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ORIGINAL

BROWN BAG PRESENTATION

November 1, 2007

* * DVD TRANSCRIPTION * *

1 * * Beginning of DVD * *

2 PARTICIPANT SPEAKER: If you have
3 questions, what Sharing Neutrals found that
4 session, and this session's specifically going to
5 focus on neutrality, a number of different
6 aspects.

7 And, you know, when I was putting this
8 presentation together, I found that something
9 which seems very simple that you'll learn based
10 on the agency's skills course as far as, you
11 know, as mediator, the importance of having your
12 role as being a neutral, seems like it's -- it's
13 something which you think would be very
14 simplistic, but when I actually researched this
15 issue and thought more about my own experiences
16 in neutrality, I found it to be quite complex in
17 a lot of ways.

18 So what I hope to accomplish today is
19 not getting so much in the theoretical aspects of
20 things, but really talking about it in -- in real
21 life and practice: What is neutrality, what
22 influences it, and -- and what do you do about

1 that?

2 I don't view this session necessarily
3 as skills based. I typically like to use
4 skills-based sessions and, you know, deliver a
5 specific examples.

6 And my -- I think there will be some
7 take-aways I hope you can get out of it, some
8 things I'll point out towards the end of our
9 session.

10 What I hope to do, though, is to
11 create more awareness and discussion around this
12 issue of neutrality in practice and leave --
13 leave you with a lot more to think about when it
14 comes to neutrality. So that's my main goal.

15 With that, something's that's really
16 interesting to me is that when you come into
17 mediation, you've got parties that are very
18 positional stances, you know.

19 And they're coming to look to you as a
20 mediator and viewing you as the person that's
21 going to be, quote, unquote, neutral to help them
22 deal with a problem that they haven't been able

1 to deal with themselves.

2 And so you've got some people coming
3 in the room that are not neutral, but yet are
4 looking to you, putting their full faith and
5 confidence in you, to be neutral, to help them
6 figure out how to deal with their conflict.

7 So one of the questions I have for all
8 of you first, before we get into talk about how
9 some of the different law and guidance are
10 defined, in your own words, what is neutrality?
11 What is it to you? (Inaudible.)

12 PARTICIPANT SPEAKER: Yeah.

13 PARTICIPANT SPEAKER: Number one is
14 not having a dog in the fight.

15 PARTICIPANT SPEAKER: Not having a dog
16 in the fight. Elaborate on that one a little bit
17 more?

18 PARTICIPANT SPEAKER: Well, that's the
19 first step.

20 PARTICIPANT SPEAKER: Quite an
21 analogy.

22 PARTICIPANT SPEAKER: You can't -- you

1 can't -- whatever difference, you can't be
2 interested in either side. You have to -- you
3 can't have a -- an interest in -- in either one
4 of the (inaudible). You can't have a dog in the
5 fight, so -- as such.

6 PARTICIPANT SPEAKER: So having no
7 stake in the outcome.

8 PARTICIPANT SPEAKER: Exactly. That's
9 (inaudible). That's correct.

10 PARTICIPANT SPEAKER: Well, I'm
11 pretty -- I -- I like the way you said it,
12 though, better. It's going to stick with me
13 more. No dog in the fight.

14 Anybody else?

15 Yes.

16 PARTICIPANT SPEAKER: Being impartial.

17 PARTICIPANT SPEAKER: Being impartial.

18 Okay.

19 Yes.

20 PARTICIPANT SPEAKER: I think if you
21 can put yourself in the place of either party,
22 assuming there's a (inaudible), you know, if you

1 can equally -- with equal, exactness, put -- put
2 yourself in the place of the party and take their
3 perspective, then you have neutrality.

4 PARTICIPANT SPEAKER: Being able to --
5 to yourself stand in the shoes of both parties.

6 PARTICIPANT SPEAKER: Uh-huh.

7 PARTICIPANT SPEAKER: So you can kind
8 of see where they're coming from. Anybody else?

9 Okay. Yes.

10 PARTICIPANT SPEAKER: Well, neutral is
11 someone who has a capacity to take all of the
12 agendas and -- and actually know what they are
13 and put them aside, because we all have them,
14 whether we try to not have them when we walk in
15 (inaudible) parties.

16 PARTICIPANT SPEAKER: So in essence,
17 having a consciousness to, first of all,
18 recognize some of your own motivations, or you
19 called it agenda, and -- and yet not allowing
20 that to interfere with what your role is and what
21 you're trying to accomplish in aiding the parties
22 through this maze of mediation to help them with

1 their conflict. Okay. Very good.

2 Well, you've talked about from a lot
3 of different angles. I wanted to go real quick
4 to what it says in the Administrative Dispute
5 Resolution Act, which is the acronym of ADRA.

6 And what it says, basically -- and
7 actually, it's in your handouts, with pretty big
8 notes in your handouts, if you want to, as we go
9 along the way.

10 You know, looking at ADRA itself, it
11 first defines specifically what is a neutral.
12 And it says, it's the individual who aids parties
13 in resolving an issue in conflict.

14 And it talks a little bit more in
15 depth about who that individual is. Individual
16 can be a federal employee officer, you know, on a
17 temporary basis or a permanent employment, or
18 anyone else acceptable for the parties.

19 So in other words, it can be someone
20 in the private sector that's contracting with the
21 federal government, coming to help out mediate a
22 series of the disputes; and even mentions --

1 within that ADRA act even mentions the type of
2 neutrals, parties called facilitator,
3 conciliator, and also mediator, different types
4 of neutrals, basically. So that's how ADRA kind
5 of uses it.

6 But what's interesting about ADRA,
7 too, on the next line here, it is always kind
8 of -- oh, there I go. Okay. That is just a
9 secondhand (inaudible) for one second
10 (inaudible). Okay.

11 What's interesting about ADRA is it
12 also defines what the neutral's based on:
13 Conduct. But it defines it with within a
14 negative frame.

15 Yeah. It says, to be neutral, here's
16 what you need not to do. It talks about, you
17 know, officials, financial, personal (inaudible)
18 with respect to any issue in controversy.

19 So it talks about it in the negative
20 sense. It gets back to what Carol was saying,
21 have no stake in the outcome, basically, you
22 know, no dog in the fight, right?

1 And what's interesting is if you also
2 look at "The Model Standards of Conduct for
3 Mediators," which is a document that the American
4 Bar Association, American Arbitration
5 Association, the Association of Conflict
6 Resolution, written years ago back in the '80s
7 and they revised it last year in 2006.

8 And then the -- the interagency ADR
9 (inaudible) committee put out the document,
10 federal guidance, basically, last year, because
11 there were some specific issues which are more
12 pertinent to federal employees, so they made some
13 different notes to it, basically.

14 And if you want to see a copy of that
15 document, along with also ADRA, you can go on to
16 the DOJ web site at ADR dot gov and be able to
17 work that out, basically.

18 But the -- the model of conduct is
19 pretty much -- does something so much (inaudible)
20 in a way. It kind of, again, defines it within a
21 negative, talking about what not to do.

22 It tells you what to avoid here from

1 the standpoint of conflicts of interest, biases
2 any way against -- based on the parties'
3 characteristics and beliefs and values and
4 behavior.

5 And it also kind of gives the
6 (inaudible) basically. You know, say, for
7 example -- I just had this happen not too long
8 ago, after a case I was mediating out of town,
9 basically, you know, Lansdowne.

10 One of the parties offered to take me
11 to the airport, because it was getting late, you
12 know. So, again, it's all those little things
13 that could also give the appearance of favoritism
14 on one side or the other, very subtle precedents,
15 basically. So that's what the guide says.

16 The guides and the federal law is kind
17 of our -- kind of our line drawn in the sand,
18 kind of our (inaudible), telling us, you know, as
19 long as you operate and don't do these things and
20 kind of perceive this, then you are being a
21 neutral, and those individuals who aren't
22 neutrals, according to advocates.

1 Well, that's in theory. And that's
2 what the law and guidance state. But is that
3 reality in our practice? That's kind of a
4 question that you guys need to kind of take a
5 look at.

6 What happens when you get to practice,
7 though? You've been taught these things in
8 courses, workshops like this, but what happens
9 when we get -- really get in a room? Are we
10 really in line to follow these things in some
11 shape or form or is neutrality is really based on
12 just this? Think about it.

13 One question leads -- comes to mind,
14 also, is: Does neutrality differ based on your
15 approach to mediation? Now, just out of the
16 hands in the room here, how many of you practice
17 within the facilitative model? just out of
18 curiosity.

19 Okay. And what about the
20 transformative model? How many practice in that
21 model?

22 Just me? We'll get to train where you

1 also do transformative the model, too. So do you
2 think it differs according to neutrality
3 according to your mediation approach? What do
4 you think?

5 PARTICIPANT SPEAKER: (Inaudible) some
6 of the transformative models, I think, for us to
7 be able to --

8 PARTICIPANT SPEAKER: Well --

9 PARTICIPANT SPEAKER: -- (inaudible)
10 for comparison (inaudible).

11 PARTICIPANT SPEAKER: Okay. That's
12 fair. Here's what I like to do. Before that,
13 just focus on the facilitative model. Do you
14 think the first mediation influenced neutrality?
15 You're operating under the facilitative model.

16 PARTICIPANT SPEAKER: It may not
17 influence the concept of neutrality, but it's
18 going to influence the application (inaudible).

19 PARTICIPANT SPEAKER: How so? How so?

20 PARTICIPANT SPEAKER: Well, for
21 instance, you may, because of power imbalances in
22 the room, intercede in the discussion or -- or

1 try to bring the discussion back in a direction,
2 and that could affect the appearance of
3 neutrality. So you're always sort of -- or, for
4 instance, when you're reality testing, you
5 could -- someone could perceive that you are not
6 acting as a neutral.

7 PARTICIPANT SPEAKER: Uh-huh. Fair
8 enough. All things that mediators do in a
9 facilitative model, you know, as far as reality
10 testing, making sure that there's a balanced
11 dialogue at the table, all specific things we've
12 been trained to do ethically are viewed as -- as
13 acceptable practice and good practice.

14 And yet you're right: The way they're
15 perceived by a party can be quite different
16 and -- and lead you down a line of being viewed
17 in a -- in a not neutral role, basically.

18 Anybody else want to share any other
19 insights from your experience within the
20 facilitative model?

21 Yeah, yeah.

22 PARTICIPANT SPEAKER: I don't know if

1 this is what you're looking for, but particularly
2 doing workplace-related work, and that's where my
3 experience and background has tended to focus, it
4 seems to me that many times we are operating
5 where there's a real definite power imbalance,
6 because we're talking about, you know,
7 subordinates and superiors, as they say in the
8 government.

9 So it seems to me that given that,
10 that's why it's really important -- and my bias
11 is showing here -- to have the facilitative model
12 in those kinds of cases, because there has to
13 be -- I mean, I -- I've been trained a little bit
14 in the transformative model; seems to me it would
15 not work as well where you have a -- a big power
16 imbalance. But maybe I'm wrong.

17 PARTICIPANT SPEAKER: Well --

18 PARTICIPANT SPEAKER: You're going to
19 tell me -- tell me why --

20 PARTICIPANT SPEAKER: Well, that's --

21 PARTICIPANT SPEAKER: -- that's wrong,
22 right?

1 PARTICIPANT SPEAKER: You know, well,
2 I'm actually going to make a distinction, which
3 is (inaudible) one to the adherence part of the
4 different forms of -- of practice.

5 But before I do, I think a visual
6 illustration would be great to do to help make
7 this point regarding neutrality and viewing it in
8 light of different approaches.

9 I need some volunteers. And I'm not
10 going to necessarily tell the first people up
11 here, because sometimes people don't want to
12 (inaudible) they don't want to be picked on. So I
13 want to fall in that frame of -- of not doing
14 that.

15 But what I'd love to do would be to
16 have three people come up here. One other person
17 will be -- actually, two people will be
18 mediators, two people will be -- actually --
19 actually, I just need three people.

20 One person will be a role player with
21 me; other two will be mediators. Mediators,
22 you're -- you're like potted plants. You're not

1 going to have to do anything. (Inaudible)
2 situation I'm putting you on the spot to mediate
3 today.

4 But I want to illustrate this point
5 based on some differences with -- you know, is
6 neutrality different based on your mediation
7 approach? So don't all jump up at once.

8 PARTICIPANT SPEAKER: (Inaudible) I'll
9 (inaudible).

10 PARTICIPANT SPEAKER: I'll be a potted
11 plant.

12 PARTICIPANT SPEAKER: I'll be a potted
13 plant.

14 PARTICIPANT SPEAKER: Be a potted
15 plant.

16 PARTICIPANT SPEAKER: Potted plant.

17 PARTICIPANT SPEAKER: Sarah's going to
18 be a potted plant. I need one party who's going
19 to work with me now. All right. (Inaudible)
20 right here, John. Come on up. Okay.

21 PARTICIPANT SPEAKER: Okay.

22 PARTICIPANT SPEAKER: So here's what

1 we needed to. We need to get a couple of chairs,
2 too.

3 PARTICIPANT SPEAKER: Am I a ficus
4 or --

5 PARTICIPANT SPEAKER: Say again?

6 PARTICIPANT SPEAKER: Am I a ficus
7 or --

8 PARTICIPANT SPEAKER: What's a ficus?
9 Well, (inaudible) plant (inaudible)
10 plant any (inaudible) on me. So let's sit down,
11 mediators. And John, let's get you a chair.
12 Let's actually bring one over here. Okay.

13 PARTICIPANT SPEAKER: (Inaudible.)

14 PARTICIPANT SPEAKER: Oh.

15 PARTICIPANT SPEAKER: Sorry, Will.

16 PARTICIPANT SPEAKER: That's all
17 right.

18 PARTICIPANT SPEAKER: There goes our
19 teeth.

20 PARTICIPANT SPEAKER: Yeah. It's
21 (inaudible) teeth.

22 PARTICIPANT SPEAKER: (Inaudible.)

1 PARTICIPANT SPEAKER: Materials, too.

2 PARTICIPANT SPEAKER: Materials, too.

3 PARTICIPANT SPEAKER: We'll get you
4 another one. Okay. So -- so basically,
5 actually, we're going to pretend that we're just
6 coming into the room, and then you two are going
7 to -- Sarah, I'm -- you're going to introduce
8 yourselves basically to us.

9 And John and I are parties coming into
10 mediation based on an EEO complaint. You don't
11 know the substance of it. You just know that
12 it's at the informal stage. Okay?

13 PARTICIPANT SPEAKER: Right.

14 PARTICIPANT SPEAKER: So John, why
15 don't you and I come back here. So we're at the
16 door waiting for our mediators to -- to bring us
17 into the room.

18 PARTICIPANT SPEAKER: Hi, Patrick.
19 I'm Leah.

20 PARTICIPANT SPEAKER: Hi, nice to meet
21 you.

22 PARTICIPANT SPEAKER: Nice to meet

1 you.

2 PARTICIPANT SPEAKER: Pleasure.

3 PARTICIPANT SPEAKER: John, Leah. I'm
4 a mediator.

5 PARTICIPANT SPEAKER: Hi.

6 PARTICIPANT SPEAKER: And Sarah.

7 PARTICIPANT SPEAKER: Oh, Sarah,
8 great. Okay, great.

9 PARTICIPANT SPEAKER: Hi, John and
10 Patrick.

11 PARTICIPANT SPEAKER: Why don't you
12 guys sit down here and here.

13 PARTICIPANT SPEAKER: Is that what you
14 want?

15 PARTICIPANT SPEAKER: Sure
16 (inaudible).

17 PARTICIPANT SPEAKER: Is this okay if
18 I (inaudible) prefer to sit here. Is that okay
19 with you-all?

20 PARTICIPANT SPEAKER: Yeah, that's --
21 that's fine. We can work that out, of course.

22 PARTICIPANT SPEAKER: Great. Okay.

1 Okay. Let's stop there for a second. One of the
2 things I'm to just ask you about, basically, was
3 neutrality in some shape or form impacted in this
4 facilitative model --

5 PARTICIPANT SPEAKER: Yeah.

6 PARTICIPANT SPEAKER: -- just starting
7 out?

8 How so?

9 PARTICIPANT SPEAKER: Who you shook
10 hands with first.

11 PARTICIPANT SPEAKER: Who I shook
12 hands with first. Okay.

13 PARTICIPANT SPEAKER: There has to be
14 somebody.

15 PARTICIPANT SPEAKER: I know, but
16 (inaudible) in terms of implicit assumptions.

17 PARTICIPANT SPEAKER: Uh-huh. So you
18 think mediator neutrality (inaudible) was --
19 was --

20 PARTICIPANT SPEAKER: It (inaudible).

21 PARTICIPANT SPEAKER: -- basically
22 compromised -- it might have been compromised.

1 Oh.

2 PARTICIPANT SPEAKER: And depends on
3 what your predisposition is, if --

4 PARTICIPANT SPEAKER: By -- by the
5 fact of -- of just a gesture of a handshake.

6 PARTICIPANT SPEAKER: Possibly.

7 PARTICIPANT SPEAKER: Okay. Anybody
8 else?

9 PARTICIPANT SPEAKER: The seating
10 arrangement.

11 PARTICIPANT SPEAKER: The seating
12 arrangement. How so, Diane?

13 PARTICIPANT SPEAKER: Because you have
14 the two mediators here, you're in the center, and
15 he's on the outside.

16 PARTICIPANT SPEAKER: Right. He's on
17 the outside. I got -- I got (inaudible).

18 PARTICIPANT SPEAKER: (Inaudible.)

19 PARTICIPANT SPEAKER: (Inaudible) sit
20 here, John. Okay. Maybe -- maybe so.

21 Anybody else? The mediators -- do --
22 do you feel the mediator acted in a -- an

1 impartial way? Were they neutral in their -- in
2 how they handled the circumstance when I decided
3 I wanted to sit here versus where Leah first
4 recommended for me to sit?

5 PARTICIPANT SPEAKER: Probably should
6 have asked the other guy to --

7 PARTICIPANT SPEAKER: I would have
8 suggested that it was more appropriate for you to
9 sit here.

10 PARTICIPANT SPEAKER: Why, Diane?

11 PARTICIPANT SPEAKER: So that each of
12 you (inaudible) kind of on the same playing field
13 at the same level.

14 PARTICIPANT SPEAKER: Okay.

15 PARTICIPANT SPEAKER: (Inaudible.)

16 PARTICIPANT SPEAKER: So then your
17 intention behind it was to -- you mentioned
18 the --

19 PARTICIPANT SPEAKER: Right.

20 PARTICIPANT SPEAKER: -- same playing
21 level, with -- with a sense of feeling in some
22 shape or form if he were sitting in a different

1 location, it could impact as far as the -- the
2 power going on between us.

3 PARTICIPANT SPEAKER: If you --

4 PARTICIPANT SPEAKER: Is that it?

5 PARTICIPANT SPEAKER: You and he are
6 what, the employees or the people that we're
7 (inaudible)?

8 PARTICIPANT SPEAKER: You know, we --
9 we haven't even figured it out yet.

10 PARTICIPANT SPEAKER: Oh.

11 PARTICIPANT SPEAKER: We're just
12 parties, though. We haven't gotten that detailed
13 yet. Go ahead (inaudible).

14 PARTICIPANT SPEAKER: (Inaudible) --

15 PARTICIPANT SPEAKER: Go ahead.

16 PARTICIPANT SPEAKER: -- the two
17 parties are on the same level coming in for
18 mediation, (inaudible) should be in the same
19 (inaudible).

20 PARTICIPANT SPEAKER: Okay.

21 Interesting. Yeah.

22 PARTICIPANT SPEAKER: (Inaudible) is

1 just the fact that they granted your request flat
2 out; your first request is going through: Oh,
3 sure, not a problem, instead of saying, no, this
4 is the rule, not necessarily, I mean, I think the
5 location is an issue, but just the fact that they
6 granted your request --

7 PARTICIPANT SPEAKER: Uh-huh.

8 PARTICIPANT SPEAKER: -- shows they're
9 impartial -- could be impartial.

10 PARTICIPANT SPEAKER: Okay. Yeah.

11 PARTICIPANT SPEAKER: I would sort of
12 raise this thing differently, that it shows you
13 did something that they weren't expecting. I
14 mean --

15 PARTICIPANT SPEAKER: Right.

16 PARTICIPANT SPEAKER: -- you had both
17 of them sitting there, so I think they were both
18 expecting to go back to those two chairs. So
19 when you came in -- I think this is your
20 self-determination; maybe the parties want to sit
21 where they want. But I thought, well, how are
22 they going to communicate as comediators?

1 And so in a way, I thought it was
2 maybe more bias towards him, because Patrick
3 wants to sit here; let's let Patrick sit wherever
4 he wants.

5 And maybe the other person might
6 think, oh, I might have wanted to sit there, or
7 who's in charge here, anyway? My boss just
8 walked in and plopped himself -- and we don't
9 know who you are.

10 PARTICIPANT SPEAKER: Right.

11 PARTICIPANT SPEAKER: So I could see
12 it as maybe not exactly what I would want to do,
13 but maybe even a little more biased towards you.

14 PARTICIPANT SPEAKER: Uh-huh. So
15 if -- and you-all have some different perceptions
16 of what's occurring here. And so in -- in
17 essence, basically, being the facilitative model,
18 as a -- as a mediator, you know, the facilitative
19 model has a different viewpoint of -- of what is
20 necessarily considered being neutral in a lot of
21 ways.

22 And you-all mentioned earlier that,

1 you know, Carol didn't notice about the
2 principals, basically, but, hey, they can be
3 viewed very differently from whose -- whose shoes
4 you're standing in, from the standpoint of the
5 parties, the mediator. You've all given some
6 different answers, basically.

7 PARTICIPANT SPEAKER: (Inaudible.)

8 PARTICIPANT SPEAKER: I'm sorry, John.
9 Go ahead.

10 PARTICIPANT SPEAKER: Of the possible
11 seating arrangements, could the parties be in the
12 middle, with a mediator on each side; would that
13 be acceptable; facing each other, parties on the
14 outside, mediators in the middle? I mean, is any
15 symmetrical relation acceptable, in your view?

16 PARTICIPANT SPEAKER: I -- I think it
17 depends upon the value of self-determination, you
18 know, because I -- I don't know about you-all,
19 but I was taught when I came in and did the basic
20 skills course when I first started mediating, you
21 know, mediators on one side, parties on the other
22 side.

1 And there was a reason behind that.
2 One is, we want to make sure that we are viewed
3 as a neutral from the very inception of the -- of
4 the mediation session.

5 Also, from the standpoint of these two
6 are in conflict with each other, you know,
7 basically, and they're not going to like to talk
8 to each other anyway, and so -- and we're
9 starting out talking to them about the process,
10 let them focus on (inaudible) forget the
11 (inaudible) able to sit and -- and be able to
12 understand each other better and -- and can kind
13 of, you know, go from there and see their
14 commonalities and on and on.

15 PARTICIPANT SPEAKER: All right.

16 PARTICIPANT SPEAKER: So that's one
17 way to be. Now, to get to Barbara's question,
18 how could this be different, same situation,
19 using a transformative model, is that a
20 transformative model, the focus is basically
21 on -- on the end result as mediators not trying
22 to line up common interests to get parties to

1 problem solve and -- and come to some type of --
2 of resolution or to sit (inaudible) of not
3 resolving, so really try to help to take people
4 from the state of having a very destructive way
5 that they're conversing, where they're not clear
6 for themselves, and also they're not able to
7 put -- if they're self-absorbed, they're not able
8 to -- to see things from the other person's
9 viewpoint and trying to help them have more
10 constructive way of a dialogue.

11 That's the outcome, where
12 transformative focuses on the transformation is,
13 then, not a person shifting, changing,
14 necessarily, but the focus being specifically on
15 having a -- transforming the nature of the -- of
16 the way they dialogue in conversation that's the
17 distinction.

18 Well, it would be quite different --
19 well, actually, not necessarily a different
20 result, different intention might be behind it,
21 but basically, what Leah did is what a
22 transformative mediator would have done, would

1 (inaudible) way, then, to (inaudible) parties.

2 Parties said they want to sit here. Okay.

3 Choice point, do you want to sit here? It's okay
4 with you. What would you like to do?

5 The other party -- the other party
6 objects to it, then that's an opportunity for --
7 to be able to highlight that -- that difference,
8 but still keeping that -- te control in the hands
9 of the parties to decide how they want to have
10 the conversation and ultimately, do they want to
11 have, if they can't come to some decision about
12 who's going to sit where. It's a bit of a -- a
13 bit of a difference there.

14 I want to get back to (inaudible).
15 Thank you folks for -- for doing this little
16 demonstration. I want to get things back to
17 (inaudible). Give them a hand. Let me get back
18 to this -- this -- which I think I've lost it
19 here.

20 PARTICIPANT SPEAKER: (Inaudible)
21 chair there.

22 PARTICIPANT SPEAKER: Oh (inaudible).

1 PARTICIPANT SPEAKER: This chair here.

2 PARTICIPANT SPEAKER: Leah's chair.

3 PARTICIPANT SPEAKER: Thank you.

4 PARTICIPANT SPEAKER: No (inaudible)

5 right by (inaudible) buy you another. Okay.

6 We're back here now. Okay. Great.

7 PARTICIPANT SPEAKER: (Inaudible)

8 situations, Patrick, I wasn't entirely

9 (inaudible) might have said, John, would you like
10 to sit in front of me? because then it would have
11 balanced it (inaudible).

12 PARTICIPANT SPEAKER: That's -- that's
13 fair. And I want to get to this point, but I'm
14 going to respond to that in a second, too. So
15 how does neutrality affect mirror influence?

16 Well, from my viewpoint, in the
17 facilitative model, not practicing both models,
18 so I don't feel -- I've only been practicing in
19 transformative, but I do have a bias. I think
20 there's a need for both models, and I think
21 they're both good models.

22 I'm just going to make a statement

1 here for y'all to look at. That is the
2 facilitative model, there's -- there's probably
3 to me a myth of -- of that mediator doesn't have
4 any influence here, you know. But a mediator,
5 like this gentleman down here at the end of
6 the -- your first name, sir?

7 PARTICIPANT SPEAKER: David.

8 PARTICIPANT SPEAKER: David. Like
9 David was saying earlier, basically, you know,
10 the mediator does have some influence, you know,
11 because a lot of times, the end result is
12 persuading people to get to settlement, might be
13 in the line of your questioning, might be a -- as
14 far as how you look for these opportunities to --
15 to be able to focus on the future, might be your
16 focus on just focusing on the commonalities and
17 not the differences parties have.

18 You know, there's influence there.
19 There's that decision that when it works to go
20 try to caucus, you know; might need it to defuse
21 emotions, because you think things may be able to
22 handle or it might impact people's abilities to

1 be able to get to problem solving.

2 So there's all these different places
3 within a facilitative model where a mediator is
4 going to have influence, but a lot of times, I
5 find the practice, from being myself and smiling
6 for a while and also other folks (inaudible) come
7 to (inaudible) with, a lot of it's based on
8 persuading people towards a solution.

9 You know, it gets back to like you
10 said, David, when it comes to using those reality
11 testing, all those different problem-solving
12 techniques.

13 On the other side of here, there's no
14 myth at all. There's no subtle lack of
15 disclosure in somebody about what the mediator's
16 intent is in coming to the room.

17 This view or this model says, look,
18 your influence in conflict is inevitable. Your
19 physical presence in the room itself is
20 influential.

21 Whether you can tell the parties ahead
22 of time all of the different aspects of

1 mediation; maybe the EEO -- what the ADR
2 coordinator does. Either way, people are going
3 to come in -- by you just being a person coming
4 into the room, a third party, you've got
5 influence.

6 And the key here is what you do with
7 that influence as a mediator. So the
8 transformative model, the main focus here is that
9 it's a (inaudible) by mediator to use that
10 influence to keep decisions in the hands of the
11 parties, and not only based on the content, as
12 far as what they're going to talk about, what
13 outcome they're going to seek, how they're going
14 to get back on whatever path we choose to, or you
15 can go into another form and sign that.

16 You know, this mediation forum just
17 isn't going to (inaudible) work out here; got to
18 go to -- I got to go to another form of report,
19 get what I feel is my needs satisfied.

20 It's not only that. It's also within
21 the process, the decision making in the process
22 from the very get-go of where do we sit in the

1 room, how do we have this dialogue, are there
2 going to be ground rules or no ground rules,
3 what's going to transpire here? very much of a
4 mediator taking a back seat, making sure that
5 decision making gets in the hands of the party.

6 So it gets back to something that was
7 said beforehand, which is, the value that's
8 placed upon this whole concept is fundamental
9 principle of self-determination.

10 Yeah (inaudible).

11 PARTICIPANT SPEAKER: This gets back
12 to the -- the comment earlier, and if this is
13 off --

14 PARTICIPANT SPEAKER: No. Go ahead.

15 PARTICIPANT SPEAKER: -- if this takes
16 you on a tangent, then I apologize if we get off
17 of it, but --

18 PARTICIPANT SPEAKER: We'll go to the
19 tangent and come back. Go ahead.

20 PARTICIPANT SPEAKER: I'm curious.

21 You know, your description of attorneys forwarded
22 model in keeping the content, the outcome, the

1 process, all that decisions the hands of the
2 parties, how do you deal with a situation where
3 you have one party on the one side who's highly
4 power -- has a lot of power, a huge power
5 imbalance --

6 PARTICIPANT SPEAKER: Right.

7 PARTICIPANT SPEAKER: -- you know,
8 and -- and the party on the other side who
9 doesn't? I mean, it seems to me what (inaudible)
10 ought to be afraid of --

11 PARTICIPANT SPEAKER: Uh-huh.

12 PARTICIPANT SPEAKER: -- is if I apply
13 the (inaudible) transformative model for that,
14 it's going to default back into the power basis,
15 particularly when you've got someone from one
16 side who's got the power, who's used to operating
17 in the power mode, you know, and -- and wielding
18 that power --

19 PARTICIPANT SPEAKER: Right.

20 PARTICIPANT SPEAKER: -- and
21 influence. How do you -- how do you keep that
22 from overtaking the process?

1 PARTICIPANT SPEAKER: Well, you know
2 what? In a transformative -- a transformative
3 model does not look at trying to bring balance to
4 power within the room.

5 The attention is focused on how to
6 keep (inaudible) under constructive dialogue.
7 And to practice in that model, you've got to
8 believe in some of the fundamental principles
9 of -- of that model.

10 And I'd like -- one of the premises is
11 that people have what it takes to be able to deal
12 with conflict. And so there's not a need to
13 balance things in the room, because people can do
14 it for themselves, or they can find people who
15 can assist them in mediation -- might be a
16 representative or somebody -- who can assist them
17 if, in some shape or form, there's a -- there's a
18 feeling that they lack something to be able to go
19 through this process. So that's a distinction.

20 In the -- in the facilitative model,
21 you're very much right. And it even says, again,
22 your role here is to try to help balance it where

1 somebody's not in a position where they feel some
2 strength.

3 A lot of times your role is there to
4 be able to help them be able to fulfill that.
5 That's not what this is about transformative, a
6 different -- different approach.

7 PARTICIPANT SPEAKER: Okay. So -- so
8 what I think I'm hearing you say is -- for
9 instance, I just do court mediation.

10 PARTICIPANT SPEAKER: Uh-huh.

11 PARTICIPANT SPEAKER: So when you're
12 talking about two parties, both represented by
13 lawyers, they're -- they're there, you know, in a
14 lawsuit or something, they may be in a -- in a
15 better place to do the transformative in some
16 ways than an employee/employer situation, if
17 you -- you know, where you've got that -- I guess
18 I -- I see it so many times --

19 PARTICIPANT SPEAKER: Yeah.

20 PARTICIPANT SPEAKER: -- that if it's
21 not -- when the people come to us as internal --
22 as an internal resource, the person without the

1 power comes to us because they don't feel they
2 have what it takes to speak to the powerful
3 person openly. You know, they need that
4 facilitation to do it.

5 And I'm wondering if, in that
6 environment, when you have a really
7 substantial -- because if they could, they would.
8 You know, if these parties could, they would,
9 possibly.

10 PARTICIPANT SPEAKER: You know what's
11 interesting, though? In the mediations I've done
12 in transformative model --

13 PARTICIPANT SPEAKER: Uh-huh.

14 PARTICIPANT SPEAKER: -- there's been
15 times when the -- when the power has been in
16 balance, based on the agency has more negotiation
17 power. The law might be in the -- better on
18 their side.

19 PARTICIPANT SPEAKER: Are you're
20 talking about in the workplace or outside the
21 workplace?

22 PARTICIPANT SPEAKER: They're both

1 within the workplace.

2 PARTICIPANT SPEAKER: Okay.

3 PARTICIPANT SPEAKER: It might be more
4 people on one side there representing the agency
5 versus the other. I've seen it in a lot of
6 different ways.

7 PARTICIPANT SPEAKER: Uh-huh.

8 PARTICIPANT SPEAKER: And I've
9 practiced in both models. And -- and I'll be
10 honest with you, I've not seen a huge difference,
11 because ultimately, what's at stake is people are
12 there because they can't figure out for
13 themselves.

14 And again, if your testimony is going
15 to go back to that fundamental belief, and that's
16 the best answer I can give to you on that one,
17 Carol.

18 But it does beg the -- another
19 question from you; and that is, basically, if
20 you're practicing the facilitative model and here
21 you are working on balancing the room out between
22 the parties, because one side, you feel, lacks

1 power, are you being neutral?

2 PARTICIPANT SPEAKER: Yeah. Yeah.

3 That -- that is a question. That's what my

4 (inaudible) --

5 PARTICIPANT SPEAKER: (Inaudible.)

6 PARTICIPANT SPEAKER: -- (inaudible).

7 PARTICIPANT SPEAKER: Okay. Well,

8 when -- when you think --

9 PARTICIPANT SPEAKER: Yeah.

10 PARTICIPANT SPEAKER: How do you

11 remain neutral?

12 Yeah. Okay.

13 PARTICIPANT SPEAKER: (Inaudible) of

14 (inaudible) with the (inaudible) here about --

15 PARTICIPANT SPEAKER: Uh-huh.

16 PARTICIPANT SPEAKER: -- the

17 facilitative model. But first of all, I think

18 that by information the mediator has -- has

19 influence by virtue of the position, whether it

20 be the transformative or the (inaudible) model.

21 PARTICIPANT SPEAKER: Right.

22 PARTICIPANT SPEAKER: You're there as

1 the mediator.

2 PARTICIPANT SPEAKER: Uh-huh.

3 PARTICIPANT SPEAKER: People look to
4 you. You've got influence.

5 PARTICIPANT SPEAKER: Yes.

6 PARTICIPANT SPEAKER: I agree -- I
7 agree with that.

8 PARTICIPANT SPEAKER: And it's no
9 myth. I don't see the myth about not having any
10 (inaudible). Secondly, the mediator often
11 (inaudible) parties towards a solution. I don't
12 think so.

13 I think the (inaudible) comes with an
14 agenda of, well, here we are. We want a
15 solution. You -- you be the person to help us
16 with that.

17 I for one say there's no obligation.
18 You -- you don't have to come to an agreement.
19 If you want to, if you know the (inaudible), if
20 you feel that the -- the (inaudible) fine. If
21 not, you know, go on our way.

22 So I -- I'm not sure that the -- the

1 word "first rate" is a good one that (inaudible).
2 So maybe the mediator goes along with the
3 parties' wish to have a resolution and might
4 facilitate that, but I think that's -- that's
5 where the term comes from. But I don't think
6 that we persuade them (inaudible).

7 PARTICIPANT SPEAKER: No. Well, you
8 know, that -- that's interesting. Again, I have
9 a different take on this than what you do, and I
10 appreciate you sharing your viewpoint.

11 I think there are mediators out there,
12 like you're saying, that basically practice very
13 much don't go don't understand the borderline of
14 what the -- the law, what the guidance say as far
15 as what a mediator should do. But there's other
16 mediators that are very much -- very much
17 focusing on a resolution, for whatever reasons.

18 PARTICIPANT SPEAKER: So I --

19 PARTICIPANT SPEAKER: (Inaudible.)

20 PARTICIPANT SPEAKER: So I think --
21 well, they could go back to the best mediation
22 practice. But that practice is out there, from

1 what I've seen myself personally and also other
2 colleagues.

3 So it's not to say that this is a
4 stream that everybody in the facilitative model
5 automatically is just there pushing people for a
6 settlement.

7 That's not my intention. I hope you
8 don't take that from that, because like I said, I
9 still practice in the facilitative model, also,
10 from time to time.

11 But I -- I do think there's this myth,
12 though, when you come in the room as mediators,
13 we're talking to the party and saying, look, I'm
14 neutral. I don't have a take in the outcome.

15 And -- and no, I'm not -- I don't
16 necessarily think that that's necessarily true.
17 I myself think that -- and there's two schools of
18 thought on this books.

19 I mean, some people feel basically,
20 that mediator can be neutral. I'm more in the --
21 in the -- on the side of a mediator ultimately is
22 not neutral. You come with baggage. It's in

1 your own experiences.

2 PARTICIPANT SPEAKER: (Inaudible.)

3 PARTICIPANT SPEAKER: And --

4 PARTICIPANT SPEAKER: (Inaudible)

5 something.

6 PARTICIPANT SPEAKER: Well, that's the
7 thing is, sometimes maybe do, sometimes you
8 don't. Sometimes before the caucus of it, maybe
9 you're not, because maybe still is being
10 perceived in that way from another party, which
11 is ultimately something we can't control. All we
12 can control is -- is our conduct, and that's what
13 the standards seem to focus on.

14 PARTICIPANT SPEAKER: (Inaudible.)

15 PARTICIPANT SPEAKER: (Inaudible.)

16 PARTICIPANT SPEAKER: What we
17 (inaudible).

18 PARTICIPANT SPEAKER: Right, right.

19 PARTICIPANT SPEAKER: And it what we
20 can (inaudible) concept of.

21 PARTICIPANT SPEAKER: Right, right.

22 But it's -- it's the perception of that, too.

1 But we're going to get to more of that in a
2 second.

3 But again, any other comments about
4 neutrality doesn't affect mediator influence here
5 in (inaudible)?

6 PARTICIPANT SPEAKER: I'm sorry
7 (inaudible) speaking.

8 PARTICIPANT SPEAKER: (Inaudible)
9 Carol.

10 PARTICIPANT SPEAKER: But I -- I'm
11 with you.

12 PARTICIPANT SPEAKER: Yeah.

13 PARTICIPANT SPEAKER: I'm with this
14 lady, because I don't -- you seem to be using the
15 terms "influence" and "neutrality" mean the same
16 thing, and I don't think they're interchangeable.

17 PARTICIPANT SPEAKER: Uh-huh.

18 PARTICIPANT SPEAKER: Yes, I think we
19 can be neutral, but that doesn't mean we don't
20 have influence. Do you see what I mean?

21 PARTICIPANT SPEAKER: Uh-huh.

22 PARTICIPANT SPEAKER: And I don't

1 think there's a -- there may be -- maybe you
2 didn't -- neutrality's in there, but I think
3 nobody's expect the mediator not to have any
4 influence at all, regardless of what model
5 they're -- they're -- otherwise, why would you be
6 there, you know, regardless of the model that
7 you're following? I mean, the whole purpose of
8 having a mediator is try to help move things --

9 PARTICIPANT SPEAKER: (Inaudible.)

10 PARTICIPANT SPEAKER: -- however, you
11 know, for -- I guess, you know, help these people
12 reach whatever they're going to reach.

13 Otherwise, why are you there?

14 PARTICIPANT SPEAKER: (Inaudible.)

15 PARTICIPANT SPEAKER: So --

16 PARTICIPANT SPEAKER: To answer that
17 question --

18 PARTICIPANT SPEAKER: Yeah.

19 PARTICIPANT SPEAKER: -- to some
20 extent in a mediation, you're creating an
21 environment which is safe --

22 PARTICIPANT SPEAKER: Exactly.

1 PARTICIPANT SPEAKER: -- for the two
2 parties, which is a huge contribution --

3 PARTICIPANT SPEAKER: Yes.

4 PARTICIPANT SPEAKER: -- without doing
5 anything other than that.

6 PARTICIPANT SPEAKER: That's true.

7 PARTICIPANT SPEAKER: And that is
8 really quite irrespective of the content --

9 PARTICIPANT SPEAKER: Uh-huh.

10 PARTICIPANT SPEAKER: -- right? All
11 you're doing is I think a bit like a sandbox:

12 It's all smooth.

13 PARTICIPANT SPEAKER: Till they get in
14 there and start fighting.

15 PARTICIPANT SPEAKER: Yeah. So
16 then -- so that that's a contribution that the
17 facilitative process brings --

18 PARTICIPANT SPEAKER: Yes.

19 PARTICIPANT SPEAKER: -- irrespective
20 of the personality of the mediator. Then the
21 question is -- then your personality is part of
22 the mix.

1 PARTICIPANT SPEAKER: Right.

2 PARTICIPANT SPEAKER: And you're
3 suggesting that the baggage that you come with is
4 seeping out of your pores, and either you're
5 conscious of it --

6 PARTICIPANT SPEAKER: Yeah.

7 PARTICIPANT SPEAKER: -- or not.

8 PARTICIPANT SPEAKER: Well, I
9 (inaudible).

10 PARTICIPANT SPEAKER: That's why --

11 PARTICIPANT SPEAKER: I guess what I
12 mean by "influence," though, is you're using your
13 influence to help create that safe place and to
14 maintain it.

15 PARTICIPANT SPEAKER: Okay.

16 (Inaudible.)

17 PARTICIPANT SPEAKER: Well, I -- I
18 think it goes back to what's your intention. You
19 know, you can have the best intention coming into
20 the room from the standpoint of really I'm there
21 to help people, and -- you know, and yet whether
22 you're fully aware of it or not, influence things

1 in a way that is -- is not borderline with what
2 your role is there --

3 PARTICIPANT SPEAKER: Uh-huh.

4 PARTICIPANT SPEAKER: -- out of -- out
5 of several motivation. We're going to go to --
6 on to those in a minute, basically. And that's
7 the main point I'm trying to make there: There
8 is there is an influence -- I agree with you --
9 simultaneous with it, no matter what model you're
10 using.

11 PARTICIPANT SPEAKER: Right.

12 PARTICIPANT SPEAKER: It's there. But
13 I think in some ways, a facilitative model -- in
14 practice what I've seen people do is -- is to try
15 to act as if that -- oh, I'm not really here.
16 You-all are making the decisions.

17 In essence, what's going on is that
18 mediator is really working -- in the questions
19 and opinion interventions -- working people down
20 towards a deal.

21 PARTICIPANT SPEAKER: Uh-huh.

22 PARTICIPANT SPEAKER: I've seen that

1 in practice.

2 PARTICIPANT SPEAKER: Uh-huh.

3 PARTICIPANT SPEAKER: And that's all
4 I'm trying to point out.

5 I had a hand back there, this lady
6 right here.

7 PARTICIPANT SPEAKER: I'm Kyle.

8 PARTICIPANT SPEAKER: Hi.

9 PARTICIPANT SPEAKER: I was going to
10 read it -- I did read it (inaudible) and I zone
11 in -- I zone in on the word "often," because it
12 said often; it didn't say every time, but yes,
13 often persuades the parties towards resolution, I
14 think is very -- in my opinion, very incorrect --

15 PARTICIPANT SPEAKER: Uh-huh.

16 PARTICIPANT SPEAKER: -- to say.

17 And also, I agree with the fact that
18 people do bring in this baggage sometimes
19 unaware. And I -- I applaud the effort to make
20 people more conscious of this, because
21 oftentimes, people think, oh, well, I am just
22 neutral and, you know, I -- I just want to get to

1 the greater good and whatever there is you're
2 trying to reach here and I don't have any other
3 thoughts about this.

4 But you really do. And you've been
5 down this road. And it's so important to be
6 conscious of it, because then you turn around and
7 it becomes like a -- just such a common thing
8 that it's like -- you know how people just,
9 business as usual.

10 And you take out of the -- you take a
11 part of it out that really is so important,
12 trying to really help people, and it just becomes
13 like another number, you know, another --

14 PARTICIPANT SPEAKER: Yeah.

15 PARTICIPANT SPEAKER: -- routine
16 thing.

17 PARTICIPANT SPEAKER: Similar -- it
18 becomes like (inaudible) for a while it can
19 become like an (inaudible) like a (inaudible)
20 almost.

21 PARTICIPANT SPEAKER: Right.

22 PARTICIPANT SPEAKER: You -- you

1 forget what your purpose was there, because you
2 get so caught up in -- in business as usual.

3 PARTICIPANT SPEAKER: I've seen this
4 before.

5 PARTICIPANT SPEAKER: You desensitize
6 people. I think --

7 PARTICIPANT SPEAKER: Right.

8 PARTICIPANT SPEAKER: -- the same
9 thing can happen in this practice of the mediator
10 if you're not cautious, or, what is my role here?
11 What am I trying to do? Who am I serving?
12 Myself? My organization?

13 You know, let's make a (inaudible)
14 it's an obligation for the parties who are coming
15 in the room. So I think all those things are
16 very much pertinent for discussion thought as you
17 continue practicing in the field.

18 PARTICIPANT SPEAKER: Well, I think in
19 terms of the (inaudible) purpose, I mean, it must
20 be in the minds of a lot of you who (inaudible)
21 in the federal context, you want to justify the
22 success of the work you do by having resolution.

1 So you don't get a lot of credit for
2 saying, as Willie said is, you know, if you can't
3 mediate, then that's okay with us. We're just
4 here to see if you can.

5 But your statistics, I presume, are
6 (inaudible). So, you know, I mean, there's got
7 to be an implicit feeling here of, but we need to
8 have our numbers good so we can justify our
9 mediation program. Is that true?

10 PARTICIPANT SPEAKER: You know, from
11 my perspective on that, I'd rather see
12 evaluations of the mediator by the parties look
13 good in the program I'm responsible for than look
14 at a success rate of how many solutions, et
15 cetera, because our program just got evaluated by
16 an outside evaluator who went and -- and saw a
17 group that were not happy with the outcome, but
18 they were very happy with the process, because we
19 tried to make a difference; we made a difference
20 we could; and -- and what we got back was, did it
21 fix everything? No. Did it help a lot? Yes.
22 Did we appreciate the process? Was it -- was it

1 successful in that respect? Yes.

2 PARTICIPANT SPEAKER: Uh-huh.

3 PARTICIPANT SPEAKER: So I'd rather
4 see the evaluations of our program come back from
5 the people who use it. You know, did they --
6 were they -- did they feel like the process was
7 fair, balanced? You know, were they happy with
8 it? this kind of thing --

9 PARTICIPANT SPEAKER: Right.

10 PARTICIPANT SPEAKER: -- than how many
11 you've settled.

12 PARTICIPANT SPEAKER: Sure. So you're
13 speaking to a measuring stick to determine
14 success for --

15 PARTICIPANT SPEAKER: Right.

16 PARTICIPANT SPEAKER: -- the
17 (inaudible) of the program, I think, rather than
18 what you're hitting on is, there's other
19 organizational affiliation also be -- tie into
20 this --

21 PARTICIPANT SPEAKER: Right.

22 PARTICIPANT SPEAKER: -- impacting

1 the -- to the extent of what causes mediator to
2 have influence in that room.

3 PARTICIPANT SPEAKER: Right.

4 PARTICIPANT SPEAKER: Just curious:

5 Does anybody --

6 PARTICIPANT SPEAKER: Yes.

7 PARTICIPANT SPEAKER: -- think

8 there -- there is bad pressure to produce

9 resolution, in terms --

10 PARTICIPANT SPEAKER: (Inaudible.)

11 PARTICIPANT SPEAKER: You would say

12 yes?

13 PARTICIPANT SPEAKER: (Inaudible.)

14 PARTICIPANT SPEAKER: Definitely. You

15 would, too?

16 PARTICIPANT SPEAKER: Yes. And that's

17 a complicated role there to try to make sure you

18 can justify what you believe in is a really

19 important service provided an agency.

20 PARTICIPANT SPEAKER: That's very much

21 true. We're going to get into more of that in a

22 second. Let's go on to the next line. What I do

1 now is do kind of a little bit of an exercise
2 (inaudible) scenario.

3 What I want you to do is (inaudible)
4 come back. Okay. What I want you to do is get
5 in groups of, like, four or five, okay? And
6 answer this scenario here.

7 And you've got, like, about, maybe,
8 five-plus minutes to go over this case. And I'll
9 kind of check in with you and see where you're
10 at.

11 I want you to look at this situation
12 and just talk amongst each other. You know, are
13 you neutral, based on this given scenario?

14 And -- and how do you know, you know?

15 (Inaudible) federal mediator, (inaudible)
16 discriminated against in your own -- your own
17 life?

18 Somebody contacts you about mediating
19 a case. One of the parties is Asian American.
20 They specifically request an Asian American
21 mediator, thinking that yourself as a mediator is
22 going to help them -- help better understand

1 their perspective. Are you neutral? You know,
2 in either -- in either case (inaudible.)

3 PARTICIPANT SPEAKER: (Inaudible.)

4 PARTICIPANT SPEAKER: So it's reality
5 in practice. These type of things come up. So
6 are you neutral? And let's talk about the clause
7 how you handle the situation.

8 PARTICIPANT SPEAKER: Mediate it.
9 That's what we do (inaudible). I am also
10 (inaudible).

11 PARTICIPANT SPEAKER: Can you speak
12 up, please?

13 PARTICIPANT SPEAKER: (Inaudible.)

14 PARTICIPANT SPEAKER: Can you speak up
15 a little bit more so --

16 PARTICIPANT SPEAKER: Yeah. I've had
17 experience with this (inaudible) --

18 PARTICIPANT SPEAKER: The situation
19 (inaudible). Got you.

20 PARTICIPANT SPEAKER: So what -- what
21 I do (inaudible), I -- I don't think myself if
22 I'm (inaudible) agent. I'm -- I'm conscious of

1 my whole neutral -- neutral role (inaudible).

2 So I guess (inaudible) and then --
3 indirectly, the person will talk management and
4 that they (inaudible) nothing to do with my
5 Asianness.

6 PARTICIPANT SPEAKER: Uh-huh.

7 PARTICIPANT SPEAKER: So I would
8 accept it.

9 PARTICIPANT SPEAKER: Okay. You would
10 accept the case.

11 Now, Leah?

12 PARTICIPANT SPEAKER: Obviously, I'm
13 not Asian American, and so what did I is I
14 translated it into ways that I might -- you know,
15 whether it says a woman or a Jew or a -- or
16 somebody from upstate New York, whatever it is,
17 that I -- I could not deny that I would not have
18 some type of affiliation or automatic closeness
19 with that person who shared whatever that
20 identity was.

21 The trick is, can I function outwardly
22 in a way that will not display that and will not

1 make either party feel as though I'm playing
2 favorites?

3 PARTICIPANT SPEAKER: Uh-huh.

4 PARTICIPANT SPEAKER: So I -- I'm
5 like -- I'm sorry, Mia?

6 PARTICIPANT SPEAKER: Mia.

7 PARTICIPANT SPEAKER: Mia.

8 PARTICIPANT SPEAKER: I can't deny
9 that I would have some biases. It's just, for
10 me, the question of whether I cannot act on them.

11 PARTICIPANT SPEAKER: But you're not
12 (inaudible) so (inaudible) mediator. So if you
13 are conscious (inaudible) of their position
14 (inaudible) then I think we (inaudible).

15 PARTICIPANT SPEAKER: Yeah. I mean,
16 we come down to the same conclusion. It's just
17 I -- I don't think I lose my identity when I walk
18 through the door. I think I still have it. I
19 just have to learn how to control it.

20 PARTICIPANT SPEAKER: Uh-huh.

21 PARTICIPANT SPEAKER: (Inaudible.)

22 PARTICIPANT SPEAKER: I see a lot of

1 other hands here, folks. Thanks to David and
2 this young lady over here (inaudible).

3 PARTICIPANT SPEAKER: One of the
4 things when you start the mediation and describe
5 the process is -- and I haven't been in this
6 situation, where one of the parties has asked for
7 a specific mediator based on race, ethnicity, or
8 gender.

9 But people don't necessarily know how
10 mediator are assigned, so (inaudible) part of the
11 discussion of neutrality that we're assigned
12 (inaudible) mostly based on -- on availability --

13 PARTICIPANT SPEAKER: Uh-huh.

14 PARTICIPANT SPEAKER: -- and not
15 working for the same agency.

16 And -- and so I think, you know, if
17 someone did request that, you would want to
18 acknowledge that (inaudible) point for discussion
19 saying that we understand that you one of the
20 mediators -- one of the parties specifically
21 requested a mediator of the same race and -- and
22 that is part of how the assignment was done and,

1 you know, this is something that we can't discuss
2 as part of the mediation, and then, you know, see
3 how the parties feel about that, if that is, you
4 know, part of the issue to begin with in the
5 case, if -- if that maybe makes one party more
6 uncomfortable, so they don't want to move forward
7 with the mediation.

8 PARTICIPANT SPEAKER: Uh-huh.

9 PARTICIPANT SPEAKER: You know, I
10 don't know.

11 PARTICIPANT SPEAKER: So then you
12 would get them pretty much in joint session, just
13 bring this out and talk about it, put it out
14 there for them to make a choice of how they want
15 to deal with that. Do they still want you to
16 mediate? Do they not? What might be some
17 concerns (inaudible)?

18 PARTICIPANT SPEAKER: I think they
19 have to be, because people are going to make
20 assumptions, walking in, about how assignments
21 are done.

22 And that's why, you know, I kind of

1 say it's part of neutrality, the assignments are
2 done blindly. If it wasn't, I'd have to say the
3 same (inaudible) you know.

4 PARTICIPANT SPEAKER: So disclosure is
5 a key for you, to be able to talk this -- kind of
6 name the elephant in the room, you know, rather
7 than just go about your business and this is who
8 I am; I'm mediator here, just putting it out
9 there to talk about and see if this is something
10 that people want to (inaudible) that's
11 specific -- the specific race or -- or gender or
12 whatnot, to see if they still want to go through
13 this process, based on that.

14 PARTICIPANT SPEAKER: It was very
15 important to one of the parties, so --

16 PARTICIPANT SPEAKER: Right.

17 PARTICIPANT SPEAKER: (Inaudible.)

18 PARTICIPANT SPEAKER: Okay. I saw --
19 who was it? This young lady right here.

20 (Inaudible.) Time to move on, folks. Go ahead.

21 PARTICIPANT SPEAKER: Well,
22 (inaudible) how common it is to be able to

1 request a certain race or --

2 PARTICIPANT SPEAKER: I couldn't tell
3 you how often it is, but I can only share my --
4 my personal experience.

5 PARTICIPANT SPEAKER: (Inaudible.)

6 PARTICIPANT SPEAKER: (Inaudible) you
7 know.

8 PARTICIPANT SPEAKER: Yeah. I
9 don't -- I don't know, from the whole federal
10 gamut. I just speak to -- when I first began
11 practicing, I saw more of that. I personally had
12 this experience myself.

13 PARTICIPANT SPEAKER: Uh-huh.

14 PARTICIPANT SPEAKER: And in my rush,
15 I want to help. So yeah, I'll -- yeah, I'll
16 be -- I'll do it, and give thought to, is it
17 impacting my neutrality associated with
18 (inaudible)?

19 What does this mean to me? Can I
20 actually do this and feel a sense that I could
21 (inaudible), like Leah was saying, mediate this
22 in a way that's fair to both sides? based on my

1 conduct; didn't -- didn't even think about that.
2 Good intention; wasn't even on my (inaudible) to
3 think about that.

4 It's something I'm -- challenge
5 you-all to consider for yourselves. And I don't
6 know that, your answer, as far as how often is
7 this done. I don't know.

8 To me personally, a lot when I started
9 practicing. I've been practicing about eight,
10 nine years now. I don't see that happening to me
11 as much as anymore.

12 But it can come from not just an
13 individual party requesting it, even a
14 coordinator saying, this will be a better case
15 for --

16 PARTICIPANT SPEAKER: Right.

17 PARTICIPANT SPEAKER: -- such and such
18 to mediate --

19 PARTICIPANT SPEAKER: (Inaudible.)

20 PARTICIPANT SPEAKER: -- because,
21 well, they're African American. You know,
22 it's -- it's putting assumption based on a

1 stereotype that because of my particular
2 ethnicity or race that I'm going to somehow
3 really understand a person's viewpoint better.
4 And I'm not.

5 And -- and, you know, if I agree to
6 that, am I basically increasing that -- you know,
7 hiding that (inaudible) that -- that assumption
8 or stereotype associated (inaudible)?

9 Richard?

10 PARTICIPANT SPEAKER: (Inaudible.)

11 PARTICIPANT SPEAKER: (Inaudible)

12 something I had.

13 Leah?

14 PARTICIPANT SPEAKER: (Inaudible) go

15 first.

16 PARTICIPANT SPEAKER: (Inaudible) go

17 ahead.

18 PARTICIPANT SPEAKER: (Inaudible) but

19 a person might be of a certain race or you might

20 have some (inaudible) maybe the position they're

21 in is (inaudible) to you.

22 You know, (inaudible) if -- if

1 (inaudible) over defend their -- or their action
2 also would depend on the part that person's
3 (inaudible) or, you know, other factors
4 (inaudible)?

5 PARTICIPANT SPEAKER: Other factors, I
6 agree with you. Other factors can come into play
7 here. And we're going to get those (inaudible).
8 And other motivations could be going on,
9 irrespective of this one based on physical --

10 PARTICIPANT SPEAKER: Yeah.

11 PARTICIPANT SPEAKER:
12 -- characteristic of a party or -- or a mediator.

13 PARTICIPANT SPEAKER: (Inaudible)
14 instinctively you -- sometimes you find a -- a
15 position more preferable than the other, even you
16 don't do anything about this, but, you know, so
17 that would override the (inaudible).

18 PARTICIPANT SPEAKER: That would, in
19 fact, be more of -- what makes you more than
20 physical characteristics.

21 PARTICIPANT SPEAKER: (Inaudible.)

22 PARTICIPANT SPEAKER: Got it.

1 Leah?

2 PARTICIPANT SPEAKER: I -- I don't
3 think this is an appropriate discussion topic for
4 today, but I do want to at least throw out the
5 possibility for people who are dealing with this
6 that agreeing to that request of specifically
7 finding an Asian American mediator could be
8 violative of Title VII.

9 PARTICIPANT SPEAKER: (Inaudible.)

10 PARTICIPANT SPEAKER: (Inaudible.)

11 PARTICIPANT SPEAKER: (Inaudible) to
12 violate any law by acquiescing to this request?

13 PARTICIPANT SPEAKER: Right.

14 PARTICIPANT SPEAKER: It was to the
15 coordinator.

16 PARTICIPANT SPEAKER: (Inaudible.)

17 PARTICIPANT SPEAKER: Yeah.

18 PARTICIPANT SPEAKER: What about --
19 and I'm -- I'm sorry. We're taking too long.

20 But what about the situation where, say, the
21 complaining party asks for somebody with a
22 certain characteristic and the responding party,

1 they go in and say, you know, (inaudible) this
2 no, before you've set it up. I mean, that would
3 take care of part of the problem.

4 PARTICIPANT SPEAKER: Yeah. And the
5 way I would handle this --

6 PARTICIPANT SPEAKER: Just like a
7 joint discussion that was mentioned earlier, this
8 (inaudible).

9 PARTICIPANT SPEAKER: Very much like
10 that. Actually (inaudible.)

11 PARTICIPANT SPEAKER: (Inaudible.)

12 PARTICIPANT SPEAKER: (Inaudible) I
13 mean, some people --

14 PARTICIPANT SPEAKER: Yeah.

15 PARTICIPANT SPEAKER: -- would say,
16 like David was suggesting, deal with it when you
17 get at the --

18 PARTICIPANT SPEAKER: Right.

19 PARTICIPANT SPEAKER: -- table. Put
20 it out there like the pink elephant, and talk
21 about it.

22 PARTICIPANT SPEAKER: (Inaudible.)

1 PARTICIPANT SPEAKER: My approach
2 would be to deal with it ahead of time.

3 PARTICIPANT SPEAKER: Yeah, do it
4 during the (inaudible).

5 PARTICIPANT SPEAKER: And the first
6 thing I would look at would be basically, can I
7 do this?

8 PARTICIPANT SPEAKER: Uh-huh.

9 PARTICIPANT SPEAKER: Can I do this,
10 of before I even talk to the parties, is this
11 something I can -- I feel I can -- can do? Then
12 I would talk about the assumption being made --

13 PARTICIPANT SPEAKER: Yeah.

14 PARTICIPANT SPEAKER: -- with the
15 complainant, the other party that's making --
16 whoever's making this request, complainant,
17 agency rep, or not. Then I would talk to
18 understand, what are the concerns underlying that
19 assumption?

20 PARTICIPANT SPEAKER: Uh-huh.

21 PARTICIPANT SPEAKER: And are there
22 other ways to meet that concern? Representative,

1 I don't know. Maybe someone else to help in
2 support. And then I also talk to the other side
3 about this.

4 PARTICIPANT SPEAKER: Uh-huh.

5 PARTICIPANT SPEAKER: Would this
6 impact them, based on their perception of me
7 because I'm of this particular race or gender or
8 live next -- next -- in the geographic location,
9 wherever it might be? Then come to a decision.
10 What I'm challenging you to do is to
11 think a little bit more deeply about the
12 circumstances before you jump in juxtaposition in
13 saying, I want to help, kind of like, you know,
14 stepping back for a second, more of a
15 self-awareness piece.

16 We're still going to use the same
17 skill sets, active listening to problems. It's
18 not going to change anything. Even think a
19 little bit more differently from the standpoint
20 of your role as a mediator and -- and how
21 neutrality and your influence impact, based on a
22 number of different things, one of those being

1 your physical characteristics and that of the
2 parties.

3 Yeah.

4 PARTICIPANT SPEAKER: Two questions.

5 PARTICIPANT SPEAKER: Go for it.

6 PARTICIPANT SPEAKER: You talk about
7 disclosing this information to the other party.
8 Does confidentiality play into this anywhere,
9 where the initiating party asks this of -- of the
10 program manager? And that something that should
11 be --

12 PARTICIPANT SPEAKER: Good question.

13 PARTICIPANT SPEAKER: -- confidential
14 in --

15 PARTICIPANT SPEAKER: Well --

16 PARTICIPANT SPEAKER: -- that respect,
17 be allowed to be --

18 PARTICIPANT SPEAKER: -- it possibly
19 could be something that could be confidential,
20 but then the mediator -- say that they say, look,
21 I don't want this mediator to share it with the
22 other side. I don't want the mediator

1 specifically for that -- that's -- of this
2 particular ethnicity or race.

3 I mean, as a mediator, I think you
4 have an obligation to say, well, you know, you
5 don't want me to say this, but yet I tell you
6 what, I don't feel I'm going to be in the
7 position where I can be able to be neutral.

8 And Leah's telling me to watch my time
9 and feel free to watch it. So the quick
10 question -- answer is: Yes, it could impact it.
11 And still, as a mediator, you've still got to
12 think through how you would handle that, if you
13 want to mediate that case or not.

14 That's a party choice of determination
15 and I wanted to share this, but I also have an
16 obligation to the quality of the process, avidly
17 monitoring it, let alone neutrality, is my
18 response to that.

19 Quick, real quick, I just want to go
20 over this real fast. Motivations and impact,
21 physical characteristics: That's what this
22 scenario was specifically about.

1 Just like a party's behavior, you
2 know, getting that difficult party in the room
3 that you just can't stand, because they're
4 obnoxious in how they are -- are mediating, you
5 know; or if they're doing things which you feel
6 are underhanded.

7 You know, all those types of things --
8 Mark had mentioned this about characteristics --
9 can have an impact on, you know, to the extent
10 which you can maintain neutrality.

11 Balancing the table: Carol and other
12 people talked about that issue already. I won't
13 elaborate on that further.

14 The fine stone as a success: That's a
15 popular one. You know, it's -- it's easy to be
16 motivated based on whether it be coming from
17 the -- the ADR or EEO office, whether it be
18 coming from the standpoint of your boss, whether
19 it's your own personal feeling of this is what
20 success is. You're easy to get locked up into
21 that as mediator and have that motivate you and
22 impact you.

1 Yeah.

2 PARTICIPANT SPEAKER: This is someone
3 who -- who's (inaudible) balance of the table.

4 PARTICIPANT SPEAKER: Uh-huh.

5 PARTICIPANT SPEAKER: There's a lot of
6 places and times in the workplace the supervisor
7 may be professional; he may be better at
8 communicating their interest, and the employee
9 may be less able to. So just in essence, they
10 already have a disability in order to be able to
11 communicate.

12 PARTICIPANT SPEAKER: Uh-huh.

13 PARTICIPANT SPEAKER: And so as a
14 mediator, it may be not really necessarily the
15 power imbalance, but you may be spending more
16 time with one party versus the other to assist
17 them in being able to communicate their
18 interests.

19 PARTICIPANT SPEAKER: Very good point.

20 PARTICIPANT SPEAKER: Yeah.

21 PARTICIPANT SPEAKER: (Inaudible) that
22 still is tilting neutrality.

1 PARTICIPANT SPEAKER: That's true.
2 Very good point. And -- and also, it plays -- I
3 mean, this reminds me of a case I had where a
4 lady was manic-depressant, disability. And she
5 took medication, whatnot.

6 But yet in the course of the
7 mediation, one of the things I was monitoring
8 was -- and she was even had a husband there as a
9 representative working with her, but I was still
10 kind of monitoring is she competent? Is she
11 following the law? Is her attention span all
12 right? Can she articulate her perspective? you
13 know.

14 And I even met with her. I spent more
15 time and -- with her prior to mediation, in
16 preparation (inaudible) she wanted really to go
17 over more and more in depth about the process.

18 What I did was I checked with the
19 other party, let them know, too, if you want
20 to -- this party's requested to meet (inaudible)
21 the process. They have a disability. It's one
22 of the reasons why that they're bringing the

1 case. They're feeling that they're being
2 discriminated against.

3 I also want to give you the -- the
4 ample time, too, if you want to, meet separately,
5 also, at the beginning before we get into
6 mediation, you know.

7 So all those things do factor, right.
8 It might not be something physical, but it might
9 be just the person's ability to communicate their
10 perspective, for various reasons, so all good
11 points about what can motivate you, just a couple
12 of things to think about, for yourself
13 (inaudible) do these things motivate you
14 (inaudible) and if so, how in the future will you
15 handle that? (Inaudible) to think about.

16 Scenario two, real quick: (Inaudible)
17 I want you to get back into your groups
18 (inaudible) situation of age discrimination.
19 Listen to the organization. It's (inaudible)
20 case review the parties, hey, you recognize the
21 manager's name there; you've seen him before,
22 because you've mediated a prior case with that

1 manager serving as the agency rep.

2 So, hey, they were easygoing. They're
3 familiar with the mediation process. So how do
4 you handle that? Are you neutral? I want you to
5 get back in groups and think about that for a few
6 minutes.

7 (Inaudible conversation.)

8 PARTICIPANT SPEAKER: So a couple of
9 things -- we're on a roll -- (inaudible) how did
10 you deal with the situation? Are you neutral?
11 How did you handle the situation?

12 PARTICIPANT SPEAKER: Disclose,
13 disclose, disclose.

14 PARTICIPANT SPEAKER: Disclose,
15 disclose, disclose. Okay. Okay. Disclose it to
16 both parties and see what they want to do about
17 it. Okay. Anybody else?

18 Yeah.

19 PARTICIPANT SPEAKER: This is
20 happening. I'm going to (inaudible) this may
21 be -- I tend not to disclose, because I like to
22 view each person as a discrete coming together.

1 And we've worked with a couple of people who use
2 the ADR process.

3 PARTICIPANT SPEAKER: Uh-huh.

4 PARTICIPANT SPEAKER: The idea is to
5 have people feel like they're going to come in
6 and be treated -- it's a -- it's a different
7 conflict. It's a different set of -- it's
8 different circumstances.

9 And I -- I don't know what I would do
10 if (inaudible) oh, this person's been in
11 mediation a ton of times, because there's a
12 perception, at least within our agency, that
13 they're -- you know, it may be (inaudible) asking
14 your problem, you know.

15 If you're a manager, you're able to --
16 and, you know, I don't -- I don't know that -- I
17 don't think you can be neutral (inaudible) the
18 other person before.

19 And the idea of disclosing it, I know
20 it sounds odd, but people are just almost there
21 not to disclose it and just kind of look at it
22 fresh and say, okay, hi. I mean, it hasn't

1 happened a lot, but there's -- I don't know
2 (inaudible).

3 PARTICIPANT SPEAKER: (Inaudible)
4 yeah. It's interesting, because you're getting
5 into another concern, and that is: How does this
6 impact the program if people are using --

7 PARTICIPANT SPEAKER: Yeah.

8 PARTICIPANT SPEAKER: -- the process
9 (inaudible)? I guess -- guess --

10 PARTICIPANT SPEAKER: Yeah.

11 PARTICIPANT SPEAKER: -- ethically --

12 PARTICIPANT SPEAKER: Yeah.

13 PARTICIPANT SPEAKER: -- it says
14 ethics need -- in the ADRA site, you need to
15 disclose it and if people choose to do it --

16 PARTICIPANT SPEAKER: Yeah.

17 PARTICIPANT SPEAKER: -- then -- then
18 good, because again, it goes back to what's your
19 main value here?

20 PARTICIPANT SPEAKER: Uh-huh.

21 PARTICIPANT SPEAKER: Does
22 self-determination trump everything else or

1 (inaudible) the parties, you know, informed
2 consent to know what to do.

3 I think the other thing is, it's
4 important to mention based on this one is that
5 you might not have to say -- at least I don't --
6 hey, I've met this manager in another mediation.
7 It might be a situation --

8 PARTICIPANT SPEAKER: Yeah.

9 PARTICIPANT SPEAKER: -- just like,
10 you know, there's been another occasion where
11 I've known him professionally through another
12 encounter and leave it at that.

13 PARTICIPANT SPEAKER: Yeah, the
14 question of confidentiality earlier --

15 PARTICIPANT SPEAKER: Right.

16 PARTICIPANT SPEAKER: -- and what
17 happens then (inaudible) --

18 PARTICIPANT SPEAKER: Right.

19 PARTICIPANT SPEAKER: -- and then what
20 happens (inaudible).

21 PARTICIPANT SPEAKER: And that can
22 come up, too. Right.

1 PARTICIPANT SPEAKER: (Inaudible.)

2 PARTICIPANT SPEAKER: The other thing
3 I want to mention, too, is it might be something
4 that you deal with at a organizational -- at the
5 broader context from the standpoint of in your
6 program, making sure that people know that it's
7 not uncommon for managers to come in more often
8 and let's mediate different cases, gives a fresh
9 outlook on the situation where the agency is
10 taking a -- a stance that they prefer to have one
11 or two of them come in, different people come in.

12 PARTICIPANT SPEAKER: Uh-huh.

13 PARTICIPANT SPEAKER: So if I come to
14 see this person again and again and -- and deal
15 with it at that level --

16 PARTICIPANT SPEAKER: Uh-huh.

17 PARTICIPANT SPEAKER: -- versus the
18 level of just mediation --

19 PARTICIPANT SPEAKER: Uh-huh.

20 PARTICIPANT SPEAKER: -- being in a
21 room, basically.

22 PARTICIPANT SPEAKER: Uh-huh.

1 PARTICIPANT SPEAKER: The last thing I
2 want mention real quick to you-all is this,
3 basically, and that is that, you know, you've got
4 the organizational affiliation case (inaudible)
5 comes. You've dealt with Number 2 there at the
6 record -- repetitive agency representative, but
7 you've got fresh (inaudible) again from the
8 standpoint of the EEO program, based on their --
9 or ADR program, may be saying that basically, we
10 want people in here we are going to mediate cases
11 successfully or from the standpoint there's no
12 pressure because of the magnitude of the impact
13 (inaudible)

14 All those things can happen, and even
15 the different component trick. I'm working at
16 HHS. I remember one case I had with mediation,
17 in the aftermath, looking at the survey, the
18 parties didn't reach a resolution, but looking at
19 the survey, the parties said that it felt, in
20 reflecting, looking back at it, that it would
21 have been better to have a non-HSS employee
22 mediate it, basically, because they felt, in

1 essence, that if they had somebody else from a
2 different agency, maybe that would have been able
3 to cause management to really look at this quite
4 differently. They came to reality testing and
5 maybe putting a little more pressure on them,
6 basically, so that there's that perception, also,
7 being within a different part of the agency that
8 you're still not a, quote, unquote, neutral.

9 And of course, again, this raised
10 (inaudible) I think (inaudible) mentioned it
11 earlier, I -- eventually (inaudible) I don't want
12 to -- I don't want the (inaudible) specifically,
13 but it might (inaudible) you know -- you know,
14 being a mediator, a federal mediator, and have
15 the situation where your rating itself is -- is
16 dictated according to success based on
17 settlement. So those are all things
18 organizations look at.

19 Last point I want to make real quick
20 before you depart is take-aways. I hope what you
21 can get from this is that from my viewpoint, you
22 know, being neutrality is a -- is a fiction, not

1 a truth.

2 And again, it's a focus on what we've
3 got to work with, and that is the (inaudible)
4 conduct is in our interacting as we go through
5 this.

6 And once motivation is approached, the
7 affiliation, I think they all influence it. The
8 guidance and law, basically, really focus on the
9 party behavior when it comes to neutrality.

10 The last thing is, I think that if
11 you're going to use you (inaudible) have
12 influence, let's use it to support
13 self-determination. That's the way I look at it,
14 which is (inaudible). So with that, 1:30 --

15 PARTICIPANT SPEAKER: Can I --

16 PARTICIPANT SPEAKER: -- (inaudible)
17 questions and how this --

18 PARTICIPANT SPEAKER: (Inaudible.)

19 PARTICIPANT SPEAKER: -- can sway
20 one's (inaudible) --

21 PARTICIPANT SPEAKER: (Inaudible)
22 couple things?

1 PARTICIPANT SPEAKER: Sure.

2 PARTICIPANT SPEAKER: One, I'd like to
3 really encourage you-all to go to the ethics
4 brownbag that's coming up in (inaudible) we
5 handed out the flyers and that the person who
6 wrote this is going to be at that (inaudible).

7 PARTICIPANT SPEAKER: I forgot to
8 mention that.

9 PARTICIPANT SPEAKER: So that's number
10 one. And number two, I would like to thank
11 Patrick, because as usual, he did a wonderful
12 job.

13 PARTICIPANT SPEAKER: (Inaudible)
14 clapping for you-all, especially -- I also want
15 to mention that -- a thank-you to Howard Gamblin
16 and Leah for providing you with a copy of this.

17 This is something which I took a look
18 at in preparation for this presentation. And
19 also, Deirdre did a great job as being
20 (inaudible) copy like this.

21 And so -- and thank you, all staff, to
22 be able to help broadcast this (inaudible)

1 participate from afar; all the (inaudible)
2 involved.

3 They (inaudible) got some more
4 (inaudible) in the room for you, please. Enjoy.
5 And also (inaudible) those two scenarios. If you
6 want that tape, we'll also forward it.

7 PARTICIPANT SPEAKER: I'd like to get
8 a (inaudible).

9 PARTICIPANT SPEAKER: And (inaudible).

10 PARTICIPANT SPEAKER: And evaluations.

11 PARTICIPANT SPEAKER: (Inaudible)
12 evaluations. You can't get out the door --

13 PARTICIPANT SPEAKER: So --

14 PARTICIPANT SPEAKER: -- without
15 handing you this (inaudible) hold this at the SEC
16 any longer. I'm not sure yet, because
17 (inaudible).

18 PARTICIPANT SPEAKER: Oh.

19 PARTICIPANT SPEAKER: There's a
20 distinct possibility -- if anybody has facilities
21 and they'd be willing to host this, please let
22 either Patrick or me know.

1 And a final thing, just to leave this
2 on a really positive note, in terms of random
3 acts of kindness, Brenda over there went and
4 brought me a new (inaudible).

5 PARTICIPANT SPEAKER: Oh, thank you,
6 Brenda.

7 PARTICIPANT SPEAKER: Thank you,
8 everyone.

9 (Inaudible conversation.)

10 * * End of DVD * *

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CERTIFICATE OF COURT REPORTER

I, Caren Bengé, a Notary Public in and for the State of Texas, before whom the above-entitled cause was taken, do hereby certify that the proceedings were taken by me and thereafter reduced to typewriting under my supervision; that said proceedings is a true record; that I am neither counsel for, related to, nor employed by any of the parties to the action in which the proceedings were taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Caren Bengé

Caren Bengé
Notary Public in and for
THE STATE OF TEXAS

My commission expires:
October 28, 2009

