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by [Alnoor Maherali, Ehsan Ali](#)

October 2020

Article originally published [here](#).

"If the point of mediation is to get us to talk to each other, why would you ever speak to us separately?"

The purpose of facilitative mediation is to enable the parties to decide on an outcome together. That means communication between the parties is critical to the process. But mediation also allows for what is known as a "caucus" – a short period where the mediator speaks privately with each of the parties. Mediators vary in their feelings on the use of caucuses – some use them freely and others eschew them entirely. At the start of any mediation, we explain to our clients what a caucus is and that at any point in mediation, a party or a mediator can suggest one. Below are a few of the reasons a mediation could benefit from a caucus.

The Emerging Interest

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At the start of every mediation, we help parties to express all of the topics important to them and we probe deeper to see if there are related issues that should also be discussed. But despite this effort, new issues can emerge. When a mediator finds themselves in uncharted waters, they may call a caucus to see if there is something that should be added to the agenda for any deal to be comprehensive and sustainable.

The Tug of War

Mediation often involves difficult and highly personal or sensitive issues. As such, sessions can become heated. This often means that the parties are discussing items of real importance to them and that critical issues are finally being worked out. But sometimes, arguments can boil over or become circular in unhelpful ways. In these circumstances, the mediator's job is to get the discussion unstuck. And one method for doing that is to call a caucus - where the parties can safely let off steam without the negative fallout that might result otherwise.

The caucus can also provide space to examine what the parties want out of the mediation and the feasibility of their proposals. It can give the mediator time to assess whether there is a zone of possible agreement (ZOPA) - a range of deals that could work for both parties. Mediation works because it's a conversation about ways to move forward, and it only works if both parties are hearing each other. When they aren't, a caucus can encourage a candid exploration of interests and provide space to consider everything that has been said.

The "Privacy Please" Sign

There are several things a mediator pays attention to during the session. When a party suddenly goes silent, or won't answer a question or address a topic, a mediator may consider a caucus to explore that. Parties can privately share items with the mediator they might be hesitant to discuss in a joint session. In commercial disputes, this can be a potential settlement they are hesitant to offer, or a business concern they have that they would rather not share with their counterparty. In interpersonal disputes, the issue might be a sensitive point about personal history or an item they are nervous to discuss in front of the other party because they aren't sure how they might react. Discussing this information privately first can reduce the risk of blurting out the wrong thing in session.

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Mediation in Today's News

The Growing Appeal of a Multi-Stage Mediation Process



Scholars and mediation practitioners have begun to question whether a multi-

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At any point in the mediation, a party can request a caucus with the mediator. In every case, the mediator will grant a caucus both to the requesting party and, in the interest of fairness, to the other party as well. Besides the reasons already noted, a party may have questions, they may wish to address a perception of bias, or they may just need to share something in confidence that they do not want the other party to know. We always encourage parties to request a caucus (or break) as needed.

The Compass Check

Sometimes, towards the end of the mediation when options are being explored and evaluated, parties may be close to an agreement but not quite there. When a resolution is imminent, parties must weigh difficult decisions, ponder hard realities, and consider alternatives if a deal is not reached. A mediator can call a caucus to help each party to (a) brainstorm options that have not been considered, (b) weigh the options on the table against the best and worst case alternatives to a mediated outcome, and (c) reality-test the possible outcomes to ensure that they will address the party's concerns.

The Signal Check

Mediators can also call a caucus to do an internal check about how the mediation is going. This is especially true in co-mediation, our preferred mode of operation. With two mediators, you have twice the experience and a synergy of problem-solving expertise and listening skills. And it allows the mediators to put their heads together and confirm what they are hearing. A caucus is a great opportunity for the mediators to check in with each other and decide on the best way forward.

These are a few of the reasons mediators might call a caucus. And there can be times when most of the mediation will be done in caucuses - referred to as "shuttle diplomacy." Especially if that is how one or both of the parties would like to proceed. In this scenario, mediators work with the parties in much the same way to make sure their interests are met. With or without caucuses, mediation provides a space for parties to discuss their issues and find sustainable solutions that work for them. But, sometimes to come together, you need a little time apart.

Biography

stage mediation process, in which discrete parts of the mediation are tackled at different times, might offer a better ...[more](#)

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Alnoor Maherali is a highly skilled diplomat, dispute resolution specialist, and certified mediator. He resides in New York City and mediates for the New York Peace Institute and Venn Mediation. A ‘student of the world’ his personal and professional travel has taken him to almost 50 different countries, making him especially adept at navigating cultural, ethnic, and racial differences. During his time in the foreign service, he worked overseas in Afghanistan and Bangladesh, specializing in conflict resolution, political dynamics, human rights, and disaster response. He studied Mathematics at Queen’s University in Canada and has a Master in Public Administration (MPA) from the Harvard Kennedy School in Boston. It was in his MPA that he discovered his passion for mediation, while taking an advanced workshop in Multiparty Negotiation and Conflict Resolution. Since then he has committed himself to mediation full-time, with training and professional development, co-launching his own mediation firm, and by joining community mediation rosters.



Ehsan Ali is a practicing New York lawyer, arbitrator, dispute resolution specialist, and mediator. He resides in New York City and mediates with the New York Peace Institute and Venn Mediation. He attained his B.A. from American University, majoring in Communications, Law, Economics, Government and Philosophy. He went on to graduate with distinction from Columbia Law School. While an associate at a leading New York law firm, he worked on major national and international arbitral cases, successfully representing clients in major matters valued between \$25,000,000 and \$50,000,000. Thereafter, he has served as outside general counsel to a number of startups handling a full range of matters including dispute resolution and contractual negotiations, particularly in the entertainment space. This richly varied experience has given him a unique perspective on conflicts, especially



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