

# MWI's Mediation Training Program

# Welcome!



# MWI's Mediation Training Program

- Purpose
- Methodology
- Challenges
- Expectations
- Logistics
- Agenda Review
- Questions?

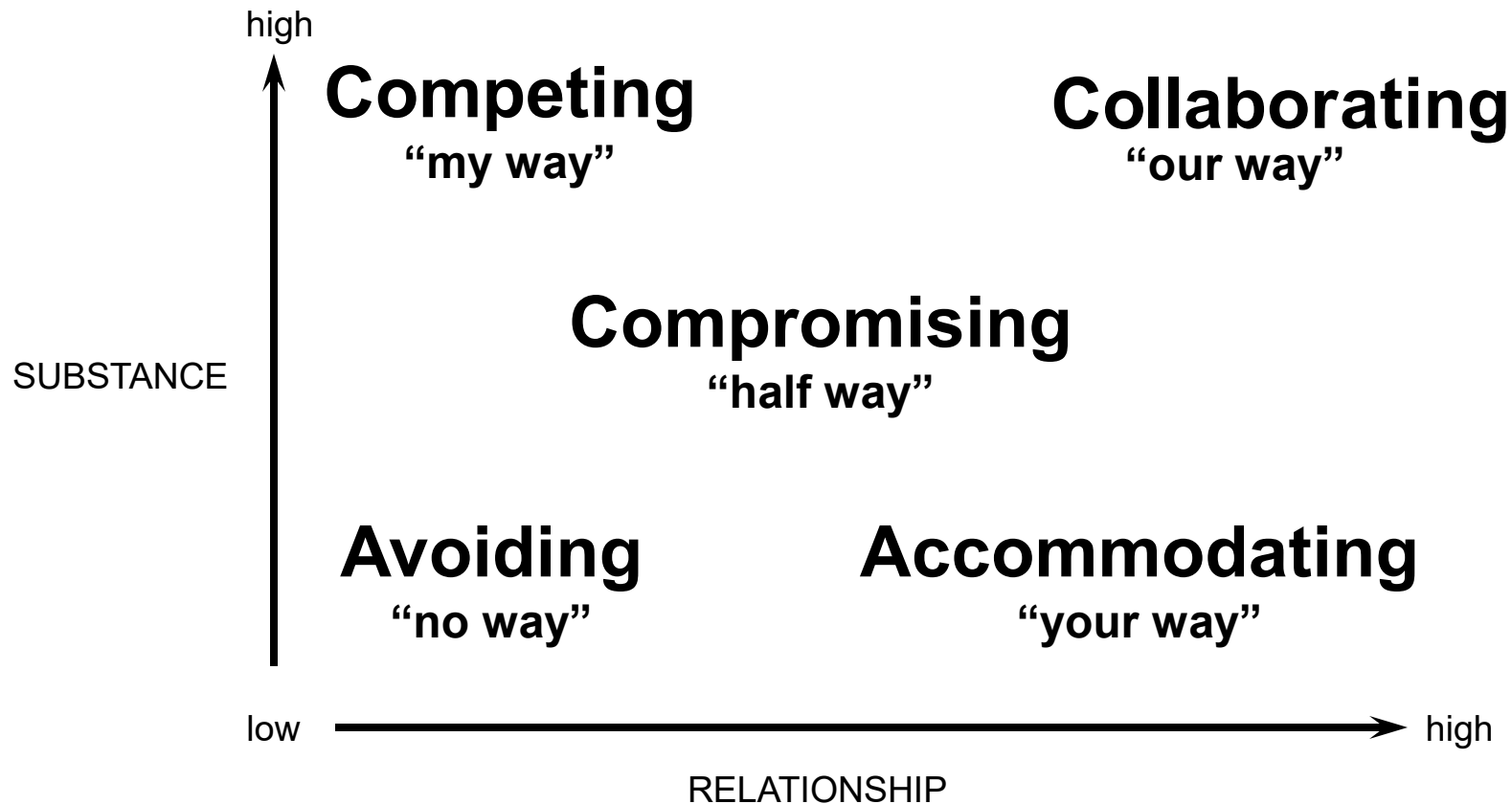


# Zoom Overview

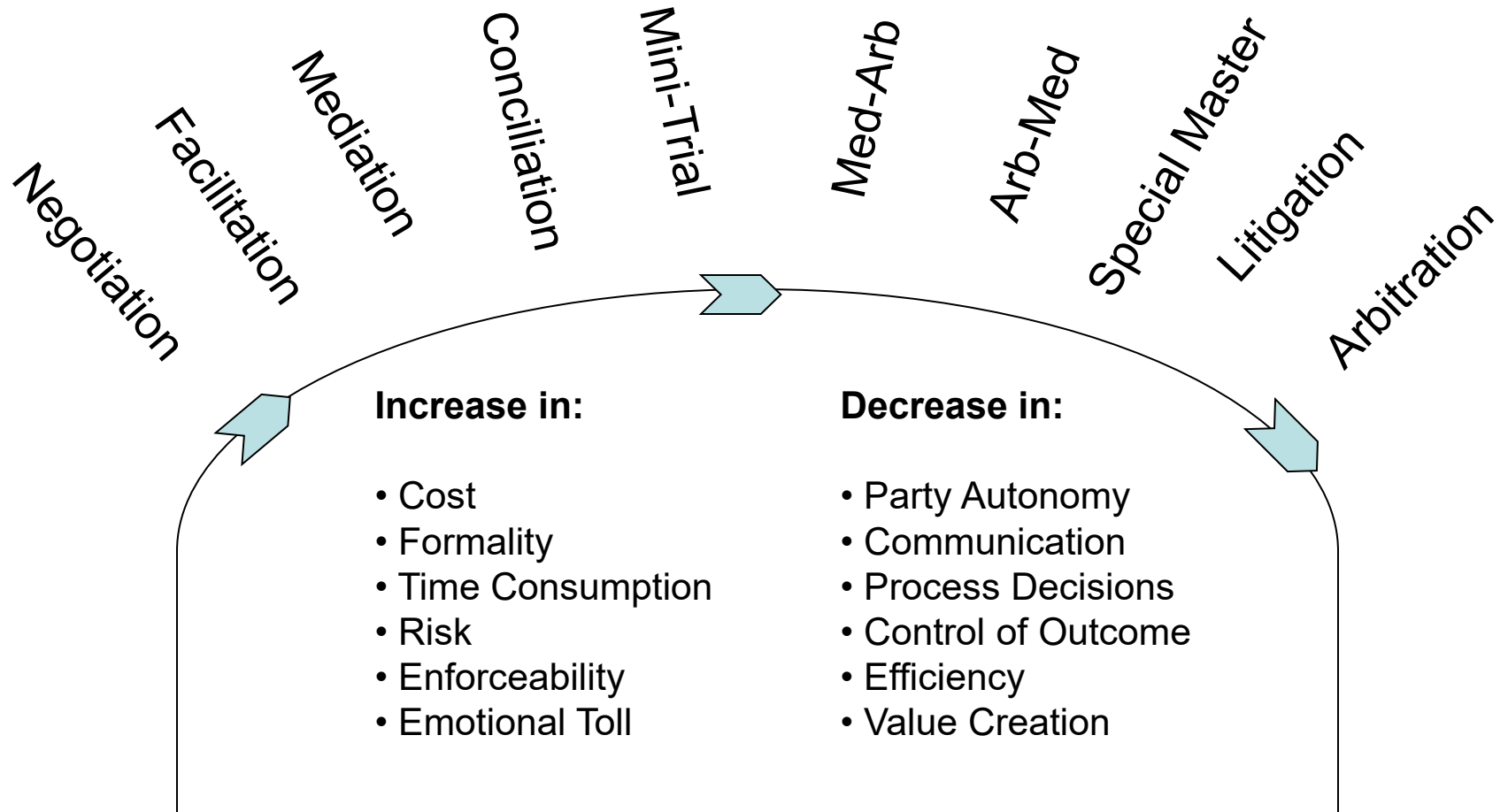
- Two views (top right-hand corner) – Gallery (see everyone) vs. Speaker view
- Leave camera on during the training
- Chat feature will be on – check if you're sending a message to everyone vs. a specific person
- Raise hand - Alt+Y (PC) / Option+Y (Mac) to ask a question
- Check that your name is correct
- Please mute your mic when you are not speaking. Hold spacebar down to temporarily unmute your microphone.



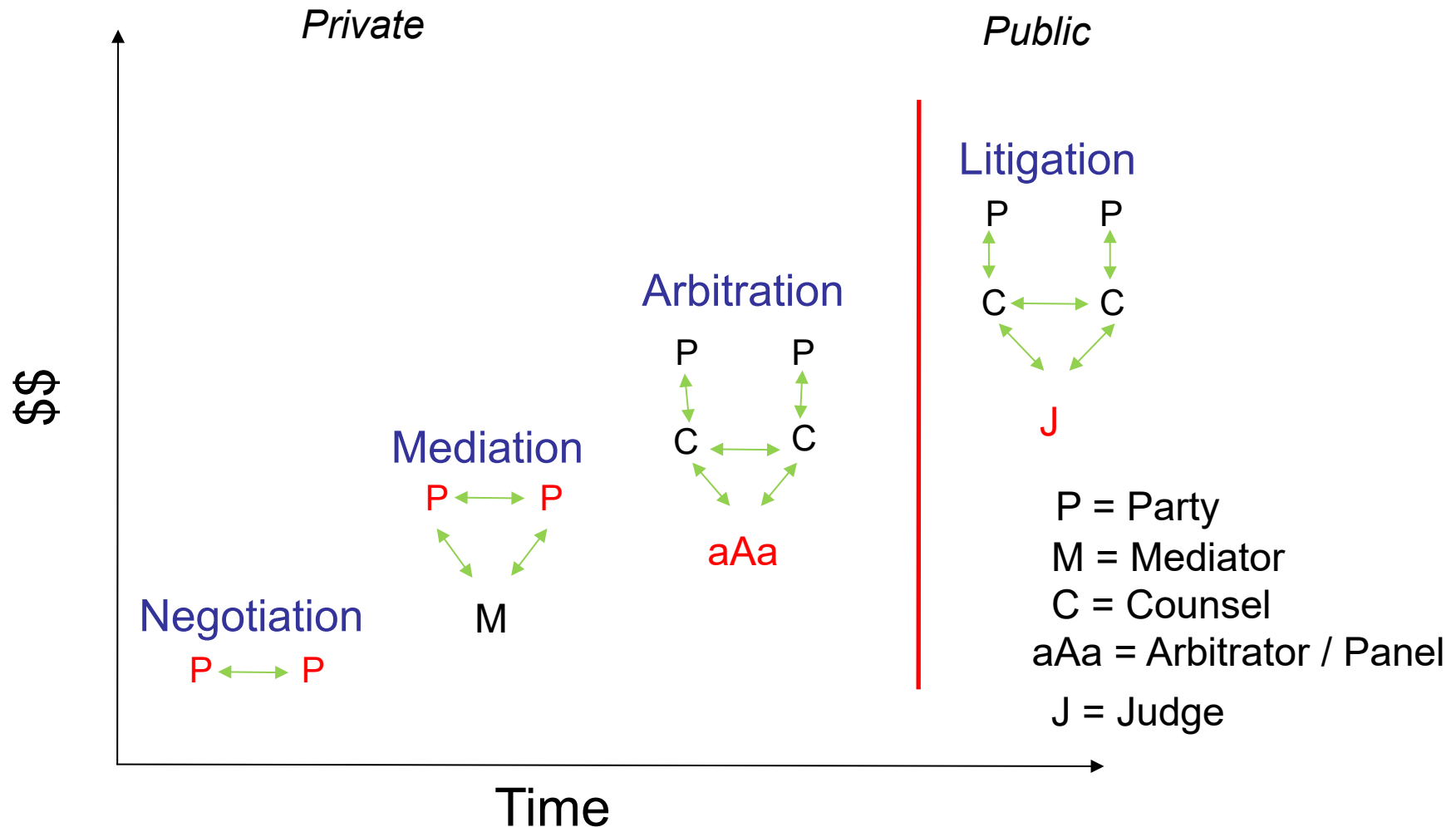
# Conflict Styles



# Dispute Resolution Processes



# Dispute Resolution Processes



# Mediation Overview

- Definition – “Assisted Negotiation”



- Goals of Mediator:
  - Manage process effectively
  - Facilitate communication
  - Focus on interests
  - Help parties define and meet goals



# Principles of Mediation

- Voluntary
- Impartiality / Neutrality
- Confidentiality
- Informed Consent
- Self-Determination



# Structure and Stages of Mediation

## *Pre-Mediation* - Screening and intake / Preparation

- Initial Joint Session (public)
  - Defining an agenda / Identifying interests
- Individual Sessions (private)
  - Generating options / Analyzing alternatives / Making decisions
- Final Joint Session (public)
  - Reaching closure / Agreement Writing

## *Post-Mediation* - Evaluation / Follow-Up



# Mediators' Introduction

1. Welcome / Names
2. Explain process and roles
3. Voluntary
4. Confidentiality
5. Neutrality
6. Structure of mediation
7. Agreements
8. Confirm participation / questions



# Initial Joint Session

- Mediator 1 and 2 split the Mediators' Opening
- Mediator 1
  - Asks - who would like to begin? (Party A)
  - Informs Party B about next steps and lets them know they will have the same opportunity / Asks Party A – why here and what are you looking for
- Party A speaks
  - Mediator 1 thanks Party B for waiting and summarizes Party A's perspective to confirm understanding / Mediator 2 summarizes any additional points (if needed)
  - Mediator 2 invites Party B to speak – why here and what are you looking for
- Party B speaks
  - Mediator 2 thanks Party A for waiting and summarizes Party B's perspective to confirm understanding
  - Mediator 1 summarizes any additional points if needed
- Mediator 2
  - Asks both parties - Is there anything either of you wish to add? Summarizes
  - Asks each party to define what a successful mediation looks like for them | Listen and summarize

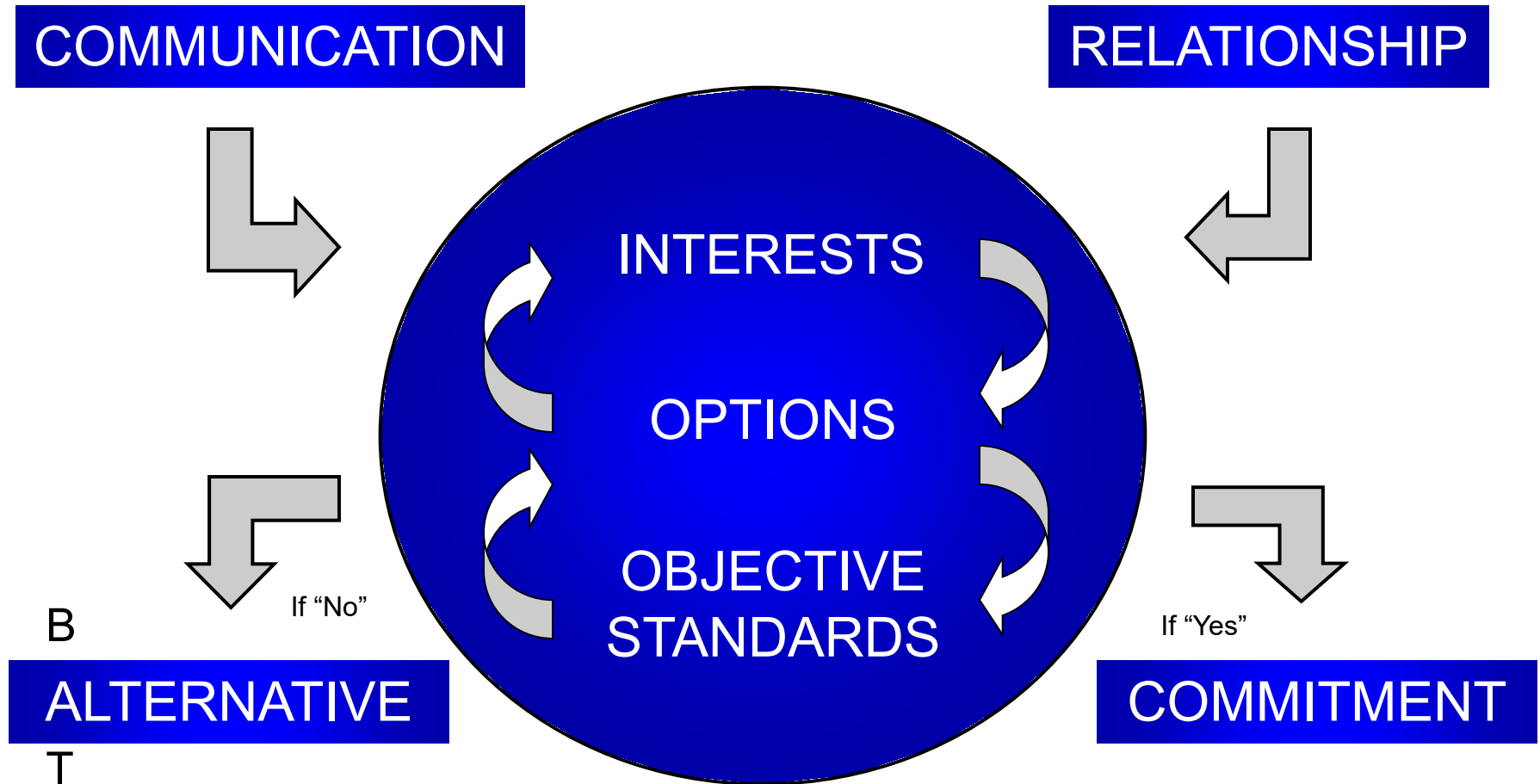


# Mediators Caucus

1. How are YOU doing?
2. How are WE doing as a team?
3. What do we know about each party's INTERESTS?
4. What do we do next and why?



# Negotiation Framework for Mediators



T  
M  
A

# Early Private Session Mechanics

[check with party not going to private session / give homework]

- Welcome back
- Confidentiality overview
  - This session will be as confidential as you want it to be
  - We'll check in with you at the end of this session about what you want us to keep private from the other party
- Anything to add?
- Allow for venting
- Summarize / reframe to interests:
  - Ask “Why?” / Follow-up with “Anything else?”
  - Ask / listen for options once interests are out
  - Wrap-up with summary of interests / options
- Confidentiality check / give homework

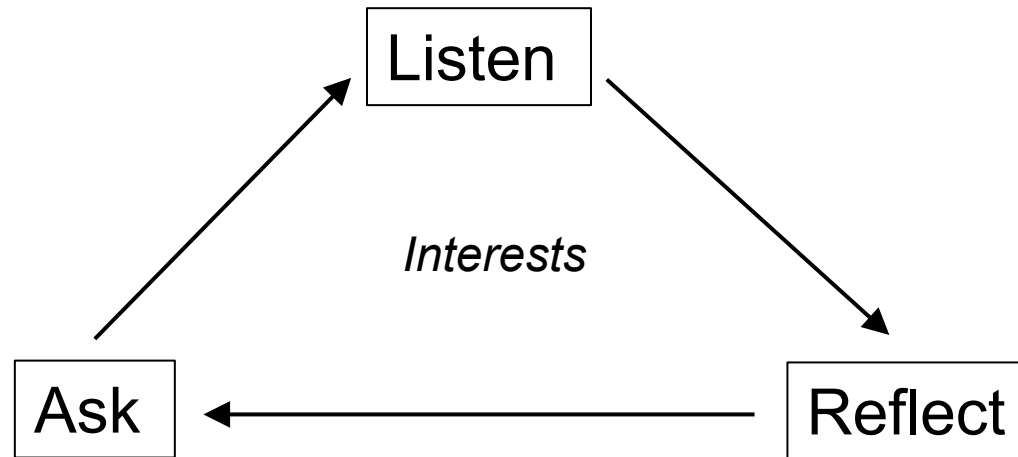


# Later Private Sessions

- *Goals*
  - Develop / Refine options
  - Evaluate alternatives / Address impasse
  - Prepare to reach agreement or end mediation
- *Mechanics*
  - Welcome back / Begin with confidentiality
  - Ask about homework and explore options
  - Address barriers to agreement
  - Conduct Reality Testing
  - Examine / Discuss alternatives
  - Prepare for final joint session
  - Close with confidentiality



# Listening Triangle



- OEQ (open-ended questions)
- CEQ (closed-ended questions)

- What are 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



# Final Joint Session: Mechanics

- Welcome back
- Identify progress (if any)
- Summarize interests
- Ask parties for options
- Manage process
  - Memorialize agreement
  - Watch for and manage breakdowns in communication
  - Congratulate parties and counsel for their accomplishments



# Elements of an Effective Agreement

- Drafted in the words of the parties
- Addresses the interests of the parties
- Present / future oriented
- Workable, realistic, implementable
- Clear, precise, specific
- Legible
- Anticipate contingencies
- Plan for breaches (ADR provision)
- Confirm terms with parties
- Opportunity to review by counsel
- Do not bind absent third parties



# Dealing with Difficult Behaviors

As you observe the simulations, prepare to answer the following questions:

1. What was the difficult behavior?
2. What did you see the mediators do?
3. What else could be done?



# Rule 9 – Uniform Rules Ethical Duties

- Impartiality
- Informed Consent
- Fees
- Conflict of Interest
- Responsibility to Non-Participating Parties
- Advertising
- Confidentiality
- Withdrawing



# Ethical Dilemmas

1. Review dilemma
2. Identify the challenged Ethical Standard(s)
3. Discuss options (no need to reach consensus)
4. Select spokesperson to provide summary of dilemma to class
  - Groups 1 & 2 – Dilemma 2
  - Groups 3 & 4 – Dilemma 5
  - Groups 5 & 6 – Dilemma 6



# Dealing with Impasse - Preventions

1. Openings are closings – set the tone early / build rapport / pay attention to the emotional content throughout
2. Find out who is at the mediation – ask people to tell you a bit about themselves - do it early
3. The eyeball factor – get some portion or all of the people in the conflict in the same room (early and later)
4. Think about where you will meet + get / bring food



# Dealing with Impasse - Interventions

1. Ask participants for help - The Focus Group technique
2. Tell a story – the Starfish, the Sweepstakes, etc.
3. Make sure to explore BATMA, including WATMA
4. Pros and Cons
5. Principle or Principal
6. Ask what else besides the items on the table could help participants settle/resolve the situation?
7. Mediator Surrender – tell folks you’ve done all you can – now it’s up to them
8. Bracketing – will you do x if they do y?
9. The Chicken sandwich technique for multiple participants



# Learning Cycle

