

Formulating solutions in mediation

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Abstract

This paper examines the work done by formulations in the service of pursuing solutions to disputes between neighbours in a community mediation setting. In particular, it shows how mediators formulate the talk of mediation clients – the parties in dispute – in a particular sequence of activities. Parties' complaints are formulated by the mediator, often proposing common ground between them. Mediators ask 'solution-focused questions' (SFQs), which are treated in mediation training as a key method for effecting client-generated solutions to neighbour disputes. Drawing on a collection of 30 recorded mediation sessions between mediators and their clients, conversation analysis shows how formulations do more than (or do not necessarily) 'summarize' what clients have said. Rather, they do institutional work of various kinds, including reconstructing clients' versions of events and initiating sequences in which decisions about change are accomplished. In other words, formulations are at the heart of the mediation process, in which mediators attempt to scaffold clients to come to an agreement about ways to move forward, without giving direct instruction or advice.

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1. Introduction

Mediation is a method of conflict resolution, often positioned as an alternative to courts and legal processes, through which people involved in a dispute attempt to resolve their differences. Mediators act as impartial third parties and aim to guide parties to bring about their own solutions. When clients come to mediation, their complaints and experiences are routinely summarized, or formulated, by the mediator. The paper examines a particular practice in mediation in which such formulations co-occur with questions that seek to get clients to make suggestions about ways out of the conflict. These questions are commonly referred to as 'solution-focused questions' (SFQs). We focus particularly on a sequence identified in both individual meetings (in which mediators talk to disputing parties individually) and 'round table' sessions (where both parties are present) in which mediators (1) produce *formulations*: summaries that proffer the mediator's candidate understanding of what the clients have said about the problem (Heritage and Watson, 1979), and then (2) produce SFQs. We will see how formulations work to progress the mediation from sequences of problem description and troubles tellings to the work of mediation: finding solutions to the dispute.

Let us start with a brief example of the sequence we examine in our subsequent analysis. In Extract 1, two parties, Deb and Terry, are in mediation with two mediators (M1 and M2). Their dispute is about noise: Terry has complained that he "can't get a good night's sleep" and we join the mediation as Deb describes what she has done to try to be quieter.

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Extract 1: NM-C252RT2

1 D: Now I've (0.4) stopped doing that, (0.5) because I know
 2 that it upsets you, and- (0.2) you know it's been a
 3 problem for you an' all those sorts of things, .hhh but-
 4 y'know th- the- there comes a point where I- don't even feel
 5 like I can live in my own ho:use.
 6 (1.0)
 7 T: Well I f- I feel the [sa:me (about it).]
 8 D: [You know that's] how I feel now so,
 9 (1.5) you know w- [w'lll- what-] what am I supposed to- I- u- I
 10 T: [(Yeh but) ()]
 11 don't-
 12 (0.9)
 13 M1: So you both feel uncomfortable living in your own
 14 houses at the [moment].
 15 T: [Mm.
 16 (0.6)
 17 M1: Um: (0.4) Terry because you can't: get a good night's
 18 sleep an' Deb because- you're- walking on eggshells.
 19 D: Yeah.
 20 M1: Is there anything that might (2.8) change that,

Our focus is on M1's summary formulation ("So you both feel...", lines 1–6) of the clients' perspectives on their noise dispute (lines 13–14), followed by an SFQ ("Is there anything that might (2.8) change that," line 20). M1's summary "involves summarizing, glossing, and developing the gist of the informant's earlier statements" (Heritage and Watson, 1979: 100). Formulations such as these work frequently to provide the gist or upshot of previous talk. As Bolden (2010: 8) points out, "such formulations are sequence-initiating actions: they function as requests for confirmation, making a response (a confirmation or disconfirmation) conditionally relevant from the addressee". M1 therefore makes a 'recipient formulation', one which is "commonly used by an institutional agent (such as, a therapist or an interviewer) to reformulate and operate on the layperson's (e.g. a client's or an interviewee's) words" (Bolden, 2010). Note that M1 is not formulating a stance towards the dispute to which *she* has primary epistemic access, but rather one which summarizes the stances of the clients, who each have primary access to their own stances.

The sequential relationship of the solution-focused question to the formulation is one which we will see repeated in the analysis section. Note also that M1's formulation comes at a point where the clients are simultaneously struggling to formulate a next action and starting to compete for turns (lines 7–11). As such, the formulation achieves two key things. First, as Bolden (2008) notes, it initiates a new sequence *precisely* at the point where the clients make competitive incursions into each other's turns (note the multiple overlapping turns between lines 7–11; see Wells and Macfarlane, 1998).

Second, it constructs the parties to a dispute as nevertheless having something in common: that they both feel uncomfortable. The formulation is therefore also a place to transform clients' descriptions from individual, one-sided and heavily invested stances towards the dispute, into something two-sided and reciprocal, in order to serve the institutional aims of mediation. Terry (line 15) and Deb (line 19) confirm, minimally, M1's version of their perspectives on the noise dispute, although their confirmations are placed differently: Terry confirms M1's formulation that they "both feel uncomfortable", while Deb confirms M1's unpacking of each side's stance towards the situation.

The data for the current paper come from a large scale qualitative study of neighbour disputes, which examined not just mediation sessions like Extract 1, but also initial telephone queries into mediation services, as well as calls from members of the public to environmental and housing services and police-suspect interrogations about criminal-level neighbour conflict (see Stokoe and Edwards, 2009). While little research on neighbour disputes themselves has been undertaken (see Stokoe, 2006), researchers have engaged in a great deal of work on the management of such disputes, particularly on mediation and its practices. Much of the research has focused on participants' experiences of mediation and their evaluations of mediators and the mediation process, or on mediators' reports about their strategies for (un)successful mediation (e.g., Alberts et al., 2005; Goldberg, 2005). For example, Wall et al. (2011) noted that a recurrent theme in mediation research has been its focus on mediation styles and strategies, from "evaluative-directive" or "narrative," to "problem-solving" or "understanding-based". Their review also noted extensive research-based advice to mediators for managing the process as well as the behaviour of disputing parties (e.g., "be neutral," "evaluate," "improvise," "obtain trust") and they also noted that there has been substantial research focused on outcomes for disputants (e.g., finding agreement), mediators (e.g., indicators of success, continued funding of service) and third parties (e.g., reduced use of court and police resources: see Charkoudian, 2010).

Mediation research has generally been conducted via the collection of self-report data, survey responses, and/or interviews, with little attention paid to tracking the "moment-to-moment activities that shape meaning, realities, and outcomes" (Glenn and Suskind, 2010: 118). A few studies, however, have examined actual encounters between

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