

Prof. Hurwitz's class
REPORT ON A MEDIATION

(This assignment should represent your own individual work product.)

Please download this form and type your response (no need to repeat question). Your report should be no longer than 3 typed pages, double spaced, Times Roman font size 12, due one week after the mediation.

Name: Matthew C. Berntsen
Parties: Joel Sage (T.C. Veranda), Matt Hunter (Fran Moran)
Mediator: M. Berntsen

Title of Simulation: The Neighborhood Spat Date of Mediation: October 26, 2009

Approximate Time Spent on Mediation: 30min

Please give a brief description of what occurred during the mediation and any agreement reached by the parties. Please critically evaluate the role the mediator played during the mediation. If you were the mediator, please evaluate your own performance. You may want to talk about:

Relationship-oriented issues: For example, rapport, trust, discussing mutual interests, reducing hostility, helping parties save face

Process-oriented issues: For example, agenda, neutrality, caucusing, framework for negotiation, order of issues discussed

Substance-oriented issues: For example, probing interests, forming goals, moving parties off positions, identifying unrealistic ideas and positions, suggesting options

If you were not the mediator in this simulation, what would you have done differently? If you were the mediator, what would you do differently the next time you mediate a dispute.

As the mediator, I started the discussion by laying out what a mediation is, my goals to help them reach agreement while preserving and hopefully improving their relationship, the potential alternatives to not reaching an agreement (entering the court system). Introducing myself as Matt, I attempted to build trust, respect and rapport by asking both parties how they wanted to be addressed, starting with T.C. Veranda out of consideration for his age. We settled on first names, and I continued to lay out the ground rules, saying that I hoped they could agree to them. I used these as an opportunity to build rapport and trust between the three of us. Anything said to me individually would remain confidential (we did not end up meeting individually), I requested that anything said about a third party would remain in the mediation room, and lastly I asked that we all try to remain civil and respectful, focusing on our feelings and reactions rather than the actions that caused them. They agreed to the rules, and T.C. requested that we also agree not to interrupt one another, which we all did.

I started the information gathering phase by asking Fran why we were there. I decided to start with Fran for two reasons. First, it gave him the opportunity to be involved in the mediation early, which I hoped would increase his investment in the process. Second, I assumed that he had not painted T.C.'s door on a whim (and entertained the possibility he would claim to be innocent), and saw it as an opportunity to get at the underlying facts. Fran opened with a relatively conciliatory tone, referring to painting T.C.'s door as an "overreaction," and proceeded to explain about how he felt embarrassed in front of his parents by T.C.'s comments, got home from work around 10PM during the week, and was frustrated by the police showing up at his house. T.C. later mentioned that he went to bed around 10. Through a discussion with T.C and Fran I ascertained that there were at least two parties in question, T.C. had asked Fran to quiet down after the first one, Fran had at least attempted to do so, and T.C. called the police at a later party. I attempted to get more details as to the timing and day of the week of

these parties, which they were unable to provide, so we agreed to operate under the assumption that at least one was during the week and one was on a weekend.

During the discussion, T.C. and Fran exchanged apologies. T.C. mentioned that he wished the parties could be held while he was away, and in discussing this with he and Fran they agreed to try to work together to schedule around T.C.'s frequent weekends away on the condition that Fran agreed not to vandalize T.C.'s house while he was away (to which Fran readily agreed). As for working to keep the parties held while T.C. was home under control, we discussed a fair means for notifying Fran of loud noise and balanced Fran's desire **not** to deal with the police with the fact that the police were T.C.'s only real bargaining chip. T.C. expressed concern at physically going to Fran's house, so we ultimately agreed (at my suggestion) that T.C. would phone Fran's mobile, then house if no answer, leave a message if no answer, and then repeat that process fifteen minutes later if Fran had not responded. Only after another fifteen minutes would T.C. call the police, and T.C. offered to give Fran at least one free pass in case Fran's phones malfunction there was some other reason Fran did not respond. Lastly, feeling that T.C. had been reasonable in working with him to allow the parties, Fran volunteered to repaint the door the next morning, as he leaves for work in the early afternoon.

The conclusion of our mediation was a little rushed, and I feel that some more time might have given me the opportunity to work on building a relationship between Fran and T.C. rather than just having an agreeable resolution. As the mediator, I gave them a lot of leeway to discuss and almost negotiate between themselves. They both seemed willing to work toward a mutually acceptable solution, and so I tried to interject mainly to refocus their discussion on the issues, delay discussing solutions until we had gotten at most of the facts, and occasionally stepping in to enforce the ground rules. I also found myself reframing what was said when one of them stopped speaking, which gave them both a neutral party to help distill the underlying interests and to digest what was just said. It also

served to keep the peace and clearly indicated to them who was supposed to be speaking at a given point in time.

I feel that I generally did a good job. I was unsure of myself at the outset as I have never mediated before, and I fairly quickly fell into the role. Playing an impartial role comes easily to me, and in being someone who friends come to when they need a good listener proved to be valuable. The one note that I will make that I feel wasn't made in the debrief is that in my mind a mediator is not without interests. You may be neutral, but you have an interest in helping the parties resolve the situation and have a large amount of implied power to further that end.

One place that I feel might have worked well given the interactions of T.C. and Fran here but has the potential to be problematic in other mediations is the amount of leeway I gave them to direct the discussion. We were all smiling and joking a little within the bounds of our roles, so I felt no need to interject and keep things strictly respectful and focused on the immediate issue most of the time. I also delayed resolution of the door painting issue to the end because it seemed to be a symptom rather than a cause, and Fran was being in no way cantankerous, so I estimated that repairing or replacing the door would be a concession that Fran would gladly give. Accordingly, I wanted to allow it the opportunity to serve as the capstone of their agreement. Had Fran been more difficult, leaving it to the end would not have been a good idea whatsoever.

Another thing that I found difficult was the blurred line between understanding or acknowledging what a party said and agreeing with it. In fact, one of the parties mentioned afterwards that he felt I might have sided with him on a small issue, but the other did not feel the same way. It seems from the video that professional mediators also have trouble with the distinction, so perhaps it is an area where there is always room for improvement.