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AMERICAN ARBITRATION ASSOCIATION[®]

STRAIGHT FROM THE SOURCE: MEDIATION DO'S AND DON'T'S – FROM THE PARTIES' AND LITIGATOR'S PERSPECTIVES!

**A Two Stage Study of Florida Family Mediators:
Metaphorical Coherence and Analyses and
Phenomenological Interviews** *(Storrow, 2012)*

What language reveals regarding

- Parties' and litigators' perspectives
- Mediators' perspectives



STAGE 1 – STATEWIDE SURVEY FINDING

Figure 1. Chart of Positive, Negative, and Neutral Metaphors

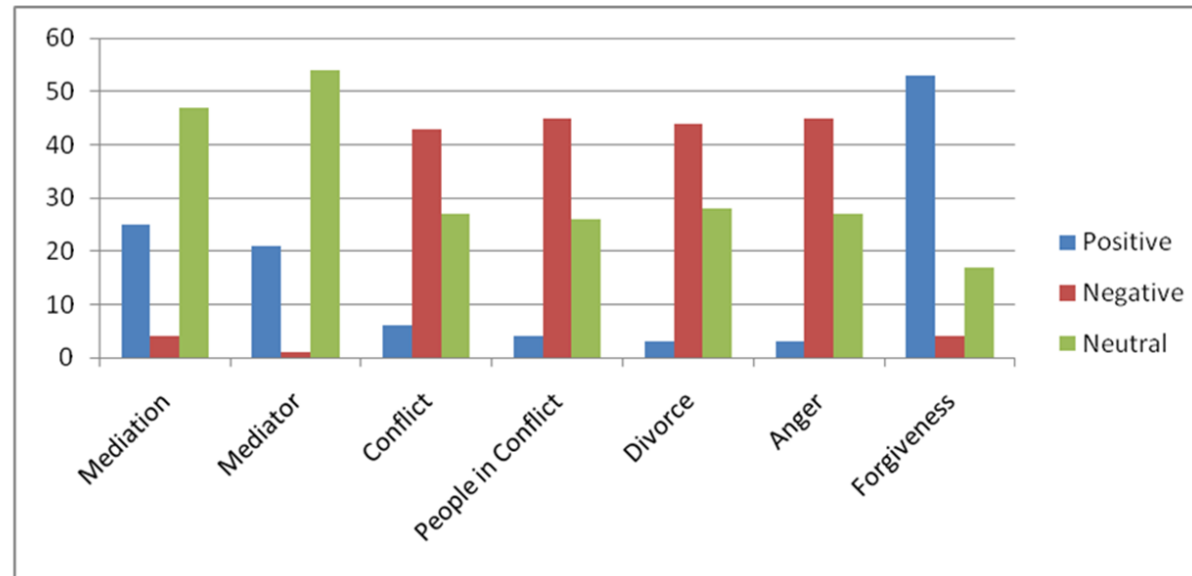


Figure 1. Chart of positive, negative, and neutral metaphors. Showing positive metaphors for forgiveness and mediation, and negative metaphors for conflict, people in conflict, divorce, and anger.

Uniqueness of approach

- Many of the mediators stated in interviews that they had a “unique” approach that came from their distinctive set of experiences in life
- Several mediators stated to have spent years to discover a technique or tool that can be well documented and taught in courses on mediation.
- They stated they have not observed other mediators

Private versus court staff mediators

- Private mediators tended to look unfavorably on the skill level of court staff mediators
Court program mediation is like “public transportation ... you get a ride on the bus”, whereas private mediation is like “Hertz Rent-a-Car ... you get a working vehicle to get you from here to there.”

ANALYSIS AND FURTHER STUDY

- ❑ Mediator participants assigned mostly **negative** metaphors for *conflict (earthquake) and anger (cancer)*
- ❑ Mediator participants frequently described *parties* negatively – “lost”, “fighting children”, “pack of dogs”, or “wild animals”
What does this do to our ability to empathize and empower?
- ❑ Mediator participants assigned mostly **positive** metaphors for *mediation, mediators and forgiveness*
- ❑ What does our awareness of metaphors tell us about
 - ❑ Mediator bias?
 - ❑ Active listening?

Examples:

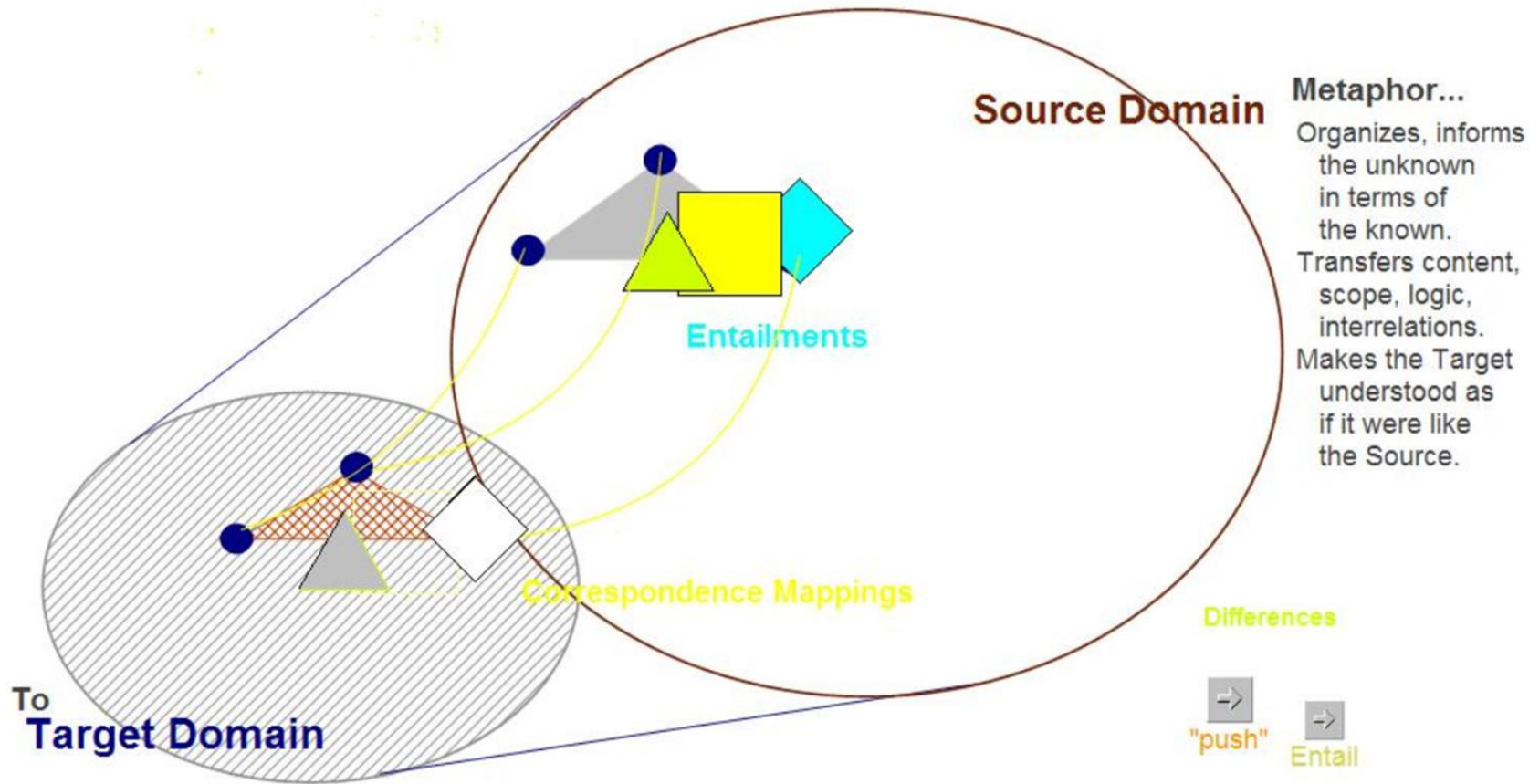
1. Mediator:
“Mediation is like war.”

2. Party:
**“I’d like to strike a deal,
but it’s like talking to a
brick wall.”**

EXPERIMENTS WITH LANGUAGE AND FEELINGS

1. Sympathy feels warm, exclusion feels cold (Zhong and Leonardelli, 2008)
 - Group A imagine inclusion, Group B imagine exclusion
 - Estimate of room temperature
2. Subjects given hot coffee or cold soda to hold
 - Corresponding differences in personality assessments

SOURCE DOMAIN AND TARGET DOMAIN



http://metaclara.com/Metaphor/web_axonfiles/sourcetarget.htm

THE INFLUENCE OF METAPHORS IN PARTIES' PERCEPTIONS IN MEDIATION

- Abstract ideas (target domains) are understood in terms of direct bodily experience (source domains).
- Abstract human thought is embodied
- Reframing
- Perceptual filters

A WORD ON
NEURO-LINGUISTIC PROGRAMMING (NLP)



Abstract human thought
is embodied.

FUTURE RESEARCH

- Evolution of collaboration in our field
- Mediation as a “journey”, “business”, and “education” influence parties’ process and perception. What do studies of linguistics tell us about our mediation research?
- Exploration of how language influences the experience of conflict (and vice versa)
- Qualitative research as a supplement to quantitative information
 - 2019 Sample study of mediating parties

EXERCISE

1. Identify the metaphor being used by the party.
2. Identify the roles in that metaphor.
3. Determine what role each person might play in the metaphor.
4. Choose whichever one of the roles is most appropriate for you as mediator.
5. How would you proceed from within that role, following its rules.

Rules 10.220 Mediator's Role and 10.370 Advice, Opinions, or Information

