Maximizing Mediation

An Experienced Mediator’s Favorite Techniques

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What Mean By “Maximization?”

- assisting participants to be at their **individual best**
- assisting participants to most capably **work together**
- assisting participants to obtain the **greatest possible satisfaction** of their interests.
Maximization More Broadly

- Mediation as **best opportunity for maximized problem solving.**
  Compare: Adjudication, Arbitration, Unassisted Negotiation

- **Moving beyond barely sufficient** processes and barely sufficient agreements **to most capable** processes and most capable agreements

- Maximization has both **micro** and **macro** levels
Justification for Maximizing Mediation

Imperfect Theoretic Options Regarding Power Disparity & Mediator Response

- Operate under the illusion that the mediator does not influence participant power
- Attempt to balance participant power
- Seek to "comparably" empower (or disempower) participants
- Embrace empowerment and carry it to the fullest extent of "maximization"
Framing and Questions

- Mediator as **Frame Master**
- Create Frames with Questions
- “The Ideal Mediator”
- The two most important questions: **Outcome Questions** and **Evidence Questions**
- The Conditional Close
- The Reference Point
Three Basic Strategic Ways Mediators Work to Create Agreement

- The **Interest-Based Option Generation Approach** (problem-solving)
- The **Hypothesis Generation & Testing Approach** (guessing) and
- The **Doubt and Dissonance Approach** (heat)

*Key determinant is available time*
Interest Based, Option Development Problem Solving

**Introductory Session:** Process, Info/Doc, Questions, Rapport Dev., Future Pace Success

**First Session:**
- Review Info Doc
- Getting Current – Past / Present / Future
- Easy Points of Agreement
- Problem Solving Agenda
- Interests & Outcomes
- Options
- Exchanges of Arrangements - Homework
- Shelf of Differences – Package Deals
- Reference Point Process
- The Integrative Question
Hypothesis Generation & Testing

- I wonder . . .?
- I’m curious . . .?
- Might it be . . .?
- Would I be wrong to think . . .?
- Perhaps something in the direction of . . ?
- Maybe something along the lines of . . ?
- Perhaps an exchange here of ___ for ___ or the like . . ?
- Correct me if I am wrong, but might I be hearing . . .?

“Reference Point Process” is Mediator Guessing as End Game
“D & D” or “Heat” is based on the concept that participants will always make the best choice they perceive available.

We elegantly challenge their current assessment.

- The mediator either challenges the positive or negative evaluation of an option; or

- The mediator challenges a perceived comparison of options.
Favorite Techniques I

- **Rapport Development**: Meet people “where they are” – Matching, Pacing, Leading

- Identifying **Resource States, Anchors, and Metaphoric data-base**

- **Getting Current & Framing Time**: Providing time and a frame to be heard – Distinguishing Past, Present and Future Frames

- The Impact of **Location** – The Yurt Story
My Favorite Techniques II

- Managing behavioral expectations with ground rules & “the relevancy check”
- Identifying “easy points of agreement”
- De-positioning to motivating interests & positive intentions with the word “Imagine”
- Normalization & Mutualization
- Problem-Solving Questions: “How can we best ..?” “What is the best way for us to ..?”
My Favorite Techniques III

- **Normative stories** (similar situated others)

- “New Perspectives” (dis-associative techniques) e.g. “Zen Fly”; If you were the other; If you were the mediator; Looking back from the future; If you were your children.

- **Homework – exchanges and package deals (“shelf of differences”)**

- The “**Reference Point Process**”

- The “**Integrative Question**” end