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# Improvisation and Mediation: Balancing Acts

*Lakshmi Balachandra, Frank Barrett,  
Howard Bellman, Colin Fisher,  
and Lawrence Susskind*

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*Improvisation can be an important element of mediation practice, and there are several ways in which mediation practice correlates to improvisational performance. In this article, two mediation experts and two skilled jazz musicians explore the improvisational aspects of mediation. Two central themes emerge: (1) mediators often use improvisational techniques, and (2) by being improvisational, mediators can create environments that would encourage the parties themselves*

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**Lakshmi Balachandra** is a visiting lecturer at the Massachusetts Institute of Technology's Sloan School of Management and a visiting researcher at the Program on Negotiation at Harvard Law School. Her e-mail address is lakb@mit.edu.

**Frank Barrett** is an associate professor in the Graduate School of Business and Public Policy at the Naval Postgraduate School in Monterey, California, where he is the director of the Center for Positive Change. He is also an active jazz pianist who has led his own trios and quartets and traveled extensively with the Tommy Dorsey Orchestra. His e-mail address is fbarrett@nps.navy.mil.

**Howard Bellman** is a practicing mediator. He served as Secretary of the Wisconsin Department of Industry, Labor and Human Relations in the administration of Governor Anthony S. Earl. He is also an adjunct professor at the Marquette University Center for Dispute Resolution Education and a member of the National Academy of Arbitrators. His e-mail address is belmediate@aol.com.

**Colin Fisher** is a Ph.D. candidate in organizational behavior at Harvard University. He is a professional jazz trumpeter and regularly performs with the Either/Orchestra, a ten-piece jazz ensemble based in Cambridge, Massachusetts. His e-mail address is cofisher@verizon.net.

**Lawrence Susskind** is the Ford Professor of Urban and Environmental Planning at MIT and founder of the Consensus Building Institute through which he provides mediation services in complicated public disputes around the world. His e-mail address is susskind@mit.edu.

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*to be improvisational. We argue that practitioners can enhance their effectiveness as mediators by mastering improvisational skills.*

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## **The Improvisational Framework**

What makes a skillful mediator? Individuals who can enter a highly charged situation and effectively interact with parties in dispute, nurturing substantive and productive dialogue that leads to a successful resolution of a challenging conflict seem to share certain traits. These include sharp intuition, well-honed listening capabilities, and, often, plenty of experience.

But mediation is also a performance, and a mediator is, in some ways, playing a part. When one envisions the mediator as a performer, the parallels between mediation and improvisation become apparent. For example, like an improvisational actor or comic, the mediator does not work from a set script. Like a jazz musician, he or she does not work strictly from a set piece of music. Although mediators have critical knowledge of the parties and certain expectations about how they will behave, what will actually happen during the actual mediation is unclear, in particular how the parties will respond to the mediator and to each other. Mediators use information they glean in advance in combination with new information learned “on the spot” to determine their next moves.

Despite the lack of a set script, both improvisational performance and mediation practice are built upon structures. Jazz musicians and improvisational comics must rigorously prepare for improvisational performances after all. They spend hours learning the basic building blocks of jazz performances, practicing not only the melodies of songs, but also internalizing their rhythmic and harmonic structures. Most jazz performances consist of “composed pieces or tunes, consisting of a melody and accompanying harmonic progression . . . It has become convention for musicians to perform the melody and its accompaniment at the opening and closing of a piece’s performance. In between, they take turns improvising solos within the piece’s cyclical rhythmic form” (Berliner 1994: 63). Jazz musicians like Miles Davis must thus commit to heart the structure and form of a song in order to readily improvise new melodies within or over it as a soloist, while the accompanying musicians must also know the piece well enough to smoothly back the soloist up. In addition, just like all other musicians, the jazz soloist or accompanist must intimately know his or her instrument, its capabilities, and its limitations.

In much the same way, actors in an improvisational comedy troupe such as Chicago’s Second City or Los Angeles’s Groundlings Theater rehearse the framework of their performance pieces over and over. These performance pieces are typically improvisational “games.” An improvisational game is an

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exercise with a set number of conditions that the actors must follow. For example, three actors are on stage in a “sit-kneel-stand” game. At any given moment, one actor must be sitting, one must be kneeling, and one must be standing. If the sitting actor stands up, the other two must adjust accordingly so that one is sitting and the other is kneeling. They must perform these adjustments in relation to their spoken lines so that the scene makes sense. The “sit-kneel-stand” game is one of the many games that improvisational actors perform for an audience. The physical aspect of the game has been clearly established and internalized; although the actors know their physical movements, they cannot prepare actual words and outcomes because they never know what suggestions they will receive or what a colleague will say. The improvisation must follow this structure in order to make sense to the audience. In fact, the stronger the structure, the freer the actors actually become because they need not worry about where the plot line is going — they are free to quickly respond and adjust according to the structure, as events unfold on stage.

Like improvisational performers, effective mediators create, develop, and perfect an underlying structure of their performance in mediation. Although they cannot script their encounters with their clients, they do improvise off of the structure that they have created. In mediation, the mediator and the parties enter the room with certain shared assumptions. Everyone knows the general case structure. For example, in a labor mediation to renegotiate an expired contract, the representatives of both the union and management arrive with goals that everyone realizes — the union members want salary increases while management may want more controls in hiring policies. In such a scenario, the structure and norms are reasonably clear: the parties will talk to each other and offer proposals and counterproposals, while a mediator manages the process.

Within this structure, the mediator will improvise. Everything that he or she says, in fact, is improvised. A mediator may ask initial questions to learn about the conflict from how the parties respond even as much as from the substance of their words. Are they being provocative or inflammatory? Are they respectful or dismissive of each other? Are they optimistic or negative about the chances of achieving resolution?

Once discussions begin, the mediator moves into a responsive/reactive mode. By carefully watching *how* the parties respond and listening carefully for other cues, the mediator can then make “judgment calls” as to when to intervene with a question or a suggestion, or even when to draw one of the parties out of the room. Judgment calls are ways in which the mediator improvises over the basic structure of the mediation, much like a jazz musician or an improvisational comic. Mediators develop an instinctive sense from past experience about when and how to intervene. They are alert for cues that would indicate that the time is right to make a move by interrupting a negative dynamic, by suggesting private caucuses, or by offering a creative solution. Like an experienced jazz musician, an

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experienced mediator develops certain “licks” or repertoires that he or she can call upon during mediation to buy time when everyone seems stuck.

## Developing a Repertoire

In rehearsals, jazz musicians learn the basic building blocks of specific songs (chords, rhythms, etc.), but also practice scales, patterns, and “licks.” When the need arises, they can call upon these components and arrange them in novel ways, either to create improvisational solos or to support other band members as they innovate. The jazz performance thus incorporates a complex interplay and juxtaposition of musical creation and reformulation. “As soloists are perpetually engaged in creative processes of generation, application, and renewal, the eternal cycle of improvisation and precomposition (creating and shaping the structures underlying performance) plays itself out at virtually every level of musical conception” (Berliner 1994: 242).

When any musical phrase is performed, it shapes the next phrase. Conversely, the rhythmic, harmonic, and melodic structures that scaffold a performance are often altered as part of the improvisation. When a piece is performed, it is both a referent (offering constraints or fixed elements) and a fluid part of the performance, subject to change and mutation from its original form.

Mediators similarly draw on their own experiences and the observations of other practitioners to develop a repertoire of responses or reactions. Effective mediators are always expanding their repertoire, sometimes picking up on earlier moments in a current case, while also reaching further back to experiences from previous mediations. For example, if one of the parties is being belligerent, a nimble mediator may be able to remind him or her of a more constructive comment he or she previously offered. A mediator might also remember using some techniques that succeeded in encouraging a person with a similar temperament or outlook to be more constructive. Knowing what note to strike — and when to strike it — is as much an art for the mediator as it is for a musician.

Mediators also develop more generalized “rules” for dealing with different types of mediations, conflicts, and disputants. Teams of people in the same room usually conduct collective bargaining. Much of the dialogue, in fact, reflects prepared statements made for the benefit of other constituents who are not at the table but who want to know that they are being zealously represented. If the negotiators themselves have a great deal of experience, they know that much of their dialogue is often *pro forma* posturing. When the professional stakes are high, the personal stakes may actually be low. Conversely, there are other cases where the parties in mediation may have great difficulty expressing the full extent of their emotional and psychological needs. A mediation growing out of clergy sex-abuse allegations might be one example. A mediator attuned to such contextual differences might privately encourage such parties to speak

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more freely, while this would be less necessary in other less emotionally fraught cases (Cedrone 2004).

Cognitive psychologists refer to this behavior as pattern recognition (Klein 1998). How can mediators recognize patterns of behavior, call on their developed repertoires, and apply their knowledge to develop new, creative solutions? A mediator's stored library of moves is not static and, while instinctual, should not be reflexive or automatic. In heated mediation moments, mediators need to be able to use these stored ideas to redirect the parties' attention elsewhere. One technique is to take the particular conflict at hand, particularly in a situation where the parties are "hot and bothered," and depersonalize it by putting the participants in a more neutral role by asking what kind of advice they would offer to other people in a similar conflict.

This method of changing context echoes the Synectics creativity-generation framework approach developed in the 1950s by researchers in the innovation department at the management consulting firm, Arthur D. Little, Inc. (Gordon 1961). The Synectics model utilizes the juxtaposition of two seemingly disparate concepts or objects to encourage participants to break free of existing mind-sets and think more creatively. The Synectics approach uses metaphors and analogies to inspire new ideas (Gordon 1961). For example, in discussions about a new car design, the facilitator might ask the participants to think of the car as an amusement park. What do you see? What would the rides be like? This visualization helps the participants to see new connections that they otherwise may never have created (Couch 1993). With this brainstorming tool, the participants hope to find fresh ways of solving problems. Similarly, mediators hope that the parties they work with will find a way to solve their conflict. By changing context, an effective mediator improvises to facilitate a fresh solution to the problem. Mediators must determine which way to change context — or which move in their repertoire — to utilize.

Deciding which move to make, or how improvisational a mediator should be in the use of his or her repertoire of mediation skills, techniques, and tricks will unpredictably vary from mediation to mediation. Mediators seldom know in advance what exactly they will face. However, like jazz musicians, experienced mediators learn when to use their own specific "licks" or series of somewhat scripted lines or statements. One technique in the mediator's repertoire is to direct the participants' attention to something new or disparate as a means of coming up with a new, more creative solution to the conflict. Effective mediators have a variety of different rabbits they can pull out of their hats, knowing *when* to pull *which* rabbit requires great improvisational ability.

### **Improvising in the Moment: When to Use a Move?**

In jazz and improvisational comedy, musicians and actors must work closely together as a team, to create a song or a scene. When one jazz musician decides to solo, the others must know when to fall back and play the

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backup chords and rhythm of the song. They must recognize what song they are playing. More importantly, they accept the soloist's "move" and thus support him or her with the appropriate accompaniment until he or she finishes. The other musicians understand their role — to play the supporting parts — so that the sound becomes full and complete.

Jazz musicians have one or more roles that they typically play in a performance. Those who play melodic instruments (e.g., trumpet, saxophone, and trombone) perform the melody and solo. Those who play harmonic instruments, like guitar and piano, harmonize chords, support the soloist, and perform a solo when their turn comes. Bass and drum players define the rhythmic structure for the soloist and also perform solos themselves.

There is a close parallel in improvisational theater, where one actor makes an "offer" of a relationship to another actor. (For example, one says to the other, "Mom, thanks for making cookies for my bake sale.") The other actors on stage now know that these two have established characterizations with established relationships, and must then build on that information. They support the offer and use it to work together and create a scene. The actor who was spoken to now knows that she is playing the mother. (The audience accepts this proposition as well.) The actor can take the information in the offer and build on it. Perhaps she would say something like, "I am happy to help — anything at all — so you can finally afford to move out of my house!" (This second character has built on the original "offer" with new information: the daughter is not a child but an adult living at home — and so the score builds, piece by improvisational piece.)

How does a mediator determine the right moment to make his or her move and try something different? What steps should he or she take? How incremental does he or she need to be? What should he or she do to advance incrementally? What feedback governs how much further he or she should go each time?

Deborah Kolb has written on the moves that take place in negotiation. These moves have strategic consequences. She categorizes them as "appreciative moves," "process moves," and "power moves," and then offers various responses or "turns" for each type (Kolb 2004). While these characterizations are important in negotiation and mediation, identifying the precise moves in the improvisational arts, however, is more difficult as the process is more fluid and less specific.

On the improvisation stage, when an actor makes an offer the other performers respond accordingly. They understand what the offer is meant to do, and they either build on it or depart from it in some fashion in order to create a scene. Their ability to do so successfully, like jazz musicians creating an improvisational piece, is dependent on the hours of rehearsals they have shared.

But this is one aspect of improvisational performance that is less transferable to the mediation context because the mediator is not on the same *team* as the parties (who are clearly not on each other's team) and does

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not have the benefit of joint preparation. Thus, determining how and when a mediator should make a move is a more difficult and unpredictable process. This is especially challenging when the dispute is highly conflict filled, for example, a situation involving ethnic conflict where the mediator will be repeatedly told how much the parties have harmed each other. Effective mediators learn to calculate when to use a move by reading the mood of the parties involved.

## **Reading a Mood**

In jazz and theater improvisations, the musicians and actors must listen not only to each other and to themselves but also to the audience. This is particularly true in improvisational comedy. When the audience suggests a topic, they expect to see that topic played out by the actors. If the actors do not perform the suggestion, the audience may feel let down and dissatisfied. Similarly, in a jazz improvisation, the musicians must listen carefully to each other to determine when solos are to be finished, who will next perform a solo, and, ultimately, when the song will be over so that the transitions from soloist to soloist are seamless. The great trombonist/composer Bob Brookmeyer, for example, advised that a musician should play as if he or she had one ear on his or her head and one ear on the piano across the room, which captures the idea of simultaneously listening to oneself play and listening to the group as a whole. Jazz musicians also speak of being in a “great room” — or one that is “dead” — depending on the energy and responsiveness of the audience.

In a jazz performance, a musician learns to play something that is internally coherent but must seamlessly fit into the music created by the entire ensemble without seeming forced. By listening intently, making eye contact, paying attention to body language, and listening to various cue notes, the jazz musician spots, interprets, and reacts to “critical moments” during the performance (i.e., when the soloist should shift or when the song should end). In an improvisational theater, the actors likewise do much more than just listen to the improvised dialogue. They use eye contact, body movement, intonation, and facial expressions to convey a great deal of information to their fellow actors, information that is then used to build a scene.

Mediators must also “listen to something else” in order to effectively read their clients’ moods during mediation. Reading the mood of the parties and being able to imagine the reactions of the parties to others who are not at the table are critical aspects of mediation. For example, one party may reject the offer of another without giving any reason. On the merits, the mediator might think that the proposal was, indeed, responsive to the concerns that everyone had already expressed. The mediator has to be able to “get inside the head” of the one rejecting the offer, to hear what that person hears about what his or her own constituents are saying about the proposal. In effect, the mediator must be able to hear the unspoken

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conversations that each party is having with his or her constituencies as the face-to-face dialogue goes on. By helping to orchestrate what is and is not being said at the table, the mediator can help the parties rework provisional proposals put forward by one side until all the spoken and unspoken arguments are aligned in a harmonious fashion.

Asking the “right” question — one that elicits a response that the mediator desires — is the key for mediators, of course. For that exchange to truly move the mediation forward, however, the mediator must also make sure that the parties actually *bear* what they themselves are saying. They want the participants to be more aware of the ways in which others may interpret what they are saying differently at the table. But what happens when a mediator asks good, strong, insightful questions that encourage parties to tell their stories and to listen carefully and sensitively but the mediation still fails to move forward? Some questions will lead to answers that open up opportunities for resolution, while others will close them down. Both can constitute a kind of progress, as long as the parties (or at least the mediator) understand what has happened. With the help of the mediator, the parties need to synchronize their efforts to move the conversation in new problem-solving directions.

If a proposed method of redirecting the conversation does not lead to a concrete solution, some mediators work toward eliminating one problem at a time. By accurately assessing the “mood” of the room, mediators try to reframe what the parties are working on at any moment. Take for example one mediator’s experience in an environmental dispute over the use of a river. During a tour of the river with the scientists selected by each side, the mediator observed the way the scientists interacted. He felt that the scientists were not interested in debating; rather, they were more interested in each other’s scientific views. Watching this interaction, the mediator decided to meet with the scientists instead of the lawyers to discuss the case because they were more interested in discussing the heart of the dispute. This move proved to be an effective one for the case as well. Such a move required the mediator to react immediately, in an improvisational fashion, based on his reading of the mood. Often, reading a situation or the mood might require the mediator to reframe the conversation, to make a stronger move, or to make a move designed to shock the parties involved.

### **Shock Value: Key Improvisational Moves**

Experienced mediators may make improvisational moves purely for shock value. This technique seems to be highly effective in difficult mediations. The shock value of a move can have a stimulating and provocative effect. It can move parties to a slightly different place. Sometimes, it should be a little abrasive and even aggressive, because shocking parties can bring them out of an impasse.

Mediators typically seek to develop civil, friendly relationships with the parties from the outset. Ideally, they will develop a rapport with the



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clients, who will then grow to trust the mediator and have faith that he or she is neutral and has everyone's best interests at heart (Goldberg 2005). Jazz musicians aspire to break free of conditioned patterns and shake up the status quo to produce more creative performances. Musicians work with a "provocative competence," and in doing so they pursue "deliberate efforts to interrupt habit patterns" (Barrett 1998). However, in challenging moments such as when the mediator realizes that progress is not happening, it is time to pull the rabbit out of the hat by, for example, saying or doing something particularly provocative. The mediator might change his or her attitude from that of a civil ally to a frustrated, disappointed foe by announcing something like, "I thought I could help you but we are not getting anywhere, so perhaps it is time to go home." Because the mediator has established himself or herself as neutral, trustworthy, and calm throughout the mediation, the parties will not be expecting this shift; these words will jar them and, it is hoped, spur them to go in a new direction.

In this way, the mediator also encourages the parties themselves to improvise. He or she has thrown out an offer that cannot be ignored by the parties — they must acknowledge this offer and respond one way or another. This action by the mediator is unexpected or different, so it is unlikely that the parties will be able to stick to their own "scripts." The mediator has created an environment for improvisation to occur, which ultimately may lead to creativity. This outcome resembles the Synectics model described earlier, where the mediator introduces a move that shifts the parties' thinking and may potentially improve communication.

## Conclusion

Improvisation in mediation is a balancing act. Within this improvisational performance, the mediator confronts boundaries that are sometimes difficult to discern but which he or she cannot cross. Experienced mediators develop a set of skills that they can draw upon in the moments that they need them. Some of these key abilities are improvisational. Learning to read the mood of the room, making a move to change the direction of mediation depending on the mood, developing a repertoire of moves, and making a move for its shock value are all improvisational assets for mediation. The benefits for a mediator — and for the outcome of mediation — are clear. But, in addition, such skills may also produce an environment that encourages the parties themselves to be more creative in determining outcomes. These aspects of improvisation as they relate to mediation are clearly deserving of further research and examination.

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