

## COURT CLINIC TRAINING June 8, 2018

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## COLLECTIVE ORGANISM

People brought together in a room  
to mediate an unresolved conflict

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## A GROUP OF PEOPLE

- Everyone brings their own presence and behavior
- As well as their own role
- And how everyone interacts with everyone else will determine what can happen

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## ASPIRATIONS FOR MEDIATORS *For Their Presence And Behavior*

- To spark the capability to mediate for the participants
- To provide a meaningful opportunity for the participants to exercise the capability to mediate
- To be aware of how the power of the mediator influences the capability to mediate

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## CAPABILITY TO MEDIATE

For a participant to meaningfully mediate...

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## CAPABILITY TO MEDIATE FOR A PARTICIPANT

- ★ • An open, flexible, and creative state of mind
- ★ • An ability to interact with others in a meaningful and beneficial manner
- ★ • An ability to balance self-preservation and integrity, with
- ★ • What resolutions are possible for everyone to agree upon

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## CHALLENGE

- ➔ • To support participants to acquire and to exercise the capability to mediate
- ➔ • To use mediator power to empower the participants

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## MEDIATOR POWER

Identifying mediator influence...

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## MEDIATOR POWER

- Is not to determine the outcome of the conflict.
- Is the ability to influence a party's state of mind and behavior.
- Is the ability to influence what happens in the room.

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## SOURCES OF MEDIATOR POWER

- Mediator Behavior
- Mediator Presence
- Mediator Knowledge
- Mediator Guidance

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## EXERCISING MEDIATOR POWER

- ➔ • How the mediator participates is not neutral.
- ➔ • A mediator's participation in the process has consequences for the parties.
- ➔ • A mediator needs to be level handed and needs to maintain the integrity of the process.
- ➔ • How a mediator uses power needs to be as intentional as possible.

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## MEDIATOR BEHAVIOR

Creating a good environment & beneficial working relationships

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### HOW PEOPLE ARRIVE *Elevated Stress Response*

- ★ • Prepared to advocate and to defend
- ★ • Anticipating a hostile response
- ★ • On high alert for danger
- ★ • Locked down

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### WHAT PEOPLE NEED TO MEDIATE And may be compromised OR may be unsafe to do

- Ability to speak so that they can be heard
- Ability to listen so that they can understand
- Ability to think openly, flexibly and creatively

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### PEOPLE TEST THE ENVIRONMENT *Is it safe or dangerous?*

They send a probe to see whether in response

- They will be wacked
- Or whether they will be safe
- The mediator's behavior in response will be key

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### TO SHIFT FROM AGGRESSIVE DEFENSIVENESS To an Increased Capability to Mediate

Parties need to:

- Be heard
- Be understood
- Be respected
- *To experience a safe and receptive environment*

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### TO SHIFT FROM AGGRESSIVE DEFENSIVENESS To an Increased Capability to Mediate

To feel safe, each party needs to experience

- That the mediator will be even handed
- That the mediator can work with the other party
  - Without betraying their connection with the mediator
  - Without becoming aligned with the other party

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### ROLE OF THE MEDIATOR Stimulate a Relief Response

- Provide an environment where each person will feel incrementally safer to lower:
  - Wall of defenses
  - Clinging to positions
  - Fear

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**ROLE OF THE MEDIATOR**  
Stimulate a Relief Response

- Provide support for an increased capability to mediate, including:
  - A state of mind conducive for mediating
  - Behavior conducive for mediating

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**IF A MEDIATOR DOES NOTHING ELSE...**

These mediator behaviors matter:

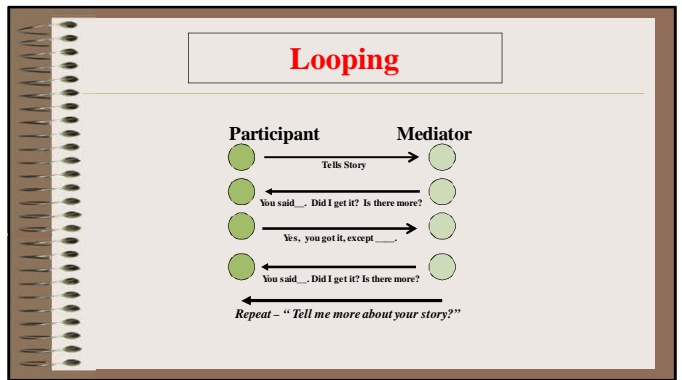
- ➔ • Listen to understand
- ➔ • Respect and acknowledge
- ➔ • Ask to know more
- ➔ • With an even hand

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**ACKNOWLEDGMENT REFRESHER**

An essential tool

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**OVERHEARD CONVERSATION**

Hidden impact...

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**WHILE THE OTHER PARTICIPANT WATCHES...**

- ★ While the mediator works with one participant,
- ★ What is the impact on the other participant?

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INITIAL REACTIONS  
Particularly when waiting to go second...

- Is the mediator becoming aligned? Am I at risk?
- Needs the mediator to acknowledge their fear
- Needs to be appreciated for waiting
- Needs to be know mediator wants to know them too

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RELIEF REACTIONS

- As each participant sees the mediator give even handed, authentic attention to all,
- They learn the mediation environment may be safer than initially experienced,
- Their defenses can begin to lower, and they can feel safe enough to listen more openly.

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LONG TERM REACTIONS

There may be no outward clues,

- That the listening participant is taking in what the other participant is expressing...
- That listening brings new understandings...
- That the listener's state of mind may become more open and flexible...

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UNEXPECTED SHIFTS

- ➔ With time, the hidden learning is ready to surface, to the surprise of everyone else
- A position may shift...
- A new idea may be offered...
- An apology may be given...
- ➔ The overheard conversation can be powerful.

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**MEDIATOR PRESENCE**

Modeling behavior that is conducive  
for meaningful mediation

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**HOW PEOPLE ARRIVE**

Unfamiliar with

- ★ • How to behave during mediation
- ★ • What attitudes will be useful
- ★ • How to respond effectively
- ★ • What interactions will be safe & beneficial

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## MEDITATOR AS A MODEL

- where the mediator embodies the conduct and state of mind conducive for a meaningful mediation,
- where mediator presence is a model of behavior for the parties, and
- where mediator bias and baggage are acknowledged to be inherently present and the mediator works not to allow them to contaminate the process.

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## BOTTOM LINE

## Mediation as Attitudes &amp; Interactions

- ➔ • The qualities needed for a participant to meaningfully mediate, and
- ➔ • The attributes needed for a mediator to provide a helpful process, are sufficiently similar
- ➔ • For the mediator to be a critical model behavior for the participants.

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