you define weekend?¹⁸⁸

DEBBIE: From Friday night to Sunday evening.

MEDIATOR: What would happen if you defined it from Friday after school to Monday . . .¹⁸⁹

MICHAEL: Monday morning.

MEDIATOR: . . . after school?

DEBBIE: Well, that would be fine, because I think I could live with that, because then the children don't really have to do homework on Sunday night.¹⁹⁰

MEDIATOR: [to Michael] My sense is that you're perfectly capable of helping them do their homework.¹⁹¹

MICHAEL: Yeah.

DEBBIE: Oh, I'm not saying he isn't. I want some consistency.¹⁹²

MICHAEL: What do you mean?

DEBBIE: I mean if you help them for one week, how am I going to know where they left off? If we're not talking to each other.

MEDIATOR: Schoolbooks tell you a lot, right? Week by week.¹⁹³

MICHAEL: I'll write a note to you.

MEDIATOR: I don't think you need to be involved about that, Michael. That's just going to create, generate more anger between you.¹⁹⁴ You can follow it, each of you, from the schoolbooks in terms of where they're at. You're very smart, you're a doctor; you're a doctor, you know where the kids are in terms of their education. You can pick that up very easily in terms of where they're at.¹⁹⁵ So that if they came to you from school on Friday and stayed with you through Monday, you'd get them to school on Monday morning, and then they'd be back at your house on Monday after school. Would that meet both needs, on a temporary basis, to give us all space and time to talk about this?¹⁹⁶

DEBBIE: I'd try.¹⁹⁷

MICHAEL: I'll live with it.¹⁹⁸

MEDIATOR: All right. Let's then do that for the next few weeks.¹⁹⁹ Let's review it along the way, and let's get back together next week to talk about some of the other issues that are going on between you, so that we can try to get the children clearly out of the middle of your fight as spouses. Okay?

DEBBIE: Thanks.

MEDIATOR: Goodbye.

177. The mediator legitimates Michael's opposition to Debbie's proposal, since I believe they are in the ball park and close to agreement. I seek an alternative proposal from Debbie, thus limiting Michael's need to respond defensively, since in doing so he would probably escalate the fight.
178. The couple may be afraid of making a deal at this point, but they are also afraid of not making a deal. As cooperation develops, one or the other returns to a more familiar, polarized position.
179. Debbie challenges Michael's parenting again.
180. On the basis of prior information about his role with the children, I challenge Debbie's definition.
181. With this change in the scenario, more data are needed and more reality testing.
182. Double-checking the space data with Michael.
183. I decide to apply a time constraint, to move the couple away from arguing. This also moves them toward closing the deal on a small item.
184. Debbie restates her position, using a derogatory term for Jocelyn.
185. This cuts off Debbie and notes the prior agreement.
186. I speak for Michael, to avoid his having to respond, since he would probably escalate the issue.
187. Given my statement, Michael also responds calmly.
188. I seek clarification of Debbie's position.
189. After restating the question, I add a suggestion that enlarges the weekend.
190. Debbie accepts the increase and adds another attack on Michael's parenting. She is still reluctant to settle without ousting the other woman.
191. This statement is designed to validate Michael as an okay parent, as a way of limiting his need to counterattack.
192. Debbie adjusts her position to get back in line with the mediator.
193. Reality testing.
194. I quickly separate spousal and parental roles in response to Michael's dig.
195. This statement places the couple in a paradoxical posi-

tion. They cannot deny the suggested alternative without denying their own intelligence.

196. A restatement of the terms of a possible agreement.
197. Debbie accepts.
198. Michael accepts.
199. I summarize the agreement and set the agenda for the next session.

Analysis

The Mediator's Assumptions

Four of the assumptions discussed in Chapter One are demonstrated in this case. The separation of issues from dynamic behavioral conflicts leads to the mediator's taking control of the problem definition. Once this is done, the problem is defined as an issue between Debbie and Michael, not as a product of the dynamics. The discussion on ventilation shows how the conflict is legitimated. This is also an example of the assumption that the mediator controls the process and the couple controls the outcome. Process control is further examined in an analysis of the use of questions. The mediator controls the clients' competitiveness, as well as the strategies used to orchestrate the concessions each must make in order to arrive at an agreement. The concession orchestration, together with the mediator's determination of where the initial movement should come from, are part of the overall process, or negotiations management, role of the mediator.

The Mediator's Strategies

Problem Definition. The task for the mediator was to contain the behavioral conflicts and focus on an agreement on the issue of how much and under what circumstances the children would spend time with Michael. The mediator limited his goal to achieving some movement on the access issue. The degree of movement was governed by the couple's readiness to settle and the extent to which they were engulfed by the reasons for

the separation. Thus, the mediator also had to separate the feelings about the separation from the task at hand.

A mediator begins by gathering the basic data. Since most data come from the disputants, the mediator faces a quandary: Each party to a dispute has his or her own version of the problem. Each party has a separate version of the events leading up to the current situation, and each has a different definition of the problem. The stories the disputants present have three parts.

The disputants' *versions of the facts* are designed to show the mediator how reasonable they are. Debbie stated, "Michael left a month ago, and I have let him see the children on several occasions. But the children aren't happy about seeing their father." (5)

The disputants' *complaints about the other* are designed to show the mediator how unreasonable the other is. Debbie noted that the children were devastated by the separation and that Michael had destroyed their plans, "giving me no reason." She concluded by reporting that "he's seeing someone else, and he's exposing our children to that other person." (21)

The disputants state that the *problem can be solved only through a change in the other's behavior*. Debbie, who did not want the separation, opened by saying, "They [the children] are very unhappy about the separation. When they come home, they are very upset. They're crying, and it takes me hours to settle them down." (6) Obviously, the only way to solve this problem was for Michael to return home.

Michael responded that the children had spent time with him and enjoyed that time (showing that he is a good father) and that, while the children were apprehensive about the visits, Debbie was not helping matters (Debbie was at fault). He closed with the comment that when he returned the children, Debbie dissembled and started crying. (10) (She could solve the problem by accepting the separation.)

In an arbitration setting, the professional sifts through the evidence and tries to determine the truth. Yet, as we know, in families there is rarely truth, but only perceptions. Thus, the mediator must work to create a shared perception in the form of a problem statement that is both neutral and mutual to both

parties and that, once resolved, provides a solution acceptable to both of them.

The mediator acts on the information the clients present, in such a way as to help them see the information in a different light. For example, disputants base most of the problem definitions they present in the early stages of a session on the belief that their situation is abnormal and therefore difficult to resolve. The mediator attempts to normalize the disputants' experiences, because normal problems are solvable.

Following the parents' opening statements, I normalized the children's behavior. (12) Thus, it couldn't be the problem that Debbie had defined. At the same time, I suggested that the children's behavior was a product of their loyalty to both parents, which tended to mutualize the situation. These statements suggested that every separating family has the kind of problem presented by Debbie, and since it is normal, it is solvable.

Each party's problem definition is individual and designed to win the dispute; any action by the mediator to mutualize the problem causes change to take place. Thus, the mediator mutualizes the disputants' concerns, fears, hopes, and goals. As the parties see some commonality, their thinking changes, and they begin the search for a mutual solution to their common problem. Here, I noted their shared pain at the separation and commented that while they were angry with each other as spouses, "I've not heard any serious differences emerge between you as father and mother." (115)

At times when a mediator is gathering facts, he does not learn the particular facts being sought but does learn other information about the parties' bargaining positions. The exchanges from 51 to 56 are interesting in that the wife did not directly answer any of my factual questions. I continued and did not worry about her nonresponses to my data-gathering attempts. She was revealing important information about her position in the bargaining, which I stored away for later use.

Directing Questions. There are numerous examples of closed/directed questions in this chapter. I opened this session by asking Debbie to tell me about the current arrangements. I directed the question to her and closed it down by specifying

the focus of the response. (2) Later, when Michael was about to launch an attack on Debbie, I asked him a closed/directed question about the ages of the children.

There are also examples of open/directed questions. For example, I asked Michael, "What is your feeling?" (8) This was a mistake, since it gave Michael the space to launch an attack on Debbie through a "feeling" response. It would have been better to ask him a closed/directed question, to match the one I had asked his wife.

Later, I asked Michael, "What does Michael want?" (15), giving him wide latitude to answer along a specific line of thought. When he completed his reply, I used the same approach with Debbie. (18)

The mediator uses questions as the prime mode of action. The questions are not probing, in the sense of eliciting a yes/no statement based on a preformed strategy of the inquirer. Rather, he asks these questions to provoke answers that the parties can own. The answer to the mediator's question is often more useful to the disputant than any advice the mediator can give.

The questioning provokes shifts in the thinking of the disputants as much as it develops data. I asked Debbie, "If you were to structure the arrangement for the parenting, how would you structure it?" (41) This question basically assumed that the children would have a relationship with their father. Answering it forced the mother to suggest how it could happen, rather than allowing her to defend why it should not happen.

Controlling the Competitive Couple. Michael and Debbie are a highly competitive couple. Each is a successful professional who is accustomed to making decisions and controlling the situation. On the one hand, in their marriage, a prestige hierarchy favored Debbie, the M.D. On the other hand, Michael appeared to have had a larger parenting role than is usual for a father, and it was also larger than Debbie's. The couple could fight at the drop of a hat. I had to decide how to maintain control of the competition as well as of the presenting conflict and the inner conflicts of each parent.

A mediator must understand, before meeting with the couple, that he will control the process. Early in the session, he

must decide how to take and maintain control. In this instance, I decided to control the process by sharply limiting the fighting and by focusing on the access issue. The couple had different agendas. Michael wanted me to straighten out his wife and make her accept the separation; Debbie wanted me to straighten out her husband and send him back home. Both of them wanted to ventilate about their marriage. If I had followed either of the couple's agendas, I would have lost my neutrality, and the mediation would have proved unsuccessful.

I needed to select strategies that would enable me to take and maintain control of the process. I frequently interjected questions, to cut off a burgeoning battle. For example, early in the session, Michael gave me his opening statement. As he continued, I sensed that he was beginning to wind up for the marriage fight and to wander from sharing his perception of the facts; he was moving toward an attack on Debbie. (10) I cut in and asked him, "How old are the children?" (11) This is a closed/directed question that requires a straightforward answer. Michael was taken off his attack, and I took back control of the agenda. This type of question is called a *process interruption*—that is, it interrupted Michael's process and required a change in his behavior for long enough to return control to the mediator.

I offered no explanation of this strategy, nor did I seek permission from the couple for such interjections. The relationship and interaction of powerful and competitive couples is often chaotic. They usually welcome a firm structure. I used a direct and at times confrontational approach with Michael and Debbie. They are professionals, and the referring attorneys had informed me of their ability to engage in a high-conflict power struggle. Therefore, I chose this controlling approach to cut off each fight as it broke out and before it could develop. Their old patterns of behavior had not worked for Michael and Debbie. By creating and enforcing new patterns of behavior, I had a chance to transform their unsuccessful problem-solving approach to a new, task-focused interaction.

Ventilation. In this case, there was a lot of hostility and high tension on both sides, which I could not suppress. The mediator must decide when to permit ventilation and when to cut

it off. It is the product of conflict, and it can be permitted as long as it is about a person's feelings. It should be cut off when it develops into an attack on the other. Ventilation of feelings does not interfere with mediation; it simply delays it. An attack on the other, however, undermines mediation and therefore needs to be controlled.

Michael was inattentive in the session. He spent a lot of time off somewhere—reliving an old wound, thinking about his hurts, or planning his next smart move against Debbie. I frequently saw Michael's eyes glaze over. When Michael tuned back in, he had not heard what had gone on in his mental absence, and his comments were often inappropriate at that moment. Since I could not make Michael stay focused on the task, I attempted to summarize when Michael reentered. This helped him to catch up on what had happened. I also permitted the initial ventilation, while determining whether it was an expression of feelings or an attack on Debbie.

I permitted Michael to ventilate, without cutting him off, on four occasions. The first time was when I permitted the ventilation but responded critically, to balance my previous criticism of Debbie. (33) Later, I permitted another digression, which came after I had spent a lot of time dealing with Debbie. Although Michael's ventilation added nothing to the session, it did balance the time spent with Debbie. (63) I permitted it a third time and then responded to Michael in a way that let him know I had heard his concerns, to keep him in the process, while continuing to spend more time with Debbie. (82) Toward the end, I permitted Michael to wander and then normalized his feelings to maintain my relationship with him. (107, 108) I kept Michael's ventilation within bounds by preventing it from escalating into overt conflict between the couple. Whenever Michael began to repeat himself, I cut him off in a way that obviated Debbie's need to respond to it.

Determining Initial Movement. On the surface, it seems that I was unbalanced in allowing Michael these frequent ventilations, but another objective governed my response to Michael: managing the negotiations by seeking the first movement. After the initial data had been gathered, it seemed to me that the two

positions were essentially as follows: Michael wanted equal access to his children, and Debbie wanted to control when and how Michael saw the children. This was a shift from the position they had taken with the attorneys. There, Debbie had said she would not let Michael see them at all. Still, it was more than she could reasonably expect to get in the legal arena.

The mediator must not be controlled by the legal arena. Rather, he must enable the couple to find solutions to the problems that arise from the decision to separate. The decisions the couple will reach are bounded by the norms of their community—that is, the experiences of their friends and family will affect them. They will not settle on an agreement that is too far removed from their community's norms. In part, community norms are established by local court rulings on similar cases. Those norms will affect the mediator, since his responsibility is to help the couple arrive at an agreement that meets their needs. In this case, the norm in the community was that seeing another woman did not mean that a husband gave up the right to see his children. Thus, Debbie's position was untenable. Michael's desire to share the children on a fifty-fifty basis might not necessarily be practical, but it was certainly a tenable position. Given that he held a tenable position and hers was untenable, the first movement would have to come from her, with subsequent movement from him.

At this stage, I did not have enough data to determine whether Michael's claim for shared parenting on an equal-time basis was practical. Its practicality depended on Michael's prior role as a father and on his work habits and requirements. As the session proceeded, I could see that his proposal was not a strategy on his part; it was essentially a continuation of his past role and relationship with the children. It is not for the mediator to make determinations about the practicality of a given proposal. Rather, he must test reality with the party who is making the proposal. The mediator's principal interest in the proposal concerns whether it is an honest position or a strategy designed to achieve a different goal. In this case, the past parenting roles would reflect the future parenting roles, thus maintaining a level of coherence with which to balance the changes that were taking place as a result of the changing spousal roles.

I concentrated on obtaining the first movement from Debbie, spending more time with her than with Michael. This added to Michael's tendency to "disappear" from the session by giving him additional scope to do so. Since I had not obtained any movement from Debbie's original position, I had no strategy for engaging Michael when he did return to the session, because that might have meant getting a concession from him before Debbie had made any movement. Given this situation, I had no alternative but allowing him to ventilate—as long as it was about his feelings and was not an attack on Debbie.

Debbie's initial movement came at 61, when she finally acknowledged Michael's parenting, his love for the children, and their need for him. Once this statement surfaced, it was hard for her to hold on to her original position of not letting the children spend time with their father.

Michael's initial movement did not come until 138, after I had spent most of the time seeking movement from Debbie. I restated her concession on the parenting, setting the stage for him to reciprocate. It was a long process, but it was important not to push either spouse too hard or too soon for signs of movement.

Orchestrating the Concessions. This couple needed a solution to their problem, quickly. The children were victims of the current crisis, and its continuation would also contaminate the economic negotiations. Therefore, I had to decide the extent to which I would orchestrate the negotiations by suggesting different courses of action. In an ideal setting, the mediator would not make any proposals or suggestions. Without my active intervention, however, Michael and Debbie would have stayed too tied up in their recent separation to be able to come up with a range of ideas for themselves. Therefore, I chose to orchestrate these negotiations and to use a tit-for-tat approach in the negotiations.

Tit-for-tat, or reciprocal, concession bargaining is a useful method of negotiating when the level of mistrust between the parties is high (Pruitt, 1981). In such a situation, the mediator seeks a small concession from one party and then seeks reciprocal action from the other. The concessions are small and slowly build a bridge between the two opening positions, en-

abling the parties to arrive at a settlement somewhere in between. Thus, the mediator seeks movement from the wife and then turns to the husband for reciprocity. As reciprocity takes place, the level of trust increases. Once the mediator has orchestrated a few reciprocal concessions, the couple begin to take risks with each other and maintain the bargaining process of give-and-take.

The initial response to my attempts to begin tit-for-tat bargaining did not come until 61, when Debbie acknowledged Michael's parenting. Nevertheless, she defended her position carefully and did not follow up this concession with one related to the issue of access. For example, I asked Debbie whether, if Jocelyn did not sleep over when the children were with Michael, she would feel comfortable "about working out some arrangement for the children." (101) I did not ask her to specify the amount of time, but simply to agree on some reciprocal movement. This was also a way of suggesting to Michael what movement he might make that would achieve reciprocity from Debbie. I took this process one step at a time. I simply wanted Debbie to make some small movement, in general terms, because I believed that this was easier for her than making large steps. A small step would also be more believable to Michael, and therefore he would be more likely to reciprocate. Nevertheless, she was stuck and could not go beyond her initial concession. (122)

I finally gave up trying to get the first substantive concession from Debbie (movement on an amount of time). I turned to Michael for the first substantive concession late in the session (134) by asking him whether in the "short run" he would agree that Jocelyn not sleep over when the children were with him. He agreed (138), and I then turned to Debbie for reciprocity. When none was forthcoming, I pursued Debbie until she finally did respond (173) with specific movement.

This series of interactions illustrates how important it is for the mediator to separate process from outcome. At no time did I thrust a proposal on either party; I always left space for either one to reject an idea and supported each one's right to do so. At 177 and 186, I spoke for Michael in rejecting Debbie's proposal, which he had previously rejected. I strategically designed the intervention to obviate the need for Michael to reject the proposal again, since he would probably have done so with

some agitation and a counterattack. Instead, Michael repeated my calm words of rejection.

In this case, I also educated the couple on how to negotiate. I was particularly concerned by Debbie's conditional offers ("maybe"). I pointed out that such tentative offers were inappropriate. It was important to do this, since the level of trust I was still building between them could easily have been destroyed if Michael had responded positively and then Debbie had said, "Maybe I won't." When couples engage in dangerous negotiating behavior, the mediator intervenes and explains the problem. If a party is engaging in a dangerous strategy deliberately, then the mediator wants to control that behavior. If the party takes an action through ignorance of its dangers, the mediator explains the consequences of a given strategy. The person can then retract it and use a more practical strategy.

Monologues. I frequently used monologues to keep control of the session. Each time I engaged in a monologue, it had a specific if different purpose. When the marriage fight first emerged, I normalized the couple's situation and educated them about what they were experiencing. (12) I then returned to my agenda. I used another monologue to join Debbie, undermining her position and then allowing her to save face. At the conclusion of the monologue, I returned to the task. (47-49)

Another monologue was designed to test reality and help me formulate a neutral problem statement. I also used this moment to point out the possibility of joint maximum benefit, so that each party would look at the "half-full glass." In doing so, I took control of the problem definition. (124)

When the issues became obscured, I clarified the meaning of fairness for everyone and returned to task. (128) Toward the end of the session, I engaged in a complicated monologue that covered a number of key thoughts but still returned to task at the end. (159-160)

Clients' Negotiating Behavior

Directional Information. During the give-and-take of the parties, the mediator will often hear information indicating the direction in which one or the other is willing to move. Only

rarely does the other party pick up on this information. The mediator notes the directional information and uses it later in orchestrating the negotiations. It becomes a guide for determining which way to organize the talks.

Michael indicated early that his parameters were equal time with the children for each parent. Thus, he was not seeking *more* than equal time. Ten minutes later, Debbie also provided some key directional information: "He's a good father. He's been a good father. I can't deny that. The children love him and he loves the children." (119) This information set the other parameters of the negotiations. If Michael was the good father that Debbie now stated he was, then obviously they would not reach an agreement that would deny his parenting role. It meant that Debbie's position of controlled access was not intended to protect the children from their father but to protect herself from Jocelyn. It suggested a direction in which Debbie might be willing to move.

Michael provided some further directional information when he stated, "I know that Debra doesn't want the kids around her [Jocelyn], and that it's confusing." (following 133) This told me that Michael understood Debbie's concerns, and that he might be willing to move to accommodate them. Debbie confirmed this understanding when she stated, "Well, I want the children to see their dad, but why does she have to be along?" (155) These various pieces of directional information helped me determine how to proceed. The ultimate agreement of sharing the week, conditional on Jocelyn's not sleeping over, was designed in part by the directional information Michael and Debbie provided about where they were willing to settle.

Equity Versus Equality. The equity-equality arguments are clearly demonstrated in this case. Michael wants equality of parenting. He makes the case that he has had at least an equal role in the marriage and wants to continue that role after the divorce. Debbie wants an equitable outcome. In her scenario, Michael's access to the children should be controlled by his relationship with the other woman and his proximity to Debbie. Equality arguments are simple to make: "I want my share, not one iota more." The fifty-fifty outcome is very appealing and, if

carried across the board on all aspects of the negotiations, should result in an eminently fair agreement. Nevertheless, most parties shift their positions from equity to equality according to the subject.

In this case, it appeared that Michael was willing to share in the parenting equally and to share equally in the costs of raising the children. He stated that he was paying Debbie \$1,500 per month in support. Debbie, however, took the equity position—not because it reflected past parenting behavior, but to control Michael's behavior with Jocelyn. Even if Jocelyn had not been a factor, however, Debbie's arguments in favor of equity could still have been a useful strategy, since they could have been based on the "best interests of the children" justification. Thus, Debbie's negotiating strategy would have been equally valid with or without Jocelyn in the picture. To avoid the consequences of Debbie's strategy, I moved to develop an interim arrangement that would give Debbie time to accept the separation and begin to construct a new life for herself, based on an equal sharing of the children in the future.

Conflict Expansion. When I tried to define the problem—that Debbie would feel uncomfortable letting the children sleep over at Michael's if Jocelyn were also sleeping over—Debbie expanded the conflict, suggesting that Michael should have "a house not too far from ours, so the children could go back and forth on their bicycles. Something more appropriate." (102) This was an interesting expansion of the issues; it proposed a situation in which access to the children would in some measure be governed by the children themselves, since, if they lived close enough to bicycle over to Michael's, they could also decide when and when not to go. This expansion, however, was really designed to allow Debbie to avoid having to respond to my previous proposition: that the entire issue was Jocelyn's sleeping over when the children were with Michael.

Using Threats. Michael tried a threat, obviously from a one-down position: "If the children are so upset when they go back to see their mother, maybe they should stay with me most of the time." (84) I ignored this part of his statement and concentrated on the positive content of his comments. This allowed

Debbie to also ignore the threat. Had I identified the threat and attempted to deal with it, the issue might have escalated and developed into a major battle. As the session proceeded and the balance of power became more equal, Michael saw no need for further threats.

Triangulation. The classic triangulation attempt was Michael's. He said, "John, I would like you to open her eyes" (32) and then went on to detail what I should tell Debbie to do. Later, he pleaded with me, "Can't you tell her that what I'm doing is normal, it happens all the time, can't you explain to her where I'm coming from?" (110) Had I tried to explain Michael's behavior to Debbie, I would have become his ally and therefore her adversary. Instead, I reframed the issue with a focus on the future.

Conclusion

It could be argued that Michael lost in this settlement. He did not achieve the fifty-fifty shared parenting he sought, and he did give up his girl friend when the children slept over. It could also be argued that I had a major role in shaping the agreement. These observations are true—in the short run. Note, however, that I sought the agreement only for a couple of months; it was not a permanent agreement. I did not make a moral judgment about Jocelyn's sleeping with Michael; I made a practical one. Debbie was incapable of dealing with her displacement by Jocelyn as wife, and her possible displacement by Jocelyn as mother, while she was still dealing with her loss of Michael. The separation was too recent for her to believe that a permanent agreement could be reached. What this couple needed was a brief respite from the battle, to give them a chance to organize their lives for the next two months. This allowed them to deal with the inner conflicts of the separation.

Mediation is situational. An agreement in a temporary situation is different from a permanent agreement. The couple's readiness to negotiate an agreement is also a factor. It makes no sense for the mediator to try to help a couple reach a permanent agreement when the parties are not ready to make one.