Contents

Acknowledgments

page xiii

1	Introduction: Approaches to Mediation	1
	Roots and Varieties of Mediation	2
	Facilitative Mediation	5
	Narrative Mediation	6
	Transformative Mediation	6
	Previous Research on Mediation	8
	Interactional Approaches to the Study of Mediation	11
	Theoretical Perspective and Analytical Approach	14
	The Research Settings	16
	The West Coast Data	17
	Data Collection	18
	Recording Equipment	19
	Midwest Small Claims Mediation Data	19
	The Setting	20
	The Organization of the Hearings	21
	Midwest Divorce and Family Mediation Data	21
	Access to the Setting	22
	Data Collection Procedure	22
	Equipment and Recording	22
	Data Preparation	23
	Recent Examples of Mediation	23
	Training and Experience as a Volunteer Mediator	24
	Chapter Summaries	24
2	The Interactional Organization of Mediation	29
	Mediation Session Openings	29
	Small Claims Mediation Session Openings	30
	Divorce Mediation Session Openings	33
	Summary	36
	The Turn-Taking System of Mediation	36
	The Participation Framework of Mediation	44
	Nonproblematic Disputant Intrusions	46
	Error Repair	46
	Sentence Completion	47
	Brief Oppositional Utterances	48

ix

Cambridge University Press & Assessment 978-1-009-24498-5 — How Mediation Works: Resolving Conflict Through Talk
Angela Cora Garcia
Table of Contents
More Information

х	Contents	
	Information-Seeking Questions	49
	Provision of Relevant Information	50
	The Interactional Organization of Divorce Mediation Sessions	51
	The Hybrid Mediation Format	51
	The Interactional Impact of Multiple Sessions	55
	Discussion and Conclusions	58
3	Minimizing and Managing Argumentative Talk in Mediation	60
	Disputing in Ordinary Conversation	61
	Minimizing and Managing Arguing in Mediation	63
	The Separation of Accusations and Denials	63
	Selective Responses to Accusations	66
	The Formulation of Accusations and Denials	67
	Third Person Attributions of Blame	68
	Elision of Agent	68
	Displacement of Agent	69
	Mitigating Accusations	70
	Summary	70
	Disputant Direct Address and the Emergence of Arguing	71
	Disputant Self-Exit from Brief Argumentative Exchanges	71
	Mediator-Assisted Exit	73
	Mediator Responses to Emerging Arguments	77
	Minimal Responses and Topic Shifts	78
	Strategic Interruptions, Questions, and Sanctions	80
	Deflection from Arguing by Focusing on Facts	82
	Stepwise Departures from Mediation Format to Arguing	83
	Discussion and Conclusions	88
4	Disputants' Opening Statements and Persuasive Arguments	
	in Mediation	89
	Soliciting the First Disputant's Opening Statement	90
	Soliciting Disputants' Opening Statements in Small Claims	
	Mediation	90
	Soliciting Disputants' Opening Statements in Divorce Mediation	92
	Summary	93
	Facilitating Disputants' Opening Statements	94
	Opening Statements with Minimal Mediator Intervention	94
	Opening Statements with Mediator Facilitation	96
	Summary	99
	Constructing Strong Opening Statements Stories or Narratives	99 100
	Quotes and Reported Speech	100
	Moral Claims	101
	Preemptive Moves	102
	Soliciting the Second Disputant's Opening Statement	104
	The Interactional Consequences of Going Second	107
	Discussion and Conclusions	117
_		
5	Mediator Representation of Disputants' Positions	120
	Paraphrases, Summaries, and Upshots	122
	Refocusing or Redirecting the Discussion	122
	Articulating the Main Point of a Story	123

	Contents	xi
	Articulating the Main Areas of Disagreement	124
	Highlighting Common Ground	126
	Using Summaries to Serve as an Intermediary	130
	"Revoicing": Mediator Representation in Direct Exchanges with Opposing	
	Disputants	132
	Mediator "Replacement" of the Opposing Disputant	136
	Replacement in Small Claims Mediation	136
	Replacement in Divorce Mediation	138 141
	Implications of Replacement for Dispute Resolution Replacement and Disputant Autonomy	141
	Replacement and Implications for Fairness	141
	Discussion and Conclusions	145
6	Soliciting Proposals for Resolution of the Dispute	150
	General Solicits of Disputant Proposals	150
	Specific Solicits of Disputant Proposals	152
	Specific Solicits of New Suggestions	152
	Narrowing the Range of a Proposal Solicit	153
	Soliciting Elaboration of an Existing Proposal	154
	Specific Solicits with Candidate Suggestions	155
	Summary	155
	Resisting Mediator Solicits	156
	Resisting Solicits by Claiming Not to Have a Proposal	157
	Resisting Mediator Solicits by Passing on the Opportunity	158
	Resisting Mediator Solicits with Silence	158
	Resisting Mediator Solicits with Talk on Other Issues Summary	160 164
	Pursuing Proposals and Recycling Proposal Solicits	164
	Proposal Solicitation in Divorce Mediation	167
	Discussion and Conclusions	171
7	Producing Ideas for Resolution of the Dispute	173
	Disputants' Ideas for Resolution as "Position Reports"	174
	Mediator's Ideas for Resolution as "Suggestions"	177
	Information-Seeking Questions as Mediator Proposals	178
	Mitigated Proposals	180
	Footing Shifts	181
	Mediator Proposals and the Display of Neutrality	183
	Proposal Production in Divorce Mediation	185
	Proposal Generation in Hybrid Exchanges	186
	Joking Proposals	191
	Discussion and Conclusions	194
8	Mediator Teamwork	197
	Failure of Alignment between Co-mediators	199
	Activity Misalignment	199
	Transition from the Discussion Stage to the Solution-	200
	Generation Stage	200
	Transition from the Discussion Phase to Individual Caucuses Substantive Misalignment	201
	Substantive Misalignment Interactional Misalignment	203 205
	Summary	203
		200

Cambridge University Press & Assessment 978-1-009-24498-5 — How Mediation Works: Resolving Conflict Through Talk
Angela Cora Garcia
Table of Contents
More Information

xii Contents

Creating and Displaying Mediator Alignment	209
Displaying Alignment through Silence	209
Mediator Teamwork through Explicit Negotiation	210
Mediator Teamwork through Expressing Agreement	211
Mediation Teamwork through Paraphrasing	213
Mediator Teamwork through Sentence Completion	214
Mediator Teamwork through "And-Prefaces"	216
Mediator Teamwork through Complementary Actions	219
Discussion and Conclusions	222
9 Autonomy, Empowerment, and Neutrality in Divorce and Small	
Claims Mediation	224
Summary of Findings	225
The Speech Exchange System of Mediation	225
Managing and Minimizing Arguing in Mediation	227
Mediator Solicitation and Facilitation of Disputants' Opening Statements	229
Mediator Representation of Disputants' Positions	230
Facilitating the Solution-Generation Process	233
Proposal Production and Disputant Autonomy	235
Proposal Generation in Divorce Mediation	237
Mediator Teamwork	238
Implications for Mediation Practice	240
Recommendations for Mediators and Disputants	240
Recommendations for Mediation Procedures and Processes	242
Redesign the Solicitation of Opening Statements	242
Utilize the Co-mediation Model	243
Design the Proposal-Generation Process to Maximize Brainstorming	243
Mimic the Multiple-Sessions Model of Divorce Mediation	243
Suggestions for Further Research	244
Comparing Different Types of Mediation	244
The Need for Cross-Cultural Comparisons	245
Conversation-Analytic Research on Caucuses in Mediation	245
Improving Access to Data	246
Appendix: Transcription Symbols	248
References	249
Index	249
Index	209