

Nancy GRIEFF, Guest Speaker – Maintaining Neutrality

NG: The topic that I was told to think about was what to do if you feel you're losing neutrality. What to do if you feel that you're becoming partial. So first thing is what is neutrality? For a mediator, what is neutrality? Ideas? What does it mean to be neutral?

Response from audience member: Not take sides.

NG: Not take sides. At a minimum, it's not taking sides. What else?

Response from audience member: Can't make decisions for them.

NG: Can't make decisions for them. So, one thing is we all know that the disputants have a right to self-determination. We can't make their decisions for them. We can't steer them. Once we're steering them no matter how well intentioned we are, we are partial.

I think there are two kinds of ways we can go wrong here. One is what I call; it's like a medical term, pre-existing condition. So maybe you know the party and have some feeling about them so it could be your relationship to the party. It could be that you stand to make some personal or financial gain. Obviously then, you're not impartial. It could be that the sub-stated issue; you get to the table and you find out the issue that you're mediating is something you're interested in too and have a strong opinion about. That could make it hard to be impartial. Pre-disposition to certain solutions. If it's a pet peeve of yours or something and you have a pre-disposition to certain solutions. Any of those things. Prior relationships. Anything pre-existing that you bring into the room with you. Now, do we all bring something to the room with us? You bet 'cha. So some of this is checking in with yourself. Some of this, for instance, I do a lot of public speaking once in awhile I get in the room, somebody says I saw you give a talk. Does that mean I have to excuse myself? No. But I do need to ask, does anybody in the room feel that because Katie saw me give a talk that they would feel more comfortable with another mediator, I'd be glad to get you someone else. And make it really inviting when you offer to get someone else. And if everybody's cool with it we go on, if they aren't, then maybe the co-mediator is experienced enough to take it by themselves or maybe we have to re-schedule. So just knowing the person, isn't necessarily a pre-existing condition. But the minute you know them you gotta check. Because you may feel you could be neutral and they may not feel you can be. Or vice-versa.

I've been in the room with people. I mediated a case, where the day before, one of the disputants had been my co-mediator, believe it or not. So here he is, he's in the room actually as an attorney for one of the disputants and he'd been my co-mediator the day before. So we get a look at each other, we burst out laughing, we let everybody know what's going on and to my surprise the disputants said fine with us. So then this attorney and I had to check in with ourselves, is this fine with us. In this case since we'd never known each other until the day before, it was absolutely fine. But, had it been my best friend in there, obviously, even if the disputants thought it was fine I would have had to recuse myself. So either way, they get to decide or you get to decide. Everybody has to be fine with it.

The other thing is things that come up during the mediation. I think those are harder aren't they? You really don't like somebody. I did a mediation where it was a father had shot his daughter with bird shot in the stomach while she was about to have a baby. I mean I can't think of anything more horrific. Having said that, techniques we're going to go through today, I was able to stay neutral. Not everybody could. If you hear that something's going on and it immediately raises such an issue for you, it's not a pre-existing condition but something about the person in the room raises such an issue for you that you can't be neutral, again time to opt out gracefully. And there are all sorts of ways of opting out gracefully. So it can be pre-existing, it can be something that comes up; you just don't like the person.

Are we ever really neutral? No, Jerry says no. As humans, you're human. We're not vulcans. We're humans. We're not hyper-rational. It's impossible to be neutral. Anybody out there on the phone who doesn't believe me, who thinks that they can be neutral, next time you're driving down the highway at rush hour, start counting the judgmental thoughts that go through your mind about the other drivers. And within 30 seconds you've probably had about five of them. It's amazing how fast we can rush to judgment. So we're not neutral in the sense of course we have judgments. It's whether we let ourselves glom onto them intellectually and emotionally. So I find myself, even about 25 years of mediating and I teach mediation, I find myself saying constantly, "Nancy, what are you here for, what are you here for, come back?" And in a nanno-second you can bring yourself back to what you're doing. So you have the judgment, just don't run with it. Let go of it. It's just noise. Treat it like it's just noise and go on when you can. Obviously this takes some awareness of your own history. There are some things that you won't be able to go on with. But most things just naming the judgmental feeling, even saying, having a judgment is tremendously, tremendously helpful.

What about power imbalances? This is a tricky one. We're kind of taught to make the mediation fair; we want to neutralize power imbalances. The minute we neutralize them, haven't we favored the weaker party. So either way, you're up a creek. So again, you can't be, no such thing as being absolutely impartial.

So the minute you have to even intervene.

NOTE: (Background noise enters the call-Interrupters don't hear requests to mute their phones)

So if there is a power imbalance, any time you've got to intervene, by definition, in that moment, you can say well I'm not treating everybody equally, but what we look for is mutuality, we look for fairness. The definition of impartial here isn't treating everybody the same. Not everybody gets the same piece of the pie. They get the piece that in your best judgment, they're needing right then to make the mediation work. So that's important too. We're not talking about, there's no way you can give everybody equal time, there's no way you can give everybody equal eye contact, now if one person just fascinates you, be careful that you're not totally dedicated to them. But, what it means here really is mutuality and it means actively withholding your judgment, actively withholding suggestions, persuasion.

Let me ask you this. If you want to see the disputants come to an agreement, have you violated impartially? Jerry says yes, how come?

Jerry: I had one where I saw the solution. What I thought was. And you want to jump in and say, fix it. And as soon as you do that, you take options away from the participants.

NG: Right, your solution might not be theirs and the risk you run is that no matter how brilliant your solution is, somebody is bound to think you're being partial. Somebody's bound to react badly to it. So even pushing for a solution, one of the first mediations I ever observed was in the court system and the disputants came in, it was in a small claims court, and they were about \$500 bucks apart. They went back and forth, back and forth. They got down to where they were \$50 dollars apart. And then they couldn't agree. Anybody want to guess why? Prior relationship. That \$50 dollars represented their prior relationship. It was emotional, it was charged, it wasn't really about the money. So they got down to \$50 dollars, they couldn't agree and the two mediators started pressing them. "Do you want me to write on this piece of paper for the judge that the two of you couldn't agree over \$50 bucks? And they kept doing this. Do you want me to write for the judge that the two of you couldn't.....?" And I heard it about five times and I was there as an observer so I'm sitting on my hands and trying to keep a poker face and inside I'm thinking they are just not neutral. If these disputants want to fail to agree over \$50 bucks, they know more, who's the expert on their dispute? They are, not us. So even wanting agreement badly, really wanting it violates neutrality.

Ok, so having said that, what you want to know about are what are some techniques, because all of us are humans, do like some people better than others, we are reactive to some things more than others, what do we do?

After the one where the father had shot the daughter, we had an observer that day and the observer said, "How did you feel about that guy?" And believe it or not I had to think a moment because what I'm doing while I'm there is being like a glass of water, letting it all pass through me. You know how you can see through a glass of water? I keep the image of a glass of water in my mind. That's my first tactic. Then I do a lot of other things if that doesn't work. But I keep that image of a glass of water. I'm just there for them. I'm just a container. But I'm clear. So that what they have can pass through, they can hear each other. I'm there to help them hear each other. Did I feel something about him when I drove away? You betcha.' That's why I'm telling you about him. But right then, it was sort of like re-entry. It took awhile to feel something about him because I was so much in mediator mode and that's that glass of water phenomenon. We can't always get there.

Does everybody, I hope everybody on the phone and in the room has a piece of paper. And what I'd like you to do is take out a pen, everybody, all 142 of you. And I'm going to time a minute. And what I'd like you to do is for the next minute, you don't need to pay attention to the time. I'd like you to write down every single sound you hear. That's your only job, in the next minute is write down every single sound you hear. Go for it. So Lisa, what's one sound.

Response from audience members/NG: Doors creaking on the outside. Somebody talking on the system. The fans, the ventilation system. The phone feedback. The static. My sniffles. I'm getting over a cold.

NG: And you all have long lists. I bet everybody on the phones has a long list. So here's the question. During the time you were doing that, where was your mind? Right on this. Were you doing anything except listening? That's how you listen to be impartial. In fact, doing this exercise for a minute or so each day actually trains you to theologically listen that way. So if you do, the research says that if you want to build a new habit, do it every day for three weeks. So if you took a couple of minutes, set an egg timer so you're not thinking about time. Of course then you'll hear the egg timer. That will be one of your sounds. But if you did this exercise every day for three weeks and it only takes a minute or two, what it does is train you to listen, with that kind of focus and lack of judgment. You were too busy listening to the sound to say oh that stupid sound. So it's just what's coming in. That's the kind of listening you want to do.

When I find I'm being judgmental, that's the focus I bring back to it. This is actually a physical act. You can feel what it felt physically to listen like that. I bring myself to that physical place. The best way to move from starting to violate neutrality back to being impartial and neutral is to change your physiology. Because what happens the minute you're not neutral? What kinds of vital sign things happen? Anything, any ideas? What kinds of vital signs when you're not neutral, when you're upset, for instance?

Response from audience member: You get tense.

NG: You get tense. Your adrenaline starts going. Your pulse changes, your breathing changes. So watching the group in here, writing down sounds, the breathing relaxed and got lower in the body. You put your breathing down in your tummy. You listened to sounds. In an emergency listen to sounds in the mediation room for thirty seconds just to bring yourself back to the present, back into your body. So anything you do that brings you back in to your body, it's impossible almost, to be really in the present and have judgment. Judgments are always in the past and in the future by definition. What's present is just the sound, just what's happening. So that's a great

(break occurs in the recording)

NG comes in: ... differentiating between what's being said and your own thoughts about it, is a great technique. Here's what he said and the other thing is my thought about it. If you have to, jump in and summarize. If nothing else it will force you to come back from what is being said. Now obviously, the mediation isn't about you. My dad when I was a kid told me a great joke that I think applies to mediation. It's an old joke, it's a little sensitive to a man, however many 60 or 70 of them that are out there. A guy goes into a bar and he's trying to impress a woman. He's telling her about his great job at the V.A. and his tennis game and his sports car. He's going on about his resume, about himself. And finally he says, "well enough about me, let's talk about you. What do you think of me?" We don't want to mediate like that. What we want to do, we don't want to summarize unless it would really be helpful. We don't want to make it about us but sometimes if you're finding you're violating neutrality, the best

thing you can do is either summarize in your mind or even out loud. It's helpful for those disputants to feel acknowledged. Summarizing can go a long way. A little acknowledging can go a long way. Reframing. What's really being said here and reframing that out loud can be really useful. It forces you back to the content.

This is going to sound funny but one thing I do sometimes is I check in with myself in terms of gratitude. I'm really glad that this is not my problem, whatever it is I'm mediating. Just being thankful. And what that does is it helps you recognize the other person's humanity. No matter what it is they're telling you, guess what, they're there but for grateful you. Everybody makes mistakes. Everybody on the phone and in this room, it's five to eleven Albuquerque time, we've all made errors already today, small or large. I forgot my box of tissues when I left the house. We all make errors. We're all human. So just remembering that and being thankful that you get to be there in the role of conduit, of helper with communications instead of having whatever the particular difficulty. That you get to bring a gift and you get a gift from those two, don't you? So focus on the gift you get. Focusing on the tremendous opportunity to be there without your own problems for an hour or two. You get to focus on them. Being you're a great gift because they're an opportunity to be present.

By the way, if you're co-mediator is losing neutrality, that's another opportunity to be present instead of judgmental. So what's the first thing we tend to do if we think our co-mediator is being judgmental or making suggestions? What do we do? We get judgmental. "They shouldn't do that. How can they do that?" In fact we get angry at them more easily than we get angry at the disputants. So that's another opportunity to use these same techniques. Drop it. We'll talk about how to intervene if they're being blatantly judgmental. One of my mediator friends said she was in a co-mediation in the court system and in the court system you get; it's random pretty much who your co-mediator is going to be. So she had this co-mediator who after he heard the first disputant's side of the story said, "Well that was a stupid thing to do wasn't it?" Ok, well then she had to cover for him. But even so she's not going to be able to cover for him if we've got a new dispute in the room which is between her and her co-mediator. So, you want to bring all this lack of judgment, all this gratitude, all this forgiveness, to the mediation, especially to our co-mediator as well.

What do we owe the disputants? As a mediator, what is it that we got to be sure to bring? We've got to bring impartiality, which is what we're talking about. What else? Confidentiality. Bingo. No matter how juicy it is. What else? Self-determination Jerry mentioned earlier. What else? An open forum. Safe atmosphere. If it looks like it's not going to be safe, it's very hard for anybody to be impartial.

What do you do if it looks like it's not going to be physically safe? You stop. You betcha'. You stop and you reschedule or you find out what the disputants want to do, you find a graceful way to stop. And it can be as simple as remember always the "I" statements, always owning it. So it's not blame. It's you know, I'm feeling like it might be better to do this another time. I would feel more comfortable. So nothing about them. I would feel more comfortable if we took a break. I would feel more comfortable if we rescheduled, depending on how dire it is.

There's a couple of things I think we owe them. One thing I mentioned is remembering they're human too. All of us have done and said not only stupid things, but mean things in our lives. Maybe we didn't see what we had. We owe them our full presence. So, if you're supposed to mediate from 1:00 to 3:00, you're not going to be neutral if you have a previous appointment, you're going to be worried about getting there so don't have a 3:30 appointment, have a 4:00 appointment maybe. But you may be neutral all the way up to 2:30 and then you're going to start pushing if you know you got to leave at 3:00 on the dot. So, we owe them our full presence and that means not having our minds focused on we might be late, not having our minds focused on we don't like our co-mediator or we love our co-mediator or our co-mediator's cute, I don't know. We owe them our full presence and our calm presence. Which is why this exercise is, the other thing that I hope you all noticed when you wrote down sounds, is how calm you feel because it puts you back in your body. If a little bit of patience, you know, you don't have to go to the Bahamas, if you write down sounds, you'll get a little vacation from all the jabber in your head. So feel the more calm presence. Anything you can do. Sometimes I actually, if I know I'm tense, I stretch before I walk into the mediation room. I don't care how silly I look. My husband says actually, I think he means this to be a double??? But I take it as a compliment; he always says "one thing about Nancy is she's not too attached to her personal dignity." Don't be too attached to your personal dignity. If I've gotta stretch, if I've gotta breathe, if I've gotta make a little soft belly to make sure that I'm breathing down in my belly where I'm calm, your personal dignity has no place in the mediation room. They're going to be too concerned with theirs. So those are all things you can do ahead of time.

Ok, so we're forgiving our co-mediator. They still seem to be losing neutrality. You're still worried about it. What are some other things we can do if it's our co-mediator? We can't make them leave.

Response from audience: You can caucus.

NG: You can caucus. Thank you. You can caucus. You can call for a break. And again we do it tactfully. Boy I'm feeling like I need a little break. I'm feeling like I'd like to talk with Tammy about where we are right now and I'm going to point to the restrooms for the disputants and I'm going to offer them restrooms. I'm going to do all of that. I'm going to be really sure I don't make a scene. Not say, you guys are being really difficult and we now have to caucus? But I'm going to talk to my co-mediator. And you're probably going to have to own your feelings? So, how would you do this? Let's rehearse this. We don't like to give feedback. I call for a caucus. What do I say to this person? We're alone in this room. Someone want to try it? I just said this awful thing. What are you going to say to me? Someone want to try it?

Response from audience: Why did you say that?

NG: Laughing, "What were you thinking?" Now of course, remember. Why did you say that?? I might do that. But remember, we've got people waiting and this isn't about them. So I probably would actually use some of my mediator techniques and I'd probably reflect back to them what was said, "Boy you really felt strongly about what that person just said." Do you notice the difference between that and why did you say that? See that could give them an opportunity to back off. Why did you say that,

they are going to begin to justify. So, I am going to use my same mediator skills, “boy you really felt strongly” and then they have the opportunity to back down and say, yeah I really did. I understand, my concern is, I want to make sure that the disputant doesn’t feel shy because we’re judging. What can we do, again, mediator techniques as questions? What can we do when they come back in the room to ensure that we’re practicing impartiality no matter how we’re feeling about them? And that person’s going to remember and quit. They’ve taken a mediation course. And they may say, “You know what? I think I’ve got to excuse myself.” That’s fine too.

So, I think the more we ask questions, by the way, it’s about being neutral altogether. If I find I’m not being neutral and that’s why I think that the why is a good thing, in the sense that it’s a question, rather than, oh I think you did blah, blah, blah, right? So even, what were you thinking is better than an accusation. But the more I can say, what can we do so that they feel more comfortable and then back in the room I’m going to start with questions. Any time I don’t feel in control I go to a questions rather than a statement because it’s harder to judge in a question than in a statement. Although my New York relatives manage, “Do I look like ... “ They manage to turn a question into a statement. But other than my uncles and aunts, the rest of us, if we ask a question, we tend to stay more neutral.

NOTE: (Background noise enters the call again)

NG: I’m hearing people again so I think the best thing to do is open it up to questions and that way when we hear people we can respond to them rather than hearing them.

Question from audience member (Joe Wilson from Northern Indiana): I was recently, I’m a labor relations specialist and I was recently in a mediation representing management and we had a mediator that more or less was telling the person we were mediating with that she has no case, this and that. It was strongly worded. What should we do in a situation like this?

NG: What did you do?

JW: Basically nothing because it came down to it was a part-time employee that was probationary and I mean she had no case; this was a mediation before EEO. But I felt kind of uncomfortable with the way the mediation ...

NG: Does anyone want to weigh in from the telephone?

Response from audience member: Yea! I have one. This is Angie from Oakland. And I had a situation where the co-mediator was, in a word, lousy. And I asked to be excused for a personal caucus and went to get guidance from our senior mediator who was available to discuss it. And we ended up having to terminate the mediation because the other mediator was passing judgment against the disputant. They were saying, we have to go, we have to hurry this along, we can’t stay longer than, I have someplace to go and everything that you just said, in the course of it, this particular mediator was doing everything against everything you had just said. So in that particular case I felt really badly that it went the way it did. It went south and we could not bring that to a good resolution. It was totally lost.

NG: Ok, so coming to this and this relates back to what Joe said. One thing you can do, if all else fails, you can go get guidance, either by taking a break or by rescheduling the mediation. I think again, it's going to depend somewhat on the chemistry between you and the other mediator. I've had mediations where the person has said, "The judge won't feel you have a case." And sometimes you can cover for it right in the room. You can say, "you know what, we're just here to communicate about what's happening, let's leave aside for a second outcome and talk about what it is you'd like to see happen." So first you can redirect and if your co-mediator isn't a total numbskull, they'll get it at that point. Because the thing is, most people don't get up in the morning; look in the mirror and say, "Today I hope to be a terrible mediator. Or today I hope to be a numbskull. Or today I hope to sense things out." That person who did such a bad job, they woke up with good intentions like the rest of us. So, sometimes it's just giving them a face-saving way to back off of that position saying, "Let's leave aside for a second what the judge would decide because we can't mind read. Let's talk about what, you the disputants, would like to be happening today. Or let's talk about whether there are other facts you'd like to put on the table that we haven't heard yet." So one thing you can do is try to back it up. And I'd say, that I've mediated with a lot of other people, because one of the things I like about volunteering is I get the luck of the draw, so I get to test my skills with hundreds of other people. And you get a certain amount of that. A certain amount of, "I know best." Father or mother knows best. Your co-mediator becomes a parent. And you have to work with it. So the first thing I do is a little gentle redirection and making sure that that person isn't going to lose face. If that doesn't work. I should back up. First thing I do is check the disputant's faces and body language. It may have gone totally by them, in which case I don't have to do anything. If they don't seem like they absorbed that, we can just move forward. If they do seem, then I might do some redirecting and if the redirecting doesn't work, I would probably call for a caucus at that point. If in caucus he kind of hears my concern about the way this is going, what can we do instead, that doesn't work, I could express, "I'm not comfortable mediating this way, perhaps we either need to get our senior intervener or reschedule."

So, again, whatever you feel is going to be best for the disputant and to me it's an incredible opportunity for you to learn how to manage your own judgment. Quite frankly one of the reasons I do this is it helps my marriage. How many people judge their significant other? So if you can work with this co-mediator, whose not doing what they're supposed to be doing, people don't do what they're supposed to be doing, if they did what they're supposed to be doing, they wouldn't be in mediation and you wouldn't need a co-mediator. So, first thing is, don't take it on. Breathe into it. Give them the benefit of the doubt. They probably just said something unskillful, not mean. See if you can cover for it and like I said, a great way of covering for is saying, "Let's back up a second, maybe we're going too fast." Then you don't even have to say oh no the judge won't say that. Just don't contradict them, just back it up. Redirect it. Caucus and don't be afraid to stop the mediation if you think you're doing more harm than good.

What else from callers? What else?

Response from Audience member: I have a question. My name is Gwen and I'm from Indianapolis, Indiana. Let's say you're in a mediation and just like the prior caller had stated that their co-mediator

was way off track with the participants. Should the senior coordinator be advised of the behavior of that person, of that mediator, just in case this may be something that is out of habit for that person?

NG: I do that and I'd like to hear from other people what they do. But, where I volunteer, I certainly let the coordinator know, now I'm very careful about that because in my case I'm a particularly a non-directive mediator. My belief is that the participants contain the solutions to their problems so then I'm a very quiet mediator. I will let them yell and curse at each other if they seem comfortable with it, so sometimes my co-mediator will seem directive to me because I'm so non-directive and I've got to make the judgment in my mind in the scheme of things, is this person really that directive or is it that I prefer that they behave like wonderful me. Right, "enough about me let's talk about you." So, having made that calculation is it, that, I want them to be like me or is it that they were actually pushing? If it's the second one then yes, absolutely. So, certainly if somebody says you don't have a case, I would bring that to the senior person, that's the kind of thing I'd bring to the court coordinator. That kind of thing. If you find out confidentiality's been violated, absolutely that has to go to the coordinator.

I've been in court cases where I know that the co-mediator has gone to the judge and I had to bring that to the coordinator, obviously. That created a big problem. So, we're all taught not to be a tattletale. I think it's a great opportunity to examine yourself first and what I've discovered is that lots of other people have styles that I didn't think would work and lo and behold they worked great. And boy am I glad I didn't get myself worked up about it. On the other hand somebody says something like you don't have a case or I think you should do blah, blah, blah, I might try talking with them first in the debrief to see if they got that they made a mistake, if I'm comfortable doing that. If I'm not even comfortable doing that I'd go straight to the coordinator. I don't know does anybody else have some thoughts because you know your own program better than I do.

Response from audience member: This is Karen. What I would suggest, you know, is communication for us is our greatest tool and so if we have concerns I would suggest. What I would do personally, is I would speak to my co-mediator, as Nancy had stated, and then together try to decide, again, what do we need to have some further discussion on because it just may be a lack of information that's been shared with us that the coordinator needs us to be aware of because the coordinator's are running the program. And so again, it's not to come back to the coordinator with anything judgmental but simply to have a dialogue with everyone involved, to share concerns, that we have that someone is coming with documentation that can already solve the case for the parties that something is happening. That would be one of my suggestions, personally if I had a co-mediator or myself if I felt that that was happening. There are ethical standards that we work under as well and if we see that those are being broken, it's important that we have those discussions. Because it's really about the program and the parties that are using the program.

NG: Anyone else have thoughts on that?

Response from audience member: From Muskogee, Oklahoma. I would meet personally with the other co-mediator and let that co-mediator know that we are going to caucus with the other parties and during the caucus it is going to be just me caucusing with them and I'd ask them how do they feel the

mediation process is going at this time. And get their feedback and then from that, you know, meet again with the co-mediator and make a decision. Because that's the only time those people can attend and they have to decide whether they want to go on or return another date.

NG: Okay, so in other words, what I'm hearing is that your feeling is, if it's clear that the other mediator isn't neutral and it's the only time your disputants can mediate, you might request a caucus with the parties and get their ideas?

Response from audience member: Yes. And if they decide that the mediation should continue, then I will be the only one meeting doing the rest of it.

NG: Now do you have the option of telling your co-mediator that?

Response from audience member: Yes.

NG: You do. I think that in certain circumstances and again this is so much of what's going on in the room that it's hard to make a blanket statement. I would, I'd be careful there because it introduces another level of tension. For instance, what if your co-mediator says, "I don't think I violated neutrality and I want to be in the room." And then you're in an argument. So, I'd be a little careful there. What I might do instead of telling is ask. I might say, "you know I noticed that you have a very strong opinion about this case. I'm uncomfortable with introducing our opinions into the mediation. Would you be willing either to let me proceed alone or to not introduce any more opinions?" And 99 out of 100 people are going to opt for one of those 2 choices and you've solved the problem without creating more tension. So it's a variance of what you're suggesting.

Response from audience member: Yes, but it's not my decision. It's whatever those mediating. It's whatever they decide (the disputants) and then I would discuss that, because this has happened once and they decided to go on without the other mediator. So I had to meet again with the other mediator and say this is what, how they feel.

NG: Right and I think that can work. I think the danger in that is that sometimes if you do appear impartial, appear partial rather, the person who thinks you're on their side says, "oh yeah I want Nancy to continue" and the other person says, "no I don't want Nancy to continue." And then the disputants are now disputing about the mediators in addition to whatever they were originally there for. So that's why I say, that you know because you were in the room and you probably had an idea that the disputants didn't want this other mediator anymore. But remember, that's essentially a suggestion too. And with an suggestion, you're always running some risk that one party will say, "oh that's great," and the other party will say, "no, no, no." And now we've introduced a new issue into the dispute. So it's a tricky thing is all I'm saying.

NG: It's tricky though. So let's take some other questions and we'll probably come back to this. But just to know that that's a really a last resort because it does introduce a certain amount of tension. I would rather have the coordinator make that call quite frankly.

Other questions of what to do when you feel yourself not being neutral or the other mediator?

Response from audience member: This is Jerry from Albuquerque. It's gets really hard when you're in a small facility where you either know everybody or you have a relationship with most of them and now you walk into a room cold and the first thing you say is, "ah, I know both of you, are you going to have a problem with me here? And immediately you have to ask yourself the same question and that's what you said here is that you have to do a real quick soul search. Have I contributed to this issue in the first place?"

NG: Yeah. Am I part of the problem? In a small facility. I bet a lot of you work in small facilities because I'm hearing you come from all over the place and so yeah, I actually think that our own neutrality is more of a problem than our co-mediator. It's really easy to see when your co-mediator's not being neutral and so then at least you can take action but we're not always quite so honest with ourselves. So we get in there and we think, "oh even though I know these people, I can be neutral, I'm such a fair person." Well, bull. You know none of us are. All of us have opinions. It's what makes us interesting. We'd be dull if we didn't. So, I think good open-ended questions. So I wouldn't even go necessarily, if I'm having a good day, if I'm having a normal day, I'll go with, "does anyone have a problem that we all know each other." If I'm having a great, brilliant day, instead I'll go with, "Boy, we all know each other, what affect do you think this might have on the mediation?" You notice the difference? Because if you say to someone, "do you have a problem, people are so polite, half the time they'll say, no, no, no, no problem, we love you Jerry." And so then, that's the trick. And also as adults we like to feel that we're above the fray so we may not be completely honest with ourselves. So I try to ask the most general questions I can. "What do you think about the fact that we all know each other. How do you think that's going to influence the mediation today?" And they'll tell you. They'll either look at you blank or they'll say, "yeah I play golf with you, I think I should have someone else mediating."

So they'll tell you and just out of curiosity, logistically what do you do in a small place if you really need somebody who doesn't work in a small place. Do you have any options here?

Response from audience member Jerry: We do here. We have the pool and our coordinator is right at our fingertips. Very close at hand. And we can either go with one mediator he's usually able to delay the mediation long enough to get another mediator.

NG: Ok, if you can find somebody they don't know. Are you given people's names in advance?

Response from audience member Jerry: No. I walked in and found out that one of the people involved had just turned me down for promotion. He didn't think I could be totally impartial.

NG: Laughing. I'm sorry it's not funny but it is. Ok, other questions about what to do when you don't think you can be neutral for whatever reason or you don't feel your co is being neutral? Any other questions about managing your egos or the egos of others?

Response from audience member: Alvin Miller from Hudson Valley. I was kind of listening in on where a mediator may suggest to management that maybe the case is one that they may want to proceed to settlement. I have a tendency that as an EEO manager, immediately, that if I see something into the case that they have and during a caucus I might suggest to them, you know, I may have concerns about

how this case was handled that might lead to a situation that you might want to resolve this and how that would affect the parties into thinking that I'm not being neutral in other words. Because I don't know if anyone else has had that type of situation or not?

NG: Ok, so let me see if I'm understanding. So what you're basically saying is because of the knowledge you have, sometimes you hear things in a mediation that you kind of have a guess how the case would come out if it proceeds? And so you don't want to make that guess in the mediation for the reasons we've mentioned earlier but you don't want your disputants to shoot themselves in the foot. So you get in caucus and what you'd like to do, in your heart of hearts, is say to the person, "you know what, you're going to get a better deal in mediation than you'll get if this proceeds," but you don't want to do that because it feels like you're violating neutrality. Is that the question, essentially?

Response from audience member: Yes it is.

NG: I think a couple of things. I think one thing is to think of it as mutuality. To the extent that I ask the same question, because I always caucus with both sides, if I caucus with one, I caucus with the other, always. So, if in both sides I say, "what do you think will happen? What do you think your options will be?" Then sometimes you can draw it out of the disputants. Sometimes it's as simple as, "what have you been told your options will be if you proceed?" So, my first step is to try to draw it out of them and I might be comfortable sitting there with some silence. You know they might say, "oh, I don't know it's going to be fine." I might say, "let's take a few minutes to think this through." And then let them just sit with it. Because if they just sit with it, 9 times out of 10, they'll do your work for you. They'll tell you, "well I guess there was a witness, such and such could happen," and then you're off the hook. To me and I'd like to hear from the others, but to me, if it doesn't come from them, then I can't stick it in there. I can't interject it because I'm biased. I'm making a suggestion, I'm violating neutrality.

If I really feel strongly that this person's doing themselves a disservice, then maybe ask to reschedule the rest of the mediation and I get with the coordinator see what they think. But, really, unless I can draw it out of them and unless I ask the same questions to both sides in caucus and as open-ended as you can get it. You don't want to ask a leading questions like, "Don't you think something bad's going to happen if you don't...? So we need to be really careful. It's one of those things where there's the good heartedness you feel because you don't want this person to shoot themselves in the foot but then we've got to subscribe to the larger good heartedness of making it a truly open and neutral, self-determined process and remember just because you're the mediator, they think you're an authority already, you're already an authority figure. So, anything you say is going to carry double force which means that sometimes you gotta let people make their own mistakes. Can't save everybody from themselves, I guess in my sense. But having said that, really my experience is that people do know and if you just give them the space by asking instead of telling, they'll take longer to get there than you would but they'll get there most of the time. Is that helpful at all?

Response from audience member: Thank you, yes.