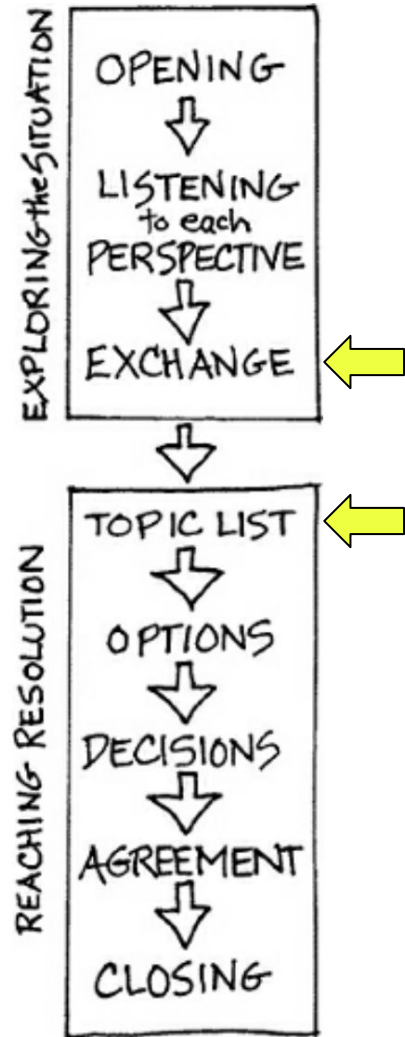
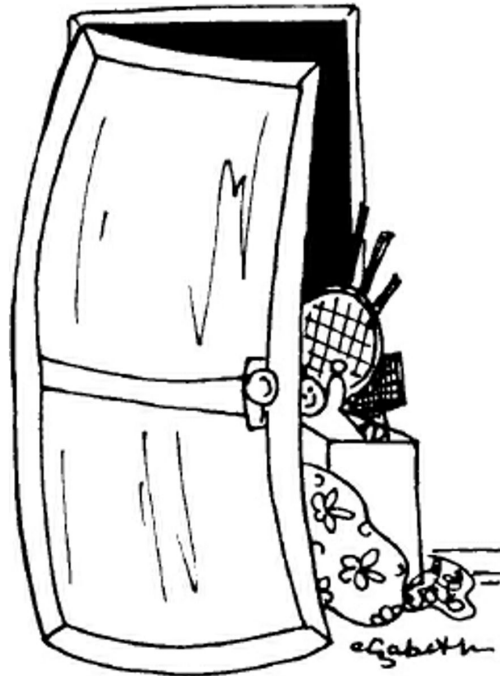


# The Exchange and Creating a Topic List



# The Exchange

1. Invite questions and responses
2. Clear up misinformation, gaps
3. Explore concerns: examples of behavior + impact
4. Summarize interests

## Throughout:

- Encourage empathy, curiosity
- Postpone discussing solutions!

# The Exchange

## 1. Invite questions and responses

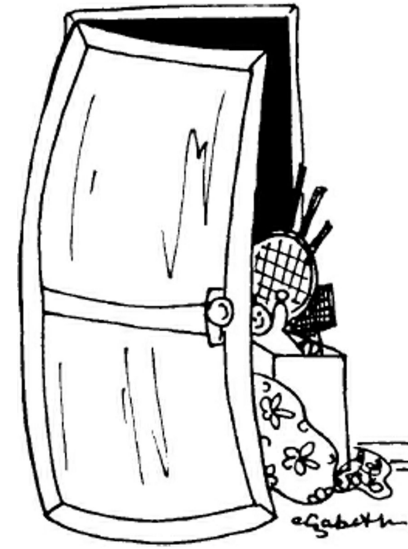
The Exchange follows the initial listening and starts out with a jumble of accounts, claims, demands, interpretations and concerns that were described by each person in the prior listening portion.

The mediator helps participants sort through it, gradually building a clearer, shared picture of their situation.

Ideally a shift happens on two fronts:

- From a self-centered view to a situation-centered view.
- From adversarial mode to cooperative mode.

By the end, people should have more accurate information, have identified what interests need to be met in order to resolve their conflict, and be ready for problem-solving.



# The Exchange

## 1. Invite questions and responses

### Show Impartial Empathy

- This has really been tough for everyone!
- That meant a lot to you.
- You've both had a really hard time.
- Thank you for going into those details.
- Take your time.

**Note: Mean what you say (or don't say anything), say it warmly and respectfully, and keep it low-key.**

# The Exchange

**After the Listening segment, participants usually launch into their own questions about facts (“What happened?”) and motives (“Why did you do that?”). This is great, let it roll!**

**If they don’t start talking spontaneously, invite them to respond to what they’ve heard: Do either of you have a question for the other? Jane, I asked you to hold a thought a minute ago, would you like to talk about that now? I’m sure you have some questions, and I have some too.**

**Note: not all mediations flow this way. If there is higher conflict, you may ask them to tell you what questions they have for the other person, for example.**

# The Exchange

**You can also ask questions, especially for context or clarification.**

**Your questions can orient everyone to the broader context, and can sometimes spark a cooperative conversation. If they don't know each other well, the other party may need the information, too.**

**Useful questions: Ask for any information you need to follow the thread of their narrative. Don't be shy: if you don't understand what they mean, you can't help them.**

**Convey interest and curiosity; don't interrogate. Ask for facts they will probably agree about.**

**Save probing questions about feelings, "what happened," and hot topics till later. Ask for information which they can explain together, such as drawing an organizational chart, putting together a timeline.**

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# The Exchange

## What information to look for

Concentrate on information that will move them towards resolution. Try to minimize the time they spend on information that serves to assign blame, that is second-hand, or that goes into repetitive detail.

## Types of information to look for:

- The situation. What happened, context, concerns, behaviors, impact.
- Interests. What do people want and need? Why do they care?
- Facts that could help in problem-solving. What is the standard process?  
Who is in charge of this piece? What's the deadline?
- People's emotions and thoughts about that information—reactions, stresses, interpretations, prejudices, assumptions, world-view.
- People skills, how parties interact with each other.



# The Exchange

## 2. Clear up misinformation, gaps

**Quite often, participants discover significant misunderstandings about events, especially about the other parties' reasons for behaving as they did.**

**Experiences & choices. Invite them to talk about how they personally experienced pivotal events and what choices they made.**

**Questions. Encourage them to ask each other about any behavior that puzzled or upset them.**

# The Exchange

## 2. Clear up misinformation, gaps

**When the “truth” will not come out Participants often respond to the other parties’ “truths” with objections, disbelief, or fury.**

**No persuading! Caution—you are trying to get clearer and more specific information on the table, not trying to convince anyone to believe or trust what the other party says.**

**When they clash over facts or interpretations, explain that they don’t need to agree on what happened in order to move forward. It’s normal for people to have different memories about the same incident. In any case, mediation can’t determine whose version is “right.”**

**Instead, ask about information that will help them decide what to do next.**

# The Exchange

## 3. Explore concerns: examples of behavior + impact

In exploring each of a participant's concerns, mediators focus on getting specific examples of the behavior which troubles them, and the impact on them of that behavior. This grounds discussion in observed reality, and uncovers practical information for developing options later on. Asking for examples and impact helps bring each person's most troubling concerns to the surface. From these, the mediators distill the parties' interests and priorities, which will become the basis for evaluating options in the Reaching Resolution phase of the mediation.

# The Exchange

## 3. Explore concerns: examples of behavior + impact

Ask for an example of behavior

Ask about the impact of behavior

What they don't want can be “flipped” or reframed as what they do want (a positive outcome) in the future (I don't want our child to be late all the time becomes I want our child to be on time) as an interest.

# The Exchange

## 4. Summarize Interests

You now have a final interest you can summarize, wording it to be:

**Outcome-focused**—it's about what's wanted in the future; it doesn't just restate the problem.

**Non-partisan**—It doesn't imply that one party's view or needs are more legitimate than another's. It's about the person whose interest it is, not about how they want the other party to behave or think. Where possible, don't mention the other party.

**Non-judgmental**—it contains no words implying right, wrong, blame, or “shoulds.” It uses tactful, neutral, non-inflammatory language.

**Reasonable**—their need or goal sounds reasonable, legitimate (if possible!).

# The Exchange

## 4. Summarize Interests

### Highlight shared interests

Bring out any shared interests you notice.

**“It seems like everyone wants Tommy to be able to play an instrument and get to lessons.”**

**Broad interests and goals like these help people reconnect with each other—we want similar things!—and widen the number of potential solutions, e.g., there are several ways to support Tommy playing an instrument and getting to lessons.**

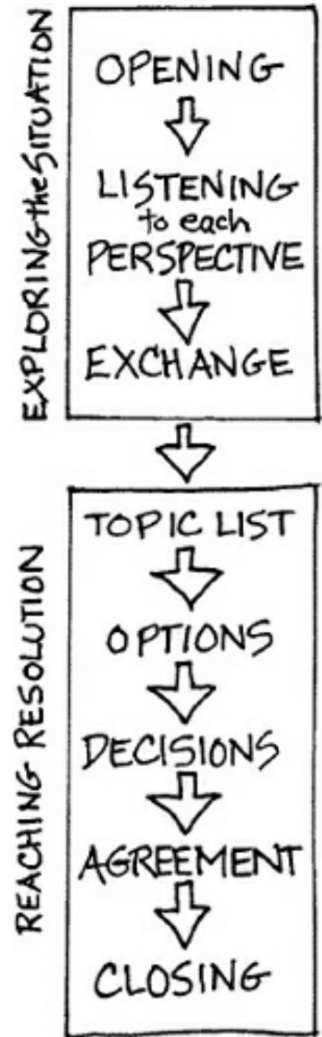
# The Exchange

An important note about the order of the steps of the process.

This sequence of mediation steps is only one way that a mediation can be structured or described, and there are other legitimate ways to describe the steps involved in facilitative mediation.

In some mediations it might make sense to do the Opening and then skip several steps and start the substance of the mediation by creating a top list and prioritizing topics and then going back to listen to each person on each topic one at a time.

The Exchange seems to be most amorphous step that is hard to describe and is left out of a lot of models explaining the mediation process. In many cases, it may be that building a topic list and the exchange are seemingly done at the same time, rather than being distinct steps.



# The Exchange

## The turning point phenomenon

In mediations involving parties who previously had a close relationship but became estranged, mediators sometimes witness a marked emotional shift, which we call the “turning point.” It may happen after someone makes an apology, or offers a concession or a kind word. There may be a pause. Then, like water rushing through a breach in the dam, there may come a mutual outpouring of personal sharing, ideas and offers.

Often the spurt of energy propels them into spontaneous problem-solving. Sit back and let them go to it. (Later, you can loop back to check whether there’s anything else they still need to address, using a Topic List.) This dramatic U-turn is not necessary for reaching resolution, and not something a mediator can make happen. But you can be ready to recognize and make room for it when it does.



# Topic List

Once the parties have put their concerns on the table, and you have helped them translate those concerns into tactfully worded, future-focused interests, the next step is to organize those reframed concerns into a tentative list of all the topics they need to discuss and decide.

The list is adjusted and refined until all parties agree it's accurate and complete. Like a meeting agenda, the Topic List structures the discussion, reassuring the parties that everything will be covered in its turn.

# Topic List

## Example family law topic list

- **Child support: How to pay for little Juan's daycare, medical and dental insurance, out-of-pocket costs and regular daily expenses such as activities**
- **Custody and Parenting Time: Figure out a parenting time schedule and holiday schedule. Figure out legal and physical custody labels**
- **Division of Assets and Debts: Build a spreadsheet and work through ways to fairly divide things**

# Topic List

**Discuss and confirm the Topic List**

**Ask, Does this list cover everything you need to talk about to resolve the situation?**

**Ask, Is anything missing?**

**Ask if the wording is okay, and adjust it together to be tactful and clear.**

**Review available time compared to the number of topics.**

**Consider asking them to help prioritize topics or suggest one to start**

**This can be a good time to take a break and come back refreshed to work on brainstorming options about the first topic**

**Note: If a new topic surfaces, it is likely to be something important that a participant has been holding back.**

# Separate Rooms/Separate Conversations

Although separate rooms/separate conversations is covered in The Mediator's Handbook in the same section as The Exchange, we'll be covering the topic of separate rooms/separate conversations on another day of the training.

# The Exchange and Creating a Topic List

Questions?

