

UC San Diego

Conflict Case Studies

Title

Case Study #1: Neutral Fact-Finding and Empowerment Within Conflicted Systems

Permalink

<https://escholarship.org/uc/item/5t45v3c5>

Author

Erbe, Nancy

Publication Date

2019-04-26

CIASWORKINGPAPER

CoverSheet

Readers are encouraged to send comments and critiques directly to the author. Because of this text's deliberate "one-of-a-kind" format, detailed page-by-page comments and questions are welcome. This paper presents Case Study #1, in a series of case studies for a future conflict resolution textbook. An "Introduction to Conflict Case Studies" is also available to guide use. The text has been successfully piloted with several international classes. Those, who benefit most, stress the importance of carefully studying the introduction. Because the case study format is intentionally unique, written in an interactive and non-linear workbook style, unlike many introductions, the information provided is required for understanding. The introduction is so critical to effective use, the most important paragraphs are repeated at the beginning of each case study. Confused readers are encouraged to read the "Introduction to Conflict Case Studies" in its entirety.

Readers report rich reward when they approach the case studies in the interactive workbook style recommended, and, for example, take time to reflect on questions; add their own opinions and interpretations. They also do the activities, applying conflict research, theory and approaches presented, to case study and personal experience. Their main challenge is accepting that thorough analysis and practice cannot take a lifetime.

The author is particularly interested in comments that will help instructors and individual users around the world fully understand and effectively use the text's curriculum for important social change. For example, would you suggest an instructor's guide?

Please also let the author know what you appreciated most and would like to see "more of" in future texts. These case studies are part of a larger vision for evaluating and sharing effectiveness with leading non-violent peace and conflict resolution efforts. The author would appreciate hearing your "success stories" and the most troubling challenges (including ethical and cultural) that you face. Thank you and best wishes.

Author: Nancy D. Erbe, J.D.

Director, Rotary Center for International Studies in Peace and Conflict Resolution (www.rotary.org)

Lecturer in Conflict Resolution, Peace and Conflict Studies

International and Area Studies

University of California, Berkeley

Berkeley, California 94720

Tel: 510-642-4679

Fax: 510-642-9850

nerbe@socrates.berkeley.edu

Title: **Holding These Truths: Empowerment and Recognition in Action**
(Applied ethics & diverse cultural perspectives for advanced conflict resolution)

Source: Proposed textbook prepared for the William and Flora Hewlett Foundation

Sponsors: UCSB Global Peace & Security Program (part of UC IGCC), William and Flora Hewlett Foundation

“Introduction to Case Studies”: Excerpts

A teaching case is a story, describing or based on actual events and circumstances, that is told with a definite teaching purpose in mind and that rewards careful study and analysis...

In the real world, the solutions to complex problems cannot be found in textbooks, nor will everyone agree on the “right answers” to difficult questions. The case method prepares learners for a world that demands critical thinking skills and the ability to create convincing arguments, often with little time and incomplete information.

Laurence E. Lynn Jr. *Teaching & Learning With Cases* (1999).

Readers may feel somewhat disoriented, confused, and, even a little anxious, when they first read case studies, especially if they are accustomed to texts that present information in a linear logic. In the latter, points are described step-by-step and connected with explanations.

Here, however, each case study deliberately goes back and forth between describing 1) important case study facts, 2) conflict and resolution theory, 3) ethical perspective, 4) cultural views, 5) questions for the reader, and 6) application --- opportunities for reader analysis. No explanation is provided; so readers are likely to miss valuable learning unless they carefully read and respect the interactive suggestions. The reader is expected to develop her or his own thinking by, for example, actively asking: What is the possible connection or relevance of this information? What do I think? What are my reasons? What options exist here? What criteria do I propose for evaluating alternatives?

(I)ntermediaries can learn from experiences in dealing with past conflicts, but there is no model that can be applied to all cases. The unique features of each must be examined carefully and adjustments in strategy made throughout the process, which is invariably complex and sensitive.

Olara A. Otunnu & Michael W. Doyle, *Peacemaking and Peacekeeping for the New Century* (1998).

WHAT TO DO WITH MISSING OR VAGUE INFORMATION

Case studies are often open-ended, or incomplete, to emulate real life ambiguity and complexity, and help users develop critical thinking and confidence required in the face of challenge and uncertainty---particularly these cases. These are concept, principle and process application cases, rather than decision-forcing, policy making or illustrative cases. For readers new to case studies, decision-forcing cases require actual decision, with simulated pressure. Lynn, *supra*. Policy making cases direct the creation of framework or processes for policy making. Illustrative cases record historical success and failure. Application cases, however, focus on increasing student skill, without necessarily requiring decision. Decision-forcing, policy making and illustrative cases necessarily contain more descriptive and substantive detail than application cases. *Id.*

These cases are deliberately even more open-ended than many application cases, with sparse facts, for several reasons. First, they intend to teach and guide advanced conflict resolution skills, including the ability to identify important information gaps and “fill them” through, for example,

framing excellent questions and acute observation. In real circumstances, particularly complex ones, conflict intervenors, like detectives, face many unknowns. They must be willing and have the courage to navigate uncharted waters. Oftentimes only seasoned judgment (their own and that of respected colleagues) is available for determining whether understanding is sufficient.

I wanted more specifics about the original conflict to begin with, but I also understand that some of that ambiguity is simply how one has to enter conflict scenarios. We will probably never hold all the pieces of information when we start. Discovery is part of the process... This is definitely a powerful process. (Anonymous student)

Second, responses to complex ethical and cultural dilemmas are dynamic and evolving; not solutions to be described or finalized, with simple logic or reference to expert authority. As one student commented, these are the questions with "no answers." They require extended, perhaps life-long, reflection and dialogue, and, most importantly, consciousness of real world consequences, after attempted practice. Readers should feel no pressure to reach conclusions or provide answers. Questioning, reflection, discussion and awareness are the desired results.

(P)eacemaking is marked by experimentation. There is no right way to go about creating peaceful communities and a peaceful world. Working for peace will differ according to context.

Herr & Herr, *Transforming Violence: Linking Local and Global Peacemaking* (1998).

With cultural issues, majority and minority are used to avoid the stereotyping that unfortunately still too often accompanies specific labels. The open-ended cases allow readers to introduce, discuss and show their own cultural experiences and preferences with each other. With my students, this has been a much appreciated opportunity to create multicultural community and interdisciplinary dialogue, in relatively low-risk environments (at least in contrast to discussions in the heat of conflict.)

In my last multicultural conflict resolution class at the University of California, Berkeley, more than eighty percent of my students identified with one or more minority groups within and outside the United States. Several have dual citizenship. They include citizens of Argentina, Australia, Belize, Bulgaria, China, Costa Rica, Cyprus, Finland, French Polynesia, Germany, India, Iran, Mexico, Nigeria, Pakistan, Peru, Thailand, Turkey, Ukraine and more than forty additional countries.

Everyone attempts to identify, describe and explain their own cultural experience, assumptions, values and preferences as they participate in conflict resolution process. Ideally, the result is truly inclusive. At least, participants are empowered.

The ideal response is like this one elicited with a Hmong student. One of the case studies resonated with her experience in the United States as a first generation immigrant and the first member of her family to feel comfortable speaking English. As a result, she spoke in great detail about her family's many cultural challenges and conflicts.

Readers are invited to reference and consider their own life experience with conflict whenever analyzing and discussing case studies. This engagement raises readers to the level of "peer

partners” or “experts” with cases, and prepare them for whole-hearted participation in future role-play simulations.

The text is written so that no particular background or training is required or has an advantage. This is important with multicultural dialogue, where members of various cultural groups may be sensitive to others “speaking for them.” Others may simply stay quiet in the presence of authority. Still others might react with offense, angry accusation and heated debate. None of these responses promote the open, reflective and inclusive dialogue and learning desired here.

Once again, the purposes of this collaborative partnering are to fully engage readers in true life-to-life dynamics and maximize development of advanced skill and awareness. Unlike simpler negotiation exercises, where participants can begin with a factual, even mathematical, formula, for resolution, complex intergroup exercises require participant creativity, prolonged discussion, initiative and persistence. Developing necessary skills and attitudes may be the most realistic and important outcomes with complex, tough case studies.

These case studies have been field-tested with many different groups, ages eight to sixty, representing diverse groups within and outside the United States, and a wide range of interests, disciplines and professions, with varied experiences and perspectives. They include peace and conflict studies, social welfare, various sciences, public health and policy, psychology, pre-medicine, nursing, law, environmental and development studies, engineering, ethnic and area studies, education, communications, business and political science. The issues raised in these cases are relevant and meaningful to most, partially because the detail provided is only what is essential to introduce issues for exploration. More technical detail risks excluding less knowledgeable participants and narrowing the audience, while “cluttering” the ethical and cultural issues shared across the conflict resolution continuum.

Readers are free to adapt the cases to their own interests through integrating their knowledge and experience, or researching topics of interest. Some students have done interviews regarding culture, conflict and values. Others incorporate library and internet research.

Commentary is provided throughout the cases to help readers consider, apply and integrate relevant interdisciplinary approaches to and diverse perspectives regarding conflict resolution. An attempt is made to highlight and introduce some of the richest resources for advanced practice from a practitioner perspective. Commentary, questions and exercises are interwoven throughout the cases, rather than at the end, to further engage readers, simulate real world reflection and analysis, and guide readers in regular application of conflict theory, research and material — also a habit and practice of advanced intervenors, popularly called reflective practice.

Like the cases, commentary is provided without explicit guidance or explanation. Readers are encouraged to continue proactively developing their own questions and thinking as they would in real circumstances, imagining ways of connecting the commentary to case material. At the very least, articulating one or more questions, regarding how the material relates to the case study, will engage the reader in necessary critical thinking, initiative and information gathering. The more complex the case, the more important these skills become.

In some ways, conflict resolution cases are analogous to business administration cases. Unlike law or medical cases, business and conflict cases lack a well-defined professional knowledge base and formal logical processes for application.

Business case analysis may draw on virtually the entire body of knowledge of behavior and social science and may make use of it in virtually limitless variety of ways. Originally, cases were just about anything... faculty could find to provide a basis for provocative discussion... (T) here reasoning process is more experiential and associative, involving pattern recognition and intuition, than it is logical reasoning, as in the teaching of law, or scientific reasoning.

Lynn, *supra* at 10-11 (citing Christensen with Hansen 1987, 25). ("In less institutionalized domains, such as administration, social work, planning and education, the question of what constitutes "essential knowledge" is far less clear; indeed, it may be difficult to rule out any but the most esoteric or specialized knowledge as relevant to practice. In such domains, "structuring" a well-defined body of knowledge is a less essential skill than identifying knowledge potentially relevant to resolving the problem at hand. *Id.*)

Section I. INFORMATION GATHERING FOR SOCIAL CHANGE

Case Study Topics (In Order Presented)

**Neutral Fact - Finding
Ombuds**

**Leadership for Social Change
Party Empowerment
Best Alternative
Alliance Building
Intervenor
Impartiality/Ethical Independence/Neutrality
Systems Analysis (Force Field)**

Asking Important Questions

**Excellent Negotiation
Paraphrasing (Perspective -taking)**

**Party Positions & Interest Analysis (win -lose versus win -win negotiations)
Good/Bad Faith**

Note: For many topics introduced here, books have been written on each. Some involve entire fields of study. Respected references are provided throughout the case study for interested readers.

Case Study #1: Neutral Fact - Finding and Empowerment Within Conflicted Systems

Background: You are a government worker who investigates whether private non-governmental/profit organizations qualify for state licensing. You focus on agencies that provide therapy, and other "treatment" for teens and children with problems, who need to live away from their families for many different reasons: a parent who attempted to murder her daughter, sexual abuse, parents' inability to keep their children from crime. One young woman, gifted in intelligence and school performance, returned home at thirteen to find her possessions packed outside the garage and her professional parents gone.

You find making decisions about licensing youth treatment homes a tough challenge. How do you deny the ability to operate and provide services when so many young people desperately need them? The number seem to grow daily.

On the other hand, this vulnerable population seems to attract “vultures looking for prey,” adults who abuse and exploit, including “business types” perversely intent on profiting from others’ misfortune. You wonder if they lack the skills and confidence needed to profit in constructive ways. Fortunately, the field also attracts many generous, kind and talented staff, who truly care about children in need.

Strong, quality facilities, however, are ideal but too rare. Whatever their reasons, these children challenge the most skilled and devoted.

Some of the youth wrestle with mental illness, severe cases of multiple personalities and posttraumatic stress disorder, with vivid “flashbacks,” or terrified reliving of repeated abuse. One young man spent his early childhood locked in a New York City closet, being fed like a dog. Their histories are usually heartbreaking. If only determining present and future well-being was as clear --- unfortunately, sometimes only when you let the futility of their chances weigh you down.

A social worker at a well-known facility contacts you. (In fact, your boss is good friends with the treatment director at this facility.) Her colleagues, all social workers, asked her to report their concerns. The entire social work team believes their agency increasingly ignores and sometimes encourages staff neglect and action violating the state child welfare code. Examples include failure to document all child sex offenses against children at the agency, particularly the youngest residents, ages five to eight. Also underreported are frequent “runs” from the agency and suicidal behaviors. In addition to neglect of duties required by law, some staff, particularly new staff, are encouraged to punish residents in illegal ways, such as long periods of unsupervised isolation, particularly risky with suicidal, self-abusive residents who find ways to hurt themselves. Recently, a nine-year-old, institutionalized after her mother’s death, rubbed herself bloody against a rug. Some of the staff behavior used for punishment have consequences, like marks on a child’s skin after restraining, which could be judged as child abuse under local law.

The first social worker to voice concerns to agency administration was fired shortly after complaining. The agency asserts incompetence, but she was the type of social worker who works evenings and weekends to “catch-up” on paperwork. She had devoted ten years to her job. Colleagues view the firing as retaliation for whistleblowing, or breaking the organization’s informal and unspoken “no talk” rule. The only other social worker who openly expressed concerns, later received detailed, lengthy criticism in a public meeting, a sharp departure from his status as a “staremployee” prior to voicing concerns. Understandably, all social workers fear retaliation. On the other hand, they fear ethical censure if their concerns are not addressed appropriately.

The complaining social worker gives you detailed documentation describing twenty-seven violations of state code. You decide you must give this information to state authorities and conduct a thorough, in-depth neutral fact-finding investigation to determine if illegalities exist. What follows are reports from several interviews.

You also act as the government ombudsman for investigating complaints and otherwise intervening in conflicts involving your contractors licensed to provide treatment for youth offenders. Sometimes your roles overlap and blur.

APPLICATION

- **Note: Readers unfamiliar with the fields of social work, child welfare and juvenile justice may be somewhat confused when reading this case, but there is no need to understand the technicalities and context of this case study to complete its activities. All essential information is provided.**

Readers interested in learning more and doing their own research may wish to start creating lists of: 1) questions of interest, 2) friends and acquaintances who know more about these fields, and 3) other research resources.

Conflict Theory

Neutral fact finding is one approach to conflict resolution, commonly used by ombuds (internal grievance staff) and other investigators of sexual harassment, discrimination and other complaints of illegal behavior. On an international scale, public interest and non-governmental organizations conduct neutral fact-finding missions regarding alleged violations of human rights. See, e.g., Francis Forrest Martin, Stephen J. Schnably, Ronald C. Slye, Richard Wilson, Richard Falk, Jonathan S. Simon and Edward Koren, *International Human Rights Law & Practice* (1997).

Ethical Perspective

Many professional codes of ethics contain some reference to independence from organizations. Professionals who subscribe to these codes, like the social workers described here, cannot avoid ethical responsibility by waiting for the employing organization to take the lead with concerns, or excusing their inaction in accordance with organizational practice. Instead, they must proceed as independents according to professional ethical norms.

Professional independence is an important check and balance in organizations that expect and push for conformity, or “topdown” control. The Vice Chancellor Emeritus for Institutional Relations, at a leading research university, recently reflected on his institution’s struggle with conflict. In his opinion, many, if not most, organizations cannot handle “independents,” such as ombuds, who are accountable to their own code of ethics rather than bureaucratic “boxes and lines.”

Such tensions, however, are not confined to bureaucracies. They are likely in all of our most important conflicts involving societal authority. Third parties to conflict face questions concerning authority and ethical independence on a regular basis.

CATALYZING CRITICAL CHANGE WITH TOXIC SYSTEMS: SPEAKING TRUTH TO POWER

EMPOWERMENT

To improve, toxic and traumatized systems requires smart, steady and sustained strategy and strong, sensitive influence; in short, empowered leadership. Resignation learned under oppressive circumstances must be reversed in any way possible. Otherwise, ironically, the passive or inert tolerance of learned helplessness supports continuing toxicity and trauma.

The conflict resolution concept of “Best Alternative(s)” may help. See Roger Fisher, William Ury & Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (2nd ed., 1991). Assisting members of toxic organizations, with exploring and considering the costs, risks and benefits of maintaining the status quo, will clarify and elevate consciousness about the consequences of their current choices. Going one step further to envision and consider alternatives to the status quo will help them realize their actual power. Of course, exploring the costs, risks and benefits of these alternatives is needed for action to be strategic and empowered in practice.

APPLICATION

- **What alternatives exist in the case circumstances described? Analyze the costs, risks and benefits (actual and potential) of at least one.**
- **Alternative**

- **Costs**
- **Risks**
- **Benefits**

Ethical Perspective

Emile Durkheim asserts reliable knowledge as key to autonomy, and autonomy as essential to moral development.

The difference between self-determination and witless submission lies in the ability to predict accurately the consequences of alternative courses of action. Autonomy involves a personal decision in full knowledge of different courses of action.

Emile Durkheim, *Moral Education* (1961).

Empowerment can be defined as “the restoration to individuals of a sense of their own value and strength and their own capacity to handle life’s problems.” Robert A. Baruch Bush, Joseph P. Folger, *The Promise Of Mediation: Responding To Conflict Through Empowerment And Recognition* (1994).

She reaches a clearer realization... of what matters to her... that her goals are important and deserve consideration... Id.

Characteristics of Self-Accepting Individuals

- ◆ They believe strongly in certain values and principles, are willing to defend in face of strong opinions, and are personally secure enough to modify if experience and evidence suggest in error;
 - ◆ They are capable of acting on their own best judgment without excessive guilt or regret if others disapprove;
 - ◆ They do not worry unduly;
 - ◆ They have confidence in their ability;
 - ◆ They feel equal to others; not superior or inferior;
 - ◆ They resist domination;
- ◆ They are sensitive to others;
 - ◆ They accept and admit that feel a wider range of impulses and desires.

See, e.g., Human Dynamics In Psychology and Education (Don E. Hamachek ed., 1968). *See, also* Making The Case For Campus Mediation, <http://www.mtds.wayne.edu/Makecase.htm> (citing Cameron & Whetton, 1985: Cameron & Whetton argue that effective administrators must: 1) Place emphasis on process and outcome; 2) Have low fear of failure, and willingness to take risks; 3) Nurture the support of strategic constituencies; 4) Not immediately succumb to the tyranny of “legitimated demands;” 5) Leave a distinctive imprint; 6) Error in favor of over-communication, especially in times of flux; 7) Respect the power of organizational cultures; and 8) Preserve and highlight sources of opportunity at the institution.)

ALLIANCE BUILDING

Another important means of empowerment for catalyzing change with *int*ough, toxic systems is alliance building, with supportive, trustworthy (safe) peers and power allies, within and outside the circumstances in question. Power includes access to important people and resources.

She gains new awareness of resources. . . . s he add(s) to her resources by tapping into an additional source of support..
Bush and Folger, *supra*.

Respected, trustworthy lawyers, with necessary information, are examples of power allies.

(An) interesting area. . . is. . . the identification of the “indig enous” problem-solvers who are found within various. . . domains. Within any community, one can usually find individuals who, based on their interpersonal skills or social position, are frequently approached by people seeking problem -solving assistance.

Research...Management Culture(s): A Role For , UCI Ombudsman: The Journal (1995), <http://www.ombuds.uci.edu/Journals/1995/researching.html>.

APPLICATION

- **Analyze the case study. Describe empowerment exercised; imagine and describe other possible “power moves” and opportunities:**

Investigative Visit: You decide to surprise the agency with an unannounced visit. You arrive early, about 7:30 a.m., at one of the cottages, on a bitterly cold winter day. You hope to observe morning routines before school starts.

You are surprised to see ten to twelve girls, a agent to eighteen, sitting in a circle, eagerly awaiting their social worker (whose car won't start.) Soon she walks through the door. The girls scold her tardiness.

You observe the group, once again surprised to see how they raise their hands when wishing to speak, and listen intently to each other with little interruption. You learn that the group is grieving recent tragedy. A sixteen-year-old former resident, who returned home a few months ago, just died in a fire.

You attend the memorial service that afternoon — an event you will never forget. Before an auditorium packed with sobbing children and staff, young people honor the deceased, reading poems they have written, singing songs and telling stories, quietly chuckling about the times she got her head stuck between her bed and the wall.

Later that evening you join a smaller group of the deceased's closest friends. Sitting in a circle, lit by candle, they take turns sharing their fondest memories.

Ethical Perspective

When is doing nothing a moral act? Discuss. Include consequences.

**We had to really think hard because our decisions were going to directly affect children, more specifically troubled kids. The way we dealt with them could have a profound... impact on the kids.
(Student Enacting Case in Role -Play)**

APPLICATION

- **If no concerned social workers or codes of ethics existed in this case study, how would necessary social change occur? Who would lead? Continue through needed change?**
- **Have you ever taken the lead with social change? Why? Why not? What would motivate you to do so?**
- **Questions**

1. What is the significance of the friendship between the investigator's boss and the agency's treatment director?

Ethical Perspective

An ombuds... should act as independently as possible of all other offices and should avoid conflict of interest, external control and either the reality or appearance of being compromised. An ombuds should be readily accessible to all members of the constituent community.... should avoid either the reality or appearance of bias toward any individual or group.

University and College Ombuds, Ethical Principles For University and College Ombuds.

Note: The above language is similar to that in other ombuds codes, e.g., government.

The German philosopher Habermas sees room in ethical discourse for those who "can assume the catalyzing role of impartial critics in processes of self-clarification." Jürgen Habermas, *Justification & Application: Remarks on Discourse Ethics* (1993).

- **Discuss.**

APPLICATION

- **Considering the above language regarding ombuds, list investigator options, with consequences of each. Also articulate your concerns and questions regarding application of the above language in this case study.**

Ethical Options

Consequences

Concerns

Questions

CATALYZING CONSTRUCTIVE CHANGE WITH TOXIC SYSTEMS: CRITICAL CLARITY

EXTRAORDINARY INFORMATION GATHERING

One of the first steps for a neutral conflict resolution process with a "toxic system" is deactivating the protective work. A third party risks being used as a partial pawn, rather than acting as an empowering agent, if not at least aware of possible "hidden agendas." Thorough, smart information gathering investigates questions like: how much attraction or pressure exists for conformity?

Kurt Lewin, *Field Theory in Social Science* (1951) advocates force field analysis for systems change. Lewin theorized that the status quo results from current forces. To change the status quo, force field analysis identifies and closely examines current forces in light of the change desired.

Current forces are analyzed as competing forces: restraining and driving forces. Restraining forces include all factors that work against desired change. Driving forces support and encourage desired change. Change occurs through reducing restraining forces and increasing driving forces.

APPLICATION

- **Assume eliminating illegalities is the change desired in the above case study and identify**

Restraining forces

Example:

Staff fear of retaliation if speak openly and honestly about possible illegalities

Driving forces

Example:

Social worker professional code of ethics

- **Imagine some ways the concerned people in this case ("parties") might**

- **Reduce restraining forces**

Sample: Find concrete way to reassure staff that employment is secure, especially that job security will not be jeopardized if speak openly about concerns.

- **Empower driving forces**

Sample: Network and strategize with other professionals who share concerns.

ASKING THE RIGHT QUESTIONS

Key to in-depth information gathering in conflict are questions: open-ended questions, penetrating questions, clarifying questions.... One study of skilled negotiators found they used questions more than twice as much as average negotiators. See M. Rackham, *The Behavior of Successful Negotiators*, reprinted in *Negotiation: Readings, Exercises and Cases* (R.J. Lewicki, D.M. Saunders & J.W. Minton eds. 1999).

If I listen, I have the advantage: If I speak, others have it.

Frank L. Acuff, *World-Class Negotiating Strategies* (quoting "From the Arabic"), Stewart L. Tubbs, *A Systems Approach to Small Group Interaction* (5th ed., 1995).

APPLICATION

- Study the case study “facts,” or reports provided above; **imagine yourself as the investigator. Create questions in the categories below.**

➤ **Open-Ended Questions**

Sample: How have you observed staff disciplining children?

- 1.
- 2.
- 3.

Reminder: Closed questions can be answered with a mere yes or no; leading questions give the person answering the answer!

Related suggestion: “Tell me more (about).....” and other requests for elaboration encourages broad disclosure.

➤ **“Journalist” Questions**

1. What:

Sample: What concerns do you have?

2. How:

Sample: How have you responded when you have been concerned about staff discipline?

3. Who:

Sample: Whodoyouknowwhosharesyourconcerns?

Note: Why is discouraged since it may elicit defensiveness rather than an open response.

➤ **Clarifying Questions**

Sample: What specific discipline concerns you the most?

- 1.
- 2.
- 3.

➤ **Penetrating Questions**

Sample: If you could change one thing, what would be most important?

- 1.
- 2.
- 3.

Conflict Theory

The Tubbs Model of Small Group Interaction includes these critical variables for “big picture” assessment of the status quo: interpersonal relations, interaction roles, group norms, decision making and leadership, particularly as they relate to status and power, and with close observation of communication, especially disclosure and information flow. *Id.*

APPLICATION

- *Consider the Tubbs systems variables. Formulate a penetrating question to learn more about*
- **Communication**
- **Information Flow**
- **Group Norms**
- **Power**
- **Decisionmaking**

Ethical Perspective

An organization of integrity will actively solicit information itself, recognizing that the quality of its decisions depends on the quality of input. Great questions unearth handsurface critical information regarding good faith (or bad.) For example, how does a group (community, society or organization) respond to negative consequences, e.g. loss of revenues, from unethical decisions? How are employees and other group members involved in ethical circumstances treated? Is the organization (group, society...) willing to devote the resources needed to solve problems ethically (money, time, effort to secure necessary information)? Does it have historical examples, particularly involving leadership, where members "did the right thing" even at the organization's expense? How does the organization involve stakeholders and regard the viewpoints of those who have a stake in and are affected by a decision? Richard L. Johannesen, *Ethics In Human Communication* (4th ed. 1996).

During periods of great change, answers don't last very long but a question is worth a lot. The word *question* is derived from the Latin *quaerere* (to seek), which is the same root as the word for *quest*. A creative life is a continued quest, and good questions are useful guides. We have found that the most useful questions are open-ended; they allow a fresh, unanticipated answer to reveal itself. Daniel Goleman, Paul Kaufman & Michael Ray, *The Creative Spirit* (1992).

APPLICATION

- **As you read through and work with the case, continue to list information needed and desired. Note: What follows are reports from investigator interviews, in interviewee words and first person.**

Child Staff Worker I agree that several concerns fit the facts, but what's new. The kids here are "the toughest of the tough," the ones who are the most aggressive, refuse to follow the "rules" and have gotten "kicked out" of other agencies. I think they need some tough adults. They do not need nice ones. The social workers, while well-intentioned, do not last. The toughest adults stay.

It's not easy for a place like this in "the middle of nowhere" (so the residents won't run) to have enough staff who stay. I, for one, am raising a family here, in a community where my children are safe. I appreciate this job. It pays me more than any other locally. Still, it's a struggle. Just last week my car engine went up in flames.

I intend to stay and survive. Most of the city kids here (juvenile offender residents) don't share this hope. They are lucky to have a safe place that feeds them, at least for the time that they are here. I never had anyone help me survive Los Angeles. I was raped as a young girl; later "gave myself" to the landlord for rent.

There are racial and cultural issues here, too. Most of the staff are white small town rural folks. The young people aren't. Some of the white staff want to proceed "cold and rational" while emotions and passion are all over the place. A few of the kids are gang members and rivals. The staff doesn't even get what's going on.

There aren't easy answers in a place like this, though one rule stands --- adults first. These kids don't deserve priority. They've broken the rules. Any adult who tries to put children's needs first is going to hear it, especially an adult who thinks they're better educated and know more than heretofore.

APPLICATION

- Describe, in your own words, what is most important to the child staff worker interviewed above. List questions you would ask her to learn more about what is most important.

RECOGNITION/PERSPECTIVE-TAKING/VALIDATION: GOING DEEPER & FURTHER WITH PARAPHRASING AT LEVEL OF MEANING

The best listening accurately interprets the speaker's meaning or perspective, with a focus on what matters most. Paraphrasing, or repeating key words, emotions and meaning, is a skill used by listeners to investigate understanding.

The first level of paraphrasing is at the level of content, substance or words. Concisely, the listener reflects back important parts of what he has just heard.

By minimizing his words, the listener seeks to show the speaker that his priorities are hearing and understanding the speaker. Actually encouraging and allowing the speaker to talk more than the listener "speaks louder than words." A listener's true and demonstrated attentiveness will encourage most speakers.

Some Reflective Listening Responses Re: Content

"_____, _____ and _____ both to you;"

"_____, _____ and _____ are important to you;"

"When _____ occurred, you _____;"

"You have been thinking _____ about _____."

In response to paraphrasing, the speaker is likely to correct, clarify, elaborate and otherwise verify the accuracy and completeness of the listener's understanding. This is to be encouraged. With active listening, the speaker is "expert."

Paraphrasing underlying meaning involves responding to the speaker's words, and verbal and non-verbal expression of emotion, with the listener's interpretation of the speaker's meaning. Accurate paraphrasing of

speaker interpretation relies heavily on verifying or corrective feedback from the speaker, since a listener will naturally interpret through the listener's experience and perspective.

For example, the speaker says "I am hurt that I was not invited to my sister's celebration." Paraphrasing the listener responds with "You wish you had been invited." Paraphrasing emotion the listener simply says "You sound hurt."

Paraphrasing at the level of meaning, or speaker interpretation and value, while also seeking verifying feedback, the listener may ask, "I wonder whether being considered and included by your sister, being part of family celebrations, or both, are most important to you." When the speaker responds with "I have always been included in all my sister's important gatherings. I don't understand why I don't know what's going on," the listener moves further forward in understanding the speaker's perspective.

Taking the time and "trouble" to complete this dialogue, until the speaker verifies listener understanding, is essential. Otherwise, the listener may appear to understand through repeating words and emotions, yet never actually understand the most important parts of the speaker's perspective — what the speaker means and intends to express with his words and emotions.

The best negotiators listen well and more actively than average negotiators. Rackham, *supra*. Average negotiators are more likely to advance arguments or mentally prepare arguments than listen. *Id.*

Ethical Perspective

Sara Cobb defines empowerment as "a set of discursive practices that enhance the participation (construction of a joint story) of disputants." She asserts that looking for "places of lesser... coherence in the parties' stories" and facilitating full communication are practical ways that third parties empower parties to conflict. Without such assistance, the more coherent story — often the one that resonates more closely with dominant culture, is likely to dominate the conflict process.

Sara Cobb, *Empowerment and Mediation: A Narrative Perspective*, <http://www.colorado.edu/conflict/transform/cobb.htm>.

Discuss.

Cultural Perspective

In a recent survey of participants in conflict resolution process from the Balkans, Cameroon, Nepal and Ukraine, careful listening was the third most important criteria for evaluating effectiveness, ranked equally with strong, skilled leadership. Paraphrasing, or active listening, was mentioned most, with special reference to deep understanding, or paraphrasing at the level of meaning ("how to recognize and understand real cause of conflict"). Also appreciated by all cultural communities was direct and free questioning with open-ended questions, no interruption, and checking in with the parties.

APPLICATION

- **With each of the following interviews, create a list of possible speaker meanings.**

Example. Child Staff Worker -- Whatever you propose, my children's well-being and future come first and must be considered.

- **Young Resident/Offender:** Yes, the reports are true. This is a nasty, depressing place. I can't wait to "get out."

POSSIBLE MEANING:

- **Treatment Director:** I am not aware of any of the facts reported. If I was, I would certainly investigate. I suspect someone is angry and vengeful because of some recent changes, e.g., social worker termination. I am not at liberty to say more.

POSSIBLE MEANING:

- **Staff Manager:** I know better than to tell the state what happens here.

POSSIBLE MEANING:

- **Agency Director/Owner:** I love my job, especially the glowing success stories about how these kids are “turning their lives around” (unsaid -- and the business profits don’t hurt.) I live far away from the facility and visit only about once a month. I believe in “hands off” management. The last thing I want is bad publicity. As long as the glowing stories (unsaid -- and profits) continue, I’m happy.

POSSIBLE MEANING:

Conflict Theory

POLARIZED POWER STRUGGLES

Conflict may appear impossible “stuck” once one has heard all involved express their opposing opinions about what should happen. These opinions are called “positions” in conflict literature.

APPLICATION

- List all “positions” about “what should happen.”

➤ **Social Workers**
Example: We must respect the law.

Staff Worker
Example: We must remain tough with tough kids.

➤ **Resident**
Example: I must get out.

Treatment Director
Example: My job must continue.

➤ **Manager**
Example: I demand respect.

Owner
Example: I must profit and prosper.

A helpful way to identify party “positions” is to imagine each party completing the following: “_____ Idemand _____;” or “_____ must _____.”

As long as parties continue “fighting” with each other and attempt to demand or push for their “position,” they engage in competitive or “win -lose” dynamics. Such power struggles continue until one or more parties “gives up,” “gives in,” or “wins.”

FACILITATING INSIGHT

Roger Fisher, of Harvard's Negotiation Project, is a leader in conflict resolution recognized for proposing "interest-based" ("win-win") bargaining as a constructive and creative response to destructive positioning. In *Getting to Yes, supra*, he leads negotiators through identification of party interests, or "needs, desires, concerns and fears."

Interest identification requires analysis of the speaker and speaker words, emotions and meanings, including the implied or "unspoken." Interest analysis aims to discover the underlying "whats" and "whys"—like the paraphrasing described earlier at the level of meaning. *Id.*

Party Statement

Possible Needs/Interests/Concerns

"I'm sick and tired of sitting in hours of meetings and never seeing any results."

shorter meetings
less meetings

- ✓ talking more about frustrations in specific meetings

possible question:
Which meetings frustrate you most? (Tell me more.)

- ✓ desired results: meetings speaker needs

possible question:
What would you like to see?

APPLICATION

- **Return to your list of positions. Analyze and list interests; include as many needs, desires, concerns and fears as possible. Consider what has been explicitly stated, as well as implied and "unspoken."**

- **Social Workers**
Sample: Respect for professional code of ethics

- **Staff Worker**
Sample: Considering her family's well-being

- **Resident**
Sample: Healing depression, or sense of hopelessness

- **Treatment Director**
Sample: Keeping his job

- **Manager**
Sample: Respect

- **Owner**
Sample: Positive public relations

Note: Interest identification was also appreciated as part of skilled in-depth listening in the international survey mentioned earlier.

APPLICATION

- **How you would encourage these interviewees to share the private information described below?**

Young Resident Offender: I feel nuts not being allowed to drink and drug. I don't know what to do with these feelings .

POSSIBLE RESPONSE:

I will run from my home when I return, even though I was raped on the street last year. The shouting scares me and hurts.

POSSIBLE RESPONSE:

I am fourteen -years-old. Don't tell anyone, but I still suck my thumb when I'm sad .

POSSIBLE RESPONSE:

I'm in love with a gang leader. My sixteen -year-old sister lives with her boyfriend and baby. Maybe I can live with my boyfriend next time I run.

POSSIBLE RESPONSE:

Treatment Director: Unsaid but known through local community: Several years ago I suffered "anervous breakdown" after being fired from this agency, the one where I currently work. Fortunately, after a change in management, I was rehired. I could not find comparable employment elsewhere. The last thing I want is to subject myself and my family to such trauma again.

POSSIBLE RESPONSE:

Agency Owner: I'm a lawyer. With all the regulations and laws governing juvenile offender treatment and child welfare, I'm nervous that we might be breaking some of them. I try to train my staff. Hiring and keeping good staff are my toughest challenges.

POSSIBLE RESPONSE:

- **Questions**

1. Who are the necessary participants/representatives in the investigation described in the case study? Would you include one or more juvenile/ child representatives? Under what conditions, e.g., if there is no acceptable or qualified adult to speak on their behalf, ages sixteen or older? Would you include any of their family members? What if the young person has a family history of sexual abuse , attempted murder of the child, concealed deadly weapons, etc.?

2. Would you include government officials, e.g., child county social worker? What if the official knows of agency social worker concerns and has ignored or otherwise failed to respond? Has a hundred other cases, some involving worst circumstances?

Case Study Postscript: You find twenty-seven violations of state code. You negotiate an agreement for future compliance. Three years later you receive a call from a staff member reporting that the agreement has been ignored. Little, if anything, has changed. **Discuss.**

Ten years after the investigation described in the case study, the center closed, progressively receiving too few referrals.

Proposed Third Party Conflict Intervenor Competencies

Information Gathering Skills and Knowledge

1. Elicit sufficient information throughout process; *See, e.g.,* Academy of Family Mediators Standards of Practice for Family and Divorce Mediation; hereinafter “AFM;”

Relationship Skills and Knowledge

1. Can form an effective facilitative relationship.*
 - A) ability to earn trust and maintain acceptability with parties... *See, e.g.,* Colorado Council of Mediators and Mediation Organizations Code of Professional Conduct for Mediators; hereinafter “CCMMO;”

*Evidenced by all parties’ increasing level of risk-taking, e.g. information sharing, disclosure and discussion of present experience...

Communication Skills & Knowledge

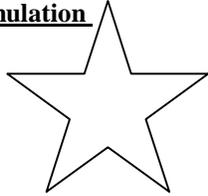
1. Prioritizes party communication; minimizes own to what is necessary and helpful;
2. Models attuned and active listening that encourages full, honest exploration and expression; *See, e.g.,* Society of Professionals in Dispute Resolution Ethical Standards of Professional Responsibility; hereinafter, “SPIDR;” California Dispute Resolution Programs Act and Regulations; hereinafter, “California;” Maryland Committee for Dispute Resolution Mediation Performance Evaluation Form; hereinafter “Maryland.”
 - A) Perceptive reading and investigation of unspoken/implicit, e.g., non-verbal communication;
 - B) Clear, unambiguous (e.g. non-verbal and verbal congruence) communication of commitment to understand;
 - C) Accurate paraphrasing of important party messages (content), feelings and meanings (explicit and implicit interests), *see, e.g.,* SPIDR Commission on Qualifications, 1995; hereinafter “SPIDR95 Report;” Maryland;
 - D) Comprehensive exploration and clarification of needs, interests, expectations and values from party frame of reference, *see, e.g.,* Maryland, California;
 - E) Regular verification re: accuracy and sufficiency of understanding (e.g., seeks and encourages party feedback);

Problem-Solving Skills and Knowledge

Facilitates and promotes party critical thinking and problem solving through:

1. Frequently asking open -ended questions to encourage complete in -depth and detailed exploration and otherwise promote high level party task engagement;
2. Eliciting and comprehensively identifying important needs/interests/concerns underlying conflict, including the hidden and less obvious, and substantive, procedural and psychological; *see, e.g.,* SPIDR, Maryland, AFM.

Role -Play Simulation



CAST OF CHARACTERS

**INVESTIGATOR
SOCIAL WORKERS
CHILD STAFF WORKER
YOUNG RESIDENT/OFFENDER
TREATMENT DIRECTOR
STAFF MANAGER
AGENCY DIRECTOR/OWNER**

Research Ideas:

- *Juvenile justice system : history, ideals and realities
- *Relevant law

