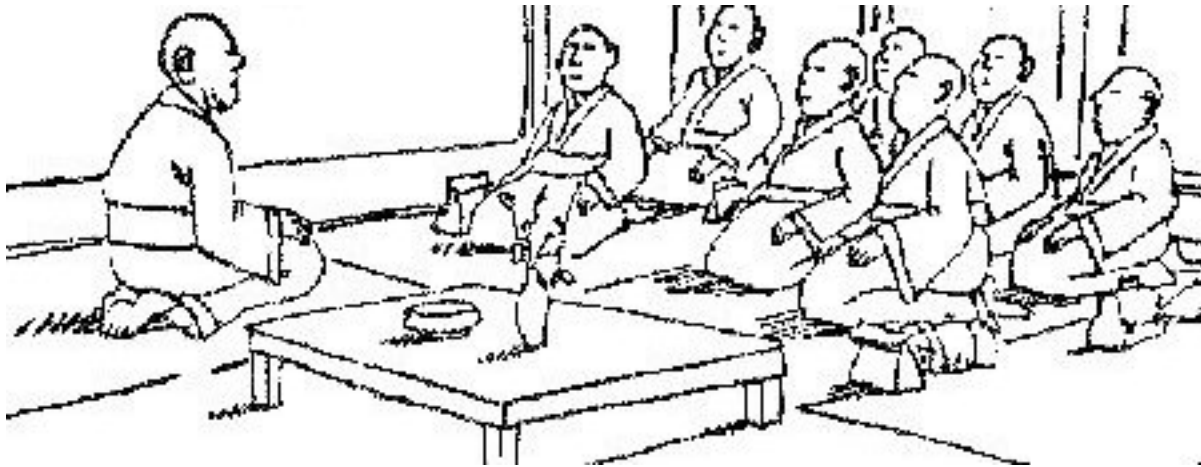


Maximizing Mediation

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***

Doubt & Dissonance (aka “Heat”)

*“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