

# Mediation Training Program

**Welcome!**

**Day 3**



# Welcome / Introduction of Trainers

- Timothy M. Linnehan, Esq.
  - ADR Coordinator for the Trial Court
  - Executive Office of the Trial Court
- Josh Hoch
- Nnena Odum
- Diana Chiang Cooke



# Housekeeping

- Problems? Text Josh: 857-719-6642
- Start at 9:00 AM, and end by 3:30 PM
- Stay hydrated and comfortable
- Break at 10:45 AM
- Lunch at 12:30 PM
- BIN
- Training Manual
  - <https://www.mwi.org/tc-mediation-training/>



Training Material



# Group Norms

- Try new things
- Participate
- Support each other
- Don't be shy, find your voice
- Help us manage time
- Create a safe environment
- Confidentiality
- Be open-minded
- Be open to learning new things



# Day 3: Mediation Training

- Introductions
- Ladder of Inference
- Listening Triangle
- Mediation Skills Fishbowl: Interests to Options
- Role-play III and small group discussions
- *Lunch*
- Role-play IV and small group discussions
- Power and Mediation
- Bias and Mediation
- Wrap Up

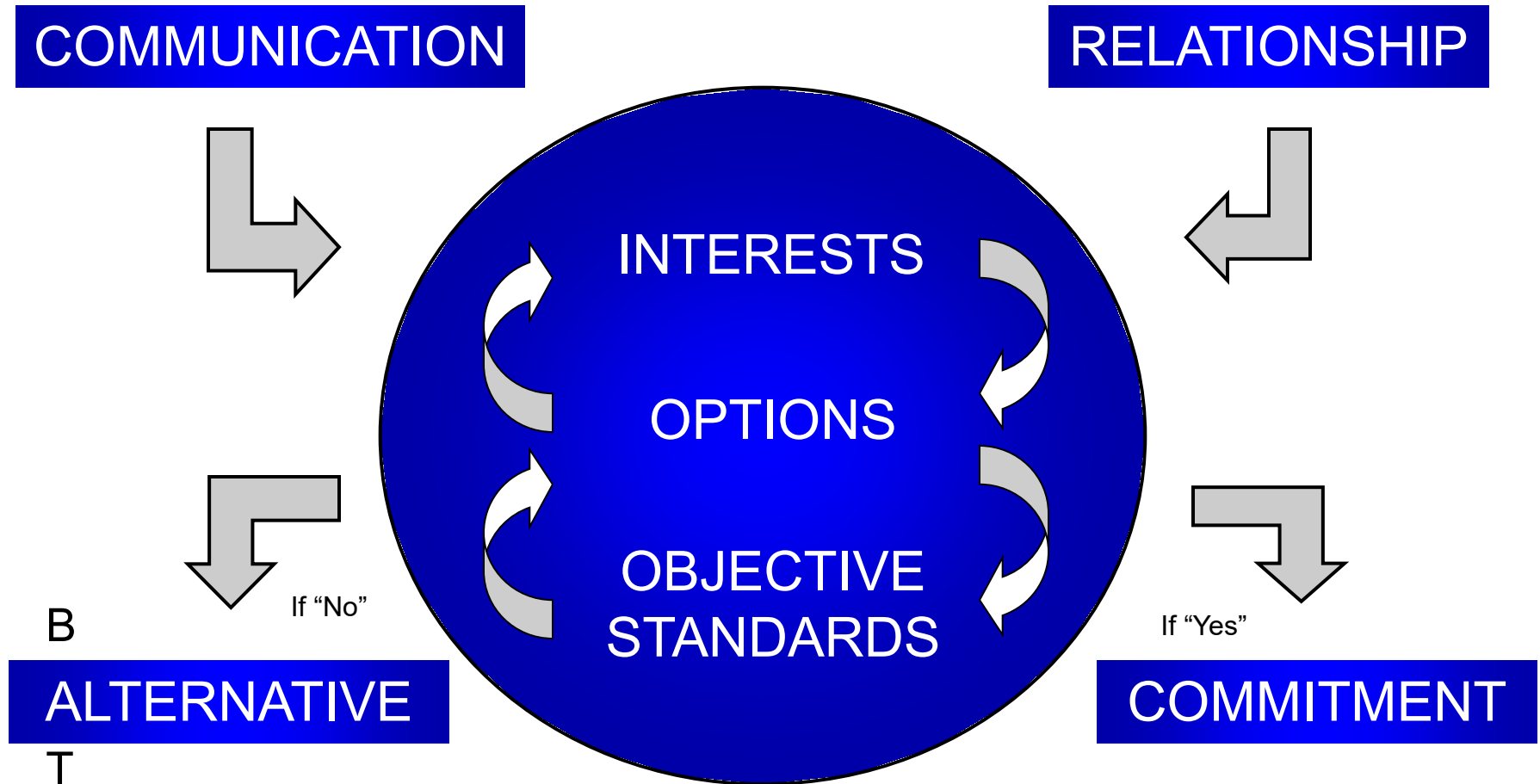


# Introductions

When not working . . . What do you do for fun?

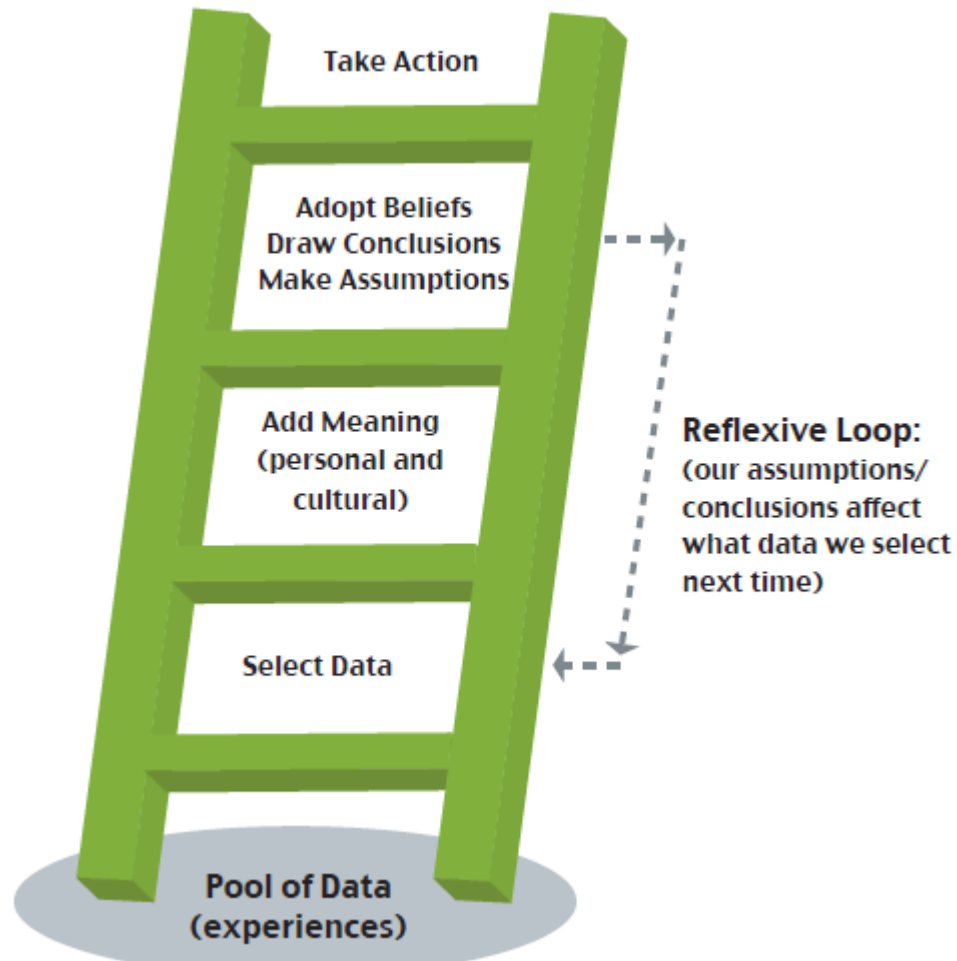


# Negotiation Framework for Mediators

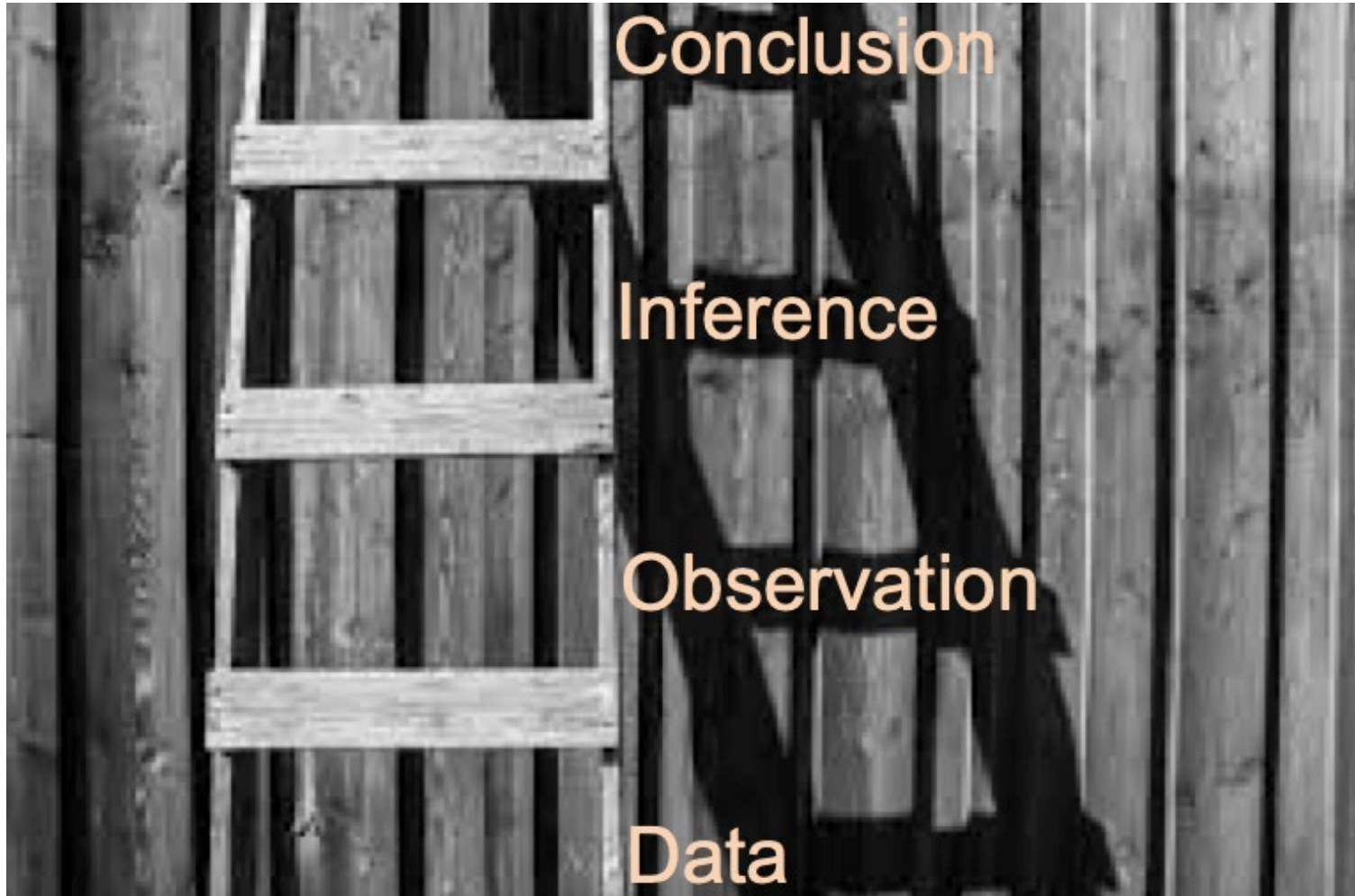


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# Ladder of Inference

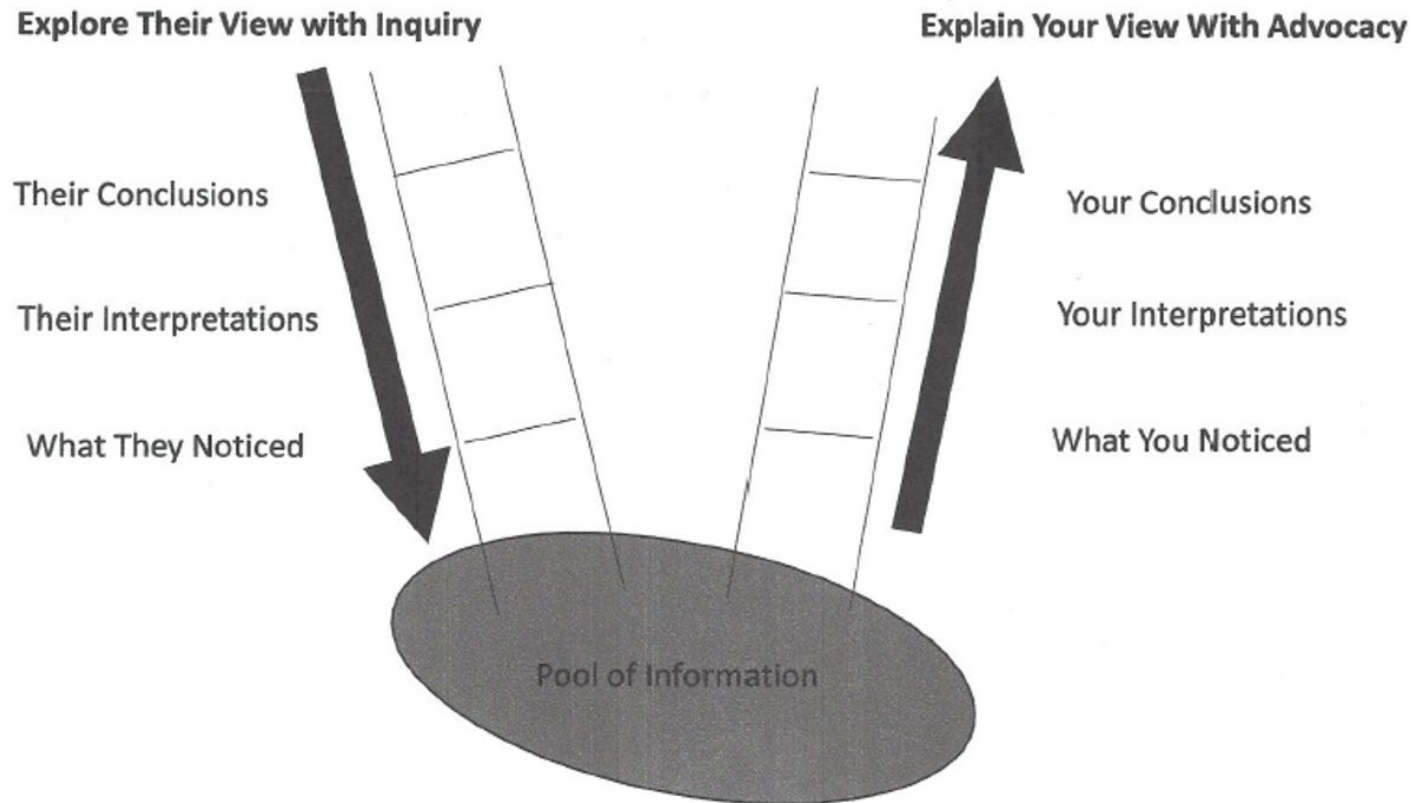


# Ladder of Inference



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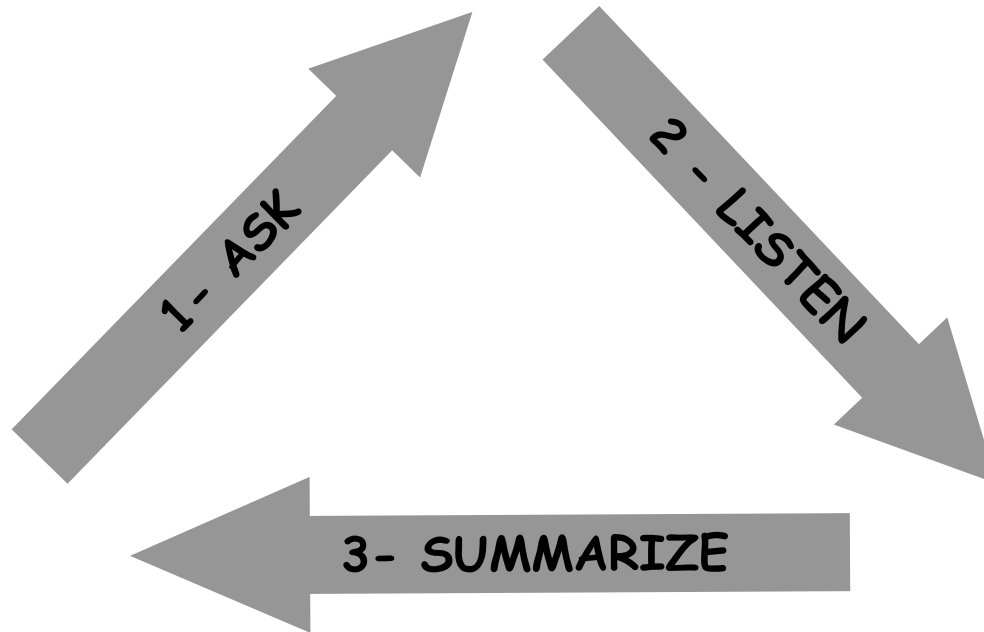
## Use the Ladder to Engage Productively



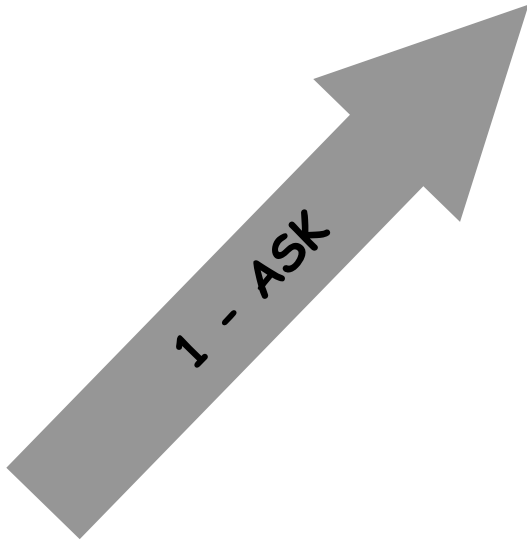
# Interactive Listening Skills



# Interactive Listening Skills



# ASK

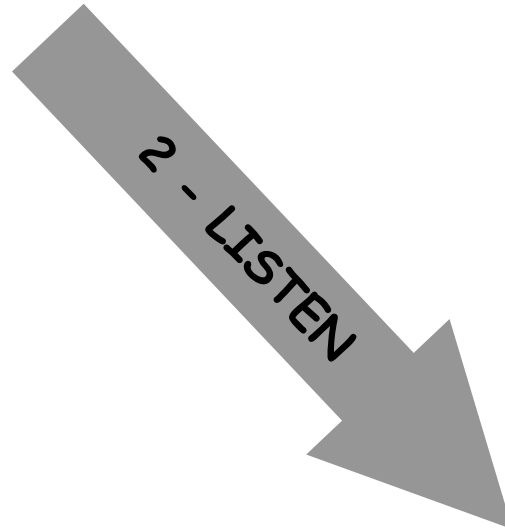


- Negotiate with yourself to be curious
- Use open-ended questions
- Keep it simple and succinct



# LISTEN

- Quiet your inner-voice
- Check body language
- Work on being present
- Goal: Listen for INTERESTS



# REFLECT

## 3 Ways

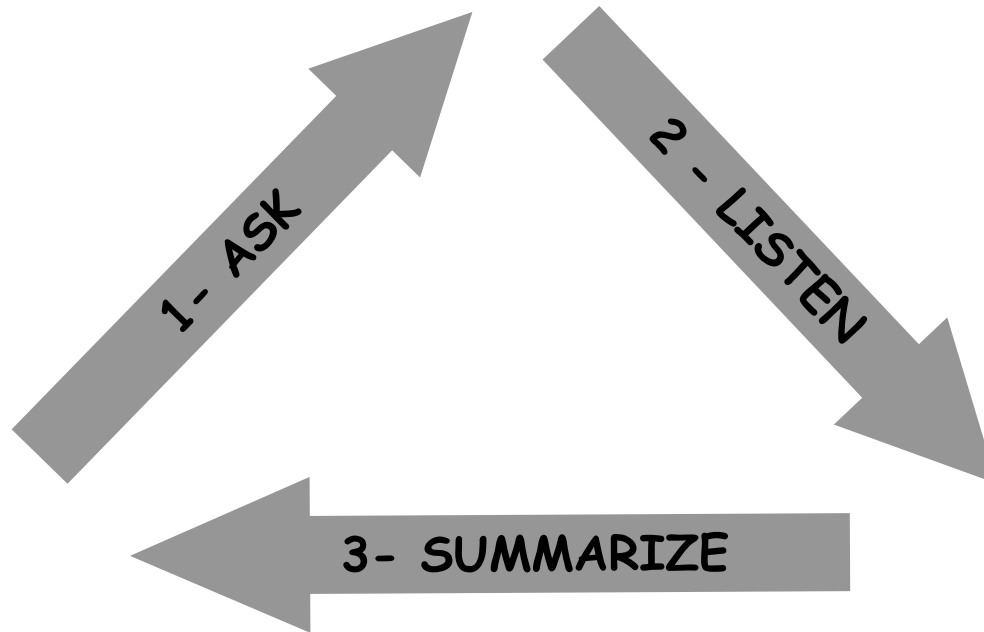
- Repeat
- Paraphrase
- Reframe
  - Positions to interests
  - Past to present/future
  - Negative to positive

## Benefits

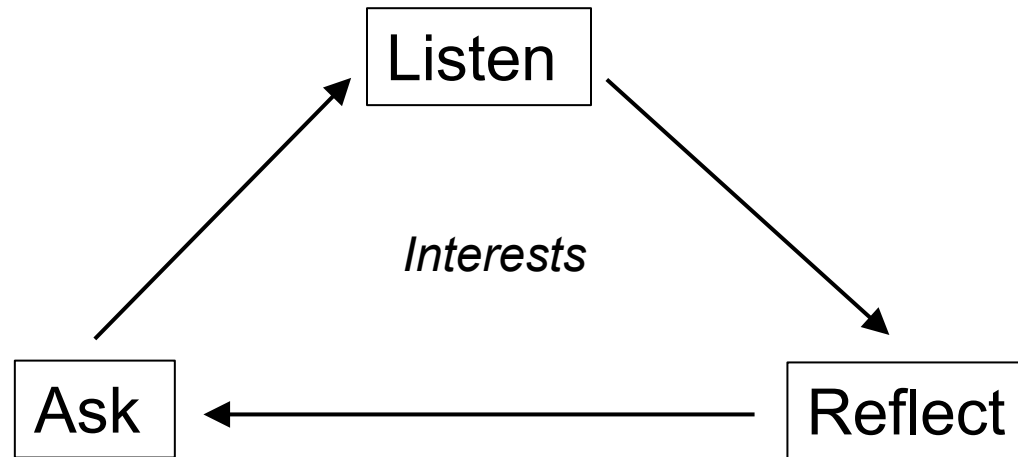
- Let the party know they've been heard
- Confirm you understand
- Identify & clarify miscommunication
- Allow party to reflect on their own words
- Let other party hear things in a different kind of way
- Shift to a more productive focus/mindset



# Interactive Listening Skills



# Application: Listening Triangle



- OEQ (open-ended questions)
  - CEQ (closed-ended questions)
- What are you hoping to achieve in mediation?
  - What would be a successful outcome?
  - Tell us more...
  - Why is that important to you?
  - Is there anything else?
- Repeat
  - Summarize
  - Reframe
    - Positions to interests
    - Negative to positive
    - Past to present



# Managing Perspectives

## Activity:

- Share a conflict
- Partner steps into your shoes

## Group Debrief:

- Reflection: What changed in your assumptions?



# Role-Play 3

Complainant: Gardener

Respondent: Dog owner

The complainant filed suit in court for \$3,000. The judge referred the case to mediation.



# Role-Play 4

Former Tenant, Plaintiff  
Property Manager, Defendant

The former tenant filed a complaint in Small Claims court, suing for \$2,000.



# Power and Mediation

## What is Power?

- Small Groups – 5 minutes
- Create a definition

## Self-reflection

- Think of a situation when you felt powerful – identify the situation
- How did you know you had power?
- How did it feel to be powerful?

## Self-reflection

- Think of a situation when you didn't have power – identify the situation
- How did you know you didn't have power?
- How did it feel to lack power?



# Power and Mediation

- How does this relate to mediation?
- What can mediators do?



# Implicit Association Test (IAT)

<https://implicit.harvard.edu/implicit/takeatest.html>

IAT – Harvard. Most Americans (75%) react positively to white Americans and less toward African Americans. 65% more positive to straight vs. gay. Less favorable to old, more to young.

Conclusions from research:

1. Variance between implicit and explicit cognition
2. Favor our own social group or socially valued groups
3. Implicit cognitions can predict behavior
4. Implicit cognition can be changed

Mediators are likely to favor their own social group and may be biased against other groups, especially those less valued.

Nonverbal behavior is also shaped by unconscious biases and stereotypes.



# Impartiality

- Rule 8(b) of the Uniform Rules on Dispute Resolution:
- A neutral shall provide dispute resolution services in an impartial manner. Impartiality means freedom from favoritism and bias in conduct as well as appearance.
- A neutral shall provide dispute resolution services only for those disputes where she or he can be impartial with respect to all of the parties and subject matter of the dispute.
- If at any time prior or during the dispute resolution process the neutral is unable to conduct the process in an impartial manner, the neutral shall so inform the parties and shall withdraw from providing services, even if the parties express no objection to the neutral continuing to provide services.



# Beyond Neutrality

- Neutrality is affected by implicit or unconscious bias.
- Implicit Bias is an automatic association of stereotypes and attitudes toward social groups.
- Research shows stereotypes are automatically activated by encountering a member of a social group, which influences our judgments, actions, and decisions.
- Despite our intentions and explicit beliefs, implicit biases can produce behavior different from our principles.



# Bias

Tendency to favor or oppose something or someone based on personal feelings or beliefs, not facts or reason.

May be explicit or implicit, conscious or unconscious, positive or negative and bias influence decisions and behavior.



# Implicit Bias

Implicit bias is . . . and can affect

- Behavior of mediators
- Behavior of the parties in mediation

Eye contact – more blinking, less eye contact with others when biased.

Example – Interviewers interviewing black individuals for jobs unconsciously sat further back, leaned away and interviews were shorter.

Bias can affect parties' willingness to tell their story and the mediator's ability to connect with the individual.



# Types of Bias

## 1. Affinity Bias:

- perceive you have something in common with them... school, town, neighborhood

## 2. Halo Bias:

- if we like one thing about someone, we think everything about them is good

## 3. Confirmation Bias:

- looking for evidence to support our judgments

## 4. Conformity Bias:

- think like the group

## 5. Anchoring Bias:

- over-reliance on the first piece of data you hear

There are many more...



# ABA Video



VIDEO

# Overcoming Bias in Mediation

Strategies for mitigating bias to promote fairness and effectiveness in mediation:

- Know Yourself
- Focus on the role of mediator and rely on the process
- Seek feedback and support from a co-mediator or mentor
- Put yourself in the party's shoes
- Be aware of positive biases
- Look for positives in both parties
- Be curious
- Withdraw



# Wrap Up

Lessons Learned from day 3

