

**MEDIATION:
Participants' Perspectives**

by

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Thesis

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ABSTRACT

This study records the experiences of people who have undergone the process of mediation from the inside. Four participants shared their stories. Although the sample size is small, this study is important because it is a first account of participant voices in mediation. By analyzing the experiences of the participants, it is found that in these cases the improved communication was there only for the duration of the mediation. Communication after the mediation was not improved. It was found that how people behave toward each other was important to the parties. Four major points emerged as central to the process of mediation. *Anger* is described by all participants, and is a major obstacle to people in resolving their conflicts. *Mediator Neutrality* as determined by the participant as well as having a set of *Rules* in place are important to them, helped overcome their anger and enabled them to work toward resolving their dispute. This shows a relationship between anger, mediator neutrality and rules. Mediator skill is discussed as vital to the process. Another point the participants uncovered as important is *Being Heard*. For some people this was the first time someone listened and heard what they were saying. Gender differences are observed and noted. Recommendations for pre-mediation sessions are discussed.

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Chapter I

INTRODUCTION

There is no road to peace— peace is the road.

— Gandhi

The process of mediation, as an Alternative Dispute Resolution (ADR) process, has become a rapidly growing field in our society. An abundance of recent literature is available on the subject of mediation. However, the presented research is from the researcher's perspective.

Pastorino (1997) noted, in literature prior to 1990, an absence of the participant's experience of mediation in both research and theory building.

Significantly omitted from these dialogues are the insights of those who actually experience processes that are resolving; namely, the disputants....

There had been neither systems designs nor phenomenological reductions, nor case studies conducted on participant experience. As such, there has been a failure to come to understand the process from the experiential perspective of those most affected or influenced by it (p. 252).

He presented a mediation approach designed by adolescent disputants, thereby providing voice to those participants. No other studies, such as case studies, had been conducted to reflect the participants' perspectives.

Purpose:

The purpose of this study is to explore the participants' perspectives on mediation. Specifically, I am interested to learn if participants' perspectives support research findings of improved communication, between conflicting parties. The aim is to present participants' voices and to learn from the insights of the people who have experienced the process of mediation as disputants. The participant's point of view is an insider's viewpoint of what it feels like to face one's adversary. What is it like to meet with one's adversary to settle a dispute? Many questions such as these may become of special importance when mediation becomes mandatory.

Mediation is reported to be empowering, but without the voice of participants this statement remains academic. Only the person who has experienced the process of mediation as a disputant can say what the experience was like for him or her. How the mediation process will be experienced will most likely be different for each person. By listening to the experiences of people who have been in a conflict and mediated their conflict, either successfully or not successfully, we can learn what it is really like to be there. Mediators can learn from the stories of the participants if the process is working, or what part of the process is working or if there are parts that are not working. Do mediators need to be more flexible, or do they have to stay within the strict framework? What do participants regard as important in the mediation? How is the role of the mediator perceived by the participants? We may gain some insight from the answers to these and other questions. In so learning about mediation, what works and what does not work, mediators can be of greater assistance to future participants in the resolution of conflict situations.

It is important to acknowledge and validate that it requires a great deal of courage to face conflict. Not all people are equally skilled in how to articulate their feelings. People's response reactions to conflict situations are influenced by emotional and relational issues, where powerful feelings of disrespect, betrayal and abuse can play a role. If these feelings are not addressed, then the underlying emotional conflict remains and impairs future relationships (Umbreit, 1997). In mediation, past experiences may contribute to power imbalances that may not be directly apparent.

Participants' experiences in mediation can also provide an insider's view that will be helpful in the future development toward the teaching of mediation skills. Deutsch (1993) emphasizes the need to pay attention to participants' skills in conflict resolution. It is important to learn the participants' perceptions to provide researchers and mediators with information that will help in furthering awareness and understanding of how to provide more effective teaching and facilitation in mediation.

Mediation:

Mediation teaching is based on the assumptions of empowerment and that there is a chance of genuine dialogue through cooperation. It is my intention to examine these assumptions by interviewing people who have been participants in mediation.

Mediation teaches that every opinion is valid, thereby giving acknowledgment to everyone. To validate is to empower and enable people to express themselves, to have a voice. Mediation is a concept of cooperation, where people are guided in the process to listen to each other, to rephrase what the other person said before responding. Mediation in

essence teaches people to listen to each other, to wait to voice their own opinion after the other person has finished speaking. This is said to present a potential for the development of genuine dialogue. It also teaches people that every opinion is as valid as their own. By teaching that each opinion has validity, greater acceptance and tolerance among people is possible because this empowers all people. The process of mediation is one where the focus is not necessarily on the outcome. The primary focus is on the cooperative process. Once the willingness for cooperation between conflicting parties has been established, working toward resolution of the conflict is possible. The possibility of working together on a problem by separating the issues from the individuals, and of discussing options of how to work with a problem, has the potential to create mutual respect.

The teachings of mediation are important as life skills from which all people can benefit. It is often assumed that people know how to communicate. However, it is a learned skill. Tidwell (1994) notes that mediation ultimately is a communication process. The teaching of mediation skills can be of help to those learning to express feelings and thoughts, and to distinguish between needs and wants.

Background:

My first introduction to mediation was during a course in Family Law. I learned about mediation as a form of Alternate Dispute Resolution in the context of the legal system. As part of the adversarial system, lawyers represent their clients to the best of their ability. When lawyers represent a client, they represent oppositions. In the end, a judge makes the final decision. This form of settling does not promote discussion, and makes further

relationships difficult. In the legal profession, distinction is made between two different forms of Alternate Dispute Resolution. **Negotiation** is a format where one looks at *what* positions are being taken. The process of negotiation does not necessarily promote communication. **Mediation**, on the other hand, is a process that is facilitated by an independent third person, in which one looks at *why* positions are taken. This process promotes communication and the parties themselves often resolve the conflict. (Jean DeWolfe, L. L. B., Family Law Course at Acadia University, Lecture notes, Jan. 3, 1996).

A Mediation Model:

The mediation model that I am familiar with is taught by the Valley Community Mediation Society in Wolfville, using Cornelius and Faire's (1989) text; *Everyone can win: how to resolve conflict*. The following outline illustrates how this model can be used.

A neutral position of the mediator, equality and confidentiality are important parts of the model. Mediation is viewed as a voluntary process.

Preliminary Work

Parties requesting mediation will provide the mediator with a brief outline of the conflict. The mediator will take the case under consideration and if acceptable for mediation will contact the other party. Cases not considered for mediation are those in which: (1) a party is unable to represent him/herself, (2) not all parties wish to mediate, (3) there are threads of criminal charges, (4) there is not enough time to work through the process (i.e., one party is moving away).

Pre-Mediation

In the pre-mediation meeting the parties will be given a brief outline of what to expect during mediation. For example, both parties get equal time to present their cases. People may be advised to prepare what they wish to say in their statements. This is not formal, but is meant to assist the parties in order that they do not forget, during the process, the details that are important to them. Parties are advised to bring documentation (for example, separation agreements, contracts or written promises relevant to the case) if this is applicable. Finally, a time and place for the mediation agreeable to all parties is established.

The Mediation Session

OPENING

The mediator greets and welcomes the parties and addresses each person by name. The mediator seats the people (usually in a triangle where the parties do not face each other, but both face in the direction of the mediator) and opens the meeting.

First, the mediator(s) introduces him/herself (if co-mediators are used this is discussed in the pre-mediation) and the parties are asked how they wish to be addressed during the mediation. Next, the role of the mediator is explained as that of a neutral party, who does not make decisions. The parties make all decisions regarding resolution or settlement themselves. Parties are informed that confidentiality is an important part of the mediation. If notes are taken by the mediator, assurance is given that these will be destroyed when the mediation is finished.

The role of the participants is explained. Each party is expected to participate with an honest effort and to give full information relevant to the dispute. Mediation is voluntary and each party is free to leave the mediation at any time.

Ground rules are discussed. These are basic rules that each party is expected to follow. The rules assure that each party has a chance to speak freely. Interruptions happen at times when emotions run high. In such a case, the offending party will be reminded of the rules. These rules are: (1) no personal attacks, (2) no interruptions, (3) no blaming and, (4) no attributing motives. Parties are asked if they wish to add to the ground rules. Writing down these items is helpful in case people later dispute the rules.

Finally, if all parties approve, an agreement to mediate is signed.

CLIENTS' OPENING STATEMENTS

It is important that the mediator face the party that is speaking. The opening statement is timed and each person gets the same amount of time to speak. After the opening statement, the mediator asks questions in order to clarify that what he/she heard is what that party meant to say. This is very important because the opposing party is present and hears what the speaker is saying.

IDENTIFYING THE ISSUES

Once the statements have been given, the issues are identified. Parties are asked if they agree that these are the issues. During the remainder of the process, one issue at a time

will be dealt with. Some mediators like to start with the simplest issue in order to give clients confidence in the process.

EXPLORING OPTIONS

During this time people are asked to brainstorm. Every option one can think of, even if it seems unrealistic, is brought forward. (The hope is that parties start to work together.) Once all the possibilities of how to resolve one issue are presented, sorting of the possibilities takes place. Some options are discarded; others may be used in part only. The choices belong to the parties. They have to decide what is acceptable to them.

The mediator can help with making suggestions, but the final decision rests with the parties. Not all parties come to an agreement. The idea that people can work together on the problem is seen in itself as a 'win situation'. The parties may agree to disagree.

CAUCUS

Anytime during the mediation, emotions may get in the way. If that happens, the mediator has the option of asking the parties if they wish to take a break. Another option is for the mediator to call a caucus (a private meeting with one party, to help overcome an impasse). When a caucus is called with one party, the same needs to be done with the other party, as people may become suspicious. It is not only the mediator who can call for a caucus. Each party can request a caucus during any part of the mediation. Confidentiality during those sessions is upheld. The mediator can suggest that one party share information with the other; however, the choice to do so rests with that party.

AGREEMENT

If the parties have come to an agreement as to how to settle their dispute, the agreement will be put into writing. The agreement outlines the agreed-upon terms in detail, i.e., what each party has agreed to do or not to do. The agreement may include task completion time frames. Once the agreement is drafted, both parties sign it, and all parties retain a copy.

DEBRIEFING

At the closing phase of the mediation, the mediator has an opportunity to congratulate the parties for their hard work. In summarizing, the mediator makes it clear that the accomplishments are due to the parties' efforts.

Orientations in Mediation:

Legal

Ontario launched private mandatory mediation for all civil actions, except family disputes, prior to court proceedings. This action was announced by Attorney-General Charles Harnick (Makin, 1997). Sault Ste. Marie and Windsor were named as the two new sites to implement mandatory mediation, following in the footsteps of Toronto and Ottawa. The announcement was made by Ontario's Attorney-General, Charles Harnick, after the Civil Rules Committee, in February 1998, reached an agreement in principle to institute a new order of civil procedure (Interaction, 1998). Small Claims court mediation pilots were set up in Surrey and Vancouver. As well, a Mediation Roster is being established for all civil,

non-family cases in the British Columbia Supreme Court. Mediation is presented as an option, and the services are delivered by the private sector (Wood, 1998). Programs currently under consideration for Nova Scotia are being tested; for example, pilot projects in mediation in conjunction with Family Law Courts in two communities are under way. The Dalhousie School of Law in Halifax offers courses in mediation to its students. The legal system has been the medium that we have relied upon to help us settle our disputes. However, the legal system is a structure in which rulings are made and rights and wrongs are declared, and in which the outcome is in terms of winners and losers. It is designed to deal with facts and not with human emotions.

Professional Organizations

Mediation has in many instances become a distinct professional field; for example, The Academy of Family Mediators, Family Mediation Canada (FMC), the Society for Professionals in Dispute Resolution (SPIDR), Arbitration and Mediation Institute of Canada. In those organizations, the mediator is considered the expert.

Peer Mediation in Schools

Mediation has been adapted to teach school children to become peer mediators who learn to settle their disputes by peaceful means. Benson and Benson (1993) report that research by the "National Association for Mediation Education" as well as their own research shows a reduction of conflicts and violence in the schools and that self esteem, grades and attendance of children who trained as mediators is enhanced. Mediation is said to enhance

communication skills, self-esteem and respect for self and others (Deutsch, 1993; Lane and McWhirter, 1992).

Community Mediation

Community mediation organizations are making efforts to continue the models that have taken hold in the schools by encouraging people to act in their own interests (Stipanowitch, 1992-1993). Community mediation programs teach people that they have choices on how to negotiate a dispute or disagreement. At times, the agreements reached become secondary to the process of transformation and healing of relationships. (Umbreit, 1997). In mediation, the focus is on communication and awareness skills (Cornelius and Faire, 1989). Through mediation people can be taught to separate the issues from the persons involved (Fisher and Ury, 1981). In the cooperative spirit of mediation people can work together as partners to resolve conflicts.

Chapter II

LITERATURE REVIEW

All truly wise thoughts have been thought already thousands of times; but to make them truly ours, we must think them over again honestly, till they take root in our personal experience.

— Goethe

In reviewing the literature on mediation it is difficult not to notice how widespread the use of mediation has become. The practice of mediation in itself is by no means new. The earliest mediation record is recorded in the Oxford English Dictionary (Volume IX, p. 545); 1387 Trevisa *Higden* (Rolls) VII. 125: “Mediatours goynge bytwixe, pees was made.”

“*Mediator*” (Oxford English Dictionary) is derived from the Latin form *mediare*, to mediate, and is defined as “One who intervenes between two parties, especially for the purpose of effecting reconciliation; one who brings about (a peace, a treaty) or settles (a dispute) by mediation. “*Reconciliation*” stems from Old French *conseiller*, to counsel, or re-counsel; In translation, this became reconcile.

The focus of modern day mediation is said to be self empowering. “*Empowerment*” to give power or authority to; authorize. Also to give the ability to; enable or permit (Collins Concise Dictionary 1988).

In the revival of the practice of mediation there are promising new developments in the field of mediation research. Moore (1996) gives a brief overview of mediation around the world in his text, *The Mediation Process*. Folberg and Taylor (1984) present the historical and cultural roots of mediation and note that: "There is both a biblical foundation and approval for mediators able to bring about peaceful coexistence: 'Blessed be the peacemakers for they shall be called the sons of God' (Matthew, 5:9)" (p. 3).

The Mediation Process:

While much research is presented and ways are found to use mediation as an alternate form of settling disputes, the need arises to be vigilant that mediation remains an alternative that is available to all people (Cooks and Hale, 1994). In reviewing the literature there appears to be a trend that mediation programs in the schools are taught for use by the children. The ultimate goal is toward greater tolerance and a more peaceful society (Deutsch, 1993). At the same time programs for adults, in many cases, are controlled by professionals such as Family Mediators Canada and the Society for Professionals in Dispute Resolution. Community mediation programs have been started and are reporting positive results. Umbreit (1997) says, "[t]he art of mediation, as well as teaching, nursing, therapy, and social work, is found in connecting with people at a human level through the expression of empathy, warmth, and authenticity" (p. 207).

Mediation methods of conflict resolution are part of the culture in Confucian societies. Nations such as the Pacific Basin Nations and the People's Republic of China have practiced mediation for centuries. In The People's Republic of China, for example,

mediation replaces contract and tort litigation, and is the method of choice for most civil disputes. First Nation people in Canada and Native American peoples used healing circles to mediate disputes (Barnes, 1994), which are examples of spiritually-grounded and dialogue-driven forms of conflict resolution. There are many variations of the mediation process documented, each unique to its culture (Moore, 1996; Umbreit, 1997).

Mediation practices in Western society differ in their methods, and are often settlement oriented. Moore (1996) defines mediation as:

The intervention into a dispute or negotiation by an acceptable, impartial, and neutral third party who has no authoritative decision-making power to assist disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute (p. 14).

Moore presents a twelve-stage mediation model consisting of two categories. The first category consists of work done by the mediator prior to the actual mediation and has five pre-mediation stages.

Stage 1: Establishing relationship with the disputing parties.

Stage 2: Selecting a strategy to guide mediation.

Stage 3: Collecting and analyzing background information.

Stage 4: Designing a detailed plan for mediation.

Stage 5: Building trust and cooperation.

The Second category is divided into:

Stage 6: Beginning the mediation session.

Stage 7: Defining issues and setting the agenda.

Stage 8: Uncovering hidden interests of the disputing parties.

Stage 9: Generating options for settlement.

Stage 10: Assessing options for settlement.

Stage 11: Final bargaining.

Stage 12: Achieving formal settlement (pp. 66-67).

Within this model pre-mediation meetings are held to inform the client of the process. Behavioral guidelines must be agreed upon by the participants. To be effective the rules must be agreed on by consensus. Establishing behavioral guidelines is a common practice among mediators; in some instances these guidelines are enough to make people move toward a productive resolution. The mediator is the advocate for a fair process and remains impartial to the outcome of a particular settlement. Impartiality is defined as “[t]he absence of bias or preference in favor of one or more negotiators, their interests, or the specific solutions that they are advocating” (p. 52). Active listening and rephrasing facilitates intense emotions and assures the speaker that he or she has been heard. Moore’s text provides the reader with a variety of strategies that can be applied in the mediation process.

The growth and expansion of mediation, Moore says, has been due in part to social changes such as the acknowledgement of individual rights, but

has also been motivated by growing dissatisfaction with authoritative, top-down decision makers and decision-making procedures, imposed settlements that do not adequately address parties’ strongly felt or genuine interests, and the increasing costs - in money, time, human resources, interpersonal and

community solidarity - of more adversarial, win-lose procedures of dispute resolution (Moore, 1996, p. 23).

Tidwell (1994) sees problems with this concept of mediation. He says that people are not rational when in conflict. He calls the process of mediation a quasi-coercive process. Tidwell sees individuals in conflict as dependent on the nature of their actions. Through habituation people conform to a behavior that can be making them blind to alternatives. He compares this to Seligman's "learned helplessness" and to his "trained incapacity concept". Tidwell says "[b]oth trained incapacity and learned helplessness serve to explain how people get into conflict and why they find it difficult to escape from conflict" (p. 9). Persuasion is seen as a tool of which the most powerful components are commitment and consistency. Thus persuasion is used to overcome the trained incapacity in order to consider alternative options to resolve the conflict situation. "Overcoming the dynamics of conflict requires the language of conflict resolution to be sufficiently powerful to galvanize the parties involved" (p. 13).

In the course of our lives we will be challenged by all sorts of conflict situations. Most times when we hear the word 'conflict' we portray it as something negative. Conflict can also be seen as a positive or constructive event. Deutsch (1994) says conflict "is the root of personal and social change; it is the medium through which problems can be aired and solutions arrived at" (p. 13). Deutsch identifies cooperation, individuality and competition as three types of motivational orientation toward conflict. Previous research has given rise to what the author terms: "Deutsch's crude law of social relations: the characteristic processes and effects elicited by a given type of social relationship (e.g., cooperative or

competitive) also tend to elicit that type of social relationship” (p. 15). Mediators need specific skills to assist disputants to resolve their conflicts in a constructive manner. However the participants in a conflict do need similar skills.

Mediation also should be examined as a process that can provide possibilities for the coordinating of the different meanings that humans give to their lives. There are many ethical and moral questions surrounding mediation. Communication is often looked upon as the defective part in the interpretation of meanings. “The conceptualization of communication as a tool parallels the means-ends epistemology of moral and ethical (ultimately, social) choices. By contrast, we argue that communication is *both* the means and the ends of social (moral and ethical) interaction” (Cooks and Hale, 1994, p. 57).

Cooks and Hale discuss the ethics of mediation and the standards of practice, mediator impartiality and neutrality as two distinct concepts. The standards of practice for mediators generally place high emphasis on disputant self-determination, informed consent, mediator impartiality and neutrality. Problem areas surrounding these issues are discussed. Attention is drawn to the meaning of these terms. For example, Grebe (1992) is referred to as saying that mediation on the one hand accepts human individuals as rational beings able to solve problems. On the other hand mediators are cautioned to protect their clients from harm or prejudice. Problem areas that are investigated are issues such as the distinction between impartiality and neutrality. The paradox that is noted is how mediators “maintain impartiality while simultaneously assisting the parties” (p. 63).

Ethics may be cited as a means to claim validity as a profession and disclaiming the importance of community mediation. The authors note, “in the case of mediation, the

'professionalizing' of the discourse around ethics has led to discussions that silence the claims to validity voiced by disputants and those who are outside the profession" (Cooks and Hale, 1994, p. 74). What are the alternatives to the legal system and how accessible is this system when professional standards are put in place? Neilson (1994) expressed a similar concern when she said:

If mediation is a process designed to respect disputant autonomy and decision making, free from professional domination and control, why do mediators need professional status and power? Will educational developments necessarily professionalize the discipline? If so, will mediation continue to offer an alternative to the professional domination and control inherent to the formal legal system, or will it merely, as Abel (1982), Davis (1983), and others have warned, replace one form of professional domination and control with another? (p.173, 174).

In 1986, as a result of the International Year of Peace, the Conflict Resolution Network was founded in Australia. Its purpose is to develop, implement and teach the skills of conflict resolution. Cornelius and Faire (1989) feel that by taking a different view of conflict situations it is possible to become partners in solving the conflict rather than being opponents. In working together, both parties' wants and needs are considered resulting in a cooperative approach that leads to a win-win situation. The focus is not on how to win but rather on how both parties can gain from cooperation. Mediator neutrality and disputant self-determination are important parts of this model.

Conflict-resolution skills enable people to turn conflict into opportunities to learn more about the self and others. Awareness of how we deal with conflict is an important factor in the teaching of mediation skills (Cornelius and Faire, 1989). The win-win approach to mediation teaching is also expressed by Umbreit (1997), who presents a humanistic approach to mediation based on the principles of Carl Rogers' (1961) humanistic psychology. Umbreit presents a theory of two different methods of the use of mediation. The difference he describes is between a settlement-driven and a dialogue-driven mediation approach. Umbreit's humanistic-mediation model taps into the dialogue-driven approach to using mediation as a journey toward healing and transformation. Emphasis is on establishing a connection with the parties and an atmosphere of trust. It is suggested that pre-mediation sessions take place at least one week before the mediation session. The mediator has an opportunity to establish trust and rapport while explaining how the mediation process works, and answer the participants' questions about the process. The model of humanistic mediation is non-directive and dialogue-driven, and is said to be well suited for community, family and workplace mediation. "By moving from a settlement-driven to a dialogue-driven approach to mediation, the practice of mediation can intentionally and more consistently tap into its transformative and healing powers" (Umbreit, 1997, p. 202).

Joyce (1995) also refers to Rogerian theory, with a client-centered approach. She notes that this theory is based on "principles that describe an unconditional positive regard for the client and a profound respect for people and their ability to solve their own problems (Rogers, 1965)" (p. 301). She points toward the many different types of disciplines involved in conflict resolution and how the goals are of a varied nature. She also points to the fact that

there is not an agreed-upon language and compares the field to the “Tower of Babel”. Joyce reflects that terms such as “*intervenor, third party, mediator, and neutral* are used synonymously and interchangeably by the Society for Professionals in Dispute Resolution (SPIDR, 1986)”. She continues by saying that, “ethical standards are the vehicles that transport the values of the dominant culture into the practice of conflict resolution” (p. 303).

Taylor (1997) questions mediator neutrality and asks. “How neutral is neutral?” (p. 215). She presents a discussion about allowable influence and persuasion and how this relates to the concept of client self-determination. Taylor as well as Cooks and Hale (1994) look at the works of Rifkin, Millen, and Cobb (1991) and, as they say, “the companion piece by Feer (1992) opened up some provocative notions about whether a mediator can ever be truly neutral” (p. 217). Taylor also notes that there is a lack of published material on mediator neutrality. The problem she sees is family mediators who believe in being impartial. They at times may find that they need to become more active, which moves them away from a neutral position. She presents definitions about neutrality and impartiality from different origins. However, says Taylor, “Mediators are ultimately responsible for the process, and that process must be solidly fair; but it must also take into consideration the different needs of each client, the type of conflict, and the context within which the mediation process is being conducted” (p. 224). In order to deal with the emotional needs of a client, Taylor says that the mediator may have to expand his or her view of impartiality and neutrality and move toward a more therapeutic mode of mediation. As Joyce (1995) did, Taylor notes the lack of a shared vocabulary in the field of mediation.

Williams (1994) looks at Gilligan's theory that men and women use different languages and the implications this presents for divorce mediation. Gilligan (1982) explains a gender difference in moral development which stems from their different experiences in relationships when growing up. Williams also mentions that this gender difference in language was observed by Tannen (1990). Williams notes that clarification of the meaning of words in divorce mediation is essential to meet the needs of each participant. Mediator training and awareness of Gilligan's theory is seen as a means to better facilitate and guide the parties in their mediation, by helping parties communicate about their differences.

Bush and Folger (1994), in *The Promise of Mediation*, find that the most important dimension of mediation is found in the potential for change. They look for a paradigm shift "from the individual to the relational conception" (p. 3). Mediation is presented as a transformative process where the primary focus is on empowerment and recognition.

Empowerment means the restoration to individuals of a sense of their own value and strength and their own capacity to handle life's problems.

Recognition means the evocation in individuals of acknowledgment and empathy for the situation and problems of others (p. 2).

The concept of transformative orientation to mediation lies in the premise that disputes, "be viewed not as problems at all but as opportunities for moral growth and transformation" (p. 81). The goal of the transformative-mediation approach is that of moral growth, "the realization by individuals of their highest potential as moral beings, and with this a changed and better world" (p. 224). The transformative approach is thus seen as making people responsible for their own choices in how they deal with conflict. Self

determination and the human capacity for compassion toward self and the other can be possible results from conflict interaction (Bush & Folger, 1994).

Folberg and Taylor describe the nature of conflict by quoting Kenneth Boulding's (1962) definition of conflict: "a situation of competition in which the parties are *aware* of the incompatibility of potential future positions and in which each party *wishes* to occupy a position which is incompatible with the wishes of the other" (1984, p. 20). Folberg and Taylor approach mediation from a psychological perspective. They present psychological concepts to understanding human motivation and personality, taking the view that humans are motivated by their internal needs. Maslow's (1954) as well as Glasser's (1965, 1981) theories are presented as useful for mediators. Summarizing Glasser: "people do what they do because they are attempting to meet their needs as they perceive them" (p. 79). Albert Ellis' Rational Emotive Therapy and Bandura's social-learning theories are presented as useful in bringing about a change of behavior (Folberg & Taylor, 1984).

The term's *negotiation* and *mediation* are frequently used as though they were the same. Rubin (1994) presents a clear outline by examining approaches to conflict management. Negotiation, he said, is derived from the "Latin word *negociare* - to conduct business" (p. 34). There are two types of negotiation that are discussed. The Mutual Gains Model is an approach that argues for solutions acceptable to all sides, while the Concession-Convergence Model is a bargaining approach, where parties start from opposite positions and both parties bargain back and forth until they meet at a point that is agreeable to both. Rubin notes that these concepts were first presented by Follett in 1942. Rubin also notes that both models have a place in the field of conflict management.

Another model that is discussed by Rubin is third-party intervention, which can be in a variety of different forms, such as:

mediation (in which advisory recommendations are made that need not be heeded by the disputants), conciliation (in which the focus is not the settlement of issues as much as the process by which the conflict is carried out) to arbitration (in which the third party's recommendations for settlement are binding) (p. 41).

The author notes that an independent third party at a dispute can assist people in understanding their conflict issues and help people manage their conflicts (Rubin, 1994).

Resolution of conflict becomes a more efficient and mutually satisfying experience when people learn to be better negotiators of conflict situations. Fisher, Ury and Patton (1991) have introduced a method of principled negotiation. This method is said to be hard on merit and soft on people. The four principles of the method are as follows:

- (1) Separate the **People** from the Problem,
- (2) Focus on **Interests**, Not Positions,
- (3) Invent **Options** for Mutual Gain,
- (4) Insist on Using **Objective Criteria** (p. 15).

Mediation provides a method for constructive and cooperative conflict resolution. The objective is that each side can understand the interests of the other party, before looking for a mutually advantageous agreement. Jean-Paul Sartre (1966) in his text *Being and Nothingness* says, "I can know myself only through the mediation of the other" (p. 91). Cooperative interaction among human beings is needed to discover the self. Whereas

competition emphasizes power differences between people, Deutsch (1994) points toward cooperation. By looking for similarities in beliefs and attitudes rather than differences, openness for communication is created. All human beings have unique sets of values and their own perspectives on life. These differences among people do not have to be limiting factors. People do not have to trade their own values or beliefs in order to accept that others may have different values and beliefs.

Mediation for Children:

Training in mediation does require the acquisition of knowledge, but a need to develop the skills to engage in constructive conflict behavior is essential. “The factor of abilities and skills is not sufficiently emphasized” (Deutsch, 1994, p. 24). By teaching children at an early age that every voice has value, the message of mutual respect is inclusive (Deutsch, 1993, 1994; Klein and Alony, 1993).

Klein and Alony (1993) report that there is an empirical base which suggests that parental-mediation behaviors facilitate children’s development. In a three-year research study of mothers and their young children, it was found that parents who are instructed in mediation techniques as parenting skills changed their own behavior and attitudes over time. The basic elements of what constitutes teaching mediational interactions are described as:

Focusing: Any adult act or sequence of acts that appears to be directed towards achieving a change in the child’s perception or response.

Affecting: An adult’s behavior that expresses verbal or nonverbal appreciation or affect in relation to objects, animals, or concepts and values.

Expanding: An adult's behavior directed toward the broadening of a child's cognitive awareness, beyond what is necessary to satisfy the immediate need that triggered the interaction.

Rewarding: Any verbal or nonverbal behavior of an adult that expresses satisfaction with a child's behavior or identifies specific components of the child's behavior that the adult considers successful.

Regulating: Adult behaviors that model, demonstrate, or verbally suggest to the child a regulation of his or her behavior in relation to the nature of the task or to any other cognitive process prior to covert action (p. 178, 179).

In their discussion, the researchers report a relationship between the mediating behavior of the mother and children's verbal skills as well as the children's behavior of mediating to others.

"Although we can see that something about our punishment system is not working, we continue to deal with problems reactively." This comment is made by Hetty Adams in the introduction to her book *Peace in the Classroom*. The text is designed for young children and is an aid to teaching communication skills by using specific activities toward this end (Adams, 1994).

Kreider (1994) also provides a program that is designed for teaching young children. He says, "I believe that when children feel safe, respected, and cared for, they are free to learn" (p. 101). He uses Maslow's Hierarchy of Needs to underline this belief. Maslow (1954) proposed that there is a hierarchy of needs which is presented as a pyramid. At the bottom of this pyramid are the basic biological needs for survival such as water, food and

shelter. The psychological needs, those of love and affection and self-esteem, are on higher levels of the pyramid. A person is said to be self-actualized when all possible needs are simultaneously met. "The concept of a hierarchy of needs is particularly relevant to mediators since most clients come to mediators because of the threatened loss of their basic needs" (Folberg and Taylor, 1984, p. 77).

A variety of programs have been developed specifically for training of elementary school children in conflict resolution skills. Johnson and Johnson (1994) describe a three-step program in which, through the use of cooperative learning and critical thinking, peer mediation and negotiation skills are developed.

Peer-mediation programs are being implemented in schools as a result of escalating discipline problems and increased violence in the schools (Bettman and Moore, 1994). Smith & Sidwell (1990) are quoted by Moore as stating that training programs in mediation "Have made significant impacts on the levels of conflicts in schools" (Moore, 1996, p. 25). These peer mediation programs include teaching mutual respect and tolerance of different opinions, and assisting students in resolving disputes, using methods of peaceful settlement of conflicts (Benson & Benson, 1993; Deutsch, 1993).

Lane and McWhirter (1992) report that students learn to develop skills in managing conflicts by practicing role-play. Students involved in the mediation process can practice their critical thinking, problem-solving and self-discipline skills. The same authors also make the observation that mediation provides a structured forum, which empowers the students by enabling them to make decisions that may affect their own lives. "All students--both disputants or mediators--find within the process a place for talking about problems,

learning more about the views of others, and practicing better communication in a non-violent, nonjudgmental atmosphere” (p. 17). The possibility of counsellors opening mediation training to parents as a school-community outreach program is mentioned as an implication for counsellors. Peer-mediation, conflict-resolution programs are seen as programs that may prevent violence in schools.

The training of mediation skills in schools seems to focus on groups of students who are trained to become peer mediators. Shulman (1996) discusses the establishment of guidelines for two mediation teaching programs. The guidelines are specific to students who want to become involved either in the training process of negotiations or as peer mediators.

In order to assess the usefulness of mediation programs in the schools, several scientific studies were conducted. Johnson, Johnson, Dudley, Mitchell and Fredrickson (1997) report that their study provides “empirical confirmation to the anecdotal testimonies on the effectiveness of conflict resolution training programs in schools” (p. 19). The authors continue by saying, “all students can be trained to manage their conflicts constructively” (p. 19).

Lieber and Rogers (1994) report that urban school districts face considerable difficulties in the implementation of conflict resolution programs. Among several factors contributing to this are differences in culture, different beliefs driving the school system, and financial resources.

In a summary of eleven articles, Bernard (1994) reports the various strategies for dealing with violence that were discussed. Analysis of the success of conflict techniques used with students is also reviewed. Bettman and Moore (1994) note that peer-mediation

programs in the school are often started in the hope of reducing violence and improving the social climate. Social injustices, the authors say, cannot be corrected by peer mediation, and it would be unfair to put that burden on the shoulders of the students. Institutionalized social injustice, the author notes, may give the opposite effect and can work as a catalyst for violence.

Not all peer mediation programs are first and foremost seen as a program to curb violence. Vincent, Houlihan and Zwart (1996) describe the effectiveness of peer mediation in role-modeling behavior for socially isolated children. The result of this study shows that peers, as behavior change agents, are effective in increasing positive social behaviors in a variety of problems and skill levels.

One of the most likely conflicts elementary-school children can encounter is with their siblings. Gentry and Benenson (1993) found that children who participated in peer mediation programs at school also used those skills at home when in conflict situations. Parents reported a decline in frequency of conflicts between siblings and a reduction in the need to intervene.

Most of the research regarding mediation is from the facilitator's point of view. Pastorino (1997) reports on a student-designed model of peer mediation, where student disputants' experiences are used in the design. The resulting structure is a five-stage model. Trust and confidence in the peer is identified as a major component to the success of mediation. Students said that the reason for this was the feeling of equality they experienced with peers.

This led to another important feature, which was identified as safety, which is essential in the program. Students described the first stage of identifying the dispute in their own words as “getting it all out” (p. 260). In the second stage, when exploring the relative nature of each person’s truth, students start to see differences as well as similarities in each other. “Disputants begin to understand there may not be a single truth but multiple truths, all correct” (p. 260). During the third stage, students’ own words described the event as “getting on the same wavelength” (p. 260).

The fourth stage showed that the students no longer held onto their positions, nor was there any concern about who were right or wrong. Instead, the students became part of the problem-solving process. Students became involved in genuine communication where agreements to disputes were viewed as by-products of the process.

Pastorino looks at developmental theories. Citing Freud, Erickson, Piaget, Mahler and Fowler, and says that by looking at these models, “one begins to recognize that children ages seven to nine are moving out into the world to test their relationship with others, their own competence, and their place in the world” (p. 254). This is also a time for children to become aware of differences and a time in which conflicts escalate. Developing mediation skills toward resolution of conflicts and prevention of violence is an option that “may be critical to offer ... to all children at these ages to allow a different experience of conflict resolution” (p. 263). When taught at an early age, the mediation problem-solving skills become skills for lifelong usage. Pastorino notes,

people in our society have gradually grown to be dependent on experts (co-dependency) rather than on the insights and powers of perception existing

within themselves. Continuation of such a trend arguably will increase problems and diminish creativity and consciousness as individuals continue to depend on others (experts) to solve their problems and thereby fail to realize their own ability and potential (p. 252).

By no means is mediation training limited to children's education.

Mediation for Adults:

In our mobile world, communities are changing to multinational societies. Bercovitch (1996) notes that "parties' reaction to their conflict and to the act of mediation is the result of their particular experience, society, culture, and structure" (p. 4). This observation by Bercovitch is in relationship to his work in international mediation. The same holds true for people in any kind of relationship. Rubin and Levinger's (1995) definition of conflict states that:

[e]very form of social conflict implies a perception of divergent interests - whether or not they are divergent in reality. Whether these differences occur between individuals or between states, between groups or between organizations, any conflict signifies some degree of perceived incompatibility between the parties' goals or between their preferred means of achieving similar goals (p. 15).

Canadian soldiers, prior to serving as peacekeepers in other countries, receive training in mediation at the Lester B. Pearson Canadian International Peacekeeping Centre, in Clementsport, Nova Scotia. Trainers from this Centre recently also provided education

sessions to parents, teachers, as well as students in their own communities. This was in response to racial conflicts that had escalated into schoolyard fights (Flinn, 1997).

Community mediation programs have been started to make mediation available to the public. Stipanowich (1992-1993) discusses a case study in community mediation. This is a model community program in Kentucky. The program is independent, nonprofit, quasi-public and enjoys the full cooperation and support of the court system. The service is provided by trained volunteer mediators. The program is geared toward the informal resolution of issues through mediation. Stipanowich calls this a “quiet revolution” which is “a worldwide phenomenon, from Canada to the newly opened markets of Eastern Europe and the Soviet Union to the far East” (p. 860). In selecting a system for out-of-court disputes that would fit the needs of the community, mediation was selected by group consensus. The reason for choosing mediation was that the primary emphasis is on negotiation and mutual accommodation.

Mediation does not guarantee a successful settlement; however, it provides for people to express their concerns and offers the potential for collaboration on issues of concern. Another benefit is that the parties can express their points of view in the presence of the others and this could serve as an eye-opener. “Mediation may help to overcome lack of trust and animosity, and establish channels of communication” (p. 872).

Within the best of programs there are areas for concern to be kept in mind; power imbalance is one such concern. Not all disputes can be mediated. Abuse situations, for example, are not suitable for mediation because of the power imbalance in abuse situations. Pre-mediation meetings are useful in determining suitability for mediation. The decision to

have a resolution centre separate from the justice system is helpful, in that it shows independence from the courts and provides for the needs of the community at large.

The Kentucky court has adopted a rule whereby the judge could refer civil disputes to mediation. The attorney's presence is not required if both parties agree. Under this rule, confidentiality of mediation communication is privileged information and is not admissible in court.

With regard to mediator qualification and training, Stipanowich notes, "we have come to recognize that academic qualifications in related fields are no guarantee of success as a mediator" (p. 903). This centre uses co-mediators and notes that mediators come from all walks of life. Training consists of a four-day program that is provided in the centre, and continuing education programs are offered to the volunteer mediators. Educating the general public to the possibilities of mediation is another function of the centre.

Overall, disputants rated the program effective even if no agreement had been reached. Mediation was rated to be less effective in domestic communication. "Mediation is likely to assume a primary role in whatever combination of public process and private enterprise that comprises the system of justice and conflict resolution" (p. 933).

Cox and Parsons (1992) report that according to the American Bar Association (Kestner & Wood, 1988), mediation lends itself well to a variety of disputes encountered by the elderly. As a result of this, "the University of Denver Institute of Gerontology sponsored the senior-to-senior mediation service (SSMS) project" (p. 420). Elderly volunteers were trained as mediators. The authors report that during the first nine months, the service

received seventy referrals. Volunteer mediators worked in teams. The program was so successful that a permanent program is being developed as a “not-for-profit agency” (p. 422).

Nelson and Sharp (1995) described “Project Helping Hand,” where volunteer mediators assisted people in housing disputes. The authors report that the project worked as prevention to people becoming homeless. In Boulder, Colorado, community mediation services are provided to low-income families by volunteer mediators. The service has two programs, which are funded by the city and specifically address family issues: youth services, divorce and child-custody mediation. The youth services program is not limited to low-income participants. Volunteer mediators are trained accordingly. The successful mediation service is because of a united effort by the city, courts, lawyers, private mediators, legal services and non-profit agencies (Coates and Damas, 1997).

The Department of Justice (1998) for the province of Nova Scotia designed a program of Restorative Justice; in this program, victims of crime have a chance to be heard. They can take part in the system, as with the victim/offender reconciliation mediation programs that are established. Offenders are being held accountable for their offence and must learn to take responsibility for their actions. Through this program, opportunities for restitution and reconciliation are becoming a possibility.

A framework of the restorative justice program that is presented lists as its primary goal a reduction in recidivism as well as increasing the victims’ satisfaction with the justice system. The community is to play an important role within this program. In the past the focus was on punishment by a process that alienated people. This new focus aims at

reconciliation, where the debt is owed to the victim and the community. Mediation plays an important part in this restorative justice program.

Mediation by Professionals:

Williams (1997), in a critique on Bush and Folger's (1994) *The Promise of Mediation*, that problem-solving mediation is inevitably directive, argues: "Let us not forget ...that mediation is a profession, and that, like any other profession, it requires skill and dedication" (p. 150). Williams looks at the client-mediator contract and says that the client comes with a specific request, and the mediator will try to help the client get an answer to that.

Within the commercial sphere, Alternate Dispute Resolution is seen as "A more consensual approach to problem solving" (Emond, 1989, p. 3). A process that is less expensive but also more accessible. "ADR does not argue that courts be replaced, rather that all processes have some contribution to make to resolving (or avoiding) disputes" (p. 24).

Adjudication excludes participation and looks at issues in terms of yes or no and right or wrong. Participation is seen as a dynamic feature of the process in Alternate Dispute Resolution forms. The **Conciliator** is seen as a passive third party who functions as a facilitator in overcoming barriers to a way of agreement. The **Mediator** is seen as an *active* third party, one that assists in the coming to an agreement. The mediation process in commercial dispute resolution consists of five tasks; (1) agreement to mediating, (2) understanding the problem(s), (3) generating options, (4) reaching agreement, (5)

implementing agreement. The confidentiality “without prejudice” privilege in mediation has been upheld in two leading Canadian cases (Emond, 1989, cited p. 48, 49).

The workplace is also using mediation as a model to resolve disputes. However mediation as a process controlled by the disputants takes a shift here. Within the managerial model, the disputants are related to as ‘subordinates’ and managerial control is driving the resolution process. Mediation is seen as an active strategy, and Elangovan (1995) presents a list of, Managerial Dispute-Intervention Strategies. The five strategies thus presented are: Means, End, Low, Full and Part control strategies. The concept of a successful intervention is defined as one in which (1) the issues are fully addressed to produce a settlement consistent with organizational objectives, (2) the resolution is timely, and (3) the disputants are committed to the resolution. The article lists a decision-climbing tree to assist the manager in the selection of the appropriate strategy. Rules that underlie the model and need to be taken into consideration prior to selection of intervention strategy are described by Eloangovan as; (1) dispute-importance, (2) time-pressure, (3) the nature of dispute, (4) the nature of relations, (5) commitment-probability, (6) disputant-orientation and, (7) the priority rule.

Family mediation has become a large field and, as mentioned before, has developed into the professional body of “The Academy of Family Mediators”. The process of mediation has been adapted to assist parties in their family conflicts. Most conflicts mediated by family mediators appear to be dealing with separation and or divorce. Coulson (1996) notes that, “[a] family mediator’s primary responsibility is to persuade people to commit themselves to a practical and enduring arrangement for their future, what the

Academy of Family Mediators calls an 'informed and voluntary settlement' " (p. 141). Separation and divorce mediation practices found their origin in an innovation by O. J. Coogler, who developed a model of *structured mediation* (Coulson, 1996; Grebe, 1994).

Taylor (1994) provides an opinion on the training and skill requirements for family mediators. The proposal presented calls for extensive training and notes that "there is more than one knowledge base we need to master" (p. 81). Taylor views education in (1) mediation, conflict resolution, and negotiation processes, (2) legal and financial knowledge and processes, (3) adult, child, and family development (historical, normal, and assessment) and, (4) helping professional skills (communications, interviewing, referral, case management, collaboration with other professionals, and strategic case planning) as the four foundations which are needed by family mediators to provide an effective and competent service.

Wiseman (1990) provides another focus of mediation, by using mediation techniques in the therapeutic field. She differentiates mediation therapy from couple therapy or marriage counselling as having a specific, narrow goal, assisting people with their decision-making skills. "People in mediation therapy are given instruction, often for the first time in their lives, in the art and science of assertiveness, communication, negotiation, and decision making" (p. 42). The therapy is based on twenty rational structures, which are interwoven with educational and sensory structures. "The business of mediation therapy is to help people become aware of the many cues already available to them, including those within their bodies" (p. 91). The therapy is also useful for couples who want to make decisions

about whether or not to live together or to get married. It helps people identify their needs and wants rather than what they think they should do (Wiseman, 1990).

I have found that in parent-adolescent conflicts, family therapy techniques are often useful for unblocking or uncovering and externalizing entrenched interactional patterns. I believe family mediation may be considered as another “window in” to a family, which can assist them to change. I would argue that family mediators benefit highly from the use of family therapy techniques and that family therapists are well served by mediation as a particular structured, focused, problem-solving method (Favaloro, 1998, p. 107).

The similarities between mediation and therapy are multiple and at times this may become a gray area. Favaloro (1998) looks at the differences and similarities of mediation and some therapeutic strategies and in particular mentions the solution-focused brief therapy and the Milan therapy.

Summary:

The above-presented literature review is but a fraction of an extensive body of excellent research that is available. The material presented is to give the reader a sampling of the work and to present an overview of the different pathways that are emerging in mediation.

Mediation as is shown has been an integral part of various cultures to maintain continued communication and relationship between people. In our Western culture,

mediation has been adapted to meet a variety of needs. Peer-mediation programs in schools are taking hold and appear to be successful in educating young people in how to manage their conflicts in a productive manner.

Conflict management in the adult world seems to be taking two different directions. Community mediation programs are assisting people to manage their own conflicts, which empowers them. At the same time, mediation is promoted as a profession in which the mediator is the expert. Debates about the mediator's education, how much education and what type of education, are frequent in the literature. In this sense it is the mediator's role that has been under investigation in the research.

"Participants in a conflict need skills and orientations similar to those of a skilled mediator if they are to develop constructive solutions to their conflicts" (Deutsch, 1993). Participants' voices in the mediation process, however, are noticeably absent in the literature. Pastorino (1997) has started to change this trend by giving voice to adolescent disputants in his study. In another format, mediation has been developed into a therapeutic tool that is used in instructing people in awareness and effective decision making.

Chapter III

METHODOLOGY AND METHODS

Not all consciousness is knowledge, but all knowing consciousness can be knowledge only of its object.

— Jean Paul Sartre

Methodology:

This study is qualitative in nature and utilizes a phenomenological approach. One of the five features of qualitative research as defined by Bogdan and Biklen (1992) is that qualitative research is more concerned with process than outcome or product. The participants' experiences can be understood in developmental terms, over the course of a lifetime or during a brief period of time. "By learning the perspectives of the participants, qualitative research illuminates the inner dynamics of situations— dynamics that are often invisible to the outsider" (p. 32). These authors also state that "[r]esearchers in the phenomenological mode attempt to understand the meaning of events and interactions to ordinary people in particular situations" (p. 34).

Van Manen (1990) describes phenomenological study as "the study of the lifeworld ... it aims at gaining a deeper understanding of the nature or meaning of our everyday experiences" (p. 9).

When trying to gain understanding of the *lifeworld* of each other through communicative action, Habermas (1996) notes that this action is circular.

The actor stands face to face with the situational relevant segment of the life world that impinges on him as a problem, a problem he must resolve through his own efforts. But in another sense, the actor is carried or supported from behind, as it were, by a lifeworld that not only forms the *context* for the process of reaching understanding but also furnishes *resources* for it. The shared lifeworld offers a storehouse of unquestioned cultural givens from which those participating in communication draw agreed-upon patterns of interpretation for use of their interpretive efforts (p. 135).

A similar view is expressed by Schutz', "world-taken-for-granted". He argues that the individual derives a world view in much the same way as his/her social roles and identity are derived, which, as he notes, are pre-defined by their society (Berger, 1963; Holstein and Gurium, 1994). The argument then is that we assume that our view of the world is experienced in a similar way by the other. We take our subjectivity for granted and therefore, we can understand each other.

The philosophy of Edmund Husserl (1970) is that the interaction between perception and interpretation is not passive in nature but that our conscious mind is actively involved in the construction of our experiences. This philosophy is used by Schutz as a foundation of his theory that an individual approaches the lifeworld with a stock of knowledge which is composed of common sense constructs and categories that are social in origin.

Dewey (1967) similarly describes perception as a form of "*Knowledge of actually present particular things or events*". The object of the perceiving activity of mind is, in ordinary phrase, 'the world of the senses' "(p. 139). He continues by saying that the world

of perception is an external world of things (objects) and appears independent from intelligence. “The world appears to be *independent* of the intelligence: the latter has only to open its sensory organs and let the world report itself in consciousness” (p.139). Therefore, he argues, perception is objective and is opposed to thinking. The mind appears internal and for it to exist depends on intelligence, which is subjective. The external or objective world is taken in by the senses and then submitted to the internal or subjective world for processing, where meaning is described according to the objects.

Perception may be defined as the act in which the *presented* sensuous data are made symbols or signs of all other sensations which *might* be experienced from the same object, and thus are given meaning, while they are *unified* by being connected in one wholeness of meaning, and made *definite* by being discriminated from all mental contents possessing different meaning. The unity of a perceived object expresses the fact that it has been grasped together in one act of mind; its particular character expresses the fact that this same act has separated it from all other acts of mind. An object, in short, is the objectified interpreting activity of intelligence (Dewey, 1967, p. 141-142).

Van Manen (1990) views Phenomenology as the science of interpretation of lived experiences by looking for the meaning of that experience. The work is always recollective, and since the moment of first experience has passed, it is already lived through. The recollection of the lived experience is through reflection and the experience is then reconstructed. The researcher’s task is to attempt “to construct a possible interpretation of the nature of a certain human experience” (p. 41) by asking simple questions such as, “what

is it like to have a certain experience” (p. 45). Phenomenology looks for the meaning of the experience,

the problem is that our “common sense” pre-understandings, our suppositions, assumptions, and the existing bodies of scientific knowledge, predispose us to interpret the nature of the phenomenon before we have even come to grips with the significance of the phenomenological question (p. 46).

It is important, Van Manen says, to stay focused on the original question, when asking this question of what is it like? He adds that to investigate something, the investigator needs to “live” the question to have it come from the heart.

Phenomenological study does interpret the meaning of the event. Denzin (1992) notes that:

Interpretation is a productive process that sets forth multiple meanings of an event, object, experience or text. Interpretation is transformative. It illuminates, throws light on experience. It brings out and redefines, as when butter is clarified, the meanings that can be sifted from a text, an object, or a slice of experience (p. 504).

Method:

To conduct a study which provides the perspectives of participants who have participated in a mediation process, the method of data collection is through face to face interviews.

The mediation process provides confidentiality to the people who access this service. In order to find candidates willing to participate in this study, the process of contacting participants must be through the mediators to ensure the continued confidentiality for the people and integrity to the mediation process. For this purpose I have contacted mediators for assistance in this venture, with a request to approach their clients.

Contacts are established through: Valley Community Mediation Society in Wolfville; John D. Hill, Q.C. and Jean DeWolfe, L.L.B. who make use of mediation in their law practice; Kentville Family Court Mediation Services; Valley Youth Alternatives (Victim-Offender Mediation); AMS Family Mediation Services and Dartmouth Family Court.

Those contacts who are able and/or willing to assist in approaching prospective participants are provided with a letter to the prospective participant (Appendix A), with a request for participation. This letter provides the prospective participant with the purpose and method of this study and a means to contact the researcher. Confidentiality is thus maintained and leaves the participant a free choice of participation.

The number of participants for this study is entirely dependent on the availability of willing participants and as such is a convenience sample.

To ensure the feasibility of this study and to help clarify problem areas, a pilot project was conducted. The female participant used in this pilot remains in the study. Eventual selection of the participants was based on access to participants, which was very difficult.

Prior to this study, I was acquainted with two of the participants. They learned about the study and offered to be participants in this project. I did not have prior knowledge about their mediations. The third informant was a friend of one of these two participants and

expressed the desire to participate in this study. Only one of the people that mediators approached agreed to participate, and gave permission to be contacted.

When contact with a participant was established, a time and date convenient to both participant and myself were set to conduct the interview. The time of the interviews was approximately one to two hours in length. The interviews did not require much time because the participants were very willing to tell their stories. It also must be kept in mind that the actual mediations are short-term events, which in these cases lasted approximately three to five hours. Provisions for the possibility of a follow-up interview(s) if deemed necessary, were made.

Two of the interviews were conducted at my home, as this was convenient to the participants. These interviews were conducted in a quiet room without interruptions. The other two interviews took place at each participant's residence. The participants were relaxed in their own atmosphere and there was very little to distract them during the interview.

Prior to the interview, participants were assured of continued confidentiality and anonymity, for all parties, by use of pseudonyms. During the interviews the tape recorder was in full view and participants were told that if at any time during the interview they requested the tape be stopped, this would be done.

The interviews were conducted in an open-ended conversational style, where the major focus was on the participant's experience in mediation. During the interviews little questioning was needed; my task as the researcher was to keep the participants focused on

the process rather than on their conflict. However, a list of questions to guide the interview was prepared to assist in the interview (Appendix B).

The interviews were conducted in a conversational manner. Each participant was invited to talk about his or her mediation. At the beginning of the interview, I asked each participant to begin by talking about who initiated the mediation, how the mediator was chosen and what brought them to mediation. During the interview the participant talked about the actual conflict that resulted in mediation. The actual conflict is not of relevance to this study; however, the participant's story of the conflict is relevant to the mediation process as experienced by the participant.

My role of the researcher during the interview was that of conversational partner. When the participant departed from the topic, I would then steer the conversation back to the topic of the mediation. All participants talked comfortably about their experience and needed very little encouragement.

Participants were informed that the tape recording of the interviews would be destroyed after the tape had been transcribed. As the researcher, I personally transcribed the taped recordings of the interviews.

Each participant has been given the opportunity to review a copy of the transcript of their interview and make changes if he/she wishes to do so. Three of the participants did review their transcripts; one person did not feel this was needed.

Although assistance was given to the researcher by various contact persons, she was also informed by a Family Court mediator that the Department of Justice has not yet defined the process, and that the mediator works with the input from a judge. The agreements

reached within this system are legally binding contracts, and the mediators felt that they were not at liberty to ask the clients if they wished to participate in a study, without judicial permission.

Data Analysis:

Individual stories of mediation will be reconstructed in the participants' own words and presented to the reader. By using direct quotes from the transcripts, the participants' voices will be a formal part of this study.

Transcripts will be analyzed by reading and re-reading the transcripts. By using this process questions emerge. Looking backwards at the mediation the question that first arose was, "What is different at the end of the mediation compared with the beginning?" In trying to find an answer to this question the first theme was uncovered. Subsequent questions following from this are: "How did this happen, what happened?" The researcher tries to discover areas of similarity and or difference within the stories of these mediations. When related themes are discovered and extracted from the stories they will be identified and presented in a analytical format for interpretation of their content. The presented material will be interpretive in nature.

Following analysis of the material, the researcher will present it in a discussion chapter to examine the findings of this research, and how it relates to the established research body.

The actual sample of participants is small because of difficulties in finding participants. However, I found that because of the lack of this type of study in the field of mediation, it is important to present the material that was available.

Chapter IV

THE PARTICIPANTS

Understanding has meaning only if it is consciousness of understanding.

— Jean Paul Sartre

The data presented in this chapter are taken directly from the interview transcripts. The data are presented in the participants' own words. The material has been rearranged, presenting the participants' experiences in a sequential manner, to give the reader the individual stories of mediation as experienced by the participants. Each mediation story is introduced with a brief outline of the problem that brought the participants to mediation, followed by the participant's story, with some interpretive sentences to provide continuity to the story.

It is important for the reader to keep in mind that these stories are told by *one* person in a mediation situation and, as such, the presented material is from *that* one viewpoint.

During the interviews, details pertaining to each individual conflict were revealed which are not included because they were not deemed pertinent to the mediation process by the researcher, and would breach the participant's anonymity. The names of places and persons involved have been altered to provide continued anonymity for the participants and others involved in the stories.

Ann

Ann and her partner M— had agreed to a legal separation with a chance of reconciliation. Ann wanted M— to be out on his own looking after himself, dealing with his problem, and doing what he needed to do with his life. M— had agreed to this and had accepted his share of monies from the residence for this.

What brought them to mediation was the non-compliance with some of the terms that the couple had agreed to in a legal separation agreement. One of the terms stipulated in the agreement was a time frame as to when M— would move out of the residence. The problem arose when, three months past the agreed date, M— had not moved nor had he made any effort in that direction. This was especially problematic because of some other stressful events that took place during that time in Ann's life, which added to the stress she experienced. Ann had heard about mediation from her partner's counsellor, and she also knew about peer mediation in the schools.

Ann called the counsellor and requested to work with them as a team using mediation as she felt that:

I couldn't get through to M— on my own. I felt something had to be done, with someone that M— would feel safe with and that I would feel safe with too because we were not getting anywhere in talking to one another and, so I felt it would be a very positive experience. I thought this is someone M— knows and that has worked with us already. He knows the situation. It was free. I felt that this was a step between he and I discussing it and getting nowhere or getting a court to enforce it. I had no money to go to court.

After a pre-mediation interview with the mediator, Ann says that a lot of her anger had dissipated.

I felt supported, and I felt that something was going to happen. Just knowing that there was going to be some action.

Going to the mediation session, Ann describes her feelings as:

I felt a little bit, when I went there first, that the mediator may side with M— because he had been M—'s counsellor for two years. I was a bit apprehensive that way. Because I thought if M— was not going to agree that maybe the mediator may side with him. I was feeling a little bit scared of how M— might react. So I had a little bit of fear. I also felt I had support.

In the actual mediation, I was feeling very sad. Especially when you see a person that you lived with and loved crying there, in the office with you. You think, why can't we work this out? Here we are, we are both so sad about what is happening and here we are sitting with the mediator trying to figure out yet another way to end it.

I also felt very empowered I guess because I knew something was going to happen. Because the mediator agreed to do it and M— agreed to come.

Ann identifies the parts of the mediation that were most helpful to her in working toward an agreement as:

The part that helped was that we had a neutral person. The facilitation of conversation, with the rules. Simply by facilitating our

conversation, by listening and saying and repeating. To redefine if it had been heard in a different way. Clarifying, "Is that what you meant" or "Would you say you are happy with that definition?" I think those things are very helpful. We were not yelling at one another, it was calm, we were taking turns we were respectful.

The fear she had felt at the beginning of the process,

Became less as time went on. I started realizing that some things were going my way. Because by the time we got through number one I was already feeling better. I could see that M— was not going to argue or fight and that helped me to relax.

Ann had brought a list of things, as she had been advised to do in the pre-mediation, which she wanted to have resolved.

I had seven or eight things and M— did not have any. And I thought the fact that M— came there without any requests or any needs, was a sign that he was ready to talk, or a sign that he was acting victimized, or a sign that he was feeling powerless or whatever. M— answered in a way that cooperated with whatever my request was. And then when I left there I felt, oh ... I got everything that I wanted. M— did not have any needs on his list or wants. But I still felt that M— was not happy with the decision.

She said that they had been through a lot of counselling to try to gain a better understanding of each other and that had not worked. The mediation was more like business. Ann said that she felt good because she got everything she needed.

I felt empowered for sure, like good that something was finally going to happen, I can start feeling not so angry. Because now I have a time frame and I know that things are really going to happen, because I knew he would not let the mediator down.

It was not that M— was not going to let me down, he would not let the mediator down. And I am sure that in his heart he felt that these were the right things to do under the circumstances.

I felt satisfied that I had support in saying what I needed to say and I had support in being heard. That part I felt very satisfied with. But I did not feel that my partner was satisfied with the choices. I felt he was going through the motions and putting on a powerless face. I felt that he acted like he had been victimized.

After the mediation Ann said:

I did not feel let down by the mediator, but I feel let down by my partner. When we left, he said, "So you got your own way." M— did not say how he really felt. I wanted him to tell the mediator how he was really feeling about this. Cheated and disrespected and kicked out and manipulated. He had told me all about these things, but did not voice that at all with the mediator. I don't feel that M— had respect for me.

M— had a lot of respect for the mediator and I think I had that working in my favor as well. Had it not been someone that we knew it, may not have been that easy for me, I just feel that he would have not respected

the persons qualifications, or sincerity or position if he had not worked with him.

There was no more talk about those issues. They had been resolved, we had some dates set, things happened. Everything M— agreed to happened. Our talk did not change because of mediation, we have just grown to respect one another more than we did during that very angry time.

Ann said she felt comfortable and safe with the mediator. She said that mediation was working because of the neutral stand of the mediator. Asked if she gained anything from the mediation she replied that she had not because the mediation had been short term.

Asked if she would like to have seen anything different, and if so what, she said;

I would have liked M— to give me an argument. Because he had lived there months past the date that he was to be out. And he had lots of arguments with me, but had no arguments at the mediation. I would have liked him to present his argument during mediation. I thought he was going to retaliate and I thought that maybe we could really come to an understanding, about the way he was feeling. But I am sure he left three years ago with those same feelings that he had at home.

Ann noted that this was very different than talking to a friend. She said she had talked many times with friends about this and that did relieve a lot of her anger, because she said friends sided with her but it did not change anything.

Brian

Brian and his partner S— were in the process of divorcing. They did try marriage counselling before arriving at this point; however, Brian says that S— refused to go to any more counselling. He said, “ *We were in a negative position.* ”

Brian reflects that once he found that the divorce was going to take place, his major concern was to get through this with a clear conscience. Brian was guided in this by his grandmother’s words:

You cannot afford to buy a clear conscience, you don't have enough money.

If you go through life with a clear conscience on anything you have done, then you have done something right.

The marriage counsellor had suggested mediation as a way to proceed if separation or divorce was the course of action to follow. Mediation was suggested as a means for property settlement and division of assets to avoid the major legal expense of court action. Brian had worked in law enforcement and had seen the negative effects of going through the divorce courts. He hoped to avoid this route by using mediation.

*Mediation itself was a brighter alternative. I felt **anything** else was worth a try first. It was a positive more than a negative, it showed a possible solution to the problem without the additive expenses of legal fees and the destruction that sometimes divorce courts cause.*

Brian wanted to use mediation and suggested this to S—.

When I first suggested it to my wife she was against it, she had wanted to go for the courts. Once I explained to her, what mediation was

and how it could possibly save us a lot of legal costs, she agreed to go and give it a try.

Brian subsequently called the counsellor with the request for mediation. Brian and S— went to a short pre-mediation meeting and set up an appointment. Brian said that after the pre-mediation meeting,

I went home immediately and I did a room-to-room search of everything in the house and listed everything. I then took the preparation of making three copies, my intention was one for the mediator, one for myself and one for my wife. I listed everything from spoon right up to the largest item, including financial assets that I was aware of, and bank accounts, everything.

I felt cautiously optimistic, that the outstanding issues might be resolved. I feel that if someone is using 'common sense' and can offer an intelligent route to follow I am willing to listen. Again I make up my own mind, but I thought it is worth a try.

On the date of the mediation, Brian and his wife S—traveled together to where the mediation was to take place.

We drove the approximately 45 miles in my vehicle and not a word was spoken. We were both extremely stressed when we arrived there. I think the mediator sensed that. The mediator separated us quite considerably, he made sure we were both sitting in a position of neutrality almost. I was not allowed to stand up, I had to sit down, so did she. Once it was explained to

me that the mediators' role was a neutral position and making sure that everything stayed there, I understood where he was coming from. A matter of fact it probably relaxed me more.

The mediator told us what he wanted to do, my wife was a little reluctant because she did not know everything we had. I then produced the lists and at that time she became very defensive. The mediator very quickly pointed out the benefits of that for both of us. We then took this list and with the mediator we agreed on separation of all the items, putting our initials by each item that we were to get.

I remember a feeling ... it had to be fair not only to her but also to me. So a certain amount of anxiety over the fact that once a decision was made it was final. You have the fear of saying or doing something that upset my wife. I wanted to make sure that I came across as being fair but also wanted to come across as being firm. I was not there to come ahead of the game. As long as I could see that I was treated relatively fair, I was happy.

The main concern I had, was with this family heirloom (from Brian's Grandmother) she wanted to keep possession of. That was the one point, which I was adamant on. It made me kind of angry in a way, because I felt it was an action of greed on my wife's part. And I also felt that it was probably being used as a pawn to get more too. That sort of made me angry a bit too.

Brian said he, surprisingly, was able to control his anger, but he said during the session S— had called an end to the mediation. That and the issue about the heirloom brought them several times to caucus. He said that the mediator praised him for controlling his temper but also reminded him of the consequences if he lost it. Brian recalls that the mediator pointed out these were items that they were talking about. They were just things and that they stood more to lose if they had to go through a costly court proceeding. He also pointed to the effect this might have on their children.

We did go into caucus over this heirloom business for one thing. That was necessary for both me and my also my wife. I think it is a matter of the mediators advice that he gave to me in the caucus and the things that he pointed out is sort of like a slap side to the face with common sense. It is very easy to loose track of common sense when you're involved in family heirlooms, things you have worked for fifteen years, twenty, thirty years, all your life even and I think the mediator put me back on track as to what the real picture was.

This was all done in one session. It was a very intense session and quite lengthy (three hours). I think it was the last caucus, he suggested that we continue on with it, if we both felt up to it because he felt that to break might lose the momentum we had going. We both agreed to it.

Brian said that his reason for staying with the mediation was to have some closure. He said that walking away would not solve anything;

If we were able to stay and fight it out, it would be somewhat of our decision. A judge would not give us that choice and I felt it should be, since my wife and I were the ones that were together all those years. Our combination of efforts got us what we had, so it was up to us how we are going to divide it.

Brian reports that he felt safer with every moment that passed, by the progress they were making, with every item they agreed on. He said that he had expected his wife to walk out. He also was watching the mediator closely.

With every step that we took, every agreement we made, gave me confidence in the possibility of a success. The mediator was extremely neutral. That was reassuring, because he appeared that he did not give a darn whether I got one item or another, just as long as we both were happy. When we were getting towards the end and things were leaning more towards her than towards me, he even pointed that out. He said he did not care, he made it quite clear that it was not important to him. As long as I realized it, that's all he cared about. And he stopped quite often to praise us for our progress. I was quite surprised because I felt my wife is going to be adamant on a few things and she eventually did come around.

Brian did say that there was definitely a power struggle.

She wanted to be in control, she was ... she had her walls well up, she said she was in charge of her own live and nobody is going to tell her what to do. Every time I was going to say something that basically took

power or control away from her, the mediator would say, "Now Brian wait a second" and he would explain the situation to both of us. I think the power was neutralized very quickly, on both sides.

At all times we knew what was the right way to act and what was not the right way to act. The mediator really did have to mediate in some situations, not just against my wife, I stepped out of line a few times too. Quite often he kept the lid on things. We had to justify our reasons. For instance; the mediator would say, "Why? Why do you feel that you should have this?" If questioned, you have to justify what you are saying, it is kind of hard some time if you have no justification.

When I lost, it bothered me at first. You had to stop and sort of reason with yourself as to why she won that particular battle.

Interrupting when the other party was speaking would be dealt with at once by the mediator. Brian said that,

At first it would make me kind of mad that he would stop me in the middle of my thought. But I did not think that I was also stopping her in the middle of hers. I complied of course, because those were the rules and I had agreed to them. It gave me more time to think, for a proper attack basically. When the mediator said let's wait till she is through, when she was talking I was gathering thoughts more so. I probably saved myself a lot of embarrassment. After the first time the mediator stopped me I was glad he

did. But basically it worked to my advantage. To think, not to saying things I should not have but saying them better.

The mediator, also asked me before he concluded the mediation, "Are you sure you can live with that, are you happy with what you agreed to. Now here is what it looks like. What does it look like to you?" He was basically asking if I was willing to accept this, and I said, "Yes" and I still feel to this day that I made the right decision.

After the mediation session was over Brian says:

I felt okay, I can live with this, I am happy with this. I was satisfied with the final result. My wife could not wait to get to the next day to get it typed up and have me sign it before I changed my mind, so I felt that she felt quite good about it. She felt she had won. I felt that I had won. Again, like I say, it was not a fifty-fifty deal, but it was within the limits of what I set my mind to.

The whole way back not a word was said, although, I did request that she stay clear of a specific lawyer. That lawyer has a reputation of destroying, please don't go to that lawyer.

I had agreed to pay all legal fees to have the agreement drafted up, the whole works. And once that was done she took it to a lawyer to sign and she did not take my advice, she went to that lawyer and hence the two and a half, three year legal battle. So the mediated agreement from her lawyer came back as being totally unacceptable. We proceeded going through the

divorce courts. The thing what impressed me the most about the mediation was that, the divorce agreement was an almost identical draft of what we had mediated.

Brian said that a close friend or an untrained mediator could not have taken us through this, because the emotions were too high. Brian said he learned a lot from the mediation. He said that

The mediation itself was the beginning of me looking at people a little different. I am nowhere near as confrontational as I used to be. That you should think before you jump to some sort of a conclusion or decision. I have come to appreciate the other persons' point of view a lot more. Instead of snapping back and reacting, now I am more up to thinking out and respond.

Asked if he was surprised about this, Brian responded:

Being arrogant, of course I was. I thought of course, I am smart, not to agree with these kind of things. So I thought it's always the other person. However through the mediation process, I understood that I was just as much to blame as my ex was. And I was just as unreasonable in some cases as she was. But mediation basically kept us on the straight and narrow.

As I say the win-win situation was possible, but before a win-lose would have satisfied me, as long as I was the winner. I was always the good guy, but mediation also pointed out that I could be the bad guy. You know I could be unreasonable. Any mediation is a reality check if it is done with

your eyes open. I have also learned now that giving does not necessarily mean losing.

If you pay close attention to what happens in the mediation process, it can do nothing but improve your attitude towards life. That sounds pretty profound, but what I am saying is, I thought I was pretty sharp and pretty intelligent and on top of things, but can also see where I was wrong in a lot of cases, a little too unbending on certain things. But when you do the reality check, it does not hurt to bend a little bit.

In discussing the results of going through the court system, he notes that his wife was happy with the mediated agreement. Brian notes that the agreement that is in place after the court proceedings, is “almost identical” to the mediated agreement. Brian reflects that this in itself is a test of the fairness of mediation that the court came up with the same thing.

Kate

Kate does not recall where or how she first heard about mediation. Kate had sought counselling to fix what she thought was her problem. After exhausting all her resources, she finally decided to separate. At the time of the first mediation she was still living in the same house with her ex-husband. Kate describes that time of her life as follows;

I had physical fears of him at that time. I've since realized that they were probably inflated by me not dealing with the physical abuse when it happened. But I was extremely fearful of him for some time, after our separation. So much so, that when I did tell him I had a friend in the house

at the same time. He had a gun. An unlicensed gun and I was fearful of him using it. And so a significant portion of my decision making had the flavor of that.

Kate said that her ex-husband J— suggested seeking mediation, within about a week after she told him that they were going to separate. Kate agreed to mediation because she felt that there were significant concerns. Among other issues, how the children would cope in relation to the separation was an issue that needed to be addressed.

The first experience for us was with two counsellors, our goal was to have them help us clarify what way we would tell the children that their parents were separating. There were also issues about how the separation would work.

Unfortunately, as so often is the case, my ex-husband had another agenda. His agenda was to use that situation to explain himself and have people understand him. So at least half the session was spend on him defending and explaining his side of why I had decided I could not be married to him. So I felt a big chunk of it was a waste of time, as far as the real mediation process.

Kate relates that the issues that came to light were J—'s addiction problems. He had identified the relationship problems as Kate's problem. She said,

Indeed, when I separated from him, he still considered me sick. I was co-dependent and I needed a lot of help, he felt I was suffering from exhaustion. Carrying the financial load, because I was the major

breadwinner. He was going to help me through that, once I decided to separate.

The mediators, it was a man and a woman team, helped us, they helped me look at the abuse issues with him. I thought I had to clarify that during the session. But they also clarified for him that those are big issues, not just a little thing that happened. That they are much harder on a marriage than he realized, and perhaps the fact that he was not consciously, completely in the marriage for a large part of the time, maybe was why he was unaware of how serious the problem might have been for me.

They did allow us to get back on track, and I found it very useful when they asked us to formulate the goals of that meeting. And then we were able to spend some time on those particular goals.

Kate had decided that she would move (for safety as well as practical reasons) and find a place for herself to live. She details that the main issue to be mediated, for her, was how the children would relate to where she was moving. J— kept referring to it in a way that was offensive to Kate.

It was important that the children see that now they have two homes. And this was not just a vacation for Mom. He responded well to it eventually. The mediation process I think worked quite well in that case, because they allowed us to get back on track. They heard and they were able to give him a little bit of feedback. But they would remind him of the stated function of this meeting. So that made me feel they knew, that they were

going to stay with the stated agenda. They also reaffirmed my stress of some of the things he tried to minimize, like they heard my comments and restated them or asked me for clarification.

Kate talks about her feelings during that meeting, especially the power imbalance she had felt in her relationship with J—.

First I felt ripped off that he was grand-standing and when I realized they were not going to let that go on forever, I felt very safe and reassured that they saw that for what it was. They heard him, because he was a person who had needs to be heard. But they were not going to let his needs take over the meeting. They also knew that there was another side and they were interested in enough of the other side for me to feel heard. I felt very championed, I felt they were not specifically on my side but they worked equal. They re-enforced me, because there had always been a power problem or a sense that J—'s agenda was stronger and more important. I felt that I was in a safe place to be heard and get down to brass tacks, over things that really mattered. So that was a good experience for me. I think it was successful in that regard. They were also keen to provide us with the service we had originally asked for.

I remember feeling, my dear if we have to spend this much money and this much time over those two issues. How to tell the children and what to call the mother's new home, were the two real issues that were clarified and that took an hour and a half of four people's time.

In reflecting on her experience, Kate said that the mediators did not make any judgements. They just commented on the impact his behavior had on her and the marriage. She said she was feeling very sad that she had not dealt with all that in the past. She also felt sad that he did not remember some of it. She had carried it as a big load; he did not deny anything but said he had forgotten or not realized or could not remember the occasion.

Still it brought up stuff I had tried to put away a long time before. In a way there is a great deal that gets uncovered in a short period of time and that's probably why it is pretty exhausting.

They did not return, because Kate said she could not relate to the man in the team. She found him cold and very reflective. Another reason was that J— had a friend whom he thought would be a good mediator. Kate said she also knew and respected this person and agreed to go and see her. Kate said that she is not clear if this were actual mediation.

We wanted assistance from someone on how to look at the issues. It was mostly on J—'s initiation, his agenda was always to fix the marriage. My agenda was to feel safe and to feel like I could get some energy back, because I was very emotionally exhausted. I felt like I was going to die. I felt like I was so angry all the time that I was going to get cancer and die. I did not think my body or my soul could survive any longer.

And so I agreed to go to this mediation more to appease him than really looking for assistance.

Kate had sought help for herself and was trying to heal herself. She said that these meetings just took more time. She said that the process is kind of foggy. She agrees that these sessions were more about discovery than about resolving issues. Kate did go to these sessions because,

You see my husband had been an addict for twenty years probably. I thought it was a bad habit, but when I realized that he had been an addict for twenty years, I thought I'm gonna do whatever I can to be useful for this man. Because he is the father of my children and I'm gonna have to deal with him for the next fifteen years. And so I thought this process is not particularly painful to me and I am not leading anybody astray, I can participate in it. So I did. But you know, at times I remember the mediator saying, "It is true that J— wants to work on this and you have stated you don't." And that is one of my concerns about mediation. That what the mediator says can be very, very powerful. I remember a few times feeling like she implied that he was trying harder than I was. And I am not sure she meant it that way, but that is how it felt to me.

Kate said that at first she had felt a lot of guilt for making the decision that ended the marriage. At the same time, she could see some positive aspects of the sessions.

The mediation felt like a safe place, I could express myself. You know this active listening where someone recounts what you've said back to you that works very well with me, because then I am very comfortable that they heard me.

We were very respectful to give each other due turn that worked quite well. A few times J— would interrupt, or I would interrupt, if someone said something blatantly hurtful or blatantly wrong. You know, in our minds.

Part of the issue with telling painful things to your partner, in front of someone is that you see, in the person you cared for's face, their pain or sorrow or their attempt to try and not just hear you but defend or react and you can't. I found it. I find it hard to be with, when I am trying to say if I am reacting to that person's response. So if you are telling a story it is much easier to tell it and not look at and feel the response of the audience. For me anyway. And the mediator allowed that.

It actually felt very freeing and almost like a treat. I mean I know that sounds funny, but I would leave sometimes thinking that was a treat, you know somebody got to hear. Somebody got to really hear me, and I did not have to debate or step sideways or beg. There was no dancing around, there was just saying it and having it actually heard. So that was ... she certainly provided a safe environment for that. And then he would do the same and I would sense that he was grand standing a fair amount of the time. And I do think that he fooled her. I mean he would persuade these people that he was really genuinely was very fond of me.

Kate talks about issues that brought her to this point in her life. She was left very confused and tired. She sought and found help at different places to work on her own issues.

So the mediation, I must say did not work as well over what went wrong with our marriage, because we had different agendas for that. It felt less directed, because of that. It felt kind of free flowing and just kind of talking for the sake of. Eventually she enabled me, as a mediator, to tell him in a safe environment that I had made my ultimate decision. I used that opportunity with her to tell him that I had decided that I could not work on this marriage and that we should be working on a divorce eventually. That he might as well understand that and move on with what he needed to do in his life. So it certainly provided a safe place to do that and she was excellent at trying to help him not to be extraordinarily rude and nasty to me at that time.

We discussed with her as well some of the terms of the separation agreement. A big stickler was custody.

Kate had discussed these issues with a lawyer and other helpers. They had told her that she did not stand a chance to get full custody unless he was physically abusive or actively using drugs around the children. J— had never been abusive to the children and had every right to at least joint custody. Kate herself describes J— as a loving father who adores his children. She did, however, want to be able to protect her children.

Anyway, because I was fearful plus I really hate fighting. His manipulative controlling stuff was primarily with me. He was never demeaning to the kids. He was never physically abusive to the kids. So I thought that they deserved him in their lives, so I thought this joint custody

was appropriate. My big fear was what if he starts using again or what if I started to see manipulative behavior to the children? So I wanted to put in the separation agreement an affidavit. And he ... it all gets juggled, if you do that then he was going to write an affidavit. I had been told I was not competent, in little ways for so long, I was fearful that ... you know.

So I agreed to this joint custody, but when we were actually writing up the separation agreement, I felt that I needed some power. I thought I need some way to have more control over where they spend their time, if he should become that way again. We did go in to discuss all this stuff with her and that was useful. I felt she championed my cause.

Kate said that J— agreed to that but that she still felt her children were not protected, she said she changed the wording again and took it to a lawyer who advised her to stipulate her reasons. Otherwise a judge might perceive her as just power hungry. She was told that she could not expect the court to provide protection unless she gave a reason. She did change the wording to include the addiction problem. J— did not like this and did not see a need for that. Again he rewrote the agreement, but Kate felt that she at least had the most important aspects documented.

It has been documented that he was a regular user and he acknowledged it was a problem. So he took out the manipulative behavior and I thought no, it's the [drug] use that I am interested in, because that explains a lot. If a judge is on the ball or has any knowledge of addictions, he should realize the scenario that goes with that. That's of concern as well.

And he agreed to sign the separation agreement and divorce that gives me ultimate say over the children's scheduling. So I compromised significantly on that. And she did ... no we did not go back to her again. We tried once and it did not work at all.

It worked in one regard: he became his old self. Accusing, you know in front of her. She acknowledged that it was disrespectful and that she did not expect me to put up with that.

It was definitely useful to ask her help with the settlement issues. And how the custody would work.

Asked if there were anything that she would like to have seen different in the mediation and what she responded by saying:

I wish I had been more well, to start with, I think if I had been able to operate with less fear, I would have been less stressed by it all. The financial cost of mediation is so high that you feel you have to save it. In some ways it was such a safe place to be, it could have been used more. Cost and time are always factors.

Kate said she felt safe; however, at the same time she felt that she could not completely trust the mediator's style. Kate identified that as the difference between artistic and science based people. She said she was a little more black and white.

Part of me is a little distrustful. I am a bit distrustful of people who have such a broad background that they can use jargon that sometimes sounds like it understands. But I was at a stage that I just wanted to stop the

madness. Stop the abuse, stop the manipulation, stop this hurt that I felt. And the mediation process did not always allow that because, she has to walk that balance between not offending him.

In respect to this I asked Kate how she felt about the mediator's position - did she feel it had been neutral?

No, I think they bend over a little more for J— because he was likely too bold if there was any sign of judgement. I think that she did lean towards representing his needs more than mine, yeah. Part of me is okay with that, because I do think his needs are greater than mine in that.

When asked if she would consider mediation again if she were to have a dispute, Kate specified that it would depend on the relationship she had with the individual. She said with her children and siblings she would consider it. She added:

If it mattered a lot and I felt that there was a potential for that person to really want to see the other side, then I probably would. But I have a lot more "cut your losses" philosophy. People don't really change. It depends on the issue.

The most important part of the process for Kate was, she said,

The counsellor's ability to hear what and to acknowledge that they have heard what has been said. And to give equal opportunities for both people to be heard. When I felt that they defended me in my right to be outraged by his behavior, those were stunning moments.

Kate said that it was valuable to learn that there is a safe place you can go. That listening to someone else's point of view in that kind of a safe environment means you won't be talked down to or persuaded or bullied. She also expressed some concerns she had, in particular what the result would be if one person is a poor communicator and the other person is a great communicator. She reflected that mediation,

Is only as good as the mediator is. So it depends a great deal on the communication skills and the experience of the mediator. If the mediator re-enforces something the manipulative person says or does, that is very powerful to me. That would make me feel smaller and ganged up on. That's when I go back to those comments where she said, "J— is right, your intention never was to work on this marriage, J— is the one who wants to work on this marriage" as well as another counsellor's comment, "You may have left this too long." Those are weighted comments to me and they made me feel or I did respond to those with feeling guilt. He is trying harder than you are and you did not do what you should have done in the first place.

Fred

Fred learned about mediation from his partner, who suggested this as an option to resolve the problems he was experiencing with his ex-wife.

He felt somewhat apprehensive making the decision to go to mediation because he said, "I am not a person that really likes to go to other people with their problems". He

considered that there were not that many options available and decided this to be the best course of action. The other option he saw was to go to court.

Fred and his ex-wife had been separated for more than five years at the time. They did have a child and the concerns he had were regarding the welfare of his child. Fred said that he and his ex-wife had always had a stormy and volatile relationship.

He called the mediator for an appointment. Fred did not know the mediator and neither did his ex-wife. He did not consider talking to someone he did not know to be a problem. He said,

I had been used to the idea already, because we had been separated for five years. I had already dealt with all those feelings of rejection and whatever. I wanted to resolve this thing for my [child] more than anything else. I was in some respects, I suppose, being a little bit selfish too because I felt I was being short-changed in the relationship and after the relationship as well, as a father.

Fred said that his ex-wife did not want to go to the mediation when he first suggested this to her.

I said either, go to mediation or I am going to take her to court. I gave her a choice. Yeah, go to mediation or I'll see you in court, one of the two. So she agreed to go to mediation.

Going to mediation, Fred said,

I was a little skeptical. I did not think it would work out, just because of the history of our relationship was fairly non-communication, for a long

time, about things that mattered. We could talk about music or art or literature or whatever no problem. But if you wanted to talk about cooperating to solve family problems or cooperating, it never happened, it just turned into a free-for-all. It was a dominant sort of thing there, like it was either your idea or my idea. There's no middle ground. It was impossible to breach any topic where there was a need for concessions on both sides. And it was not just her, it was me too, you know. I get my back up, my attitude for sure.

In the mediation Fred said the first thing that the mediator did was set out the parameters of mediation and determine their goals as participants. The mediator also explained that their cooperation was needed to accomplish their goals, and that a mediator was not a miracle-worker.

It was frustrating at first, because I thought, "Man, this is, what a waste of time, we're not really talking about anything to do with anything here right now." In retrospect in thinking back on it I realize he was just setting up format, so that he just would be walking us through the process so that we could reapply these simple moments when things got more complicated. I am not sure if he consciously did that or not but that's what it seemed like to me.

He was very honest, he did not lead us on in a false way and that was pretty cool. It worked out reasonably well; I had a very positive feeling just

about being heard. You know and having someone there, just to make sure that you could be heard and not interrupted when you want to say something. There were some major issues involving our child that needed to be resolved and there was not a cooperative effort on our part, to maintain an open-minded communication. In concerning the child's well being, I thought. And a lot of issues actually, many different types of issues that were just not being addressed whatsoever, at all. It was nice to ... you know everybody needs to vent. Especially if it's something that is real important and you feel you have not had a chance to for five years. So in that respect I think it was a positive thing, for me anyway, it's nice to get the stuff off your chest. Just to speak, have it said.

When Fred was asked if his feelings of skepticism with the mediation changed, he said that his feelings changed quickly once the mediation had started.

The process itself I guess. The ability of the mediator to maintain a level of calm so that we could talk. The first night I felt it was a viable process, immediately. I liked the mediator, I thought he was calm and seemed fair. I thought it was good, the possibility was there to open up some channels of communication to resolve some issues. Helping to see the perspective of what they are doing, to the point where they realize that this is about their child, it is not about them. It is not about their ability to be dominant or anything like that. If you had reasonable people and they love their kid, then you would realize that's all that both parents wanted, was to

have a healthy normal relationship as much as possible. We tried to do that, I guess and it did not quite solve it but it was a stepping stone.

Fred talked about the approach of the mediator to remain an equal power relationship as follows:

He came to us from a fairly neutral corner. Kind of spoke to agree on what we felt was important for our child and as parents who love their kid, it was difficult not to, and unless you approached it in an open and reasonable way. Which I felt like we sort of did. And it made sense to me anyway. It was not much that we could disagree on. The process itself seemed fine.

I think his presence in general was more a rational procedure than petty. The arguments between people can be very petty.

When arguments happened during the mediation, and they did a couple of times, the mediator handled this as follows.

If you'd sort of get out of hand, then he would ensure that it was more important that both parties be heard. And if you felt like it was unreasonable accusations or whatever, that person be given a chance to defend themselves. Or at least the information be given in a way that was not insulting, that helped a lot, oh it was great.

I guess there was a power struggle, there always was. I think that we were people who had different approaches to parenting. It became a problem to talk about our approaches to parenting, because my ex-wife did

not want to talk about it. I could not talk about it because she would not answer the phone, even if the child was right there. And then just like that, I get a phone call, "I'm dropping her off today, I had her for two weeks, you can have her for two weeks." That was unacceptable to me, because the child did not know from one day to the next where she would be.

Fred said that they were able to communicate during the mediation because, as he put it,

We both had a swing at the ball. Meaning, I had my say and then she had her say and then I had a chance to sort of resolve some of my feelings on what's already been said and then say some more and then I would be quiet and she would get to do that. The mediator maintained a sense of rapport and if we got off topic, he said, "Ho, we are not talking about that now, we are talking about this now. Let's maintain our focus here." And in that respect it was really good. Which was a big problem with any argument, it's hard to stay on any topic isn't it, when you're fighting with someone. It's probably very good of the mediator being a patient man that he was, that he helped us stay focused on the topic. Whatever we were talking about and trying to resolve, he maintained that we stick to that until we come to some kind of mutual ... I don't want to talk about this anymore or to resolve this to the best of our satisfaction.

Fred described the most important thing about the mediation as:

The mediator's ability to stay impartial, you know his ability to maintain respect between the individuals. That was the big ... because that was what was really lacking in our communication, was respect.

It's good having an impartial third party, that has a say, you know. Maybe say, "It's not your turn, don't talk now. It's this person's turn to talk now" or "stay on topic or let's not lose our tempers here. Let's maintain our ability to communicate here let's not get petty or whatever." That was the most important thing to me.

Another thing that Fred found important was the mediator's adherence to the agreed-upon length of the sessions.

One of the big problems, I felt, with the relationship was the inability to scheduling and the inability to stick to a plan. Even in the few instances that we did have a plan, it always changed at the last minute with little or no notice. I think in some sense the process of being where you say you are going to be and doing what you say you are supposed to do or how long you say you are going to do it, that is a good thing. It's not just kids that need routine, you know.

After the mediation Fred said that they had come to an agreement, but that this only worked for a brief period. He was satisfied with this agreement but it did not work out.

It worked out reasonably well. I had a very positive feeling just about being heard. The mediated agreement that we arrived at, it was a very general agreement, left a lot up to the individuals involved, myself and my ex-

wife, to uphold their communications, etc. And that did not happen, so we ended up going to court anyway. I thought it was a start, I was hoping that might turn out to be something that would continue, but it did not.

We really wanted to resolve the issue as soon as possible. School attendance was one of the problems, she would not attend school from her mother's house. The only thing that made the court process work was that she did not show up for court a lot of the time.

It seemed to me, the mediation process in some respects was better than the court process, because you get to say what you are feeling. You don't have some guy who does not even know you or your kid or your problem or your history, there negotiating with some other person who does not know you from a hole in the wall or her from a hole in the wall. Telling this other guy with whom they do this all the time and he is used to these people. And comes to some agreement that you have to live by and it really has very little to do with you. So in that respect I thought mediation is a better thing in a lot of ways, because at least you are dealing with real people. You know. Somebody you know and problems that you understand and they understand even if they don't agree with you. You know they understand it from their point of view they may get a chance to say that.

Asked if he had learned anything from the mediation, Fred said that he has a great deal of respect for the process.

I thought the process very helpful, is definitely better than court. It makes you feel better. There were decisions made by me during the process. Although it was a painstaking, cumbersome at times thing to do.

It helped me to understand some of her reservations about the relationship about two-part family, you know. It helped me to understand where she was coming from too.

Every experience you have is in there. Being civil and communicative with somebody that I really, you know in some respects is, yeah, that was a good experience I imagine.

Asked if he would use mediation again, he responded,

I'd recommend it to anyone. Even now I think it might be helpful once a year to get together with my ex-wife in the same room with a mediator for half an hour and just spend fifteen minutes each, talking about what was going on. Your concerns and, you know it was not a one way street. I mean, there were things that I was doing, that I really, you know, that came up that was really bothering her. And I could see where they would, you know. But I had reasons for that. And they were usually a reaction to something that, it was like a catch twenty-two situation it was just swirling in a circle. So I think it would be helpful even now, I think.

Fred also commented on the trust and understanding he felt from the mediator.

He realizes that the process can work. It's a healthy process and I think he believes in it and his ability to believe in it was instrumental in

making our mediation, even though it broke down, a limited success. I think so. It seemed, like the ability to be able to just speak and get your point, words, without interrupted was ... was a treat.

Chapter V

THE INTERVIEWER

It's really a wonder that I haven't dropped all my ideals, because they seem so absurd and impossible to carry out. Yet I keep them, because in spite of everything I still believe that people are really good at heart.

— Anne Frank.

The stories of the participants contained more than just the words in which they have been presented. The interactions between the participants and myself during the interview conveyed more than the spoken words. Tone, and volume and velocity of the speech and the demeanor of the person contribute to the meaning of those words. This joint information of words and their presentation do form the basis for the interviewer's perception.

In this chapter I bring the reader to the interviews. I do this by describing the settings of the interviews and the surroundings that became part of the interviews. I present portions of the transcripts to show how we interacted. In these portions I have placed bracketed comments on voice changes.

I have known Ann casually for a few years. We like each other's friendship. Although I knew of her separating from her partner, we never much talked about how and why this happened. Ann offered to be interviewed when I talked to her about my thesis work, and I gratefully accepted her offer; we decided that Ann would come to my place for the interview.

We sat in a small room that I have set up as a study. Ann sat in a desk chair and I sat directly opposite her. The microphone of the tape recorder was held in her hand so that she could control the recorder and turn it off if she wanted to do so. I made sure that she was comfortable and that we would not be disturbed. Ann settled in and asked me what I wanted to know. After a brief explanation we turned the tape on. At first Ann talked about how she arrived at the point of going to mediation. During this she spoke in a firm voice and was relaying the factual parts of her story. When we talked about being in the mediation, at times Ann was transported back into the time and remembered. The transcript shows this in the following exchange. (M is the interviewer, and A is Ann).

M: So once you were there and you were together in the actual mediation, what did that feel like?

A: In the actual mediation it felt like uh... What did that feel like? Well it was very sad. I was feeling very sad, because it was another move toward what I wanted. But the whole thing was such a disappointment and such sadness that when we got there in this room, with someone we both knew and we both were very sad about it and we just could not get beyond our feelings, you know together. [Ann's voice becomes much softer and slower]. I felt well, I felt comfortable. [She said this in a firm voice, it seemed that she was checking herself not to become too emotional and regaining her strength to focus back on the purpose of the interview].

M: You did?

A: Oh, yes I felt very comfortable with the person we were talking to, sure, and I felt ... I also felt very empowered I guess because I knew something was going to happen, because the mediator agreed to do it and agreed to come.

M: Did you feel empowered into that you were going to get what you wanted to get out of it?

A: Yeah, well. I did not know that I was going to get what I wanted, but I was hopeful that I would.

M: And what about your partner?

A: I don't really think he understood what we were doing, he knew we were going there to get help and the funny thing is just this morning I saw him, and he said, "So, what are you up to this afternoon?" And I said, "Oh, I am going over to Mary, to do an interview on mediation." And he said, "Mediation? What's that?" So it kind of tells you that here we are two years later and he still was not even really there. He was in a bad way too mentally at that time and even you know a year later he said he didn't even remember going.

But I felt that he was there, yeah emotionally and mentally. [In a reflective tone]

M: In the mediation you felt like you were empowered, you felt like you had enough control?

A: I did and I felt that I had support, because I talked to the mediator prior to that, about what I wanted and that we had a legal agreement in place already and that things were not happening and we needed some help to make them happen.

M: So, how did that help, what was the part that helped.

A: The part that helped was that we had a neutral person, really who, well I guess I felt a little bit, when I went there first, that he [the mediator] may side with M—, because he had been M—'s counsellor for two years. So I guess that's another, I was a bit apprehensive that way. Because I thought, if M— was not going to agree that maybe the mediator may side with him, but he didn't surprisingly. He just sort of facilitated our talk and he made us listen to one another.

M: How?

A: He made us repeat what the other person said and confirm what the other person had said and asked if we understood what the other person had said. Which was all very good, and I had a list of things when I went there that I had written down what I wanted to talk about they all got talked about and I left there still very sad because knowing it was coming to another level. `M— was very sad too, we were both sitting in his [the mediator's] office crying, with our mediator but came away with some decision's that had been made mutually. I felt though that M— was just giving in. I felt that he was acting powerless, by the time we got there he was just going through the motions, I felt. He just agreed to everything. [Ann's voice becomes soft when she talks about the sadness, when talking about M—'s behavior her voice becomes stronger and louder as if getting upset with him].

M: Why do you think he agreed?

A: I think he may have thought that the mediator may agree with me, I don't know exactly

M: Yeah, it is hard to speak for him, but what about you? Like you wanted to have?

A: *I wanted to have several things clarified and some dates set*

M: *And you feel that in the mediation you accomplished that?*

A: *Yeah, we did*

M: *So what was different in the mediation?*

A: *Well, we were not yelling at one another. It was calm we were taking turns we were respectful.*

M: *And why were you not these things when you were at home?*

A: *Because, we had... Why were we not these things at home? I guess because we had an out, we could walk out, we were still very angry, you know if we got to a point where we were raising our voices we stopped talking because we thought we would wake the babies. You know!*

Ann conveyed her feelings of sadness and also her feelings of hope and disappointment, throughout the interview. It made me feel that she still cared very much for M—, but that she was also mad/sad/disappointed that he had not changed.

During the interview my role was conversational in nature. At times I redirected the conversation to being in the mediation. Ann, however, was very focused on the topic of the interview herself and redirected herself at times.

I knew Brian from mediation meetings and a course we both attended. During a call to Brian, with a request for participants he offered himself to be interviewed. I was invited to his home where we would conduct the interview. When Brian welcomed me into his

home, I was also given a very warm welcome by the dog. Brian talked to me about the things he had been able to teach his dog whom happily obliged in showing me his repertoire.

We chatted a little prior to the interview and Brian told me that it was his own mediation that had inspired him to go on and become a mediator. Brian is active as a volunteer mediator, helping people, where needed.

The table in the large farmhouse kitchen had several file boxes to which Brian pointed and said that those were the result of having to go through the divorce court. He explained that, because of the costs of the legal route, he now had to put his home on the market and all savings were gone. He did show his sadness about this but never laid blame, instead he talked about the system that allowed this to happen. Brian also said several times that the divorce agreement was nearly identical to his mediated settlement. The court experience has made his belief in the mediation process stronger, he explained. Before this meeting I had no knowledge of Brian's personal situation.

Brian's mediation took place more than two years ago and he still seemed puzzled about the marriage breakup. He spoke with great respect of his ex-wife and fondness for his children. Brian's main concern then and now is to be fair to others and to be treated fairly. He talks about how the division of assets would lead to disagreement. The mediator helped them through this.

We sat at the table, the dog obeyed and stayed where he knew to lie down, ready for play in case anyone might suggest it. The recorder was on the table and we started the interview. (M is the interviewer. B is Brian).

M: *In the mediation, the tempers did get high, you give a lot of credit to the mediator for controlling the tempers of the parties, and being able to continue through that whole process.*

B: *I don't think a close friend or an untrained mediator could have taken us through it. Why? Because the emotions, were too high. One, she had specific ideas on what should be hers. I had certain heirlooms that I wanted to remain with me. She even wanted to have my camera, I said no to that, cause ... and I said there is no way that camera is going. The mediator stepped in and said, "Why, why don't you want her to have the camera?" I said because that was a Christmas gift from my two kids. And he just looked at her, he said you can have the camera. Things like that.*

M: *So he made the decision?*

B: *No, he just asked, well, if this was a Christmas gift from the kids, why do you want it? Explain to Brian, why you should have it. And she says, no never mind. So he never ever made any decisions, he just asked her or me to explain why do you want that. When I had to explain it, if I could not explain it, it was kind of hard for me to say, well it should be mine. Why should you have it over her? Well, because it was her great grandfather's but I like it more than she does. That would not be a good enough reason. So this is the kind of things, the tactic's of the mediation.*

M: *So, when you had to say it out loud, it did not make much sense, to want someone else's Christmas present.*

B: *Exactly. If it is a gift, given to you by your children it is hard to say why. And I think being a third party, common sense kicks in first.*

Later in the interview Brian came back to this same point.

.....Break, Tape turned.....

B: *The fairness of it was done by, for instance; now if I said I want the table and chairs, "That's what I want." First of all before my wife had a chance to clear the chair type of thing, he [the mediator] says, "Why, why do you feel you should have the table and chairs, Brian." I said, "Well because my grandfather sat at it when he was sixteen years old, he and my grandmother almost a hundred years ago. I said it's been in my family ever since. It's always been in my family and I feel it should still stay in my family." "Well what do you think about that Mrs. B?" "Well, it was his grandfather's, but don't forget I was his wife for fifteen, eighteen years." "Why do you feel that gives you the right to take a family heirloom, explain to him why you think you should have it." "Well, I just think I should that's all." "Why?" "Well, I don't know." "Can you think of any reason, Brian, why she should have it?" "No not really, cause my grandmother always wanted it to stay in my family, my grandfather always wanted it to stay in my family." [Brian took on the roles of the others, to convey how this worked, in doing so he changed his tone with each character to represent the different parties].*

M: *So the mediator really kept questioning each person's motives.*

B: *Yes,*

M: *What happened if you would interrupt?*

B: *He [the mediator] would stop that immediately. He'd say, "Brian will you hold that thought for a moment, Brian you want Mrs. B to finish her statement. Now when she*

is finished, can you continue with your point. If you want to, just write it on your little pad there, as to what you want to bring up there, so you don't forget it."

[Speaking as the mediator]. *So then when she said her point, I might come back and say, well she already has a part of it, but [Emphasis Brian] I want to know this or I want to know that, you know. Quite often he [the mediator] kept the lid on things. We had to justify our reasons.*

M: And that was helpful for you?

B: Oh, yeah. If questioned, you have to justify what you are saying, it is kind of hard some time if you have no justification. If that was hers when she was six years old, why should I have it now? You know, that's very hard to do. And it also made it a little bit easier next time when she made a demand. It was reasonable for me to ... it's kind of hard for me to ... [Reflective]

M: How did you feel when that happened, going forth and back?

B: When I lost, it bothered me at first. I don't know, like I wanted to have that (notepad) that should be mine. But I guess, I suppose, where it was hers all of her life, I guess, yeah. You had to stop and sort of reason with yourself as to why she won that particular battle.

M: How did you feel that you couldn't just say what you wanted, when you wanted?

B: Oh that did not bother me. Gave me more time to think, for a proper attack basically. When he [the mediator] said let's wait till she is through, when she was talking I was gathering my thoughts more so. I probably saved myself a lot of embarrassment.

After the first few times that he [the mediator] stopped me I was glad he did. As you know, the reaction is what kills you.

M: *You would have reacted and once the words are out of your mouth you can't take them back.*

B: *Exactly, yes.*

M: *So you were kind of glad he made you stop.*

B: *Afterwards I was yes. At first I was not, it just would make me mad that he would stop me in the middle of my thought. But I did not think that I was also stopping her in the middle of hers.*

M: *And what did you do about it?*

B: *Nothing at first, but I complied of course, because that's the rules that he [the mediator] lay down. He laid the rules down before we started. And we had agreed to that. So what else could I do. Those were the rules I had to follow them, because I had agreed to them. But again it worked to my advantage. To think, not to saying things I should not have but saying things better.*

During the interview I followed Brian through the process of telling his story, where I was the listener asking probing questions for Brian to elaborate on what he had said. Brian spoke forcefully throughout the interview.

The interview with Kate was very different from the two former interviews. I had seen Kate once or twice but did not really know her, nor did I know anything about her. Kate

had told Ann that she was interested in being interviewed because she had been in mediation and wanted her concerns to be known.

I called Kate and asked if she were interested in being interviewed; she affirmed that she was, and we arranged for a time and place. Kate agreed to come to my place and, as with Ann, I used my study, where we sat directly opposite each other. It was a quiet day and I had made sure that we would not be interrupted. After some pleasantries we started the interview; Kate held the microphone to control the tape recorder.

After I explained the purpose of the interview, Kate started her story and the circumstances that brought her to mediation. She spoke softly and quietly about her experiences and needed little or no prompting to talk about this. Again I took the role of the listener and only needed to respond to clarify my own understanding of what she said. Such as in the next excerpt of the transcript. Kate had explained her situation and what had led up to the mediation. She talked extensively about this (two pages of the script) the excerpt is started where she identifies the issue that needed to be worked on in the mediation. (K is Kate and M is the interviewer).

K: And one big issue that came up, was what to call where Mommy was moving to. And there was quite an argument over that because my husband kept referring, ex-husband, kept referring to "Mommy's home" or "Mommy's new home." And because they were my children and they were going to be living with me too I was very offended by that. [Emphasis Kate]. So we spend some time trying to have him understand. That was a big deal for me and he should respect that. And that it was

important that the children see that now they have two homes. And this was not just a vacation for Mom. [Spoken firmly].

M: Yeah

K: And he responded well to that eventually. [Speaking much softer].

But, eh ... his agenda was different than mine, his agenda was to have people understand him and forgive him and work on the marriage. My agenda was very different. [Reflective]

M: How did that make you feel?

K: Well the mediation process, I think, worked quite well in that case. Because they got back on track or they allowed us to get back on track. And they allowed it not completely because of J— telling his story which he does.

M: So, how did they go about that?

*K: Well they heard and they were able to give him a little bit of feedback, but they understood. But then they would remind him that the stated function of this meeting was, to discuss how we might communicate the problems to the children in the best possible way. So that made me feel that they knew ... that they were going to stay with the stated agenda. And they also reaffirmed my ... stress over some of the things he tried to minimize. Like **they heard** [Emphasis Kate] my comments and restated them or asked me for clarification. [... Indicates where Kate paused to choose her words carefully when remembering].*

M: Inside, what did you feel like?

K: Well first I felt ripped off that he was grandstanding [Rapid and firm tone of speech] and then when I realized they were not going to let that go on forever, I felt very safe and reassured that they saw that for what it was. [Slowing down and softer, as if relieved]. And they heard him, because he was a person who had needs to be heard. But they were not going to let his [Emphasis Kate] needs take over the meeting. And they also knew that there was another side. And they were very interested in enough of the other side for me to feel heard [Emphasis Kate]. And they were also keen to provide us with the service that we had originally asked for. [Sounding relieved]

M: So what did that do to the power balance?

K: I felt very championed, I felt like they were not specifically on my side but they worked equal. They re-enforced me, because there had always been a power problem or a sense that J—'s agenda was stronger and more important. He pushed harder, and so I felt that I was in a safe place to be heard and get down to brass tacks, over things that really mattered. So that was a good experience for me. I think it was successful in that regard.

M: Hm, hm.

K: There are so many issues around separation and divorce, that I remember feeling, my dear, if we have to spend this much money and this much time over those two little things. And they are not that little, but how to tell the children and what to call the mother's new home, were the two real issues that were clarified that day and that took an hour and a half of four people's time. [Laughter, as in how ridiculous this

is]. It opened my eyes to how much the potential for conflict and how time consuming the details of breaking down or fixing or adjusting to those changes was going to be.

Kate's voice is quite expressive, the hurt and pain she had experienced were clearly audible. When she related some painful memories, her voice would drop to a whisper and become very slow, in doing so she related the tiredness she experienced during that time. During the interview I could feel myself taking sides and becoming more sympathetic toward Kate and feeling negative toward J—. I also felt surprised that she could see J— as a person who had needs. I asked her if she felt that she had been an en-abler and she said, "I think I was." I was impressed by Kate's strength and her insight and am glad that she has moved past this.

Fred was contacted by his mediator with my request and agreed to take part in this study. I was given Fred's phone-number and contacted him to confirm and arrange a time and place to meet. Fred invited me to come to his home to do the interview. Upon arrival I was greeted by the dog in the yard, Fred opened the door and welcomed me into his home. Fred had his young son in his arms he remained with us during the interview. The baby had just learned to walk a few steps, and having him there was fun. He sat very happily on his Dad's lap for a long time and only made us aware of his presence when he wanted something to eat. Seeing Fred with his son was a pleasure to watch.

We sat in the kitchen with some open space between us; I held the recorder on my lap and turned it on when Fred was ready. He is an easy talker, meaning that I felt that he was very relaxed. He did tell me that he was very happy with his life now. Fred's primary

focus, during the interview, was always on his son; the role I took was that of asking open-ended questions. Fred's conflict was related to his concern for his other child from a previous relationship. He was very willing to talk about his mediation and I kept the interview conversational, as in the following excerpt. (F is Fred, and M is the interviewer)

M: Did you get a chance to make the decisions or, like with the power balance did you feel it was pretty much equal?

F: Oh yeah, well the mediator made it that. Well the way he approached it, he was fairly ... come to us from a fairly neutral corner anyway. Kind of spoke to agree on what we felt was important for [the child] and as parents who love their kid it was difficult not to. You know, and, if ... unless you approached it, if you approached it in an open and reasonable way, you know.

M: Yeah

F: Which I felt like we ... during the first stages of mediation, it was, we sort of did that. And it made sense to, you know, it made sense to me anyway, it was not much that we could disagree on, but in that respect. Yeah, the process itself seemed fine.

M: So, just that you have to listen to each other and can't interrupt, that was

F: That was a plus

M: That was a plus?

F: Yeah, it was for me anyway.

M: Is that what turns it around, versus not being able to do that at home when you ... like you say it was a volatile relationship, you just get louder and louder and you stop listening?

- F: Oh yeah, pretty soon you are arguing about things that you know, don't even mean anything.*
- M: Exactly. Yeah your temper gets in the way.*
- F: Power struggle, you know, gets beyond*
- M: Within the mediation, that power struggle, he put the lid on it right away?*
- F: Yeah, well I think like his presence in general like was fairly ... more a rational procedure than petty, right. The arguments between people can be very petty, extremely*
- M: How come they did not pop up during the mediation?*
- F: Oh, they did, couple of times, yeah.*
- M: They did, and what happened then?*
- F: Well he would just say ... he would give the other person the floor as opposed to ... If you'd sort of get out of hand then he would ensure that it was more important that both parties be heard. And if you felt like it was unreasonable accusations or whatever, that the person be given a chance to defend themselves, you know. Or at least the information be given in a way that was not insulting, you know or people were*
- M: Yeah, so that helped?*
- F: Oh, yeah, it helped a lot. Oh it was great, yeah.*
- M: Did you feel safe, discussing you know, part of your life is on the table.*
- F: Yeah, I wanted to resolve things for my daughter, more than anything else.*
- M: You reveal part of yourself within that process.*

F: Well, Yeah, I didn't know [the mediator] from a hole in the wall. He was just like buddy on the bus like, you know.

M: How did that make you feel to start to talk about your personal business, with a stranger, like you are doing with me?

F: Yeah, I was okay with it, I was okay with it.

The transcript also includes evidence of Fred's ability to continue with the interview while paying attention to his son. As in the following section,

F: It is not about their ability to, you know, be dominant or anything like that. It had more to do with

-----Okay bud, let me cut that in half, pretty big one-----

... if, we had someone, you know if it was in the ability by people to, if you had reasonable people, you know, and they love their kid. I guess every mediation is different, as there's a different situation.

The interview with Fred was the most light-hearted, and I felt relaxed and enjoyed myself. Throughout the interview he related his concern for his child. At times his speech was halting which felt as if he were looking for the right way to say what he wanted to say. Fred told me he did the interview as a favor to the mediator; he really appreciated the mediator's efforts.

Chapter VI

DATA ANALYSIS

RESPECT

There can never be deep peace between two spirits, never mutual respect, until, in their dialogue, each stands for the whole world.

— *Emerson*

In analyzing these data, specific points of interest are extracted from the stories and presented to the reader. These are points that have been identified by the participants to be significant in the mediation process. By looking and trying to establish similarities between the different mediations, it may be of use to the reader to note that all four participants were Caucasian between the ages of thirty to fifty years of age. In these four mediations one thing is immediately evident. All four mediations are the result of conflict situations involving family relationships, either past or present. This by no means is by design, but rather by coincidence.

Communication difficulties between partners are noted as they are reflected in the stories. Ann talks about how she “couldn’t get through to M— on my own”. She also talks about how they dealt with their communication problems at home. “We had an out; we could walk out”. Brian talks about the strained relationship between himself and his partner. He describes his relationship with his partner as their being “in a negative position”. He describes the drive to and from the mediation as a forty-five minute drive when “not a word

was spoken". Kate talks about her partner having his own agenda and she said "there had been a fair amount of control and manipulation and also a fair amount of emotional abuse in the form of criticism, for a very long time". While Fred reported that "there was not a cooperative effort on our part, to maintain an open minded communication", he also said, "the history of our relationship was fairly non-communication for a long time, you know, about things that mattered."

After the mediation, Ann reports that M— commented, "So you got your own way", but she also said mediation did not change their talk to each other, but that they had "grown to respect one another more than we did during that very angry time." Brian said he learned a lot about his own behavior in communication as he said, "I am no where near as confrontational as I used to be". Communication between him and his partner remained strained as he described that, "the whole way back not a word was said". Kate said about her mediation, "It worked in one regard: he became his old self. Accusing, you know in front of her". Fred said that he personally learned from the mediation. He said that their agreement "left a lot up to the individuals involved, myself and my ex-wife, to uphold their communications, etc. And that did not happen."

Within these mediations there are several aspects that are mentioned by all four participants. One of the aspects identified and pertaining to the conflict is that of **anger**. All participants spoke of anger as a powerful force associated with the conflict.

Ann identified her marital problems as being the cause of this anger. "I felt very powerful at that time, anger makes me powerful and very motivated." In that sense, she says that just knowing that the mediation was going to take place allowed her to let go of some

of her anger, knowing that there was going to be some action. In that sense mediation was seen by Ann as business. She needed to resolve this issue in order for her to feel that she could move on. Inaction made her angry.

Brian had accepted that a breakup of the marriage was inevitable. He had decided that to resolve the situation he wanted to make things fair. Being fair to everyone was of major importance to Brian. When his sense of fairness was violated by the other party, he reacted with anger. Brian was able to control his anger. However, the parties did have to go into caucus to defuse the emotions. Brian found it helpful to be reminded of the consequences of losing his temper. He said that, "I felt that if I can control my temper, my anger, and my feelings, it might make it easier for her to see where I come from."

Brian also said that at first it would make him mad when the mediator stopped him when he spoke out of turn, but said that later on he was glad about this because it gave him time to think before he spoke.

In Kate's situation, the anger she felt was directed toward herself. At first she said, "I remember feeling confused, I didn't know why I was upset, why I was sad. I didn't really know what he wanted. All I knew was that I was furious and angry. I could never do anything quite right." After she had decided to separate she said, "I was really angry at myself. I had let myself be emotionally bullied for a very, very long time." At that point she went to mediation to appease her ex-husband.

Fred also spoke of anger, but for him much of this was in the past. He said, "I felt a little bit of distance from the situation as far as my ex-wife was concerned. Like I did not lose my temper with her."

The anger arose as a result of the conflict, then became an obstacle to resolving the conflict and actually increased the level of intensity of the conflict.

One of the most important parts of the mediation identified by all participants was the **mediator's neutral position**. All participants entered mediation with some degree of fear, skepticism or apprehension. The neutral position of the mediator was identified as not taking sides and being non-judgmental. Participants said that the neutral position of the mediator earned him or her a trust position and made the participants feel safe and gave them confidence in the process.

Ann said, "The mediator never said 'I think you are right'. There was no personal input at all." Ann said that this was much different than talking to friends, because friends do tend to take sides, and nothing changes in that situation.

Brian said that he was watching the mediator closely and found that, "He was extremely neutral. That was reassuring, because he appeared that he did not give a darn whether I got one item or another, just as long as we both were happy." Brian several times makes mention of the third party's common sense and how helpful that was for him.

In the first mediation Kate described mediator neutrality as, "They were not going to let his needs take over the meeting, and they also knew that there was another side." Kate said that made her feel safe and reassured. She also said, "I felt championed, I felt like they were not specifically on my side but they worked equal." In the subsequent mediations, Kate said that although she liked the mediator as a person she did not trust the mediator's style. When asked if she thought the mediator had been neutral she said, "No, I think they bend

over a little bit, yeah I think that she did lean towards representing his needs more than mine.”

Fred also expressed that he felt skeptical at the onset of the mediation, but that, “The ability of the mediator to maintain a level of calm so that we could talk” was very helpful. Fred also commented about the mediator, “he came to us from a fairly neutral corner anyway.”

Rules and having them enforced by the mediator was an extremely important factor in the mediation process to all the participants. In Ann’s case, having rules in place and taking turns speaking gave her the feeling of respect she had felt was lacking. Having the rules in place and thereby listening to each other helped Ann. She also said that she and her partner, through counselling, had learned about rules of communication but that, “having someone there, enforcing them made the difference.”

Brian relates to the rules as being part of the fairness of the process, he said, “At all times we knew what was the right way to act and what was not the right way to act.” He said that the mediator quickly stopped both parties when he or she overstepped the boundary. Brian admits, “At first it would make me mad that he would stop me in the middle of my thought, but I did not think that he was also stopping her in the middle of hers.” Brian said he complied by the rules because he had agreed to them, but he also said, “It worked to my advantage to think, not to saying things I should not have, but to saying things better.”

Kate does not make any specific reference to the rules in the mediation, in fact she said that, “We were very respectful to give each other due turn.”

Fred does remark that for him having a third party who can say, "It's not your turn, don't talk now, it's this person's turn, their turn to talk now, okay?" was very helpful, because he said, "The ability to be able just to speak and get your words, without being interrupted was ... was a treat."

Having a rule in place for taking turns in speaking was for the participants a significant part of the mediation process. The resulting effects, of having this rule in place was important in other aspects because it gave the participants a feeling of **being heard**. This sense of "*being heard*" was expressed by the participants with relief.

Ann had a pre-mediation meeting and felt very positive because she said, "I had been heard simply with questions from the mediator." She also felt she had, "support in being heard." Ann added that in addition to the rules, clarification of statements was also very helpful and added to her feeling of being heard.

For Brian, being treated fairly was of major importance and, in that sense, he was being heard because his sense of fairness was kept intact during the mediation.

Being heard for Kate was important. As she said, "I felt championed". Kate said it "reinforced me because there always had been a power problem." She said that sometimes she caught herself thinking what a treat it was to be heard. "Somebody got to really hear me, and I did not have to debate or step sideways or beg. There was no dancing around, there was just saying it and having it actually heard."

Fred also expressed a sense of relief at just being able to talk about the issues he had been worried about for a long time. "I think it was a positive thing, for me anyway that ... It's nice to get the stuff off your chest you know. Just to speak, have it said."

It is interesting to note that during the telling of the stories some of the participants used similar expressions in connection with the mediation process. One such an expression is the view of taking **“steps”**. Both Ann and Fred used this expression. Ann saw the mediation process as: “I thought it was a step between he and I discussing it and getting nowhere or getting a court to enforce it. I did not want to get into nasty legal things at that point and I felt that this was a step in between.” Ann also said that she felt that it was important for people to know that “there is a step between personal problem solving and court.” Fred saw the process more “like a stepping stone towards being more candid, in speaking of our child’s life.”

Another expression that was used by two different parties, was the feeling of part of the process being a **“treat”**. Kate used this expression when she felt her side of the story got heard as she said she had learned that her issues tended to get lost in the relationship. Having a chance to tell her story, she said, “It actually felt freeing and almost like a treat.” Fred, in a similar vein, expressed this feeling when he said, “like the ability to speak and get your words, without being interrupted was ... was a treat.”

Another observation that needs mention is that there are possible **gender differences**. These differences are noted in how women and men relate to some of the important experiences in mediation, and what is important to them during this process. This observation is made through some of the expressions of the participants. In these stories the women talk much more about emotional issues as if they are still connected to the emotions, whereas the men in these stories seem to talk more in practical terms and appear less connected to the emotions.

The women in their stories expressed some deep emotions and associated feelings toward the situation and their respective (ex) partners. Ann says that she went there on business but, by the same token, she talks about her feelings and the sadness she is experiencing during the mediation. She says, “especially when you see a person that you lived with and loved crying there in the office with you. You think *why* can't we work this out. Here we are both so sad about what is happening and here we are sitting with a mediator trying to figure out even yet another way to end it.” Kate relates that,

Part of the issue with telling painful things to your partner, in front of someone is, that you see in the person you cared for's face. Then their pain or their sorrow or their attempt to try and not just hear you but defend or react and you can't. I found it ... I find it hard to be with, when I am trying to say if I am reacting to that person's response. So if you are telling a story it is much easier to tell it and not look at and feel the response of the audience. For me anyway.

Neither Brian nor Fred spoke about their emotions in relationship to their ex-partners. Both Brian and Fred spoke with respect and easily took responsibility for their own parts in the breakdown of the relationships. Brian said,

Being arrogant, I thought of course, I am going to ... I am smart, not to agree with these kind of things. So I thought it's always the other person, but I understand that I was just as much to blame as my ex was. I was just as unreasonable in some cases as she was. I was always the good guy, but the

mediation process pointed out that I could be the bad guy. You know I could be unreasonable.

Fred reflected that things are not a one way street, “I mean, there were things that I was doing that I really, that came up that were really bothering her. And I could see where they would.”

Mediator choice seems to be another interesting aspect that needs to be looked at in terms of whether these choices have implications for the other party involved. In Ann’s case, her choice seems very clear as she states that she knew that her partner knew and respected the counsellor. Ann does say that she feels that her partner’s respect for the mediator was working in her favor. But mostly she said that she did not think that her partner would have respected a stranger’s opinion. She also was clear about the fact that she needed the situation resolved, and that if she had gone to a mediator who did not know them or their situation, this would take more time. Ann believed that they would need to spend time building a trust relationship. Her partner was contacted by the mediator and had agreed to this. The partner during the mediation decided not to argue. This was disappointing to Ann as she had hoped that he would let the mediator know how he felt. Ann did feel sure that things would happen after the mediation, because she said of her partner, “It was not that he was not going to let me down, he would not let the mediator down.”

One could only speculate on the feelings of the partner; however, one way to interpret his silence is that this was his way of maintaining control. It did make Ann feel less satisfied with the mediation because she had hoped he would express his feelings.

Brian chose the mediator who had been also the couple's marriage counsellor, because mediation had been suggested, at that time, as an alternative option. Brian's wife had not wanted to continue with the counselling. Her husband told her about mediation. At first she rejected this idea. "She was against it, she wanted to go for the courts." But Brian says once he explained to her what mediation was, she agreed to give it a try. During the mediation, Brian said that his wife did call an end to the mediation a couple of times, "That's why we went into caucus." Brian also said, "Definitely she wanted to be in control. She had her walls up, she said she was in charge of her own life and nobody was going to tell her what to do." Brian says that the mediation was successful, and that both he and his wife were pleased with the agreement. "My wife could not wait to get to the next day to get it typed up and have me sign it before I changed my mind." On their way home from the mediation, Brian said, "I did request that she stay clear of a specific lawyer. That lawyer has a reputation of destroying, please don't go to that lawyer."

Yet his wife did go to that particular lawyer the next day, and the result was that the couple ended up in court. Here again one could speculate on the feelings of the other party and the possible power play that might have been in place.

Kate's ex-husband was the one who suggested mediation as a means to resolve concerns regarding their separation. Kate agreed to go with him because she felt that it would be a good idea to get help. During the first session the mediator equalized the power imbalance as Kate said, "They heard him because he was a person who had needs to be heard. But they were not going to let his needs take over the meeting." Kate reflects that she, "Felt that I was in a safe place to be heard and get down to brass tacks over things that really

mattered. So that was a good experience for me.” Kate said that she felt that the male mediator was cold, and that she could not relate to him. But she also reflected that, “It brought up a lot of stuff I had tried to put away a long time before.” It is as though she was not really ready to deal with issues that she had not expected to face in a mediation situation. She was clear in her purpose to resolve issues surrounding the separation and how to help the children. Kate said, “In a way there is a great deal that gets uncovered in a short period of time, and that is why it is probably pretty exhausting.” Kate made the decision not to return. Her ex-husband did not argue with this but instead suggested another mediator he knew. Kate went to these sessions to appease her ex-husband. She felt at times burdened by these sessions as she said she was trying to work on herself and it was no longer her intent to fix the marriage. This mediator had also been her ex-husband’s counsellor. One could question why the mediator was not aware of the situation. Overall, one gets the feeling that Kate’s ex-husband tried to remain in control by going into mediation and finding support for his cause.

Fred did not know about mediation. Faced with the conflict and the possibility of going to court, he heard about mediation and looked up a mediator. Fred talked to him over the phone and explained his problem. He then called his ex-wife and gave her the choice to either, “Go to mediation or I’ll see you in court, one of the two.” She agreed to go to the mediation and did participate in the process. They had about four to five meetings and Fred said that he felt hopeful that more candid communication might continue in the future. Although they had come to an agreement about future communications regarding their child, Fred said that the agreement only lasted for a short while. Then his ex-wife did not respond

to his calls or the mediator's calls. Fred said, "In some respects I totally understand. Because that is how she deals with a lot of things that are threatening or if she can't totally have it her way she does not participate at all." Fred also said, "I guess there was a power struggle. There always was, like she had a history of a power struggle in our relationship."

One can only speculate on the motives of the other parties, but their voices are not represented here. It would not be prudent to create their stories from their reported actions.

Chapter VII

DISCUSSION

POWER

Power is everywhere; not because it embraces everything, but because it comes from everywhere...power is not an institution, and not a structure; neither is it a strength we are endowed with; it is the name that one attributes to a complex strategical situation in a particular society.

— *Michel Foucault*

The process of mediation as reported by the participants appears different from the picture presented by the research. In the literature the focus is directed toward better communication among the parties. Umbreit (1997) looks for greater understanding among the parties. Deutsch (1994) looks at power relations, where cooperation leads to openness in communication. Bush and Folger (1994) discuss mediation as a vehicle for change and transformation. Rubin (1994) reports that better understanding of conflict issues is needed and Folberg and Taylor (1984) approach mediation from the perspective of understanding human motivation and personality.

The participants in this study did not have any problems in relating their stories and as such did not seem to have a problem communicating. However, it is evident from the data that communication for the participants with their partners was a problem and presented obstacles to resolving their conflict.

In this study communication among the parties was only possible because of the presence of the mediator and the structure that was in place. Participants emphasized the behavioral aspect of the people involved in the mediation as important. The parties' main foci, however, were to deal with the conflict and to get that resolved as best they could.

After the mediation, communication as reported by the participants in how the parties communicated with each other remained as it was before the mediation. However, several changes did occur on a personal level. Ann reported that she and her partner have gained respect toward each other. Both Brian and Fred report that they gained insight into their own communication behavior and learned how this may affect another party.

At the onset of this project I stated that the purpose of this thesis is to provide insight into the experiences of people who have been in a mediation situation. By reading the stories of participants one can now get a little insight into how mediation is experienced by the participants. Although this is a small sample of participants, the stories provide the reader with some ideas of what can and does happen in mediation.

In the analysis I posed the question, "What is different at the end of the mediation compared with the beginning?" The main theme that was identified by the participants was the anger they felt at the beginning.

Anger

Anger was one aspect voiced by all participants. In the literature anger is recognized as playing a part in the emotions that are experienced by people in conflict. Coulson (1996) says, "[a]nger and guilt go hand in hand, reinforcing each other. The human mind tries to

protect itself against feelings of guilt by finding someone else to blame” (p. 26). Folberg and Taylor (1984) discuss anger in terms of stress and cite Woolfolk and Richardson (1978) as saying, “[a]nger happens most often if there is a perception of infringement, if there is frustration, or if there is a perception of wrongfulness or intentionality” (p. 92). The management of emotions includes anger as a destructive force (Cornelius and Faire, 1989).

Acknowledgment of anger in the literature does not seem to reflect the prominence this feeling of anger holds for the participants. Anger seems to act as a barrier that prevents communication among people. As one participant said, when they got angry “at home they had a way out”. They stopped talking and listening and walked out. Fisher, Ury and Patton (1991) recognized the anger as a barrier to the communication process. The method they use calls for “[s]eparating the people from the problem” and “[f]ocusing on interests and not on positions” (p. 15). By doing so, the emotions are put outside of the mediation process and the focus is brought back to the issues central to the conflict. Umbreit (1997) does not agree with this and points out that if we do not deal with the underlying feelings then the emotional conflict remains and impairs future relationships. The different points of view about this issue depend the type of mediation that is practiced and what the clients request. Umbreit considered that the different philosophies about mediation resulted in the different approaches with respect to the use of mediation. The humanistic and the problem-solving approach developed as a result of the different philosophies.

The next question that arose asked what happened to allow for change to occur? During the mediation process the mediator’s behavior and skill were of primary importance to the participants. Tidwell (1994) says that people in conflict are not rational and therefore

persuasion is needed in helping people settle their differences. With the participants, however, the mediator acted as a buffer to being irrational. For one participant it was a dose of “common sense” or a “reality check”, as he called it. For others, it was to maintain respect between the individuals.

Mediator neutrality

Mediator neutrality and impartiality has been a topic of debate as Taylor (1997) asks the question, “[h]ow neutral is neutral?” (p. 215). Participants watched closely and monitored mediators’ behavior and used their own criteria as to what they felt was neutral or impartial behavior. The neutral behavior as seen by the participants was a criterion that gave them a feeling of trust and safety. It also allowed participants to feel less angry, because they felt that now they had a chance to explain their point of view without getting into a battle.

The ethics and morality of mediator neutrality and impartiality are part of the debate of professionalizing mediation. Cooks and Hale (1994) note that although these terms can and should be distinguished from each other, they “are treated in at least some standards documents as though they are synonymous terms” (p. 62). They also note that the “Society of Professionals in Dispute Resolution (1987) standards do not specifically define neutrality” (p. 63). Taylor (1997) questions if indeed there is such a thing as impartiality and how one can be truly neutral. This does not appear to be an issue with the participants. They identified mediator neutrality as not taking sides, being indifferent to which party gets what

as long as the participants are happy with their choice, being non-judgmental and having no personal input. Participants use their own criteria as a measure of neutrality.

Rules

Having a set of rules in place is what the participants said was very helpful for them. It was in part what provided the participants with a perception of mediator neutrality. The debate on mediator neutrality is closely tied in with the concept of rules and client self-determination. Taylor (1997) asks the question: If the mediator rules emotional behavior in or out of the room, is the mediator acting biased toward that client? Fisher, Ury and Patton (1991) argue that in order to deal with the conflict one must separate the emotions from the issues. The rules that are put in place are agreed upon by both parties and as Moore (1996) notes these are behavioral guidelines and must be agreed upon by consensus. The rules do not rule out the emotions as much as that behavioral guidelines allow people to deal with issues that are emotional to them.

As one of the participants noted, he felt having a set of rules in place allowed him to think before responding, rather than reacting immediately to what the other said. Moore (1996) observes that the notion of ground rules or behavioral guidelines at times is enough for disputants to work productively toward resolution. Behavioral guidelines generally establish how people will act toward each other. Participants in this study felt good about having rules in place. The rules helped them to focus on the issues. Rules also helped people to be less angry because they felt that there was more respect when taking turns in talking.

The Anger, Neutrality and Rules Relationship

The findings from this data shows a relationship between *anger, mediator neutrality* and having *rules* in place, and that these are central to the mediation process. The anger that the participants said they felt at the onset of their mediation subsided when the participants felt that the mediator acted in a neutral way toward them.

It is as if the anger closes a door to further input from the other person, but not to others who are not part of the conflict. The notion that people in conflict are irrational as discussed by Tidwell (1994) does not seem to hold. The conflict closed the door to the other; however, this may be a rational act to prevent further escalation of the conflict. The door to the mediator thus may be ajar far enough to try and see what that third person has to offer. If the mediator is perceived to be neutral and willing to listen, the door opens further.

Having rules in place gives opportunity to speak without interruption allows for communication between that party and the mediator to take place and makes the participants feel respected. How the conflict situation in dealing with angry people is managed is dependent on the skills of the mediator.

Mediator skill plays an important part in how the participants experience the mediation process. Deutsch (1994) recognized that mediators need to develop skills to constructively resolve conflict, and noted that not enough emphasis was placed on abilities and skills. He also said that the participants themselves need skills to work constructively on their conflicts. As one of the participants in this study observed, “the mediation is as good as the mediator.”

On the other hand, programs for children do focus on skill development and behavior. Vincent, Houlihan & Zwart (1996), Gentry and Benenson (1993), Lane and McWhirter (1992), Adams (1994) and Johnson and Johnson (1994). Deutsch notes these social skills can be acquired by repeated practice and creating a positive social environment. Pastorino (1997) noted the, “importance of supplementation and delivery of mediative, problem-solving skills” (p. 253). He created a positive environment for the students to work on social development skills, which resulted in them, developing their own mediation model. Pastorino suggests starting to educate children in problem-solving skills as early as grade three. Klein and Alony (1993), however, suggest that training start as early as infancy.

Professional mediator development seems to focus on more knowledge training for the mediator, Taylor (1994), Neilson (1994). However Folberg and Taylor (1984) realize that people becoming mediators have different levels of skills. They say that, “[t]he skill-building component of mediation training must allow flexibility so that each person can concentrate on developing skills that were not emphasized in his or her background and education” (p. 238).

Community efforts such as the Valley Community Mediation Society in Nova Scotia or the Mediation Center of Kentucky provide mediation as well as training to interested parties, Stipanowich (1993). Participants in mediation, or other interested parties, have the opportunity to develop their skills from their experience. Lane and McWhirter (1992) suggest the possibility to open up training to parents as a school out-reach program. Parents can, together with their children, learn skills they can use at home and support their children when they bring their new skills home, Gentry and Benenson (1993).

Being Heard

Being Heard is also a very important event that occurs in the mediation and certainly also reflects on the skill used by the mediator. Although it is noted in relation with having rules in place, *being heard* is found to stand by itself as a major component in the mediation process, as found from the data. Being heard is a result of skillfully maintaining the rules that are in place; as such it is a behavioral component. In some cases this was the first time that participants felt they had a chance to say what they wanted to and feel that they had been heard.

Cornelius and Faire (1989) view active listening as a statement that shows the other person that there is understanding of the other side. Some of the participants related to this experience as, “a treat”, indicating the importance of people being able to voice their concerns, and having someone hear what that person has to say. Stipanowich (1993) affirms this as an important experience in his research and notes that, “[t]he process may offer parties the first opportunity to express their point of view in the presence of the others and be heard by the other party” (p. 871).

Gender differences

A possible difference is noted in how the mediation process by women and men is experienced and what is important. Note was made of the way people expressed themselves in connection with their partner. Women seemed still connected to the emotions while the men seemed to talk more in practical terms. This sample of participants is too small to make any conclusive statements. In light of the findings by Gilligan (1982), it is worth mentioning.

Gilligan looked at a Kohlberg's (1969) moral developmental theory and investigated how boys and girls approached a question of morality. In this case she use the dilemma of Heinz, who is faced with either stealing a drug, he cannot afford to buy, for his ill wife or to let her die. Gilligan observes that the boy approached the problem from a logical point of view and tried to solve the dilemma as a math problem. The girl however approached the problem from a relational point of view. Gilligan observes that, "Both children thus recognize the need for agreement but see it as mediated in different ways— he impersonally through systems of logic and law, she personally through communication in relationship" (p. 29). Tannen (1990) also gives an account of how women and men use language differently. Williams (1994) writes about the implications of these findings in divorce mediation; it may well have implications for all types of mediations when women and men are in a conflict. The subject of gender differences in communication in mediation needs further investigation.

Participants did say that their mediation in general was short term. They did not feel that a greater understanding or better communication for future relationship with the other party was gained from the process. However, both male participants did say they felt that they, "could understand where the other party was coming from." In that sense it appears that communication has been improved, at least during the process. This comment also shows greater understanding of their own process and both did say that they felt they had learned something from this. "By exposing parties to other points of view, mediation can serve as an 'eye-opener' " Stipanowich (1993, p. 871). One participant felt he had become more tolerant toward other people because of the process.

Participants, overall, were pleased with the mediation process and felt that it was a good way of trying to resolve issues, rather than going to court. This was so even for the people for whom the agreement did not hold. One participant sums it up by saying, "At least you are dealing with real people." This in fact may be the most important part of the mediation process, the feeling that people have some control over what is going on, whereas court proceedings leave people feeling alienated from the process. The Nova Scotia Department of Justice (1998) booklet on restorative justice acknowledges this feeling of alienation, and is promoting community involvement such as mediation.

How the participants choose their mediator may be of interest. Moore (1996) talks in a cultural context about the role of the mediator when there exists, a prior relationship. He notes that the opening statement and further process may be more formal in cases where the relationship was hierarchical, that the formality may be seen as a means of leveraging the parties toward an agreement. In some cultures this may be needed to show respect for positions of the parties. It is interesting to note that the participants requested mediation from the people they had a prior relationship with. Parties in these instances made their choice of mediator because they felt that this prior relationship, based on trust, was helpful in that this person had a greater insight into their dispute.

Deutsch (1994) describes conflict as, "the root of personal and social change." He argues that through cooperation people have an opportunity to learn the others' point of view and work not as opponents but as partners. Cornelius and Faire (1989), Umbreit (1997) and Bush and Folger (1994), among others, have expressed a similar point of view. The participants in this study were able to communicate during the mediation process to some

extent; however, “genuine dialogue” such as referred to by Umbreit (1997) did not occur. The participants reported that their mediation did not last long enough to make any changes other than resolving the dispute, nor were they not looking for better communication. Mediation was used as a means of solving a problem that they were not able to solve without the help of a third party.

Recommendations

The literature shows that there are many different models of mediation to be used for different situations. It is clear from the participants’ stories that a pre-mediation meeting is necessary to establish what the client needs, as well as the mediation model the mediator practices. “The client should be fully informed of the practitioner’s model, assumptions, methods, and values before and during the process and should have the choice to leave” (Taylor, 1997, p. 229). Cornelius and Faire (1989) on the other hand, present a model that does not include a pre-mediation session instead they acknowledge that, “[o]ne or both parties may have come to the mediation unwillingly” (p.158).

As has been shown, by not having a pre-mediation session, the result can be that a participant be forced to deal with issues that person was not prepared for at that time. Going willingly to the mediation to discuss the issues one believes to be on the agenda needs to be clarified prior to the actual mediation. Clearly mediation in abusive relationships may not be appropriate. Hilton (1991) notes that, “[m]ediation philosophy assumes equal and gender-neutral bargaining power and women who do not exercise such power will be subject to further victimization” (p. 45). Pearson (1997) also notes the importance of pre-mediation

interviewing, in order to detect domestic violence. Her research shows that approximately fifty to eighty percent of divorcing couples who are referred to court-appointed mediation programs are dealing with domestic violence. Only half of those programs use private face to face screening interviews. Implications of re-victimization of the client are very real indeed. Moore (1996) talks about the importance of setting the agenda as an approach to defining issues. An initial interview to collect data about the dispute is the initial step toward preparing a strategy for an intervention plan in assisting people with their dispute.

Assessment of the dispute and the people involved needs to take place before and not during the mediation. The mediator as well as the client needs to enter the mediation process prepared. Moore (1996) presents a five-stage pre-mediation model which includes planning the mediation. This provides the client with control over the mediation and reinforces the concept of client self-determination.

It is important to look at the process of mediation as to what people want to accomplish. Both Joyce (1995) and Taylor (1997) note the lack of, "a shared vocabulary" in the field of mediation among practitioners. Practitioners need to be aware of this and inform their clients. Clients looking for mediation may not be aware of the variety of mediation models that is being practiced.

It seems evident from the literature that in some cases mediation is seen as a medium to heal relationships' (Bush & Folger, 1994) and find long-term solutions to problems through change. However, mediation is also a process of solving the immediate problems some people face. These are problems that people are able to solve themselves (Joyce, 1995;

Umbreit, 1997), but require the assistance of a third party to help them stay focused on the issue at hand.

Clients need to be made aware of the modality used by the practitioner prior to engaging in mediation. The latter of those two forms of mediation seems to be the one used in the cases of the participants that have spoken here.

Implications for Counsellors

As has been shown in the stories, participants turned to counsellors with requests for mediation. Counsellors are in a unique position to assist people and make use of mediation strategies in order to resolve disputes. Mediation skills will certainly be an asset to the counsellor in assisting their clients. Counsellors do well to familiarize themselves with mediation strategies or with mediation services available to their clients.

Professionals may put the ethical implications, concerning the dual relationship, which exists in some of these situations, into question. It is, however, the clients who make the choices as to whom they wish to ask for assistance in such difficult times. A client's self-determination to choose is to be respected and not to be questioned. If counsellors, however, are not comfortable with this, it is their option to refuse the clients' request for mediation and refer them to practitioners who provide this service.

As is clear from one of the participants' stories, it is important to discuss the process with the client before proceeding. Here the client was lost in the process, in part because she did not know if she were in mediation or if this were a counselling session. If a counsellor

had a prior working relationship with one of the parties, and then engaged in mediation, all parties need to be clear that this is mediation.

Counsellors need to be aware of the power their words have, especially the little things which are spoken without the intent to hurt. The words of the counsellor who said, "You may have left it too long" may have been intended to comfort, but instead the one hearing these words felt that blame and responsibility were assigned. The same with the words, "It is true that J— wants to work on this and you have stated you don't." The participant recognized that the intent of those words were not how they felt, but they were hurtful nonetheless because it resulted in her feeling devaluated as a person.

Mediation areas of interest, to counsellors, may be in the development of therapeutic modes of mediation, such as developed by Wiseman (1990). Although some counsellors may use mediation as Favaloro (1998): a 'window in' to assist families in bringing about needed changes.

Being a mediator with a counselling background is indispensable. At times mediation may be requested when in fact that is not what is required or possible. Individuals who may not be willing to participate in a mediated session are at times more willing to talk privately. The problems causing the tension may be due to personal stressors people face. By making use of counselling skills, tensions may be eased and the possibility of conflict situations be lessened.

Counsellors may use computer chat-lines to assist people. The computer chat-line also can be used to assist in mediating conflict between people who are unable to talk to one another. Just as with the rule set, people have no chance to interrupt each other because they

have to wait to see what the other person says. This also gives people time to think before reacting. Their responses are thought out before they are sent. An example is a couple whose marriage was in trouble discovering this as a means for better communication. This couple learned that they could get along better when using this mode of communication. They can look better at the issues better in this way, and have learned that what they thought the other would say is not what the other did say. In other words, with the computer they can hear what the other is saying.

Closing Thoughts

From the stories of the participants, the claims of improved communication resulting from mediation among people as is presented in the literature, does not seem to be experienced in a similar way by the participants in this study. Being with the participants and hearing their stories it seems to me that there are many different levels of communication and that what is meant by improved communication is by no means defined. At one level the way the people talked or failed to talk to each other became part of the problem. Having a mediator present was helpful for the parties in telling their stories. However, they really did not have to speak to each other but talked to the mediator in front of the other party.

The level of talking to one another did not improve as a result of the mediation. What did happen was that the rules and the presence of a third party did *slow down* the reactions of the parties. It was anger that people felt they were dealing with. Because of the rules they agreed to, they had to sit and listen to the view-point of the other party. Perhaps

the most important part of these mediations was that people had to reflect on their own behavior as they heard their behavior described to a third party.

The presented data suggests that for the participants in these mediations anger is the most prominent issue that prevented people from resolving their conflicts. It is the mediator's neutral behavior, as perceived by the participant, in combination with having a set of rules to which the participants agreed that helped them in the resolution of their conflicts or disputes. The rules helped people alter their own behavior and also helped them focus on the issues. The mediator is perceived as neutral or impartial by the participants' own criteria.

Mediation is seen by the participants as a better alternative to going to court and, as one participant noted, mediation feels like dealing with "real people," indicating the alienation people experience when dealing with the court process.

All participants felt they would use mediation again, although some indicated reserve in that respect. Willingness by all parties to change is important to keep in mind as a factor. Mediation overall is experienced as positive by the participants.

I would recommend individual pre-mediation sessions prior to all mediations to detect abusive relationships and prevent situations where people are unable or unwilling to defend themselves.

It is my view that mediation works well for people who truly want to change. Further study of people's experiences would be very helpful in learning how to help them resolve conflicts or disputes. It is important to investigate the feelings of both parties in such a situation. Until such time we truly do not know the whole mediation story. How differently

do the parties experience the mediation process? Investigation of this question may also give further insight into whether gender differences affect the approach taken in resolving disputes. Gender issues have not been well addressed and, with the small sample examined, it is difficult to determine if there are real differences and how or if they affect the mediation.

Recording the perspectives of the participants shows what is important to the informants in this study and gives greater understanding of how mediation is experienced. This opens the field to explore new areas of how best to assist people in their mediation process.

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APPENDIX A

**Wolfville,
Phone:
E-mail:**

To the Reader,

My name is Mary van Det and I am a graduate student in the Department of Education at Acadia University. I am conducting a research study for my thesis. A thesis is a formal part of graduate studies where the student has an opportunity to contribute to an area of study that is of interest to that student.

My area of interest is in the field of mediation. As a member of the Valley Community Mediation Society, I have taken training courses in mediation. In my readings on mediation I found that what has been recorded is from the point of view of the mediator or the researcher. The purpose of my study is to record the voices of people who have experienced the mediation process as a participant. To do this work, I would like to conduct interviews with people who have this experience.

My request is for an interview with you about your experience. This interview will be recorded on tape and will be approximately two hours in duration, per session. In order to maintain your continued confidentiality each person interviewed is provided with a pseudonym for this purpose; only the participant (you) and the researcher (me) will have knowledge of your identity. It is my hope that this work will contribute to future education programs in mediation.

I would like to take this opportunity to thank you for reading this and am looking forward to hearing from those who may be willing to assist me in this study. If you have any further questions please feel free to call me.

Sincerely,

APPENDIX B

Open ended Interview questions(if needed):

- 1. Did you request the mediation or were you asked to participate?**
- 2. How was the dispute that brought you to mediation a problem for you?**
- 3. What was the experience like for you before, during and after the mediation?**
- 4. How safe did you feel in presenting your side of the issue?**
- 5. Do you feel that you had equally as much power as other parties in mediating your own dispute?**
- 6. Do you feel the case was settled satisfactorily and do you still feel that way now?**
- 7. What, if anything, would you have wanted to be different?**
- 8. Would you use mediation again if you were involved in a dispute? Why or why not?**
- 9. What do you feel was the most important part of this process?**
- 10. Do you feel you gained anything from this experience. Describe.**