2017

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Abstract

The study examines transcripts from dispute mediation to explore mediators' strategic maneuvering for keeping the disputants on task—that is, on negotiating plans about caring for their children. The article discusses mediators' institutional practices to keep disputants on task and to constrain what becomes arguable. It analyzes strategic maneuvering at the levels of topical potential, audience demands, and presentational devices. The study also suggests that the concept of strategic maneuvering can be further developed by including identities as another type of interactional resources employed to shape argumentative activity. It focuses on how mediators use interactional resources to balance institutional goals (i.e., reaching an agreement) and interactional goals (i.e., sustaining participants' face) and to shape an institutionally preferred interactivity.

Key words: argumentation, conflict, discourse analysis, dispute mediation, institutional talk, strategic maneuvering

Strategic Maneuvering in Dispute Mediation

The article examines transcripts from dispute mediation to explore mediators' strategic maneuvering for keeping disputants on task—that is, on creating a plan regarding custody and visitation arrangements for their children. The concept of strategic maneuvering (van Eemeren, 2010; van Eemeren & Houtlosser, 2001) was developed for principals in a dispute but not so much for third parties who are responsible for the quality of interaction, for example, mediators. During mediation sessions, the goal of achieving a reasonable settlement goes hand in hand with participants' attempts to get what they want, so parties are involved in strategic interaction to balance both aims. In contrast to disputants whose gains are related to their personal interests, mediators' interests, in a way, are the ones of the conciliation court on behalf of which they act. Mediators' strategic maneuvering orients to achieving the institutional goal. The article explores mediators' institutional practices to keep disputants on task and to constrain what becomes arguable.

Institutional practices, in this context, are interactional features of mediation talk. Institutional talk differs from ordinary conversation in many aspects (e.g., lexical choice, turn design, and sequence organization (Drew & Heritage, 1992)), which can influence how disagreement is managed. For example, in mediation talk disputants often direct their utterances to the mediator rather than the other disputant, which helps to mitigate disagreement between them (Garcia, 1991). Thus, mediation talk, although it varies among centers and practitioners, carries some expectations about what is an adequate contribution to interaction, and what is a violation. While strategic maneuvering can be associated with an individual choice of strategies interactants use (e.g., Muraru, 2012), it is possible to identify some common practices mediators employ as institutional agents. This study, in particular, focuses on moves mediators make and

their framing,[1] topics they treat as institutionally (in)appropriate, identities they advance, and how these features of interaction contribute to constructing argumentative activity.

The study takes a communicative view of argumentation that emphasizes the importance of discourse in understanding argumentation concepts, which was advanced by a conversational argument approach and pragma-dialectics (Jacobs & Jackson, 1981; van Eemeren et al., 1996). This view integrates pragmatics with its focus on language use in the context and treats argumentation as a dialogic process and a collaborative activity.

The study examines custody mediation and claims that mediators' strategic maneuvering in this type of mediation has its own specificity. Mediators use a variety of interactional resources to manage disagreement but institutional and interactional constraints of mediation talk limit their communicative work. The study also suggests that the concept of strategic maneuvering can be further developed by including identities as another type of interactional resources employed to shape argumentative activity.

In the following sections, I will explain the concept of strategic maneuvering, discuss research on mediators' communication work, describe the data and method, analyze mediators' strategic maneuvering, and discuss findings.

Strategic Maneuvering

Strategic maneuvering is one of the key concepts developed in the framework of pragma-dialectics (van Eemeren, 2010; van Eemeren & Houtlosser, 2001).[2] This concept arose because participants of argumentative activity not only pursue the goal of discussion, which is the resolution of difference of opinion, but also try to achieve their own goals. In strategic maneuvering, interactants use rhetorical moves to lead discussion in the direction that is advantageous to them for reaching their aim. Strategic maneuvering manifests itself

in making an expedient choice from the options constituting the *topical potential*—the set of relevant alternatives—associated with a particular discussion stage, in selecting a responsive adaptation to *audience demand*—the listeners' or readership's expectations and preferences—, and in exploiting appropriate *presentational devices*—the phrasing of moves in the light of their discursive and stylistic effectiveness. (van Eemeren & Houtlosser, 2001, p. 152)

Although pragma-dialecticians emphasize that interactants' primary goal is resolving difference of opinion and not just reaching their own ends, and that they are expected to follow the rules of critical discussion while trying to achieve that (van Eemeren & Houtlosser, 2001), the concept of strategic maneuvering suggests that interactants shape discussion using resources available in this very interaction.[3] Strategic maneuvering is context-dependent and is affected by an argumentative activity type (van Eemeren, 2010).

Recently, research has provided insight into how strategic maneuvering manifests in mediation (Greco Morasso, 2011; Muraru, 2012), political communication (van Eemeren, 2013; Garssen, 2013; Zarefsky, 2008), legal sphere (Feteris, 2008), advertising (Goodnight, 2008), health communication (Snoeck Henkemans & Mohammed, 2012), mathematical arguments (Krabbe, 2008), marital argument (Weger, 2013), and public policy debates (Jackson, 2008).

These studies demonstrate that, although strategic maneuvering is performed by individual interactants, features of institutional activity play an important part in how it is accomplished. For example, the institutional goal of a medical encounter constrains argumentative exchanges between physicians and patients and techniques physicians use to recommend the best medical treatment and to create an impression that it is patients who make a final decision (Snoeck Henkemans & Mohammed, 2012).

Of particular interest for the present study is argumentation in the course of mediation, as unlike many other activities where two parties are engaged in argumentative discussion, it involves a third party, who is not the principal of conflict exchange, but nevertheless plays an important part in it. Next, I discuss research on mediation, with a primary focus on mediators' actions to shape interaction.

Mediators' Activity to Shape Interaction

Mediation talk is an institutional form of talk where the goal of interaction is to help disputants manage their conflict through deliberation. Research on mediation, aimed at understanding natural interaction processes, has focused on its different aspects, such as interactional organization of mediation talk (e.g., Garcia, 1991; Greatbatch & Dingwall, 1997; Jacobs 2002), mediators' neutrality (e.g., Donohue, 1991; Heisterkamp, 2006; Jacobs 2002), disputants' participation (e.g., Donohue, 1991; Garcia, 2010), and mediators' actions to shape interaction (e.g., Aakhus, 2003; Greco Morasso, 2011; Muraru, 2012; Vasilyeva 2012a, 2012b, 2015). The research on the latter aspect provides grounds for seeing mediators' actions as strategic ones.

Greco Morasso (2011) rightly states that, although mediators do not have the role of a protagonist or antagonist, and are supposed to be a neutral party in argumentative discussion, they nevertheless are involved in their own strategic maneuvering. Focusing on mediators' behavior in diplomatic mediation, Muraru (2012) identifies mediators' two roles: facilitator and manipulator. As facilitators, mediators help parties to communicate. As manipulators, mediators use their persuasive power to influence the parties' decision. Other research views mediators as designers of interaction (Aakhus, 2003; Vasilyeva, 2015).[4] As designers, mediators adapt to the situation and make moves to keep the interaction on task. For example, analyzing messages

mediators produce to manage impasse (i.e., a situation where the interaction is likely to

aggravate conflict rather than to solve it), Aakhus (2003) identifies three strategies: using

linguistic devices to redirect the focus of discussion, to temporize the dispute (i.e., asking

participants to develop temporary arrangements), and to relativize facts (i.e., discounting the

grounds on which a disputant escalates the dispute).[5] Mediators also contribute to constructing a

specific form of interactivity by advancing institutionally preferred dialogue activities (e.g.,

information gathering) and discouraging institutionally dispreferred ones (e.g., having-an-

argument) (Vasilyeva, 2012b).[6]

     Other argumentative tools mediators use to act strategically are neutrality, dissociation,

and definitions (Muraru, 2012). For example, neutrality, according to Muraru, can be understood

in two ways. Firstly, neutrality is related to the process of mediation and is associated with

creating symmetry between conflicting positions and a mediator's impartiality as a third party.

Secondly, it corresponds to its content and is associated with the language use (i.e., rephrasing

emotionally-loaded terms with neutral ones), and thus can be viewed as a strategy.

     Focusing on exemplary interactions in different types of dispute mediation (business,

community, school, family, organizational), the goal of which is to restore parties' relationship,

Greco Morasso (2011) identifies a number of mediators' strategic moves to manage conflict, for

example, constraining topical potential, helping parties to identify real issues that led to the

conflict and their interests, shifting the conflict to the resolution that is related to the participants'

deepest interests, and using metaphors and questions.

     These studies, whether they take a normative approach to argumentation such as pragma-

dialectics (e.g., Muraru (2012) and Greco Morasso (2011)) or an inductive approach such as

conversational argument and communication design (e.g., Aakhus (2003); Vasilyeva (2012b,

2015)), highlight the importance of interactional resources for constructing argumentative activity in mediation and mediators' role in this process. The present project continues this line of inquiry into mediators' strategic actions to shape interaction and focuses on peculiarities of mediators' strategic maneuvering in custody mediation. It complements the previous research on strategic maneuvering. Firstly, it focuses on one particular type of mediation. In these custody mediation sessions, unlike mediation studied by Greco Morasso (2011), the primary focus is not restoring parties' relationship but reaching an agreement that would be beneficial for an absent party, such as a child or children. Thus, custody mediation can have its specificity in the construction of argumentation process. Secondly, this project explores typical institutional practices (rather than individual ones) that mediators use to keep disputants on task and to constrain what becomes arguable.[7]

Data and Method

The research employs discourse analysis that views language use as actions and is based on the communication design approach to argumentation that emphasizes how procedures and tactics emerge from puzzles of interaction and problems of constructing particular forms of reasonableness (Aakhus, 2007; Weger & Aakhus, 2003). This perspective is complemented by the concept of strategic maneuvering developed in pragma-dialectics.

An existing collection of 18 transcripts from audio recordings of mediation sessions conducted at various branches of a mediation center in the western United States serves as a source of interactional data. The transcripts were made by Deborah Weider-Hatfield for Dr. William Donohue's project on communication practices in divorce mediation (Donohue, 1991). They were made available to me by Dr. Scott Jacobs. The transcription followed the simplified

scheme developed for conversation analysis. The transcripts capture what was said (words, cut-offs, ums, uhs, and unintelligible talk) and include interruptions, overlaps, and pauses.

The participants of these sessions are divorcing or divorced couples (re)negotiating their divorce decrees. The sessions involve one mediator. Eight mediators (seven men and one woman) conducted 18 sessions with 17 couples. The examples are taken from different sessions.

The mediation sessions are mandatory for participants. If they cannot reach a settlement, they can opt to go to court to resolve their dispute. All studied cases except one lasted one session. Their length varied but generally lasted two hours.

At the beginning of each session, the mediators usually explain to the disputants what the conciliation court is, what mediators' job is, why the disputants are attending the session, what they should achieve in the course of the session, and what options they have. Then the participants proceed to discussion.

The data has limitations. Firstly, it is not recent. However, it is relevant for the study as it provides insight into how participants create interactional possibilities for disagreement management, and how these possibilities are taken to create a specific interactivity. Secondly, due to the absence of audiotapes, there was no chance to update the transcripts according to current standards. Given the nature of the data, it is not possible to capture all the aspects of interaction (e.g., nonverbal actions, the length of pauses) that can affect how the interaction unfolds. However, these data make it possible to analyze participants' language behavior and interactional resources (e.g., turns, references) they use to shape interaction and are sufficient for discovering recurrent features across the transcripts. Also, the study explores strategic maneuvering in one particular context of mediation, so the findings might not be generalized to other types of mediation. There is also no information about participants' race, age, and

education. The focus of the study, however, is on aspects of interaction, regardless of individual characteristics.

The transcripts were examined in terms of mediators' language use with a specific focus on topics they initiate, their interventions to terminate an inappropriate activity or topic, membership categories the mediators use in referring to the disputants and their framing.

Data Analysis

The categories of topics and interventions, membership categories, and the types of strategic maneuvering discussed in this section were developed based on the data from all the transcripts. The mediators' strategic maneuvers are viewed as typical for the studied mediation as they occur across the sessions.

Topical Potential

Mediators use topics to shape the development of interaction and to constrain what becomes arguable. They usually set alternatives relevant for discussion in the introductory stage of a session (which can be considered an opening stage of critical discussion) limiting them to visitation and custody matters and try to make participants focus on this agenda throughout the whole interaction while participants may try to exploit topics to their advantage and initiate discussion on matters that are not relevant from the institutional point of view. Introducing new topics can also happen in an argumentation stage of discussion when the disputants reach an impasse. The mediators use them to bring interaction back on track, which creates new confrontation and opening stages.

Topics that are treated by the mediators under study as institutionally appropriate are grouped into the following categories: visitation issues, custody issues, parties' collaboration, ways to deal with the situation, relationship issues, personal information, technical matters,

agreement, interaction process during the mediation session, children's interests, parties' behavior

and character features, and children's behavior and personality (Vasilyeva, 2012a).[8] These

categories are related to the task that participants are trying to accomplish during sessions and

derive from the institutional activity of dispute mediation. Some of them are connected directly to

the argumentation process, while others are not. For example, the categories *visitation issues* and

custody issues are centered on the primary reason for attending the conciliation court, that is,

developing some agreement. They represent issues to be discussed during the main argumentative

activity. The categories *parties' collaboration* and *ways to deal with the situation* touch upon

necessary conditions and ways to resolve a dispute; *personal information* focuses on information

about the parties that is relevant to the process. These topics are not the focus of argumentative

discussion but they are important for it, as they contribute to keeping participants on task and

gearing interaction toward achieving its institutional goal.

Excerpt 1 illustrates how the mediator strategically limits options for discussion by setting

a meeting agenda.

Excerpt 1
1 M[9]: . . . our role is to see if we can work out an agreement between the two of you on, three
        items particularly legal custody, visits to the children and the amount of time to visit the
        other parent. Any combination of those in reality ((PAUSE)) uh, first thing I don't know
        whether you have any existing rules already, or is this uh brand new
2 H: Since [January   ]
3 M: [You do have 'em.] Is this a repeti- I mean a uh ((PAUSE)) change from that then
        somebody's requesting or
4 W: It's [temporary]
5 M: [What state of af]fairs are you in right now

M sets up the scene by explaining to the disputants what will happen during the session,

which is a common practice in mediation (turn 1). Although it can be a routine institutionalized

procedure for M to introduce this information, by doing this, M gets the disputants focused on

the meeting goal, as what M says is related to this individual case. M directly states what topics

are institutionally appropriate to discuss, namely, custody, visitation, and the amount of visitation time. At the end of the turn, M initiates a shift to an information seeking dialogue and introduces a new topic. M asks questions to get or to confirm information about the disputants' state of affairs and intention to change the arrangements (turns 1, 3, and 5). As Greco Morasso (2011) states, some activities (e.g., an information seeking dialogue) are not argumentative in their nature but they play an important role for argumentative exchanges. Firstly, M collects information that would help them to work on the case. Secondly, by asking for information that is relevant to the agenda, M focuses the disputants on the task. Thirdly, it serves as a tool to check the disputants' mutual understanding of their situation. In this way, M makes an attempt to put institutional constraints on the development of interaction, first of all, by shaping the meeting agenda, and secondly, by initiating an institutionally appropriate topic.

To achieve the institutional goal of mediation talk, interaction during a session should be centered on issues of the meeting agenda. However, participants may bring in their own interests into the discussion. When participants go off-task, mediators signal that the focus has shifted onto matters that are out of scope of the meeting. Among topics that the mediators from this sample treat as improper are *parties' negative behavior*, *financial issues*, *parties' interests*, and *private matters* (Vasilyeva, 2012a).

The mediators' strategic maneuvering manifests in curtailing off-task topics. The mediators may state directly that a disputant initiated an off-task topic. In excerpt 2, H initiates a topic on the past event that depicts W in a negative way. M intervenes to close up the topic.

Excerpt 2
254H: . . . she took my Tuesday and I was to take her Wednesday and Wednesday night she
      comes driving over to the house saying I'm gonna have to take the kids she calls her
      lawyer telling him that I'm keeping them from their appointments and keeping them
      from their medication, she had poured the medication down the drain
      [the night okay I   ]

255M: [Okay I (don't need] to hear that)

By introducing this topic, H makes an attempt to advance his standpoint that W's behavior is inappropriate. H claims that W violated their agreement on visitation time and also accused H of the action that she had performed herself (i.e., keeping the kids from medication). The episode shows W in an unfavorable light, and M does not let H finish (turn 255). This topic, which can be part of H's strategic maneuvering to discredit W, has a potential of shifting the discussion in an unproductive way and to lead to a quarrel over the event that cannot be verified during the session, so M makes a move to terminate it at the initial stage.

Another example of the mediators' strategic maneuvering is making a shift from an unproductive activity by employing on-task topics. Excerpt 3 illustrates this strategic use of a topic. Prior to this episode, the discussion was on visitation time. H made a proposal about how much time he would spend with his children. However, W was against it and insisted on implementing her proposal. The disagreement between them gradually led to having an argument. M interferes to support W, making a point that she has already compromised on the visitation time.

Excerpt 3
379M: . . . I think this is a ah, a ah, a compromise on her part, ah, [first she]
380H: [What-   ] what's a
        compromise.=
381M: =Well, she was saying that ah you said two week ah two evenings, plus,
382W: Then I changed it to the one.
383M: Plus, ah, six p.m. Friday to six p.m. Sunday=
384W: =Yeah, [then I changed it to]
385M: [Now,   now] you say okay, it'll be Wednesday night=
386W: =(another) night if that's necessary=
387M: =And she has agreed to one night and then she has agreed to ((PAUSE)) that you can
        keep them until Monday morning,
388H: All she's agreed is letting them sleep two nights at with me. That's not quality time.
389M: Well you- you had suggested in your plan you had suggested ah two evenings per week.
390H: Um hm
391M: And she has agreed to one week one evening I mean, no, two overnights

392H: Yeah, and [she's agreed] to one=
393M: [(   )]
394M: =to one.
395H: Plus her every other weekend schedule. That's not a compromise (   ).
396M: [Well, it is,] ah it's a slight compromise.
397H: [(   )]
398M: Now, could we drop that for a moment? And go to the Easter vacation,
399W: Uh huh,
400M: And see if we can work something there?

H asked to clarify what compromise W made in regard to the visitation time. M and W collaborate to provide an explanation (turns 381-387). H challenges what W agreed to (turn 388). M and H make moves to clarify what W agreed to (turns 389-395). In turns 395 and 396, H and M disagree regarding whether W's actions can be called a compromise, which is not relevant for the task at hand. In these turns the interactants do not advance new points to support their positions but recycle prior moves, which is a feature of having-an-argument. Thus, this clarification dialogue was gradually moving to escalation of disagreement between H and M. The participants have reached an impasse. On the one hand, H does not accept W's proposal regarding the visitation time. On the other hand, H does not accept M's interpretation of W's actions as a compromise in spite of the evidence that M and W provided, which can be identified as unwillingness to be reasonable. M does not point out directly that the dialogue activity was inappropriate. M uses the strategy of temporizing (Aakhus, 2003) by asking to drop the subject matter of the discussion "for a moment" and suggests going over a new topic (the strategy of redirecting), which becomes a confrontation stage of a new argumentative discussion. In this way, M creates an opportunity for the disputants to engage in a more productive argumentative exchange, as a new issue can be something that the disputants agree upon.

While shifts to unproductive activities can be provoked by certain topics, interventions in the form of introducing a new on-task topic can lead to bringing interaction back on track. Thus, institutionally preferred topics serve as a resource for mediators to discipline the talk.

Audience Demands

Mediators have to take into consideration audience demands when they make moves to keep disputants on task. One of the audience demands they orient to is the disputants' face concern. Face (Goffman, 1967) is an important feature of interaction as the need of a presentational self to be achieved and maintained constrains interaction (Goffman, 1983). According to Goffman, sustaining their own face and other participants' face during interaction lets interactants get where they are going in their interaction. However, people can perform actions that threaten positive face (i.e., the person's wants to have their public image to be approved) and/or negative face (i.e., the person's wants to be free of impositions) (Brown & Levinson, 1987).

The quality of argumentative discussion depends on whether parties orient to face concerns. Weger (2013) states, "the topical potential is generally open to any line of attack or defense as long as the argument does not threaten the partner's motives or character (i.e., audience demands) and as long as the message is delivered respectfully (presentational devices)." (p. 293). In conventionalized activities involving two parties (e.g., marital argument (Weger, 2013)), disputants are supposed to monitor their participation. In dispute mediation, it is also mediators' responsibility to help parties to sustain their face. Firstly, the mediators monitor that the disputants' moves should not present a threat for their opponent's image, as it was done, for example, in excerpt 2, where the mediator intervened to stop the (ex)-husband's move to undermine his (ex)-wife's image (strategic maneuvering at the level of topical potential).

Secondly, they have to monitor their own moves as they can be face-threatening for the participants (strategic maneuvering at the level of presentational devices). Taking into consideration face concerns is relevant for any stage of discussion but it becomes more crucial for the mediator to sustain the disputants' face when the quality of their interaction degrades (e.g., in case of a shift from discussing an issue to performing personal attacks).

While maintaining one's face is a precondition for creating interaction process that allows the disputants work on their agreement, the mediators orient to other audience demands that would help them construct a common ground and reach that agreement (e.g., audience values,[10] interests) at different stages of discussion. The problem that the mediators face in this particular context is that they have to help the participants create arrangements that will be in the interests of an absent party. One way to do that is to make that party's interests be the disputants' interests. The disputants have their own preferences concerning visitation and custody arrangements but as parents they are expected to value their children's well-being. In excerpt 4, M makes moves to bring to the forefront the children's interests by framing them as the disputants' wants.

Excerpt 4[11]

12 M: . . . what other concerns about Chris what would you like for Chris
13 W: Well I want Chris with- Now my husband has filed a custody suit that my
       twelve year-old son from a previous marriage beats the five year-old, and that I
       stand by and don't do anything about it. Now this is very untrue, they are
       [both my children   ]
14 M: [Let me, let me back up] a little bit and ask you what you would really like for Chris
       and Greg, not- not for yourselves but for them.

M asks W to explain what she would like for Chris. W starts producing a relevant response but cuts it off and makes a shift to a lawsuit her H filed that accuses her of being negligent. W makes a move to deny the reasonableness of that lawsuit, thus making an attempt to defend herself and to undermine her H's image (if the fact is not true, then her H tells a lie) at the same time. M intervenes to refocus W from her interests on the children's ones (turn 14). M's

moves make these interests, however, be intertwined with the disputants' ones, as M constructs this intervention as an inquiry about the disputants' wishes for their children. While W and H can still have their own preferences, as reasonable parents, they are expected to represent their children's interests and advance a position that would be to the benefit to this third party rather than to themselves.

Presentational Devices

Strategic maneuvering at this level manifests itself in interventions the mediators perform to terminate an institutionally inappropriate dialogue activity or topic and framing the disputants' participation.

Interventions. Interventions the mediators under study perform vary in forms but they can be put into two major categories, namely, direct and indirect interventions, depending on whether interventions include a straightforward message to terminate an off-task topic or dialogue activity or not (Vasilyeva, forthcoming). In direct interventions the mediators specifically point out inappropriate topics or dialogue activities. They differ in terms of accounts the mediators provide to terminate an off-task topic or dialogue activity or lack of them and the degree of threat they present for the parties' face. In indirect interventions the mediators bring interaction back on track in a subtle manner without pointing out that disputants have gone off-task. The mediators usually employ these interventions in an argumentation stage of discussion.[12]

Strategic maneuvering manifests itself in the mediators' attempts to construct their interventions in the way that would keep the disputants in the frame of mediation activity and would not threaten their face at the same time. Earlier, face concerns were identified as audience demands. How the mediators frame their moves to address these audience demands constitutes the level of presentational devices. The mediators' task is to get the participants to contribute to

solving visitation and custody issues. Their actions, however, can violate the disputants' negative

or positive face, which can be specifically observed when the disputants go off-task. For example,

letting one party talk about the other's transgressions would be threatening for that disputant as it

depicts them unfavorably. Intervening into the discussion, however, is a face-threatening act, too.

The mediators' task is to lead the participants but, at the same time, they are supposed to preserve

the interaction order and minimize a threat to the disputants' face. The mediators achieve this, for

example, by providing an account for terminating the discussion. The reason for not discussing a

certain issue can be attributed to the fact that the matter is out of scope of questions that can be

resolved during the session, a mediator's lack of knowledge to discuss certain things or abilities

to take actions regarding them (Vasilyeva, forthcoming). Excerpt 5 illustrates the latter.

Excerpt 5
98H: This is our fifth time in court, so ((PAUSE)) (   ) community property,
        there won't be any left (to), pay the attorneys and cour[t costs (   )
99W: [But I made them
        compulsive two months ago they have not said yes-no counter offered or even
        spit in my face. So I do not believe that it is my fault that this thing has to keep
        going back to court=
100H: =Her, basically her proposal ((PAUSE)) which for some reason she can't [can't]
101M: [Well,]
        you know I don't really need to get in, into the financial proposals 'cause I, not,
        nothing I can do about that . . .

        H starts talking about expenses that court process requires and its impact on the

disputants' financial situation (turn 98). W denies her fault (turn 99). H touches upon W's

proposal (turn 100) but M intervenes to terminate the discussion (turn 101). By making an

argument that he cannot do anything regarding finances to justify his intervention, M indicates

that the discussion on this issue is futile. Also, by providing this account, M mitigates his face-

threatening action. In this way, M does not let disagreement space expand.

The mediators can also redirect interaction without indicating that a violation happened. These interventions (e.g., initiating a new topic and reformulating) do not threaten any party's face in the way it can happen when the mediators indicate some violation. Excerpt 3 discussed in the section on topical potential illustrated how the mediator shifted the discussion back to the task at hand in a less disruptive manner by initiating a new topic. The mediator's action presented a minimal threat to the disputants' positive and negative faces as it did not undermine their image and had a minimal imposition on them as the intervention was framed as a request ("could we drop that for a moment? And go to the Easter vacation").

The mediators employ different ways to terminate the development of inappropriate dialogue activities or topics and to enforce the institutional format of talk. At the same time, in framing their moves, they take into consideration disputants' need to sustain their face.

Framing disputants' participation. When participants enter mediation, they can act as (ex-)spouses who are in conflict. Mediators are not concerned with resolving their interpersonal conflict but with creating an agreement beneficial for disputants' children. One way mediators distance disputants from their conflict and focus them on their task is by constructing institutionally appropriate identities for participants. That is, for the moment of interaction they are encouraged to perform as parents, on the one hand, and collaborators, on the other one (Vasilyeva, 2015). Muraru (2012) states that a particular lexical choice (e.g., the words "common," "mutually," "together") is strategically used to diminish disagreement and to create communion between the parties. Similarly, the mediators' use of language to put the disputants in a certain membership category (i.e., parents) strategically aims to focus them on the common goal (i.e., their children). Through the language use mediators invoke these identities as an

exercise in articulating what is possible in interaction, indicate what parenting means, and construct a specific interest for disputants (e.g., their children's well-being).

The mediators work on these identities at different stages in mediation. They often start constructing them in their introduction speech, where they set up a scene of mediation. They explain to participants the rules of mediation and their rights and state the meeting goal, which is to develop a plan for their children. The focus of each session is children' interests and the best arrangements for them, so disputants, in the first place, participate as parents. To further separate the identity of parent from problems the parties had as spouses, the mediators occasionally compare being a parent with having a job (Vasilyeva, 2015). Similar to being colleagues who can work together without liking each other, parents can do their job of raising their children regardless of their relationship issues with each other. Thus, the conceptual metaphor of job applied to parenthood is one of the presentational devices the mediators use to shape interactional possibilities. Excerpt 6 illustrates how the mediator employs this device.[13]

Excerpt 6
1M: . . . the purpose is to try to uh, work out, an arrangement whereby, this little guy that's your kid, can have two parents, in his life, and hopefully having have you both in a way where you can really be parents where you can co-parent. Know there's an in- interesting um, thought that I'd like to leave you a lot of people have agreed to those difficulties, uh they believe that they couldn't stay married to each there's no way they could uh parent together. But I tell you that really isn't true. . . . But that doesn't mean you can't accomplish the job that you, have to do. You can work with a person you don't like, when you focus not on your personal relationship but on the job you have to do together. And I don't see that that needs to be any different, uh when people divorce and they have the job of raising a child or children together. They can focus their energies, only on the thing of being parents to the- the child. ((PAUSE)) When you personalize it, you're apt to get in trouble. . . . There's no point in rehashing what has now become a historical fact and can't be changed.
2W: Right
3M: So you focus on something that is that is, I assume from talking to both of you really important to you and that is your son, and so you try to give him the best shake you can. And that's- that's our job here today.

This episode is a complex argumentative exchange. This introductory speech is an opening stage of discussion on the solution to the disputants' problem, where the starting points are established. At the same time, it has features of an argumentation stage, as M constructs an argument to support the standpoint that the parties can co-parent despite their divorce. M makes an argument by analogy stating that ex-spouses should treat parenting as a job. M frames the child's interest as something of importance for the disputants. While M simply makes assumption about what is important for the disputants, it would be improper for them to deny it without damaging their face. If they are parents, they are expected to care about their child. In a way, M makes appeal not necessarily to what their interests are at the moment but what their interests should be.

M does not just create a model of an ideal parent for the disputants to aim for (i.e., acting in the interest of their child and the involvement of both parents in the child's life). Here, M gives them an idea of how to act by making analogy between parenting and a job, and co-parenting and being colleagues. By doing that, M shifts a focus from personal relations to professional ones, which also contributes to crafting argumentative activity during the session as collaboration process.

While the focus here is on the language use to construct an institutionally preferred situated identity of the participants (i.e., the level of presentational devices), the analysis indicates that identities themselves are an important interactional resource for shaping argumentative activity, and thus can constitute another level of strategic maneuvering.

To sum up, in mediation under study, strategic maneuvering at the level of topical potential manifests in advancing institutionally appropriate topics (e.g., visitation) and curtailing institutionally dispreferred ones (e.g., the disputants' negative behavior). Introducing new topics

during an argumentation stage of discussion when the disputants reach an impasse serves as a way of redirecting argumentative activity. At the level of audience demands, the mediators orient toward the participants' face and appeal to their responsibility as parents. The mediators construct the children's interests as the disputants' primary concern. At the level of presentational devices, strategic maneuvering is reflected in how the mediators frame their contributions. Firstly, it manifests in how the mediators invoke and reinforce disputants' institutionally appropriate identities by means of references they bring into interaction and moves they make. Specifically, they frame the disputants' participation as parents and collaborators and use a conceptual metaphor of parenting as a job. Secondly, it manifests itself in the way the mediators shape interventions to terminate an off-task activity or topic. Next, I discuss how these findings advance our understanding of mediation activity as institutional talk and strategic maneuvering.

Discussion

The mediator's focal point is to try to construct mediation activity, which involves acting strategically. As it was mentioned earlier, strategic maneuvering is context-dependent, and an argumentative activity type constrains it (van Eemeren, 2010). What participants talk about can be restricted by some agenda (e.g., creating a plan for custody arrangements) but how the discussion unfolds depends on how parties exploit topics and identities and frame their moves. In this respect, the discovered practices may differ from other types of mediation activity.

The findings show that the mediators in the studied sample strategically employ a great variety of interactional resources. Their strategic maneuvering manifests itself at the levels of presentational devices (e.g., interventions they make), audience demands (face concerns and the disputants' responsibilities), and topical potential (e.g., topics they initiate). With help of these

resources, the mediators structure dialogue in a way that lets the disputants make contributions to create the argumentation process. For example, different identities open different opportunities for pursuing controversy and affect the quality of interaction. By putting the participants in a certain relationship (i.e., parents and colleagues), the mediator emphasizes a task-oriented mode and promotes collaboration between them.

The study expands research on strategic maneuvering in mediation. Greco Morasso's (2011) research focused on successful mediation sessions (i.e., they ended in restoring the relationship) that are conducted by two mediators and vary in their application domain and cultural contexts. The present study complements this research by studying one particular type of mediation in the US culture, regardless of the success of sessions in terms of reaching an agreement, which makes it possible, on the one hand, to discover typical institutional practices, rather than individual ones, of the mediators' strategic maneuvering in custody mediation, and, on the other one, its specific features.[14]

For example, Greco Morasso (2011) states that mediators' strategic maneuvering will be the same in child custody mediation as any other type of dispute mediation as "they respond to the same requisite of aiming at restoring a relationship which is already present" (p. 151). However, custody mediation has its own specificity. As the analysis shows, the mediators make moves to focus the disputants on the children's interests, not on what they want for themselves. The mediators are interested in managing the parties' disagreement on arrangements for their child rather than in resolving a conflict they have as (ex)-spouses. They steer the focus from the interpersonal conflict onto the task at hand by invoking the identity of a parent and behavior that is expected from a good parent. While the disputants may bring their own agenda, the mediators' moves indicate what their interest should be. Their children's interests may not necessarily be

their priority. However, if they want to appear reasonable they have to act as parents and not to threaten their image of a good parent. This identity constrains the parties' behavior. Their children's interests and their joint responsibility for their child serve as a common ground. Thus, this study shows that the mediators do not just identify interests (Greco Morasso, 2011) but also actively construct them for the disputants.

One presentational device the mediators use is a conceptual metaphor of parenting as a job. In this respect this study is in agreement with Greco Morasso's (2011) findings of strategic employment of metaphors in mediation. However, she demonstrated an individualized use of this device for a specific case of conflict. In the present study the mentioned metaphor occurs in a few cases, so it might be treated as an institutional practice for the studied mediation.

The ways the mediators construct their interventions to signal violations reflect the presentational devices level, too. The mediators have to manage violations in such a way as not to threaten the parties' face (which was identified as an important aspect of audience demands). As mediation talk, in general, is more informal than, for example, court hearings, it is essential to maintain the interaction order in a greater degree than in more formal contexts of conflict resolution. In this respect, the findings of this study can be relevant for other types of mediation talk. The mediator has to take into account the participants' needs (e.g., saving their face) in managing interaction between parties and crafting their own moves. In this study, this is evident, for example, in using indirect interventions or direct interventions that contain an account for terminating discussion, which is less face threatening.

The use of topics is another strategy the mediators employ to craft interaction and to constrain how the participants proceed during the discussion. The study illustrates that strategic maneuvering at the level of topical potential is not limited to advancing issues (e.g., Greco

Morasso (2011)) that help to reach an agreement. It also involves avoiding issues that can hinder achieving an institutional goal of argumentative activity. On-task topics are also used to make a shift in a more productive direction when the interaction reaches an impasse in an argumentative stage. This is similar to Aakhus's (2003) strategy of redirecting, although he focused on linguistic devices to redirect the discussion.

Strategic maneuvering, in this respect, is limited by interactional and institutional constraints of mediation talk. By introducing institutionally preferred topics and terminating dispreferred ones, the mediators shape disagreement space. For example, visitation is an appropriate topic for argumentative discussion as it is related to the mediation goal, while parties' negative behavior is not as it is likely to shift the discussion to a primitive argument.

The institutional goal of the encounter conditions what interventions are appropriate. For instance, interventions that emphasize the mediator's unwillingness to discuss an issue may be improper in some other argumentative discourse (e.g., the critical discussion) but they are acceptable during mediation because the mediator acts as an institutional agent and enforces institutional rules.

At the same time, mediation talk constrains ways and means the mediator can use to craft argumentation. For example, the termination of an argument by stating that the issue is out of scope of the meeting agenda can be done only in regard to certain questions (e.g., financial issues).

To conclude, a practical dilemma the mediators face is that they have to balance institutional goals (i.e., reaching an agreement) and interactional goals (i.e., sustaining participants' face). To achieve that, the mediators employ different resources available in interaction. They strategically employ interventions and topics to keep the disputants on track

and to shape an institutionally preferred interactivity, which reflects different aspects of strategic maneuvering. However, this concept does not take into account other interactional resources the mediators employ to create disagreement space. For example, the use of language to put the disputants into a certain category (e.g., parents) constitutes a level of presentational devices but participants' identities as such fall outside the bounds of this concept as developed in pragma-dialectics (i.e., they are not viewed as presentational devices, topical potential, or audience demands). Identities are constructed and negotiated during interaction. The mediators navigate between possible identities the participants have and strategically make institutionally relevant ones pronounced. They articulate what it means to be a good parent and a collaborator in this particular culture and then appeal to values associated with these identities, thus indicating what the participants' interests should be. Thus, the study contributes to further development of the concept of strategic maneuvering by recognizing identity as an important feature that needs to be taken into account in argumentative activity. As identities are constructed in interaction, advancing institutionally appropriate ones can help manage disagreement. The study also advances our knowledge of strategic maneuvering of a third party who is not a principal in a dispute but nevertheless plays a crucial role in argumentative activity. Besides, while the study focuses on custody mediation, it shows what interactional resources (e.g., participants' identities and on-task topics) institutional agents, in general, can use to shape argumentative activity, thus contributing to further understanding of argumentation in institutional context.

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Notes

[1] The term *frame(ing)* has different meanings (Agne, 2015). In this study, frame means an explicit or implicit definition of a situation that helps participants to understand what they are doing (e.g., negotiating) and provides guidelines for what to say and to do in this situation. Framing is the use of verbal and nonverbal means to define a situation.

[2] Pragma-dialectics views argumentation as a type of communicative activity and focuses on specifying the rules and conditions for critical discussion, and more recently on conventionalized types of argumentative activity, for example, mediation (van Eemeren et al. 1996; van Eemeren, 2010).

[3] Critical discussion is an ideal model of argumentation suggested by pragma-dialectics. It consists of four stages: the confrontation stage where a difference of opinion gets manifested; the opening stage where the participants' commitments and roles are identified; the argumentation stage where the protagonist defends their standpoints while the antagonist raises doubts about them; and the concluding stage where the participants determine whether the protagonist succeeded in defending the standpoints and whether the difference of opinion was resolved (van Eemeren et al. 1996).

[4] The communication design approach views communication as an object and a process of design (Aakhus, 2007). The design is natural in a sense that it emerges from interaction itself (Aakhus, 2007). Participants of argumentative discussion coordinate their interaction and collaboratively construct disagreement space using linguistic and non-linguistic means available for them in interaction. At the same time, participants can have ideas about how interaction should unfold to be effective. They use these tools to shape the interactivity in general, and disagreement space in

particular, in a preferred way and avoid dispreferred ones according to the norms of a certain format.

[5] The types of impasse Aakhus (2003) identifies include irreconcilable facts (i.e., facts that cannot be established as true during interaction), negative collateral implications (i.e., questioning an interactant's moral character or competence and undermining their positive image), and unwillingness to be reasonable (i.e., unwillingness to accept proposals or claims that are seemingly legitimate).

[6] O'Keefe (1977) distinguishes two senses of the word "argument": a speech act (i.e., an argument is something that a person makes) and a kind of interaction (i.e., an argument is something people have). Jacobs and Jackson (1981) identify a set of "clear" cases of argument: making arguments in the course of having an argument (a prototypical argument); having an argument without making arguments (primitive argument or quarrel); and making arguments without having an argument. The meaning of the term "argument" in this study depends on the context.

[7] For example, Muraru (2012) focuses on Jimmy Carter's strategic maneuvering in one conflict situation. Greco Morasso (2011) analyzes practices of two mediators across various types of mediation. While these practices might be impacted by institutional constraints, there is not enough ground to treat them as typical institutional ones.

[8] The identification of institutionally (in)appropriate topics is based on the mediators' actions across all the transcripts and the topic relevance for the institutional goal of interaction. Primarily, the analysis relied on the topics they initiated, made moves to terminate or indicated as inappropriate for mediation in their introductory speech.

[9] M stands for a mediator; H for an (ex)-husband; and W for an (ex)-wife.

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[10] See Vasilyeva (2016) on cultural values in dispute mediation.

[11] A longer version of the episode appears in Vasilyeva (2012a) as an example of an institutionally inappropriate topic.

[12] These techniques are related to Aakhus's (2003) strategies. For example, direct interventions indicating the mediator's incompetence in certain areas and the matters being out of scope of the session, and indirect interventions such as introducing a new topic and reformulating are employed to redirect discussion around topics that cannot be resolved.

[13] A longer version of the example appears in Vasilyeva (2016) where a cultural aspect of the parent identity is discussed.

[14] The cultural aspect of this mediation was discussed in Author (2016) and is beyond the scope of this manuscript.