

BATTERED WOMEN'S PERCEPTION OF DIVORCE AND CUSTODY
MEDIATION: A QUALITATIVE ANALYSIS

by
Susan Lynn Beckett

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Associate Dean Nancy R. Hauserman
Degree Committee Member

Dr. Mohammed Abu-Nimer
Faculty Advisor

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ABSTRACT

The past 30 years have seen a rise in the use of mandatory divorce and custody mediation as a first step for divorcing couples. Court-based programs report that 50% to 80% of all cases referred to them involve domestic violence. Concerns regarding profound power imbalances, client safety and mediator neutrality raise serious questions about the appropriate use of mediation for these cases. Regardless of the risk, some battered women choose to mediate even when they could obtain a waiver. This study examines battered women's perceptions of their mediation experience and the impact on them through qualitative analysis of in-depth interviews. Recommendations drawn from the battered women's experiences offer suggestions that may help mediators, policy makers, and court-based programs better assess options and risks associated with mediation and more effectively help battered women who enter mediation.

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CHAPTER 1: INTRODUCTION

Mediation and Domestic Violence

The question of the appropriate use of mediation in divorce and custody cases when there has been a history of domestic violence has long been a topic of discussion and debate between feminists and proponents of mediation. With the prevalence of abuse in the divorcing population (Cohen, 1991; Depner, Cannata, & Session, 1992; Newmark, Harrell, & Salem, 1995), the increased risk for violence after separation (Hart, 1993; U.S. Department of Justice, 1986), and the growth of the use of mediation in place of formal court procedures during the past three decades, feminists and victim advocates have strongly advocated against the use of mediation in divorce and custody cases where there is a history of domestic abuse. Feminists and victim advocates passionately espouse the dangers of mediation for women in general and battered women in particular (Bryan, 1992; Fischer, Vidmar, & Ellis, 1993; Grillo, 1991; Hart, 1990; Lerman, 1984). Likewise, equally impassioned arguments are offered by proponents of mediation who see mediation as a viable, safe, and empowering alternative to the adversarial process for *some* women who have been in abusive relationships (Chandler, 1990; Corcoran & Melamed, 1990; Erickson & McKnight, 1990; Irving & Benjamin, 1995; Yellott, 1990).

The Rise of Mediation

Though mediation has existed worldwide for centuries,¹ family mediation as it is practiced in North America rose to prominence in the mid-1970s. The availability of court-connected family mediation increased during the 1980s in part due to an increase in the divorce rate, which resulted in crowded dockets, and a push for a less adversarial forum² (Irving & Benjamin, 1995). In 1981, the state of California introduced mandatory

¹ See Moore (1996) for a comprehensive discussion of the use of mediation by various cultures throughout history.

² There were just under 1.2 million divorces in the U.S. in 1991, up from 413,000 in 1988 (Irving & Benjamin, 1995; Manocherian, 1988 as cited in Irving & Benjamin, 1995).

mediation prior to any court appearance for all divorcing couples disputing custody and visitation issues (Duryee, 1991). Kelly (1996) reports that 10 other states have since mandated custody mediation prior to the use of other adversarial processes. Since 1996, court-referred (mandated) mediation has been in place in Iowa's Sixth Judicial District for all divorcing couples disputing custody and visitation issues. As more states mandate mediation for divorce and custody cases, state legislatures and special task forces have begun to examine policy issues surrounding domestic violence and the appropriate use of mediation.

The Case for Mediation

Early mediation proponents made exaggerated claims about mediation's efficacy while at the same time distorting the role and effect of the adversarial system (Irving & Benjamin, 1995). Research studies and clinical experience over the past two decades have tempered these early claims, but results are generally favorable to mediation. Proponents of mediation believe that mediation offers clear advantages to those people involved in custody and visitation disputes. Advantages reported by existing studies include client empowerment, giving parties the opportunity to air their grievances, helping parents focus on the needs of children, limiting damage to parents' relationships, and developing more durable, lasting, and fair agreements (Kelly, 1996; Pearson & Thoennes, 1989). Studies across countries and diverse mediation settings (e.g., court-based or private programs, voluntary, mandatory, single session, multiple session, and a range of mediation models) indicate successful mediation agreement rates range between 50% to 85% (Irving & Benjamin, 1995; Kelly, 1996; Pearson & Thoennes, 1989). Research also indicates consistently high rates of satisfaction, in the 60% to 85% range,

with the outcome and the process of mediation³ (Irving & Benjamin, 1995; Kelly, 1996; Pearson & Thoennes, 1989). Furthermore, in a comparison of mediation and litigation clients, mediation clients reported greater satisfaction than their adversarial comparison group (Emery, 1994; Kelly, 1989). Irving & Benjamin's review of 51 studies across the U.S., Canada and Britain found that, on the whole, women in mediation expressed more satisfaction with the process and outcome than women in litigation (Irving & Benjamin, 1995). Though very little empirical research has been conducted examining abused women's experiences in mediation, a recent Australian study reported that they found no differences between abused and non-abused clients' (men and women) ratings of satisfaction of their experience in mediation (Davies, Ralph, Hawton, & Craig, 1995).

The Feminist Critique

Though feminism is not a single monolithic perspective (Tong, 1998), the critique of mediation by feminists does embody a consistent theoretical perspective. Throughout this study, the feminist critique refers to this body of literature. A central theme found in the feminist critique of mediation is that the oppression of women is a result of patriarchy, the systematic subordination of women by men. Feminists argue that patriarchal institutions and modes of thought that privilege men and discriminate against women still dominate our culture. One such patriarchal institution is family law. Feminists have criticized family law as inequitable, reproducing patriarchal assumptions and maintaining gender bias (Brophy & Smart, 1985). In contrast to the family law system, Rifkin (1984) suggested that mediation might hold out more promise to women with its orientation toward cooperation, context, self-determination and ownership of the process. Neumann (1992) and Ricci (1985), both mediators and feminists, offer favorable

³ But in England, Walker et al. (1994) found only a 50% satisfaction with comprehensive mediation and 38% satisfaction with custody mediation (cited in Kelly, 1996).

but qualified endorsements of the process. Both acknowledge the gendered power imbalances and offer guidelines from their individual practices, such as setting ground rules, interrupting intimidating behavior, and offering information and support, to address the power inequities.

Despite these three favorable feminist critiques, the bulk of the feminist analysis of mediation has been decidedly negative (Bailey, 1989; Bryan, 1992; Hilton, 1991; Leitch, 1987; Lerman, 1984). Specifically, feminist critics argue that mediation is an informal and confidential process which is not bound by legal rights or entitlements (Bryan, 1992). Without the formal protection of legal proceedings, women may bargain away their legal entitlements to financial settlements. The effect of giving up financial support seriously disadvantages women's social and economic status. Bryan (1992) also argues that mediation reinforces the patriarchy and oppression of women because it cannot adequately address the significant power imbalances between husband and wife. She notes several factors that disadvantage women when negotiating with their partners, including economic power and sex-role ideology.

A review of the literature reveals four major themes to the feminist critique: mediation principles (primarily neutrality and empowerment), equality, justice and violence. Similar themes are noted by Irving and Benjamin's (1995) review of the literature.⁴ These themes will be explored in more detail in Chapter 2. Essentially, because of long-standing patriarchal assumptions and institutions that subordinate women to men in all arenas of our culture (social, legal, political, economical), feminists argue that the mediation process cannot counteract this gender bias to protect the rights of women and empower them to negotiate on an equal basis with their spouse.

⁴ Irving & Benjamin suggest the themes of neutrality, equality, rights, and practice standards (1995). I consider neutrality as one of the principles of mediation.

The most severe criticism of mediation to date is its use in divorce and custody cases with a history of domestic violence. In addition to the dangers cited for women in general, further risks were noted for battered women, notably concerns for safety throughout the mediation process (Hart, 1990; Mahoney, 1991), the ability of battered women to negotiate on their own behalf (Fischer et al., 1993), and the “privatization” of domestic violence⁵ (Fischer et al., 1993; Hart, 1990). The theoretical arguments and anecdotal evidence of feminists and victim advocates raise serious and important issues that must be addressed by the mediation community. Concerns raised include (a) an acknowledgement and awareness of domestic violence and its impact on battered women by the mediation community, (b) safety of the battered woman throughout the process, (c) screening for the existence of violence, (d) the sensitivity of the mediator to domestic violence and his or her ability to handle this issue in a way that does not re-victimize the woman, (e) the ability of the battered woman to express her needs and concerns, and (f) the protection of her rights and entitlements under the law. The following quote from an interview by Barbara Hart supports these concerns and illustrates the significant impact mediation had on one battered woman:

[As] soon as I left he filed for custody of our son. I had to go to mediation. They told me I had to cooperate; we had to work out an agreement in mediation. If I didn't cooperate I would lose my son because I couldn't afford an attorney to go to court. I don't remember much of what happened there. I felt like I had no choice. The mediator and my husband actually worked out the agreement. I signed it. They tell me I agreed and that I'm stuck with it. (Hart, 1990, p. 321)

This interview was conducted in 1989. As the following section will note, significant progress has been made during the 1990s with regard to polices and

⁵ Because mediation is private and confidential, feminists fear that the legal protections for victims of domestic violence will not be invoked and that domestic violence will be treated as a private, individual problem rather than a public and societal problem.

procedures relating to the use of mediation in divorce cases with a history of abuse. But have these changes made a difference for individual battered women in mediation?

Response to Feminist Critique

The early 1990s saw the first major response by the mediation community to the feminist critique through the formation of two special forums to examine mediation and domestic violence: The Domestic Abuse and Mediation Project (Maine Court Mediation Service, 1992) and the Toronto Forum on Woman Abuse and Mediation (1993). Barbara Landau describes the thoughtful and respectful process of bringing together representatives from the mediation and domestic violence provider communities over a two year period for the Toronto Forum (Landau, 1995). Both forums fostered a dialogue between victim advocates and mediators and increased the awareness of domestic violence within the mediation community. One result of this collaboration has been the initiation of the following systemic and policy-related changes: (a) recommendations for screening protocols to assess the presence of violence and fear in the lives of women clients; (b) suggested possible modifications to the mediation procedures, such as shuttle mediation, to ensure the safety of clients and increase the likelihood of fair negotiations; (c) the development of domestic violence training initiatives for mediators; and (d) waivers from participation in mandatory mediation programs.

At the same time, national mediation organizations began to revise their standards of practice and to require accredited training programs for mediators to include domestic violence. The Ontario Association for Family Mediation (OAFM) adopted an Abuse Policy in 1994 and now requires a minimum of five hours of domestic violence training as part of a 60-hour mediator training requirement for membership in the Association. The Academy of Family Mediators (AFM) has a draft Abuse Policy under consideration and requires a minimum of two hours of domestic violence training in its 60-hour training

requirement for membership in the Academy (Landau, 1995). In recent years, nearly every state with mandatory or discretionary mediation has enacted legislation to exempt battered women from mediation (National Center of Women and Family Law, 1993 as cited in Pearson, 1997). A state-wide task force in Iowa spent 11 months evaluating policy and procedural issues regarding the appropriate use of mediation in cases of domestic violence. Their report, *Final Report of the Iowa Supreme Court Mediation and Domestic Violence Work Group*, was released in December 1999 and includes an extensive list of recommendations for professionals in a number of fields who might be involved with a battered woman entering mediation (e.g, attorneys, judges, mediators, victim advocates, mental health professionals, and religious leaders).

Victim advocates and mediation proponents agree that domestic violence exists along a continuum, ranging from a single incident to severe and devastating violence (Fischer et al., 1993; Johnston & Campbell, 1993). Research suggests that the level, frequency, duration, and type of violence varies in abusive relationships and that not all women are impacted in ways that disempower and intimidate them (Chandler, 1990; Johnston & Campbell, 1993). Kelly (1989) found that women in general rated mediation as more helpful in empowering them to stand up to their spouses than using attorneys. Is this true for some battered women as well?

Research Question

Significant systemic progress has been made toward creating policies and procedures that acknowledge and address the impact of domestic violence in divorcing women's lives. Despite this progress, considerable doubt and concern still exists about the efficacy of mediation for some domestic abuse cases. Little is known about how individual mediators implement these procedures, how violence is addressed in mediation sessions, and how battered women experience mediation. Even though results from a

1995 national survey of mediation programs providing family and divorce services indicated that most programs (approximately 70%) provide some kind of domestic violence training to their mediators and the majority of programs (63%) conduct private screening interviews with clients prior to the first mediation session, little is known about the quality and effectiveness of these mechanisms, and it should be noted that approximately 20% of the programs surveyed indicated that they conduct no screening of clients at all prior to the start of mediation (Thoennes, Salem, & Pearson, 1995).

Researchers have also noted the lack of client voices in this analysis (Chandler, 1990; Pearson, 1997). What do we know from battered women themselves about how they experience mediation? Anecdotal evidence exists that both supports and refutes the efficacy of mediation for women who have been victims of domestic violence (Erickson & McKnight, 1990; Hart, 1990; Yellott, 1990). The few research studies that have been conducted indicated general satisfaction with the process and the outcome (Chandler, 1990; Davies et al., 1995). Surveys can indicate satisfaction with the outcome (e.g., it was fair); satisfaction with the process (e.g., fair, friendly); and satisfaction with the mediator (e.g., neutral, competent, informed). Analysis of agreements can tell us how they compare financially and periodic checks of compliance can tell us something about the durability of an agreement. We cannot, however, understand the nature of this experience for a battered woman, the subtleties and complexities, her perceptions of the experience, her motives, intentions, and interpretations surrounding this experience without in-depth interviews of battered women who have experienced mediation. We need to ask battered women about their experience without preconceived notions of what that experience might be. This leads to the research question:

What is the nature of the experience of battered women in mediation?

By conducting in-depth interviews with a small sample of battered women who have experienced mediation, I hoped to contribute to the theoretical discussion of the appropriate use of mediation in cases involving domestic violence as well as provide important and useful information for practitioners and policy-makers.

Significance of Study

It is clear that before significant further progress can be made on whether and perhaps, how, battered women's safety, needs, and entitlements concerning issues of divorce can be addressed by the mediation process, we need an understanding of how battered women perceive and interpret their experience in mediation. With the increase in the use of mandatory mediation across the U.S., policy-makers at state and local levels are already making decisions that effect battered women's lives. The results of this study could guide ethical and just decision-making by bringing forth and legitimizing the voices of battered women in the debate about the efficacy of mediation.

AFM and OAFM training standards now require domestic violence training as part of divorce mediation. Results from this study can further inform the direction and emphasis that this training needs to take by identifying aspects of the process (including premediation counseling, screening, and the mediation process itself) that battered women found particularly problematic or helpful.

Finally, what's at stake here are the individual lives of real women. We must not lose sight of their voices. The mediation community has been very responsive to victim advocates' concerns and objections at a systemic level, implementing needed policy and training changes over the past five years. What is not so clear, is whether these changes are making a difference in the mediation session itself. Anecdotal evidence from victim advocates and mediators is contradictory. Findings from this study may illuminate and clarify anecdotal evidence from both victim advocates and mediators, deepen and expand

practitioner's conceptual orientation to this issue, and contribute to the theoretical base of knowledge currently guiding mediation research and public policy.

CHAPTER 2: LITERATURE REVIEW

Introduction

I reviewed research literature in the areas of mediation in general and divorce mediation in particular, domestic violence theory and research, and the feminist critique of mediation. North America and Britain provided the primary research material for examination with supporting material from Australia. These sources were selected because of the wealth of research material from these sites on family mediation, domestic violence, the feminist critique, and the parallel development of family mediation services. The selected topic areas have been examined to provide the desired breadth and depth of understanding of the intersection of mediation, domestic violence and the feminist critique.

Mediation Theory and Principles

The literature review will focus on mediation theory and principles drawn from family mediation as it is practiced in North America that are most problematic for feminists and victim advocates. The themes, identified in Chapter I, are neutrality and empowerment. These themes are central to mediation practice, serving as justification and goal for the practice of mediation. They are also the focus of the feminist critique. Feminists argue that the practices of neutrality and empowerment are precisely the reason why mediation is not appropriate for battered women. As the purpose of this study is to explore the experience of battered women in mediation, the literature review will focus on the themes of neutrality and empowerment. First, a general overview of the mediation movement is offered to provide some context for these themes.

The problem-solving model of mediation forms the foundation of family mediation as it is practiced today. The AFM Standards of Practice state that “Mediation is

based on principles of problem solving that focus on the needs and interests of the participants” (AFM, 1998, p.1). The 2000 Model Standards of Practice for Family and Divorce Mediation⁶ also describe a problem-solving model (Symposium on Standards of Practice, 2000).

The family mediator assists communication, encourages understanding and focuses the participants on their individual and common interests. The family mediator works with the participants to explore options, make decisions and reach their own agreement. (p. 1)

This assumption is also supported by Kruk’s study of 500 Canadian family mediators who indicated that the problem-solving model formed the foundation of their practice (Kruk, 1998b). The problem-solving model is based on an individualistic needs-based discourse. The model assumes that conflict is based on the psychology of the individual, rather than a social view of the human being (Winslade & Monk, 2000). Individuals are primarily driven by needs that are conceived to originate in basic human nature, rather than cultural patterns of thinking. In this model, when individual needs are unmet, conflict arises. The role of the mediator is to assist the parties in finding a solution that will meet both parties’ underlying interests and needs. In addition, the mediator is supposed to be a neutral third party, a detached and objective observer able to apply the knowledge and principles of a scientific tradition, i.e. the problem-solving model, to the mediation process. Indeed, Harrington and Merry (1989) claim that the discourse of neutrality has legitimized the practice of mediation in the same way that scientific objectivity has legitimized empirical research. The mediator is to guide the process without influencing the substantive discussion. Clearly, value is placed on the ability of

⁶ The 2000 Model Standards were created by representatives from over 30 state and national mediation organizations.

the third party to be objective (scientific and value-free), thereby enhancing the probability of creating a fair outcome (Moore, 1996).

The general themes of family mediation as it is practiced in North America—client self-determination through empowerment, neutrality, a focus on interests, and a focus on the future (Academy of Family Mediators, 1998; Bush & Folger, 1994; Folberg & Taylor, 1984) reflect the problem-solving model and coincide with the Satisfaction Story as described in Bush and Folger's *The Promise of Mediation* (1994). Bush and Folger summarize four divergent views of the mediation movement.⁷ The story that most reflects mediation practice today is the Satisfaction Story. The goal of mediation from this viewpoint is to maximize each individual's options in order to construct an agreement that meets the interests of both parties. Mediation proponents argue that mediation is more suited to this goal than the adversarial system because it (a) focuses on the future, avoiding blame for past actions; (b) strives for client empowerment and self-determination; (c) encourages mutual problem solving; and (d) can lead to innovative solutions that may not have emerged otherwise (Bush & Folger, 1994).

The conception of power in this model bears discussion. Power is conceived as the ability to impose one's will on another party (Weber, 1940 as cited in Cobb, 1993). Some people are assumed to possess more power than other people by virtue of status, money, gender, race, or other individual attributes. Winslade and Monk (2000) discuss this conception of power as a commodity, which individuals possess in relative amounts. In a hierarchical society, e.g., patriarchy, individuals at the top of the hierarchy are assumed to have the most power. It is then the responsibility of the mediator to attend to

⁷ In addition to the Satisfaction Story, they describe the Social Justice Story—marginalized individuals can form communities to negotiate collectively with traditionally more powerful parties; the Transformative Story—fostering individual moral growth through empowerment and recognition; and the Oppression Story—the private and informal nature of mediation maintains the status quo by circumventing legal rights of less powerful (Bush & Folger, 1994).

these power differences and to balance power where one party is significantly weaker than the other party.

The following sections present a more in-depth discussion of the two themes that emerge in family mediation which are most problematic to feminists and victim advocates: neutrality and empowerment.

Neutrality

Neutrality is perhaps the central theme of mediation as it is practiced in North America. As already noted, Harrington and Merry (1989) claim the discourse of neutrality has legitimized the field, lending it scientific authority. In the North American model of mediation, one hallmark of neutrality is that the mediator does not know the parties, or at least has not had a previous relationship with the parties from which they derived direct benefit, and has no vested interest in the outcome (Moore, 1996). The AFM Standards of Practice state that “neutrality refers to the relationship that the mediator has with the disputing parties” (Academy of Family Mediators, 1998). The standards also state that the mediator must be impartial—act without bias or preference toward any party or position. Moore (1996 citing Young, 1972) also notes that neutrality is a critical defining characteristic of mediation. Neutrality means that mediators must separate their personal opinions about the case from their professional obligation to remain unbiased. The ultimate test of a mediator’s neutrality is in the parties’ judgment of their behavior (Moore, 1996). Moore asserts that neutrality, then, assures objectivity, which in turn ensures a fair, credible, and impartial process and outcome.

Studies on Neutrality

Though the concept of neutrality is core to the practice of mediation, little research has been conducted on what behaviors constitute neutrality and how to measure it. Seminal work in this area has been conducted by Cobb and Rifkin (Cobb & Rifkin,

1991a) with their neutrality project,⁸ which involved an analysis of over 30 videotaped community mediation sessions. Cobb and Rifkin noted that no guidelines exist for the practice of neutrality and that there seems to be a “folkloric” understanding of what neutrality means and how to practice it. A search of mediation literature and training texts by Rifkin, Millen and Cobb (Cobb & Rifkin, 1991b; Rifkin, Millen, & Cobb, 1991), revealed two contradictory qualities that comprise mediators’ conceptions of neutrality: impartiality and equidistance. Impartiality is the quality of remaining unbiased and detached from the disputants and the substantive issues. Bias, in this conception of neutrality, was a negative attribute of the mediator. Equidistance, on the other hand, is the use of bias to promote one party’s story or perspective when the mediator perceives a power imbalance or marginalization of that party. Bias, in this conception, was perceived as good and necessary, as long as it was practiced in symmetry, i.e., one was equidistant to both parties equally. Mediators are supposed to display both these qualities in their practice of neutrality.

Cobb and Rifkin (Cobb, 1993) further argue that the concepts of neutrality and power are intertwined and that mediators are supposed to use their neutrality to balance power. As one of the mediators interviewed in their study describes:

I never try to tell people what they should do; in fact, my power as a mediator lies in my ability to avoid taking control—my ability to be neutral. Being neutral, to me, means not taking sides, not judging but maintaining control over the process. (p.249)

Neutrality, they claim, is difficult to assess when the only measure of it (and therefore the balancing of power) is in the perception of the participants.

⁸ See Cobb & Rifkin, 1991a, 1991b for a detailed analysis of the discourse of neutrality. They propose redefining neutrality as a set of discursive practices that manage the storytelling process in mediation. The management of stories provides communication-based and observable guidelines for mediation practice.

A study of male and female visions of mediation further illustrates this lack of clarity over the meaning and practice of neutrality. Weingarten and Douvan (1985) found that male and female mediators described their neutral role and relationship to the parties differently. Women were less comfortable in defining themselves as “neutral” and instead used metaphors like “loving parent” or “a bridge” (Weingarten & Douvan, 1985, p. 355) to describe the quality of facilitation they wished to achieve. They viewed their role as being connected, caring, and guiding. Men, on the other hand, often stated they felt comfortable defining their role as neutral and objective. They chose metaphors like “Sherlock Holmes figuring out what isn’t there and needs to be included” and “a translator accurately capturing and reporting messages on newsprint” (Weingarten & Douvan, 1985, p. 355).

Despite this finding that male and female mediators have different perceptions of the role of neutrality, a recent study by Dingwall, Greatbatch and Ruggerone (1998) revealed no significant gender differences in the interactions of mediators with clients. The study analyzed 150 hours of audio taped divorce mediation sessions. Results indicated that the mediator’s professional identity and perceived role as a neutral facilitator had a greater impact on his or her interactional conduct than did gender. For example, the authors noted that the choice of direct and indirect forms of communication seemed to be more dependent on the immediate situation, rather than gender-related considerations. The authors also attributed the tendency of both male and female mediators to use indirect forms to a concern that their neutrality might be compromised (Dingwall et al., 1998). This study suggests that neutrality was a guiding factor in the choice of interactional style.

Feminist Critique of Neutrality

Mediator neutrality has long been seen as problematic by feminist critics (Bryan, 1992; Fischer, Vidmar, & Ellis, 1993; Gourley, 1994; Grillo, 1991; Hart, 1990; Lerman, 1984). Feminists argue that a neutral stance ignores the societal inequities present in a patriarchal society and the unequal negotiating power of men and women. It compromises the ability of the less powerful party, the woman, to represent her needs and interests in negotiation. Bryan (1992) cites a number of factors that she argues contribute to unequal power and provide men significant negotiating advantages including education, economic power, status, competitive orientation, and sex role ideology. She argues that even if women attain equal or greater status in any particular area, sex role expectations and a greater emphasis on care and relatedness seriously disadvantage the negotiating power of women. Bailey (1989) questions whether a divorcing couple can achieve a fair agreement when one of the parties is weaker. She claims that some mediators acknowledge that the woman is usually the weaker party but that addressing this problem is seen as incompatible with neutrality. She notes that women rely on legal entitlements enacted in law precisely to address systemic gender inequities, which may be lost to her in mediation if the mediator acts in strict neutrality or is unaware of such entitlements.

When the mediation involves a battered woman the neutral stance becomes even more problematic. Battering can create extreme power imbalances between men and women (Dobash & Dobash, 1980; Fischer et al., 1993; Schechter, 1982). Through repeated abuse (physical, emotional, sexual, familial, or property), threats, and intimidation, the batterer exerts control over the victim and isolates her from external resources and support (Fischer et al., 1993; Walker, 1979). The effects of the abuse may

lead to long-term psychological harm, from depression to post-traumatic stress disorder⁹ (PTSD) (Davies, Lyon, & Monti-Catania, 1998), making it difficult to negotiate on her own behalf. She is likely to be subject to manipulation and intimidation in the context of the mediation session. Feminists argue that mediators would need to abandon the principle of neutrality in order to address this power imbalance (Bryan, 1992) and even then, the most skilled mediator could not compensate for the extreme power imbalances present in a relationship characterized by battering (Fischer et al., 1993; Hart, 1990).

Finally, a neutral stance in mediation translates to a neutral stance toward the abuse, which sends a message that the violence is acceptable. This stance is unacceptable to feminists and victim advocates because it counters hard-won legal reforms that made domestic violence a punishable crime (Bryan, 1992; Fischer et al., 1993; Hart, 1990) and threatens to “privatize” domestic violence.¹⁰ This is further complicated by the focus on mutual responsibility for problems in mediation. Not only is the battered woman denied support as a victim, she is implicitly held partially responsible for her abuse (Fischer et al., 1993; Grillo, 1991).

For these reasons, neutrality as it is defined by standards of practice, is a significant problem for feminists and victim advocates. Prior to any dialogue with mediation proponents regarding the use of mediation in cases of domestic violence, feminists insisted that the following conditions be recognized and acknowledged: the abuse is not negotiable, it must be acknowledged as unacceptable, the victim must not be held responsible for the abuse in any way, and agreements must not include conditions on

⁹ Battered woman syndrome, identified by Walker (1979), has recently been viewed as a type of post-traumatic stress disorder.

¹⁰ Because of the informal nature of mediation, treating domestic violence as a mutual problem or not addressing it at all effectively removes domestic violence from the public arena, making it no longer subject to public policy or public scrutiny (Grillo, 1991).

the victim's behavior for stopping the abuse (Toronto Forum on Woman Abuse and Mediation, 1993).

Empowerment

Like neutrality, empowerment emerges as a key ethical principle and practice standard of mediation. Ricci (1985) defines empowerment as “the ability to exercise [entitlement] claims through preparing and presenting proposals, analyzing circumstances, withstanding power ploys or negotiating in one's best interest” (p. 50). Bush and Folger (1994) define empowerment as “the restoration to individuals of a sense of their own value and strength and their own capacity to handle life's problems” (p. 2). Though these definitions are quite different—one focusing on specific skills and strategies in negotiation and the other on personal growth in life—they both attend to the effects of empowerment on the individual.

The 2000 Model Standards of Practice for Family and Divorce Mediation also note that client self-determination is the fundamental principle of family mediation. The primary role of the mediator is to “assist the participants to gain a better understanding of their own needs and interests and the needs and interests of the others” (Symposium on Standards of Practice, 2000). It also states that a mediator should inform the parties of additional resources they can turn to for information and advice throughout the mediation process. This suggests that the mediator should take active steps to increase the capacity of the party to mediate, i.e., empower the parties.

In response to feminist concerns, Neumann (1992) and Ricci (1985) recommend an interventionist style to empower the woman (the weaker party) in divorce and custody mediation. They suggest that the mediator has an ethical obligation to empower the weaker party. Ricci (1985), Neumann (1992), and Davis and Salem (1984) suggest that

mediators can best empower parties by controlling the mediation process, including the following:

1. Setting ground rules
2. Encouraging parties to share knowledge
3. Interrupting intimidating behavior
4. Conducting mediation in a context that offers information and support
5. Monitoring that one party does not settle out of fear
6. Compensating (in caucus) for one party's negotiation skill deficiencies
7. Encouraging insight into the parties' (destructive) patterns of interaction
8. The use of proxies to stand in place of a spouse
9. Controlling who attends mediation sessions

Ricci (1985) recommends that the mediator inform all parties of their full entitlements and take steps to equalize the negotiating power of both parties. Once entitlements are identified, the next step is to identify dysfunctional interaction patterns and employ interventions to interrupt these patterns. For example, set ground rules to address judgmental or threatening statements or behaviors. This is accomplished through "traded assurances" and "interactional monitoring." The first is the process of identifying the parties' greatest fears regarding negotiations or mediation and then helping the couple build assurances to assuage those fears. The second step of this process is to determine whether expert counsel on rights and entitlements is necessary, and if so, encourage them to seek out expert counsel. Interactional monitoring is the process of pointing out to the couple the effect of their behavior on the process of negotiation. In order to empower the weaker party, then, Ricci argues that the mediator must employ interventions that increase the knowledge and skill of the participants and interrupt dysfunctional communication patterns.

Laue and Cormick (1978) also talk about client empowerment in their work with community disputes and suggest that a third party intervenor must be guided by the values of freedom and justice through empowerment. Like Ricci and Neumann, they claim that the mediator has an ethical obligation to empower the weaker party. The mediator must attend to proportional empowerment, a condition in which all parties have full access to their latent power, can advocate for their rights and interests, and negotiate with other empowered groups or parties from a position of respect and not charity. Mediator interventions contribute to proportional empowerment by enabling the weaker party to increase their power. Mediators should evaluate every decision as to whether it contributes to social change by increasing the ability of the weaker parties “to determine their own destinies to the greatest extent consistent with the common good” (Laue & Cormick, 1978, p. 220). Laue and Cormick suggest that mediators can empower the weaker party by first recognizing and acknowledging the conditions that disenfranchise or marginalize the weaker party (e.g., racism, discrimination, etc.) and then working to assist negotiation skill development, increase access to information, and being alert to co-optation of the process by the more powerful group (e.g., a focus on settlement alone usually contributes to strengthening the status quo; a neutral stance favors the status quo).

Bush and Folger (1994) propose yet another approach to client empowerment. They suggest that mediators can empower parties by attending to the moment-to-moment interactions and encouraging and helping parties to deliberate and make their own decisions. This is accomplished by the mediator intervening to ask questions that help the parties clarify their options and assess the consequences of their different options. The parties are in charge of the process and the content, increasing their opportunities for decision-making during the mediation session. Bush and Folger do not provide any

guidelines on how to address power imbalances within this model. In fact, “power” does not even appear in the index of their book *The Promise of Mediation*.

Similar to her findings on neutrality, Cobb (1993) found that mediator’s descriptions about how they empower parties were vague and attributed to psychological concepts and vocabulary (e.g., “not taking sides,” “not judging,” “learn how to listen, to value the experience of others,” and “protect women from the authority of their husbands,” pp. 247-249) rather than communication-based descriptions of practice. She finds this problematic in that it does not provide any specific communication guidelines to mediators in how to empower their clients.

Though guidelines or procedures for empowering clients differ, the definition of empowerment throughout the literature is fairly consistent: assisting the parties in understanding, clarifying, and exploring their options in order to enhance their decision-making power.

Feminist Critique of Empowerment

One can see from Cobb and Rifkin’s studies that neutrality and empowerment are intertwined in the mediator’s conceptions of ethical practice and that it is difficult to describe observable, specific actions or communication strategies that empower parties. Some feminists maintain that the only way to empower women and guarantee their rights is through an advocacy process (Bailey, 1989). Bailey believes mediators cannot successfully empower women in mediation because of the structural inequities in society. She claims the rhetoric of empowerment lacks a political analysis of gendered relations in our culture. In order to balance power inequities, mediators would have to abandon both neutrality and empowerment. Bryan (1992) argues that in order for mediators to insure fair agreements where there is a significant power imbalance (as there is between husbands and wives in our society), mediators would have to intervene in the substantive

discussion of the agreement. She notes that this conflicts with the ethical principle of client self-determination and that mediators are unlikely to violate this principle in favor of responsibility for fair outcomes.

Feminists further claim that empowerment fails women because mediators typically fail to recognize the existence of inequities and then to take action to correct the power imbalance (Bailey, 1989; Grillo, 1991). Bryan (1992) notes that mediators may not be sensitive to power disparities that result from a gendered culture. She discusses two sources of power that illustrate the inequities between men and women entering divorce: tangible resources, like wealth and education; and intangible resources, like self-esteem, status, and dominance. She discusses the difficulty in identifying the disparities that stem from intangible resources and the unlikelihood that even a skilled mediator could address these inequities in the course of the mediation process.

Another feminist theorist argues that empowerment disadvantages women in the long term because it sets up a false expectation that she now has an equal voice in the relationship yet does not provide support or skills for negotiating with her ex-husband in the years to come (Regehr, 1994). Regehr, like Bryan, suggests that mediators must not only recognize that inequities exist, but must use their own power to insure that fair settlements are reached.

Empowerment Studies

Very little research has been conducted on empowerment to determine whether it actually occurs and if it does, what mediators do to empower the parties. Cobb's study, discussed here, is one of the few. Two other related empowerment studies will be discussed in the "Mediation and Domestic Violence Research" section.

Mediators consistently talk about empowerment as a goal of mediation and a justification for the process (Cobb, 1993). As part of a neutrality project, Cobb

interviewed 15 mediators about how they empower disputants. Their responses fell into the following three categories: (a) balancing power, (b) controlling the process, and (c) being neutral (Cobb, 1993). In Cobb's analysis, power was conceived by the mediators to be an individual attribute and the exercise of power the ability to impose one's will. In order for the mediators to balance power required that they first assess which disputant possessed more power (based on individual attributes like education, status, money, gender, etc.) and then to infer that they are acting with an intent to impose their will because they are more powerful. This means the mediator must construct his or her own interpretation of the parties' actions, effectively usurping the right of the parties' to account for their own actions and ultimately disempowering them.

Mediators believed that controlling the process also empowered the parties by setting and keeping ground rules, and guiding the parties through the different stages of mediation toward agreement. Even if no agreement was reached, mediators talked about the process of mediation itself being empowering because the parties may learn to listen and value the experience of others. In their talk, mediators clearly separated the content and the process—controlling content was thought to be disempowering, while controlling process was empowering. The distinction between managing process and managing content has begun to be questioned in the field. There is a growing recognition that mediators cannot help but shape content through their interactions. Winslade and Monk (2000) cite several theorists that question the ability of the mediator to guide process without influencing content: (a) Burton (1990) notes that mediators are not value-free and the notion that they could stand outside their culturally-informed values and norms is very unlikely, (b) Putman's (1994) research has shown that process decisions do influence content, and (c) Bush and Folger (1994) discuss how a settlement orientation narrows the range of topics addressed in mediation.

And finally, Cobb's (1993) mediators talked about neutrality as a way to keep their own potential power from threatening empowerment of the parties. Because of the distinction between content and process, mediators are faced with the task of remaining impartial with respect to content, yet guiding the process in a way that empowers both parties. Cobb suggests that without specific practice guidelines, mediators are left to guess which practices empower and which do not.

The notion that neutrality empowers parties directly conflicts with Laue and Cormick's (1978) research on community disputes, where they claim that a neutral stance will favor the status quo and further disempower and marginalize the weaker party. Because most community disputes, in their experience, arise between the establishment and a disenfranchised community group (e.g., patient/health care system, welfare recipient/welfare system, black neighborhood group/white controlled planning department), significant power imbalances are usually always present. In this respect, community disputes resemble divorce and custody mediation with abuse couples. Laue and Cormick (1978) claim that proportional empowerment, i.e., the ability of all parties to fully exercise their latent power to advocate for their rights and interests, is the only protection against unethical intervention. It is the responsibility of the mediator to act in ways that assist parties in developing their latent power and contribute to social change. Anything less preserves the status quo and works against the values of freedom and justice for every human being.

Domestic Violence and the Battered Women's Movement

At the same time that the use of divorce mediation began to increase, the battered women's movement was taking form. The 1970s saw the grass roots development of victim services for battered women and a political agenda to fight violence against women. Early in its existence, the battered women's movement fought for legal and

social reform as well as providing shelter and other services for victims of domestic violence. Feminists in the movement sought alternate theories to the intrapsychic explanations for the violence perpetrated against women. In her analysis of male violence, Susan Schechter points to patriarchy (domination of women) and capitalism (public vs. private realms) as root causes that perpetuate violence against women by their intimate partners (Schechter, 1982).

Prior to the battered women's movement, the general public thought the occurrence of domestic violence was rare. The battered women's movement brought the frequency and severity of domestic violence to the attention of the public and the criminal justice system. It also dispelled the myth that battering only occurs in certain races and socioeconomic classes. Research has shown that battering occurs across race, ethnicity, culture, age, socioeconomic, and educational groups (Schechter, 1982; Walker, 1979; Walker, 1984). However, national crime statistics show that women without a college education suffer partner abuse at double the rate as those women with a college education and abuse is five times higher in lower-income families (Bachman, 1994). Research supports this higher incidence of domestic abuse in lower socioeconomic families (Chandler, 1990; Davis, 1998).

In their book, *Safety Planning With Battered Women*, Davies, Lyon, and Monti-Catania (1998) trace the early development of advocacy services and discuss their development of a new model for advocacy, which they call woman-defined advocacy. They note that in the early years of the battered women's movement, resources were scarce, policies did not address domestic violence as a social problem, and battered women were often viewed as asking for the violence they experienced. In order to raise public awareness and garner public support advocates developed a more sympathetic image of the battered woman as "pure victim." The components of this image include: (a)

abused women are not violent unless they are driven to use violence in self-defense, (b) battered women experience extreme violence separated by periods of emotional abuse, (c) the pattern of abuse will increase in severity and frequency and will only get worse unless someone intervenes, and (d) women are terrified by this experience. This model represented many, but not all, of the women seeking help and shelter during the 1970s and early 1980s. Services, policies, and protocols were developed to aid and protect this image of the battered woman. Components of this service-defined advocacy included, for example, shelters, safety planning, restraining orders, and mandatory arrest.

Changes in the court system and law enforcement that swept across the country during the 1980s brought battered women with a more diverse set of circumstances before the system. Many of these women did not fit the publicly constructed image of the battered woman. They were not pure victims. They may not have experienced extreme violence; they may have problems of their own such as drug or alcohol abuse or criminal activity; they were not necessarily terrified of their abusers. These women presented more complex and varied circumstances which the previous service model of advocacy could not adequately address. The woman-defined advocacy model recognizes the unique situation of each battered woman and draws on her life experiences, her perceptions and her own analysis of her partner's control in order to devise a safety plan. Advocates work with each woman to help her clarify her choices and explore her options.

The work of Davies et al. (1998) suggests an approach from which mediators could benefit. Western mediation models are based primarily on negotiation theory and research, and empirical studies of mediation. Battered women have not been the primary subjects of these studies so a model has developed that does not account for the significant power imbalance present in their relationships. With the increased use of mandatory mediation in divorce cases, victim advocates grew concerned about the impact

this would have on battered women. During the 1990s victim advocates and mediation proponents, in a variety of organizations both in Canada and the U.S., met to talk about mediation and domestic violence. Policy statements regarding mediator standards and recommendations for modifications to the mediation model were issued by several organizations. Accredited divorce mediation training classes were required to include a module on domestic violence. The AFM Task Force on Spousal and Child Abuse (1998) published a set of guidelines for the mediation of disputes in which abuse is a factor. Included among the suggested guidelines are setting ground rules, using separate meetings if necessary, and maintaining a balance of power between the couple. The guidelines also instruct the mediator to inform their clients that they are not neutral about safety. But what is the definition of safety? Does the AFM's definition include psychological safety? And if so, what steps does a mediator take to protect the victim and at the same time maintain neutrality? It seems these instructions pose a dilemma: remain neutral and you risk your client's psychological safety; take steps to protect your client and you risk your neutrality. But do you? It may depend on your definition of neutrality. As the previous discussions have shown, some mediators (and theorists) believe they can maintain their neutrality and take steps to empower the weaker party. The question remains, do these steps benefit battered women in mediation?

A significant concern of feminists is the further victimization of battered women when they seek formal help be it from the criminal justice system or the feminist community itself. One of the questions raised about mediation, then, is does it place women in danger both physically, legally, and economically, thereby further victimizing them.

Impact of Domestic Violence on Women

Lenore Walker (1984) theorized that battering leads to a psychological condition known as learned helplessness in women. Learned helplessness is a conditioned reaction to unpredictable abuse. Through intimidation and abuse, the batterer gains control and domination over his victim. Loss of self, anxiety, intimidation and a sense of helplessness psychologically paralyze the victim. This psychological theory places the cause of abuse in “individual” behaviors and motivations.

Fischer et al. (1993) analyze battering in the context of a relationship. They define a culture of battering that has three elements: (a) the presence of abuse, (b) control and domination, and (c) denying or minimizing the abuse by the victim and the batterer. When these three elements are present in a relationship, victims describe feeling fear, intimidation, depression, anxiety, and loss of self. They also note that the batterer and his victim develop their own symbolic language and gestures around the abuse, which often go undetected by observers, even mediators trained to be sensitive to the effects of domestic violence. For these reasons they argue that women would find it difficult to face their abuser and articulate their needs and concerns, impossible to negotiate on an equal basis with their abuser, and that mediation places these women at greater risk for coercion.

An alternative theory emerged in the late 1980s following research by Edward Gondolf (1988). He found that as the severity and frequency of the abuse increases, battered women begin to shift blame to the batterer. Gradually the woman’s perception of her situation changes and she develops coping strategies. Gondolf’s study showed that women are active survivors rather than helpless victims. They increased their help-seeking behaviors as the intensity and severity of the abuse increased. The survivor theory suggests that battered women possess strength and self-determination, are able to

blame their batterers as their perception of the abuse changes, and maintain a sense of self. Therefore some women may find mediation empowering and a beneficial forum in which to address divorce and custody issues.

A grave concern to feminists and mediators alike is that national crime statistics and research show that battered women are at greatest risk for assault at the time of separation. Men who batter often escalate their violence to coerce a woman into staying or to retaliate for the woman leaving them (Dutton, 1988 as cited in Hart, 1993; Mahoney, 1991; Saunders & Browne, 1990). U.S. crime reports indicate that up to 75% of domestic assaults reported to law enforcement agencies may be inflicted after separation (Harlow, 1991; U.S. Department of Justice, 1983). Victim advocates worry that increased exposure to her violent partner through mediation may dramatically increase her risk for assault and serious injury.

Mediation and Domestic Violence Research

Clinical experience and anecdotal evidence formed the early foundation of mediation proponents' arguments for the appropriateness of mediation for some domestic violence cases. Proponents recognized that mediation was not appropriate for all couples where domestic violence had occurred. But violence research does indicate a continuum of violence, some of which does not render the victim powerless and fearful (Johnston & Campbell, 1993). These mediators drew from their clinical experience to develop theories and special procedures for domestic violence cases.

Erickson and McKnight (1990) say they have had success in mediating domestic violence cases by developing special mediation procedures that (a) take the violence seriously, (b) clearly state that there is never an excuse for violence, and (c) proceed by discussing the special steps that might need to be taken given the history of violence in the relationship. They also suggest that the mediator must take an active role in

uncovering spouse abuse. This experience was based on 1400 cases in 13 years, over half of which they estimated were couples with some history of domestic violence.

Corcoran and Melamed (1990) argue that mediation is a viable alternative to women who have been victims of abuse when the abuse is in the past and no coercion or intimidation is currently present in the relationship which might jeopardize her safety or ability to negotiate effectively. And finally, Ann Yellott (1990) notes that after years of experience in the field, she finds that mediation can be an effective problem-solving tool for at least a percentage of those whose lives have been touched by violence.

To date, there exists very little empirical evidence of the impact of domestic violence on mediation. One of the earliest studies in this area was conducted in 1990 by David Chandler. This study found that 23% of the cases had a history of violence.¹¹ Violence cases were categorized according to three dimensions:(a) the existence of past violence, (b) the presence of current fear, and (c) the present ability to communicate with the abuser. Women who responded “yes” to all three dimensions accounted for 49% of those who had been abused and 9% of the total sample of those seeking mediation. Of the abuse cases that mediated (23 of 49 cases or 47%), 69% reached some kind of an agreement. (An agreement was defined as any written agreement on any topic.) Cases with past violence, current fear, and inability to communicate had a lower agreement rate of 33%. In contrast, the non-abuse cases had a mediation rate of 52% and an agreement rate of 53%. Mediators were asked to rate the complexity of cases and the agreements reached between the abuse and non-abuse comparison cases. Mediators rated the abuse cases more difficult because of the complexity of issues and interpersonal dynamics. They rated the agreements as being fair, durable, workable, and comprehensive, but less

¹¹ This is significantly below the estimates of court-based mediation program directors that 50% to 80% of cases referred to them involve some domestic violence (Thoennes, Salem & Pearson, 1995).

so than in the non-abuse comparison cases. The author cautioned against drawing any generalizable conclusions from this study because of the low numbers. He also noted that research needed to look at clients' perceptions of their experience (Chandler, 1990). This study raises two additional questions. First, since the participants were not surveyed for their perceptions of the process and outcome, one has to wonder whether the abused women felt coerced or manipulated into agreements. Second, by what standards did the mediators rate the agreements as fair and workable? Whose values were the basis for evaluation and were those values based on cultural norms and gender bias? Without the answers to these questions and more information about the clients' experiences, this study fails to make a strong case for mediation when abuse is present.

A recent study comparing mediation and lawyer-represented clients in Canada found no statistically significant differences in postprocessing abuse and harassment between the two samples. They found that voluntary mediation made a greater contribution to the prevention of postprocessing violence toward women than coerced mediation or lawyer negotiation and concluded overall that mediation makes a greater contribution toward preventing violence against separated women by their partners than lawyer negotiations (Ellis & Stuckless, 1996).

An Australian study (Davies, Ralph, Hawton, & Craig, 1995) compared the experiences in mediation of clients who reported abuse as a significant issue and those who did not. Of the 292 individuals in the study, 69% of the women and 53% of the men reported abuse as a significant issue for them.¹² The self-report instrument used to

¹² The "mutual" battering results of self-report instruments has been heavily criticized (Dobash & Dobash, 1992). Johnson (1998) notes the failure of the Conflict Tactics Scale (CTS), the most frequently used instrument to measure family violence in the US, to take into account the economical and physical disparity between men and women, the context in which the abuse occurs, and the consequences of that abuse. The scale equates a shove, push or slap by a man equivalent to that of a woman and fails to measure the damage of those acts. Though we don't know what self-report instrument was used in this study, the authors did note that a high percentage of men reported their spouses and themselves as victims of the

measure the presence of violence simply asked whether “physical and/or emotional abuse” was present, whether abuse was a significant issue, when violence last occurred, and whether the respondent had sought any help. The limitation of this type of questionnaire is that it does not distinguish between the level (e.g., a slap versus threatened with a weapon) and consequences of the violence (e.g., momentary pain versus a black eye or broken rib). In addition to the “significance of abuse” questionnaire, the women were also given the Index of Spouse Abuse,¹³ a 25-item scale designed to measure the severity of physical and nonphysical abuse experienced by the woman. Results of the ISA correlated with the self-reports of women indicating that abuse was a significant factor, i.e., women reported specific behaviors that matched their assessment of abuse in their lives. No such cross-validation instrument was given to the men.

The study compared satisfaction of abused females and males with non-abused females and males regarding several dimensions of the mediation process: (a) overall satisfaction, (b) professional skills and sensitivity of mediator, (c) mediator’s impartiality and fairness, (d) impact of mediation on spousal relationship, (e) adequacy of information provided, (f) child specific issues, (g) counseling outcomes and agreements, and (h) management of abuse issues. Satisfaction was determined by responses to the Client Satisfaction Questionnaire (CSQ), which was mailed to all clients 2-3 weeks following completion of mediation. Eighty-five CSQs (29%) were completed and returned. The authors found no significant differences in satisfaction levels for any of these dimensions among abused and non-abused clients.¹⁴ The lack of significant differences led the authors to conclude that merely knowing of the presence of physical or emotional abuse

abuse, suggesting men’s tendency to attribute mutual responsibility to the abuse and minimizing their accountability as sole perpetrator.

¹³ The ISA was developed by Hudson and McIntosh (1981 as cited in Davies et al., 1995).

¹⁴ The only significant differences surfaced for abused men who reported dissatisfaction with mediators’ responses to their voiced concerns about abuse that they had suffered.

is not a predictor of client satisfaction with mediation. Two additional follow-up contacts were planned at points 9-18 months and 18-24 months following mediation. Further analysis of the data is expected to yield an assessment of the workability of agreements and clients' perception of the fairness of agreements over time. The follow-up studies regarding clients' perceptions of agreements over time could be particularly beneficial in assessing the appropriateness of mediation for abused women. Such an assessment needs to look at the economic and social status of the women, the impact of custody and visitation arrangements, and the level of violence or harassment still present.

Finally, a fourth study that was intended to compare the use of mediation and custody evaluation procedures in resolving custody and visitation disputes in Portland, Oregon, had to be revised because so few participants were willing to forego mediation for assignment to the custody evaluation group (Newmark, Harrell, & Salem, 1995). The redesign of this study compared perceived personal empowerment, risk of future harm, and decision-making power of partner between abused and non-abused clients referred to mediation. Results indicated that abused women scored significantly lower than non-abused women on personal empowerment scales, predicted a higher risk for harm (45% compared to 5%), and rated their partners' decision-making power greater on all items but one (decisions about the children) than non-abused women indicated for their partners. Personal empowerment referred to how competent parties felt about working with their partners to resolve the dispute. Interestingly, the study results suggested that abused women believed they could state their needs but were fearful of the possible repercussions for doing so. Personal empowerment and fear of harm are considered two important factors to consider in the appropriateness of mediation. The Newmark et al. study found that lower personal empowerment and fear of harm in the next six months were both a function of the occurrence of abuse. Since the participants were interviewed

prior to their mediation experience, the study measured only their perceptions of empowerment and risk for harm. The authors speculate as to whether the mediation process might empower the abused women who had a stronger sense of self-efficacy.

The Newmark et al. (1995) study seems to support the clinical experience of Erickson and McKnight, Corcoran and Melamed, and Ann Yellott. These practitioners found that at least some abused women benefited from mediation when the mediators were sensitive to and knowledgeable about the dynamics of abuse and mediation procedures were modified to address client safety. What is still missing from these analyses is a detailed contextual exploration of the mediation experience from the perspective of the battered women themselves.

The three studies that follow raise questions about the appropriateness of divorce mediation for cases with a history of abuse. The first of these studies examined mediation trainees' responses to a performance art piece depicting victims' experiences with domestic violence (Maxwell, 1999). The piece employed an image-based format as a method of increasing mediation trainees' sensitivity to and recognition of domestic violence. Respondents varied significantly in their perceptions of the piece, from associating the pain and angst of the performer with domestic abuse to "I shouldn't be seeing this, and I don't know what it's about, except that it is definitely not about the experience of domestic violence" (p. 282). This raises troubling questions regarding whether some mediators are disinclined to consider the possibility of domestic violence, thereby risking the further victimization of the woman in the mediation session and precluding any chance of a fair or just settlement.

The second study used a simulated client technique to explore process styles of mediators when confronted with a divorce case involving spouse abuse (Kruk, 1998a). The researchers developed a case study with a dominating and abusive husband and a

wife who was intimidated by him and feared for her own safety. She was afraid to identify the abusive behavior for fear of retribution and further abuse from her husband. The researchers played the role of the divorcing couple. Twenty mediators were randomly selected and ten agreed to participate. The mediators were to proceed as if this were a real divorcing couple, starting from their initial contact and moving through the process as they would in any case. The researchers sought to determine whether the mediators chose a neutralist or interventionist process style and what effect it had on the participants. Kruk found that the first step in identifying abuse was a sensitivity to and understanding of violence and the range of abusive behaviors. Six of the mediators identified the presence of abuse in their first telephone contact. Six (three of those that identified abuse in the phone call and three who did not ask about abuse) chose to meet with the parties separately for the first session. In this separate session, the mediators focused on questions about power and abuse, control in the relationship, safety and victim capacity. The mediators were sensitive to the violence, discussed options thoroughly, shared their reservations about certain options and then made decisions in a way that led the woman to concur. During this private session, mediators abandoned their neutral stance in favor of safety, making decisions about whether and how to proceed. Kruk found that these mediator actions and interventionist style empowered the women in the initial private contact.

Six mediators proceeded to joint sessions, one halted mediation after the initial contact, and three recommended shuttle mediation. In the joint sessions, mediators used a variety of tactics to maintain control of the process, not all successful. One mediator in particular, who had not identified the presence of abuse, lost control when the husband used bullying tactics to obtain concessions from his wife. In another case, the mediator attempted to challenge the husband's dominance by speaking for the wife. She was

placed in the middle of a power struggle between the husband and mediator, and when asked to clarify what she really wanted, was put in the position of having to disagree with one of them—an ultimately disempowering experience. Kruk found that an interventionist style during the private sessions, in which the mediators were highly sensitive to the wife's disadvantaged position and made decisions in a careful and considered way, empowered the woman. In the joint sessions, however, whether the mediator took a more interventionist role or lost control, it was ultimately disempowering for the woman. He concludes that shuttle mediation may be the best option for situations of power imbalance and abuse.

The final study involves analysis of community mediation tapes. The cases include mediation involving visitation disputes and domestic violence. Cobb (1997) reviewed 30 community mediation tapes, analyzing the violence stories that surfaced and the function of the mediation process in either sustaining or domesticating the violence story. Violence is domesticated when the discourse of rights is subsumed by the discourse of needs, when the morality of mediation (responsibility, mutuality, participation) overrides the competing morality of rights (there is a right and wrong, a right is an entitlement not an earned privilege). Cobb explains that a moral context is what establishes shared norms and standards that make up a community. A violence story invokes the moral context of the community for evaluation of action. Since there is no one right way in mediation, no absolute moral code, it becomes difficult to establish a discourse of rights. Because the ideology of mediation transforms rights to needs, complaints become requests and individuals become responsible for ending the violence to which they are victim. In 80% of the cases, the violence story was domesticated. In the 20% of stories where the roles of victim and victimizer survived, all the victims were men. The positive positions for the victims in these stories *never* occurred without the

help of the mediator to reformulate the role of the victimizer. When the rights discourse prevailed, this was evidenced in the agreement itself which included an apology and/or some form of protection for the victim. Cobb notes that the data were collected in 1990 and since that time much has transpired to increase awareness of mediators to the presence of violence, and particularly, domestic violence. Indeed, Maxwell's 1999 study indicates that at least some mediation trainees were particularly sensitive to recognizing the possibility of domestic abuse, the critical first step toward being able to work with the parties to determine the most effective intervention.

Conclusion

In summary, the theoretical, empirical and anecdotal evidence regarding the appropriate use of mediation in abuse cases is contradictory. Significant mediation clinical experience (e.g., 1400 cases over 13 years for Erickson and McKnight) suggests that mediation can be effective and empowering for some women. Anecdotal evidence presented by feminist critics suggests the opposite, that mediation is extremely disempowering for women (Grillo, 1991; Hart, 1990). Mediation theorists argue that the process of mediation itself is empowering, that the principles of neutrality and empowerment can effectively address power imbalances. If the mediator is skilled and knowledgeable about the dynamics of abuse, proponents claim that abused women can benefit from mediation through the use of modified procedures. Feminist theorists argue that the patriarchal structure of our society will be replicated in mediation, that skill alone cannot counteract societal inequities based on gender, and that a number of factors (e.g., education, economic status, sex-role ideology) disadvantage women in negotiations.

Mediation research has resulted in contradictory results. Some studies suggest that mediation works equally well for abuse and non-abuse couples (Chandler, 1990; Davies et al., 1995) and that the use of mediation, as opposed to lawyer negotiation, might

reduce post-mediation violence and harassment (Ellis & Stuckless, 1996). These studies do not present a convincing case for mediation, but they do create an opening for the possibility that mediation could be effective. The most hopeful of the mediation studies found that abused women indicated a sense of self-efficacy and that the process of mediation might empower these women (Newmark et al., 1995). Other studies suggest that not all mediators will recognize the presence of abuse (Maxwell, 1999), thereby jeopardizing the safety of the woman and the likelihood of reaching a fair agreement, or that mediators contribute to the transformation of violence stories such that the victim ends up accepting blame for the violence and is responsible for ending the violence (Cobb, 1997). Clearly mediation research has presented contradictory evidence as to its efficacy and appropriateness for domestic violence cases.

Likewise, violence research has presented contradictory evidence. Some (but not all) women suffer psychological harm as a result of the abuse. Some may suffer extreme levels of psychological harm (e.g., PTSD) and some may suffer milder levels (e.g., lowered self-esteem). As a result, not all women are terrified of their abusers. Research has shown that women are not passive in the face of abuse, but are active in strategizing and planning their safety options (Davies et al., 1998; Gondolf & Fisher, 1988). Woman-defined advocacy builds on the model of the battered woman as active and engaged in her assessment of her situation and her options.

There is still not enough empirical evidence to convincingly support or deny the use of mediation in domestic violence cases. As the developers of woman-defined advocacy discovered, it is imperative to listen to the voices and experiences of the women themselves—they are the experts on their lives. This study's goal was to explore battered women's experiences in mediation from the perspective of the battered women themselves. It was hoped that by listening to the experiences of battered women, this

study could identify the strengths and weaknesses of mediation from the women's perspective and contribute to the continuing dialogue about the appropriate use of mediation when abuse is present. It was further hoped that specific recommendations would emerge from the data that would improve this experience for abused women and guide future developments in training, practice, and policy.

CHAPTER 3: METHODOLOGY

Research Design

This study will be conducted using qualitative methods. Qualitative inquiry is uniquely suited to exploring and examining the perceptions, thoughts, motivations and interpretations of a particular experience by the participants themselves. It is well suited to the goal of this study: to explore the nature of the experience of battered women in mediation for the purpose of understanding and providing guidance in the context of the “appropriateness” debate.

Qualitative methods seek to explore and understand the richness of a particular experience from the perspective of the one who is living through, with, and in the experience. One of two fundamental inquiry paradigms, logical-positivism¹⁵ being the other, qualitative inquiry seeks to understand a phenomenon through inductive and holistic exploration of human experience in context-specific settings. The researcher does not define expected outcome measures and minimizes to the best of her ability any manipulation of the research setting or subject (Patton, 1990).

The strength of qualitative inquiry depends on the research question and the goal of the research study. If the desired outcome is to understand a phenomenon in order to evaluate, improve, or develop policy or program initiatives, then qualitative methods yield a richer data set that can provide a deeper understanding of the phenomenon and hence, better information for policy-makers and program-designers. If the goal is to gather evidence in order to prove or test an hypothesis, then quantitative methods would likely yield the best results. The goal of this study is to explore a particular phenomenon

¹⁵ The logical-positivist paradigm uses quantitative and experimental methods to test hypothetical-deductive generalizations. It considers this approach to be objective and value-free (Patton, 1990).

and to provide insight that may be useful to policy-makers, researchers, and practitioners, hence the choice of qualitative methods.

Qualitative methods also acknowledge that no research is value-free, that the researcher brings her worldview, her biases and assumptions to the field. Explicitly exploring the lens through which we interpret and understand the world around us can enrich the design methodology and the data analysis for a particular phenomenon under study. It can also lend credibility to the research (Patton, 1990).

This study sought to explore through in-depth inquiry the experiences of a small sampling of battered women who have been through divorce and custody mediation. Because this project was necessarily limited in scope due to available time and resources, the sample size was small. Though the findings from qualitative research may not be generalizable¹⁶ to the larger population, because of their potential for rich, in-depth analysis of a specific experience, the findings can be very helpful to decision-makers, program directors, and practitioners. It was anticipated that the results of this study would not generalize to all battered women, though I hoped that they would prove useful to policy makers, program directors, and mediators, and provide Iowa and other rural states information to guide and inform policy makers as they evaluate domestic violence and the appropriate use of divorce and custody mediation.

Significance of Qualitative Inquiry

Research texts describe a number of principles of qualitative inquiry (see generally Lincoln & Guba, 1985; Patton, 1990). First, the relationship of the researcher to the subject under observation is qualitatively different than that of quantitative research. The hallmark of quantitative research is objectivity—the researcher is supposed to remain

¹⁶ By sampling a large set of people on a limited set of questions it is possible to generate statistical data that gives broad, generalizable results. By contrast, qualitative data generates a great deal of detailed information about a much smaller number of cases, increasing the richness of the information but reducing generalizability (Patton, 1990).

detached so as not to bias the results. A qualitative researcher is not a detached observer, but engaged with the topic and the subjects. In fact, part of the research process involves acknowledging one's worldview and the impact this has on data collection and data analysis.

The research design focuses on open-ended inquiry so as not to pose leading questions that might bias participants' responses. The focus is on the participant and their interpretation and description of their experience. This type of design has flexibility, allowing themes or data sources to emerge that when designing the research one may not have thought pertinent. This does not necessarily mean that one embarks on the research without any idea of what one might discover, but the focus is on the participant's interpretation and perception, with a possible secondary focus on areas of interest to the researcher if the participant does not mention these areas herself.

Further, qualitative research does not necessarily set out to test an hypothesis, but instead can focus on exploring and describing a particular experience, its relations and organizing forces among the individuals actually experiencing them. In order to gain a deeper understanding of a particular experience for an individual, one needs to conduct in-depth interviews and to conduct them in a way that minimizes manipulating the data. Through this process, one hopes to gather a set of rich data that describe the individual's *own* perception of her experience.

Qualitative Methods in Mediation Research

Kressel and Pruitt enumerate a number of methodologies used by researchers in their 1989 review of mediation research. They include: (a) self-report data in the form of interviews, questionnaires, and case studies; (b) direct observation; (c) experimental or laboratory simulations; and (d) archival sources such as historical documents or records (Kressel & Pruitt, 1989). A summary of methodologies in Irving and Benjamin's (1995)

review of 51 family mediation studies reveals the use of self-report data, mediation program records, transcripts of taped sessions, and audiotapes or videotapes of sessions. No single methodology can answer all the questions raised by researchers and practitioners; each has its relative strengths and weaknesses.

Kressel and Pruitt (1989) note that the case study or other in-depth gathering of self-report data is the only methodology that can convey the richness and complexity of the mediation process and which can suggest unanticipated hypotheses of social conflict. One of the best examples of the use of the case study in mediation research is the collection of mediator profiles in *When Talk Works* (Kolb, 1994). This team of researchers and practitioners wanted to bring the mediation process to life by interviewing exemplary mediators from the major arenas of mediation practice. Kolb explains:

What connected us in this common endeavor was a curiosity about the details of the mediation process and how those who are leaders, with either local or national reputations, think about what they do, carry out their practices, and work through some of the inherent contradictions of the role. Our challenge has been to work with the mediators on an ongoing basis and use that relationship to learn more about the practice of mediation. We introduce the mediators through their work and bring the readers into the room with us to watch and listen to what the mediators do and how they reflect on their work (1994, p. xiv).

Kolb alludes to the collaborative nature of the relationship between the interviewer and interviewee here. Kressel, in his case study of divorce mediator Frances Butler, also notes with some unease the “blurring” of lines between investigator and participant (Kolb, 1994 p. 20). He comforts himself in the knowledge that there is no better way to attain the project’s goal of capturing this emerging profession than intensive and detailed focus on some of its exemplary practitioners. Profiles in the book are based on interviews, and in some cases, direct observation of cases. Time spent with the interviewees ranged from a single interview (e.g., Babbitt’s interview of Jimmy Carter) to

a series of interviews and/or direct observation over several months (e.g., Kressel's case study of Frances Butler). The project concludes with an analysis of the themes of mediation practice which emerged in the 12 interviews. The use of the in-depth interview parallels the research methodology used in this study.

Sample Population

My target population was women who had experienced domestic violence and had mediated some aspect of their divorce (e.g., property settlement, custody, or visitation). I recruited interviewees in three ways. First, two interviewees were referred to me by word of mouth. Second, I placed two advertisements in two different weekly newspapers two months apart. The first weekly had a circulation of 33,000 homes; the second weekly a circulation of 110,000 homes. The ad asked for volunteers who had experienced any of the behaviors listed and who also had used mediation in their divorce process. Two of the eventual nine interviewees responded to the ad. To avoid putting my personal contact information in a general ad, a university-based women's center served as the contact point. The text of the ad is in Appendix A. The women's center staff forwarded the names and contact information for women who responded to the ad. I placed an initial phone call to each respondent introducing myself and explaining more about the study. There were thirteen responses to the first ad: (a) six of the women that responded had not mediated, (b) one did not return my phone calls, (c) two decided not to be interviewed after our first conversation, and (d) two met the criteria for the study and agreed to be interviewed. One additional caller wondered if his sister could participate, but it turned out that she had not mediated. There were no responses to the second ad.

Third, I enlisted the help of two local mediators. Over the course of several months we discussed various options for contacting possible participants that would protect the participants' safety, maintain the mediators' pledge of confidentiality, and

maintain the integrity of the study. With regard to safety, the mediators had no knowledge of their clients' situations post-mediation, therefore we needed to devise a method of contact that did not target the recipient of the letter as having been in an abusive relationship. In order to maintain client confidentiality, I would not have access to any of the names and addresses of the clients receiving letters. The letter would need to include information on how to contact me if the participant wished to be interviewed.

The thorniest issue by far was the clash of the ethical principles guiding the researcher and the ethical principles guiding the two mediators. I only intended to interview women for this study. The mediators were uncomfortable sending the letters only to the women, primarily for two reasons: safety and neutrality. The mediators believed it might be safer to send the letter to both in the event that her partner had access to her mail and discovered the letter. I concurred with this assessment. Regarding neutrality, they preferred sending the letter to both clients in order to maintain as neutral and balanced a posture toward the research and their former clients as possible. This posed an ethical dilemma for me. How would I compose a letter that was honest about the study yet did not indicate that I was only going to interview women respondents? After consultation with my advisor and degree committee member, I proceeded to draft a gender neutral letter that stayed as true to the study as possible without asking for only women respondents.

We settled on the following procedure. I drafted a letter that explained the research project and invited the recipient of the letter to talk with me about their experience in mediation. I also created a self-addressed stamped postcard for the recipient to return if they were interested in being interviewed. The postcard asked for a telephone number where they could be reached and a first name only in order to protect anonymity. No information about the study appeared on the postcard so as to protect confidentiality.

The recruitment letter and postcard are included in Appendix B. I gave a total of 66 letters, return postcards, and blank stamped envelopes to the mediators.

The mediators each drafted their own cover letter (an example is included in Appendix C) that explained their involvement and provided credibility to the research and the researcher. The mediators then selected couples whom they had identified as having some domestic violence present, addressed the letters and mailed them. The recipients returned the postcard indicating their interest in a possible interview. Five women and two men responded to the letters. The postcards were returned to the women's center. I collected the postcards as they arrived and called each respondent. All five women respondents agreed to an interview. I called the male respondents, thanked them for their interest, and explained that I would not be able to interview them at this time.

Research Site

The divorces for all interviewees were filed and processed in Iowa's Sixth Judicial District. The mediations also took place within the Sixth Judicial District and mediators were likely to be selected from the Sixth Judicial District's Family Mediation Program roster. In order to qualify for the mediator roster one must have attended a 40-hour Divorce and Custody Mediation Training. A 1998 report covering the first 18 months of operation notes that 254 cases were mediated in the Sixth Judicial District, nearly 10% of the cases filed in the two counties participating in the mediation program. One-hundred-sixty-seven cases were reported as court-referred, 87 were reported as voluntary (Tucker, 1998).

The 1998 report includes information from a survey distributed to the 50 roster mediators. Of the 24 surveys returned, 19 said they screen for domestic abuse prior to the joint session. Mediators are also asked to distribute evaluation forms to their clients

which are then returned to the program director. Of the 169 Mediation Participant Evaluations returned within the first 18 months, 75 participants reported that their mediator spoke with them privately before the the mediation session and specifically asked questions about the presence of any abusive behaviors; 94 indicated that their mediators did not conduct a pre-mediation screening.

All divorcing couples in the Sixth Judicial District are required to attend a 30-minute mediation education class. Those couples who are parents of minor children are also required to attend a 4-hour class on children and divorce. The classes are taught by three different agencies. The mediation education class includes a 23-minute video, discussion, and a short script. One agency, whose presenters have mediated, do not show the video and instead use an interactive script. All the participants in this study had children and attended the required classes. It is not known what information is shared regarding domestic abuse and mediation.

Interviews

The interviews were conducted between June 2000 and November 2000. Eight interviews were conducted in person. One respondent had moved to Michigan so her interview was conducted over the phone. All interviews were taped and transcribed. The interviews lasted anywhere from one hour to three hours, with the average being one-and-a-half hours. The time between the participant's last mediation session and the interview ranged from just under two years to two months, with most interviews occurring within six months of the final mediation session.

All interviewees signed an informed consent and release form prior to the start of the interview. At the close of the interview, each interviewee filled out a demographic form.

In preparing for the interviews I consulted with a number of individuals representing the constituencies involved in the debate over the appropriateness of mandatory mediation for battered women. I wanted to know what each thought would be important to learn from the women interviewed. I spoke with the chair and several victim advocates serving on a task force reviewing the state's policy regarding mandatory mediation; a victim advocate who is also a mediator; several local mediators; and a local lawyer who opposes mediation with battered women. I considered their thoughts and comments in developing topics to pursue in the interviews.

The interviews were conducted using the interview guide approach as defined by Patton (1990). The interview guide is a list of questions or topic areas to explore with each participant. The interviewer can also explore and ask other questions that further illuminate a particular topic area. This leaves the interviewer free to establish a more conversational style and to ask spontaneous questions based on the issues raised by the interviewee. The interview guide provides a framework within which the researcher can develop questions and make decisions about which information to pursue in depth. Patton notes that the interview guide can be more or less detailed depending on "the extent to which the research is able to specify important issues in advance" (Patton, 1990, p. 283).

The goal of this research was to explore the woman's perspective of her experience without imposing any pre-determined set of issues. Using Patton's interview guide definition, then, I developed a very open-ended interview schedule, which allowed issues to surface that may not otherwise have been talked about. The drawback of this approach is that it made the analysis of the data more complicated because there was less structure to the interviews. The interview schedule included the following questions:

1. What was your experience in mediation like? Where did it take place? Who was there?

2. How did you feel about mediation going into it?
3. What did you learn about mediation beforehand? How did you prepare for mediation?
4. What did you hope to accomplish in mediation? How do you feel about what got accomplished?
5. What, if any, concerns or fears did you have about mediation? How were those fears addressed?
6. How did you feel being in the same room with your husband?
7. How did your husband treat you in mediation? What effect did this have on you? What did the mediator do in response?
8. How did the mediator treat you in mediation? How did this impact you? What did the mediator do that was helpful? Not helpful?
9. What advice would you give a friend in a similar situation as you about mediation?
10. What would you want to be different if you were to mediate again?
11. Was your mediation court-ordered? How did you feel about that?
12. If the respondent had been to court: How did your court experience compare to your mediation experience?
13. Was cost a factor for you?

The questions were not asked in a specified order. Often participants would introduce a topic addressed by one of the questions so that it was not necessary to pose the lead-in question. In those cases, I focused on formulating spontaneous follow-up questions. The first question, What was your experience like?, often led to a lengthy monologue of a description of her experience and her interpretation of this experience. Many issues addressed in the questions were often touched on by the participant in this opening statement and it became my responsibility to filter them and form follow-up questions at appropriate points in the interviews. As such, experience and skill were key

factors in the success of an interview and thus the later interviews yielded richer and more complete data.

Analysis

I used two primary forms of analysis: the case study and content analysis. The purpose of the case study is to gather comprehensive and in-depth information about each case of interest. Case data consist of all the information one has collected about each individual case and may include interview data, observational data, demographic information, and impressions or statements of others about the case (Patton, 1990). I began the analysis process by writing up a case study for each participant using the raw interview data, the demographic data, and my impressions and observations during the interview session. This phase of the analysis provided a sense of the similarities and differences in each woman's experience. Each case study included a summary of the demographic data collected for each participant as well as a synopsis of each woman's experience in mediation.

Content analysis is the process of identifying, coding and categorizing the primary themes in the raw data (Patton, 1990). Because the interviews were largely unstructured, I could not simply code the participant's various responses to specific questions. Instead, I used a process described by Patton (1990) which involves reading through the interviews several times and coding and collecting descriptive passages from each interview into separate files. The descriptive categories used included:

1. Statements about mediation and reactions to mediation
2. Statements about court or the legal system
3. Statements about the mediator
4. Statements about her partner and responses to partner
5. Feeling statements about the experience

6. Statements about the mediated or court outcome

7. Recommendations

Passages often appeared in more than one descriptive category. I then looked for themes within these categories. For example, the passage below was coded in three categories: statements about mediation, statements about the mediator, and statements about her partner.

The thing that finally reduced me to tears is that he would he would insert throughout the mediation session little jabs that were subtle, um, but were clearly saying, You're a bad person, you're stupid, you're evil, you're a bad parent...um, you're gouging me for my money...things like that. He would insert those throughout the mediation session and they were inflammatory statements within the context of our marriage. The mediator didn't pick up on that and so it ended up with me crying and leaving the room and Frank saying, You know, she's just an out of control female. What can I do? She's irrational...and...That should not have happened. A mediator who had control of the situation should have stopped him when he started saying comments only about me. A mediator should have stopped him and said, No that's not what we're here to discuss. We're here to discuss the budget and <garbled>. We're not here to discuss personalities. We're not here <garbled>. And you keep yourself under control. No matter how charming and suave...and all that he wants to be.

The possible themes present in this passage include safety (“The thing that finally reduced me to tears...”), power (“No matter how charming and suave...”) and mediator neutrality versus intervention (“A mediator should have stopped him.”). As I identified themes in the collections of descriptive categories, I cut and paste them into new theme files, e.g., safety, capacity, and mediator neutrality. I moved back and forth between the raw data and the descriptive categories refining my interpretation of the findings. Because the interviews were largely unstructured, coding and collecting the data into descriptive categories first significantly enhanced the process of finding patterns between the various interviews.

Throughout the data collection process I also maintained a journal in which I documented the logistics, the challenges encountered, and my thoughts and reactions to

the interviews. I made regular entries during the content analysis phase, noting my thoughts about comparisons between the cases, the emerging themes, and possible recommendations.

In addition to these solo pursuits, I shared the transcripts (or a subset of the transcripts) with several individuals for their interpretive insight. Readers included a former director of a domestic violence project, a mediator, a counseling psychologist and mediator, and a prominent domestic violence researcher. Readers were not asked to check transcripts for coding reliability or verification. Their insight was helpful in providing a framework for the analysis and further research.

Limitations of Study

One limitation of the study is the small number of women interviewed. Additional interviews or, alternatively, a second interview with each participant (or a subset of participants) following a preliminary analysis would have allowed for more in-depth follow-up and yielded richer data. Even so, important trends were identified and could serve as a pilot study for a larger study of similar format.

All participants were white and lived in a small to medium-sized urban area. To date, in North America, mediation has been primarily a white, middle-class phenomenon (Irving & Benjamin, 1995; Kruk, 1998b). Virtually no research has been conducted on the impact of race, ethnicity, and culture on the mediation process (Kelly, 1996). Though the clientele seeking mediation services may be diverse, most research to date assumes a norm of white, middle-class couples, which leads to the widely accepted practice of talking about mediation clients in generic terms (Irving & Benjamin, 1995). This study acknowledges that the results do not represent all women or even all white women.

All participants had access to their own money. One ramification of this is that all the women hired a lawyer. The results of the study, therefore, reflect the experiences of

some white women with enough income (for some just barely enough) to be self-sufficient. For example, their experiences in mediation would probably not be comparable to an abused woman with children who faces homelessness as a result of leaving.

The study lacks the perspectives of the male partners and the mediators. Though some informal information was gleaned from various discussions with mediators regarding the project, no formal interviews were conducted. Interviews with the male partners could provide additional valuable insight into their perspective of the process, their own behavior, how their behavior impacts their partner, and their perception of the mediator's interactions. Interviews with the mediators could examine their philosophy and approach to mediation when domestic violence is a factor, whether and how they modify their procedures, and how they actually feel when confronted in the session with the competing ethical directives of mediation, i.e. client safety, client self-determination, and mediator neutrality.

Tapes of actual sessions would be extremely beneficial in analyzing the actual discursive patterns that occur in these mediations. As at least one researcher has pointed out (Cobb, 1991), what mediators perceive they do and what they actually do may be quite different.

And finally, a limitation of the study was the experience of the researcher. Lack of experience influenced the development of the interview schedule and the skill and expertise in conducting the interviews. Though my interview expertise improved with each participant, it wasn't until I began the analysis phase in earnest that I realized what information was missing. If I had started with the experience I have gained from working on this study, the study would have yielded richer and more comprehensive data.

CHAPTER 4: CASE STUDIES

This chapter presents a narrative description and case synopsis of each interviewee. The case study served as one of the analysis procedures used to identify similarities and differences between the participants. Each case study includes a narrative description of the woman's experience in mediation. Names, locations, and identifying details have been changed to protect participant confidentiality and anonymity.

Meg

Meg is white and is between 30 and 40 years of age. Meg had been married for over 10 years. Meg and Frank had three children. She worked full-time during the marriage and continues to work full-time post-divorce, earning over fifty-five thousand dollars a year. Both Meg and Frank hired attorneys. Meg indicated that they entered mediation voluntarily. Both agreed that mediation was preferable to going to court. Meg had never mediated before. Their mediator was female. The only issue discussed in mediation was child support. They attended one mediation session that lasted one hour. They did not reach agreement. Their divorce was finalized in court; the proceedings took nearly a year. Meg is the custodial parent.

Meg described the abusive behaviors she experienced in the marriage as controlling behavior, isolation from friends and family, threats to leave, and withdrawal of love. Meg describes feeling beaten down and scared in the marriage. She notes that she did not feel emotionally strong enough to “stand up to him” in mediation.

Meg believed there were no factors working on her behalf during this process—the divorce and the mediation. She seemed to be struggling against the reality of her ex-husband's psychological control over her, her own perceived lack of emotional strength to recognize and respond in any way that would aid her cause, and the lack of societal or cultural supports for women in her position—not only of leaving an abusive situation but

of leaving a marriage, i.e. the act of divorce. Her experience is that the woman goes “nuts,” worries about money, the kids, and her self-image. As she enters mediation everything is stacking up against her—all the chips are on his side: he feels good about himself (“he’s attractive to other women”), he has money, he can still intimidate and manipulate her, he is seen as charming and reasonable by society and probably by the mediator as well. She is seen as weepy, emotional, irrational, and unreasonable.

Meg wants the mediator to provide more support. She wants the mediator to recognize the abuse, to recognize the “emotional barbs,” the verbal asides that demean her and “beat her down.” She wants the mediator to stop this behavior, to act as a referee of sorts. She wants rules and guidelines and consequences if you break the rules. She seems to want an authoritative presence that is “greater” than either party or the parties together. She explicitly says the power should reside in the mediator and not the two parties. She does not suggest that the mediator offer substantive content, only that the mediator should maintain tight control of the process: “like a court of law.” This seems contradictory since she says that their eventual court experience was the worst experience of her life. She wants an authoritative figure to control the way they talk about the issues: leave out all emotion, stick to the facts and stop extraneous comments. She acknowledges that it might be hard for a mediator to “recognize what constitutes an emotional barb from 15 years of marriage.” Above all, she does not want to leave the session crying.

She was hopeful about mediation working because she did not want to go to court. The mediator they used came highly recommended and she liked her after their pre-mediation conversation. She told the mediator about her ex-husband’s intimidating behaviors, about her negative experience in marriage counseling and asked for the mediator’s support if he started to act like that. The mediator replied that that was part of her role, she was trained to do that. It was not clear from our conversation what support

meant to the mediator. Meg was expecting support from the mediator in the form of protection from the emotional abuse she feared. She did not get it. Her solution would be to find a male lawyer who would conduct the session more like a court of law.

Meg does not trust herself to be strong enough to stand up to her ex-husband. She also talks in the abstract about how it is for women in her situation. She is strong, educated, has her own money and support network. She asks: How could she find herself in this situation? How do women manage that don't have the resources she does? Meg seems to have some cognitive dissonance between how she sees herself and what she "should" be able to do and the reality of what happened to her and what she was unable to do. She issues a plea to an outside authority to recognize this and, without calling attention to it, step in and provide support, protection, and advocacy because I can't provide it for myself right now. Her distress is increased because she believes her husband is perceived as charming, rational and credible while she is perceived as weak, irrational and crazy.

Connie

Connie is white and is between 40 and 50 years of age. She works full time and earns between thirty-five and forty-four thousand dollars a year. She had attended some college and is now back in school. Connie was married for over 20 years. They have two children. Both Connie and Steve hired lawyers. They ended up using two different mediators. The first mediator was male. They saw this mediator for two sessions, two-and-a-half hours each session. These were joint sessions with only the parties and mediator present. They discussed alimony, custody, child support and property issues. They reached an agreement, which they each signed after consultation with their lawyers. Her ex-husband failed to meet several of the conditional stipulations in the agreement, so ultimately the agreement was never implemented. Prior to setting a court date, Connie's

lawyer offered her the option of going to mediation again, however, this time they would use shuttle mediation so she would not have to face her husband. She agreed. The second mediator was male and they spent one five-hour session in shuttle mediation. Both parties' attorneys were present. They reached a final agreement at this session that is still in effect. Connie reported that the first mediation attempt was court-ordered, the second was voluntary. Connie is very happy with the agreement and at the time of the interview had no regrets. Connie and Steve have joint physical custody of the children. One of Connie's biggest concerns throughout this process was the threat of blackmail from her ex-husband. Connie stated he claimed to have evidence that he could use against her to get the kids. She could not imagine what evidence he might have, but was terrified that he had found out something that could be used against her. Connie nearly committed suicide to escape the emotional abuse. She said he never physically abused her, "but he sure knew how to emotionally abuse me." The abusive behaviors she described were refusing to talk to her for three or four weeks at a time, withdrawing love, hiding money from her, and berating and intimidating her.

Connie thought the first style of mediation was a waste of money. She seemed to think that the mediator's primary role was to keep them from "coming at each other's throats." She believed that he did help clarify some points and write down issues where there was agreement. But he didn't intervene in places where she thought he should—like when her ex-husband threatened to quit his job so she would not be able to get any alimony or child support from him.

She said her ex-husband could completely intimidate her with a look that "would put [her] on [her] knees." She felt defeated by her husband's tactics in mediation and the mediator's failure to intervene. She felt like it was a "losing battle" and finally gave in just to get it over with. She told the mediator at that point, "Fine, I'll agree to that,

whatever.” She said the mediator responded, “Are you sure?” She felt he did not pick up on what was happening to her. She thinks the mediator needs to be able to notice when one person is “losing strength” and to take a break, talk to each separately to find out what’s going on and what they really want.

After the first two mediation sessions, she did not want to mediate face-to-face or have any contact with her ex-husband. During the brief joint gathering of the second round of mediation, before separating to their separate rooms, she carefully avoided any eye contact with him for fear of seeing the intimidating look and having that influence the rest of the session.

She felt unsupported in the first two sessions. She believed the presence of someone who could provide support and “help her get her strength back” would have been helpful, though she did not want a friend or relative because she had found their opinions and advice confusing rather than helpful. In contrast, she felt supported in the shuttle mediation partly because of the presence of her lawyer and partly because she believed the mediator cared about her. Connie liked the second mediator’s style. She felt the mediator was more of an ally, even though she knew he was not “pulling for either side.” He helped her clarify what was important to her by offering his opinion of what he thought might happen in court or what the other side would do in response to her requests. As a result, she is very happy with her agreement and has no regrets.

Connie originally wanted to fight for alimony and child support. She gave those up in the first mediation agreement just to get out, but asked for them again in the second round of mediation. She ultimately consented to no alimony or child support because her ex-husband agreed to pay for everything for the children including clothes, school supplies, cars, and college education. Though Connie says her finances are tight because of this agreement she has no financial worries regarding the children.

She hoped to settle in mediation because she did not want to go to court. Her biggest fear was his threat of blackmail, that he would present this alleged evidence in court and she would not be able to defend herself. She also feared that her children might have to testify in court. Just the word “court” intimidated her. She was prepared, however, to go to court if they didn’t settle.

Connie did not talk in the abstract about any of her experience, i.e. societal impact, her role, his role, society’s perception of them. She took on personal responsibility for what happened to her and personal responsibility for making the best of it. She seemed proud and happy with how she was doing on her own.

She did not seem to want an authority figure protecting her in the mediation session but she did want the mediator to challenge unreasonable threats or moves to manipulate her. She would advise a woman entering mediation to be cautious, not let herself be intimidated, to ask for a break, and to know what she wants and what she is entitled to. During the process she needs an opportunity to regain strength.

Rachel

Rachel is white and is between 30 and 40 years of age. She was married for over 10 years and has three children. She attended some college, works full-time and earns between thirty-five and forty-four thousand dollars a year. Rachel and Jack attended one mediation session for approximately 2 hours. Their mediator was male. Rachel indicated the mediation was voluntary. At the time of mediation they were still living together. They discussed custody, child support and property issues in mediation. They did not reach agreement in mediation. Through their lawyers, they have since worked out all issues but property settlement. Rachel is the primary custodial parent.

Rachel experienced physical and emotional abuse. The abusive behaviors she mentioned were physical assault, throwing things, physical intimidation, berating and

demeaning remarks, and social isolation. She was very scared and intimidated by her husband and is still afraid of him. She said she was not afraid to face her husband during the mediation session with the mediator present, but she was worried and afraid of the post-mediation consequences. She did suffer retaliation after the first mediation session. She said she would try mediation again, even knowing that she might suffer further abuse as a consequence.

Rachel was afraid of the consequences following mediation if she did or said anything to upset or displease Jack. She was initially hoping for reconciliation. She had never been on her own and was afraid of being alone. She had grown used to the confrontation and being a victim (her words). She had a negative feeling about mediation because of how she thought Jack would react. At the same time, she said she felt open but scared going into it.

During her pre-mediation conversation with the mediator, which took place over the phone, Rachel disclosed the presence and nature of abuse in their relationship in response to the mediator's questions. The mediator told her that she did not need to go through mediation if she was scared of Jack. She responded that she was not scared about being in the mediation session with Jack but that she would be scared being alone with him afterwards. Rachel did not mention any special arrangements or procedures discussed at this time in response to the presence of abuse.

During the mediation, Rachel was completely focused on custody and fearful of losing her kids. Prior to mediation, Jack had alternately threatened to take the kids from her and said that he did not want custody. She came prepared with her thoughts and questions written down, was alert, focused and able to speak up about the kids. She was willing to risk the consequences for speaking up about issues related to the children. In her mind, she was there to fight for her kids and she had not thought about any other

issues at the time. Consequently, she was completely unprepared to discuss other issues, losing her focus, becoming confused and feeling overwhelmed by the details. She was also intimidated by Jack and unwilling to speak up or ask too many questions about the financial and property issues that were brought up. She managed to tell the mediator that she had not thought about these issues. She was unable to tell the mediator she was confused and overwhelmed because that reinforced her husband's characterization of her as "stupid" and unworthy ("nobody cares about what you say"). Rachel felt that if she'd had a chance to talk to the mediator privately and face-to-face (not over the phone), she would have felt more comfortable and more reassured about speaking up when she did not understand something. She attributed this to two factors. First, she would be freer to express herself; and second, the mediator would have a chance to get to know her and form an opinion that she is not "stupid." She also thought that if the mediator knew that she was fearful of appearing stupid, that he might take extra care in explaining things and going slowly, without her having to request this.

During the session, Jack was very cooperative. He seemed so genuine that Rachel believed him. She was excited about "getting the kids." As the session progressed, Rachel could tell he was getting "hot under the collar." Whenever he would give her "his looks," she would "shut up" and just agree with him. She got increasingly nervous as the session lengthened for fear he would not be able to control his anger and there would be consequences to pay when they left. When the session ended, they left the office together and walked to their separate cars in the parking lot. At that point, Jack confronted her, verbally assaulted her, told her everything he'd said in the session was "bullshit" and she'd never get any of what she asked for. She felt completely shattered, angry that he had lied to the mediator and shocked for believing him.

Though Rachel and Jack discussed and verbally agreed upon a number of issues related to the children (custody, visitation, medical coverage) no formal agreement was drafted in mediation. They were scheduled to return to a second session, which Jack cancelled. Jack's verbal assault following the mediation session essentially negated any of the tentative agreements voiced during the mediation session. Rachel felt completely setup and betrayed by Jack's false show of cooperation and subsequent verbal attack.

Six months after the first session, Rachel and Jack no longer live together. Though she is still afraid of him (she locks her doors and windows all the time) she now feels less susceptible to Jack's intimidation. She would like mediation to be an option further into the process and believes it would be helpful now to settle the remaining property issue. Time has begun its healing process and she feels stronger. The longer she is away from Jack, the more she feels her own voice, the more she believes in herself and her right to be separate from him and deserving of her share of their joint assets. She feels she could more ably represent herself in mediation now.

In addition, Rachel seemed to want mediation to be a place where they could work out some interpersonal issues, especially issues that impact how they interact around their children. She wanted to address more than "just the facts," in contrast to Meg's just-the-facts preference. Rachel wanted to find a way to communicate better so that their children would not be put in the middle. It also seemed that she still had hope that Jack would change and really hear her, see her as a separate and worthy human being; not for reconciliation, but for healing.

If Rachel were to mediate again, she would like an opportunity to meet with the mediator privately prior to any joint session. She thinks it would be beneficial for the mediator to meet with both parties privately in order to get a better idea of their

expectations and whether they are prepared to mediate. It is also important to her to establish some connection to the mediator in order for her to feel more comfortable speaking up and reassured that the mediator will not misjudge her behavior in mediation.

Sally

Sally is white and is between 40 and 50 years of age. Sally and Ned were married over 20 years and have three children. She has a four-year college degree, works full time and earns between thirty-four and forty-four thousand dollars a year. Sally had not mediated before. She interviewed a few mediators before selecting a male mediator based on how he described his philosophy of mediation, how he would create a safe environment and his years of experience. Sally reported that the mediation was voluntary. They attended two sessions; the first session was about one hour, the second session two hours. They discussed child support and property. They reached an agreement in mediation, which was still in effect at the time of our interview. Sally is the custodial parent. Sally was extremely happy with the agreement. She felt she could not have done better in court, and probably would have come out worse.

Sally was fearful of verbal abuse and the possibility of Ned becoming physically violent. At the time of their divorce she said that Ned had a substance abuse problem, was in serious debt, blamed her for all his troubles, and was very bitter. He often came home drunk and would verbally assault her. She locked herself in her bedroom for protection. Other behaviors that Ned exhibited were throwing objects, pounding his fists on the table, yelling in her face, and calling her names. Once, after listening to a newscast reporting a murder suicide (a husband who shot his wife than shot himself), Ned repeated over and over that he wished he had the guts to do that. Ned had a gun collection, so Sally took this threat very seriously. At the time of their mediation, Ned did not have access to his guns.

Sally had a positive mediation experience—the only interviewee to enthusiastically recommend joint mediation. In her pre-mediation conversation with the mediator, she informed him of her concerns regarding Ned’s behavior and he responded in a way that met her expectations in the mediation session. She was fearful of verbal abuse, yelling, name calling, Ned leaning across the table at her, and pounding his fists on the table. She described all these behaviors to the mediator and these became the basis for ground rules established at the beginning of the first session. The mediator stepped in every time Ned exhibited any of these behaviors. Sally grew stronger and more confident as she saw the mediator “take control” of the situation in this way. After thirty minutes in the first session, she began to feel more “at ease” and to trust in the ability of the mediator to maintain control. She indicated she felt more able to speak up and she perceived that Ned actually listened to her. She also perceived that the mediator helped her convince Ned that she needed a certain settlement in order to provide for “the boys.” She is convinced she got a better settlement than she would have in court. And she is convinced that ground rules and mediator control of the process and nature of the conversation created a safe environment for her.

At the time of the mediation they were living apart. Ned had no access to his gun collection and was in a living situation with little need for possessions or a personal income. She did not mention any direct fear of consequences for her speaking out, but she did say she was afraid of him.

The first session seemed to serve as a trial run, so to speak, to test out if this would prove to be an environment in which they could hammer out an agreement. Sally described the second session as the one where all the hard work of negotiating an agreement took place. Sally seemed to build trust and confidence in the mediator during that first session. She did not prepare for the first session—she said the “ball was in the

mediator's court." During the second session, however, she adopted her "professional mindset" and came prepared with documentation to support her needs.

Pat

Pat is white and is between 30 and 40 years of age. Pat and Ed were married over 5 years. They had two children at the time of divorce. Pat works full time, has some college education, and earns between twenty-five and thirty-four thousand dollars a year. Pat had not mediated before. The primary issue discussed in mediation was custody. They also talked about how they would communicate during and after the mediation session. Pat said child support was not an issue because they used the state's formula to determine it. Their mediator was female and they met for one session that lasted about four hours. Pat indicated that the mediation was court-ordered. They did not reach an agreement in mediation. Pat's lawyer told her neither of them could afford to go to court so they would have to work it out between themselves. They later reached a lawyer-negotiated agreement. At the time of our interview, their divorce was final. Pat is the custodial parent.

Pat did not want to mediate. She was concerned about cost and afterwards, felt it was a waste of time and money. She only mediated because it was court-ordered. She was told she could leave after the first five minutes. After getting there, though, she was willing to stay because it might actually work.

During her pre-mediation conversation with the mediator, Pat disclosed the presence of verbal abuse in their relationship. Pat did not mention making any special arrangements as a result of the abuse. The mediator described how she practiced mediation and how things would proceed. The mediator stressed that she would be talking to both parties prior to the joint mediation. She asked Pat to bring pictures of their

children to the mediation. Pat said she felt like she knew the basics of what would happen but still was unprepared for what actually happened in mediation.

Pat and Ed spent the first hour-and-a-half talking about how they would communicate during and after the mediation session. During that conversation they were able to identify behaviors that triggered emotional reactions and agreed to not use those behaviors. This agreement lasted about four months at which time they returned to their previous relational dynamic.

Pat left the first mediation with the impression that the mediator had sided with her ex-husband over the custody issue. Pat did not have any problems agreeing to joint legal custody but she wanted sole physical custody. Her ex-husband wanted joint physical custody. She wanted custodial care because she was very fearful for their children's well being in her ex-husband's care because of his drinking. Prior to their divorce he would often return home drunk or be gone for three to four days at a time. She was physically sick worrying about what might happen to their children in Ed's care. She felt pressured by the mediator to agree to joint physical custody because the visitation arrangement they discussed in mediation would mean that the children would spend about the same number of days at each home. The mediator drew a chart showing the number of days the children would spend at each home and used this as an aid to explain that the arrangement they were discussing was essentially joint custody. The difference to Pat, however, was that the children would spend every night in one place—her house. Visits with Ed would be days or evenings only until the youngest daughter got older. Pat believed that Chris needed to have a stable environment and sleep every night at "home" until she was older. With joint physical care, overnights could start immediately and Pat felt that was not in Chris's best interest. Though she felt adamant about not giving in to joint custody, she felt pressure to give in on *something* before she could leave. That's

when she conceded to a few more visits per month. She noted that she felt that was the only way to move forward on this topic. Ed, from Pat's perspective, did not make any concessions during the session.

Pat said the hardest thing about mediation was to open up about her real fears. She had been physically sick for months worrying about custody. Because of the presence of the mediator, she was able to voice her fears about the children's well being when in Ed's care. Though Ed scoffed at her fears ("He's laughing at me and giving that little head shake that I now knew at this point he thinks I'm stupid"), the mediator was able to validate Pat's fears, which encouraged Pat to speak up and eased her anxiety.

Mediation was very upsetting for Pat. She cried a lot. She noted that both she and her husband were stubborn and at one point they got so mad at each other that neither could speak. Pat remembers that this was one time when the mediator referred to the pictures of their children that Pat had brought to the mediation. This had the effect of defusing some of the anger and refocusing the discussion. They still cannot communicate directly without fighting and pushing those emotional triggers. The one agreement they made and kept in the mediation session was to keep a notebook of the children's activities, which they pass between them so they do not have to speak to each other. This has worked well for them.

Following the first session Ed wanted to go back. Pat believes Ed wanted to return to mediation because the mediator seemed to be supporting his point of view. Pat said she would only go back if he completed the necessary paperwork for the divorce proceedings. By the time he completed the paperwork, she felt they were close enough to agreement that it was not necessary to go back. They followed the visitation agreement worked out in mediation until the divorce was final and incorporated it into the final agreement.

She would offer the following advice to women who are in a similar situation to her's and entering mediation: be very open and honest with the mediator about your relationship. Tell the mediator if there are behaviors that push your triggers, because "no woman is going to speak up who went through something like that. Just because you're divorced doesn't mean you're safe."

Marie

Marie is white and is between 40 and 50 years of age. She was married for over 10 years. Marie and Ted have three children. Marie has an advanced degree, and earns between twenty-five and thirty-four thousand dollars a year. Marie had mediated before. She stated that mediation was voluntary. The issues discussed in mediation were custody, child support and property. They attended ten to fifteen mediation sessions over the course of eight months. Marie and Ted reached agreement in mediation and that agreement was still in effect at the time of our interview. When we talked, their divorce had been final for about two months. At that time, Marie was unhappy with the outcome. If she could change one thing, she would like more say in how the children divide their time between the two households. She feels she would have had more negotiating power for child support and shared time had she been more aggressive in the beginning. Marie is the custodial parent.

Marie was intimidated by Ted and afraid of him. During the last two years of their marriage, he "got real mean, every day, real mean." Marie said he was "trying to squash me like a bug." He told her she was incompetent, irresponsible and dangerous to the kids in many ways and over many years. Marie said Ted spied on her and she felt she had no privacy. She said she was vulnerable to the type of intimidation Ted was using. She believed that along a continuum of abuse, what she experienced was moderate. Ted never hit her or threatened to use physical violence.

Marie was very introspective in her interview. It seemed that she felt somewhat ambivalent about her mediation experience. On the one hand, she thinks it may not have been the best process for someone in her position (being vulnerable to Ted's intimidation); on the other hand, she says mediation gave her a place to "deal with things in a recuperative way." She reviewed her life, her work, and her future in relation to the process and outcome of her recent divorce. She was pragmatic ("I'm a great maker of lemonade") or perhaps resigned, and Zen-like (looking at her choices without judging) in her assessment of her experience and its consequences.

Marie felt subtle pressure to participate in mediation from trusted professionals in her life as well as friends and neighbors. She said she got the message it was the right thing to do, the compassionate thing to do, especially for "the kind of person" who wanted to keep their kids. Her attorney was clear she did not believe it would work for everyone.

Marie said everyone was surprised at how nasty Ted got. She was so focused on calming Ted ("the angry boy") that she had trouble clearly articulating what she wanted. Marie focused on expressing herself in a non-threatening and "reasonable" way so that he would accept it and not get angry. Summaries drafted by the mediator had to be corrected because he had interpreted what she said to be quite different from what she wanted. Her attorney advised her to be clearer and more direct in her communication so there would be fewer misinterpretations.

Marie said Ted never let up, that he was a constant "bulldog," openly trying to intimidate her. She said sometimes she would spend an entire two- or three-hour session trying to calm him down, and basically the only way to do that was to give things up. She took up Yoga during this time and practiced it before their mediation sessions. This helped her to remain focused and calm during the actual sessions. Though she felt

genuinely calm during this process, she is angry now at the consequences she says she is bearing. She is most unhappy with child support (she had not yet received a child support payment), the shared time arrangement, and the stipulations around her moving.

Ted threatened over and over to take her to court, to have her declared incompetent, and to take the kids away. Marie said that they ended up settling in mediation because they were assigned a “terrible judge.” Upon hindsight, she regrets not having pursued court earlier in the process. She got the message from professionals and friends that going to court “would be a bad thing to do.” She regrets not having been more aggressive at the beginning of the process. She believes she would have had more leverage in the beginning, prior to Ted having the opportunity to establish a “precedent” as an involved parent during the 8 months they spent mediating.

Despite her personal experience, Marie believes mediation is an important part of changing the way the world works, of “transforming the traditional male get-what-you-want approach to things.” Marie believes mediation can be “deeply successful” on all sorts of levels (practically and morally) when two people have a certain moral grounding, and all parties, including the mediator, come to the table with a sense of fairness and equality. One of the reasons mediation did not work as it should for them is because she believes Ted lacks moral grounding and was completely focused on his own self-interest.

Kate

Kate is white and is between 50 and 60 years old. She and Bill have three children. Kate works full time, is taking classes, and earns between twenty-five and thirty-four thousand dollars. Kate had not mediated before. They attended five sessions over the course of two months. Kate indicated the mediation was voluntary. Issues discussed in mediation included custody, child support and property settlement. They

fashioned a comprehensive mediation agreement that was still in effect at the time of our interview three months later. Kate's ex-husband, Bill, is the custodial parent and they have joint legal custody. A trusted professional recommended a mediator to Bill. The mediator was male and happened to share an office with this professional. From the start, Kate felt uncertain about this choice because of his possible connection to Bill.

Kate described her ex-husband as having a very short temper—he could cover it up in public and then “let go when they were in private.” She felt verbally and emotionally abused by him. He constantly accused her of being selfish if she spent time away from the house when she should be home. She said that Bill never physically abused her or physically threatened her.

Kate had mixed feelings about mediation. She wasn't sure quite what to expect. It's an emotionally draining time and she found it difficult to face Bill and to talk about the changes that would happen. Her greatest grief was over losing daily contact with her children. She felt pretty open-minded going into it and thought that the “idea of mediation worked well for them because they had disagreements.” During the first session, she began to feel like the mediator was leaning more toward Bill's point of view. She felt pressured by the mediator to reveal information she had shared with him privately. During her pre-mediation conversation with the mediator she confided that the children would probably end up with Bill but she was not ready to admit this in the joint session. She responded to the pressure by saying she didn't want to give the children up, or by ceasing to talk entirely. She felt the mediator continued to push. She also said she did not feel comfortable speaking up in general because she wasn't sure how Bill would react.

After a couple of sessions, she grew tired of feeling pressured and decided to draft a mediation agreement based on one she had come across. While she worked on the

agreement she began to recognize and incorporate some of her own needs. She worked with the phrasing after realizing the wording of the original version favored Bill. The feeling of acknowledging her own needs was a gradual, internal process that she wasn't able to access in the mediation session.

After finishing the first draft, she showed it to Bill, who seemed surprised at what she'd done. He did not comment further on it until they were in mediation. Kate said at the next two sessions, in which they worked with the draft, she felt less threatened and more in control. The mediator worked through the agreement point-by-point, asking Bill for his thoughts and input. She had left major issues (like custody) blank so these were discussed and decided upon. She also commented that this saved them money. She said she was happy with the agreement because she had had a major role in building it and felt it was a part of her. At an earlier point in the interview, however, she said "Bill got the better end of the deal on everything." It would seem she feels some ambivalence about the outcome.

Kate said she was lonely and missed daily contact with her children. She felt good about the time they spent together and good about paying child support. She hoped to find a better paying job when she finished school so that she could contribute more to support them.

Most problematic for Kate was feeling pressure from the mediator and perceiving the mediator as impartial and favoring Bill's point of view. She would recommend choosing a mediator that has no connection to either person.

Mary

Mary is white and is between 36 and 45 years old. She was married for over 10 years. Mary and Nate have three children. She earned a high school diploma, works full time and earns between sixteen and twenty-four thousand dollars a year. Mary said

mediation was court-ordered. Their mediator was female. Mary made arrangements with the mediator to arrive and leave at separate times. She did not want to risk being alone with Nate. They attended two sessions: the first for two-and-a-half hours, the second lasted 10 minutes. Custody was the biggest issue facing them; the house and other debts were the other primary issues. They discussed custody and property issues during the first mediation session. Mary said she would only return to a second mediation session if all they talked about was custody and what was best for the children. Mary felt mediation was not worth the money or the time. Their divorce was not yet final at the time of our interview. A court date was set for approximately one month from our interview. Mary had temporary custody of both children.

Mary had been to court twice during the 13 months of their separation: once after filing a restraining order and a second time for a temporary custody hearing. Mary described both court experiences as “terrible.” Nate and his family drew up scathing affidavits and testified about her “bad” character at both court appearances.

Mary said she was in a controlling relationship. She couldn’t answer for herself or do anything for herself. She said Nate got violent when he drank. She was scared of him and did not want to be anywhere alone with him. Her oldest daughter was also very frightened by his behavior and did not want to see him for a long time.

During the year of separation and especially following the temporary custody hearing, Nate followed Mary, got into her email and made accusations of neglect and inappropriate behavior to local agencies.

Mary was scared but hopeful entering mediation. She had hopes that they would be able to work out their differences. She knew that mediation had worked for others and was disappointed when nothing got resolved in their two sessions. Though she stated she thought their actual mediation was a waste of time and money, she believed mediation

was better than going to court because you had some say in what would happen to the kids and how the property got split up. She seemed to think that the court (legal system) wanted you to work things out in mediation, too. She was very scared of going to court because of her two previous experiences, but did not want Nate to know that. She wanted Nate to think she was willing to go to court and fight for what she deserved. Sometimes, though, she just wanted it to be over and did not want to go through all that abuse again.

She said mediation felt just like being “back in it all over again.” The presence of the mediator, however, “toned things down” and kept Nate from being as verbally abusive as she feared he would be if they were alone. She did not know what to expect of the mediator (“I’ve never been in mediation before”). She thought that the mediator might interact more, ask more questions of them, and provide some structure. She wanted the mediator to write more things down and keep Nate on task—he changed the subject frequently and avoided talking about the issues. Several times she said she wished something had been written on paper. This task was made particularly difficult because she felt that Nate was not interested in negotiating and instead focused on “cutting her down.” Nate believed that she did not deserve anything because she was the one that left. Mary speculated that no action by the mediator could have altered this dynamic and coaxed Nate toward a negotiating mindset. They did not take a break or caucus. She does not remember the mediator mentioning the option of talking privately with each of them. She said she thought a caucus might be a good thing—so they wouldn’t have to face each other.

Mary was very much in favor of mediation being court-ordered and wanted the court to go one step further and make you stay. It didn’t make sense to her to order you to

go and let you leave after five minutes. One of her biggest fears was that Nate would show up and then just leave.

Mary was intensely disappointed that the mediation failed. She was not disappointed in the mediator, but that things did not turn out the way she had hoped. At the time of the mediation, Nate had kept one of their children from seeing her for several months. She was hoping they could work out something so she could see this child again and was deeply hurt and disappointed when that failed. Despite Mary's initial experience with mediation, she thinks it might work better for them at this point in time because Nate has calmed down some and things seem to be "going smoother" with their communication. This hope may partly be fueled by Mary's intense desire to avoid court. Mary would still want to arrive and leave at different times if they were to mediate again.

Nancy

Nancy is white and between 26 and 35 years of age. Nancy was married for over 5 years. Nancy and Tom had one child. Nancy worked part time during her marriage and was working part time at the time of the interview, earning less than sixteen thousand dollars a year. Nancy has remarried. Both Nancy and Tom hired attorneys. Nancy indicated that the mediation was voluntary and neither had ever mediated before. Their mediator was male. They discussed custody, visitation, child support, and property issues. They attended one mediation session. They reached an agreement in mediation, but after leaving the mediation session, Tom had second thoughts and refused to sign. For a year, they went back and forth making minor changes in the agreement. Each time, Tom refused to sign. Finally, Nancy's lawyer set a court date, and an agreement was reached prior to the court appearance. The final agreement ended up being exactly the same as the one they had worked out in mediation. Nancy is the custodial parent.

The abusive behaviors Nancy experienced were controlling behavior, isolation from friends and family, no access to money, emotional abuse, physical intimidation, and physical abuse when she tried to leave. Nancy noted that he controlled everything: what she wore, what she ate, what she did.

Nancy chose to try mediation because of her intense fear of going to court. She believed her husband would feel powerless in court and that the loss of control would trigger a violent response from him. She believed that he would bring a weapon to the proceedings and kill her. For this reason, she wanted to avoid court at all costs.

Nancy had never told anyone about the abuse in her marriage. She chose not to tell her lawyer because she was afraid of what her husband might do if he found out she had told someone. Nancy did not plan to tell the mediator about the abuse. However, the questions the mediator asked during the initial screening conversation led the mediator to conclude that Nancy was in a controlling relationship. Nancy was stunned that the mediator had been able to discover the nature of her relationship without her explicitly telling him. In fact, Nancy had not realized that she was in an abusive relationship. She said she knew that what Tom had done was wrong, but she did not realize that his behavior was a part of a larger pattern of control and domination. The mediator's acknowledgement of the abuse and validation of her experience was a transformative experience for Nancy. She began to understand that she was not alone and that other women had been through similar experiences.

Nancy's bottom line in mediation was to get Tom to agree to end the marriage. Nancy did not want to ask for any of their joint assets. She did not want any equity from their house and did not want to negotiate for any joint possessions. She did not want to ask for anything for fear of setting him off. Prior to their divorce, Tom had made Nancy promise not to seek child support if they ever split up. For this reason, Nancy was

apprehensive about negotiating child support. She asked the mediator to stress that certain financial entitlements, e.g., child support, were determined by the state and that it was not Nancy asking for child support but just something that was required by the state. During the child support negotiations, Tom presented a net income figure determined by his lawyer. The figure was quite a bit less than his actual income, which Nancy felt was unfair. When the mediator intervened to explain that the deductions that reduced his net income were standard and to show how much the difference worked out to on a monthly basis, Nancy accepted the figure. The mediator had also privately informed Nancy that she was entitled to a share of Tom's retirement plan. Nancy was unaware of this. During the negotiations, Tom did not argue this point.

The majority of the conversation in mediation was focused on visitation. There was no disagreement on custody. At that point, Tom did not want custody of the children. Nancy felt that seeing the children frequently would lessen Tom's sense of loss of control and offer some consolation in the whole process. Tom seemed to believe he would not be in a position to take the children very often. Nancy convinced Tom that he could have the children frequently if he wanted and that he could get a babysitter during the time that they were with him when he had other obligations. Nancy now regrets "pushing" the children on him. Now that she lives several hours away and in a different time zone, the frequent visits are taking a toll. Nancy has also learned that during recent visits the children have mostly stayed at the house of one of Tom's friends. Nancy has no concerns about the actual caretaking (the person is a prior mutual friend) but she questions the frequency of the visits because of Tom's apparent disinterest and the significant inconvenience because of the travel distance between them.

Nancy was very fearful that Tom might force her to see a counselor. She believed that Tom initially thought mediation was similar to a counseling session and that the

purpose of the session was to try to get them back together. Both Nancy's lawyer and the mediator assured her that the role of the mediator was to facilitate a conversation about the issues surrounding their divorce, i.e. custody, visitation, child support, and property settlement. Nancy entered mediation trusting that this was the case.

Tom prepared for mediation by making a list of joint possessions and assigning a cost to each possession. Nancy said she did not prepare for mediation—her bottom line was to finalize the divorce and she did not want anything to jeopardize that. She said she knew better than to argue with him about possessions. When asked what advice she would give to other women in her situation entering mediation, she said that she thought most women in her situation would not argue over possessions and money. They would want out of the divorce at any cost. She believed that if she had wanted to negotiate possessions and financial settlements, court would have been a better option for her. She believed that negotiating in mediation would work for women who were in a relationship where they could comfortably argue with their partner.

Nancy had tremendous faith in the ability of the mediator to facilitate the joint mediation session. Because the mediator had identified the presence of abuse in her relationship, Nancy trusted his knowledge and expertise. She believed that he could handle the mediation session in a way that would protect her. During their initial screening conversation, Nancy and the mediator talked about a safety plan. If Nancy felt the situation was getting dangerous and wanted to leave, she would signal the mediator. The mediator would then find a way to halt the mediation that would not endanger her further and arrange for them to leave separately. As it turned out, Tom did not make any threats or intimidate Nancy during the mediation session. Nancy said she felt no fear leaving the mediation session at the same time. Out in the parking lot, they had a brief conversation, and then they both left without the occurrence of any threatening incidents.

Nancy and Tom reached an agreement in mediation. Nancy reported that they were both surprised that the agreement would not be final when they left the office that day. In the next few weeks, Tom decided he wanted to make some changes. Nancy believed that he was not ready to relinquish his control and refused to sign the agreement in order to exercise control and keep her engaged in the process. Over the course of the next year, the agreement went back and forth between them. Each time, Nancy would sign it and send it back to Tom's lawyer, and each time Tom would find something else to alter. Finally, Nancy's lawyer suggested they set a court date. One day before the court date, they sat down with their lawyers and finalized the agreement. Nancy said the final agreement was exactly what they had negotiated in mediation. She found it amazing that they had evolved back to the original agreement. In hindsight, she wishes they had scheduled a follow-up mediation session a few weeks after the first session. She believed this would have given Tom some time to adjust to the situation. She also believed that a follow-up mediation session would give Tom an opportunity to feel some measure of control again and may have encouraged him to sign the mediated agreement.

Once Nancy's divorce was final, she remarried and moved away. When Tom found out she had remarried, he filed for custody of the children. At the time of our interview (three months following her remarriage), she was scheduled to return to Tom's community to discuss custody. She did not believe he had any serious chance of gaining custody, but viewed the move as a threat.

Overall, Nancy was happy with the mediation session and the final agreement. Her only regret was encouraging frequent visitation. She hopes to amend that when she meets with Tom and their lawyers to discuss his custody bid.

Summary

All the women in this study were white and all but one had access to their own income at the time of divorce. One woman made over \$55,000 per year, three made between \$35,000 and \$44,000, three made between \$25,000 and \$34,000, and two made less than \$24,000. All the women in the study had children. Ages of the women fell between 26 and 55. This was the first marriage for seven of the women and the second marriage for two of the women. Seven of nine women reported that their mediation was voluntary, the other two that mediation was court-ordered. Eight women were employed full-time at the time of mediation; one woman was living with her mother. The length of their relationships (dating plus marriage) ranged from 10 years to 25 years. Six women reported experiencing repeated verbal or emotional abuse (e.g., putdowns, explosive temper, loss of privacy, spying, withholding affection, isolation) and one, Connie, nearly committed suicide to escape the abuse. Three women reported experiencing emotional abuse and physical abuse or physical intimidation (e.g., throwing objects, hitting, using size to physically intimidate, threatening to kill her).

The experiences of the women in mediation ranged from very positive to very negative. The next chapter explores these experiences and presents an analysis and discussion of the results.

CHAPTER 5: ANALYSIS AND DISCUSSION

The central criticisms of feminist critics involve mediator neutrality and the goal of empowerment. Mediation proponents suggest that experiencing empowerment in the mediation session may enhance capacity for *some* abused women. Five major themes regarding the nature of this experience emerged. Four of the themes are drawn from the woman's perception and interpretation of her life experience leading up to mediation and could be considered aspects of empowerment: safety, capacity, mediation vs. court, and the role of gender and power. The fifth theme, the role of the mediator, relates to neutrality and operates on and influences personal empowerment within the context of the mediation (and possibly beyond). Before discussing the themes that emerged, the nature of abuse that was present in these cases will be examined.

Emotional and Physical Abuse

Six of the women in this study suffered what they described as verbal or emotional abuse and no physical abuse; one woman was a victim of repeated physical and emotional abuse, one a victim of emotional abuse and isolated physical abuse, and one a victim of emotional abuse and physical intimidation. The affects of physical abuse coupled with psychological abuse are well documented in the literature (Fischer et al., 1993; Hart, 1990; Walker, 1984) and were discussed in Chapter 2. The affects of psychological maltreatment (all non-physical forms of abuse) independent of physical abuse are not as well researched. However, Tolman and Edleson (1989, as cited in Tolman, 1992) theorize that psychological maltreatment is functionally equivalent to physical abuse. Psychological maltreatment encompasses systematic behaviors that serve to establish and reinforce dominance and control. For example, Pence (1989) lists the following typology of abusive behaviors: isolation, intimidation, using male privilege, threats, using children, sexual abuse, economic abuse, and emotional abuse. Research has

suggested that psychological maltreatment (without accompanying physical abuse) is a strong predictor of women's psychosocial problems (Tolman & Bhosley, 1991) and the probability for depression (Straus, Sweet, and Vissing, 1989 as cited in Tolman, 1992). At least one study has shown that emotional abuse had a more severe impact on women than physical abuse (Follingstad, Rutledge, Berg, and Hause, 1990 as cited in Davies et al., 1998).

The image of the battered woman as someone who experienced a cycle of extreme abuse followed by periods of emotional or psychological abuse and was terrified of her abuser formed the basis for the publicly constructed image of the battered woman developed by victim advocates in the late 1970s and early 1980s. The public image was constructed in order to educate the public and garner support for much needed advocacy services (Davies et al., 1998) and is still prevalent in the public consciousness today. The publicly constructed profile of the battered woman is also the image most often used by victim advocates to argue against the appropriateness of divorce mediation in cases involving a history of abuse. Two of the women in this study, Rachel and Nancy, fit the publicly constructed image of the battered woman; one other, Sally, may fit;¹⁷ the other six women do not.

Studies have shown a continuum of frequency, type, and severity of abuse as well as variation in the impact of the abuse—from no physical harm to severe injury or death and from no psychological harm to severe damage (Steinmetz, 1987 as cited in Irving & Benjamin, 1995; Koss, 1990). These studies support the conclusion that the presence of abuse alone is not necessarily an indicator of capacity to mediate. The data in this study also suggest that the presence of abuse does not necessarily preclude a positive

¹⁷ Sally said that Ned had never hit her but she felt physically threatened by him and he talked about wanting to kill her and himself.

experience in mediation. Three of the women—Sally, Connie, and Nancy—had positive experiences in mediation. In the following sections, their perspectives on why their experiences were positive are explored in more depth.

As Davies et al. (1998) found, battered women's lives and situations are complex, unique, and present them with very difficult choices. They realized that the current service-advocacy model was not serving the women they were seeing and redefined the role of advocates. The success of this program, the Connecticut Model Court Response Project, suggests that it is critically important to acknowledge the uniqueness of each battered woman and listen carefully to her perception of her risk and options in order to offer respectful and effective advocacy.

The data from my study also suggest that each woman's perception of her risk and options reflected her unique life experience and contributed to a complex vision of mediation, a blend of both positive and negative experiences that left some of them feeling ambivalent, others suspicious and still others grateful and enthusiastic about their mediation experience. For example, Marie seemed the most ambivalent about her experience in mediation. She was also the only participant who had mediated for more than four sessions (Kate mediated four sessions, the rest of the women only one or two sessions each) and over the course of eight months. She was confused and frustrated by the neutrality of the mediator (this will be discussed in more detail later) and at the same time felt acknowledged and validated by the mediator. Pat left suspicious of the process after feeling pressured by the mediator and as a result would be hesitant to try mediation again. Sally, on the other hand, was very enthusiastic about her positive experience in mediation and would encourage other abused women to try the process. These examples briefly illustrate the wide range of experiences in mediation of the women interviewed.

The following sections analyze the themes of safety, capacity, mediation vs. court, gender and power, and the mediator role.

Safety

Safety is the freedom from danger, harm, or loss. In this study the concept of safety encompasses all the factors that an individual woman weighs in order to determine her risk associated with a particular situation. Safety was complicated and relative. Nearly all her choices and decisions involved risk. Using the risk categories defined by Davies et al. (1998), the data show that the women evaluated safety along a continuum of batterer-generated and life-generated risks.

Batterer-generated Risks

Batterer-generated risks were those risks directly connected to the behavior of the batterer and aspects of her life over which the batterer exerted power and control. The primary batterer-generated risks which impacted the women's perception of their options were fear and intimidation and living situation.

Fear and Intimidation

All of the women experienced some fear and intimidation and Connie and Meg experienced a level of intimidation that made it difficult for them to stay in the room much less negotiate on their own behalf. Despite the intimidation, all but Meg were able to stand up to their husbands regarding at least one issue. Sometimes this was with the support of the mediator, as in Sally's case, and sometimes solely through their own inner strength, as was the case for Connie. The women were intimidated both by the fear and apprehension about their husband's potential reaction as well as his actual behavior in the mediation. In other words, he did not necessarily have to engage in overt acts of intimidation to exert some control. Meg, Marie, Connie, and Mary described experiencing a replication of the tactics used by their husbands to maintain control in

their relationships: threats, putdowns, physical intimidation, and subtle gestures and looks (“that intimidating look that would just put me on my knees”). Rachel, Pat, Kate and Nancy talked about their fear of consequences and how that impacted them during the mediation session, while Connie talked about the impact of his actual behavior.

Rachel: If I say something he doesn't want to hear...or if I don't agree to what he says...than I'm going to have consequences to pay for that. And maybe that's what held me back from really speaking too much, except for what I was going to stand up for and that was the kids.

Pat: If it was something that the man would do, that would be like a warning to the wife, you know, you say or do anything, I'll get even with you later, you know. There is some of that. There are some little cues that would be important for the mediator to know because no woman who went through anything like that would ever speak up. I mean, at that point, because, just because you're getting divorced doesn't mean you're safe.

Connie: I felt defeated. you know. I, I felt beat up. I didn't want to say that, I didn't...that isn't what I wanted to happen. But I wanted him out of my life. I wanted it over with, so I said fine, just go. I don't care.

Most of the women responded to these behaviors by ceasing to talk, giving things up, leaving, or trying to placate their husbands.

Marie: The only way to [calm my husband down] was to give things up.

Pat: I felt I needed to give in so I could leave.

Connie: It was a losing battle so I just said, fine, whatever you want, I just want out.

Rachel: Towards the end I was very quiet, because I could see Jack getting so angry inside.

For most participants the primary concern was fear of further emotional or verbal abuse. Two women, however, were very fearful of potential physical harm. Rachel was fearful of physical abuse as a direct consequence of participating in mediation while Nancy feared a violent reaction from her husband in response to her leaving. In the past, Tom had only physically hurt Nancy when she had tried to leave. Nancy was afraid that if her husband felt he was “losing power” he would not be able to control his anger. She

was convinced that if they ended up in court, where she believed her husband would feel powerless, he would bring a weapon to court and kill her. Even though Nancy perceived a significant risk for potential harm, she explicitly chose mediation because she felt it was a safer option than court.

I really was afraid that if, if something happened to where he felt like he was losing control, that, over me, or my ex felt like he was losing power or something that, that would be the point that he would snap. It was, the only times he's ever really hurt me...are when I've left.

I was really worried that if we had gone before a judge, and um, I knew that the judge would um...tell him to pay more child support than, than he ended up paying. And I knew the judge would probably split our property down the middle and all that. And I knew that that would just set him off. I didn't, I didn't want that. I just, I just wanted out. [...] At that point, like I said, he, I, I really think he probably could have killed me.

I was afraid of court. Terrified of court. I was terrified of, I was afraid he'd bring some kind of an Uzi and shoot me in the court room afterwards or something. [...] Court makes me very nervous with him. 'Cause it would be a huge authority figure. And some of the judges are very open with their opinions, with um...you know, slamming people down on certain things and, I don't know, I'm just afraid once he opened his mouth and he said something stupid, the judge would say something, I don't know.

When women think their partners may kill them, they are extremely observant of his behavior and may be in the best position to evaluate the risk associated for serious injury or death (Davies et al., 1998). In this case, the mediator may have had the prerogative to recommend a waiver from mandatory mediation, but instead he chose to respect Nancy's evaluation that mediation was a safer option for her. Together they made a safety plan for the actual mediation session. This strategy validated Nancy's assessment and experience and may have allowed the mediator to more effectively explore a safety plan for the joint mediation session by communicating respect and trust in her knowledge of her life experience.

The presence of fear did not necessarily contraindicate mediation. Nancy and Sally both indicated the presence of a significant level of fear prior to mediation and both had a positive mediation experience.

Sally: We arrived separately and at different times. And...I was terrified, you know, just seeing him. He was a big man, six-two, you know, two-hundred seventy pounds.

The unchallenged use of intimidation in the mediation, however, did affect the women's ability to state their needs and desires and to negotiate on their own behalf. Some women, like Connie, were defeated by the intimidation and gave in to get it all (mediation and divorce) over with. Mary, on the other hand, did not cave into the intimidation but was deeply frustrated and emotionally drained by the experience. The role of the mediator in containing the intimidation and the effect this had on the women is discussed in a later section.

Fear and intimidation also impacted the women's perceptions of their options before and during mediation. Meg, Mary, Marie, Sally, and Kate entered mediation with hope and optimism, despite being scared ("I came in scared, and then also kind of hopeful."). Meg, Connie, Sally, Pat, and Mary all had a pretty good idea of what they wanted, while Rachel entered mediation unprepared to discuss anything but custody.

Rachel: I really don't remember that much about, really any input I had beyond the custody of the kids. When it was time to talk, when we talked about the kids...I was very alert and knew what I wanted to say, had things written down. I knew, you know, but after that, cause like I said I had concentrated everything I had on that one issue.

As the session progressed, their perceived options usually either narrowed or expanded depending on their husband's tactics, the mediator's response, and their own inner resources. For example, Marie felt her options narrow the longer they mediated. In hindsight she perceived her position of power as the primary parent weakened the longer they negotiated. She agreed to a split in days in the beginning that she now regrets. Kate,

on the other hand, expanded her perception of her options after coming across an example mediation agreement and using it as a model to draft their agreement. Through the process of working on the agreement Kate began to consider and value some of her own needs.

I think when I was doing the agreement and I was initially typing it up and stuff, I started to feel like, you know this isn't, this isn't right for me. This is, uh...leaning towards him in some of the areas and so, um...that's when I [garbled] I did start changing a little bit of it as I was going along.

It felt that it should be. It felt right, that it should be changed, that you know, [I] should be more into the equation, but yet, I'd been told so many times that I was selfish, that I wasn't sure. It felt good, right, but I wasn't sure if it was right.

It was not clear from the data the exact cause for this difference. However, it might be attributed to the women's sense of self-efficacy, the impact of the abuse, or the actions of the mediator. For example, Marie put a great deal of faith and trust in the power of expert knowledge and initially may not have trusted her own thoughts and opinions. Self-doubt is one of the affects of psychological maltreatment (Tolman, 1989). People in divorce are also especially vulnerable to advice they receive from experts (Grillo, 1991). She said that she regrets not having done more research so that she could argue her case armed with more facts. She also said she was particularly vulnerable to the type of intimidation Ted was using. The intimidation, self-doubt, and lack of expert knowledge (acquired through research of the issues) kept her from assertively stating her wishes early on and contributed to the eventual narrowing of her options.

Kate may have had a stronger sense of self-efficacy or she may have been acting out of an intense desire to change an untenable situation, i.e., feeling pressured by the mediator and being unable to move out until the divorce was final. The mediator's behavior certainly played a role in Kate's decision to take action. In Marie's case the effect of the mediator's behavior is less clear. She may have been waiting for guidance or

a cue from him (since he, by virtue of his professional position was in possession of expert knowledge) or she may have benefited from ground rules or separate sessions where she did not have to contend with keeping Ted calm. Each woman evaluated the risk associated with their present course of action and for Kate, remaining passive was a greater risk, while for Marie taking a more determined stance was a greater risk.

There was some indication that those who had been separated for a longer period of time prior to mediation seemed to have a stronger sense of entitlement and were less willing to give in on financial matters just to get it over with. Though court was not an attractive option for any of the women, these women were willing to go to court to get what they felt they deserved. For example, Both Rachel and Mary, separated for six months and one year respectively, noted that they were unwilling to give in on property settlements now just to get things over with. They both felt they deserved their fair share and were supported in this judgment by family and friends. Connie, separated for a year when she went through her final round of mediation (i.e., shuttle mediation), was more willing to fight for alimony and child support than during her first round of mediation and only agreed to give them up when her husband offered to pay for everything for the children. Meg, who has had to rent out half her house and change the way she drives, regrets not having been firmer regarding her financial needs from the beginning (i.e., negotiating temporary child support).

Studies show that women experience a more pronounced economic decline than men as a result of divorce (Arditti, 1997). The firmer resolve of Rachel, Mary, and Connie may be connected to two factors: (a) time away from the abuse, which has resulted in more independence, strength, and a weakening of the bad relationship bond; and (b) their direct experience of economic decline following separation. Their increased self-esteem, the desire to improve their financial status, and the recognition that they

deserve a fair share of the joint assets may have enhanced their resolve and capacity to negotiate for a more competitive financial settlement.

Chandler's (1990) study of abuse and non-abuse couples in divorce and custody mediation indicated that past violence, current fear, and an inability to communicate led to a lower agreement rate. Though mediators in that study judged the agreements between abuse couples fair and workable (though less so than non-abuse couples), it was not known how the participants perceived the agreements. One might speculate that the presence of these three dimensions should contraindicate mediation. The data in this study is not sufficient to authoritatively confirm or deny this speculation. However, it does suggest that certain circumstances can lead to successful negotiations from the client's perspective when these three dimensions are present. For example, Sally and Connie experienced these three dimensions to a significant degree and they noted that they were very happy with their agreements and would recommend the type of mediation they experienced (i.e., interventionist style and shuttle mediation respectively) to other women in their situation. The use of shuttle mediation and a mediator interventionist style, plus the strengths of each woman (e.g., Connie's newfound self-sufficiency and increased self-esteem and Sally's professional mindset) contributed to the successful outcome. For Mary, past violence, current fear, and inability to communicate did contribute to an unsuccessful mediation. In Mary's case the mediator's process style and communication strategies were not able to counteract the effect of Nate's putdowns and refusal to negotiate. These experiences illustrate, again, the uniqueness of each battered woman's experience and the importance of consulting with her regarding her assessment of her strengths, weaknesses, and risks regarding face-to-face negotiations with her male partner.

Though all the women felt some level of fear or intimidation, the actual impact on the mediation session was mitigated by a number of factors, including their own inner resources just discussed and the mediator's response (which will be discussed later).

Living Together or Separated at Time of Mediation

Whether the couple is living together or separated at the time of mediation could be a critical determinant of risk for physical harm. If the woman is still living with her husband and is afraid of the consequences she may face for participating in mediation, then it would seem that a high probability for harm exists. Statistics have shown that leaving can be the most dangerous time for an abused woman (Mahoney, 1991). Though the women have not physically separated, by participating in mediation they are taking real steps toward leaving.

Two of the nine women were living with their husbands at the time of mediation. Kate had never been physically abused and did not seem to fear for her physical safety. She did monitor what she said in mediation for fear of Bill's reaction and reported that she did not experience any retaliatory verbal attacks during the time they were mediating. Kate speculated that this may have been because she did not "push any of the issues" during mediation. Rachel, however, was very fearful of the possible abuse she could face after mediation and later that night after mediation those fears came true. Rachel believed that nothing could have been done to protect her from the consequences, not even putting him in jail directly following the mediation. He would just come after her when he got out. Rachel may have risked mediation, even though she knew she would probably get hurt, because she was hoping for reconciliation, hoping Jack would see that he had a problem and be motivated to change. Six months after her first mediation session, Rachel and her son no longer live with Jack. As Rachel contemplates a possible second mediation session, she notes that her circumstances have dramatically changed since that

first session and she would not be as scared of Jack if they were to mediate again. One of the reasons she feels more confident is because she now has her own place and feels stronger and more independent.

Nancy's fear of her husband's response to her leaving prompted her to make an elaborate and secret plan for leaving. She made sure she was out of town when Tom was served the divorce papers and she remained living out of town throughout the divorce process. It would have been impossible for her to go through mediation if they had still been living together. As she noted, the only times Tom ever physically hurt her were when she tried to leave.

Mary and Sally were sufficiently scared of being alone with their husbands that they arranged with the mediators to arrive and leave the mediation sessions at different times than their husbands. Had they still been living with their husbands, their fear of his reaction would probably have severely impacted their capacity to participate in the process, as it did for Rachel. Contrasting Rachel's experience with Sally's, one might surmise that one factor that contributed to Sally's empowerment in the mediation and the mediator's success at creating a safe environment was the fact that she was no longer living with Ned.

Life-Generated Risks

Life-generated risks are factors that exist independent of the batterer, though the batterer may have influence or control over some life-generated risks. The primary life-generated risks relevant to the interviewees' perception of their experience and discussed below were trust and confidence in the mediator and financial concerns. Other factors that contributed to life-generated risks were the emotional turmoil and loss of relationship.

Trust and Confidence in the Mediator

Trust in the mediator influenced perception of risk, comfort level with mediation, and perceived empowerment. This was less true for those women who reported that mediation was court-ordered. For example, Pat and Mary entered mediation with a mindset tending toward “I’m here because I have to be, regardless of what I think of the mediator.” As will be explored in detail below, trust in the mediator proved to be a key factor for Kate, Meg, Sally, and Nancy.

Winslade and Monk (2000) discuss the role of trust in client-professional relationships. They argue that clients place their trust in professionals largely because they expect the professional to be trustworthy, i.e., standards of trust are embodied in the ethical standards and codes of the profession. This expectation of trustworthiness seemed to be particularly present for Marie. For example, Marie believed that a mediator must be a principled and moral person, one drawn to this profession because of their values and what they believe. This is the type of person she could trust. Winslade and Monk (2000) caution the mediator against accepting this trust without earning it. They suggest that mediators should begin to think of trust as an achievement rather than as a given, that trust must be earned (and re-earned) through social interaction.

In addition to the expectation of trustworthiness, which is independent of any individual mediator, recommendations from other trusted professionals or friends may influence initial trust levels. For Marie, the mediator recommendation she received from trusted individuals enhanced her expectation of trust. The opposite was true for Kate. The mediator recommended in her case came from a source she perceived as possibly biased, which ultimately contributed to her uncertainty about the mediator’s trustworthiness.

The next opportunity to establish trust and confidence in the mediator was the initial private conversation. Meg indicated an enhanced level of trust in her mediator after the initial conversation when she said:

And I went in feeling like, I like this woman, she's a nice human being, she's a good human being, and I think those things are absolutely true. Um. She's trained to do this, she's highly recommended. It should work.

Kate was uncertain about her mediator from the beginning because he shared offices with Bill's psychologist and had been recommended by the psychologist. For Kate and Meg, initial trust and confidence in the mediator was shaken or destroyed during the joint session and this influenced their comfort level and their safety strategies. Kate refused to talk whenever a controversial or risky topic came up and Meg wrote the mediator a letter following the first session stating she would not return to mediation unless the mediator could control her husband's intimidating behaviors.

Likewise, trust and confidence was developed during the initial contact for Sally and Nancy, but was increased, rather than diminished, during the joint session. Sally initially chose a mediator based on how he said he would create a safe environment. She said she was able to get past her terror of facing her husband "knowing that the mediator was there" and "trusting him that nothing would happen." Her confidence increases as she observes the mediator's ability to control the situation and consequently, she is more willing to risk speaking up.

It was when I saw how the mediator controlled the situation. Um, he stepped right up to the plate and took control. And, like I said, you know, first thing we did was, you know, establish ground rules.

You know at first I was a little tentative. You know, kind of, you know, feeling out the waters. You know. See how it would work. And, then as we went into it more, then speaking my mind a little bit more.

Nancy, as noted earlier, built significant confidence in the mediator based on their initial conversation and her confidence in the mediator increased her comfort level before and during the mediation.

And I think, in a way, I kind of thought, I felt like, you know, oh, my ex is a threat to me, big time, now that I'm turning on him. But this, there's this somebody else, like this mediator, who knows about these things, and he's been here before. And, he'll know if, if something's going wrong. And he'll know if, you know, if I give him a signal that it's not going good, I want to stop, you know.

I mean I knew, I knew that he wouldn't be telling my ex things, you know, and making him feel powerless, but then again I didn't, I didn't know his role would be...it's really hard for me to explain because I...like I said, really the only way I can explain it is he did things without making it seem like he was doing them.

No research could be found that explicitly examined the role of trust between parties and mediators in the family mediation literature. Research has been conducted on satisfaction with the mediator and the process (Kelly, 1989; Kelly, 1996; Pearson & Thoennes, 1989) and on trust between negotiating parties (see Lewicki & Bunker, 1995) but this research does not directly examine the relationship between the mediator and the client.

The role of trust-building between the parties and the mediator is discussed by Lawrence Susskind, interviewed by John Forester for *When Talk Works* (1994). Susskind pays explicit attention to trust-building when he mediates public disputes. He has found that speaking and acting with transparency right from the beginning builds a foundation for respect and trust. For example, when confronted by a party in a public dispute who was highly distrusting of him and the process, he asked the party in private to give him a chance, give him one opportunity to demonstrate that he means what he says. If he fails the test, then don't believe him anymore. As a result the party toned down his rhetoric. When a party can only criticize a proposal and not offer ideas for how to make it more workable for them, he encourages parties to participate and brainstorm by asking "What

if” questions. He admits his mistakes and uses positive reinforcement during breaks. He thinks out loud, modeling the behavior of exploring an issue without having to commit to any particular position. His personality and charisma are a factor in being able to communicate successfully with the parties. Susskind calls himself an activist mediator. He says: “Accountability for the quality of the outcome—providing training for everybody and helping them maximize joint gains—is the focus of my activism.” He clearly disregards the conventional definition of neutrality and actively builds trusting and working relationships with the parties in the disputes he mediates. The mediators in Sally’s and Nancy’s cases seemed to convey a similar level of trustworthiness through their initial conversations with each woman and their process style in the face-to-face session.

Relevant research regarding client-professional trust relationships can also be found in the counseling psychology field. Bachelor’s (1995) qualitative study of clients’ perceptions of the client-therapist relationship is particularly helpful and transferable to the client-mediator relationship. She found that the attitudes and behaviors of the therapist were crucial in fostering a positive working relationship. The characteristics most conducive to self-disclosure (a goal of mediation as well) were respect and being nonjudgmental, empathic understanding, and attentive listening. These clients reported that self-disclosure contributed to the positive working relationship and was facilitated by therapist efforts. More important, her findings suggested that the therapeutic alliance was defined by a distinctive therapy climate:

It was this particular climate, characterized by trust (apparently through instilling a sense of feeling at ease) that promoted clients’ self-disclosure. Thus, for example, genuine interest communicated through attentive listening—together with the feeling that one was not judged and was treated with respect or the feeling that the therapist acted more like a friend than an aloof, silent “specialist”—enhanced the clients’ trust... (p. 332)

As previously discussed, one goal of mediation is to encourage party self-disclosure through equidistant behaviors in order to get to parties' underlying interests. Bachelor's study illustrates the importance of trust in promoting an environment where that can happen. Again, both Sally and Nancy describe an environment that was characterized by trust, where the mediator listened attentively and did not judge either party. Connie (in the shuttle mediation) also discusses the ability of the mediator to convey that he genuinely cared about her and the outcome. Meg and Kate on the other hand, did not mediate in an environment that felt trusting to them and they did not feel heard or attended to in their face-to-face sessions. The mediators, in their cases, failed to do what they had promised (to protect) or what was expected as a standard of the profession (not take sides).

The specific behaviors of the mediators in this study that promoted trust were some of the same characteristics identified by the clients in Bachelor's study: (a) respect and being nonjudgmental (e.g., Nancy remarks that the mediator continued to treat her with respect after finding out about the abuse; Mary talks about the mediator not judging either side); (b) understanding (e.g., both Marie and Sally talk about the mediator's ability to clarify and restate to increase understanding); and (c) attentive listening (e.g., Nancy, Marie, and Rachel reported feeling acknowledged and heard by the mediator). As these examples and the above stories illustrate, trust and confidence in the mediator proved to be a factor in assessing risk before and during the joint session especially for Kate, Meg, Sally and Nancy. The data also indicate that a critical time for establishing trust is during the initial contact.

Financial Worries

Concerns about supporting themselves and providing for the children following divorce are a life-generated risk for most women. Many studies show the economic

decline of mothers post-divorce (see Arditti, 1997; Duncan & Hoffman, 1985 cited in Irving & Benjamin, 1995). Some theorists argue that economic decline is more a function of gender discrimination in employment than divorce per se (Arditti, 1997). Whatever the reason, most research shows that the post-divorce economic status of women declines.

In this study, all the women except Nancy and Mary worked full-time prior to the divorce with most earning between \$25,000 and \$44,000 a year. All but Nancy were working full-time at the time of mediation. All made less than their husbands and sought child support as part of the settlement. Connie was the only woman who asked for alimony but ultimately dropped her request in order to bargain for other issues she felt were more important to her. The 2000 federal poverty threshold for a single mother with two children was \$13,874 (U.S. Bureau of the Census, 2000). However, data compiled by the Economic Policy Institute show that it takes between \$20,000 and \$40,000, depending on geographical region, for a family of three to meet its basic needs and achieve a safe and decent standard of living (Economic Policy Institute, 2000). With only one woman in this study earning more than \$44,000 and two earning less than \$25,000, most of the women are hovering just at or above the minimum self-sufficiency income.¹⁸

Child support negotiations were crucial for most of the women. Only two women did not negotiate child support in mediation and accepted the state's formula for determining the award. Child support was a very contentious issue for at least three of the women. Connie's ex-husband had threatened to take the kids away if she tried to get the house, alimony, or child support; Nancy's ex-husband wanted her to agree to reimburse his child support payment; Meg's husband essentially dismissed her need for child

¹⁸ A self-sufficient income includes food, housing, health care, transportation, child care, other necessary expenses, and taxes.

support. Interestingly, the two men that could most afford to pay (they were both physicians) showed the most resistance to paying a generous amount.

Sally expressed considerable concern about the financial outcome since Ned was virtually bankrupt (he had lost his business and the bulk of their joint assets due to substance abuse issues). It was crucial for her to be able to express her needs in mediation in order for her to negotiate a settlement that she and the children could live on. Sally's financial status declined but she was able to negotiate a settlement that allowed her to buy a smaller home instead of living in an apartment, which was very important to her. A last minute discovery of further debt meant she would not receive \$15,000 which she was counting on to put toward the house. Consequently, she is working two jobs to afford the mortgage.

Marie was very conscious of her change in financial status. She articulated a number of concerns among them, changes in her social group, the affect of "rich-dad-poor-mom" on the children, and self-esteem ("I'm just an artist; he's a neuroscientist"). She is on a strict budget (\$37/week on groceries), has had to rent out half her house for income, and has changed the way she drives to conserve gas. She says she is used to living on "nothing" but she worries how the contrast between Dad's house and Mom's house will affect the kids. At the time of the interview (two months after the divorce was final), Marie had still not received a child support payment. Marie regrets not having demanded temporary child support from the very beginning. She held back from that because the children were spending three days a week at Ted's house.

Connie had lived a year without her ex-husband's financial support prior to the second round of mediation and was extremely proud of making it on her own:

I was very happy with my agreement. you know, I'm not rich, I still have my bills, um, and a lot of people think I'm nuts, I let him have the house. ... I live in a trailer, I don't care. It's a roof over my head, It's mine and

I'm doing it without him, which is all the stuff he told me I couldn't do for 18 years.

Her sense of self-sufficiency enhanced her perception of her options in negotiations. Ultimately, she may have negotiated the most financially secure child support possible. Because her ex-husband was adamant about not paying alimony or child support, he declared he would pay for everything for the children before he would give her anything. The mediator (in the shuttle mediation) clarified what he meant by that and his offer became the basis for their agreement in which he agreed to pay for all the needs of the children from school supplies to college education. As a result, Connie said she had no financial worries with regard to the children.

Bryan (1992) argues that one of the dangers of mediation is that women may bargain away hard won legal entitlements to financial settlements. She may feel pressured to give in on financial entitlements in order to bargain for custody or for fear of being perceived as too competitive or uncooperative. Bryan notes that she may not feel she deserves an equitable financial settlement because women generally have lower reward expectations than men. Typically, women expect to be compensated less than men, even if they perform comparable work (Major & Forcey, 1985 as cited in Bryan, 1992). In addition, socialization further disadvantages women in direct negotiations with her male partner and mediator neutrality may exacerbate gender inequities in negotiating power. If the mediator is unaware of her legal entitlements, this may also contribute to gender inequities in financial settlements. Without a legal review of the mediated agreements, it would be difficult to say exactly what legal financial entitlements the women in this study may have bargained away. However, the data do indicate that some of the women did give up or did not aggressively pursue financial demands for reasons ranging from a desire to get out of the marriage at any cost to a fear of being seen as uncooperative. For example, Nancy did not aggressively pursue financial settlements

because she did not want to anger her husband or jeopardize the divorce proceedings. Connie gave in on almost all her financial demands (e.g., alimony and child support) during her first round of mediation because she just wanted out and her husband's aggressive negotiation tactics exacted too great an emotional toll from her. Marie was afraid she would be seen as uncooperative and too aggressive if she demanded temporary child support from the beginning, a move she now regrets. Clearly, socialization and the nature of the abusive relationship influenced negotiating power and capacity for these three women. The data also support Bryan's (1992) claim that giving up certain financial entitlements disadvantages women economically.

Sally was the only woman in this study (using face-to-face mediation) who reported receiving a financial settlement that she perceived was better than she could have obtained using any other mechanism. Her negotiating success may have been due, in part, to her husband's current situation and state of mind, i.e., near bankruptcy, living in a halfway house, and possible guilt over squandering the family assets. Though his physical presence still intimidated Sally, he was not negotiating from a superior economic position. One might speculate that had he been in a stronger economic and social status position, Sally may not have fared as well, even with the intervention of the mediator.

All the women, except perhaps Nancy who has remarried, suffered a decline in their economic status. Even Sally, who negotiated the best possible settlement in her opinion, acknowledged a decline in her standard of living. This finding is consistent with research that shows women experience an economic decline following divorce (Arditti, 1997).

Emotional Turmoil and Loss of Relationship

Next to the death of a spouse or child, divorce has been found to be the most stressful life event for an adult (Holmes & Rahe, 1967 as cited in Emery, 1994). All the women in this study described the presence of emotional turmoil and chaos surrounding their lives at the time of mediation. Meg said that it's a "crazy time" for women, that women are depressed, overwhelmed, have the responsibility of taking care of the kids, and have financial worries. Marie and Rachel noted that divorce was fraught with emotional upheaval. Kate and Nancy both described a sense of chaos and disorientation by commenting that things were happening too fast or maybe not fast enough.

Marie: It's a pretty emotionally fraught time. [...] It was up to me, to, you know, through all the emotional chaos, to try and get a grip on those things, and figure those out.

Rachel: Before I couldn't stand to be in the same room with him cause I hurt so bad, you know, seeing him and knowing that, you know, we weren't together and, I know that sounds bizarre, [knowing] what kind of relationship we had.

Kate: At that time I was...not real emotionally stable, you know, I was pretty upset, not sure what all was, things were happening, too fast, I think, or maybe not fast enough, I don't know it was just...too hard. Lot of turmoil.

Sally describes being emotionally drained by the time she reached mediation because her husband had tried to kill himself and was found by their eldest son. She says:

One of the worst things that he did and, this'll be something I'll never in my life ever forgive was that, um, a month before I filed for divorce, um, he tried to commit suicide at home. And he slit his wrists. And it was my older son who found him. Here was Dad lying on the carpet, all this blood all over the room. And the scream, you can't imagine. [...] Yeah, never had him hurt...the boys like that. I just wanted to make sure that he didn't hurt them [garbled]. And that's where, you know, that way, I was just emotionally drained, and, just to have to continue fighting with him...

It seemed that mediation also helped Sally manage the emotional turmoil. She thought she was "a bit more calm" at home and avoided drawing the boys into inappropriate conversations about their father, his actions, and their impact on her. This

was not the case for most other interviewees. Only one other interviewee, Marie, mentioned that mediation helped her deal with some of the emotional trauma; one interviewee, Rachel, mentioned this as one of her hopes for mediation.

Rachel also commented on the uncertainty of being alone and her deep sadness that they would not be together. She acknowledged that it seemed “bizarre” given the nature of their relationship, but that she had grown used to the confrontation and was not sure how she would live apart.

I think one of my hopes for mediation was that...we could be very rational. He could maybe see that he did have a problem and that we could just get things worked out and...you know, be a real family and be...So I think, my underlying thing...and nobody really understands that because my Mom was like, “You’re crazy, you know. You have a chance to be away from him. Why would you want him back?” You know, and I’m like, because I love him.

Rachel wishes the mediation could have taken place later in the process. She wasn’t ready for mediation in the beginning because she was emotionally overwhelmed and unable to focus and organize her thoughts. She suggests that the mediator assess whether the parties are ready for mediation.

And I think, if you, when you try mediation right away in the beginning, I don’t think that, and it depends on, you know, who filed for divorce, and who...there’s so many personal feelings involved right away...that I think the mediation process was just too soon. I know for us it was. For me it was. Maybe not for Jack. I mean, so I would recommend, kind of, feeling that person out, you know...both the people out, seeing if they’re ready for mediation. You know. Are they able to come in here with organized thoughts and, you know, or are they gonna sit here and cry and not have any idea of what they want to say, or have a fear of saying something or, you know, a meeting before...with each individually...might work better.

The fear and intimidation already present in these women’s lives was compounded by the stress and emotional turmoil of the divorce process itself, thereby further contributing to their life-generated risks and ability to cope.

Given this collection of batterer-generated and life-generated risk factors, each woman drew on her experience and own inner knowledge of what gave her some

measure of strength and confidence in creating a tiny haven of safety in the eye of the storm. For Sally safety meant an environment where the mediator kept her husband from engaging in threatening behaviors; for Kate it meant preparing a draft agreement on her own that increased her sense of control over what was happening and substituted for her having to state her needs directly in the mediation session; for Connie it meant being in separate rooms and never having to talk to her husband face-to-face; for Nancy it meant avoiding court at all costs; for Mary it meant having a person there who wasn't taking sides and was really listening to her; for Marie it was being in possession of expert knowledge; for Meg it meant rules and guidelines with consequences if broken; for Rachel it meant structure and time to prepare for the discussion of particular issues; and for Pat it meant knowing what you want and what you are willing to give up before you enter mediation. Nine women, nine different ideas of what would enhance their sense of safety. The experience itself contributed to the discovery and shaping of their strategies to enhance safety. It is not known whether the women could have articulated ahead of time what would contribute to making the environment safe. What seems critical, and is a lesson discovered in the development of woman-defined advocacy, is that evaluation of risks and options is an ongoing process and in order to provide the most effective response one must provide continual opportunities for exploration of her risks and options.

Capacity

Safety and capacity were found to be interdependent. The interviews indicated that increasing a woman's sense of safety enhanced her capacity to mediate. Webster's dictionary defines capacity as "the power to grasp and analyze ideas and cope with problems." Bush and Folger (1994) define empowerment as "the restoration to individuals of a sense of their own value and strength and their own capacity to handle

life's problems." The AFM Standards of Practice (1998) denote client self-determination, the ability to make voluntary and informed decisions, as a fundamental principle of mediation. Capacity as it is used here encompasses all these notions: the ability to cope, make decisions, and one's sense of personal strength and self-worth.

Factors found that contributed to capacity to mediate were (a) self-efficacy, (b) knowledge and preparation, (c) the symbolic meaning attached to mediation, and (d) mediator interventions. Mediator interventions will be discussed in the later section on the role of the mediator.

Self-Efficacy

Newmark et al. (1995) found that the fear of future harm diminished abused women's perceived sense of personal empowerment. Personal empowerment referred to how competent parties felt about working with their partners to resolve the dispute. They suggest that there may be two factors at work in their measurement of personal empowerment: self-efficacy and intimidation due to risks associated with voicing their needs and desires. In other words, abused women believed they could state their needs and stand up for themselves but were fearful of the repercussions for doing so. Since the women had not yet mediated, the study measured only their perceptions of empowerment and risk for harm. We have already talked about the presence of fear and intimidation. How did these factors influence women's ability to speak up?

This study supports the findings suggested by the Newmark et al. (1995) study. First, that some abused women had a sense of self-efficacy (i.e., the ability to speak on their own behalf), especially if the issue involved their children, coupled with a fear of retaliation; second, her overall sense of safety (i.e., fear of future harm) during and following mediation impacted her capacity or sense of personal empowerment.

Several factors contributed to the women's sense of agency and self-efficacy. Three of the primary factors were access to her own money, the presence of a support system, and her role as a parent. These factors contributed to her willingness and ability to state her needs and desires and stand up to her husband.

All interviewees worked part-time or full-time outside the home. All, except Nancy, had access to their own money and many were in positions where they made decisions regarding others (physician, office coordinator, medical facility supervisor, lecturer). Research has shown that having access to an independent income influences an abused woman's decisions and options (Gondolf & Fisher, 1988; Pagelow, 1981). Independent financial resources also contribute to a woman's flexibility and power in negotiation (Irving & Benjamin, 1995). It can also reasonably be assumed that they felt at least some measure of capability in their professional work lives.

I have already noted that divorce is one of the most stressful life events in an adult's life and that emotional turmoil and chaos were present in all the women's lives at the time of divorce. Through all this change, several women noted the role of informal support systems during the divorce process in general and mediation in particular. The women turned to friends and family for varying degrees of support, advice, comfort, and strength. Marie in particular talked about losing mutual friends and the importance of establishing new friends. Here she describes the role of a newly established friendship:

And part of the thing about knowing yourself would be to find something, like for me I had, you know, two friends created this Tai Chi class with me and I did that every week, almost everyday. And that kind of gave me a place separate, I mean, these guys didn't even know Ed. They were outside of that whole thing.

Marie also was able to use Tai Chi to calm her anxiety prior to the mediation sessions. Kate, Meg, Nancy, Rachel and Connie also drew on the support of family or friends for strength and comfort. Kate summarized the critical role of support when she

said, "I don't know if I could have gotten through it without support from anyone."

Research has found that formal support systems (e.g., shelters, advocacy services) contribute to women's coping strategies and reduced depression over time (Kemp, Green, Hovanitz, & Rawlings, 1995 as cited in Davies et al., 1998). My study suggests that informal support systems also contributed to the women's ability to cope and may have reduced some level of anxiety and stress.

Another aspect of support involved whether the women were informed about or encouraged to talk to an advocate prior to mediation or to bring an advocate with them to the mediation. One of the modifications to the mediation process that victim advocates recommend is that women be allowed to bring an advocate (or friend) to the mediation session for support if she so desires (AFM Task Force on Spousal and Child Abuse, 1998; Iowa Supreme Court Mediation and Domestic Violence Work Group, 1999; Landau, 1995; Maine Court Mediation Service, 1992; Toronto Forum on Woman Abuse and Mediation, 1993). All the women, except Marie, reported that they did not have any conversations with the mediator about the possibility of bringing an advocate with them to the mediation. Marie asked if her lawyer could accompany her. The mediator discouraged her from bringing her lawyer and, it seems, did not encourage or inform her that she could bring someone else as an advocate. As it turned out, Marie was fearful that an advocate would have been taken in by Ted's charm and, therefore, would not have effectively supported her. Connie and Rachel, however, noted that the presence of an advocate or a friend would have been very helpful for them. Connie said she would have felt a lot better if someone had been there "that could help you get that strength back." All the women were looking for some support and protection in the mediation. With the exception of Nancy's (where any show of power may have set off her husband) and Sally's (where the mediator did act to protect Sally) cases, the presence of an advocate

may have eased the expectation and reliance on the mediator for support and protection. The absence of an advocate presence in these cases raises two questions: Do mediators struggle with how an advocate fits into the process structurally and procedurally? And even though task force reports recommend that the women be allowed to bring an advocate to the mediation session, do mediators not encourage it because they believe this compromises neutrality? Why did none of the mediators encourage or recommend that the women bring an advocate, especially in Connie's case, where she was extremely intimidated by just being in the same room with her husband?

The data did not indicate what reasons may have factored into the mediator's decision-making process regarding this issue. Three plausible explanations arise: (a) the confidentiality of the process, (b) the appearance of neutrality, and (c) the structural and procedural challenges. Concerns regarding confidentiality of an observer/advocate may discourage some mediators from being comfortable with this option. As Kruk (Kruk, 1998a) notes, observation is difficult in the context of family mediation because of professional-client confidentiality. Though there are mechanisms to involve the observer in confidentiality agreements, it may seem like a risky or complicating factor. Neutrality and balance may be an issue for some mediators. If one side has an advocate, shouldn't the other side have an advocate as well? If the male partner brings an advocate, how would that affect the woman and the power in the room? Does the presence of an advocate indicate that the mediator knows about the abuse and could this put the woman at risk for retaliation? And finally, how does an advocate fit into the process structurally and procedurally? What is the role of an advocate in the mediation session? Though guidelines indicate that the woman should be allowed to bring an advocate if she wants, they do not specify what role the advocate might play, e.g., an active participant or silent supporter. Without experience or specific guidelines, perhaps some mediators are

procedurally unclear on how they would incorporate an advocate into the process or what impact the presence of an advocate might have on the process. If these factors play a role in a mediator's decision-making process regarding the presence of an advocate, it would seem that additional education and specific case examples regarding the role of an advocate and possible benefits for the abused woman might alleviate some of the confusion and hesitancy to encourage the woman, or at least offer the opportunity, to bring an advocate with her.

Finally, her sense of responsibility as a parent enhanced self-efficacy. Except for Kate, whose children were older and chose to live with their Dad, and Connie, whose children split their time equally between households, all the women continued in the role of primary caretaker. Custody and visitation was the one consistent issue women were willing to speak up about. Though Marie regrets some of the concessions she made in mediation, she never wavered from insisting on being named the custodial parent. Despite perceived pressure from the mediator, Pat also refused to give up custodial care. (Pat did not settle in mediation.) And finally, as noted earlier, all Rachel could focus on were the children and she was only prepared to talk about custody and visitation. This data confirm the finding by Newmark et al. (1995) that abused women believed they could speak up for themselves on issues related to the children just as well as their husbands. The women felt confident speaking in their role as parent and were willing to risk the consequences of speaking up in order to maintain their primary caretaker role.

Each woman at some point in the process took steps on her own behalf that demonstrated self-efficacy and also may have served to enhance her sense of power and self-worth. For example, Meg wrote a letter to the mediator stating her needs and desires; Marie hired the best lawyer in town; Pat credits her stubbornness to being able to stand up to pressure she was feeling; Mary wrote down the issues she considered important

prior to mediation; Connie drew strength from her newly acquired self-sufficiency; Sally relied on her professional mindset; Rachel prepared in advance for custody and visitation negotiations; and Nancy told someone her secret.

Knowledge and Preparation

Most of the interviewees were not quite sure what to expect in mediation. As Rachel notes:

I don't really think I was prepared for it. I mean, I think it was just...you know, we're going to have a meeting and talk about some things, and...you know, what your expectations are, what Jack's expectations are. And I didn't...at that time, don't think I had any.

They did not know what they could expect from the mediator, how the sessions would unfold, whether they could take a break or speak with the mediator privately. They did not know what would happen if they started to feel intimidated, what kind of support they might expect from the mediator and how to ask for that support. They did not know how difficult it would be and did not have enough specific information about the process to make an informed decision about whether it would help *them* solve *their* issues.

The mediator may, in fact, have given them quite a bit of information, but it seemed not to have registered, perhaps because of the emotional trauma of going through a divorce, an implicit trust in the authority of the mediator, or they simply did not know what kinds of questions to raise. The women themselves suggested two possible approaches to deal with this uncertainty: (a) an informative brochure, and (b) a private face-to-face meeting prior to the first joint session. The Family Mediation Program does provide a brochure that includes the following information: (a) advantages to mediation, (b) when mediation may not be appropriate (e.g., when physical or emotional abuse is present), (c) the option of a waiver, (d) referrals to domestic violence services for support, and (e) steps to take to prepare for mediation (e.g., make a list of important issues and review this list with your lawyer prior to the first mediation session). None of

the women mentioned this brochure in response to the question “What did you learn about mediation prior to the first session?” And Kate explicitly recommended that an informative brochure might have helped her prepare. There may be several possible explanations for not mentioning the brochure: (a) they did not receive it, (b) they received it but did not read it, (c) the information did not help them prepare, or (d) the information did not resonate with them, i.e., the timing was not right to absorb the information or they were overwhelmed with all that was happening and did not take it in. Regardless, the information contained in the brochure probably needs to be shared with the women (and expanded upon) repeatedly and most importantly just at the point when she is considering whether or not to mediate. Additional information that might be included in a brochure would be sample questions clients might ask mediators, especially those abused women might want to ask (e.g., How would you create an environment where I won’t feel intimidated?), the range of procedural modifications available and the advantages and disadvantages of each (e.g., a combination of joint session and caucus, all shuttle mediation), and the option to bring an advocate to the mediation with you. Offering this kind of information normalizes the experience and sends the message to the women that they are not asking for “special” treatment. Mediators can reinforce the information in the brochure during their initial contact and give further permission to the women to ask questions and explore their options.

There were some exceptions to the general lack of preparation, for example Meg spent extensive time figuring out a realistic child support amount and Mary followed the mediator’s suggestion and wrote down the important issues she wanted to talk about. But overall, the women did not seem prepared for the totality of the experience. I do not mean to suggest that if they had been prepared, they would have been able to successfully negotiate from a position of strength. I do suggest, however, that more full and

comprehensive preparation would have helped them assess their strengths and weaknesses, create strategies for protection in the mediation, plan what might happen in the first session, request separate sessions, and ultimately have more say in how the process unfolds. For example, Rachel said she was completely unprepared to discuss anything but custody and visitation in the first mediation session. She also said she needed time to reflect, organize, and write down her thoughts about an issue before she was ready to talk about it. Had the mediator known these things about her, he might have explored ways to structure the first session to work with Rachel's strengths. (The mediator could also do this with the other party.) For example, they might talk about custody and visitation only in the first session, or discuss custody and visitation first and then decide what issue to discuss next, take a break so that each party can collect their thoughts, and then proceed again. A more comprehensive discussion about strategies for protection would have especially benefited Connie and Meg. Even though Meg explicitly asked for support and protection, there seemed to be a miscommunication between Meg and the mediator about what actual behaviors or strategies that would entail. If Connie had been able to tell the mediator what behaviors signal that she is giving up and what she needs if that happens, and if the mediator had then recognized that situation and taken action, she might not have felt so defeated after the first round of mediation.

Marie suggests she could have assessed her capacity more clearly and been better prepared for the difficulties had the following kind of information been available.

A list of scenarios, a list of marriages, case examples, you know. And, this situation we have these kinds, this sort of history, these sort of personalities, these situations. [...] I mean, each person's complicated situation's pretty, is complicated, each history, each, you know, job situation. So that, you know, you're not saying, here's a formula, which one are you? But rather, here is how complex it is. And so here's some of the pros and cons. Here's some of the good things that can happen, you know, and here are some of the bad things that happen, that can happen. And you have to figure out, you know, what your strengths and weaknesses are, and what your situation is, you know. There's not going

to be a formulaic answer, you know. But you have to figure this out sort of minute by minute.

This type of preparation would probably take more time than most mediators spend now in the screening process. Some mediators may believe that this is not appropriate given their role as a neutral. Whether or not the mediator performs this role, victims of abuse need more comprehensive preparation for mediation than they are now receiving. The challenges posed by premediation counseling reflect a structural problem with mediation in cases involving abuse. Time, expertise, and the mediator's role as a neutral present process challenges to incorporating premediation counseling into the process as it is currently practiced. Cost becomes a factor as well. Who will pay for this service? It is likely that the women will not want to pay (or be able to pay) yet another service provider in the divorce process. Consideration needs to be given to incorporating this service into the standard mediation process in a way that does not dramatically increase costs. As this study hypothesizes, lack of comprehensive preparation is more likely to lead to a negative experience in mediation (e.g., Meg, Pat, Connie, Rachel, and Mary).

In addition to preparation, knowledge also served to enhance capacity, i.e., to increase confidence in her ability to negotiate. Knowledge encompassed self-knowledge as well as expert knowledge, and specific knowledge about the issues as well as knowing what to expect from the process. Marie increased her sense of power and capacity through expert knowledge by hiring the best lawyer in town. Marie also perceived that she would have enhanced her power had she done more research on her own ("Know what your issues are and research them."). Pat engaged her husband in the process of consulting a psychologist and reading books to help them determine what would be best for Troy since he was so young.

We did that together 'cause it was one of those, I figured he'd never believe anything I had to say so it was best if he, if we, you know, did it together and listened to the same words from the same person.

Rachel felt that she lacked knowledge about the issues of divorce when she mediated, i.e., what issues would surface and need to be resolved. As the separation process lengthened, she began to gain an understanding of all the issues that would need to be resolved.

I don't really know how to deal with the issues and I feel like...I'm kinda just doing it all on my own. And I think the mediator would have helped. [...] I didn't really know what all our issues would be. [...] When this all first started, Jack and I were pretty agreeable on most of the stuff. As times went on, it's kind of like, well there's another issue we never thought about.

It is probably unrealistic to expect that a mediator (or anyone) could adequately inform someone else about all the issues that might arise in the process of their divorce because everyone's situation is unique. What seems important here is the acknowledgement that abused women, as in Rachel's case, may feel particularly overwhelmed by the complexity of the issues and the expectation in mediation that she will be able to articulate her needs and interests. Mediators need to be sensitive to this possibility and explore ways to increase her knowledge about the issues prior to or during the mediation process. A mediator might support her need for increased knowledge by encouraging her to bring an advocate, supplying a recommended reading list, or referring her to someone who has gone through the process of divorce and mediation and is willing to talk about it.

In summary, almost all the women said they did not know what to expect in mediation. Kate, Nancy and Marie also commented that they wished they'd had more information about the process prior to mediating. For Marie this was more related to making an informed decision about mediation. Had she had that information and made what she considered to be an informed decision, she seemed to think she would have

been better prepared. Rachel also wanted more information in order to prepare herself for the session. She needed time to reflect and write her thoughts down prior to discussion of an issue and she could not focus on anything but custody in the first session. Lack of preparation and knowing what to expect left some women confused and overwhelmed in the mediation sessions, leading to diminished capacity. Possession of knowledge, or access to expert knowledge, seemed to enhance capacity for the women in this study.

Symbolic Meaning

For Nancy and Rachel, mediation seemed to serve as a first step in the process toward separateness and autonomy. It was the first time Rachel was able to say things she'd been afraid to say in front of her husband.

Well I think just being able to sit down, and talk to somebody that didn't know either one of us...was kind of like a stepping stone in the process for me. Being able to finally say some things, that...I felt like I could never say before.

For Nancy, mediation was a signal to herself and her husband that she was serious this time, she was really leaving. It carried weight (increased danger) and meaning (first sense of autonomy) beyond its stated goal (for the problem-solving model) of assisting parties in finding a mutually agreeable settlement.

The mediator played a key role in acknowledging and validating Rachel's and Nancy's autonomy, listening attentively and respectfully to their ideas and concerns and providing feedback. The mediator also played a key role for Marie in this regard. Marie said she felt the power in the room shift a little when the mediator acknowledged her autonomy. The mediation process was also a step towards autonomy and self-interest for Kate, though in her case, the mediator's behavior served as a catalyst for Kate to draw on her own resources.

These experiences contain moments of empowerment, i.e., an enhanced sense of self and increased sense of one's ability to cope, tangled up with the fear and

intimidation. Do these empowering moments, as Regehr (1994) suggests, simply create a false illusion of equality, or do they in some small way contribute to a more lasting shift in power? Have the mediator actions contributed to proportional empowerment for the abused women, which Laue and Cormick (1978) claim is the only ethical goal for mediator intervention? It is difficult to say without further research whether these empowerment moments will have any lasting impact and whether they outweigh the risks.

Mediation vs. Court

Two themes regarding mediation and court emerged. One theme was the desire to avoid court; the second was subtle pressure to participate in mediation over court. The women wanted to avoid court primarily for two reasons: fear of losing her children and fear of physical harm or public humiliation. These factors played a role in every woman's perception of her risk and her options.

Mediation seemed a better alternative than court for most of the women. Though only Mary had actually been to court, most interviewees had very strong feelings about wanting to avoid court. Seven of the remaining eight tried mediation in the hope that it would work and they would not have to go to court. (Pat was told by her attorney that they couldn't afford court.)

One fear was the threat of losing their kids. This was particularly true for Marie, whose husband constantly threatened to have her declared incompetent and to take her to court to get the kids.

What happened was, because I was so geared, you know, between my ex-husband, threatening to take the children away from me on, he had no grounds. But he has been a major putter-downer over the years, uh, so I was sort of thinking, what did I do, is there something I forgot?

Tolman (1992) claims a form of psychological maltreatment is to purposely diminish the woman's perception of her ability to care for her children properly. This was

certainly the case for Marie whose husband told her in many ways over many years that she was not a good mother. Because Marie was also taking an anti-depressant and seeing a psychologist, she seemed to fear that the court might, indeed, see her as unable to care for her children and not award her primary caretaker. Historically, courts have not sympathetically treated battered women or children regarding custody or visitation (Walker & Edwall, 1987 as cited in Davies et al., 1998). Many battered women fear losing their kids in a custody battle. Studies also show that men use the custody battles to threaten and harass their partners (Arendell, 1995).

The second factor contributing to a desire to avoid court was the fear of physical harm or public humiliation. Nancy, as noted earlier, had an intense fear that her husband would attempt to kill her were they to end up in court. Connie and Mary were fearful of the tactics their husbands would employ to demean and discredit them in court. Mary had been in court with her husband on two previous occasions (a restraining order hearing and a temporary custody hearing). At both hearings her husband and his family made demeaning and humiliating remarks about her.

I don't want to be sitting in there and just letting people just, I mean that's what they did with the temporary custody thing. His whole family wrote up affidavits. I mean, I don't know how many affidavits there were from his family, and they all just cut me down. I mean, I was called every name I could possibly be called.

Connie's husband was blackmailing her with claims he had proof of activity that would discredit her. She was very worried that he would present this "evidence" in court and she would not be able to defend herself. Connie was also fearful that her children would be called to testify.

You see TV and you see all those, you know, people there and you see how they badger you and they just...um. demean you in some degrees, you know. I was afraid that if we went to court his lawyer would get up there and, those cards would come out on the table, and they'd be lies, I wouldn't have a chance to say it. You know. They would pound on you to get you to answer the way they wanted you to. I didn't want to do all that.

And then the fact of, would my children have to end up testifying. You know. would it go that far that they'd have to testify. I did not want that. No way.

Connie may or may not have had a secret that she was terrified he had discovered. It is not uncommon for victims of abuse to harbor a secret they would not want revealed, e.g., forced prostitution or a same-sex relationship (DiCarlo, personal communication, November 19, 2000). Mediators need to be aware of this possibility and explore whether or not the woman is fearful that her male partner will discover a secret and use it against her in mediation. I do not suggest probing to discover the nature of the secret, only the awareness and sensitivity to the possibility. For example, the mediator might indicate that some women are fearful that their male partners may discover or use some piece of information about them that they would consider embarrassing or harmful, and ask only if that might be a possibility in her case. If mediators knew in advance that such a condition existed, they might choose to alter their mediation process strategy from the beginning (i.e., shuttle mediation) or be better prepared to choose an alternate strategy (e.g., caucus) if they suspected manipulation based on the threat to reveal a secret.

The second theme, "subtle pressure" (Marie's words) to participate in mediation, was evidenced in the messages women received about the process from professionals (e.g., psychologist, lawyer), friends and neighbors: it's cheaper than court, you have more say than court, it worked for me, it's kinder and more compassionate than court.

Cost was mentioned by most women as one of the reasons that persuaded them to try mediation before court. Connie believes she saved ten thousand dollars by not going to court. Mary referred to mediation as a cheaper option over and over in the interview. Cost was a more significant factor for her than any other party. She also viewed this as leverage for her husband as she reported he was struggling financially.

Like my lawyer said, she goes, you can come here and work it out with us, but it'd be cheaper to do it in mediation. It's going to cost you a lot more money here. [...] Maybe they should require it again before you go to

court. Save everybody a lot of money. [...] Court's going to be expensive. More expensive than mediation.

Another subtle pressure factor was how mediation was characterized by professionals and friends. Mary received multiple messages from her lawyer that mediation would be a better alternative to working out their problems. In the last sentence of the quote below she also attributes this judgment to an unknown "they." Perhaps she means the "system," i.e., the professionals and institutions associated with the process of divorce.

Like she says, it's better to work it out in mediation. That way you can decide where the children are going to live and, you know, what can be split up instead of things having to go on the auction block or...whatever, you know. [...] I know they'd much rather have you work it out in mediation.

Marie in particular, articulated cultural norms implicit in the subtle encouragement to participate she received.

It was characterized as being the responsible thing to do. You know. The right thing to do. The moral thing to do. The compassionate thing to do. Fair-minded thing to do. All those things that somebody that wants to keep their kids would, of course, be focused on doing, right? So in subtle ways characterized as being, the way to be the kind of person that could, get the kids.

Implicit in Marie's message is that it's the woman who must be moral, compassionate, and fair-minded in order to be the kind of person to get the kids. In Marie's world view, her husband was immoral because of his self-interest, his lack of relatedness and compassion, and his determination to get what he wanted regardless of its effect on her or the children. She attributes his immorality to his heritage, growing up in a privileged world in a foreign country with very different values and mores. Marie said Ted was not a monster, but his immorality (self-interest) and aggressiveness put Marie at a significant negotiation disadvantage. Marie believed that for mediation to be "deeply successful on all levels, morally and practically and, making the world a better place" both parties and the mediator needed to have a certain moral grounding. Marie's

definition of morality matches Gilligan's (1982) ethic of care, i.e., that women operate from a care framework that values relatedness and the needs of others in making ethical decisions, whereas men typically operate from a justice framework that values abstract rules and standards over human relationships. Indeed, mediation principles purport to be grounded more in relational aspects than abstract justice, yet Ted, by Marie's account, dominated and controlled the process on several occasions. Does this data suggest that the abusive husband is immoral and therefore unfit for mediation? The women in this study described their husbands acting on varying degrees of self-interest from total self-absorption (Connie's and Marie's husbands) to willingness to negotiate (Kate's husband) to complete denial of self (Sally's husband). This range of behavior would seem to indicate that not all abusive men act solely in their own self-interest.

Marie found the characterization of mediation as morally superior problematic, i.e., mediation is good, court is bad. She felt encouraged to use mediation for the reasons noted by professionals and friends she trusted and in hindsight regrets not taking a more aggressive initial stance. Interestingly, her lawyer's more pragmatic stance (she didn't think that mediation would work for everyone) did not override the power of the mediation-is-morally-superior message. Marie did not think she received the best advice for her situation and wanted a more balanced perspective of mediation in order to make an informed decision about whether court or mediation would be best for her.

It is not known whether the men experienced similar pressure to participate and if they did, how it might have impacted them. Given that women are still considered the primary caretakers in this society, it is likely men did not receive pressure to participate because they feared being perceived as competitive and uncompassionate if they pursued court. In fact, studies have shown that men do not feel pressured into mediation, but

rather prefer mediation over court because they think they will get a better deal in mediation (Kelly & Duryee, 1992).

A longitudinal divorce mediation study found that women chose mediation over court because they felt the courts were impersonal (Pearson & Thoennes, 1989). Another study found that women chose mediation over court to avoid hostility (Beer & Stief, 1985 as cited in Regehr, 1994). Both studies were conducted in the general divorce population and did not distinguish between abused and non-abused women. This study suggests that abused women avoided court because of the risk for harm and negative consequences. The women, especially Connie and Mary, feared public humiliation and negative public judgment. The intense desire to avoid a public forum may be directly related to the nature of an abusive relationship. Connie, Nancy, and Mary, especially, viewed court with the potential to escalate an already hostile and intimidating situation and increase the risk of real harm. Marie feared being judged incompetent by the court because of Ted's accusations and, as a consequence, losing custody of her children. In fact, many battered women fear losing their kids in a custody battle (Davies et al., 1998). As noted earlier, courts have not always treated battered women and their children sympathetically with regard to custody and visitation. Given these risk factors and their perception (or in Mary's case actual experience) of court, mediation was seen as a viable alternative.

Gender and Power in Mediation

In looking at the role of gender and power in the experiences of the interviewees I am conducting this analysis from a feminist framework that assumes people have been shaped by the values and norms of a patriarchal culture. Patriarchy privileges men's ways of knowing and acting over those of women and results in the systematic discrimination of women. As a feminist theorist, I also argue that we cannot separate ourselves from our culturally learned values and biases and that there is no objective reality or universal

truth, only a perception of truth based on our cultural upbringing. Postmodern thinking also suggests that there is no universal truth, but rather “great diversity in the ways we make meaning in our lives” (Winslade & Monk, 2000 p. 40). It is through this lens that I analyze the role of gender and power in these experiences.

Gender

One way gender influenced the dynamics in the room was the importance placed on connection, rapport and relatedness by the women. Gilligan (1982), in her work on the moral development of women, found that women operate from a framework of “care” that places more emphasis on the relational aspects of a situation than an objective standard of “rightness.” Women are more concerned about the impact of their actions and decisions on the real people in their lives, while men are more concerned with an abstract standard of fairness. This framework of care and relatedness was evident for the women interviewed in a number of ways. For example, several women noted they were trying to do what was best for everyone, especially the children. They did not want to punish their husbands or turn their children against their fathers. Marie says, “I wouldn’t have been punitive towards him, if I had the power.”

The women often viewed their husbands as operating from self-interest, or a competitive framework. For example, Connie says about her husband, “He’ll work whatever way he can. He’ll do whatever he can to get what he wants. And it’ll work.” Some also talked about their own inner struggle with self-interest. Kate’s husband had always accused her of being selfish. When she began work on drafting their own mediation agreement, she struggled with the guilt of considering her own needs. Perhaps Marie’s situation best illustrates the complicated interplay of connectedness and self-interest plus the impact it had on her.

Marie described her whole orientation to mediation as conciliatory, trying to find solutions that would work for both of them, while her husband continued to operate from a “pragmatic” negotiating stance looking out for his sole interests. She tried so hard to use “delicate” and neutral language that her wishes were often misinterpreted by the mediator in written summaries. In hindsight, she views her concessions not only as targeting her as the weaker party, but seriously impacting her financial well-being (at the time of the interview she still had not received a child support payment) and the lives of her children. She sees the outcome affecting her children in a number of ways. First, she has observed that their day-to-day lives are disrupted by the midweek switching of homes; second, there is a significant difference in the financial status of Mom and Dad; and third, she worries about the development of their moral character. She sees herself as a moral person, concerned with the rightness and fairness of the world. She negotiated in good faith; she is now the poor Mom. She sees Ted as immoral and concerned only with his self-interest. He negotiated from a competitive (typically male), pragmatic stance; he is the rich Dad. She worries that this situation will teach the children to “take the easy way out.” In other words, she worries that they will grow up without moral anchoring, possibly because of their increased exposure to Dad’s self-interest without her counter influence. Marie’s assessment of morality is supported by the moral development research of Carol Gilligan. Shaffer (1988) notes that because of this socialization, women may disregard self-interest as a valid negotiating position.

Also at play in these situations may be fear of being perceived as competitive. There may be guilt for acting more competitively, i.e., looking out for her self-interest or fear of how she will be perceived if she acts competitively. Studies have shown that women are perceived negatively when they act in an assertive or competitive way (e.g., Hall & Black, 1979 as cited in Pearson, 1985). For example, Marie seemed to think she

would be characterized as uncompassionate and punitive if she pursued court instead of mediation, and this would reflect negatively on her in any custody decision.

Related to fear of being seen as competitive was the gender norm of being perceived as cooperative. Gilligan (1982) argues that women are socialized to be care-oriented and cooperative while men are socialized to be autonomous and competitive. Fear of being seen as uncooperative was particularly true for Pat and Marie. Pat said she felt like she had to give in on something in order to leave the mediation. She felt pressured by the mediator to agree to joint physical custody, which she did not agree to, yet she felt internal (societal) pressure to give in on a few more visits a month, perhaps so as not to appear uncooperative. Studies have shown that women fear being perceived negatively if they act assertively (Horner, 1972 as cited in Bryan, 1992). Mediation studies have shown that parents fear losing custody if they are seen as uncooperative (Trombella, 1989). Fear of being seen as uncooperative and risking loss of custody seemed to be very present for Marie. Ted constantly threatened to take her to court and get the kids. She noted that she worked hard to choose neutral language to calm Ted (so he would not carry out his threat): “I was trying to make things sound so non-threatening and reasonable, that he would accept them.” She also noted that she was geared toward conciliation and “trying to find things that work for everyone” which, given Ted’s aggressive negotiating stance, was a disadvantageous combination. Marie seems ultimately betrayed by her commitment to morality and rightness and her willingness to play by society’s rules. She could not see how to be both compassionate mother and steely negotiator. Mediators need to be aware of these conflicting messages.

Another way gender may have operated on the interactions, especially between the women and the mediator, was through the code of politeness. Women are socialized to be polite, quiet and considerate of others’ feelings (Grillo, 1991; Pearson, 1985). One

author suggests that a “politeness threshold” may effectively restrain people, and especially women, from acting assertively beyond a certain point (Lane, 1981 as cited in Pearson, 1985). With the exception of Meg, none of the women challenged or questioned the mediator about any of their actions. Neither Kate nor Pat approached the mediator about their concerns of bias. They did not ask questions when they felt uncertain about the process or indicate discomfort with the process. We have already discussed the impact of fear and intimidation on the ability to be assertive and suggest that politeness may also be a compounding factor based on gender.

There also seemed to be pressure to act in ways that were consistent with societal norms. For example, Kate understood she could not move out until the divorce was final because that would constitute a form of desertion and jeopardize custody.¹⁹ This did not seem to be the case for the men who moved out—or at least that was the perception of the women. For example, Marie’s husband continually threatened to take her to court to get the kids and Pat’s husband pressed hard for joint physical custody in mediation. It should be noted that Mary’s leaving did not bias the court against her—she was awarded temporary custody of both children. However, Mary perceives she has been viewed negatively by society when she says, “You know, it’s funny how men can leave all the time, and when you’re a woman and you leave, it’s a totally different story. You’re a bad person.” These experiences indicate the trap women sometimes find themselves in—taking steps to protect themselves potentially labels them as “bad” or unfit parents.

The above studies on gender differences were conducted on men and women in the general population. Given that these studies show that women in the general population are socialized to be cooperative, polite, and self-sacrificing, asserting self-

¹⁹ Had Kate’s sons not expressed a preference for living with their father, Kate would have gone to court to fight for custodial parent.

interest and acting in a competitive manner present an even greater obstacle for abused women. Marie, Rachel, Nancy, and Connie (in the face-to-face mediation) all noted that they feared upsetting their husbands (“I was trying to make things sound so non-threatening and reasonable, that he would accept them.”), gave up certain financial demands (“I knew better than to argue with him about this kind of stuff.”), and feared retaliation if they negotiated out of self-interest (“He’d already threatened me that if I tried anything, he would snatch my kids away from me quicker than I could blink an eye.”). In order not to further harm an abused woman in mediation, mediators must be aware of and vigilant in the exploration of gender socialization factors and the compounding effect of abuse.

Finally, an outcome of divorce for women is often a marked economic decline. Theorists argue that the root cause is not divorce itself, but the result of traditional gender roles (women may be out of the full-time work force caring for children) and the fact that women are more often employed in lower paying jobs (Arditti, 1997). One study showed that socioeconomic class and education counter the effects of economic decline after divorce (Morgan, 1989, 1991 as cited in Irving & Benjamin, 1995). Every woman in this study made less than their husbands. All but perhaps Meg experienced a decline in her standard of living, i.e., some now live in apartments or trailers instead of homes, finances are tight but they’re making it, one has had to take on two jobs and another rent out part of her home for income. Some left with very few possessions and still have very little furniture or possessions beyond what is absolutely necessary (e.g., Connie left with the dining room table and chairs, two living room chairs, a broom and half the dishes; Mary left with her clothes, a jewelry box, and her parents bought her a bed). The circumstances of leaving were exacerbated by the presence of abuse and, for at least some of the women in this study, compounded the impact of economic decline.

There were at least two male mediators and two female mediators in this study. Based on the women's perception of their experience it would appear that there were no interactional differences based on the gender of the mediator. For example, Pat felt pressured by a female mediator and Kate felt pressured by a male mediator. The mediator in Meg's case was female and did not understand the nature and ramifications of the abuse in Meg's situation; the mediator in Kate's case was male and clearly did not understand the role of the abuse or its impact on Kate. The mediator in the two cases where women had positive experiences in the joint sessions (Sally and Nancy) was male. The mediator in each of these cases had a sensitivity to the violence and, in Sally's case, employed an interventionist process style. As in the Dingwall et al. (1998) study, where the mediator's professional identity and role as a neutral had a greater impact on their interactional strategies than did gender, this study would seem to suggest a similar phenomenon. The mediator's neutrality and sensitivity to abuse played a larger role than gender in influencing interaction between the mediator and the parties. Regardless of what factors influenced their strategies, the mediator's interactions had a significant impact on the dynamics of power in the room. For example, because of pressure from the mediator, Pat felt she could not leave the mediation session without giving in on something; Meg left crying and beaten down because the mediator could not counter the emotional power her partner exerted during the session; and Connie felt defeated and coerced into concessions because the mediator was unable to influence her partner's aggressive stance and refusal to negotiate. On the positive side, Sally was able to successfully negotiate directly with her husband because of the mediator's skill and expertise in controlling Ned's intimidating behaviors; Nancy was able to mediate free of intimidation and threats from her husband because of the mediator's respectful treatment of her husband and ability to maintain control without appearing to do so.

Power

A review of the literature suggests that mediation theorists view power in one of two ways: as a finite commodity or as an attribute of discourse. When power is viewed as a commodity, it is seen as an attribute belonging to and residing in certain individuals (Winslade & Monk, 2000). In a structured and hierarchical society individuals at the top possess more power and privilege. Patriarchy is one such hierarchical society. Men, by virtue of being male, possess more power and therefore will have the greatest influence in a conflict. For this reason, feminists argue that women are at a significant disadvantage when facing men in direct negotiations (Bryan, 1992; Grillo, 1991).

An alternate conception of power suggests that it is a relational phenomenon that exists in our everyday discourse (Foucault, 1980 as cited in Winslade & Monk, 2000).

Winslade and Monk (2000) explain this perspective:

From this perspective, power does not so much adhere to structural positions in hierarchical arrangements as it operates in and through discourse. Discourses offer people positions of greater or lesser entitlement. Within particular discourses, some positions are rendered more legitimate or more visible and others are subjugated. Some voices get heard and others are silenced. (p. 50)

Rifkin and Cobb's (Cobb & Rifkin, 1991a; Cobb & Rifkin, 1991b; Rifkin, Millen, & Cobb, 1991) work also analyzes power from this communications framework and suggests that a more appropriate mechanism for balancing power between individuals is to attend to their stories, giving privilege to the voice of the other. Within this framework, some people may exercise more influence and privilege in a particular context but not carry that influence to another context or conversation. In other words, women may be positioned in places of influence in certain discourses but not in others. In this study, for example, most of the women, especially Rachel, Pat, Connie, and Nancy, exercised more power in discussions regarding the children perhaps because they felt they had more authority in that area (having been the primary caretakers) and were willing to risk the

consequences. As Marie says, “I’m they’re mother. And guess what, I know a lot more about their needs than anybody else does.” Research of both abused and non-abused women indicate that they feel entitled to speak up about the children’s needs (Newmark et al., 1995).

As the culture of battering claims (Fischer et al., 1993), abuse couples develop their own language made up of subtle verbal and nonverbal cues. Fischer et al. suggest that even the most skilled mediator will not be able to recognize these subtle cues. In at least two cases (Rachel and Connie), the husbands intimidated their partners through subtle verbal and nonverbal cues. Both Rachel and Connie remarked that they did not think the mediator picked up on these cues.

Rachel: Maybe a few undertones that he might have said a few things that, the mediator didn’t necessarily pick up, but I did. A few looks at me. His looks to tell me to shut up, basically to quit talking.

In Connie’s case, her husband had also threatened her prior to the mediation that if she “tried anything” (i.e., asked for alimony, the house, child support), he would take the kids away from her.

Connie: He could look at me and just give me this look and intimidate me. Normally I’m a very strong-willed person...but he could intimidate me very easily, just by a look. And he had already threatened, he’d already threatened me that if I tried anything, he would snatch my kids away from me quicker than I could blink an eye.

The threat in combination with his “intimidating look” carried extraordinary power in the mediation and it is likely that the mediator was unaware of the “look” or the consequences Connie feared. These subtle verbal and nonverbal cues dramatically effected the power dynamics in the room, effectively shutting the women down and manipulating the conversation in the husband’s favor.

In summary, this data clearly suggest that (a) gender plays a role in the women’s conception of their power, choices and strategies, (b) the power dynamics are not

necessarily visible and overt when dealing with abuse couples, and (c) mediator professional identity and role as a neutral influenced the dynamics of power in the room regardless of mediator gender. Additional data, especially interviews with the male partners and the mediators, would contribute further to this understanding.

Mediator Role

As discussed in Chapter 2, two important components of the mediator's role are a neutral stance and client empowerment. The 2000 Model Standards of Practice for Family and Divorce Mediation (Symposium on Standards of Practice, 2000) describe the role of the mediator as follows:

Family and divorce mediation is a process in which a mediator, an impartial third party, facilitates the resolution of family disputes by promoting the participants' voluntary agreement. The family mediator assists communication, encourages understanding and focuses the participants on their individual and common interests. The family mediator works with the participants to explore options, make decisions and reach their own agreements. (p. 1)

It is apparent from this definition that the mainstream mediation philosophy is grounded in the problem-solving model. It is also interesting to note that the word "neutral" or "neutrality" does not appear anywhere in the 2000 Model Standards. The word "impartial" is used in several places to describe the mediator's role as an unbiased facilitator there to assist all parties equally.

In addition to neutrality and empowerment, when the presence of abuse is known or suspected, client safety becomes an additional ethical component of the mediator's role. The 2000 Model Standards now also include ethical guidelines to mediators when domestic abuse appears to be present. The 2000 Model Standards are too new to have impacted mediator behavior in this study, though they do confirm that significant

progress has been made in recognizing and responding to the presence of violence in women's lives.²⁰

No specific information is known about the philosophy or practice strategies of the mediators in this study. It is safe to assume, however, that the foundation of their practice is most likely the problem-solving model. As noted in Chapter 2, mediation organization standards (e.g., AFM, The 2000 Model Standards) and research (Kruk, 1998b) support this assumption. Kruk (1998b) also found that family mediation practice has evolved significantly since this model of mediation was widely taught and promoted and that most mediators also employed other models to address specific problems identified with the problem-solving model. The 2000 Model Standards reflect this evolution.

The problem-solving model emphasizes an approach in which the mediator is a neutral facilitator assisting parties to find mutually acceptable solutions based on their underlying interests. It is typically structured: (a) opening, (b) information sharing, (c) identification of issues, (d) search for options, (e) persuasion and movement, and (f) agreement or impasse (Folberg & Taylor, 1984). There is evidence that at least one mediator described his approach this way:

Well the first thing he brought up was about making it a safe environment and that we would sit down and go through ground rules. And then we would build an agenda of what we wanted to accomplish or what we felt we needed to discuss.

I have already discussed client safety. Here I will address the impact of mediator neutrality on client empowerment from the interviewees' perspectives as well as structural limitations of the mediator role and process of mediation.

²⁰ Though several task forces composed of victim advocates and mediators did draw up procedural guidelines during the 1990s and these guidelines could be influencing mediator behavior.

Neutral Stance

Rifkin et al. (1991) note that “neutrality is often understood as a set of internal characteristics of mediators that serve to guide a set of practices” (p. 152). For this reason, mediators themselves often have difficulty describing what they actually do to practice neutrality. Further complicating an assessment of mediator neutrality is the fact that neutrality, as it is currently defined in the field, is ultimately a perception of the clients.

As noted in Chapter 2, Rifkin et al. (1991) suggest that neutrality is really composed of two qualities that mediators should employ: (a) impartiality—the quality of maintaining an unbiased attitude toward both parties, and (b) equidistance—the ability of the mediator to encourage the parties to tell their side of the story. Impartiality creates distance; equidistance creates closeness or connectedness. Rifkin et al. suggest that both these qualities are part of the discourse of neutrality, i.e., how mediators understand and talk about neutrality. Using this conception of neutrality we can examine the impact of mediator neutrality by looking at what moves they took to distance themselves from the interviewees (impartiality) and what moves they took to support and encourage disclosure (equidistance).

For the reasons noted earlier, we make the assumption that the mediators in this study are operating from a neutrality framework. We will examine the actions of the mediator in two phases of mediation: the initial contact and the face-to-face joint session. All mediators chose to meet with both parties in a joint session for the first session.

Initial Contact

One factor that contributes to the perception of neutrality in the western model of mediation is choosing a mediator that neither party knows. All parties chose mediators that they did not know personally. In Kate’s case, the mediator occupied the same office

as her husband's psychologist, which as noted earlier ultimately reinforced her perception of him as biased. She says, "I wasn't entirely sure that he was totally impartial and, sharing offices with that person."

All interviewees spoke privately with the mediator prior to the first mediation session and all revealed some indication of their husband's abusive or controlling behaviors during this initial contact. All but one of these conversations took place on the phone; one mediator met with both clients separately to conduct her screening. Sally, Nancy, and Mary, because of their fear of their husbands, arranged specific safety procedures with the mediator during this first contact.

During the initial conversation, mediators discovered the presence of abuse by encouraging the women to self-disclose (equidistance) and created a sense of connectedness through their interest and concern. For example, Meg says

And I went in feeling like, I like this woman, she's a nice human being, she's a good human being, and I think those things are absolutely true. She's trained to do this, she's highly recommended. It should work.

Nancy describes a particularly poignant story of her first conversation with the mediator. She had never told anyone what was happening in their relationship, not even her best friend. She had not told her lawyer for fear of her husband's reaction if he found out. She was stunned by the mediator's skill and knowledge in identifying and recognizing the abusive characteristics of her relationship. This act of acknowledgement transformed Nancy's perception of herself and her relationship to her husband. It also established a powerful connection to the mediator and faith in his ability.

I felt a little more power than I had felt a little bit before because um, um...I thought, somebody knows this, you know. He didn't condemn me on the phone, or, you know, any of that kind of stuff. Kind of felt a little bit like I had, I don't want to say it, an ally, but just someone who, who knew something, you know. Knew this secret. Nobody else had known it and finally, you know, it was out.

There's this somebody else, like this mediator, who knows about these things, and he's been here before and he'll know if, if something's going wrong. And he'll know if, you know, if I give him a signal that it's not going good, I want to stop, you know.

Sally interviewed several mediators before selecting the one who had talked about creating a safe environment. When she described the behaviors she knew would intimidate her, the mediator explained that they could establish ground rules that could address those behaviors. This was one of the key reasons Sally was willing to proceed with the mediation. Again, the mediator's recognition and acknowledgement of her fears and concerns created a sense of connectedness and trust.

These stories illustrate the quality of equidistance at work in the initial contact. The initial conversation empowered some women (Sally, Nancy, Meg, and Mary), enhancing their sense of hope and setting a foundation for trust in the mediator. This is consistent with Kruk's (Kruk, 1998a) findings of initial mediator contact. He found that women in abusive relationships were likely to be empowered by interactions of mediators during their initial private contacts.

In contrast, the initial contact did not seem to have the same effect for Rachel. Rachel notes that she would have preferred a face-to-face private meeting with the mediator in order to share her expectations and have a chance to get to know the mediator prior to the joint session. The data does not suggest that Rachel was disempowered by the initial contact, but that she thinks she may have felt braver and more comfortable with the process had she been able to talk to the mediator face to face.

Face-to-Face Interaction in Mediation

The women had strikingly different experiences in the joint sessions. First, mediator actions that were perceived negatively or, in some cases, ambivalently by the interviewees will be discussed followed by a discussion of actions that were perceived positively.

Negatively Perceived Actions

The actions or behaviors that upset, confused or frustrated the interviewees most primarily surrounded the mediator's response to their husband's tactics during the joint session. All but Sally and Nancy commented that the mediator failed to stop or challenge behaviors they found intimidating or threatening. These behaviors included berating comments, refusal to negotiate or compromise, manipulative moves, and subtle gestures and looks. For example:

Meg: The thing that finally reduced me to tears is that he would, he would insert throughout the mediation session little jabs that were subtle, um, but were clearly saying, You're a bad person, you're stupid, you're evil, you're a bad parent...um, you're gouging me for my money...things like that. He would insert those throughout the mediation session and they were inflammatory statements within the context of our marriage. The mediator didn't pick up on that and so it ended up with me crying and leaving the room and Frank saying, You know, she's just an out of control female. What can I do?

Rachel: He might have said a few things that the mediator didn't necessarily pick up, but I did. A few looks at me. His looks to tell me to shut up. Basically, to quit talking.

Marie: Well, we would be in the mediation and Ted would say these things and the mediator would be sitting there—god bless his sweet heart, you know—kind of nodding and, and he wouldn't step in and say, well what do you mean by that?

The following quote represents a situation where the mediator did not recognize a ploy by the husband to dominate and threaten Connie. It may not have seemed like a realistic threat to the mediator, but it was to Connie, and she needed some intervention by the mediator to defuse the threat.

And anything I wanted, he just, you know he stood his ground and finally he said, I'll just quit my job and you'll get nothing...cause I won't have any income coming in. And the mediator just sat there. And, I, I didn't like that because, I guess I felt he should of, should be able to say, you know you can't do that cause then you're gonna lose your kids. Or you can't do that because this is the repercussion, you know. But instead he's sittin' there makin' sure we don't come at each other's throats.

These experiences contradict the findings of the Davies et al. (1995) study where abused and non-abused women reported similar satisfaction with the mediator's management of abuse issues. In particular, the study noted that abused and non-abused women were equally satisfied with the ability of the mediation process to enable them to talk to their partner without feeling fearful or intimidated. Since nothing is known about the mediation setting or process style of the mediators in the Davies et al. (1995) study, it is difficult to point to specific factors that would explain the contradictory results. We don't know, for example, whether shuttle mediation was employed, an interventionist process style used, or advocates present for the mediation. Also, it is difficult to directly compare the findings of the two studies since my study only looked at the experiences of abused women, the sample size was significantly smaller than the Davies et al. study, and different research methods were employed (in-depth interview vs. survey instruments and mediator assessment). Even so, the data in my study suggest that not all abused women will find that mediation makes it possible to negotiate with their male partner without feeling fearful and intimidated and mediators must attend to the unique situation of each abused woman.

Kate and Pat described feeling pressured by the mediator (not the same mediator) and as a result felt the mediator took her husband's side. From their perspectives the mediator stepped outside of his or her neutral stance. Pat was ultimately disempowered by this action, left her four-hour mediation session with a bad impression and did not return to another mediation session. For Kate, the pressure served as a catalyst to inspire her to take action on her own behalf (empowering), while it also contributed to her ambiguity about the outcome (disempowering). Here she states her dissatisfaction with the agreement but at a later point in the interview she says she is happy with the outcome.

It finally got to the point where, um, I was getting real tired of [meeting] with him. The feelings I was getting, the pressure I was feeling, um and I

sat down and, I'd found a copy of another mediation, example of a mediation agreement and basically just typed up our own mediation agreement.

I was pretty open-minded but when we got into actual mediation I really had the feeling that, um, the mediator was leaning more toward, um, Bill's point of view than mine. I don't think he was totally, um, unbiased in the whole thing. So it didn't, I didn't feel I was represented the way I should have been. As a consequence, I'm not sure that, or Bill got the better end of the deal on everything pretty much.

Other comments pointed to confusion or frustration with structural aspects. For example, Mary wondered why the mediator didn't intervene more and provide more structure to their conversation, especially when she saw that they weren't getting anywhere. Meg was extremely upset when she went home with a homework assignment while her husband did not. The mediator failed to recognize the significance of the unequal homework assignments in the context of their relationship, which contributed to Meg's sense that the power structure of their marriage was replicated in the mediation. As Meg explained: "I did a bunch of extra work. Frank did nothing. The mediator did nothing to recognize that."

These seven women, to varying degrees, experienced replication of the dynamics of abuse that had been present in their marriage. Though most wanted something more from the mediator, they weren't really sure what a mediator was supposed to be doing and attributed the mediator's actions to professional practice guidelines.

Kate: Maybe that's his job, I don't know, but it just truly felt like he was really pushing me to say something...that I wasn't ready to say.

Connie: When he sees the point when one person is getting frustrated or, so to speak, losing strength and just saying to heck with it. I'll do it just to get out of this thing. And he knows in his mind that that's wrong, you know. Maybe say let's take a break. I want to talk to you and I want to talk to you. And yes, he would be advising but...

Connie: He basically looked at me while I talked, looked at him while he talked. Um, and I don't know if it's his fault because, he's in a tough position, you know. He can't advise either one of us.

Mary: And I think that she could tell...what was going on. I mean, there wasn't, I mean, she's not going to say, "Nate, you're being abusive. Stop it." You know. And that's not her right, I mean, I understand that.

Marie: It took me awhile to understand that, he was, you know, what was he supposed to do. He was not going to guide the discussion in a way that would necessarily be favorable to me. That his job was to be neutral. And to basically, I don't know, break up a fight? I don't know. You know, just to sort of, lend a calm atmosphere?

These comments demonstrate an interpretation of the mediator's actions constructed in the session by the women in relation to their perception of neutrality. Connie, in particular, has equated a private meeting with the mediator as a non-neutral action. Whether or not the mediator was actually using neutrality to guide his or her practice, and for the reasons noted earlier it is likely they were, the interviewees perceived that to be the case. Even when Kate perceives the mediator has acted with bias, she still entertains the notion that maybe that's just part of his job.

These comments also illustrate a lack of clarity regarding the mediator role. The women were not sure what the mediator was supposed to do in the scenarios they described. They clearly wanted more protection but were not sure whether the mediator should provide it or how to ask for it. In Marie's case, she was misinformed about a specific mediator's practice style and therefore was expecting advocacy which did not materialize.

Except for Marie, who did develop a relationship with the mediator over the course of eight months, these comments demonstrate the lack of a connection or relationship between the mediator and themselves. For Kate and Connie, in particular, this lack of connection was evident in the way they talked about their experience. For example, Kate distrusted the mediator as a result of feeling pressured by him, and Connie felt defeated (and gave up) by her husband's aggressiveness and lack of intervention from the mediator. Ultimately, the effect of these mediator interactions was disempowering.

Not all actions or moves which might be attributed to neutrality were perceived negatively. Marie in particular had a love-hate relationship with the mediator's neutrality. While she found his neutrality frustrating and confusing (because she believed he was going to be a woman's advocate), she thought it was critical to Ted's participation in the process. At one point she noted she was grateful that the mediator was such a neutral and gentle person. She also noted that he used neutral language to defuse anger and neutralized touchy subjects by reframing. Marie's alternately positive and negative characterizations of these actions indicate both an empowering and disempowering effect.

Mary also had a somewhat ambivalent stance toward the actions of the mediator. On the one hand she said that the best thing about mediation was having someone there, someone who was not taking sides and could see both perspectives. On the other hand, she was frustrated when the mediator did not intervene to provide more guidance and structure to their conversation.

The confusion and frustration regarding the role of the mediator could be a result of the interplay of impartiality and equidistance. Participants' first interaction with the mediator in private conversation established some rapport and connectedness. During the joint session, however, mediators may have employed more distancing behaviors in order to maintain their neutrality. For example, Meg's initial conversation with the mediator established some faith and trust in the mediator's ability to protect her from her husband's intimidating behaviors ("She's trained to do this, she's highly recommended. It should work."). During the joint session, however, she did not experience the protection she expected. The mediator did not recognize and stop the inflammatory verbal jabs that reduced Meg to tears and left her feeling defeated. The confusion and frustration may in part have been a result of the mediator engaging in equidistant

behaviors in the initial private conversation, leading Meg to believe that she could provide protection, and employing more impartial behaviors during the joint session to maintain neutrality. Marie also described being confused by the mediator's actions in the joint session. At one point she wondered if he was only there to "lend a calm atmosphere;" at another point she said his neutrality was critical to Ted feeling like he could participate. In Marie's case, the mediator may have alternately employed distancing and supportive interactions in the context of the joint session, contributing to her confusion and frustration about the mediator's role. In fact, Rifkin et al. (1991) theorize that the mediator does send contradictory messages through the alternate application of equidistance and impartiality. This study seems to confirm the alternate use of equidistant and impartial behaviors was perceived as contradictory and did confuse and frustrate the participants.

Positively Perceived Actions

In contrast to the majority of the women's experiences, Sally described a completely positive experience in mediation. She said the mediation felt non-threatening because they were at a neutral site with an impartial person able to step in at different times. In contrast to the absence of intervention, the mediator in Sally's case took a more interventionist stance. He encouraged the setting of ground rules and enforced the ground rules consistently. He created an environment where Sally not only felt empowered to speak up but she perceived that Ned was really listening to her. He countered Ned's potential outbursts with respect and concern for Ned's perspective. His expertise in controlling the intimidation and clarifying perspectives encouraged Sally (and possibly Ned as well) to speak honestly and forthrightly. Sally did not perceive that the mediator was taking either her side or Ned's side. Since the men were not interviewed, it is not known how the mediator's actions were perceived by Ned.

Sally described a number of specific actions or strategies employed by the mediator that controlled Ned's intimidating behaviors and enhanced her capacity. First, as already mentioned, ground rules were set: no name calling, no screaming, no pounding fists on the table, no leaning into someone else's face. Second, the mediator intervened whenever Ned exhibited any of those behaviors. As Sally notes:

He controlled his side comments pretty much. There were a few times that he didn't and the mediator stepped right in and reminded him of the ground rules and that that was inappropriate. [...] He was really the one that was in control because whenever, um, Ned raised his voice or, you know, was getting out of control, the mediator was able to step in, and calm him down, and get him to, you know, act civil again.

Third, Sally attributes the success of the mediator in controlling Ned's intimidating behaviors to the way he intervened. She said he always spoke in a calm voice, reflected back to Ned what he had heard, and explored Ned's perspective. Because the mediator was able to defuse Ned's anger, Sally felt more comfortable in speaking up. Fourth, the mediator encouraged Sally to share her perspective and Sally perceived that Ned actually listened to her.

The mediator just allowed me, too, to be able to speak my mind. And for Ned to listen. And I think in that regard, so it was probably the biggest help...that he was at that point. Not that he was trying to talk him into it either. He was giving me the opportunity to talk and, um, give my point of view.

And finally, Sally noted that the mediator provided direction to their conversation through the questions he posed and that she found this very helpful. Without direct observation of this scenario, or interviews with Ned and the mediator, it is difficult to assess exactly what the mediator did that worked in this situation. However, in Sally's case, an interventionist style did effectively control Ned's intimidating behaviors and enhanced Sally's capacity to mediate.

Perhaps most striking is Rachel's experience in her two-hour session. The Newmark et al. (1995) study showed that women perceive themselves equal in decision-

making power with an abusive spouse when it involves the children. They also hypothesize that mediation could have beneficial effects for improving perceptions of empowerment. This was true on both counts for Rachel. During the discussion surrounding the children, Rachel made a number of statements that indicate an enhanced sense of self. For example:

I felt like I could help make some decisions.

I felt like I was coming up with ideas.

Somebody was really listening to me.

After the mediator said, yeah, I think that's a good plan, you know, Jack, followed through and said, yeah I think that would work. Well I never heard him ever agree with anything.

It is important to note Regehr's (1994) criticism of client empowerment at this point. She argues that empowerment in the context of the mediation session harms women in the long run because it creates the illusion that she has an equal voice in the relationship yet does not provide skills or support for negotiating with her ex-husband in the years to come. Indeed, Rachel's excitement and hope after negotiating custody and visitation, where the mediator validated her and Jack indicated agreement, was shattered as soon as they left the mediation when Jack denied everything he said in the mediation. Yet, six months later, she does feel stronger and more able to stand up for herself and she notes that mediation was the beginning of the process of moving toward separateness and autonomy.

Marie felt a little more power when the mediator recognized and acknowledged her autonomy. She also took advantage of the way they were seated to talk directly to the mediator to neutralize Ted's anger. She found this very helpful. She noted a number of other benefits to mediation: being able to discuss the issues with "some light of reasoning

in the room,” bought some time for emotions to settle down, and allowed her to deal with everything in a recuperative way.

Connie left the first round of joint mediation feeling beat up and defeated. She only agreed to a second round of mediation because they would be in separate rooms. She found shuttle mediation a positive experience. She did not have to face her husband, her lawyer was there advising her, and she found the mediator’s interactions helpful and affirming.

He’s also gonna tell you what your repercussions could be and that you could lose it anyway. Um...and it, it made me feel like somebody was on my side. [...] He did it in a way that he made it seem like he cared what I got out of it.

This illustrates the value placed on connection and relatedness by women (Gilligan, 1982). This was also noted by Rachel (if only the mediator had known me better), Nancy (he knew me better than I knew me) and Marie (identifying with the mediator as a moral and principled person). For Nancy, acknowledgement of the abuse by the mediator was a transformative experience. The mediator not only recognized what was going on in her relationship but continued to treat her with respect. This had a powerful impact on Nancy, creating space for her to speak about the abuse and increasing her confidence and self-esteem.

Though Connie still had apprehension about what her husband might be saying about her, the absence of direct intimidation and manipulation enhanced her capacity to focus on the issues. Kruk’s (1998a) study on mediator process styles suggests that conducting mediation in separate rooms might be the only way to avoid disempowering women leaving abusive relationships.

Recent research has provided evidence that mediator neutrality can result in mediator actions (or non-action) that ultimately disempower women who have been victims of abuse (Kruk, 1998a). This study largely confirms that finding and suggests

further that it is the impartial behaviors that disempower, e.g. failure to intervene, and equidistant behaviors that empower, e.g. reframing, restating, encouraging.

Though we have initially examined these actions in the context of neutrality, the literature suggests two other plausible explanations for the mediator's failure (or conscious choice) not to intervene: the culture of battering and the goal of empowerment. The first of these is drawn from domestic violence theory. The culture of battering theory suggests that an outsider, even a highly skilled mediator, will not be able to recognize the complicated communication system developed between batterer and victim. This system involves subtle verbal cues, looks, or gestures that signal a warning to the woman (e.g., "that intimidating look that would just put me on my knees"). At least three of the interviewees (Connie, Rachel, and Nancy) described feeling the affects attributed to this level of abuse: fear, intimidation, depression, anxiety, and loss of self. Two of these women had a positive experience in mediation. Connie attributes this to having mediated in separate rooms with her lawyer present and Nancy primarily credits the successful outcome to the mediator's skill. This suggests that some abused women, depending on her unique circumstances (e.g., Nancy's trust in the mediator because of his sensitive acknowledgement of the abuse), the use of modified procedures (e.g., shuttle mediation in Connie's case and separate arrivals for Sally and Mary), and the expertise of the mediator (e.g., the case for Nancy and Sally), could benefit from mediation.

The final explanation for the absence of intervention is drawn from the practice of transformative mediation. This model suggests the two practice goals of the mediator should be empowerment and recognition (perspective taking). Accepting the inevitable fact of mediator influence, both as an active participant in the process and as a human being existing within his or her own cultural norms and values (Cobb & Rifkin, 1991b; Greatbatch & Dingwall, 1989; Winslade & Monk, 2000), Bush and Folger suggest a new

conception of neutrality. They suggest that a commitment to mediator neutrality means “to use influence only for the sake of keeping the ultimate decision on outcome in the parties’ hands” (Bush & Folger, 1994, p. 105). Bush and Folger suggest one of the strategies of the transformative approach is to follow the lead of the parties and to focus on the details of how the session unfolds. The idea is not to influence or direct the parties’ talk toward settlement or any particular settlement option. The following comments illustrate the possibility that the mediator may be operating from this framework (these are from two different mediators):

Mary: There wasn’t a whole lot of involvement um...I think that, like I said, she wanted us to kind of talk the things out and see if we could get anywhere first.

Marie: We spent hours and hours on stupid stuff, you know. [...] Ted had all these creative ideas about how he could change, you know, like [the child support guidelines]. Hours and hours on this. And there’s a point, which I said to Ted, you know, I’m not paying for this anymore.

The effect of this was twofold: their partner was able to control the conversation and the women were often disempowered, responding with either frustration, silence, or concessions. In this context, refusal to engage in the process of negotiation also served as a tactic to control the conversation. Connie, Mary, and Meg, in particular, described their husband’s steadfast adherence to a position and ability to either divert the conversation or refuse to participate in problem-solving discussions.

Connie: And anything I wanted, he just, you know, he stood his ground and finally he said, I’ll just quit my job and you’ll get nothing...cause I won’t have any income coming in.

Mary: Even with the mediator, unless you can keep it on task, you know, okay, we’re gonna keep talking about this, and every time get talking, ‘cause every other sentence, just like when I talk to him on the internet. [...] He changed the subject. You know, that’s what he did in mediation too. It was more like he’d change the subject he didn’t want to talk about...

Following the parties' lead *may* have allowed some husbands to use diversion and refusal to discuss issues as a tactic of control. The data in this study suggest that this is a possibility but there is not enough data to confirm this speculation.

Structural Limitations

The data indicate several structural and procedural limitations based on the current conception of the mediator role and mediation process guidelines. I have already discussed the interplay of equidistant and impartial behaviors that left the women feeling confused about the mediator's role as well as factors that may have contributed to mediator reservations regarding the presence of an advocate during the mediation process. Other factors include timing of the mediation and decentralized screening.

Timing could prove a critical issue for abused women. There are at least two factors related to the timing of the process: (a) whether the couple still lives together, and (b) a strengthened self-concept as a result of time away from the abusive husband. As Rachel noted, if they could have waited a few months before attempting mediation, they would not have been living together and she would have felt stronger and more able to speak on her own behalf. Mary also noted that time helped her husband come to terms with the separation and that their communication had improved over the months. However, in Kate's case, she could not move out until their divorce was final so delaying the mediation would have exacerbated her situation. There may be very little a mediator can do to alter the timing of a mediation, but he or she might consider sharing the experiences of the women in this study regarding living situation and ability to speak up in order to fully inform the woman of her choices and options. Attorneys can play a critical role at this stage as well, informing and supporting the women in her assessment of her risk and options regarding face-to-face negotiation with her partner.

Current screening protocol in the Sixth Judicial District's Family Mediation Program relies on the individual mediators to conduct the screening. As the mediator survey of the program indicated (Tucker, 1998), not all mediators screen prior to the first joint session. The director of the program notes in the Draft Report (Tucker, 1998) that this is a serious concern.²¹ Decentralized screening protocols present structural challenges because one cannot be sure of the quality and comprehensiveness of the screening or that the screening will be conducted at all. A national survey of mediation programs providing family and divorce services indicated that 20% of the programs did not screen clients prior to the first session (Pearson, 1997). Another concern is that not all mediators are sensitive to the possibility of violence in women's lives (Maxwell, 1999). A mediator lacking this sensitivity may not conduct a screening or may not identify the violence because they are uncomfortable with the possibility of violence or consider it a private matter. There are no easy answers to this dilemma. Centralized screening would require significant additional funding and coordination in a program such as the Sixth Judicial District's program, which is loosely structured and without a single point of client entry into the system.²² Nonetheless, screening is a crucial procedural element and family mediation programs need to evaluate and consider the most effective mechanisms to assure that the best possible screening takes place for each client.

As noted earlier, divorcing couples in the Sixth Judicial District are required to attend a mediation education class. Though all the women in this study were required to attend the mediation class, none could recall much about the information they learned about mediation during the class. The presentation did not seem to meet their needs regarding the type of information they wanted or needed to make an informed decision

²¹ Since the survey was conducted over two years ago, program procedures may have been modified to address this concern.

²² Clients select their own mediator and schedule mediations on their own. There is no single intake point where centralized screening could easily be established.

about whether mediation was appropriate for them. This may, in part, be due to several factors: (a) only 30 minutes is available for the mediation education class, which does not leave much time for questions or exploration of specific issues of concern; (b) three different agencies rotate teaching the class and only one agency has presenters who have mediated (Tucker, personal communication, March 24, 2001); and (c) women may feel overwhelmed by the information received (i.e., the class on children and divorce plus the mediation education class) and unable to process the information at that time. Also noted earlier, none of the women mentioned receiving the mediation brochure which describes the family mediation program. Because there is no single programmatic point of contact for information dissemination regarding mediation, especially the advantages and disadvantages for battered women, and the class presenters may not themselves be mediators or familiar with the mediation process, it becomes more difficult to assure that the best and most current information is available to the women and that specific questions about mediation's strengths and weaknesses can be answered by drawing on actual mediation experiences. Increased funding and additional resources would certainly alleviate this situation, perhaps allowing program directors more flexibility and options in coordinating the mediation education classes. Barring that, regular evaluation of the information shared during the required classes or educating presenters about mediation (e.g., mediation training or observation of an actual mediation session) so that they would have first-hand knowledge of what happens in mediation might help.

Summary

The women felt disempowered by some mediator actions (or non-actions) and, in the same session, empowered by other actions. The empowerment moments may have served as a foundation for a stronger sense of entitlement, refusal to give in and more willingness to go to court. Overall, more women left mediation disappointed by the

experience, even when something powerful transpired, and the data indicate the source of the disappointment is complex and many layered but not hopeless. All but one of the women had never mediated before and did not know what to expect from the process or the mediator. Most women did nothing to prepare for the mediation and did not receive any special pre-mediation counseling or assistance. No one brought an advocate with them or talked about that being an option. Though some had concerns about how things were going, they did not initiate (or even consider as an option) any private conversations with the mediators to share these concerns.

All the women experienced varying degrees of fear and intimidation, which influenced their perceptions of their options and their ability to speak on their own behalf. Mediator interventions that focused on interrupting intimidating behaviors enhanced capacity. Gender and cultural norms influenced the participants' communication strategies (e.g., conciliatory, indirect) and their interactions with the mediator (e.g., politeness, deference to authority of expert). The effect of these gender and cultural norms was intensified by the nature of the abusive relationship. Women's greater orientation toward cooperation rather than competitiveness and relatedness rather than self-interest, was compounded by the abusive relationship as women employed strategies (e.g., asking for less, giving up financial entitlements) in the mediation session to avoid retaliation and angering their male partners. In the final analysis, shuttle mediation and an interventionist style had the most positive impact on the mediation experience for the women in this study.

CHAPTER 6: CONCLUSION

The data suggest that the nature of the mediation experience for women who have suffered abuse is more complex and varied than described by either victim advocates or mediation proponents. Each woman's perception of her risk and options reflected her unique life experience and contributed to a complex vision of mediation, a blend of both positive and negative experiences that left the women with a mixture of feelings ranging from anger, disappointment, and suspicion to gratitude and enthusiasm. In general, the presence of abuse and fear did not contraindicate mediation and mediator control of intimidating and threatening behaviors empowered the women. The data further suggest the following conclusions.

1. Mediator intervention (e.g., setting and keeping ground rules) and equidistant moves (e.g., support, encouragement, validation, acknowledgement) can empower abused women.
2. The absence of intervention in face-to-face sessions disempowers women who feel intimidated by their partners.
3. Capacity is enhanced when women feel some measure of safety. Factors that contribute to safety are: (a) not living with their partner at the time of mediation, (b) trust and confidence in the mediator, (c) shuttle mediation, (d) mediator intervention in the face-to-face session, (e) lawyer or advocate present, and (f) knowledge.
4. Lack of knowledge about mediation and what to expect sets up false expectations. Conversely, knowledge about the issues and the process enhanced capacity.
5. Societal messages about "the rightness" of mediation exert subtle pressure on women to mediate. There is an unspoken expectation that mediation is the compassionate route, that court is punitive, and that women will be cooperative. Women fear negative

consequences (e.g., being judged harshly, loss of custody) for stepping out of this gender role expectation (e.g., going to court).

6. Gender and cultural norms influence participants' perceptions of their options before and during mediation (e.g., subtle pressure to participate), their communication strategies (e.g., indirect and cooperative), and interactions with the mediator (e.g., politeness inhibits questions).

7. Women are able to speak up when their resolve (self-efficacy) overrides their fear of consequences or retaliation. Most often they are able to take a stand when the issue involves their children.

8. The presence of abuse does not preclude a positive mediation experience.

Additional research with larger and more diverse samples could either confirm or deny these hypotheses.

Recommendations

The Final Report of the Iowa Supreme Court Mediation and Domestic Violence Work Group (1999) includes an extensive list of recommendations for attorneys, mediators, judges, victim advocates, mental health professionals, religious leaders, and the parties themselves. The recommendations cover screening, assessment, training, and the mediation process. The work group included judges, attorneys, mediators, and victim advocates who met for 11 months to develop informed recommendations. As the report notes, there is very little research to confirm the validity or effectiveness of recommendations regarding mediation when domestic abuse is present. The recommendations that follow are based on what the women themselves suggested as well as what emerged from the data. Some of the recommendations parallel those in the Work Group Report confirming the validity of the report's theory- and anecdotal evidence-based recommendations. The report is too new for its recommendations to have effected

most (6) of the mediations that are the basis of this study. Two of the mediators that assisted with this study served on the task force. However, it is not known how widely the report was distributed, whether mediators in the judicial district in which this study was conducted had access to the report, or whether local mediation programs will endorse the report's recommendations. It is hoped that this study will support the efficacy of the report's recommendations and provide further evidence of the need for (a) education regarding the dynamics of abuse, (b) highly skilled mediators, (c) flexibility and openness to modifying the procedures to reflect the unique needs of each battered woman, and (d) a continued commitment to work together and build on the strengths of each service provider and agency to whom a battered woman might turn for support and assistance during the mediation process.

The following recommendations address the mediator role, the mediation process, issues regarding knowledge and preparation, and support systems.

The mediator needs to be able to stop intimidating and threatening behaviors, or they need to recommend shuttle mediation, or if they are uncomfortable with shuttle mediation or practicing an interventionist process style, refer the case to a mediator who is comfortable with those procedures.

Mediators could take a number of steps to enhance the knowledge and preparation of abused women entering mediation. For example, the women in this study would have benefited tremendously by pre-mediation counseling, where the mediator explores with the woman her strengths and weaknesses, her greatest fears, her assessment of her risks and options, barriers to negotiation, and provides some coaching in how to negotiate. The mediator could explore (a) how many sessions the woman can afford, (b) how she will feel in the room with her partner, (c) how the mediator will know if she needs to take a break, and (d) whether separate sessions might be appropriate. The mediator needs to be

sensitive to the possibility that the woman may have a secret that she fears her husband could use against her. The mediator can offer pre-mediation counseling to both clients so as to maintain equitable treatment of both parties. If a mediator is uncomfortable with this role, he or she could refer the woman (or both clients) to someone who could provide this assistance (preferably someone with mediation and domestic violence knowledge).

Mediators need to engage in follow-up with abused women clients to learn what transpired following mediation, whether modifications to the agreement are needed, and whether their process style empowered or disempowered.

In order to not replicate patriarchal assumptions and privilege, mediators need to examine how their own cultural values and biases influence their assessments and interactions. Mediators also need a deep understanding of the dynamics of abuse and the varying psychological impact on victims.

Women need more balanced information on what mediation can and can't do prior to the first contact with a mediator. If the mediation is court-ordered, then information about mediation's strengths and weaknesses should be provided by the court program. In particular, I recommend that specific information about battered women's experiences in mediation be compiled and shared with potential mediation clients.

More full and comprehensive preparation needs to be provided so that women have a better idea of what to expect in mediation, can better evaluate their strengths and weaknesses, plan the first session, and know what to ask of the mediator. This type of planning session should be modeled on the woman-defined advocacy model developed by Davies et al. (1998).

Women need accurate information about court. All the women in this study were fearful of going to court. Women need to have a realistic appraisal of court in order to make informed decisions about their options and so their partners cannot use the threat of

court to gain concessions. Women also need support from professionals for choosing court over mediation (when mediation is voluntary). When mediation is court-ordered, there should be no negative consequences for women who choose to end mediation and women need assurances that they will not suffer negative consequences.

If an abused woman decides to mediate, mediators need to encourage the woman to find an advocate (preferably someone with knowledge about mediation and domestic violence) with whom she can discuss her fears and concerns about mediation, her uncertainties, and her strategies for negotiation. She needs someone who can coach her, help her assess her risks and options, and provide support and encouragement throughout the process. If the woman wants, this person should attend the mediation sessions with her or at a minimum be available for consultation during the time of the mediation. This person could be the same person who performs the pre-mediation counseling if the mediator does not provide that function.

In general, the sense of personal empowerment was enhanced for the women in this study who felt some connection to the mediator. Therefore, I recommend that the mediator take steps to build a foundation for trust and relatedness with both parties. The data in this study suggest that this could be accomplished through pre-mediation counseling, process style (e.g. setting and keeping ground rules, reframing, validating), and the use of shuttle mediation. Equidistant support and intervention could significantly contribute to a battered woman's strength to speak up or at least be reassured that the mediator will not believe her husband's negative and demeaning comments about her. I do not think this compromises neutrality as long as the mediator offers support and assistance to both parties.

Above all, I recommend that mediators and advocates remain flexible and open to the needs of each individual battered woman as she considers mediation.

Implications for Future Research

The data indicate that the presence of abuse or fear does not necessarily contraindicate a positive mediation experience and that one of the factors that contributed to an effective mediation was the mediator's intervention. Further research on what mediators actually do and in response to what situations would be very beneficial.

Research is needed to explore whether there is a lasting impact from empowerment in mediation. Regehr (1994) theorizes that empowerment in mediation is harmful to women in the long run because they do not receive any support or skills to sustain an equal voice regarding negotiation with their ex-husbands in the years to come. Research needs to look at what, if any, is the long term impact of empowerment in mediation.

The women in this study had a deep fear of going to court and the two women who had actually been to court (Meg for divorce proceedings; Mary for temporary custody and restraining order) reported that court was a terrible experience. Is mediation simply the lesser of two evils? What role does fear of court play in women's decisions to mediate and their perceptions of their options in mediation? Do partners exploit this fear of court? Research needs to further explore the role fear of court plays in women's decisions to mediate and perceptions of their options. Research is also needed that compares the court experience and mediation experience of abused women so that lawyers, advocates and mediators can more accurately recommend the appropriate process given the unique life circumstances of each battered woman.

An examination of the perspectives of the male partners would lend further valuable information about the appropriateness of mediation and whether modified procedures are likely to be effective. For example, if the male partner is unwilling to negotiate, wants to punish his partner, has an inflated sense of entitlement, or denies the

abusive behavior then face-to-face sessions might be out of the question. The mediator might recommend instead the use of modified procedures (e.g., shuttle mediation), a waiting period, or no mediation at all.

And finally, research needs to examine how mediators wrestle with ethical dilemmas (e.g., mediator neutrality vs. client safety) they face when mediating cases involving domestic abuse and how they respond to those ethical dilemmas in the actual mediation session.

Summary

Mediators need to be flexible and open to the specific and unique needs of each battered woman entering mediation. They need to understand the dynamics of abuse and be prepared to act to protect their client's safety. Abused women need more accurate and balanced information about what mediation can and can't do, pre-mediation counseling (modeled after woman-defined advocacy) if they decide to mediate, and support (informal or formal) throughout the process. This study has indicated that some abused women have a positive experience and successful outcome in mediation and some do not. Many factors contribute to a positive or negative experience in mediation, including her batterer- and life-generated risks, the mediator's process style, and the use of modified procedures. The experiences of the women in this study confirm the efficacy of a number of mediation process recommendations suggested by various task forces that met during the 1990s. The women's experiences plus the recommendations to mediators and mediation programs from this study provide further guidance in assessing and modifying current procedures and programs to more effectively work with battered women entering divorce and custody mediation.

APPENDIX A
ADVERTISEMENT

Female researcher looking for women to interview about their experiences in divorce or custody mediation and who also experienced any of the following in that relationship: put downs or name calling, felt isolated and alone, had little access to money, afraid of partner's temper, hit, kicked or shoved, or forced sex against your will. Participants selected for interviews will receive a \$20.00 cash payment. Please contact the [local women's center], [phone number] if interested or for more information.

APPENDIX B
PARTICIPANT RECRUITMENT MATERIALS

Recruitment Letter

Dear Mediation Participant:

My name is Susan and I am a student working on my masters degree in conflict resolution. I hope that you can help me in an important project about mediation. You have received this letter from your mediator who is helping me locate potential interviewees. I do not know who the letters are being sent to and I do not know anything about you. You are under no obligation to respond.

I am interested in talking to people about their experiences in divorce and custody mediation. The focus of this research is to improve the mediation process by learning from client's experiences. I am particularly interested in talking with anyone who may have experienced any of the following during their marriage or relationship and who then used mediation during the divorce or custody process: put downs or name calling, felt isolated or alone, had little or no access to money, was afraid of your partner's temper, have been hit, kicked, shoved or had objects thrown at you, or forced sex against your will.

I am looking for people to interview in person or on the phone for a total of 1-2 hours. Identities of participants will be kept strictly confidential and no identifying information will be reported in the research. Participants will have access to their own interview data and may withdraw from the study at any point. All participants selected for interviews will receive a \$20.00 cash payment.

Since this is a small project, I may not be able to interview everyone that responds. If you are interested in talking to me about your experiences in mediation, please fill out the enclosed postcard and return to the [women's center]. I will contact you upon receipt of your postcard if I am able to offer you an interview.

If you would like more information about the mediation study, please call the Women's Resource and Action Center at 319/335-1486.

I hope that you can participate in this project and I look forward to hearing from you.

Sincerely,

Return Postcard

___ I'd like more information.

___ I'd like to participate.

I can be reached at:

Phone: _____

OR

Address: _____

OR

Email: _____

Best time to reach me: _____

Name (first only): _____

APPENDIX C

SAMPLE MEDIATOR COVER LETTER

Sally Smith, Mediator
304 Pine St.
<City>
<Phone>

July 9, 2000

Dear Mark:

Enclosed is a letter describing an important research project being conducted by a local mediator and graduate student. I've known Susan since she began volunteering for the Johnson County Small Claims Court Mediation Program in 1996. I am helping Susan find potential interviewees for her study by sending her letter to clients who have mediated with me in the past 12 months.

Susan does not know who is receiving the letters—I addressed your envelope myself. She will have no access to any information about you unless you respond to her directly. You are not obligated to respond, and the only person who will know if you respond is Susan.

Susan's research involves talking to people who have used mediation in a divorce or custody procedure and who also have experienced any of the specific behaviors listed in her letter. Please read her letter to determine whether you qualify. If you think you may qualify and are interested, please complete and mail the enclosed postcard. Those who are selected for an interview will receive a \$20.00 cash payment.

I believe this project will provide useful information which will help mediators and benefit people using mediation in the future. Thank you for reading this letter and for considering participating in this study.

I wish you well.

Sincerely,

Sally Smith

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