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Mediated Relationships: An Ethnography of Family Law Mediation

Elaina Behounek

University of South Florida, behounek_e@mercer.edu

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Mediated Relationships: An Ethnography of Family Law Mediation

by

Elaina Kay Behounek

A dissertation submitted in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy
Department of Sociology
College of Arts and Sciences
University of South Florida

Co-major Professor: Michelle Hughes Miller, Ph.D.
Co-major Professor: Jennifer Friedman, Ph.D.
Chris Ponticelli, Ph.D.
Margaret Zahn, Ph.D.

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DEDICATION

This is dedicated to my friends and especially my family. Without your love and unending support I would have never accomplished all I have. Thank you from the very bottom of my heart.

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This study is the culmination of many, many years of perseverance and learning, and it would not have been possible without the love and support of my family and friends. I love you and cannot thank you enough for all that you have done to support, guide, and inspire me.

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ABSTRACT

In my dissertation, I use multi-ethnographic methods to examine how mediators talk about, manage, and process families going through divorce. I show how a dominant narrative about marriage and the cultural expectations of parenthood provide a framework for mediators to manage the discourse of divorcing parties so assets and care giving can be split 50/50. The dominant P.E.A.C.E. narrative (P=parenting plan, E=equitable distribution, A=alimony, C=child support, E=everything else) restricts available discourse in mediation and guides mediators' behaviors in ways that homogenize families by providing a linear formula for mediators to follow which results in only certain stories being allowed to enter the mediation. Next, I show how constructions about power and violence serve to frame and shape understandings of divorce for mediators, thereby guiding their actions in mediation and discursively impacting the discourses of mediated parties. Power and violence are constructed in ways that conflate the concepts, and no clear protocol is offered to manage these complicated concerns for family law mediators. The outcome is mediators report being unsure and often fearful about mediating cases where intimate partner violence is a concern. Finally, an analytic autoethnographic examination of family law mediation provides an example of the power of ideology and makes clear my positionality within this dissertation. I explore my own identity as a white, heterosexual, female, in a world ripe with expectations about marriage and family creation as I encounter alternative messages and information in my fieldwork. Throughout my dissertation, I uncover

larger cultural narratives about marriage, and families that guide and manage people, illustrating the ways identities, stories of violence, and the ideology of marriage are shaped.

CHAPTER ONE-INTRODUCTION

For my dissertation research, I conducted an ethnography of family law mediation in Florida. I entered the field of family law mediation as a participant observer to gain a deeper understanding of family law mediation. My study is unique in its integration of three ethnographic sites: observation of actual mediations, interviews with trained and practicing mediators, and an autoethnographic account of mediation training. My work contributes to the literature on mediation in ways that inform the debates that continue to challenge the field (Mayer 2013). Specifically, I consider the following questions: How do mediators experience mediations? How do notions of parenting or families show up in family law mediation? How are power and violence constructed and managed during mediations? How do ideologies about marriage perpetuate the institution of marriage? In answering these questions, I employ a three-part, “sandwich style” dissertation in which I examine the experience of mediation from several angles within distinct self-contained substantive chapters. As such, each paper will have a separate literature review, methods section, findings and conclusion. In this chapter I present an overview of each substantive chapter and a brief background on mediation itself.

Divorce, American-Style

Nearly 90% of Americans will get married in their lifetime; many marry more than once (Coltrane and Adams 2008). With this rate in mind and despite changes in family forms, marriage remains an important social institution (Trost 2010). The Center

for Disease Control estimates that out of 2.1 million people who were married last year, nearly half of them will divorce (CDC Fast Stats 2013, Kreider 2005). In light of such figures, it becomes obvious that divorce is likely to impact a significant portion of the U.S. population at some point in their lives. This number is likely to increase with the expansion of marriage laws for same sex couples. In Florida, for instance, divorce between same sex couples only became possible with the 2015 U.S. Supreme Court decision in *Obergefell v. Hodges*, after the data for this dissertation were gathered.

As an alternative dispute resolution tactic, mediation has become an important way that divorces are handled in the United States, with mediation mandated in many counties in the United States prior to marital dissolution (Lande 2012). In that divorce has become a common occurrence in many people's lives, it begs very important sociological questions: What narratives are used in mediation? How are power and violence constructed in mediation? And how did the ideology of marriage impact my own life as I worked in the mediation field? To that end, I explore the narratives used in mediation, how power and violence are managed in mediation, and finally I explore my own positionality as I experienced becoming a family law mediator.

Mediation in Divorce

Mediation is growing as a field and will impact even more lives in the future (Florida Courts 2015). Mediation in most jurisdictions in Florida is required prior to any hearing involving a judge. This means, before you can take a case to arbitration in front of a judge you often must go through mediation. Mayer (2013) suggests this decision was made to create a better process and outcome for the parties as well as to reduce the caseloads for judges. The mediation process itself involves a neutral, third party mediator whose job it is to assist the parties in reaching an agreement regarding a range

of issues. Despite the centrality of mediation to our handling of divorce, this process has not been studied widely. Kelly (2004) argues there is a dearth of research on mediation in general because, “such research is complex, expensive and time consuming” (P. 31). In particular, Kelly (2004) notes that research examining “the interaction of emotions and personality attributes that individuals bring to the mediation setting, and the styles and behaviors of mediators that diminish or enhance the likelihood of reaching agreements, would help the field define and refine practices, improve effectiveness, and promote excellence in the field” (P. 31).

Florida is an important site in which to study mediation because Florida courts have been at the forefront of the push for mediation over arbitration (Florida Courts 2015). The State’s Court System shows “dedication to alternative dispute resolution” (Florida Dispute Resolution Center 2009-10). In fact, “All 20 circuits have court-connected family mediation programs” (Florida Dispute Resolution Center 2009-10, P. 35). In Florida as of May 29, 2015 there were 2206 certified family mediators (Florida Dispute Resolution Center 2015). In one county alone included in my analysis, in 2009-2010 there were 4,226 cases referred to mediation and 3,523 mediated cases (Florida Courts 2015). In the other four counties in my study there were 2,896 referrals and 3,883 cases mediated (Florida Courts 2015). This means that in one year, in the five counties in Florida where I conducted my research, there were 7,406 cases mediated. These cases represent individuals whose lives have been impacted by the outcomes that occur in mediations.

As a feminist researcher, I believe this topic is of the utmost importance because mediation is a widely used tactic for dealing with issues related to the family, including dissolution of marriage, child support and time-sharing, equitable distribution of

property, and alimony, yet the process can be problematic and is understudied. Semple (2012), for instance, argues mandatory mediation is a process where exploitation and power imbalances occur. Chowdhury (2008) contends mediation is a process where gendered power disparities exist and can impact agreements in unbalanced ways, but can be controlled if mediators give it proper attention. These arguments reflect the importance of understanding the role of discourse, power dynamics and ideology on mediation as a field.

As a sociologist, I am especially interested in understanding how mediators make sense of claims made in mediation. As mediation grows and is required by many jurisdictions, oversight into the process is imperative. Mediators are processing families whose needs are multifaceted and diverse. There are many critiques leveled against mandatory mediation (Semple 2012, Chowdhury 2008, Kelly 2004, Mayer 2013) calling for greater understanding of how families are processed. Yet few researchers have been granted the opportunity to examine mediations as they occur for fear of breaches in confidentiality (Mayer 2013), therefore little empirical evidence exists about mediation in general. The specific aspects of narrative construction, violence dynamics and marital ideology have yet to be analyzed in concert. For my research, I analyzed the stories told in mediation and the ways in which those stories were processed by mediators.

Analyzing the narratives from which parties and mediators draw allows us to understand the culturally circulating stories being told about divorce and families. With much at stake in the outcome, mediation is a contested site where a compelling case must be made to vie for one's own interests. Stories are a central component of how people make sense of their own lives and make a case for themselves. "Storytelling is central to communication" (Bonilla-Silva 2014, P. 123). Important work is performed

through storytelling. In fact, “stories guide action” (Somers 1994, P. 614). Stories are often drawn from readily available plot lines. This means that, “people construct identities by locating themselves or being located within a repertoire of emplotted stories” (Somers 1994, P. 614). People tell stories in mediation and characterize themselves in particular ways, which may work to convince the opposing party, the mediator or the attorney they should be awarded an asset, such as custody of a child or time with her/his child. The ways that people characterize themselves in mediation is often drawn from larger cultural stories or discourses. A mediator, whose own biography impacts the way the narratives are interpreted, processes the ways parties characterize themselves. Analysis of these narratives reveals important ways that identities are created (Loseke 2007). Paying attention to the ways that both parties and mediators craft and construct their narratives gives us clues as to how mothers and fathers, and even families, are thought about.

Overview of Dissertation

In the first substantive chapter, Chapter two, I examine the impact of managing discourse in mediation experiences, paying particular attention to how mediators are socialized and how they work to process claims made by parties that come from already available, culturally circulating formula stories about families. As Collins suggests, within the family there are hierarchical arrangements of power and resources that are distributed based on age, gender, and sexuality (1998, P. 351). In these intimate interactions, these multiple identity markers play a significant role in shaping the claims a person can and should make in mediations. In Chapter three, I examine the impact of power and violence in mediation experiences. I examine how mediators are trained to characterize power and violence and how they differentiate between an array of

behaviors, sometimes minimizing some forms of intimate partner violence. One form of power that has been of interest to researchers and mediators is intimate partner violence (Kelly 2004, Watson and Ancis 2013, Rivera, Sullivan and Zeoli 2012, Bollen, Verbeke and Eewema 2013). There is a debate among researchers and practitioners whether people experiencing violence in their relationships can effectively interact in mediation settings (Kelly 2004, Watson and Ancis 2013, Rivera, Sullivan and Zeoli 2012, Bollen, Verbeke and Eewema 2013). However, this assumption is not followed in all jurisdictions and mediation is court-mandated for some couples where violence has occurred (Kelly 2004). In my final substantive chapter I offer an autoethnographic account of my experience becoming a family law mediator. In this section, I show through analytic autoethnography how my own experiences and beliefs about marriage were challenged and transformed as a result of my fieldwork through the same processes of socialization mandated through mediator training.

Chapter Two-Mediated Relationships: Family Law Mediation And Narratives

For Chapter two, I observed and analyzed various facets of the mediation process and interviewed mediators to answer my research questions: How does the narrative framework taught in mediation training translate into mediators' actions in mediation sessions? In particular, I am interested in collecting and documenting the kinds of narratives created by the mediator trainer, mediators, and mediated parties in order to dissolve a marriage and justify and legitimate the outcomes of this dissolution. I utilize data from three sources: participant observation of mediations and training, and interviews with mediators.

Types of Narratives Parents Use

People have notions about what role a mother, father, sister, or brother, should play in a family. These preconceived notions influence our expectations as well as our interactions with each other. Mediators are not exempt from larger public discourses surrounding gender as well as expectations associated with particular status positions such as husbands, wives, mother, and fathers. Consequently, in order to understand the interactions that occur in mediation, it is critical to explore how mediators process the stories told by the divorcing parties through their own lens which incorporates complex and intersecting discourses of mediation law, the intersectionality of gender, race and class, and expectations associated with the positions held within a family. Clearly, this kind of analytical work requires the theoretical tools and concepts associated with symbolic interaction. I paid close attention to the kinds of characterizations divorcing parties” used in their stories and how they borrowed from the public discourse on gender and parenthood to situate themselves in particular kinds of ways to a mediator. At the same time, I listened to how mediators unpacked these stories, based on their own biographies and social locations as well as the discourse of the legal system, as a way to come to some kind of “legitimized” and” justifiable” resolution.

Smart argues family law policy serves to create a space where parties are expected to construct themselves in specific ways (2006, P. 124). These narratives tend to be situated in three ways: rights talk, welfare talk and care talk (Smart 2006, P. 125). Based on the research of Smart (2006), I looked to see if, when, and how mediators used these forms of talk when discussing cases as well as when working with the mediating parties. An important part of stories are the ideological frameworks that people use to make

claims about themselves. How mediators, with their own biographies and histories, interpret these claims and make sense of them is important to understand.

When couples enter family law court/mediation they do so in a setting where preconceived notions about appropriate behavior for men and women are pervasive. Gender and sex were once thought to be synonymous. Men and women were theorized as distinctly different due to biological and psychological variations. Historically, gender has been understood as man/woman, male/female. These binaries become so ingrained in our thought processes that they are believed to be valid and based in lived practice. “As we go through our daily lives, we assume every human being is either male or female. We make assumptions for everyone who ever lived and for every future human being” (Kessler and McKenna 1978, P. 1). However, the binary, dichotomous categories fail to acknowledge the great variation that exists within each gender. It was assumed that one’s sex determines one’s gender. The biological differences were thought to create distinct characteristics (e.g., masculinity or femininity), beliefs, behaviors and desires so that subordination of women by men was considered “natural” and “normal” (West and Zimmerman, 1987). Just as, doing gender is not a choice...we are also required to make sense of family relations, and “do” family, by defining our actions in terms of our family relationships (Gubrium and Holstein 1990). The heart of gender inequality stems from believed differences based on sex categories that serve as a framing device for interactions (Ridgeway 2011, P. 34). Ridgeway (2011) argues that gender is a primary frame for social life and organizes life in such a way that categorizations based on perceived gender differences lead to inequality. In this way, women have been crafted as the caregivers for children and are held to rigid expectations usually drawn from intensive mothering ideals (Douglas and Michaels 2007). Fatherhood has been less

clearly crafted, but fathers do tend to draw from the good/bad mother dichotomy when discussing the mother of their children.

In this chapter I uncover how mediators are trained to examine the stories being told in mediation and how mediators interpret those narratives. Through observation of mediations as they occur and interviews with mediators, narratives of motherhood and fatherhood will be explored. This analysis allows us to see the ideologies that permeate culture and create narratives from which parties can draw and mediators can use to make sense of claims. The result is the homogenization of stories and the lack of diversity available to people as they work through the court system to disentangle their lives.

Chapter Three: Power And Violence In Family Law Mediation: An Analysis Of The Ways Power And Violence Are Constructed And Managed

In mediation proceedings it becomes difficult to determine who has the ability to exercise power particularly when a family is or has experienced violence. An important way to understand how power and violence are managed is by examining the ways they are constructed. The way power and violence are constructed through training, and by mediators allows us to understand the ways in which it is managed. Many factors contribute to a mediator, or mother and fathers, ability to exercise power. Power is complicated and is influenced by the perspective of the mediator, the balance of power between the two parties, attorneys, their wealth, prestige, or many other factors. In this section of the paper, using data from mediation observations and training and interviews with mediators, I seek to understand how mediators define and manage power as it relates to violent relationships.

Violence

One extreme form of power and domination is abuse, an issue that is present in relationships and often in mediations. According to the National Intimate Partner and Sexual Violence Survey conducted by the CDC in 2010, more than one third of women and one in ten men have experienced some type of intimate partner abuse in their lifetime (2010). This amounts to 1.5 million women and 834,700 men every year being victimized by an intimate partner (CDC 2010). Watson and Ancis (2013) found that abuse that had occurred during marriages often continued throughout the divorce proceedings through several methods to maintain power and control. I explore how mediators deal with violence (perceived or actual) in mediations. In some cases, the mediator will have knowledge of violence between the mediated parties in the form of an injunction of IPV in the court file, a checked box on a mediation form, or a personal disclosure before or during mediation. In other cases, violence will not be explicitly acknowledged but a mediator may believe there has been violence between the couples. Not surprisingly, given the rates of intimate partner violence above, many parties I observed in mediation discussed IPV as a concern (CDC 2010). I pay particular attention to learning how mediators deal with and make sense of violence in relationships that are going through dissolution. What kinds of cues do mediators recognize as indicative of violence and how might this affect their own mediation practices?

Given the complexity of mediators negotiating dissolutions when violence is involved, the courts have questioned and raised alarms about the benefits and drawbacks of mediation under these circumstances. A consensus has yet to be reached. Some jurisdictions find mediation appropriate while others do not. As Steegh, Davis,

Frederick (2012) comment, “Intimate partner violence poses a number of complicated challenges for any system of triage (a type of case management), including: (1) questions about the complexity of decision-making about dispute resolution alternatives; (2) the feasibility of quickly and accurately screening for intimate partner violence; (3) the substantive and procedural safeguards necessary to preserve confidentiality, protect litigants’ due process rights, and provide accountability; and (4) the question of whether courts or parties are best positioned to make these decisions” (P. 955). As Steegh et al. (2012) explain, there are no concrete and mandatory screenings in every jurisdiction; therefore, the process is variable and whether or not a case will be mediated is often dependent on the individual judge or mediator’s decision. In Florida, “The current statute governing mediation prohibits the referral of family cases to mediation, upon motion or request of a party, if there has been a history of domestic violence which could compromise the mediation process” [Section 44.102(2)(c), Florida Statutes]. The ambiguous terms “could compromise” indicate the decision is left up to judges.

Although there is controversy surrounding the benefits of using mediation when domestic violence is a concern in the marriage, I observed several of these cases, learned how mediators are trained to see and deal with violence, and interviewed mediators to understand how violence is managed in mediation. I came to understand how each mediator (in the study) assessed, processed, and dealt with power as well as perceived or actual violence in mediation settings as it related to their training discourse. Ultimately, the training discourse influenced the ways mediators constructed and managed violence and power in mediation. This kind of information is invaluable for future mediation practitioners.

Chapter Four: The Marriage Myth: An Analytic Autoethnography of Family Law Mediation

In this section of my dissertation, I examine the experience of becoming a family law mediator as a white, able-bodied, middle class, non-attorney female. Through autoethnographic methods I look at “ways that social identities and relationships, in addition to cultural identities and interactions, factor into our everyday lived experiences” (Boylorn and Orbe 2014, P. 234). I have yet to find an autoethnographic account of family law mediation; thus, I offer a new approach that will further our understandings of identity and culture in interactions. In this section of my project I explore the impact of the social institution of marriage on my own life as I navigate the field of family law mediation using data from my reflections during the project, including my observations of mediations, training and interviews. I ask: how does the ideology of marriage impact my own experiences in the field?

Autoethnography, as a method, allows a researcher’s own experiences to become part of the data and analysis. Autoethnography is heralded for, “connecting evocative personal narratives with cultural criticism” (Ellis and Bochner 2014, P. 9). This method allows me to “appreciate the ways in which an intersectional approach reveals the relationship among culture, communication, identity, emotions and everyday lived experience,” with a focus on, “the intersections of diverse racial, class, ethnic, gender, spirituality, age, sexuality, and able bodied identities” (Ellis and Bochner 2014, P. 10). In other words, identities matter in interaction because our own experiences color our perceptions and understandings. Through personal narratives recounting my own experiences becoming a family law mediator, I gained first-hand knowledge about the intersecting identities that are present in mediations within the family law circuits. The

mediation training allowed me to better understand the discourses surrounding family law mediation in order to analyze the process as well as reflect on the profound role the social institution of marriage has on me, personally.

To gain a better understanding of the field of family law mediation, I enrolled in a training course to become a Certified Family Law Mediator. I was both a participant and an observer. In order to become a certified mediator, I earned 100 points. I earned points through my educational achievements (25 points are accrued for holding a Master's degree at the time of training), a mediator training course, observation of mediations and comediations. This allowed me to be privy to the kinds of information that mediators are taught about the law and legal protocol. This information is invaluable because I was able to ask critical questions of mediators about the kinds of ways they utilize various aspects of the law in the dissolution of marriages. Through my training, I acquired knowledge as both an insider and an outsider. I learned how a mediator is trained and what they are explicitly told to do in certain situations as well as understand how these rules are interpreted and enacted in mediation situations. I conducted mediations as a co-mediator and took field notes about my experiences. I do believe that my experience as a non-attorney (a minority in the trainings), white, female, in lower to middle class standing created an interesting dynamic in a room with mostly middle to upper class white attorneys or professional people. As Crawley (2012) suggests, academics can offer important contributions when writing about their own experiences as "members of social life" (P. 145). By offering my own account of mediation training and performing mediations, I enhance existing research about family law mediation in a way that more traditional methods cannot, by offering an "insider's account" that will serve to contextualize and humanize the mediation experience.

Brief Overview Of Methodology

Though I discuss in more detail the methods employed in each of my substantive chapter, here I briefly discuss my overall methodology. Guided by grounded theory (Charmaz 2006) I conducted an inductive ethnography of family law mediation. Using snowball sampling (Berg 2009) I recruited mediators to participate in audio-recorded in-depth interviews. I also observed mediations and comediated sessions with trained mediators. Finally, I engaged in the dual participant-observer role when I completed the required steps to become Supreme Court certified in family law mediation. Throughout this dissertation I utilize data collected through participation observation, observation of mediation sessions, and mediator interviews. I personally transcribed all data and analyzed it using a grounded theoretical approach (Charmaz 2006). Again, a more detailed description of the recruitment, analytic strategies, and data-gathering techniques is outlined in subsequent chapters.

Conclusion

This multifaceted ethnographic study sheds light on an important process used in family courts: mediation. Through multiple ethnographic methods I offer a new approach that provides insight on how mediators are trained and socialized, and how mediators process and manage claims in mediation. This information is important because mediation, as an alternative dispute resolution tactic, is being widely used in family courts and few studies have examined mediations, as they unfold and are processed. Additionally, autoethnographic methods allowed me to uncover the extent to which cultural narratives and socialization about marriage create an all too familiar “life story” plot that serves to guide many of our behaviors.

Throughout this dissertation I discuss the power of narratives. Narratives provide important information about what is important and why. People are judged according to ideals that are impossible to maintain or uphold. Mediators are socialized to process parties according to standards set by the courts. Often this results in mediators using information too quickly and neatly place parties stories in line with already available plot lines through use of a narrative device (P.E.A.C.E.). In mediation there is a framework that guides the behavior of mediators; this, in turn, requires divorcing parties to align their own stories with those that are already available and which fit the standard framework. This story management creates an environment where the complexity and diversity of people's lives are ignored including, sometimes, their experiences of intimate partner violence. In the following chapters I explore how such routinization occurs through an intensive and organized socialization of mediators-in-training, and through the interactions that occur within mediation itself.

Upon reading my dissertation, it is my hope that mediation, as a field, should be more closely examined because it has become central to and somewhat synonymous with, our official handling of divorce. Through my dissertation research, I have unraveled some of the layers often hidden in the mediation process in an attempt to create a space for public and professional scrutiny.

References

- Berg, Bruce L. 2009. *Qualitative Research Methods: for the Social Sciences*. 7ed. NY: Allyn and Bacon.
- Bollen, Allen N., Alain-Laurent Verbeke and Martin C. Euwema. 2013. "Money or Children? Power Sources in Divorce Mediation" *Journal of Family Studies* 19(2):159-173.
- Bonilla-Silva, Eduardo. 2014. *Racism Without Racists: Color-Blind Racism and the Persistence of Inequality in America*. Lanham, MD: Rowman and Littlefield Publishers, Inc.
- Boylorn, Robin, M., and Mark P. Orbe. 2014. *Critical Autoethnography: Intersecting Cultural Identities in Everyday Life*. Walnut Creek, CA: Left Coast Press.
- Centers for Disease Control and Prevention (CDC). 2010. "National Intimate Partner and Sexual Violence Survey" Retrieved on February 17, 2014 from <http://www.cdc.gov/violenceprevention/nisvs/>.
- Center for Disease Control and Prevention (CDC). 2013. "FastStats: Marriage and Divorce." retrieved on February 17, 2014 From cdc.gov.
- Charmaz, Kathy. 2006. *Constructing Grounded Theory: A Practical Guide Through Qualitative Analysis*. Los Angeles, CA: Sage Publications.
- Chowdhury, Jamila, A. 2012. *Gender Power and Mediation: Evaluative Mediation to Challenge the Power of Social Discourses*. Newcastle upon Tyne, UK: Cambridge Scholars Publishing.
- Collins, Patricia Hill. 1998. "It's All in the Family: Intersections of Gender, Race, and Nation" *Hypatia* 13:62-82.
- Collins, Patricia Hill. 2009. *Black Feminist Thought*. NY: Routledge.
- Coltrane, Scott and Michele Adams. 2008. *Gender and Families*. NY: Rowman and Littlefield Publishers, Inc.
- Crawley, Sara. 2012. "Autoethnography as Feminist Self-Interview" Ch. 9 in *The Sage Handbook of Interview Research: The Complexity of the craft*, second edition edited by Jaber F. Gubrium, James Holstein, Amir B. Marvasti and Karyn D. McKinney NY:Sage.
- Douglas, Susan, J. and Meredith W. Michaels. 2007 "The New Momism" Pp. 617-639 in *Maternal Theory: Essential Readings*, edited by Andrea O'Reilly. Toronto, Ontario: Demeter Press.

- Ellis, Carolyn and Arthur P. Bochner. 2014. "Merging Culture and Personal Experience in Critical Autoethnography" Pp. 9-10 in *Critical Autoethnography: Intersecting Cultural Identities in Everyday Life*. Walnut Creek, CA: Left Coast Press, Inc.
- Fenstermaker, S., and West, C. 2002. *Doing Gender, Doing Difference: Inequality, Power, and Institutional Change*/edited by Sarah Fenstermaker, Candace West. New York: Routledge.
- Fenstermaker, S., C. West and D. H. Zimmerman. 1991. "Gender Inequality: New conceptual terrain" In *Gender, Family and Economy: the Triple Overlap* edited by Rae Lesser Blumberg. Newbury Park, CA: Sage.
- Florida Courts. 2015. "About ADR and Mediation" Retrieved on May 29, 2015. (<http://www.flcourts.org/resources-and-services/alternative-dispute-resolution/about-adr-mediation.stml>).
- Florida Dispute Resolution Center, 2009-10. "Florida Mediation and Arbitration Programs: A Compendium, 21st edition, fiscal year 2009-10. Retrieved on April 19, 2014 from www.flcourts.org.
- Florida Dispute Resolution Center. 2015. "" Retrieved on January 20, 2015 from www.flcourt.org.
- Florida Statutes. 2014. Section 44.102(2)(c). *Mediation Alternatives to Judicial Action*. Judicial Branch, Government.
- Gubrium, Jaber, F., and James A. Holstein. 1990. *What is Family?* Mountain View, CA: Mayfield Publication Co.
- Kelly, Joan B. 2004. "Family Mediation Research: Is There Empirical Support for the Field" *Conflict Resolution Quarterly* 22(1-2): Pp. 3-35.
- Kessler, Suzanne, J., and Wendy McKenna. 1978. *Gender: An Ethnomethodological Approach*. NY: John Wiley and Sons.
- Kreider, R. M. 2005. "Number, Timing and Duration of Marriages and Divorces: 2001" *Current Populations Reports* P. 70-97.
- Lande, John. 2012. "The Revolution in Family Law Dispute Resolution" *Family Law Dispute Resolution* 24:411-51.
- Loseke, Donileen R. 2007. "The Study of Identity as Cultural, Institutional, Organizational, and Personal Narratives: Theoretical and Empirical Integrations." *The Sociological Quarterly* 48:661-688.

- Loseke, Donileen. R. 2011. "The Empirical Analysis of Formula Stories." Pp. 251-271 in *Varieties of Narrative Analysis*, edited by James A. Holstein and Jaber F. Gubrium. Thousand Oaks, CA: Sage Publications.
- Mayer, Bernie. 2013. "Mediation: 50 Years of Creative Conflict" *Family Court Review* 51(1):34-41.
- Ridgeway, Cecilia L. 2011. *Framed by Gender: How Gender Inequality Persists in the Modern World* New York: Oxford University Press.
- Rivera, Echo A., Sullivan, Cris M. and April M. Zeoli. 2012. "Secondary Victimization of Abused Mothers by Family Court Mediators" *Feminist Criminology* 7(3):234-52.
- Semple, Noel. 2012. "Mandatory Family Mediation and the Settlement Mission: a Feminist Critique" *Canadian Journal of Women and the Law* 24:207-39.
- Steeh, Nancy Ver, Davis, Gabrielle, and Loretta Frederick. 2012. "Look Before you Leap: Court System Triage of Family Law Cases Involving Intimate Partner Violence" *Marquette Law Review* 95: 955-92.
- Smart, Carol. 2006. "The Ethic of Justice Strikes Back: Changing Narratives of Fatherhood" Pp. 123-138. In *Feminist Perspectives on Family Law*, edited by Alison Diduck and Katherine O'Donovan. NY: Routledge-Cavendish.
- Somers, Margaret R. 1994. "The Narrative Constitution of Identity: A Relational and Network Approach" *Theory and Society* 23(5): 605-49.
- Trost, Jan. 2010. "The Social Institution of Marriage" *Journal of Comparative Family Studies* 41(4): 507-14.
- Watson, Laurel B. and Julie R. Ancis. 2013. "Power and Control in the Legal System: From Marriage Relationship to Divorce and Custody" *Violence Against Women* 19(2): 166-86.
- West, C. and Zimmerman, D. H. 1987, "Doing gender" *Gender and Society* (1):125-51.

CHAPTER TWO-MEDIATED RELATIONSHIPS: FAMILY LAW MEDIATION AND NARRATIVES

A quick historical glance at the process of divorce shows that there has been a shift in how it is handled in the United States. Alternative dispute resolution tactics have become widely used in the United States in many areas of conflict, including divorce (Barrett and Barrett 2004). Rather than a drawn out legal battle with high priced attorneys in front of a judge, couples are now processed in the courts peripherally and quickly through mediation. The role of the judge has become minimized in many cases. Additionally, this change has created a new set of professionals, mediators, who oversee and process mediations. With mediation, the divorcing parties can reach agreements about a whole host of issues with the aid of a trained mediator. As a result, “mediation has become the most widely accepted alternative dispute resolution procedure in family law cases” (Price 2012, P. 48) and is often mandated by family law courts prior to marital dissolution. Therefore, mediation is an important site to examine the narratives that guide and manage people in this setting. In order to better understand mediation as a field, I was fortunate enough to experience the training to become a mediator. In the training, we were offered a tool in the form of a narrative framework (P.E.A.C.E.) to process the complicated and disparate cases that may be mediated. This framework served to guide mediators’ behavior and actions. The protocol assumes 50/50 (equal parenting time) as the easiest and least complex way to manage families after divorce. My data gathered through interviews, observations, comediations and training allowed

me to gain an in depth understanding of these constructions during mediation. Through careful examination of the interplay between the governing discourse of P.E.A.C.E. and narratives told by parties it possible to understand the ways families are constructed and managed in family court. In this chapter, I explore the kinds of interactions that take place between mediators and divorcing parties during mediation and show how training narratives serve to guide mediators' actions as well as limit the culturally available stories parties tell about their failed marriage. I argue that mediators learn during their professionalization a framework to guide their actions in mediation in order to create a linear and easy to follow process. A formula story is crafted in order to simplify cases, resulting in homogenization whereby parties' stories are carefully crafted in order to align with already available cultural narratives. Through attention to the work that narratives do in mediation we can understand which stories are heralded and rewarded and which are minimized and denied.

Mediation

Discourse is an important way that messages are transmitted and they reflect dominant cultural mandates; therefore, it is crucial to understand from what cultural stories parties draw to make sense of their own lives, within the context of mediation. Mediation is a contested site where one would expect a compelling case must be made to vie for one's own interests. To do so, stories are often drawn from readily available plot lines. This means that, "people construct identities by locating themselves or being located within a repertoire of emplotted stories" (Somers 1994, P. 614). Stories are a central component of how people make sense of their own lives and "...is central to communication" (Bonilla-Silva 2014, P. 123, Coltrane and Adams 2008, Riessman,

1990). Important work is performed through storytelling. In fact, “stories guide action” (Somers 1994, P. 614).

In this case, the stories about families guide the narratives people tell in mediation. Narratives do important work. Narratives are successful in their ability to evoke emotions in the listener through a presentation of emotions and symbolic codes of the narrator. “Symbolic codes surround cultural narratives of identities because they contain images of the rights, responsibilities, and normative expectations of people in the world, and of the expected affective responses to these people” (Loseke 2007, P. 666). Divorce stories are an important part of cultural narratives because they not only illustrate the narrative of individual relationships, but also the narrative about the state of society because many people see marriage as a sacred social institution (Coltrane and Adams 2008, P. 202). In the twenty-first century divorce has become the most common way marriages end, with couples in the U.S. being the most likely to divorce in the world (Coltrane and Adams 2008, P. 212). The effects of divorce can be devastating personally, but it also “violates deeply entrenched individual and social expectations, (so) it generates explanations both from people who experience it and from people who study it” (Walzer and Oles 2003, P. 332, Riessman 1990).

The characterization of selves and stories about marital relationships are interpreted through the lens of mediation professionals who have their own stories, biographies, and mediation training. This specific aspect of the mediation process is particularly critical and worthy of study, as mediators are both well-trained professionals and subjective human beings who have their own experiences, perspectives, and interpretive lenses that enter the negotiation process. Mediations reveal taken for granted assumptions and ideas about families and correct behavior of

the individuals within the families. As such, it becomes sociologically interesting to explore the interplay of mediators' interactions, perspectives and experiences in mediations.

While there remains debate about the role of mediators in mediations, the growth of mediation services illustrates the impact of this practice now and in the future on peoples' lives (Mayer 2013). Mediators are tasked with facilitating an agreement between two parties, which requires the separation of assets. Therefore, it is in the mediators' best interests to help the parties to see their once entwined assets as separable. How mediators handle and process the claims by parties is important to understand because narratives serve to create identities and provides information about types of people. This information, then, guides and directs behavior.

In order to understand how discourse is organized in mediations, I examine the ways mediators are trained or socialized to manage parties, the ways mediators talk about (in interviews) managing parties, and finally I show the ways mediators attempt to assist parties in mediation sessions. This analysis illustrates the complexity of stories mediators encounter and the ways they manage them. Understanding the ways parties are processed reveals larger cultural discourses about families and divorce that serve to guide mediators' behaviors.

Literature Review

Most people know the expected familial roles of a mother, father, sister, and brother. These preconceived ideas influence our expectations as well as our interactions with each other. Mediators are not exempt from larger public discourses and expectations associated with particular status positions such as husbands, wives, mother, and fathers. "Family is constructed through talking or discourse" (Gubrium and

Holstein 1990). Consequently, in order to understand the interactions that occur in mediation, it is critical to explore how mediators process the stories told by the divorcing parties through their own lenses, which incorporate complex and intersecting discourses of mediation law, the intersectionality of gender, race and class, and expectations associated with the positions held within a family. I will now discuss several types of narratives that have been examined in relation to families and discourse management.

Types of Narratives

“Organizational narratives of identity are created by the organizers and workers in ongoing organizations, programs, and groups designed for people who evaluate themselves or have been evaluated by others, as having troubled identities in need of repair” (Loseke 2007, P. 670). In this case, the family is “troubled” because their union is dissolving and needs the court to assist them in their dissolution. Mediators work within a system where narratives already exist to explain actors. They work within narratives where dominant cultural identities have been established, such as the “nuclear family” or “the mother” (Loseke 2007). More specifically, formula stories are “narratives of typical actors engaging in typical behaviors within typical plots, leading to expectable moral evaluations” (Loseke 2007, P. 662). The stories are important because they tell us how the world should work, but, “do not offer adequate descriptions of the practical experiences or unique characteristics of embodied people,” (Loseke 2007, P. 666). Organizational identities are “explicitly in the business of structuring and reconfiguring personal identity” (Gubrium and Holstein 2001, P. 2). Some actors are cast as good and deserving of sympathy and services while others do not meet the formula story criteria and are undeserving (Loseke 2007). Organizational narratives

often stem from formula stories and cultural identities created by social activists and often fail to reflect the lived realities of peoples' lives (Loseke 2007). These organizational stories perform important social functions: they define whose identity is troubled and in need of assistance (Loseke 2007, P. 669). Because narratives of organizational identity determine who is in need of sympathy and deserving of support, they influence the personal narratives people can and should tell about themselves. Often the mediated parties and mediators' personal narratives reflect cultural narratives and are shaped by organizational narratives. The interplay between these narratives are important for understanding mediation because if mediators are trained to rely on formula stories, rather than stories that are reflective of the families they are working with, there may be a tendency to overlook important issues and concerns for families.

Narratives About Families

The courts rely on preconceived schemas, stereotypes and ideals so that the concepts of "mother" or "father" become archetypes rather than being seen as individuals who have different experiences, beliefs and opportunities that all shape how they might "mother" or "father" (Breger 2012). Mothers and fathers become homogenous groups of people whose individual experiences are left out of proceedings. The "mother" is an archetype whose needs become secondary to those of her child. The courts rely on a preconceived idea contained in a formula story about dominant cultural depictions of motherhood and fatherhood, which does not necessarily fit or work for all mothers or fathers. Formula stories are widely circulating stories that are perpetuated for some time so that they become believable (Loseke 2011), and parents are especially subject to judgment and scrutiny regarding their behavior. The most important socially

circulating story for this research is the dichotomization of the good/bad mother (Barnett 2005), and the good/bad father, which assumes that it is easy to judge and hence place a parent in a neat and tidy box without any consideration for their social circumstances. While mediators may not explicitly ask for stories about parenting, the divorcing parties’ tendency to discuss their parenting in these dichotomous ways illustrates the pervasive nature of culturally circulating stories. The parties come to realize mediators are looking for information that fits the criteria to move them away from 50/50 parenting and often rely on the good/bad parent dichotomy to do so.

The “intensive mother” has been cast as ideal for mothers in the United States (Hays 1996). Intensive mothering happens when a mother gives all of herself to the child and her man. The ideal mother is a woman who mothers naturally, who is always immediately present to care for her baby, and who does this mothering selflessly and seamlessly (Choi et al. 2005). Despite the many identities women have, when a woman becomes a mother the new, more important and all-encompassing identity often trumps all others. Most other aspects of a woman’s life are now judged next to her ability to balance multiple roles, with motherhood being the most important. Others, (other mothers, non mothers, court systems) subject mothers to scrutiny, and surveil successes and failures (Thurer 2007). Despite an awareness that “the ideal parent does not exist” we continue to “become highly judgmental about the practice of mothering” (Thurer 2007, P. 331) and some women continue to be committed to “the ideology of intensive mothering,” (Hays 1996, P. 150).

The ideal mother paradigm is based on an image of white, middle class women, yet all mothers are subject to the scrutiny and judgment when they fail to meet the expectations (Collins 2007, P. 275). Douglas and Michaels (2004) argue the “New

Momism” has created intensified expectations for mothers where mothers self-surveil themselves and surveil one another to the point that “mothering has become a psychological police state” (P. 5). Because motherhood is “so visible and dramatic,” fatherhood “remains tangential, (and) elusive” while to “mother” implies “a continuing presence” (Rich 2007, P. 6). Mothering is seen as, “always the best and most important thing you do.” In fact, a woman is not perceived as “truly complete or fulfilled unless she has kids” (Douglas and Michaels 2007, P. 619). In order to be ascribed the status of “good mother,” a mother ought to adhere to insurmountable expectations where she is the primary caretaker and “to be a remotely decent mother, a woman has to devote her entire physical, psychological, emotional and intellectual being, 24/7 to her children,” (Douglas and Michaels 2007, P. 619). The mothering ideals, like many other constructs, are dichotomized into good and bad with little room for anything in between (Douglas and Michaels 2007). Essentially, “the buck stops with you (the mother), period, and you’d better be a superstar” (Douglas and Michaels 2007, P. 622). Mothers have been tasked with creating the next moral and noble citizens, to the extent that a mother’s own life becomes secondary and less important (Duquaine-Watson 2010) than her offspring. The mother is expected to sacrifice her own selfhood in order to create a whole, healthy child and is surveiled while doing it. While not all mothers are subject to the extreme scrutiny, those who enter the family law mediation site are especially subject to surveillance.

Though many mothers and fathers will never interact with the family court, when they do they are presenting themselves as subjects of scrutiny in order to be processed through the institution. Mothers in court are often measured against the ideal standard of motherhood. Courts can be sites where the good and bad parent is contested, and a

hunt for the bad parent is commonplace (Chesler 1991). The parents have learned that there are acceptable ways to discuss their parenting, as illustrated in the data below. The parents often invoke these good/bad images themselves. There are “implicit expectations, ideals and biases about mothers” (Breger 2012, P. 2) which are class-race based and often patriarchal, and these can be harmful to mothers as many are impossible to attain. Even women with white privilege are not insulated from the scrutiny of the ideal mother. Ruddick (1995, 1980) argues that the good mother image is so firmly entrenched in our collective consciousness that we cannot imagine that any force, including illness, could change a woman’s loving nature.

In the past 30 years the notions of fatherhood have changed so that men today assume more of the caretaking tasks than men of the past, subjecting them to scrutiny as well when they fail to meet the ideal (Douglas and Michaels 2007). The ideal, however, is far less intensive and all encompassing than the motherhood ideal. “After all, a dad who knows the name of his kids” pediatrician and reads them stories at night is still regarded as a saint; a mother who doesn’t is a sinner,” (Douglas and Michaels 2007, P. 622). While fatherhood expectations have shifted in recent times, their expectations are less concrete and pervasive which may work to open up more possibilities for considering oneself and being considered by mediators as a “good enough” father. Goodsell, Bates, and Behnke (2011) argue fatherhood is centered on work and recreation while mothering roles are supportive in nature. Men have historically been cast as the financial provider for families; however, Bryan (2013) illustrates fathers are seeking more complex definitions of “providing.” Some fathers may recreate expectations associated with their roles as fathers to include more “social and emotional components” (Bryan 2013). But, fathers’ goals may not reflect

expectations held by mothers, nor mediators. The results of these expectations are that parents are held to specific and sometimes unobtainable standards of parenthood. These narrative constructions may be used by parties when addressing their roles or roles of their soon to be ex-partner during mediation.

We can all be scrutinized and judged negatively by these standards. No one is perfect. So, what makes this situation different is that divorcing parties are expected-sometimes mandated-to willingly subject themselves to this judgment within a traditional institution (the U.S. legal system) which in turn makes recommendations about how to dissolve their marriage and divvy up all the tasks that occurred in a single family unit to now separate spaces or units. In doing so, the court/mediator must decide if all parties are capable of assuming parental responsibilities. The mediators make this assessment based on their observations and analysis of what is told to them in mediation sessions. And what is told to them reflects these cultural expectations of good/bad mother and father, because divorcing parties borrow from formula stories, cultural scripts etc. to characterize themselves as former mates as well as parents.

Drawing from a symbolic interactionist framework, I analyze the kinds of characterizations divorcing parties' use in their stories and how they might borrow from the public discourse on gender and parenthood, which situate themselves in particular kinds of ways to a mediator. Mediators unpack these stories, based on their training and socialization. As professionals, they are charged with coming to some kind of legitimized and justifiable resolution. What I noticed by listening to over 35 hours of mediation sessions in my ethnographic study is that the dominant narrative (P.E.A.C.E.) provides a framework for mediators to process claims. The frame used by mediators, while also reflecting the larger cultural narratives about good and bad parents, shape

individual parties' narratives. This results in a sort of homogenization of stories where individual variation is lost and left out of the narrative. Mediators and the court may situate stories in formulaic ways that downplay the messiness of individual stories, as it tends to reinforce a rational and objective process, mediation, while it normalizes divorce. The stamp of legality is key, along with its appearance of objectivity. So, there is a kind of masking that happens within mediation that reproduces the idea of the court as a particular kind of institution --objective and rational--which endorses the legitimacy of the process. The results can mean parties do not end up with agreements that work for their lives. To uncover the types of narratives that show up in mediation, I employed a triangulated ethnographic approach, discussed below.

Methodology

What becomes particularly interesting based on my analysis of the current literature on mediation, are the kinds of narratives mediators draw on to process parties and the types of narratives parties tend to rely on to make claims for themselves. To study this process, I performed a triangulated ethnography. For background and to understand explicit regulations and rules Florida Family Law mediators are taught, I underwent a Supreme Court training to become a mediator. I also was afforded the opportunity to observe and, at times, co-mediate mediation sessions. I completed my data collection by focusing on the mediators themselves and how they process and analyze claims made by parties in mediation. I interviewed thirty family law mediators to understand how mediators construct their role within this legal process. For the current chapter, I incorporate data from my participant observations in training and in mediations and mediator interviews to uncover the narratives used in order to understand culturally circulating stories about families.

Data Collection

Training. As an ethnographer, I believe the best way to understand mediation and the profession of mediator was to undergo the training and become a mediator myself. I underwent Supreme Court certification training, which took place over six days for a total of forty hours. The training cost \$925. I was granted permission by the head trainer, David, to take fieldnotes about the training. I typed my fieldnotes on my computer throughout the training days, as well as made analytic memos when I returned home in the evening. The training served as a way to both understand family law mediation as well as make contacts I could draw on to recruit participants for my research study. The trainer provided all participants with a large, thick, training manual that provides information for new mediators regarding a plethora of topics including legal statutes, forms, and procedures. Following the training, I was required to complete mediation observations and comediations and submit an application proving my requirements had been met along with an application fee of \$170.00. The training provides background information, allowing me to see exactly how mediators are trained and the explicit information they are given about how to deal with claims being made in mediation. Prior to being able to observe and analyze the unfolding of events in divorce mediation, it was important to know how prospective mediators were taught the laws and how and when to use particular laws given certain circumstances. By becoming a mediator, I was socialized alongside prospective professional mediators. This training and my sociological eye enabled me to ask better questions of the data that I gathered and of the people that I interviewed.

Observations and comediations. I observed mediation sessions at courthouses in three different counties in Florida. Courthouse mediations ranged in length from thirty

minutes to four hours. The allotted time for these mediations is either two or three hour sessions. Sometimes the mediations reached impasse quickly; other times the mediations were extended beyond the allotted time. During the sessions where I was strictly an observer, I sat in a corner of the room and quietly observed while taking fieldnotes. In the mediations where I served as co-mediator I was engaged in the mediator role where I worked to assist the parties in reaching an agreement regarding their marriage dissolution. At these sessions, I took fieldnotes about my experience after the sessions were completed. I was an observer at thirteen mediation sessions in total for an approximately 36 hours.

In order to gain consent from the participants a consent form was sent to the mediators, who then sent it to the mediated parties or their attorneys. Prior to observations verbal consent was given. I gained written consent when we met on the observation date.

Interviews. I conducted semi-structured interviews with Florida Family Law Mediators in person and on the telephone. The interviews lasted between one and two hours. I audio recorded the interviews and personally transcribed the recordings verbatim. I used an interview guide (Appendix I) and probed for additional information whenever necessary.

Recruitment. Participants for interviews and mediation observations were recruited using snowball-sampling techniques, “a method for generating a field sample of individuals possessing the characteristics of interest by asking initial contacts if they could name a few individuals with similar characteristics who might agree to be interviewed” (Berg 2009, P. 51). Snowball sampling allows for participant recruitment beyond my own social networks. My snowball sample began with the contacts I made

during training to become a family law mediator. In this training, I asked graduates of the program for their participation in my research study. Beyond this snowball technique, as I trained to become a mediator I observed and comediated sessions during which I recruited 18 fellow mediators for the project. I recruited another two mediators using a post on a local mediation group's facebook page. Finally, I recruited ten through emailing mediators whose contact information I found on the Alternative Dispute Resolution Florida certified mediator website. To become certified I was required to observe and comediate sessions at local courthouses. All seven mediators I observed were met through the training program.

Participants. I interviewed a total of thirty certified Florida mediators whose ages ranged from 27 to 77. The mediators' experience in family law mediation ranged from three to 30 years in the field. The participants held different occupations including: attorney, mediation trainer, court mediation program managers, full-time or part-time family law mediator, mental health professionals, social worker and law enforcement, with the most common profession being attorney. Some mediated in private capacities, while others mediated at courthouses. While the sample is not intended to be representative of all family law mediators in Florida, it approximates the gender of mediators that are certified in the five counties in which I sampled. For instance, fourteen (46%) of my participants identify as male and sixteen (54%) as female. All but one person self-identified as white. In the training I attended there were twenty-six trainees; 19 female (73%) and 7 male, twenty-five appeared white and one person appeared black. I used my own observations since it was not possible for me to request this information from them personally. According to the dispute resolution mediator

listing in the three counties I observed there are a total of 376 family mediators; 224 (60%) female and 152 (40%) male (DRC-mediator reporting website).

Mediated parties. I observed mediations with seven different mediators for a total of thirteen mediations. During the observations and comediations I observed thirteen couples who are representative of several different racial, ethnic, and age groups. Since it was not part of my research protocol to ask people directly their race, ethnicity, and age, I made estimates based on my observations regarding physical characteristics of age, race, and gender. The sample appeared to be half male and half female, because Florida marriage laws at the time of the study excluded same sex couples. Of the thirteen couples I observed, approximately half of the sample were married and half had never married. The ages of the parties ranged from early twenties to fifty plus years of age (based on my approximation). Mediated parties are couples (married or not) seeking to either dissolve their union, share parenting time, and/or amend a current parenting plan, time-share arrangement, alimony, and/or child support. Most of the parties are mandated to undergo a mediation session before their case will be heard in front of a family law judge. The parties were not “selected” by me; rather, they were set for mediation with a mediator who allowed me to observe the mediations.

Data organizational procedures. Interviews were audio recorded and transcribed personally using Dragon Naturally speaking. I created pseudonyms for each participant. The names were chosen to reflect personal characteristics of the participant or an alphabetical order. If the person did not exhibit a relevant personal characteristic, I assigned them a pseudonym based on their interview order (first participant=A name,

Alicia, second participant=B name, Bernardo). The files were kept in my office under lock and key and only I have access to them.

Analytic strategies. I used grounded theory approach to guide all fieldwork, data collection and analysis (Charmaz 2006). While my study was guided by research questions, I paid close attention to the data to determine the significant themes. After collecting data, I used initial coding to create “tentative categories” (Charmaz 2006 P. 11). Next, I used more focused coding and reflected on previous codes by creating analytic memos for all the collected data. Finally, I used theoretical coding to further explore the dominant themes emerging from the data and created thematic categories.

The methodological strategies I employed allowed me to gain insight into family law mediation in multiple ways. For the purposes of this paper, I paid particular attention to the stories that mediators told in their interviews, the stories parties told in their mediations and how mediators managed the claims and stories being told.

What becomes most striking about the data are the kinds of stories people use to frame themselves as particular kinds of people as well as stories about what happened in their marriage that ended it. Despite counter narratives that exist (Ruddick 1980, Oakley 1979) mediators and parties continue to draw from and process claims using the ideal parenting paradigms. Mediators use the narrative device, P.E.A.C.E., discussed below, to move toward settlement, which forces parties’ narratives into homogenized stories. When it comes to our judicial system, it appears that these binary categorizations and formulaic stories are what helps to minimize the messiness of complex lives so that the courts can dispense cases in ways that appear clear, objective, and perhaps work to reproduce the legitimacy of the judicial system in an area that

breaches the boundaries of what is, at times, considered a private institution – the family.

Findings

Through analysis of the narratives presented in mediator trainings, observations, comediations, and in interviews several themes emerged. First, mediators are trained to process mediations according to a narrative of P.E.A.C.E., which provides a way for mediators to process complicated cases in a formulaic way. This narrative discourse (P.E.A.C.E.) dominates as it shows up in mediator interviews when they describe how they manage and process mediations and is seen in mediation sessions. The governing discourse of P.E.A.C.E. serves to manage parties’ claims and stories by pushing mediated parties to explain their lives in ways that catch the mediators’ attention in order to vie for their own interests. I explore how P.E.A.C.E. weaves its way through mediations, constraining narratives as a result. However, it is important to remember that narratives are reflexive, often overlap, and impact one another.

Dominant Discourse: P.E.A.C.E.

Professionals are trained to become mediators. They are socialized into the profession; despite coming from a variety of occupations including law, mental health, law enforcement, and religious organizations, mediators are taught what is important and vital to mediating cases. In order to become professionals in the field, mediators are socialized in three ways: forty-hour mediation training, observations and comediations, and ongoing continuing education requirements. These steps are required to become a Supreme Court certified family law mediator in Florida.

In training day two David writes on the board the issues that may come up in mediation:

Parenting time/child
Child support
Alimony/spousal support
Equitable distribution/division of assets and liabilities/what you own and what you owe/marital and non-marital
Attorney's fees
Decision making/parental responsibility
Insurance/security- health insurance, life insurance
Tax issues-are there taxes due or refund? Dependency exemption. How to file?
Jointly or independently?
Mediator's fee
Religion
School
Travel
Relocation
Indemnification-(the other person holds you harmless on prior tax returns, or debt if the bank comes after me then I am not responsible).
Family pet

Here, a formula begins to take shape that serves as a guide for mediators”

actions. There is a clear trajectory here: tangible and economic concerns and no room for emotions. This is the first mention of a common acronym used by mediators to guide their mediation practice: P.E.A.C.E- P=parenting plan, E=equitable distribution, A=alimony, C=child support and E=everything else. The first four items David listed address the P.E.A. and C. of the acronym and the rest of the list could be items that would be covered in the E portion of the mediation. Mediators are socialized to deal with these issues in this order and other messy information should be kept to a minimum or not allowed to enter the discussion. This framework provides a sort of template for mediators to look for information that will assist in processing the divorce. This focus, as well as time constraints-most mediations included in this project have a two or three hour time slot-may mean information important to parties lives are overlooked.

Also during mediation training day two David argues several times that our obligation, as mediators, is to the process, not the outcome. David says mediators

should, “create a process where people’s procedural interests are met” where, “Procedural is...I can’t have a big hand what happens in the end but I can be sure to help with the process.” As reflected in this comment the goal for mediators may not necessarily be an agreement; success may simply be ensuring the process is procedurally followed. On training day three David tells us, “If you run through this and you know you’ve gone through P.E.A.C.E. you will really have gotten everything you need to get in terms of the mediation.” In other words, a mediator’s job is to complete P.E.A.C.E. - nothing more. This socialization is important because it tells the mediators what information is important and what should be included in the conversation. It also highlights what is unimportant: everything else.

Throughout the training it became clear that the courts have, “a strong presumption that [divorcing parties] should share parental care,” dictating the Parenting Plan (P) portion of the P.E.A.C.E. framework. The trainer, David explains, “You were both decision makers while you were married. There’s this very strong presumption that both parents should be involved in the rearing of a child. It’s only in rare circumstance that they don’t share.” The presumption that parenting should be shared means mediators often begin with the goal of reaching shared and equal (50/50) time-sharing with children. This belief manages mediators’ discourse in mediations to seek shared, and equal, parental responsibility in most cases. Despite how things were “really” arranged in the marriage and who did what parental tasks, the court assumes that both divorcing parties are fully capable parents unless there are extenuating circumstances to prove otherwise. Throughout mediations there was a clear trajectory toward that shared parenting plan, unless clues were uncovered that would result in a question regarding 50/50 time-sharing.

On training day four, we discuss financial concerns. We talk about child support calculations (C) for some time. It strikes me how much of what is done in mediation is reduced to mathematical equations. Child support is linked directly to the amount of time spent overnight with a child. If a person has a certain percentage of overnights with the child, they get a reduction in child support. Conversely, alimony (A) is not as driven by time considerations; instead it is based on “need and ability to pay.” While many important issues are discussed in training, relationships are reduced to what can be discussed in the parameters of P.E.A.C.E. In the example below, David discusses the calculations for “blended families”. Here David explicitly tells us that the calculations for child support, “get crazy” and, “The formula doesn’t work.” For several days prospective mediators are primed for a formulaic way of processing divorce cases and then they are given examples of types of cases that are messier and do not easily fit the mold that can easily be dissolved. In this excerpt, we see the beginnings of learning in mediator socialization that sometimes things do not work out according to the formula.

Sometimes you might be mediating divorces with blended families. Step children. Let’s say a mom marries when the kid is 5 and divorces at 15, that child might see that person as the parent. Can an agreement provide for that? By the way child support payments get crazy when you have a parent paying other child support. The formula doesn’t work. It goes under the assumption that there isn’t other support being paid. Blending families is a real challenge. Imagine you’re 7 and you’re the apple of daddy’s eye and you’re brought into this family with other children. All of a sudden you are pushed aside and not the center of attention. Maybe daddy has a new baby and you are pushed aside. A lot of kids will say, “You’re not my parent. Don’t tell me what to do.” Can a stepparent really parent? Do you want the new parent to parent? Some say, “You can call me mom or dad.” That becomes an issue. Is the new parent trying to usurp the other parent?

When families enter mediation and have family structures that do not align with the nuclear family storyline, the task of the mediator is made more difficult because the formula story has been violated. The court system is not equipped to deal with these

family types through its standard procedures. This is an intriguing comment, especially as the composition of family structures is rapidly changing and the most growth in household type is in the “other household” category, according to the U.S. Census Bureau (2014). In addition, his comments illustrate that there may be an assumption that blended families result in a structure where the child’s needs are secondary. This statement reflects a different formula story, in which the stepparent is represented as an outsider even within the family system. Both of these issues- the failure of child support calculations to acknowledge prior family structures, and the formula story of difficulties in blended families become problematic when the mediators face families whose interactions or family structures do not neatly align with these policies and stories. So when things do not fit into neat and tidy boxes they are categorized as “crazy.” Rather than tackle the complicated issues of blended families, David tells mediators to focus on what you can use that makes it less messy, more calculable, easier to manage. The formula, P.E.A.C.E. provides the mediators with the tool to move through these messy situations with a standardized, homogenous, process. After the training is completed mediators act on the information they received. In the next section I explore the ways mediators talked about cases in interviews. The interviews reveal the ways mediators process and utilize the information taught in training in cases they mediate.

Mediators Discuss Managing Cases

The ways mediators talk about their cases reflects the utility of what is learned during the professional socialization of mediators. The narrowing down of the narratives to fit into the P.E.A.C.E. formula is retained after training. In an interview with Mike, a white male attorney/mediator, I asked him to describe his mediation process or style. Mike shows how he takes control of the situation even in cases that could be problematic

with attorneys present and the possibility of each side representing the other negatively. This formulaic way of processing divorce according to the P.E.A.C.E. protocol is still useful among seasoned mediators like Mike:

Let me give you an example: when you go into a mediation if the husband and wife sitting in a room together with their attorneys. And you say to the petitioner, that's the plaintiff; tell me a little bit about what's going on. They tell you these horrible stories about that side's spouse, well you know what an attorney is going to do he's going to, the other attorney's going to have a knee jerk reaction and say something back, because we do that and then it's going to... It just polarizes things. So initially, immediately, when I walk in I say okay were going to start together and they say no and I say no no no this is my mediation, not your mediation. You're going to go in the room with me and you are going to sit and listen and then you can do whatever you want, you can say is not going to... You can walk out if you like when we're done. And I tell the attorneys I don't want to hear facts, I want to hear issues. Child support, custody, parenting plan, equitable distribution just the brass tacks. Don't tell me what the other person has done. And I make them do that.

Mike has been trained/socialized according to professional standards I learned about in training. He explicitly tells us that he works toward the P.E.A.C.E protocol or template and does not allow any other "facts" to enter the mediation. Mike is using the dominant discourse of P.E.A.C.E. in order to take parties' often complicated and disparate stories and re-frame them so that the divorcing parties and their lawyers will focus on what is important for moving the case forward. This creates a linear story, P.E.A.C.E., which simultaneously manages mediators and parties by delineating what parts of the stories are important and which are not. The narrative of P.E.A.C.E. serves as signposts for mediators in order to take only the pieces that are relevant for moving the case forward. By following the available framework, mediators can bypass emotional stories and information they feel is extraneous to the process or stories that may cause emotional upheaval that may derail the process. This tool also keeps the process unemotional,

helps parties and attorneys to stick to the issues, move forward, and deal with only what is necessary. In doing so, it places the mediator at the center of the mediation.

In another interview I heard a similar story. Ian, a white male former law enforcement officer, now mediator, told me how he performs mediation:

Okay I have a history of having access to the court database before the mediation so I read the various filings and what they are looking for determine what the issues are. Is that paternity? Do they have children? And I get a little idea whether they want child support, time-sharing, shared parenting whatever so I actually spend I don't know 30 minutes to 45 minutes in preparation as opposed to going in cold and not knowing.

Ian describes the issues he might find in mediation and seems to pull directly from the P.E.A.C.E template or protocol. He prepares a “generic” document for his clients that identifies the narratives of relevance to the mediation. While parties may be variable, by focusing on those issues of relevance to his job, he can even prepare “generic” documents prior to meeting the individuals. Though Ian’s process is less directly centered about his activity as a mediator than Mike’s, the emphasis on P.E.A.C.E. as the governing framework through the development of a “generic” document manages the mediation before it even begins.

Through analyzing the interviews of mediators, we begin to see the effect of mediator socialization and training. Interestingly, by relying on the P.E.A.C.E. framework mediators are able to make divorce possible—which is the goal for many divorcing parties. At the same time, P.E.A.C.E. makes the jobs of mediators easier by justifying their focus on only “relevant” issues. Yet there is a trade off: the reliance on this framework also creates a space where parties’ stories must be controlled and/or managed to fit the formula. In a sense, the parties are also being socialized to tell certain kinds of stories.

The Parties Talk: Good/Bad Parents-Or Socializing the Parties

The good/bad mother and good/bad father narrative was expressed in every mediation I encountered—by the divorcing parties as they talked about their soon-to-be ex-partners. But while parties often begin mediations with these narratives that are disparate, poignant, and rooted in cultural ideologies, their stories tend to be aligned with the P.E.A.C.E. framework by the end of their sessions. They are taught what is important to the courts. The ways parties might describe their relationship ending to friends or family might be different than the way they must explain it in court or mediation. The parties seem to be socialized into telling a particular kind of story. Eventually, parties situate their storylines into the P.E.A.C.E. framework, yet they do so in ways that may be in an effort to ensure they are presenting themselves as a good parent.

In mediation between Chad and Heather, Mary asks Heather, “What I can tell you is judges don’t like to separate what’s been in place. Was he a good father?” Here we get a direct answer about Chad’s parenting, “I don’t know. When we got together it was work, school, computer, no time with Sara.” Heather uses his lack of “time” spent with Sara as an example of his poor parenting and his lack of devotion to his daughter. They go on and Mary asks, “Any problems with drugs or alcohol?” Mary is drawing from categories that have a clear good/bad dichotomy, implying with this question that a good parent does not use drugs or alcohol. Heather replies, “His parents smoke weed. When I first got with him he went out to the bar and got drunk. He called me to pick him up. Till I traded in that car it had a break in the windshield where he punched it.” Heather uses the story of his parents’ drug use to describe his character. She goes on to imply there was violence in their home. Mary asks, “Any domestic violence?” Heather

replies, “Not reported, not reported” (really starting to cry now). Mary stands and gets the box of tissues that is in the center of the table with a carafe of water and cups and sets it in front of Heather. She does not reach for one but Heather continues: “....It took me a year of begging and pleading for him to spend time with her. I know that sounds crazy, that I would beg him to spend time with her since I just left him.” Heather is arguing he is not a good father because he does not willingly spend time with his daughter while simultaneously implying she is a good mother because she is “pleading for him to spend time with her.” Her invocation of the cultural expectations of mothering and fathering dichotomize the couple into good parent/Heather and bad parent/Chad. Mary is looking for information that can assist in moving the mediation process forward.

Despite this characterization of her husband as a bad father, at times somewhat violent, and with parents who use drugs, what Heather shares does not fit the criteria for something less than equal parenting. In this situation, Mary is gathering information so that she can make an assessment – a judgment based on what Heather shares in response to the kinds of questions that Mary asks her. Heather is not free to go at length to discuss the whole story of her dissolving marriage and her analysis of what happened, and Mary does not further tease out issues of alcohol consumption, violence or attention to the child. These answers, instead, are sufficient. Mary queries Heather and her responses fit with what Mary wants to know – no more and no less. While this may seem an indictment of Mary herself, that is not my intent. Mary may be assisting the couple in important ways; by focusing on limited information the divorce process can be completed and the couple may be able to move on in their own lives.

Throughout my fieldwork, I noticed that only the typical story in response to a particular set of questions asked by the mediator was allowed to enter the mediation room. Anytime there was discussion of factors that may, in fact, impact the mediation agreement that could be cast as extraneous factors they were most often ignored, discounted or reshaped to fit into the narrow narrative or formula story the mediator and the courts rely on to move the cases forward. Mediators tended to skillfully and strategically dismiss claims from parties when they distract from the P.E.A.C.E. information like David warned us about during mediations that “get crazy.” Especially problematic are stories of new partners, grandparents, and other children. Generally, courts and mediators who work for the courts focus on the nuclear family and not the new relationships formed or severed as the marriage was becoming dissolved. Again, the mediators are tasked with a job-performing a mediation-and they must do so in a limited time frame forcing them to make difficult choices about what information to allow and what to move past.

Kara, a director for a large urban dispute resolution center, describes a case that does not neatly align with the P.E.A.C.E. narrative:

K: The one thing that I’ve learned is that being an attorney you have to be very careful about trying to steer people to enter into the fair agreement [50/50] that the court would come up with because this is just a suggestion, what the law says, ...for example: there’s this one mediation where I began to tell there was an imbalance of power in. The mother was financially, against her attorney’s advice, giving up her... giving away the farm. And you could tell the father was pretty much, that was his priority and the kids became now kind of used as a bargaining chip and she basically bought her kids back from him. Now is that an illegal agreement? No, but she figured, you know, I’ll do whatever I need to do because it meant more to her because legally she was entitled to 50% of what was his legally...and so, yes, could she not have agreed and gone into the court and made that decision, sure but her biggest fear was the court would also make a decision that the children would spend more time with their father. Because he was really one of those that could get up there and, you know,

just tell a big story. And she was deathly afraid of these kids spending more time with him, and so he thought he won because he got all this money. But she walked away joyous because the time with the kids was very important. She did what she wanted to do. She thought that was best for the kids at that time.

Kara may be seen as drawing from the intensive mother framework when she describes the mother sacrificing her own monetary entitlements in order to do what is “best” for her children. The mother is cast as noble and protecting her children while the father is typified as having one concern-money, and using power to “win” in the mediation. The description could be seen as drawing from the formula story where the father is focused on financial issues and the mother is focused on the ethics of care (Smart 2006). For Smart, an ethics of care is a narrative which focuses on aspects of care giving related to specific ways parents meet the needs of their children, like spending quality time with them. In this description we also see a narrative of entitlement where a person feels because they are biologically related to the child they are entitled to some time with their child being crafted (Smart 2006). Here is a case when 50/50 was subverted by the mediator – the mediator and a divorcing party who was able to circumvent the assumptions of the court and P.E.A.C.E. process and go for the outcome, no matter the financial cost, challenged attorneys. This example illustrates how the P.E.A.C.E. framework guides the outcome, even when the product does not reflect the court’s expectations. In this case, by violating expectations for the P, the mother had to accept divergence from equity on the E and the A.

In mediation with Patricia a couple is fighting over child support and time-sharing arrangements. They have a thick file because they have been in and out of family court for years. The couple have two teenage children and are discussing how to adjust

time-sharing. The mediator began mediating in the same room but they caucused (parties are separated into individual rooms) almost immediately because they were getting upset and talking over one another. In caucus Patricia asked the father why he would not allow the mother to have equal time-sharing, he replied:

No that's not going to happen. She's not a good mother. She can't take the education...see she let's him skip school and as a result the child was failing math and after the child came to stay with me then his grades drastically changed and he ended up with an A in algebra with 121 GPA.

The father here explicitly calls the mother out on her poor parenting, and sees an adjustment to the 50/50 rule to be an appropriate outcome of what he sees as her failures. Here is another example of what happens when P.E.A.C.E. goes awry. Cases may not end and may drag on for years. Now, mediators must query information from divorcing parties that become stumbling blocks in the P.E.A.C.E. process. Patricia seeks information from the father on the impasse with the hope of resolving the case. His response is critical of his ex-wife's ability to mother their child. Here again, the process is not working because the outcome is more important to a divorcing party. Although her parenting is called into question by her ex-husband, the mother's alleged behavior does not fit the court's criteria of such malignant conduct that it warrants changing the assumption of 50/50 parenting, yet Patricia cannot help the father understand the distinction between his perceptions of the mother's behavior and the court's expectations for the mother's behavior. Though malignant conduct was not clearly defined, certain expectations were discussed as arising to a level where a parent's time-share might be reduced or denied like child abuse or neglect. Since the father is focused on an outcome reflective of his standard of parenting rather than the court's and he is unwilling to bend, there is nothing to negotiate. The mediator informs the mother of the

father's desire to not alter the agreement and quickly declares an impasse ending the mediation. As we pack up the file and leave the room the father continues to explain why he is a better parent and warrants an outcome that reflects his claim about himself as a better parent than his ex-wife:

When I have them I feed them well! I sent them a lunch today with a croissant with three types of meat and a piece of lettuce and a little candy bar and then something salty and when she has them she doesn't cook she ordered Dominos or Pizza Hut.

Borrowing from traditional narratives about what constitutes a good parent, one that feeds children a home-prepared meal, the party makes claims that present himself in a positive way while critiquing his ex-spouse. P.E.A.C.E. did not work in this mediation because the parties seem more interested in the outcome than the process mediators are trained to follow—in this case, by expecting the mediator to agree with his assessment of his ex-wife's parenting. The father, again, pulls from both bad mother and care talk narratives in order to claim his parenting skills are better than hers, an issue that is largely irrelevant within P.E.A.C.E., ironically. Care talk is illustrated in the ways the father shows concern over the children having home cooked meals rather than delivery pizza. The mediator seems unable to process claims that push beyond the P.E.A.C.E. framework, and therefore she quickly impasses. The case seems too complicated to be quickly processed and is therefore given back to the courts to decide. The father may learn from this session to shape his narrative next time in order to align with the story the mediator seeks so that he may benefit by resolving the case although he must be satisfied with less. This case differs from the previous case because the mother was willing to allow the process to unfold and was focused on an outcome the courts would

accept. The father in this case did not adapt his narrative to fit P.E.A.C.E., resulting in an impasse.

In a mediation with Shyah and Charles there are many factors that could impact the mediation outcome. Yet, the mediator uses her skills to stick to the script by moving past what she perceives to be extraneous factors that might call into question the ability to move the case forward. Shyah and Charles are a low-income couple that were never married but have one (possibly two) children together. They have been separated for some time; both have new partners and new children. Here they are discussing time-sharing arrangements:

S: The issues is that, well one of is that every time he wants the kids they ask him and his girlfriend to bring food because they don't have adequate food. 2, my kids always complain that they don't get to brush their teeth or take showers or have toilet paper to wipe their butt, so I feel they don't have that, I want them to see the kids, I put in my time sharing plan they have them every other weekend, but he would like for us to split the kids apart so he would have one kid, and I would have one kid so he didn't have to pay child support. (Charles is saying I didn't but I can't really understand because Shyah is talking too).

Mary: All right so let's um, you're both working now. Ok, so we can figure out child support. Ok, so we know your incomes. Now to figure out child support we have to figure out where the kids are going to spend their time. So, Charles what are you envisioning for time-sharing. Just tell me I don't need to see anything.

C: Basically what I was asking for, because I wanted to see Jay more, I want him to stay with me. And it wasn't really like a split, like I was trying to separate them like that, because I never threatened her, I never did none of that, and um, I always wanted to see them, recently we went to court for child support is when I got her physical address of where she stayed, so that was the reasons why I didn't contact her....

M: Ok, well whatever happened is in the past; let's just move forward ok? Let's say that you are going to try to create the best possible plan the two of you can have that is going to work for you.

The mediator is socializing the divorcing parties by managing the conversation. She is essentially teaching them what discourse will be accepted and which will not. She

quickly moves past information she does not find helpful to how they envision time-sharing, a part of the P.E.A.C.E. script. She limits the characterizations the parties are attempting to make about themselves and the ex-partner. The parties are socialized to frame their talk in ways that is important to the mediator. So, the mother characterizes her ex-partner as negligent, and claims his interest in custody is only to reduce child support obligations. Charles characterizes himself differently, as a father wanting to spend more time with his child. In addressing these two claims, Mary makes a big point in demonstrating why she can proceed and focuses on how the process can be enacted – by focusing on their employment- that brings them back into P.E.A.C.E.

In this interaction, we see two narratives being constructed simultaneously. Shyah is calling Charles’ fathering into question by claiming he does not provide the basic necessities for his children. The second narrative used is the P.E.A.C.E. framework that Mary employs in order to manage the discourse of the parties. There are at least two instances where Shyah and Charles are explaining their lived realities to the mediator, yet Mary moves quickly past those items and continues on the P.E.A.C.E. framework. Despite the concerns both parties have in this case, Mary moves past that information and pushes for details that fit neatly and logically into the mathematical formulas the court provides. For instance, Shyah explains the problems she encounters when she brings the children to Charles, yet Mary does not engage in that conversation and continues to discuss child support. Charles then discusses his desire to see the children where he mentions threats of violence; Mary again pays no heed to that by saying it “...is in the past.” This is reflective of the many cases I observed where the mediators’ reliance on P.E.A.C.E guides and manages the parties’ storylines, culling through the claims to

the issues of relevance to the settlement. As the mediation continues we see the storyline being managed further.

Again Charles tells Mary his story:

M: Let me ask you this, do you have any problem with Shyah taking care of the children now?

C: My kids told me that her boyfriend hit them on top of the head. We contacted DCF, which put a case involved. My mother contacted DCF, there's a case involved. All these DCF cases revolve around her and its like, I really need to see my kids to know they're alright. My kid's attitudes have changed in the last 6 months. Last time I seen them, they so angry now and Cory also called me and asked can he call me daddy again. Obviously we didn't know if I was the father for sure of Cory, we looked past that, but as of recently, guys that I knew she told that I wasn't the dad. She had them call my mother and say can you call her grandmother again, and asking me can he call me dad again. Which I been there for him since day one. All the time. I don't understand, my mother's been there. She didn't have nobody there for them. I was there for her and them. Till obviously we separated and now (inaudible) the kids, and that's the problem.

Charles is telling an important story about the concerns he has for his children's safety.

So, in this characterization are various critiques of his ex-partner that appears to have just "slipped" in to his response to Mary's question. He provides a very complicated answer, which seems to provide opportunity for one to question the parental abilities of Shyah. Yet, notice how Mary responds to him:

M: Ok, so, here's... I know sometimes it's important to tell your story and I understand you want to tell me everything that's happened. But I really want to focus, we have such a short amount of time, if we don't focus on going forward, we might as well just go home, we might as well go home because nothing will happen here. It sounds like you guys have had a tumult, a lot of ups and downs.

Mary essentially recentered the case on the P.E.A.C.E. framework. She enabled Charles to air it all out, but then gently "disciplined" him with what is important for resolving the case. Charles brings up the DCF case, which may be considered a failure to protect the children, and which is his defense for time with the children. Despite this

information, Mary is very focused on the timeframe to get an agreement and tells him to “focus.” Mary seemed frustrated by the detailed information and continually tried to focus the couple on issues associated with the P.E.A.C.E template. In cases like these, mediators often allowed parties to vent about their spouse for a short time, but would get frustrated if it carried on for too long. Mediators would often allow a sort of airing out but quickly refocus the parties with an eye to P.E.A.C.E. Mary’s language here is very important; she articulates both an understanding of the desire of the parties” to tell their stories, and her own frustration with the need to move beyond them into an agreement. In her discourse, we see the justification for her narrative construction—the timeframe allotted to fulfill the mediation expectations. Mary was not the only mediator to push the narratives in these ways. In every mediation I observed there was a sort of stylized dance where mediators allowed some venting or airing out and then pushed the P.E.A.C.E framework in order to move things along.

Work is done to push the stories along into the neat and tidy boxes that make up P.E.A.C.E. and have an outcome of “peace” even though both parties do not get exactly what they want. Mediators work to get the information necessary to move a case forward and finalize it. This means they may miss important information when working to make a deal and if they miss details too much, people could return dissatisfied and having to go through the process again. So, despite David’s exhortation that mediators need to pay attention to the process more than the outcome, it is the finalized agreement- the outcome- that validates the process. And to accomplish that, the mediators must talk the parties through P.E.A.C.E.

Conclusion

A narrative of P.E.A.C.E. serves as a way to manage both mediators and parties. This narrative frame serves to minimize the messiness and complications of divorce and creates a formula, allowing mediators to process cases and work to dissolve unions and reveals the way the courts think about families. The P.E.A.C.E. framework begins with the assumption that shared parenting is the best model for children. The outcome is that mediators use the framework to search for clues as to why the 50/50 split will or will not work, often bypassing other important information. Mediators' use of the P.E.A.C.E. narrative force the varied, complex and non-linear stories into narrow narratives and formula stories. The result is a homogenization of the stories parties tell in order to fit into a neat, linear storyline. The parties seem to realize their stories need to be crafted in such a way that the mediator will listen to them. Their stories are, then, shaped by P.E.A.C.E. in ways that emphasize their good parenting or disparage their ex-partner for bad parenting. The narratives used by parties reflect cultural stories told about "families" and efforts to place blame and failure onto former partners using these cultural standards. These types of talk exist within the dominant cultural narrative of the good and bad parent where the parties and mediators rely on the formula story of the traditional family and ignore family types that do not fit the mold. Mediators are socialized and trained to work toward settlement agreements meaning they may strategically ignore their own histories, biographies and identity markers as well as the parties' diverse lives. This work minimizes messy and unclear narratives.

The narratives parties tend to resort to in mediation are pulled from the cultural narratives about good and bad mothering, and good and bad fathering, along with strong sentiments about the value of two-parent families. Mediated parties tend to pull

from these narratives, reflecting a larger cultural story about marriage, gender and families. In particular, time and again in mediations parties pulled from the narratives about good and bad parenting, in particular asserting the dominant “intensive mothering” ideology.

Mediation represents an organization, which operates within a larger structure of the court system. The court system is tasked with a variety of important social roles including divorce. In order to create a less divisive and more harmonious process mediation has been implemented in many family courts. The standardization of mediation has created a space where professionals must take complicated and diverse family dynamics and reduce them to an easy to understand formula in order to manage the massive flow of families in a timely manner. The tension between structural organizational protocol and working with individuals with diverse needs creates a process whereby variability is lost and homogenization occurs. The tendency of the courts to push for shared and equal parenting, reveals the cultural discourses of the nuclear family and two parent households as the ideal. When families are becoming more and more diverse the reification of ideals of the past are problematic as they fail to reflect the families that are mandated to participate in mediation.

In this chapter, I explored how mediators are taught to navigate incredibly diverse, divergent and non-linear stories in linear and homogenous ways. Mediators actively do work to keep their agreements moving toward resolution, sometimes at the expense of important information, thus ironically honoring the product in lieu of the process. The reliance of mediators on the narrative (P.E.A.C.E) results in the mediators bypassing important information, pushing parties to resolve issues and settle, and ultimately could result in agreements that do not consider important information like

safety and well-being of parties and their children. Mediators' use of the narrative provides a toolbox alerting them what information to consider.

Through narrative analysis of mediations, interviews, and training I was able to unpack the process by which mediators conduct mediations. It is my argument that the mediators' tendency to push agreements along using the governing narrative of P.E.A.C.E. creates an environment where agreements are made for homogenous, disembodied people. Cultural narratives about "families" are reflected in the narratives used by mediators and parties. The power of narratives to transform interactions and guide behavior is evident. Family courts should endeavor to make a mediation process where the heterogeneous realities of diverse families are welcomed and agreements are reached that recognize individual variability and needs.

References

- Barnett, Barbara. 2005. "Perfect Mother or Artist of Obscenity? Narrative and Myth in a Qualitative Analysis of Press Coverage of the Andrea Yates Murders." *Journal of Communications Inquiry* 29:9–29.
- Barrett, J. T., & Barrett, J. 2004. *A History of Alternative Dispute Resolution: The Story of a Political, Social, and Cultural Movement*. San Francisco: Jossey-Bass/Wiley.
- Berg, Bruce L. 2009. *Qualitative Research Methods: for the Social Sciences*. 7ed. NY: Allyn and Bacon.
- Bonilla-Silva, Eduardo. 2014. *Racism Without Racists: Color-Blind Racism and the Persistence of Racial Inequality in America*. Lanham, Md: Rowman & Littlefield Publishers.
- Breger, Melissa L. 2012. "The (In)Visibility of Motherhood in Family Court Proceedings" *New York University Review of Law and Social Change*. 36(4):555-92.
- Bryan, Derrick, M. 2013. "To Parent or Provide? The Effect of the Provider Role on Low-Income Men's Decisions About Fatherhood and Paternal Engagement" *Fathering* 11(1):71-89.
- Chesler, Phyllis. 1991. *Mothers on Trial: The Battle for Children and Custody*. NY: Harcourt.
- Choi, P., C. Henshaw, S. Baker and J. Tree. 2005. "Supermum, Superwife, Supereverything: Performing Femininity in the Transition to Motherhood" *Journal of Reproductive and Infant Psychology* 23(2):167-80.
- Collins, Patricia. 2007. "The Meaning of Motherhood in Black Culture and Mother-Daughter Relationships" Pp. 274-289. in *Maternal Theory: Essential Readings*, edited by Andrea O'Reilly. Toronto, Ontario: Demeter Press.
- Coltrane, Scott and Michele Adams. 2008. *Gender and Families*. NY: Rowman and Littlefield Publishers, Inc.
- Douglas, Susan J. and Meredith W. Michaels. 2007. "The New Momism" Pp. 617-639 in *Maternal Theory: Essential Readings*, edited by Andrea O'Reilly. Toronto, Ontario: Demeter Press.
- Duquaine-Watson, Jullian M. 2010. "Advice Literature for Mothers" Pp. 27-31 in *Encyclopedia of Motherhood*, edited by Andrea O'Reilly. Thousand Oaks, CA: Sage.

- Goodsell, Todd, L., Bates, James, S., and Andrew O. Behnke. 2011. "Fatherhood Stories: Grandparents, Grandchildren, and Gender Differences" *Journal of Social and Personal Relationships*. 28(1):134-154.
- Gubrium, Jaber, F. and James A. Holstein. 1990. *What is Family?* Mountain View, CA: Mayfield.
- Gubrium, Jaber, F. and James A. Holstein. 2001. *Institutional Selves: Troubled Identities in a Postmodern World*. NY: Oxford University Press.
- Hays, Sharon. 1996. *The Cultural Contradictions of Motherhood*. New Haven: Yale University Press.
- Loseke, Donileen R. 2007. "The Study of Identity as Cultural, Institutional, Organizational, and Personal Narratives: Theoretical and Empirical Integrations." *The Sociological Quarterly* 48:661-688.
- Loseke, Donileen. R. 2011. "The Empirical Analysis of Formula Stories." Pp. 251-271 in *Varieties of Narrative Analysis*, edited by James A. Holstein and Jaber F. Gubrium. Thousand Oaks, CA: Sage Publications.
- Mayer, Bernie. 2013. "Mediation: 50 Years of Creative Conflict" *Family Court Review* 51(1):34-41.
- Oakley, A. 1979. *Becoming a Mother*. Oxford, UK: Martin Robertson.
- Price, Ned, I. 2012. "Binding Arbitration, Voluntary Trial Resolution, and Med-Arb Proceedings in Family Law" *The Florida Bar Journal*. November: Pp. 48-52.
- Rich, Adrienne 2007. "Introduction from Of Woman Born" Pp. 6-10. In *Maternal Theory: Essential Readings*, edited by Andrea O'Reilly. Toronto, Ontario: Demeter Press.
- Riessman, C. K. 1990. *Divorce talk: Women and Men Make Sense of Personal Relationships*. New Brunswick, NJ: Rutgers University Press.
- Ruddick, S. 1980. "Maternal thinking" *Feminist Studies*, 6:343-367.
- Ruddick, S. 1995. *Maternal thinking: Toward a Politics of Peace* 2nd ed., Boston: Beacon.
- Smart, Carol. 2006. "The Ethic of Justice Strikes Back: Changing Narratives of Fatherhood" Pp. 123-138. In *Feminist Perspectives on Family Law*, edited by Alison Diduck and Katherine O'Donovan. NY: Routledge-Cavendish.
- Somers, Margaret R. 1994. "The Narrative Constitution of Identity: A Relational and Network Approach" *Theory and Society* 23(5): 605-49.

Thurer, Shari L., 2007. "The Myths of Motherhood" Pp. 331-344 in *Maternal Theory: Essential Readings*, edited by Andrea O'Reilly, Toronto, Ontario: Demeter Press.

U.S. Census Bureau (2014). "Trends in Prevalence of Households, 1940 to Present."
Retrieved March 11, 2015
(<http://www.census.gov/hhes/families/files/graphics/HH-1.pdf>).

Walzer, Susan and Thomas P. Oles. "Accounting for Divorce: Gender and Uncoupling Narratives" *Qualitative Sociology* 26(3): 331-349.

CHAPTER THREE-POWER AND VIOLENCE IN FAMILY LAW MEDIATION: AN ANALYSIS OF THE WAYS POWER AND VIOLENCE ARE CONSTRUCTED AND MANAGED

In this chapter, I examine the ways power and violence are constructed in family law mediation. Throughout training mediators are taught how to deal with power imbalances, especially when intimate partner violence (IPV) is a concern. Violence in relationships often leads to important power dynamics that mediators are trained to look for (Johnson, Saccuzzo and Koen 2005). Though power and violence are two distinct terms, they are often seen as interrelated. Therefore, when IPV is discussed, power is also being discussed. Reed (2013) calls for empirical research to add to our analytic understandings of and knowledge about dimensions of power (212). In response to Reed's call, in this chapter I explore the constructions of power and violence that work to inform mediation proceedings: constructions of violence by the trainer, constructions of violence by mediators-which tends to shape their actions and how they manage mediations, and ways power and violence are managed by mediators. It is in the interplay between socialization (training) and implementation that we see the ways mediators construct and manage power and violence in interesting and unexpected ways.

Family law mediation is an alternative dispute resolution technique that has been widely adopted in Family law courts across the United States and is even required in many jurisdictions (McManus and Silverstein 2011). Mediation is a process where a

trained mediator “helps the parties identify real issues, frame the discussion, and generate options for (marital dissolution) settlement” (McManus and Silverstein 2011). In the instance of family law mediation, the mediator works with the parties to reach agreements on issues related to parenting time-sharing issues, equitable distribution of assets, alimony, child support, and everything else (P.E.A.C.E). These issues affect couples in significant ways, such as time spent with children and amount of child support that is to be paid or received. With such important decisions being made in mediation, it is of the utmost importance to understand the ways power and violence are defined and especially how they are managed in mediation where violence is a concern.

While mediators are taught during training to keep to the P.E.A.C.E. protocol, this is not an easy task when there is a risk of violence or when there appears to have been domestic violence during the marriage. The court begins with a presumption that shared and equal parenting (50/50) is the best model for child rearing, but not in cases where violence is suspected or known. This is one reason I pay particular attention to cases where violence is suspected or known. In these cases, mediators may not be granted authority and status merely based on their professional positions as mediators. The rules that help dissolve marriages without violence do not necessarily work when violence is involved. In such cases, power may work differently – it may be fluid and constantly shift from person to person and mediator to mediated and vice versa. The ability to manage the mediation environment thus requires great skill. It is to these skills that I turn my attention in this chapter. However, these skills are not clearly defined, and during mediated sessions mediators search for clues to uncover if and when violence has occurred in order to find ways to manage power imbalances that may result from a history of violence. It is this kind of interactional dynamic that Foucault

highlights in his discussion of power that might help us explore what happens in the mediation room when domestic violence is suspected or has been of concern (1972). Foucault (1972) provides insights that allow critique of traditional depictions of power and violence.

While scholars have examined types of power in mediation, I will explore the ways in which different types of power relationships are constructed by mediators in families where violence is a concern. I am interested in examining how mediators talk about and define violence in mediation. A push and a shove may not be thought of as violence, or may be seen as a form of violence that characterizes the whole relationship as violent. Mediators are making these kinds of assessments which influences how they approach mediation and attempt to manage negotiations. Power is a concept that has many definitions. Yet, these definitions are problematic when examined in the mediation site because they are often simplistic and suggest a hierarchical approach to who does and does not have power. For example, some people might assume that power can be achieved due to a particular status, like high income, high educational level, or gender. Access to power may also depend on ones' social location in the class system, gender, race, sexual orientation, ability, and religion (Collins 2009). These constructions of power represent multiple levels of domination and subordination which "operates not only by structuring power from the top down but by simultaneously annexing power as energy of those on the bottom for its own ends" (Collins 2009, P. 227-8). With these definitions, a person has more or less power depending on the context in which they are operating; in mediation, mediators have power because of their position as representatives of the legal system. Ritzer (2008) continues this restrictive explanation of power by claiming that those in power seek to maintain their power through

domination and oppression of those without power, and conflict emerges between groups who hold the power and those who do not. Yet, in my observations of mediators, I noticed that power could not be taken for granted by mediators. Such power is more effective when it is seen as legitimate. There are a host of mechanisms and skill sets that work to establish a sense of legitimacy and just as many actions that work to dismantle this legitimacy. For instance, there may be times when status position enables a mediator to use power in a forceful way – such as to make a decision regarding the agreement – using the backdrop of what the court will and will not allow. In doing so, the mediator may dismantle the stories told by either party going through the divorce process, thus negating the power of narrative of the divorcing parties.

Literature Review

A typical response of an outside observer of the mediator-mediated relationship would suggest that mediators have the power to control mediations and shape the outcome through specific strategies (Chowdhury 2012). Yet, when entering the mediation arena, it becomes very difficult to have a clear picture of who has the power to claim a dominant perspective about “the story” of their marriage. Men historically have had more power than women because they generally make more money than women and have careers while women often take on parenting roles, limiting their ability to accumulate material resources (Bollen et al. 2013). Yet, in the marital arena, especially in cases where violence is a concern, the determination of who has the power and at what particular times that they may be able to assert power can be complicated and is influenced by the perspective and skills of mediators. Typically the assumption is that women are the victims and so much of the concern within violent relationships is about their diminished potential to have any confidence to assert their wishes, to have agency

and make decisions that suit their needs. Chowdhury (2012) contends that through social discourses “gender” is created and can “undermine the negotiating capacity of women despite their possession of superior income, education or employment status compared with their male counterparts” (70). In light of this, Chowdhury argues that mediators can play an important role in balancing power in mediation:

that even when considerable gendered power disparity exists in a society, mediators may help to attain fair outcomes for marginalized groups (usually women in family mediation) attending mediation by: (a) challenging dominant social discourses that might undermine the voice of the marginalized group in mediation; (b) conducting mediation under the shadow of law, or by applying gender equalizing legal discourses that are “legally binding” for all parties attending mediation; and (c) using gender equalising religious norms which are “morally binding” on the parties and so could be helpful in upholding the marginalised voice of women in mediation (2012, 70).

Foucault (1980) argues that “...in such a society as ours...there are manifold relations of power which permeate, characterize, and constitute the social body, and the relations of power cannot themselves be established without the production, accumulation, circulation and functioning of discourse” (93). Further Foucault tells us, “Power is neither given or exchanged, nor recovered, but rather exercised, and that only exists in action” (1980, P. 89). Discourse, then, provides a framework for interactions. Discourses for Foucault are “bodies of knowledge that systematically form the objects of which they speak...discourses do not simply describe the social world; they constitute it by bringing certain phenomena into being through the way in which they categorize and make sense of an otherwise meaningless reality” (1980, P. 89). Foucault cautions us to provide a much more complex picture of power as it is not necessarily guaranteed due to one’s status. Instead, people with particular status positions may be able to more easily access power through discourses that position themselves within culturally acceptable

storylines. Therefore, discourse also characterizes people in particular kinds of ways, which creates meaning about these characterizations and provides a framework for conversations, in this case, the discourse provided by the family courts both creates the divorcing parties as well as mediators, and guides their sense making and categorizations. In the mediation domain, a governing discourse is P.E.A.C.E., which serves as a framework for the process of negotiating mediation, as discussed in Chapter Two. Yet the discourse of violence may subvert the P.E.A.C.E. process, or challenge its ability to govern the narratives and actions of the divorcing parties.

Power in Mediation

Scholars from a wide variety of fields have explored family law mediation in relation to power and violence. The preeminent scholar in divorce mediation, John Haynes (1981), was one of the first to explore the dynamic process of mediation. According to Haynes, mediation is a site where intimate power gets played out. In mediation, the mediator is expected, based on her/his professional status, to have the authority or agency to make decisions for the divorcing parties by guiding the conversation in a manner that will enable the case to resolve. Yet, power is not automatically in the hands of the mediator in cases where power and violence are present (Shapira 2009). According to Haynes, mediators need to be attentive to three additional power positions incumbent to abusive relationships that might affect the mediation process: the power to control the income (i.e. one party managed the finances- a potential form of economic abuse), the power to reject the other partner, and the power to resist a settlement (Haynes 1981, P. 49). Haynes (1981) argues that the mediator can play an important role in managing these intimate power relations through equalization in order to “assist the process of negotiations” (P. 62). With

equalization, mediators manage power differentials between the parties by learning and implementing a particular set of carefully crafted interactional skills that begin with observation of the mediated parties. Through observation mediators learn how to define and interpret violence and how to manage reports of violence within the context of the mediation. For example, a party may define victimization within the marriage as a source of disempowerment, but the mediator does not. In mediation, such narratives that frame the stories of violence are constructed, interpreted, and managed.

Shapira (2009) argues mediators have power. There is a hierarchy that might suggest a level of power reflective of how social positions are valued within our society, but what becomes important here is the emphasis on mediator agency and interpretation. Because mediators have the ability to “influence the parties to behave in a way which could advance their common interests,” it becomes important to understand the ways power shows up in mediations (Shapira 2009, P. 538). Further, power can influence others in order to change that person’s behaviors, opinions, goals, needs or values (French and Raven 1959). The bases for this power are: “coercion, reward, legitimacy, referent, expertise, and information” (French and Raven 1959, P. 39). Shapira (2009) found that mediators most often use reward power in psychological compensation through praise or compliments. Unaddressed by Shapira, is the governing discourses of mediation, harkening back to Foucault’s understanding of power deriving from discourse.

These governing discourses- how mediators are to understand and act- are taught to mediators through formalized training processes. The power of the training discourse, which guides and manages mediator interactions (discussed below) has not been considered in relation to mediators’ definition of and ability to exert power and to

manage concerns about violence. However, such discourse can also assert expert power, which is “based on a perception of the power holder as having superior knowledge and experience” (Shapira 2009, P. 545). The trainer, for instance, might be seen as having a high level of expert power in that they are tasked with the role of transmitting information to new mediators about the profession. Once a mediator is successful in becoming certified they may be seen as having their own form of expert power. In mediation, parties may defer to or accept a piece of information based on the mediators’ “expert” status. All of these sources of power in mediation are important and can potentially impact the process, as they are used and managed by mediators in the pursuit of P.E.A.C.E.

Mediators, because of the authority granted to them by the courts, are to be respected – seen as professionals. They use their skills to manage mediations and more often than not –their efforts work. They can use their training, the authority of the court, the P.E.A.C.E. process – not everyone is happy – but most parties do not complain too much – and most relationships get dissolved through mediation. Mediators wield some of their authority because of their *a priori* understanding of the mediation environment and process, which is what Shapira referred to as “expert power” (2009). This understanding is created, in part, through a socialization process whereby they learn how to manage the discourse so that it aligns with the formula the courts deem necessary in order to reach a settlement agreement. Yet, there are special kinds of cases where this environment gets challenged. This is where power is not aligned with status, and where concerns about IPV tax the mediators’ skills. Before turning to discuss how mediators respond to perceived or actual violence in

relationships, it is important to describe the prevalence of IPV as the statistics are quite alarming.

Domestic Violence as a Social Problem

Couples, in general, experience epidemic rates of intimate partner violence (CDC 2014). Intimate partner violence (IPV) is a serious public health problem. According to the Center for Disease Control (2014), “On average, 20 people per minute are victims of physical violence by an intimate partner in the United States,” which equates to over 10 million men and women per year. IPV is said to increase in severity when couples are dissolving their union (A.A.R.D.V.A.R.C. 2011, CDC 2014.). With 40% to 50% of first marriages ending in divorce and higher percentages for second or third marriages (Amato 2010, Demo and Fine 2010), IPV is an important consideration in marital dissolution. IPV results in a number of serious consequences including but not limited to: physical injury, emotional and psychological health issues, and financial disruptions (CDC 2014). As these statistics illustrate, violence is commonplace and may complicate the mediation process so much so that some question if cases with violence should ever be mediated. In light of these horrifying statistics, understanding how IPV is dealt with in family law mediation is important because it furthers our understanding of how courts define power and violence, and hence, how it is managed.

Mediating Cases With IPV as a Concern

There appears to be a growing critique about marital dissolution cases, which involve violence using mediation services. Despite the ambiguity and inconsistency in mediation decisions in cases with IPV, cases with violence are mediated. Research suggests victims are not protected adequately in child custody mediations and the courts fail to protect victims of violence (Johnson, Saccuzzo and Koen 2005). Johnson et al.

(2005) conclude that victims of domestic violence are incredibly disadvantaged in mediation due to mediators' failures to recognize and report domestic violence in 56% of cases and, in 14.7% of cases, the courts did not provide the information due to screening form failings, ultimately arguing that mediation should not be mandated in cases with IPV. Kernic, Monary-Ernsdorff, Koepsell and Holt (2005) found that IPV was not identified in many cases even when there was evidence of IPV. Kernic et al. (2005) argue that in cases mandated to family law mediation little is known about the history of intimate partner violence and even when it is, little consideration in regard to the IPV is given when making custody decisions, suggesting that violence is not screened or considered enough in custody decision. As Rivera, Sullivan and Zeoli suggest, abuse victims experience secondary victimization as well as revictimization by the abuser in mediation (2012). The outcome of this secondary and revictimization is that many victims did not feel protected or safe in the courts and would be less likely to seek help in cases where IPV was an issue (Rivera et al. 2012). IPV creates power imbalances that result in unfair bargaining and cannot be mediated by mediators who are, "untrained and unskilled in assessment of IPV/A," (Beck, Anderson, O'Hara, and Benjamin 2013, P. 745). Beck et al. (2013) contends that the victim cannot negotiate agreements for fear of negative retribution or intimidation from their abuser. Additionally, the abusers' willingness to bargain fairly is unknown. In the context of violent relationships, Kelly (2004) contends that research is scant because there was swift legislation to keep these cases out of mediation in family law cases; however, some are mediated including some with reported violence. Kelly (2004) found that many parties that went through mediation were satisfied with their outcomes, however there were many parties that felt that the mediators were inept, their process was not balanced or fair, and they were

unsatisfied or unhappy with their outcomes. Given the complexity of mediators negotiating dissolutions when violence is involved, the courts have questioned the benefits and drawbacks of mediation under these circumstances. Some jurisdictions find mediation appropriate while others do not. As Steegh, Davis, Frederick (2012) comment,

Intimate partner violence poses a number of complicated challenges for any system of triage (a type of case management), including: (1) questions about the complexity of decision-making about dispute resolution alternatives; (2) the feasibility of quickly and accurately screening for intimate partner violence; (3) the substantive and procedural safeguards necessary to preserve confidentiality, protect litigants' due process rights, and provide accountability; and (4) the question of whether courts or parties are best positioned to make these decisions (P. 955).

As Steegh et al. (2012) explain, there are no concrete and mandatory screenings in every jurisdiction; therefore, the process is variable and whether or not a case will be mediated is often dependent on the individual judge or mediator's decision.

These studies illustrate several concerns researchers have presented regarding mediating cases with IPV. From a lack of identification to secondary victimization, one thing is certain-IPV is a concern that needs special and careful examination prior to being sent to mediation. Cases with IPV are very different kinds of cases that require great skill, where the flow of power is unclear and has the potential to be transitory and explosive. Thus, how mediators are trained to identify and respond to such cases and how they manage the lived experiences of mediating such cases are important to study. Before I detail my findings, I discuss how I studied and analyzed the field of mediation as I seek to understand the ways mediators manage cases with concerns about violence.

Methodology

Using ethnographic techniques of participant observation I completed a forty-hour mediator-training course, observed and mediated mediation sessions, and interviewed thirty family law mediators. In order to gain insight into how mediators are socialized and trained I participated in a Supreme Court certification course and completed all the necessary requirements to become a Florida Family Law Mediator, including observing and co-mediating sessions. I will describe the process in more detail subsequently. I also conducted in-person, semi-structured, audio recorded interviews with thirty family law mediators. For the data collection and analysis I follow grounded theory methods (Charmaz 2006). For the current paper I focus on understanding how power is exercised in mediation under conditions when violence has been present in the relationship or is suspected in the relationship.

Training

I completed the training and certification requirements to obtain Supreme Court Certification for Family Law Mediation. The requirements are: a forty hour training by a certified instructor held over six days, along with a combination of observing of mediations and mediating sessions. The training served three purposes: I learned how mediators are trained, I met potential participants, and I collected data during the training.

Prior to attending the training I contacted the head trainer, David, to gain permission to both participate and observe the training. At the training I was both a participant (answered and asked questions, participated in role plays, etc.), as well as an observer; I took copious field notes on my laptop throughout the training. I wrote notes

as verbatim as possible. At times when I was unable to write notes while at the training, I wrote them as soon as possible following the training.

David introduced me to the other trainees as a researcher, allowing me to recruit from the course participants. I was able to contact trainees both at the training as well as after its completion to request participation in my project. There were twenty-five total trainees that attended the training. I followed up with all of the trainees and recruited five participants for interviews using snowball-sampling techniques (Berg 2009). The trainees were all white with one exception; a black female. Eighteen of the trainees were female and seven male. The ages ranged from approximately twenty-five to over sixty years of age.

Observations and Comediations

As a part of the certification process I was required to perform either observations or comediations, or a combination thereof. Again, I enlisted as a participant observer where I both observed but also participated as a mediator-in-training. I chose to conduct both observations and comediations so I could understand the process more fully. I observed ten sessions and comediated three. I observed with seven different mediators. The mediators had various levels of experience from five to twenty years of experience. The mediators I observed were all white females, with the exception of one black male. I did not choose the mediations, rather I was granted permission to observe by the court mediation program director as well as the parties and their attorneys. All parties present in the mediation had to approve of my presence by signing an informed consent form prior to observation or co-mediation. I audio-recorded three sessions and took field notes during the remaining ten. I personally

transcribed all data. All participants were assigned pseudonyms to ensure confidentiality. Sessions lasted anywhere from thirty minutes to four hours in length.

During the observations and comediations I observed thirteen couples of various races, ethnicities and ages. I did not collect demographic data regarding the parties but made estimates based on my observations regarding physical characteristics of age, race, and gender. Mediated parties are couples (married or not) seeking to either dissolve their union, share parenting time, and/or amend a current parenting plan, time-share arrangement, alimony, and/or child support. Most of the parties are mandated to undergo a mediation session before their case will be seen in front of a family law judge.

Interviews

I interviewed a total of thirty participants. The participants included were all certified Family Law Mediators. The participants were recruited using snowball-sampling techniques (Berg 2009) where I utilized contacts to recruit additional participation. Snowball sampling allows for participant recruitment beyond my own social networks. Additionally, I recruited by contacting mediators who lived in the surrounding geographic counties from the Alternative Dispute Resolution website list of certified mediators. The final sample of thirty participants, contained fourteen male and sixteen female mediators. All but one identified as white. The mediators vary in age from 27 to 77. The mediators' experience in family law mediation ranged from three to 30 years in the field. The participants held different occupations including: Attorney, mediation trainer, court mediation program managers, full-time or part-time family law mediator, mental health professionals, social worker and law enforcement. Some mediated in private capacities, while others mediated at courthouses.

I used a semi-structured interview guide (Appendix I) that I deviated from frequently in order to probe for additional information. Interviews lasted between forty-five minutes to over two hours. All interviews were audio recorded and personally transcribed verbatim using Dragon Naturally speaking and a foot pedal to slow audio. All participants signed informed consent forms prior to interviews. Interviews were conducted in person at a location of their choosing when possible. When in-person interviews were not possible (often due to geographic distance) telephone interviews were conducted.

Analytic Strategies

In order to analyze these claims all fieldwork and data collection was guided by an inductive grounded theory approach (Charmaz 2006). While my study was guided by research questions I allowed the data to determine the significant themes. After collecting data I used initial coding to create “tentative categories” (Charmaz 2006, P. 11). Next, I used more focused coding and reflected on previous codes by creating analytic memos for all the collected data. Finally, I used theoretical coding to further explore the dominant themes emerging from the data and broke them into categories.

Findings

Mediator Training

Mediators are trained to become professionals in the field of family law mediation. They learn important information and skills in the training to help them in the field. The information provided is important to understand because it shapes and guides mediators’ actions when they are processing cases. In the first section, I will explore the ways power is defined and what comes to be characterized as violence within relationships. Next, I discuss the ways mediators are trained to handle complicated

cases where violence is involved. Finally, I offer a discussion of the potential consequences of mishandling violence. All of this information provides the foundation mediators use when in the field.

Power is violence.

It was quite clear from my own professional socialization of becoming a mediator that violence or suspected violence in marital relationships were of great concern for mediators. So much so that feminist scholars pushed the field of family law mediation to require four hours of training focusing on IPV issues (Sacuzzo et al. 2005, Kelly 2004, Kernic et al. 2005). Right from the beginning, power was talked about in terms of domestic violence. Power that threatened to circumvent or complicate the mediation process seemed to be the most important focus for mediation. When violence is not involved and behaviors are characterized by mediators and parties as “power plays,” these “power plays” may be predictable and more manageable for mediators. When there is violence, mediators often do not know the whole history between the separating parties that may include signs of previous violence. Within the training, violence was most often discussed as a concern by mediators when it was physical in nature, both in the past and/or ongoing. So, at face value— mediation appears to be a site where mediators discussed power, most often in the context of violence; indeed, the two terms seemed interrelated, if not, conflated.

In our first day of training, David explains how he assesses IPV in his own mediations. While mediators are taught to expect that most cases proceed through the normal channels, there are some that do not. This is when the mediation becomes problematic for mediators and requires them to utilize a set of skills to move the case along while preventing future violence and the deleterious consequences of past

violence. The well-seasoned instructor who is trained to teach future mediators explains that in his experience there are no clear ways to handle cases with IPV, and mediators must have their “radar out” and rely on their own abilities. He seems to be telling us that we must rely on our senses or training to determine if violence is an issue that needs to be addressed by the mediator. Once the mediator is in the session they are managing these situations independently. The court does not provide a clear protocol for mediators to follow. Despite the requirements in some counties to screen for IPV, it often does not happen. Therefore, David must train mediators how to handle these situations. David explains:

You have to have your radar out. You just have to show there’s an absence of bargaining power. Sometimes you have to go to caucus and say I think you’re rolling over on these issues, is there a reason? Could it be that a victim is wanting to give away everything so they can get out of this violent marriage? Yes?

It’s a difficult situation. You have to pay attention to it. You can ask questions about it. At (name) county they have an intake form; has dv been an issue in your marriage? Does it impact your ability to negotiate? Try to pay attention to it. I know that’s a lousy answer but I don’t have a better one.

I think there are some victims who have the capacity to negotiate. All you can do is feel your way through it.

In this discussion of power there is little mention of anything that may impact the balance of power in the mediation except violence. And these are the key points that he keeps coming back to in the six day training– responding to IPV is an art. Despite all the categories, the courts, the laws, mediators must “feel their way through it.” So, then, the ways mediators manage power in relationships that have been violent or suspected violence becomes highly dependent on the mediator’s own skills. In this discussion during mediator training, prospective mediators realize that in situations with violence it is often unclear and unpredictable how parties will respond to the mediation process.

In his example, David draws extreme spectrums of victims who want to give away everything, to some victims who can negotiate. Differentiating between the two “types” of victims is unclear. No hard and fast rules are offered to deal with these types of cases, other than “pay attention.” This makes me question how easily the P.E.A.C.E. framework (as discussed in chapter two) will work when the relationships are complicated by the presence of IPV. However, mediators know they will be expected to mediate these cases.

David also urges trainees to remember not to stereotype victims or offenders—not necessarily because of the potential harm to them, but because it can harm the mediators’ credibility:

The second thing about this that is lacking is it refers to the batterer as him and the victim as her. We know there are both. We know men can inflict more harm on women as likely as women can inflict harm. As mediators we need to be careful we aren’t biased in looking to see if only the man is violent. What’s the danger if we are only looking at the man? We may misidentify or fail to recognize who the batterer is. It takes away our impartiality. We may lose our impartiality because now we’re taking a side because you are finding one more believable than the other. It is hard to know if there is dv. Early on I thought I would just know. I never had any training about dv as a psychologist. I learned to just ask. I was surprised how many people had been experiencing that.

Further, David insists that it is acceptable to “just ask.” In this way, the mediator does not make assumptions (other than that a victim or offender will be honest in this contested domain). And again, the focus remains on violence when assessing power differentials of the divorcing parties. He begins to complicate the examples by adding gender and the neutrality of the mediator, but no hard and fast rules or protocol are offered to mediators for how to manage these dynamics. Further, in this description David’s use of the term “we” referring to mediators illustrates the impetus on the mediator to uncover violence. The focus on mediators as detectives locates the power to

both identify and manage cases in their hands, even if those hands have an inexact tool for identifying and managing violence.

The lack of detailed training here is interesting, given the literature discussed above about the controversies and research that suggests mediation in cases of IPV may be significantly problematic. Yet, by not providing a set strategy in response to IPV, David is asserting that mediators can mediate relationships where violence has existed, and can do so effectively and fairly despite power differentials that may exist. How, remains unstated, but, mediators have to find some way to figure it out, as we shall see.

These cases are complicated!

Certainly, it is quite advantageous to all parties to recognize cues or signs that might suggest violence, but mediators are at a disadvantage as there can be an array of cues that span the duration of the divorcing parties' relationship. From seasoned mediators to novices, mediating cases when violence is involved can be quite unnerving. These kinds of mediations require careful work to dissolve the marriage as David tells us below on day four of training.

I would feel more comfortable if the victim had an attorney. DV are hard to represent. How do you represent someone who changes their story every day? Sometimes the batterer will try to control their attorney just like they do with their victim. It's going to be a more difficult person to represent.

David alerts the trainees to the idea that victims of IPV may “change their story every day” and therefore they are “hard to represent.” This is a characterization that he shares about those who are in situations when violence has been present in the relationship. He reinforces the idea that mediations are complicated, especially in violent relationships, and that mediators must be careful in managing these interactions, perhaps by taking

cases with IPV only when represented by legal counsel. This kind of recommendation certainly may put many prospective mediators on edge.

In training day four, David offers another example as a helpful aid for prospective mediators to use as a tool to assist them in uncovering violence: the Power and Control Wheel from Duluth. He uses this model in an effort to provide some concrete help for mediators on identifying how violence takes different forms within relationships. According to David, the model is good, but not perfect. The model may not always work. Just as the P.E.A.C.E. framework may not work when situations are complicated, the Duluth model may not work when there is IPV in a relationship:

David: How can you have power and control in a dv situation? Safety. On Pg. 556 is the power and control wheel. The Duluth model. Its good, but it's not great. Probably is the way it's used. Some people teach as if this is what dv is every time. It's not. This is about dv and coercive control. There are some people who are just violent and not coercive. Clearly there is just some violent people. This is one form of dv.

As David understands domestic violence, violence does not have to be coercive. Thus, the emphasis on coercive control within a relationship articulated by the Wheel—which may directly affect his ability to manage the power and negotiations between the divorcing parties- makes the Power and Control Wheel less relevant. And, in these types of relationships, which are just violent and not coercive, the history of violence can be managed during mediation. Despite this limitation, however, David uses the power and control wheel as a way to teach prospective mediators how to recognize violence in *some* relationships. Yet, as he points out, it does not reflect the lived realities of violent relationships that he has mediated.

These are just a few of the ways mediators are socialized to look for or deal with power and IPV in the training. The training dialogue illustrates three important points:

power is only discussed as it relates to IPV, though coercive power is differentiated from IPV in important ways; there are no set protocols for managing the power that may be present in these cases, with mediators encouraged to feel their way; and that mediators will mediate relationships when violence is a concern. Mediators are expected to take the information they gleaned in training and apply it in mediations. It is quite clear during training that to miss important cues that suggest violence can be detrimental to the mediation process and divorcing parties, as we will see in the next section.

Possible consequences of missing important cues.

So far, in mediation training, David has provided prospective mediators with various characterizations of violence, victims, and perpetrators of violence and how he manages those situations and types of people. Despite such descriptive information, we all learn during mediation that it is essentially on us; our “radar must be out” and there are no hard and fast rules on what to do when mediating cases that involve violence. Yet, one thing many of us seem to fear are the consequences of being wrong or misreading cues. If cues are misread, as David tells us, the mediation may be unsuccessful (“unproductive”). Note that for David, an unsuccessful mediation means no settlement, rather than a concern about violence erupting between the divorcing parties during the mediation session. David, a well-seasoned mediator, trusts his abilities to establish rapport, gain information (related to P.E.A.C.E.), and create a settlement. But he also has a responsibility to do so:

My thought is somewhere in the middle. I have a responsibility. If I meet with them separately in the beginning I have mucked up my role as a mediator. I have no rapport with the victim. How would the victim trust me if I met with him first? Trying to collect information early on isn't going to be that productive. On the other hand I need to deal with the issue. A couple hours into the mediation I will have a conversation.

Though David is relatively vague about how to mediate for violent relationships, there are statutes that require screening for IPV prior to mediation. David describes how he screens. David says, “I’m not big on forms. I don’t think you’re going to pick up that many cases. I don’t use it. But we all have our own style of doing it. I think we all need to be careful and ask these questions.”

Here David rejects the use of official forms, trusting instead his own skills to carefully observe the situation and figure out how to proceed. Much of his focus here is on his own power to determine the way the mediation will progress, as if his choices for the mediation (who to meet with first, whether he uses a form, when he interacts with the parties) are sufficient to address preexisting power differentials. That discussion is important; because it empowers those he is training to see themselves as being successful in their new role as mediators. Indeed, David’s discourse is more than encouraging here—he suggests that each trainee can create their own “style” of managing mediations where there is a history of violence. He has only two suggestions: (1) similar to Frank later, to be “careful” in doing so; and (2) to ask questions. This latter suggestion is important, though he trusts himself and his own observational skills to determine violence thereby dismissing the value of the screening tool as a mechanism for identifying violent relationships.

Mediators Define Violence – the Training is Over

David taught us there are no hard and fast rules when dealing with violence and power in mediations, therefore mediators must rely on their own skills to search for clues whether or not there is suspected or actual violence. Mediators are taught to have a kind of characterization of those who have experienced “real” violence, and taught to act in ways where they can still be in the middle, impartially mediating for both parties

while watching for signs of violence. In addition, during training mediators learned that an important form of power in mediations comes from violence in relationships. Mediators were taught ambiguous ways to manage this power; nevertheless, they frequently reported finding themselves in the situation where violence is a concern. In this section, I look at the ways trained mediators discuss violence and power, focusing on their feelings of powerlessness and strategies they use to manage power and violence in their own mediations.

If I don't mediate, someone else will.

There is an overwhelming sense among the mediators that they have no power to decide what cases are appropriate for mediation, so they must take whatever case they are offered or risk losing mediation appointments. In an interview with a director of an alternative dispute resolution center in a large urban circuit, Cathy describes how she mediates cases with IPV. She explains that she must mediate the case. She seems to see no other alternative:

C: We don't deal with domestic violence here. We don't talk about domestic violence. They might bring it up, we never do. They were court ordered here, by a judge, knowing the domestic violence could be there. The injunction might be gone now, I don't know. They were court ordered here, our job is to mediate.

I: So you think if the judge is court ordered it to be here...

C: We don't think, we know the judge has court ordered here, he knows what's going on. He sent them here for a reason. Sometimes those are the cases that might have security. Sometimes not.

Cathy indirectly discusses power as it relates to IPV in this description. She acknowledges there could be “a one-sided situation” when IPV has occurred in a relationship, but we see no other discussion of power differentials between the mediated parties, nor any strategies she might invoke to manage such power imbued in violent relationships. Cathy also refers to the power of the courts to place the parties in

mediation, yet she does not comment on the role that she plays in her ability to manage the mediation. Cathy describes herself as a mediator as both powerful and powerless in this exchange. On the one hand, she acknowledges her ability to make decisions about the “protection” of the parties through her control over their location. On the other, her emphasis on the court’s power to order mediation assumes she cannot refuse, as “our job is to mediate.” To do otherwise might risk her job.

In an interview with Penny, she discusses her use of a screening form for IPV. The screening form is one way that mediators can determine if power imbalances are something they should be addressing in mediation. Penny tells me:

P: Yep. And well frankly if you’re a court mediator, and I was one of those mediators that did screen, and I remember when the Supreme Court dispute resolution center made a form for screening (IPV), so were supposed to screen right? The DRC made the form. So I would bring my form to court contracted mediation and say to the staff please have parties fill this out... “What’s this?” Supreme Court screening form. “We don’t have this here.” I have to be bound by my ethics and the Supreme Court of Florida says I have to have this filled out. I would appreciate if you could just pass it on.

I: so you even got pushback from something that was approved by the Supreme Court? It was supposed to be used?

P: yeah and that was my experience in every courthouse in the tri-county area that I’m on. The consequences was that I stopped getting assigned. Because the court... When it was clear that... Sometimes the judge is ordering mediation and there is an injunction in place. So look, I want my \$150. But they’re court ordered so if I say that there’s an injunction I can’t mediate...they will just go to the next mediator on the list. So, I show up and I say, “You filled out this Florida Supreme Court form, you advised me there’s an injunction, do you feel you can mediate?” So, usually they both say yes because they’re scared.

In this excerpt there are, again, multiple ways power is exercised. First, the mediator, drawing from the institutional power of the Supreme Court as well as her own agency, attempts to use the screening form to identify whether there has been IPV or not so as to further her ability to perform (or to reject) the mediation. She is denied this power by

the courthouse mediation center. She discusses her choice to use a screening form as a liability to her career as a mediator. The move by the center to stop assigning her cases when she attempts to screen for IPV is an exercise in power that simultaneously disempowers the mediator as well as the divorcing parties. In this case, it is the authority of the center to assign cases that constrains the actions of the mediator to fulfill what she saw as her legal responsibility. The mediator attempts to exert her power to screen, and is denied her desire to pursue this protocol by the mediation center. The mediation center is also undermining the institutional power of the Supreme Court by failing to screen for IPV as suggested statutorily. Yet there is even more at risk here, as her last comment implies. The desire of divorcing parties to complete the process pushes them, also, to claim that there are no concerns about proceeding with mediation. In Penny's perspective, it is their fear of a failed mediation that drives the divorcing parties' willingness to cooperate despite histories of abuse, not their fear of mediation, nor their fear of the violence within the relationship. Because the family court system precludes divorce in certain cases without mediation, victims in violent relationships may find themselves made vulnerable by a system that deigned to acknowledge – or even proactively seek to not acknowledge, as Penny's story articulates- their previous victimization. The ways mediators seek information from divorcing parties to move the mediation along demonstrate the internalization of the training they received.

Searching For Clues

Given scant specific information on how to deal with domestic violence or suspected domestic violence, mediators are left to their own skills. They cannot rely solely on their positions as professionals because when emotions are heated it is hard to fall back on their status. The best mediators can do is try to avoid problems and move

the case forward. Through interviews with mediators and my own observations, I witnessed how mediators attempted to manage divorcing parties when they lacked clear guidelines and had to make up their own.

Within the limited choices available about mediating cases that involve violence, mediators find a few places to exercise their agency. They can caucus the parties, screen for violence, and search for important clues. None of this is an exact science, but in cases that involve violence, it is important to notice the kinds of techniques mediators use to try to keep the divorce proceedings moving forward. In a mediation where Mary is the mediator and Chad and Heather are fighting over custody of their daughter, the parties are not in the same room because he lives in another state. Chad is on the telephone, his attorney is physically present and Heather is in another room. There is no challenge, by Mary, to the way Chad characterizes violence- as not serious- so Mary continues to move the case forward. When Mary, the mediator, asks about an incident of domestic violence, Chad says:

Chad: yes the next day she called...I should have never hit her. No absolutely not, I didn't break her jaw or anything it was just a pop in the jaw.

Mary: Let's move on to another issue. I can't advise as an attorney but I advised this to Heather too. Something has to give. If you go to the court someone is going to be very unhappy. The court's not going to work out something very advantageous for both. What happens if you are the one with her for going to school have you looked at a schedule what it will look like? Have you talked with an attorney about what the schedule will look like?

In this mediation we see a sort of characterization of violence. Not all violence is the same and mediators differentiate behaviors and cast only certain stories as serious and violent. Chad confessed to violence, and Mary seemed to interpret it minimally, and certainly sees it as not completely disruptive to the mediation process. We can see Mary

relying on her skills to search for clues in order to determine whether or not the violence arises to such a level that a 50/50 parenting plan should be altered. We can also see Mary's efforts to move the case along, reflective of her responsibility to achieve an agreement, if at all possible. First, Mary utilizes her skills to control the discourse by moving the conversation from violence to a parenting schedule. This enables Mary to both continue to progress through the P.E.A.C.E. protocol, as well as dismantle the power of the abuser to minimize his actions. Second, Mary uses her skills to call upon the court's authority to encourage the parties to seek agreement in mediation, rather than going to court where "someone is going to be very unhappy." In her final comments Mary is situating herself in the middle, for both of them, regardless of the history of abuse, chastising both of them for not "giving"- not negotiating in the mediation. Discursively, Mary uses the authority embodied by the process of mediation contained within the court order to manage the discussion of violence. This interaction illustrates the complicated nature of the interactions in mediation and the often-intersecting ways power is exercised. Chad was on the phone and not present which distances the possibility of physical violence.

While Chad admitted to violence and minimized it, a characterization that Mary accepts, sometimes mediators do detective work even when there is an injunction to determine whether this injunction is valid. An injunction for protection is a court order, which means a judge, reviewed allegations of violence and agreed the case warrants protections for the victim. Injunctions vary widely in the protections issues but most often include the offender being restricted access to communication and physical distance to the victim. Joni reveals the way that she searches for clues to move an agreement in a new direction. Joni warns me prior to the session that there are concerns

because there is a permanent injunction in place for an IPV case that occurred. In my fieldnotes I describe the way Joni discusses the case:

She was able to look up the injunction and see what the domestic was about. Joni told me that he beat [the wife] while she was pregnant with the other man's child. And was found to have done that so there was a permanent injunction against him. The mediator did not seem to believe that there was domestic violence because she said that the wife had brought one case and it was dismissed. And then the second injunction she did not show up for. And then she said that they were the same exact claims that she filed for both times.

Joni demonstrates the kind of work that mediators often do when violence seems to be involved. Notice how she highlights the inconsistencies in this woman's behaviors, which suggest particular kinds of information to Joni that moves her to question claims about domestic violence in their relationship and reflects the training discourse about victims who "change their story." The inconsistencies minimize Joni's concerns about domestic violence, because the mediator measures this woman's behavior against some kind of a norm of what to expect for women who are abused. Beliefs regarding victim behavior are things like shaking in their presence or being unable to communicate because the fear is so great. Based on what Joni has learned as a mediator through her training and experience the victim does not fit the criteria to receive additional consideration regarding shared parenting. Ultimately, however, characterizations are guesswork on the part of the mediators. While they know they are making assessments about whether or not violence is "really violence" and characterizations about victims and perpetrators of violence, they all know that they could be wrong.

Mediator fears. What if I misread the cues?

In training mediators learn that they will mediate cases with IPV. They learn that there are certain skills they need to be able to manage these cases safely. Mediators discussed their willingness to mediate these cases as stemming from their fear to lose their job, and also as trust in their own skills to successfully manage the cases. The ambiguous ways mediators are trained to deal with violence, the fact that they must in order to maintain their employment and creates anxiety in mediators. Frank a former law enforcement officer, echoes some of Penny's arguments, earlier. In an interview he discusses how he screens for IPV:

F: a lot of times there may or may not be a restraining order involved. I don't, you know, as far as for assessing violence of those kinds of things often... you know, sometimes I might be aware that there is an injunction in place. If there is one in place, the first question is if you let them stay in the same room or not. Are they comfortable, you know? You definitely need to assess and that-if they want to stay separate-especially if they have an injunction, but by all means you honor that. I've had mediations where the bailiff had to be there because there is a restraining order. So sometimes you have a law enforcement officer in the room with you, but it's the problem I have with the domestic violence is injunctions. And I do enough work in that area to understand what goes on with them. There may be a third or 20% that are really cases that, yes this injunction needs to be there, and people need to be paying attention.

In the first part of the description Frank is using his experience to make distinctions – and times that they need outside forces to keep everyone safe. This reflects the “skills” talk from training. These kinds of examples are what one might use to measure behavior against as well as recognize that some cases are very serious, and could erupt in violence. They acknowledge it could be bad, which keeps them on their toes, looking for signs. This is not necessarily seen as the norm-as the typical mediation- but there are no hard and fast rules to deal with these situations. His comments seem to have some fear and anxiety about dealing with these cases, though much of this comment also reflects a

minimization of violence and the role of injunctions as an identifying marker of violence in relationship. He goes on to describe what he sees as a more relevant concern:

A lot of them are fights where they may push or shove each other but but a lot of them are the cases where there is some violence but not an overly pressing concern about welfare. And then, you get a bunch of them that are just fights that were exaggerated or even, you know, problem injunctions that shouldn't have been issued in the first place! So if, you know, that that stuff's present then you need to be careful, especially if you sense...and you can tell this, is a classic domestic violence injunction where there's a pattern of control, there's a pattern of intimidation by one party. Where, you know, all they have to do is give a look or where he is intimidating the woman with a look she knows. That can cause a problem. You need to be really careful about. Is this person unable to make reasonable decisions?

He is explaining the kinds of skills necessary for mediators – to look for a look, to see if someone has the ability to control their ex partner, to look for signs of intimidation however so small – be alert, a keen observer of interactional patterns, yet his fears and anxieties are obvious. Also in this description you can sense the trepidation Frank has when navigating these cases. He describes being unsure how to know what type of IPV he is dealing with and then how to address these complicated issues raises other concerns for Frank. He goes on to explain how he feels his training prepared him to deal with the IPV, “And some other environment... so, you know, it's hard to say and of course are you able and capable of identifying? We're often unable to do that. We don't have the skills to be able to identify if it's dangerous or not.” Frank tells us one way that he can use his skills as the mediator, is to screen. And, because he recognizes power within some violent relationships shifts the ability of mediators to ensure a fair proceeding, he claims that knowing about histories of violence can help the mediator be “careful.” The screening tool, then, grants Frank the power to determine how to proceed

with the mediation. In this way, the inability to screen will disempower Frank, and disempower the parties through silence about IPV.

But Frank also complexes the need for a screening tool, by stating that sometimes injunctions- which show up on the screening tool- are inappropriate. In making these comments Frank is not just questioning the validity of victimization claims or court's responses to IPV, Frank is also claiming his ability to perform mediations for couples whose violence is not the "classic" form. Thus, a screening tool would do little for Frank, as he expresses willingness to ignore official designations of violence where he believes such designations are not warranted. At the same time, Frank directly tells us that sometimes mediators do not have the "skills to be able to identify if it's dangerous or not." So, while he believes that some situations necessitate additional security and perhaps a rejection of mediation, he notes that he may not know which cases fit into which category. Thus, screening for documented histories of IPV is both negated and reified as a legitimate strategy for mediators.

Cathy describes her fears related to mediating cases with IPV:

I: So if there's an injunction in a file and you see that there's been, maybe a prosecution even for a domestic violence charge does that change how you would do the mediation at all? Or how you would act in the room?

C: You might think that this could be a one-sided situation with whoever the abuser was, as the male or the female, so maybe you would think like a protection mode, in a way, maybe going in... of course, never letting the other person know that, and as protection mode not to say what her feelings are and what she should get. The protection mode would be: should they be together? Should we separate them? Can I let them be in here for 20 minutes? That is where the protection mode comes from for me.

The ways mediators discuss power and violence reflect the training discourse. The discourse provided in training is guiding mediators' discussions about power and violence. The discourse of the mediators is centered on a discussion of how they can use

their own agency to manage power and violence in mediations. The mediators do not question or critique the larger court system and judges that sent the cases to mediation in the first place. David, in training, focused on the ability and necessity of mediators to manage the cases they are given. David's discourse did not open up the space for critique of the larger systems and mediators" discourses followed suit. Mediators seem to follow this discourse and place the impetus for managing power and violence on themselves, often finding they are denied that right in action.

In an interview Olivia tells me about a mediation where there was an injunction for protection in place (a judge determined there was enough violence to protect the victim) and she knew this in advance, so she had them caucus from the beginning:

O: ...I learned the hard way that a mediator can be used as a pawn by both parties. And in this particular case it was the, the domestic violence perpetrator who used me! And the request elicited an instant, response and she ran out. And it was over a couch! Little did I know that the couch...he wanted, was her mother's last gift to her several months prior. And he was using that to push her buttons.... (In a shocked voice) And using me! And she was so upset she left the courthouse and I called her on her cell phone and got her to pull over because she was crying and upset.

The narrative Olivia describes illustrates the complicated ways that power can show up in mediation. Olivia perceives she is used "as a pawn" in his use of power to frighten or upset the victim. In this interaction power is operating in ways that were unexpected, for Olivia, resulting in the disempowering of the victim. The victim actually fled the mediation and was unable to resolve her dissolution. While Olivia is concerned about the victim in her narrative, she also expresses strong emotions about her experience in this situation. In doing so, she does not claim responsibility for having revictimized the woman; instead, she describes herself as an unwitting participant in that revictimization. Because Olivia is focused on her own role in searching for cues

about power here, she fails to critique the organizational structure that led these parties to mediation in the first place which facilitated the woman's revictimization and her own experience of power manipulation. Instead, the mediator defers responsibility for the woman's emotional duress onto the abusive party, and uses this experience as a teachable moment to remind herself that it is within her ability to manage power differentials arising from IPV, without recognizing the role of the court order in initiating the abusive interaction.

Discussion

Through ethnographic methods I discovered interesting and surprising dimensions of power reflective of Foucault's argument that power is discursively created and maintained (1980). In training, discussions of power emphasized the variability that mediators could encounter in any given mediation. The training provided mediators with an understanding of how power may impact a mediation process. However, the discussion tended to conflate power and violence as one and the same. This focus on the role of mediators in using their own skills to search for clues while not calling awareness to other forms of power left mediators confused and fearful they would misread cues. However, the fear to lose cases or their position as a mediator seemed to override the fear of misreading cues, forcing mediators to take cases and do the best they can.

The training discourse conflated violence with power and failed to outline specific ways mediators could manage power. The ambiguity creates a space where mediators may not have the tools to recognize the multiple dimensions of power or violence that can impact mediation. The discussion put much of the onus for managing violence in the hands of the mediator while failing to acknowledge the role the courts and judges play in these interactions. By focusing on individual mediator's agency as a way to

manage power, the responsibility for balancing power creates a space where mediators may be less likely to question the power of the court to put cases in mediation in the first place. David, the trainer, carefully crafted the discourse to focus on the mediator's role in managing power, thereby not opening up the court to critique. At times the mediator employed the previously discussed (chapter two) narrative of P.E.A.C.E. to manage the parties discourse. The application of this type of control often seemed retributive and served to silence parties, thereby disempowering them. When mediators silence parties the process becomes a way to maintain the court's power by managing the mediator's authority as was shown in the quote with Shyah and Charles.

In the case of intimate partner violence the courts reinforce a system that fails to screen, and sanctions mediators that do screen. The silencing of voices where violence is a concern serves to perpetuate and reinforce a hegemonic process that disempowers and oppresses victims and may, in fact, empower offenders. Through construction of power as only including extreme forms of violence there are many aspects of parties' relationships that go unchecked.

While mediation, as a process, may be the best way for these parties' to dissolve their union, many mediators do not screen for domestic violence, leaving victims in potentially unsafe conditions while making decisions that are important in their lives. In the cases I observed, there were inconsistent screening processes performed by mediators. Of the three courthouses I observed, all had cases set for mediation where domestic violence was a concern. Each mediator handled the information in different ways in order to assist parties to try to dissolve their unions. There were several cases where mediators were explicitly aware of violence prior to mediation, yet parties were asked to sit in the same room together.

Based on my observations of mediation training and mediator sessions an important consideration for family law mediation centers concerns the need for more consistent protocol mandated by the state in cases with violence. Particularly, protocol for screening should be more consistently implemented. Once the process is normalized it will seem less retributive and both mediators and parties can be less fearful to discuss violence. By establishing a routine protocol for dealing with divorce and checking consistently for violence, mediators will not fear that they will be excluded from cases. With a system in place that mandates each case be screened, mediators will know prior to mediation sessions to be alert and work to better protect the divorcing parties, and will perhaps engage in less minimization to justify their mediations.

When discourse is unclear it leaves mediators scratching their heads how to manage cases where violence is a concern. The ambiguity can have serious consequences as described by mediators. Training sessions should seek additional information about specific cases where violence was a concern and dealt with or was problematic in order to prepare mediators for in the field action. Additional role-plays with complicated issues that may stem from violence and the power imbalances that occur in these relationships may bolster both mediators' confidence and abilities to manage these cases effectively.

References

- Abuse, Rape, and Domestic Violence Aid and Resource Collection (A.A.R.D.V.A.R.C) (2011). "Danger! Separation Violence. Retrieved on April 3, 2015 (HYPERLINK "<http://www.aardvarc.org/dv/sepviolence.shtml>" <http://www.aardvarc.org/dv/sepviolence.shtml>).
- Amato, P. R. 2010. Review of "The marriage-go-round: The State of Marriage and the Family in America Today." *Journal of Marriage and Family*. 72:1455–1457.
- Beck, Connie J.A., Anderson, Edward, R., O'Hara, Karey, L., and G. Andrew H. Benjamin. 2013. "Patterns of Intimate Partner Violence in Large, Epidemiological Study of Divorcing Couples" *Journal of Family Psychology* 27(5): 743-753.
- Berg, Bruce L. 2009. *Qualitative Research Methods: for the Social Sciences*. 7ed. NY: Allyn and Bacon.
- Bollen, Allen N., Alain-Laurent Verbeke and Martin C. Euwema. 2013. "Money or Children? Power sources in divorce mediation" *Journal of Family Studies* 19(2):159-173.
- Center for Disease Control and Prevention (CDC). 2014. "The National Intimate Partner and Sexual Violence Survey" Retrieved April 3, 2015 (HYPERLINK "<http://www.cdc.gov/violenceprevention/nisvs/>" <http://www.cdc.gov/violenceprevention/nisvs/>).
- Charmaz, Kathy. 2006. *Constructing Grounded Theory: A Practical Guide Through Qualitative Analysis*. Los Angeles, CA: Sage Publications.
- Chowdhury, Jamila, A. 2012. *Gender Power and Mediation: Evaluative Mediation to Challenge the Power of Social Discourses*. Newcastle upon Tyne, UK: Cambridge Scholars Publishing.
- Collins, Patricia Hill. 2009. *Black Feminist Thought* NY: Routledge.
- Foucault. 1972. *The Archeology of Knowledge*. London: Tavistock.
- Foucault. 1980. *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*. NY: Pantheon.
- French, John R.P., Jr. and Bertram Raven. 1959. "The Bases of Social Power." Pp. 259-69 in *Studies in Social Power*, edited by Dorwin Cartwright. Oxford, England: University of Michigan Press.
- Haynes, John, M. 1981. *Divorce Mediation*. NY: Springer Publishing Company, Inc.

- Johnson, Nancy E., Saccuzzo, Dennis, P. and Wendy J. Koen. 2005. "Custody Mediation in Cases of Domestic Violence: Empirical Evidence of Failure to Protect" *Violence Against Women* 11:1022-1053.
- Kelly, Joan B. 2004. "Family Mediation Research: Is There Empirical Support for the Field" *Conflict Resolution Quarterly* 22(1-2): Pp. 3-35.
- Kernic, Mary A., Monary-Ernsdorff, Daphne J., Koepsell, Jennifer K. and Victoria L. Holt. 2005. "Children in the Crossfire: Child Custody Determinations Among Couples with a History of Intimate Partner Violence" *Violence Against Women* 11:991-1021.
- McManus, Michael and Brianna Silverstein. 2011. "Brief History of Alternative Dispute Resolution in the United States" *Cadmus* 1(3): 100-5.
- Reed, Isaac, Ariail. 2013. "Power: Relational, Discursive, and Performative Dimensions" *Sociological Theory* 31(3): 193-218.
- Ritzer, George. 2008. *Modern Sociological Thought*. NY: McGraw Hill.
- Rivera, Echo A., Sullivan, Cris M. and April M. Zeoli. 2012. "Secondary Victimization of Abused Mothers by Family Court Mediators" *Feminist Criminology* 7(3):234-252.
- Shapira, Omer. 2009. "Exploring the Concept of Power in Mediation: Mediators' Sources of Power and Influence Tactics" *Ohio State Journal on Dispute Resolution* 24(3):535-69.
- Steeh, Nancy Ver, Davis, Gabrielle, and Loretta Frederick. 2012. "Look Before you Leap: Court System Triage of Family Law Cases Involving Intimate Partner Violence" *Marquette Law Review* 95: 955-92.
- West, C. and Zimmerman, D. H. 1987. "Doing gender" *Gender and Society* (1):125-151.

CHAPTER FOUR-THE MARRIAGE MYTH: AN ANALYTIC AUTOETHNOGRAPHY OF FAMILY LAW MEDIATION

Prologue

First comes love,

Then comes marriage,

Then comes the baby in the baby carriage.

The song echoes through my head as I meet a friend for dinner, whose new partner asks with wide, expecting eyes, “Are you married?” While this may seem like an innocent question, it is loaded. As I search for the appropriate way to answer the question I’ve heard oh so many times before, I work to fight back the tears, anger, disgust and anguish that this question brings. The question always makes me wonder, “What happened to me? Why am I not married, with at least one baby by now?” I am thirty-three and not married. At times like these, I feel like a failure. My feelings of inadequacy are nourished as their response to my “No” is met with pity and sadness as she replies, “Oh, don’t worry you will someday!” As if this is the most important thing a person, especially a woman, can and will do in their lives. I usually answer in a somber tone to ensure the person asking the intruding question know that I realize I should be married but I am not, so, please, stop the interrogation!

That night I went home and thought about marriage, love and family. I am struggling to deal with the ever-present forces that seek a state-sanctioned union between people: pop culture, friends, family, people you just meet, the list goes on and on. I struggle with the internal battles where I tell myself, “Marriage is a tool to provide the state money, a capitalist lie! And, then as if in the same breath, I think “I

cannot wait for the day I get to be a wife! No more, girlfriend this and boyfriend that, but legitimated in the eyes of everyone!”

Now, with several days and many hours of mediator training behind me and as I am poised to embark on an extensive study of mediators and the mediated, I give pause to reflect on my confused and contradictory feelings about marriage. How have my experiences exploring the world of divorce mediation affected my understandings of marriage?

Methodology

The data for this chapter comes out of a larger ethnographic project where I was a participant observer in the field of family law mediation. I engaged in Supreme Court training to become a family law mediator, interviewed mediators and observed and comediated in actual mediation sessions. The larger ethnographic project allowed me to understand the process of becoming a mediator and working to assist people in dissolving their unions. The intense nature of ethnography means that inevitably my own life was altered by the fieldwork. I have never been married, or divorced. So, when I was presented with a project idea that involved delving deeply into the world of marriage and divorce I jumped at the opportunity. In fact, I had never heard of family law mediation. I never could have known, at that early stage, the personal consequences of my decision. Through the years I spent in the field, I faced the institutions of marriage and divorce in ways I never expected. In this chapter, I explore and describe the complex and ever-changing perceptions of relationships and marriage as they play out within my gendered and classed life. Growing up as a white heterosexual female, in a working class family in a small rural city, I experienced a certain lifestyle that people in other social locations might not have experienced. For example, most of my life my

parents fought and bickered. Money was a central concern for them, as we never had enough. They often talked about the divorce they wanted, but could not afford. It was only many years later, the children nearly grown, that my parents could afford to separate. It is with these experiences that I am now, after years of hard work, entering a hopeful new chapter of my life where money may not weigh so heavily on my mind and my expectations may shift. I share this background to help you, the reader, to understand my social location as it may impact my own visions of my future, including my expectations for marriage and a wedding. Yet, the memories of my parents' failed marriage follow me as I enter mediation training. I explore these identities in relation to the structure of marriage, the realities of marriage, and ultimately the myths that serve to perpetuate the marital institution. Using analytic autoethnographic methods I discover what happens before mediation; how people's hopes and dreams are crafted and constructed through popular culture, and interactions with others. This heteronormatively constructs marriage, resulting in a culture where marriage (and divorce) is expected, yet when we enter the union little discussion of the possible outcome, divorce, is ever mentioned. In this chapter, I reflect on how my field work revealed the making of couples, through marriage, and the perpetual myths about marital bliss that move some people down the aisle, thereby maintaining the social institution of marriage.

While there might be some controversy in the literature about what constitutes an autoethnography, the focus of my work is not designed to enter into this debate. My work is focused on locating the personal experience of relationships in a world that holds marriage as an important social institution. Anderson (2006) describes five components necessary to make an autoethnography analytic: complete member

research status, analytic reflexivity, narrative visibility of the researchers self, dialogue with informants beyond the self and, commitment to theoretical analysis. I will use my own experiences to remain both a “highly visible social actor within the written text (Anderson 2006, P. 384),” and “discuss changes in (my) beliefs and relationships over the course of fieldwork (P. 384),” in order to “inform and change social knowledge,” (Davies 1999, P. 184). Using analytic autoethnographic methods allows me to offer a perspective about marriage and weddings that reflects a culture where expectations guide behavior. I will draw from my field notes throughout my project in order to reflect on the challenges, revelations, and changes I experienced while I went through training to become a mediator and conducting fieldwork for the larger project, highlighting the theoretical implications the analysis carries. The tools provided by analytic autoethnographic methods allows me to see often hidden components of social life and how they impact beliefs, choices and lifestyles. Through my situated biography, I experience mediation as a personal exploration of what marriage, weddings, and family mean to me and how these notions are forever altered as a result.

In order to combat the “crisis in representation” (Clifford and Marcus 1986) where ethnographers remain invisible in texts, I openly discuss my “changes in beliefs and relationships over the course of fieldwork,” as a person who is, “grappling with issues relevant to membership and participation in fluid rather than static social worlds,” (Anderson 2006, P. 384). Throughout the text, I will discuss the moments where my personal beliefs were challenged and ultimately shifted as a result of my fieldwork. The goal of analytic autoethnography is to use oneself to represent others. Some of the very personal narratives work to illuminate the seemingly rigid boundaries we have that are often leveled when faced with new information or experiences. In this

case, my initial firm belief in the marital institution changed as I progressed in the mediator-training program and mediation research, as I began to realize that much of these beliefs are rooted in myths. By traveling through my own complicated vision of marriage as an educated woman, feminist, and sociologist, it is my hope that we begin to unravel the pervasive and often subtle tales told about marriage using the tools provided by autoethnography. A more “complicated” vision of marriage that frames family as an activity that requires work can create a more diverse and representative picture of marriage while troubling the social processes of marriage, relationships, and family in order to “develop and refine generalized theoretical understandings” (Anderson 2006, P. 385) of these social processes.

My personal history and biography as a white, heterosexual, upwardly mobile female is experienced in a world where expectations are to find love, marriage and a baby in a baby carriage. In order to remain analytically reflexive, I pay attention to and have, “awareness of the reciprocal influence between ethnographers (myself) and informants” through “self-conscious introspection guided by a desire to better understand both my) self and others through examination of one’s actions and perceptions in reference to and in dialogue with others” (Anderson 2006, P. 382). These moments happened on my walk to my car, in the car ride home, in my conversations with friends and family, and in my analytic memos after long days in the field. I actively reflected on my own interpretations and understandings in the mediations and trainings in order to make myself a “part of the story” (Atkison, Coffey and Delamont 2003, P. 62). As a member of the social group in which I studied, I am able to have “more of a stake in the beliefs, values, and actions of other setting members” (Anderson 2006, P. 383). I became a member through immersion in the field. I completed the 40 hour

training as well as participating in mediations and comediations, while interviewing mediators. This immersion allowed me to understand what a mediator is, and what they do. Through immersion in the field of mediation it enabled me to understand the social structure of marriage from the professional mediators' point of view. While I underwent training to become a mediator my sociological training provided me with analytic tools that enabled me to unravel what is often not revealed in this setting.

I kept field notes about my own feelings and experiences while in the field, as well as interviewed 30 mediators and observed seven others. This allowed me to understand their perspective as well as keep track of my own experiences as they shifted and morphed while in the field. These experiences allowed me to critique a larger social structure, marriage, and the ways the process is guided by cultural discourses surrounding romantic love. In my interviews and interactions with mediators rarely, if ever, did I uncover how the process of becoming a mediator impacted their understandings of marriage, love, and family. It is through these conversations and personal reflections and analysis that I am able to offer "value-added quality of not only truthfully rendering the social world under investigation, but also transcending that world through broader generalization" (Anderson 2006, P. 388). Throughout my fieldwork, there were moments that I was struck with inner dilemmas and moral questions that caused me to question the very social processes that guide my behaviors in many ways.

As a member of an "amorphous social world," (Anderson 2006, P. 179), of heterosexual women who are expected and encouraged to find a partner and marry to become a whole and normal woman, my experiences offer a deeper understanding of how the process of coupling affects women. As a researcher, I am both a participant and

an observer. Through my reflections on my fieldwork I pay particular attention to the reciprocal influence between myself, my informants and my setting in order to allow for me to seek understanding, both of myself and others, through introspection as I engage in and reflect on dialogue with others (Schwalbe 1996, P. 58). Through multiple avenues I engage with and seek understanding of that have crafted my own ideas about marriage and divorce. I also explore the ways my participants experience and construct the concepts of marriage, love, and divorce. This reciprocal understanding makes me both a part of the story as well as a part of the representational process (Atkinson, Coffey and Delamont 2003, P. 62). As an “outsider-within” I am both a part of the category “heterosexual woman” and becoming a mediator (within) but am a researcher analyzing the discourses and institutions in which we operate (outsider) (Collins 1986). As research is “a process that occurs through the medium of a person—the researcher is always and inevitably in the research. This exists whether openly stated or not” (Stanley and Wise 1993, P. 175). Therefore, explicitly analyzing my own experiences in the field as a heterosexual woman will highlight the ways in which marriage and divorce are heteronormatively gendered cultural institutions that impact beliefs, behaviors and expectations.

My personal narratives of training to become a family law mediator, focused around expectations of marriage, are used to “find something out...to learn something” through using my own voice as a “situated speaker” where I experience “struggles for identity” (Richardson 1994, P. 516-8). I am a member of the research group and setting, am visible in the texts, and am committed to developing theoretical understandings of the social phenomena (Anderson 2006) of gender, class, sexuality and marriage. I examine how my own experiences becoming trained as a family law mediator are

situated in a society that embraces marriage as a social institution where (my) gender, sexuality, race, and class are done (West and Zimmerman 1987).

The Meanings Of Marriage

There is a vested interest in the marriage industry perpetuating and maintaining the heteronormative construction of marriage as important and central to one's life. How the courts, popular culture, and individuals have constructed marriage and its utility has changed through time. Marriage was once a near necessity for women, as they could not own property or work outside the home. However, today's working women do not *need* to marry, so the socially constructed justifications for marriage have shifted to accommodate the changing roles of men and women, even within the heteronormative structures. This is where I find myself, trapped in a world where expectations from an earlier time continue to permeate my life. From the notion that women should marry as a "public good intended for bearing and nurturing virtuous citizens" to one of "love and companionship" to "a mechanism for development of personal happiness and fulfillment" (Coltrane and Adams 2008, P. 73) has served to accommodate the changing family forms throughout time for white women. I find in my own life that I have had relationships where love, companionship, and happiness were found, yet they failed to last. This leaves me wondering whether I am striving for the right thing. I do not need to marry but have always felt the desire to do so. I cannot explain the pressure that I feel because it comes from so many sources. The television programs I watch, my family, my friends, all contribute to the ever-present pressure to find a mate and couple up. The notion that marriage is necessary to "personal happiness and fulfillment" seems to be the central concern of many couples today. And, despite the evidence that marriage often ends in divorce while being costly and emotionally exhausting, couples continue to

en masse walk down the aisle and push their friends and family members down the aisle with them. I hope to be one of them.

Marriage is an expected rite of passage for people to reach adulthood, which is why its definitions have been so contentious. When people marry there are financial benefits. These benefits may influence a couple's decision to wed. There are tax incentives: filing of joint tax returns and creating a "family partnership" under federal tax laws (Nolo 2015). Once married you can inherit your spouse's estate, receive an exemption from estate and gift taxes, create life estate trusts, or become a conservator on your spouse's accounts (Nolo 2015). Married couples can enjoy government benefits including receiving social security, Medicare and disability benefits of their spouse. A spouse can receive veterans and military benefits and public assistance benefits (Nolo 2015). Additionally, there are employment, medical, death, family, housing, consumer and other legal benefits and protections that are awarded to couples that marry (Nolo 2015). With these obvious legal advantages to marriage it is easy to see why some people would choose to marry and how their decision may not be based only on emotional attachment. However, emotions do play a large role in the continuation of marriage as a sacred social institution and one that couples should strive to obtain. In my own life these considerations are important.

Marriage is a stage where gendered expectations often play out. In order to be considered a "success" one must marry. Though this is not codified into law, the fact that 90% of people will marry in their lives illustrates how marriage is continually established as the norm (Goldstein and Kenney 2001). Marriage marks an important step in many people's lives. There are often specific gendered expectations for men and women in heterosexual relationships, particularly when couples marry. Though gender

norms have changed, there continues to be fairly traditional gender roles within households (Ridgeway 2011, 2009, Johnson 2005). Gender operates in multiple dimensions (Risman 2004, Martin 2004). Gender is “done” in ways where people act according to normative expectations for one’s sex category (West and Zimmerman 1987). Gendered behaviors become patterned and repeated so often that they become believable and “natural” (Fairchild 2014). In the current project the bride has become so ubiquitous with woman that it is assumed to be the “natural” role for a woman to take. The groom has become the “natural” role for men. I, like many women and men, have been socialized to accept marriage as the norm and strive for this future. As a sociologist in the mediation field site I am able to raise questions about how marriage is normalized and what the consequences are for everyday life. In my own life I am constantly bombarded with messages about love, romance, partnerships and marriage. Like much of the public, I am a consumer of popular culture. It is not unusual where I come home from a busy day and relax in front of the TV. An important way culture is transmitted is through popular culture. Popular culture is one way that I am confronted with the myth of marriage. The influence of popular culture becomes apparent after a particular encounter in the field.

Marriage and Pop Culture

After a long day of data collection, and an even longer week, I feel raw with emotions. I was relieved to leave the mediation session, the sterile, and “secure” courthouse where my briefcase and body are searched, only to find my mind had also been searching for some way to reconcile what I had just seen. I watched a couple, once in love, fight about everything.

Here is how the story unfolds as I retell it to myself, searching for answers of what “went wrong,” and then remembering, “Oh, I am a sociologist and should be asking different questions like, how could two people who were once in love fight so much? What made them take the walk down the aisle? Was the cultural imperative to marry a part of their decision?”

I walked into the courthouse after being searched and scanned to wait anxiously in the waiting area to be “approved” by parties to observe their mediation.

“Elaina?” calls, a little tiny woman from the open door that leads to the mysterious back rooms.

“Yes,” I say anxiously as I follow her behind the door. I feel excited and nervous all at the same time.

The mediator, an older woman with a neat pink suit and matching jewelry tells me quickly, “There is no way this is going to reach agreement today.”

I quickly ask her, “Why? How do you know that?”

She tells me, as she pats a ginormous file that is dated back to 1996, “They have been here so many times before and they have been divorcing since 1996.”

“Oh” I reply. I think, “How can it take that long? How can people possibly want to come back to court that many times?”

It is in this space that I am confronted with the inner struggle I have so often thought about but dismiss for fear I will come to a decision that makes me weird or different. I think, “If I chose not to marry how I answer the questions from people about why I never married? Will I be an “old maid,” a “spinster” or a strong independent woman?” These questions are simultaneously met with, “Are you giving up because you haven’t found anyone, or is this what you really want? Are you simply

trying to make yourself feel better about not getting married?” In my work, I am confronted with the duality of thoughts. I simultaneously consider my feminist ideas about independence and freedom with ideas about family and “settling down.”

The parties enter the room, they are both heavyset, white, in their mid-thirties. Their clothing is neat but not especially nice, indicating to me they are probably middle to working class. They both are with what I assume to be their attorneys. The mediator asks them if they would like to be in the same room or separate. They choose to be in separate rooms. So, the mediator takes the man to another room and I am in the room with the woman.

She speaks softly to her attorney, “There is no way we are going to get anything done here, it’s a waste of time.” The attorney tells her, “Let’s just see what happens.”

The mediator begins with the typical opening statement about what mediation is and why they are here. Then she begins to work to reach an agreement. The wife tells the mediator that she is there to, “work out time sharing arrangement” with her ex.

The couple fights through their attorneys for about three hours and we seem to be so close to an agreement I think, “Wow! I didn’t think we would get anywhere but here we are....” Then, it dissolves. The couples begin to separate their assets and it comes to a head when they discuss a set of colored pencils. That was all it took. Their mediation agreement dissolved over a pack of colored pencils! Seriously? A pack of colored pencils created enough animosity to fail to reach an agreement!? Or are they trying to hold on to something they are scared to lose? Are they frightened by the thought of being divorced and so they hold on to the remnants of their relationship? Is the stigma of being divorced so strong they would rather hold on to a relationship that

does not appear to bring them happiness? Has the desire to marry and fulfill this step in life so encompassed them they do not want to let it go? These questions fill my head as I try to erase the images from my memory.

It has been a long week and I am happy, because it is Friday! In my house Friday=bride day. This is my super-secret, not a sociologist at this moment, behavior where I watch Say Yes to the Dress, Randy to the Rescue, What not to Wear, basically any TLC programming. I don't necessarily know why I am drawn to these programs, but I am. Every Friday I watch as newly minted fiancés search for their perfect gown for their perfect day to marry their perfect partner and stay together... forever. Forever. Right...like that's reality! I am forced to reflect on the day's events: People, once in love, now hatred fills the room so palpable its presence seems to suck all the air from the room. They can't even sit in the same room together. They talk nasty about each other. They can't agree on anything. They will do anything they can to ensure the other party gets nothing or at least they have to fight for it. I used to watch my Friday Bride Day shows and dream about my own day to be a bride, to fulfill my gendered expectations in life, to prove that I am loveable. Today when I turn on the "Say Yes to the Dress" marathon I am emotionally exhausted. Not only is it hard to watch other people struggle with their relationships but inevitably I reflect on my own. I think about how my partner and I would argue if (and when) we break up. This, this is my reality now. Sure I had heard the number of divorces is 50% but you always think that you won't be that number, you will be different, better somehow, but now I am forced to recognize I can and might be a part of that statistic. I think, "Is it just the fact that in my field work I am surrounded by people divorcing or is this something I would think

about anyway? It seems like the norm so why would my relationship be any different?"

I now think about things like, "how would I negotiate these little things, how will I make sure I leave the union as good as when I entered it, if not better? How will I make sure I have the upper hand?" What I see all day makes me question the authenticity of what I feel for my partner. They too – once felt love – they too, once felt... and it happened to them. Why would I be so different? How would I unravel what we are currently raveling?

When the cultural image of marriage ignores the reality that it may come to an unhappy end, it is false, yet we continue to hold tight to the ideal and push our friends and family to follow suit.

This is a sad day. Friday, Bride Day has lost its appeal. I change the channel to divorce court.

The marriage is so much more than a lifetime commitment; it is a wedding day, full of pomp and circumstance. It is a show, a glamorous, me-at-the-center-of-attention, expensive ceremony. It is a way to prove you really are in love. More than that, it is a rite of passage. For many, it illustrates adulthood and independence. The songs, and our ideals, also fail to recognize the realities of day-to-day life: Financial struggles, emotional wreckage, miscarriages, and divorce. All these important details are left out, until it happens.

Popular culture, like TLC's, "Say Yes to the Dress," fail to account for or recognize the messiness of relationships. Popular culture creates an image where marriage is nothing more than an extravagant wedding. After the wedding, we do not need to know what happens. Despite the popular culture images, most people grow up in families that

look distinctly different, yet we seem to strive to obtain the socially constructed ideal. This is not what I encounter. These constructed realities do not represent reality at all. Marriage is a contract. Marriage is an economic arrangement. It is not pomp-and-circumstance. Popular culture fails to show people the ugly truth: most marriages do not work, most people fall out of love. Nearly half of marriages today end in divorce (Bureau of Labor Statistics 2013). Marriage as love might be a myth.

Today we turn in our sample mediation agreements. Last night our homework was to work our way through the divorce settlement issues. This, I have learned, means we must help couples navigate the P.E.A.C.E. acronym. I find this acronym incredibly ironic in light of the fact that peace is likely the last feeling most couples that enter the mediation room will feel. The acronym stands for Parenting plan, Equitable distribution, Alimony, Child Support and Everything Else. This guides mediators in the mediation room to focus on these issues. I wrote up my “agreement” with the fake characters provided by the trainer. Yet, as I wrote all I could think about is how involved the state is in my relationship. I did not know the state could, and will, decide your life and the minutia of it, for a very long time. I look at my boyfriend of two years and wonder, “if we broke up would we be in mediation? Would I have to hire an attorney to ensure my best interests are supported? Is our relationship doomed?” I wonder about the mediators I am training with, “Do the seasoned mediators still think about these things or are they able to turn off these thoughts? Do they reflect on these cases when they go home at night or is it just a job?”

I often tell my students that sociology is a blessing and a curse because you never see the world the same as you used to before you see structure and its influence in peoples” lives. This is how I feel now as I navigate the world of mediation. I will

never see marriage as I used to. I now see behind the curtain and the wizard is just as disappointing as he was in the Wizard of Oz.

I “write up” the agreement and ask my boyfriend questions about what days he wants time with our made up children.

“So, do you want them every other weekend and Thursday, Friday or all week on and off?”

He laughs at my question and all I can think is, “you laugh now but I know this would get ugly.”

I cannot help but put myself in the shoes of the fictitious people in the agreement. I cannot seem to separate the two: myself and the hypothetical couple. The inevitable thoughts race through my head, “Are we meant to be together?”

“Is he the one?”

“Is there really one person for everyone?”

“How can you know if you found that person?”

I laugh to myself as the many rom-com’s I’ve watched over the years run through my head. Is my love the “Pride and Prejudice” love or is it the “Sex and the City” love?

The homework assignment has caused me to look at him differently, more suspiciously and I have a hard time getting to sleep that night.

When images set unrealistic expectations it creates a culture where people feel pressure to be normal. Marriage as the “normal” step in a person’s life creates a pressure to reach the milestone in order to prove oneself. The fact that 90% of people marry and 50% divorce illustrates the pervasiveness of the norm. The field site I have entered has created a new standpoint for me. I now see marriage as much more than a rite of passage. It is an economic arrangement. It is a state sanctioned and regulated contract.

Rather than making decisions between myself and my partner, the state can now decide what is best for my life. In essence, you are marrying the state. This was hidden from me until now. My friends and family never told this story.

Popular culture is full of ideas about relationships and marriages (Coltrane and Adams 2008, Ingraham 2008). Movies, television shows, commercials, and magazines glamorize and reinforce the marriage norms in contemporary culture (Ingraham 2008). Weddings do more than wed two individuals. Weddings, “are culturally pervasive, symbolically prolific, and are rarely questioned or examined” (Ingraham 2008, P. 4). The belief in marriage and elaborate weddings create a culture where marrying is normalized, expected and desired (Ingraham 2008). According to a 2013 Gallup poll 95% of Americans have, will or desire to be married in their lifetime (Newport and Winkle 2013). I doubt there is a reader out there that has not wed, plans to wed, attended a wedding or had dreams of their own wedding. Marriage is so normalized it becomes the next step in relationships after an appropriate amount of time. That acceptable time frame for dating varies depending on the family of the lovers, the age of the lovers and many other factors. Even as gendered norms change, the emphasis on marriage has remained a central feature of romantic love in the twenty-first century. My experiences in my field site created a world where marriage and divorce were ever-present ideas that challenged my beliefs and expectations.

The Roles We Play

My understanding of marriage continues to be turned upside down as I collect data. I always believed a mother’s work or “care work” as it is sometimes referred, is important work and should be considered equally, if not more, in child support or alimony situations. I, taking on the role of the mediator, experienced a contradictory

moment when doing a role-play in training, which forced me or led me to recognize my own conflicting ideas on marriage, or parts of marriage anyway.

Today in training we did a role-play activity. I loved to participate in these types of activities in school; it was a way to engage with other “students” and to break up the monotony of the day. Setting aside my concerns about whether or not I was getting too involved in my field site, I gingerly raised my hand to play the “husband” in a scenario. The short, balding mediator trainer handed me a piece of paper with a hypothetical scenario written on it. As I read the scenario I thought, “This is going to be tough for me, I have to argue that the mother of my “children” shouldn’t get alimony. I don’t even believe that!” I was steadfast in this belief until we sat down at the table. Across from me, my “wife” looked at me with such disdain it was easy to hate her. Slowly my resolve to remain a feminist, crumbled.

I played a husband that was divorcing and had two children. The “wife” had a degree but had left the workforce to care for our two children. I was negotiating our divorce without an attorney, she was represented. She wanted alimony. Alimony! The gall of that woman!

She argues, “I worked very hard to raise our children!”

I reply, “If you worked so hard, why is Tommy behind in his reading and math scores? Why was the house never clean? I rarely had a hot dinner when I got home from my actual hard job.”

In that moment I was adamant that she should never get alimony from me because parenting is not a job she performed to my standards, and she needs to provide for herself.

I was ashamed of my feelings. I, a feminist, gender scholar, was questioning mothering as work! I had never been put in this position (though hypothetical) and I was shocked by my reaction. I argued and argued with the “attorney,” contending that she was taking advantage of me and deserved nothing. I think, “Have I internalized patriarchal messages about gender roles in marriages! Am I a failed feminist?” Why was it so easy for me to play this role? How did I know what to say to characterize her as undeserving?

I went home confused and worried. What if the shoe were on the other foot, would I feel as though he didn’t deserve support? I rationalize my emotions by telling myself I would be equitable in my own life.

When I entered the field I never realized the implications it would have at home. I began to see marriage as a set of statutes, documents and figures. The picture in my head of me standing in white at the end of the aisle has shifted to a hazy image of signing a contract and crafting a prenuptial agreement. Things we learn in the field forever alter the way we see the world. For me, I realize that once you strip away the pomp and circumstance you are left with people trying to make their family and friends happy by sticking to the cultural script of love, marriage, and a baby in a baby carriage.

We live in a world ripe with expectations. Daily we encounter expectations from others, our worlds and ourselves. Gender creates specific kinds of expectations with important consequences. Gender is an often-important organizing feature of social life. Cecelia Ridgeway (2009) discusses stereotypes as ways people commonly think about gender; how “men” and “women” should act, what preferences they should have including choices regarding romantic partners. Weddings create an environment where the bride is a, “star in the about-to-unfold marital drama” (Coltrane and Adams 2008, P.

68). This ignores the sociological understanding that marriages are more than just rituals. Marriages encompass, “state sanctioned and legalized” arrangements that determine or affect “who should receive federal and state marriage entitlements” (Ingraham 2008, P. 5). Despite the legality of the decision to marry this is not the image most people have when they think about weddings and marriages.

Where Do My Ideas Come From Anyway?

Inevitably the field has changed my perceptions. The field has forced me to reflect on myself as a woman that wants so badly to find love or to question the love that I have— is it the right one – one that will last? This woman is also a feminist, a researcher with career goals that have stymied these dreams for an indefinite amount of time. Perhaps more importantly, I am a person, who, until now, had not seen behind the curtain and believed in the institution of marriage. As the days pass in the training I am reconsidering more and more the realities of marriage, weddings, children and divorce. These stark realities become much more important as I enter training day two:

Today I interviewed a participant for my project. He was a white, male, attorney who openly admitted he and all other attorneys are “assholes that only like to talk about themselves.” When I walked into his office a receptionist sitting behind a window asked me to please sit on the large comfy, expensive looking dark brown leather couch. I grabbed a copy of Acoustic Guitar and sat. As the minutes trickled by, I began getting frustrated. We had an appointment, set weeks in advance, yet I am sitting and waiting. After nearly fifteen minutes of waiting, pretending to read the same magazine over and over, the polite receptionist told me he was ready. I followed her through a large glass door to a room full of cubicles and business people working. We made our way to the back of the office to a private office occupied by the

attorney/participant. I enter the large, intimidating office and reach across his expansive desk to shake his hand. He is in a suit with his jacket thrown over the back of the chair behind me. He asks me to sit. I turn to sit and see two large leather chairs that instantly make me feel small and poor. I feel smaller still when I sit in the chair and my feet barely graze the floor. The chair is very far from his desk and I feel this was intentional to make his clients feel insecure or out of place in order to make him seem more important or something. He seems to be asserting his power here and I note I may have to ingratiate myself to him during the interview in order to get him to cooperate. Patriarchal bullshit. It takes me some time to get him to answer questions. He makes me feel uncomfortable and like his time is more valuable than my own. Through the course of the interview, I ask him if he has been married or divorced. He regales me with the story of his own divorce. One thing strikes me more than any other as he talks away. He mentions his divorce cost him upwards of \$250,000! I am in what I would describe as a state of shock. I make some awkward comment about how I haven't made that much in my lifetime and that I can't imagine spending that on a divorce. He acts very nonchalant and continues to answer my questions. I left the interview and could not forget that amount. The cost of divorce can be so astronomical, why on earth would anyone want to get married? I drive home frustrated that I struggle to pay my bills and he does not bat an eye at the quarter million he spent on a divorce. The money seems to mean very little to him, he just doesn't want her to get it. I realize that we are from two very different worlds where money will always be a concern to me for survival and for him, it seems to be more about amassing as much as possible and winning the game he is playing.

The attorney and I are clearly from different walks of life. I am shaken by the encounter and feeling angry at the universe as I drive my 2005 used car with 185,000 miles on it. At home I think, “How can people justify spending that kind of money on something as ridiculous as a divorce? If you fall in love, why can’t we simply fall out of love? Why must we try to win in divorce? When did we convert love and partnership into accounting and determination of who worked most and who was worth more? There are people starving to death right here in our city and they go on living without considering that.” I have to stop into a little shop with all kinds of nick knacks and cement stones with cute little sayings on them to drive the interview from my mind. As I walk through the store absent-mindedly looking at the things I cannot afford, I think about my own parents’ failed marriage.

I dig through my photo box shoved deep in the back of my closet to find the picture I need: the image of my parents on their wedding day. I need to see this to remind myself that love does not mean money, love does not need pomp-and-circumstance, love only needs to be enough to ignore all the concerns and misgivings long enough to say, “I Do.” I find the photo buried beneath the awkward school photos of my two older brothers and my younger sister. I look at the faded picture with the rounded edges of my smiling parents at their wedding. My dad in his finest brown corduroy suit, elbow patches and all, my mother in her hippie dippy empire waisted, bell sleeved wedding dress from JC Penny. I take in the smiling friends lined up next to the happy couple. They look so happy. My dad is in his classic pose that reminds me of the way he stood when he was proud. His arms behind his back, chest puffed out and mustache curled ever so slightly upward. Anytime “Green Sleeves” plays he tears up. This is where my ideas of marriage come from. Hardly an elaborate affair, rather, a

back yard potluck wedding. This is elegance. My dad talked fondly of their day, even after they divorced. My dad has since left the earth and all I have left are memories. Though my parents' marriage could be considered a failure I refuse to see it that way. They spent 23 years together, raised 4 kids and provided us with the important things in life: love and support. I often think about my father and his stubborn ways that ultimately drove my mother away. She spent so many days frustrated and angry with him. I remember being grateful when they divorced. I felt relieved that the fighting would end. But my dad was left alone. He had no partner. He fell into a deep, deep depression from which he never recovered. He spent the rest of his life longing for his lost love. He never stopped loving her and I believe he waits for her, even now. For me, the question then becomes, will my life be different? Will I end up with someone like my dad, be unhappy for years, and then divorce? Here I see the strength of the myths of marriage, the rite of passage. I grew up with conflict, with frustrated parents. As kids, we all felt relieved for their marriage to end. Yet, I still yearn for some idealized vision of marriage despite growing up yearning for my parents' marriage to dissolve.

Divorce doesn't mean that both partners quit loving each other. Divorce doesn't mean that everyone is sad as a result of the dissolved marriage. My experience growing up provides a much more complex and nuanced understanding of divorce and yet I am left with fear. The fear is both intensified and lessened as a result of my training to become a mediator. I can see that despite the intense turmoil many people experience there is a light at the end of the tunnel. Divorce is not the worst thing that can happen to people. And though the processing of divorce as neat little boxes to be checked irks me, it also provides me with some sense of relief. I know that if everything fails I just need to check some boxes and move on.

When this is the image I grew up with, romantic love that continues despite the inability to remain in a relationship, it is difficult to see marriage as an ideal. I wonder, if they had never married would we (the children) have come along? Would they have separated more quickly? It seems my parents fell victim to the cultural construction of family: first comes love, then comes marriage, then comes the baby in the baby carriage. The push for a wedding, not necessarily a marriage, seems to invade our lives. The cultural norm to have an elaborate ceremony to prove one's love has found its way into my conversations with friends and family.

My partner and I meet up with a couple, Matt and Kathy (pseudonyms), for a few beers. The server comes to ask what we'd like. We look at the vast menu and after some questions about hoppiness and chocolate undertones we settle on a tasty brew. While we sit and wait for our order we talk about biking, of course, and trips we have planned. Then the inevitable question comes:

Matt: When are you two getting married?

Me: I don't know, we have so much going on right now it is not something we are thinking about.

This question, I have heard many times, but today it is coming from a dear friend who was married for 16 years, has a couple of children and is now (and for the past two or three years) seeking divorce from his once beloved. His current partner, my good friend, is frustrated to say the least. They have been dating and living together for nearly four years. I think about the conversations Kathy and I have had about his relationship:

Me: So, how's Matt's divorce going?

Kathy: Her beautiful blue eyes instantly begin to fill with tears. She pushes them back. I can feel her frustration as she takes a deep breath and tells me, "He just won't do anything! He is supposed to go to mediation in December but it got rescheduled and they are supposed to go in February and he won't even call to check on when it is scheduled." (Her frustration is evident).

I try to console her: I know, I'm sorry Kathy. I talked to him about it several times and told him to skip mediation and go to court.

Kathy: He just won't do anything and I tell him if you don't want to divorce her then you need to let me go. I am ok with that. I just need to know one way or the other. If he doesn't follow through I've told him I cannot keep being in this relationship.

I know this is not true. She loves him and would be devastated. He has changed her from a single independent woman who now wakes up early to cook him breakfast EVERYDAY! When she travels for work she makes him meals for every night she is gone. She has changed her life to accommodate his and to make him happy. This threat has been heard before in other iterations. I advise my friend on the situation and tell her I agree and he should divorce.

I turn the conversation back to Matt and ask: When are you going to get the divorce done so you can marry my beautiful friend here?

Matt: We have to go to mediation still.

Me: Don't go to mediation just go to court, you are not going to get anywhere in the mediation room.

He hems and haws and eventually ignores my advice. He seems like he feels he has no agency in his divorce. However, despite the fact that he is in an awful, drawn

out, frustrating and extremely expensive divorce he continues to say, “You should have a big wedding, so I can come.”

Me: Even if we do marry it will be an elopement because we don’t want to spend all that money on one stinking day.

He continues, “No, you need to have a wedding where your friends and family can come.”

I attempt to placate him, “Well...we would have a big party!”

This does not satisfy him.

I ask him, “What was your wedding like? Was it big? Do you regret any of it?”

Poor Kathy just takes a deep breath and pretends not to care about the conversation.

He says, “It was a pretty elaborate back yard wedding and it was really nice.”

I can see Kathy dying a little bit on the inside. See my friend is in her 40’s and by all accounts has “failed” at the marriage game. Or has she? I am starting to question everything.

These conversations illustrate the pervasiveness of marriage as the ideal and the non-married person as the deviant while playing up the emotionality of the entire occasion. My friend, Kathy, is clearly pained because she cannot marry her significant other because of his status as already married. Matt cannot marry her because he is tied up in a legal contract (marriage) with his previous lover. Despite this incredibly emotional and financially costly experience, my friend pushes us to marry. The emotionality of the idea of two people entering a marital union overrides the practical nature of the legal contract. Gender becomes an important part of this discussion (though not explicitly mentioned). I, as a woman, have felt the need to marry my entire

life and I would guess most women (and men) feel this intense compulsion. I argue this feeling is ever present and all-consuming for women of a certain age because the ideology of marriage creates expectations about timing of one's marriage. The fact that I am over 30 and never been married implies that I have not lived up to my gendered expectations in life. Emotionally I believe I should need a man to make my life complete.

My super-secret single person behavior involves me wearing my engagement ring from my failed relationship around the house when no one is around. The ring is a remnant of a seven-year relationship. I will never forget the day he asked me to marry him. We went on a hike at our very favorite place. The air was crisp and cool, the leaves were beautiful gold, red, orange and yellow. The beautiful rock formations were covered in moss with soft dew pooling in the recesses. We stopped for a moment on a fallen tree to eat a peanut butter sandwich we packed for lunch. I pull the now smashed sandwich out of my camelbak and unwrap it as I gaze at the beauty that surrounds us. I can feel his nervousness yet have no idea why he might be feeling nervous. He doesn't sit, he doesn't pull out his sandwich, he just sort of paces in front of me. I tell him to "sit because he is making me nervous." Instead of sitting he turns toward me and gets on one knee. My heart jumps. I wait for those magic words I have been longing to hear. But as he starts "Will you..." I notice my heart is filled not only with excitement but trepidation and fear... "Marry me?" I look for the box. Where is it? I've seen the movies, I've seen the television shows, there should be a little box with a ring in it! Where is the box? I pull my head together and hope he didn't notice my eyes darting to and fro and say, "Yes!" He explains, "I didn't know what ring you would want so I thought we could pick it out together." Phew, I think in my head. The rest of the hike is full of excitement and new feelings. I wonder where we will wed, how we

will afford it, what my ring will look like and who will come. That was nearly five years ago. We broke up when I realized I was not “in love” with him anymore after seven long years. Now, I am in a new relationship with a different kind of man. I long for the days when someone loved me enough. When someone wanted to be my husband. So, when no one is around, I pull out the little white box, open the ring box and gaze at my engagement ring. We picked it out together. It was specially designed by a local jeweler and has memories all over it. And now, I have learned much more about what might be behind Matt’s sluggishness with finalizing his divorce. He will have to move on. Perhaps the memories are closer when there is still a cord that attaches them, even if it is an ugly cord. The aquamarine stone surrounded by small diamonds shine up at me as if they are alive, taunting me, asking me to relive the moments the relationship ended. I pull it out and slide it on my slightly fatter fingers and feel a deep swell in my stomach and heart that I must reconcile. My head swims with visions of what our wedding might have been, where our relationship might have taken us and I actively push those feelings, and the tears, back and remind myself we separated for a reason. I wear it and think back to the days when I was planning a wedding. I sometimes pull out the white empire waisted, eyelet dress I picked out from a thrift store for \$30 to wear and put it on. The dress was perfect for the mountain bike themed wedding we had planned. I have never worn it and it still has the tag from the day I bought it. I don’t regret the choices I’ve made yet I long for the feeling I had when I knew someone loved me enough to marry me. I look at the ring with a heavy heart. I move it around on my finger to catch the beautiful way it sparkles in the light. I catch a glimpse of myself and notice the somber look on my face. Why did I keep this thing? What would I ever do with it? I realize that I keep it as a reminder that

I was desired. I was someone good enough to spend the rest of your life with. I was special. I hear my current partner pull into the driveway and as quietly as I opened the pretty white box, I replace the ring and close the box. As I consider my own future I am struck by how much I have internalized the gendered traditions that are a part of the marriage myth. It is the twenty first century, yet I wait for him to propose because “that is how it is supposed to be done.” I cannot help but feel ashamed that I, a feminist, waits for a man to ask for my hand in marriage.

My emotions override my practical concerns when I begin to think about marriage. I put the ring on and dismiss the real consequences of marriage. I shirk the idea that divorce could happen. I, instead, dream about the day when I WILL be a bride. Despite all the messages that counter the narrative “You must be a bride” I continue to long for that day, when I will be a bride. These experiences helped to shape my romantic notions of love and marriage in such a way that life consequences and outcomes are ignored, until they smack you in the face. Marriages and weddings are so much more than just that. They are *events*. They are the future. The past. All the expectations our family and friends have for us. The field has forced me to think beyond the spectacle of the wedding to what a marriage is and the possible outcomes of a failed marriage.

Discussion

I am left wondering how a feminist woman like me can internalize the kinds of ideas about traditional marriage so pervasive in our larger culture. I have internalized the need to marry as a sort of prerequisite to adulthood, the idea that a wedding is necessary for a happy marriage, the idea that a man must ask a woman to marry and the idea that divorce equates to failure. The process of becoming a mediator has forced me to question my belief in marriage and my desire to reach this milestone. This is where I

am left. The institution of marriage is so ingrained in our society that it has created a person (me) who wants nothing more than to fulfill the storybook ending and find love, marriage, and a baby in a baby carriage. There are many assumptions built into marriage, including that an elaborate and costly wedding shows the world the love you have for one another. The idea that marriages are infallible is spread and promulgated from generation to generation in order to keep the institution intact, especially through popular culture. This, of course, takes painstaking efforts of people to fail to recognize that marriage more than likely will not be harmonious, lasting, cheap, or forever.

The personal narrative I presented offers an examination of the power of ideologies in everyday life. Ideologies “are patterned beliefs, ideas, opinions, and values that are used to create meaning” (Freedan 2003). People both consume and create ideologies (Althusser 1984). Ideologies “shape individual action by sanctioning and rewarding particular roles and behaviors (Therborn 1980). The ideology of marriage and romantic love are so pervasive they impact my everyday understandings and desires. In my fieldwork, I came to reflect on my life as a woman whose dreams were carefully crafted by society and quietly crushed while living life and especially while in the field. I realized what it means to be a researcher that cannot leave one’s body or personal desires, dreams and beliefs at home. This journey has created a new dialogue in myself and exposed the world of white weddings and ultimately marriage as a myth, but a powerful one. It is my hope that others can gain a deeper understanding of the marriage institution and question the structure we hold so near and dear.

References

- Althusser, L. 1984. *Essays on Ideology*. London: Verso.
- Anderson, Leon. 2006. "Analytic Autoethnography." *Journal of Contemporary Ethnography* 35(4):373-395.
- Atkinson, P., A. Coffey, and S. Delamont. 2003. *Key Themes in Qualitative Research: Continuities and Change*. Walnut Creek, CA: AltaMira Press.
- Bureau of Labor Statistics. 2013. "Marriage and Divorce: Patterns by Gender, Race, and Educational Attainment" Retrieved on May 15, 2015 (<http://www.bls.gov/opub/mlr/2013/article/marriage-and-divorce-patterns-by-gender-race-and-educational-attainment.htm>).
- Clifford, James and George Marcus. Eds. 1986. *Writing Culture: The Poetics and Politics of Ethnography*. Berkeley, CA: University of California Press.
- Collins, Patricia Hill. 1986. "Learning From the Outsider Within: the Sociological Significance of Black Feminist Thought." *Social Problems* 33(6): 14-32.
- Coltrane, Scott and Michele Adams. 2008. *Gender and Families*, Lanham, MD: Rowman and Littlefield Publishers, Inc.
- Davies, C.A. 1999. *Reflexive Ethnography: A Guide to Researching Selves and Others*. London: Routledge.
- Fairchild, Emily. 2014. "Examining Wedding Rituals through a Multidimensional Gender Lens: The Analytic Importance of Attending to (In)consistency." *Journal of Contemporary Ethnography* 43(3): 361-89.
- Freedan, M. 2003. *Ideology: A Very Short Introduction*. Oxford: Oxford University Press.
- Goldstein, J.R, and C.T. Kenney. 2001. "Marriage Delayed or Marriage Forgone? New Cohort Forecasts of First Marriage for U.S. women." *American Sociological Review* 66(4):506-19.
- Ingraham, Chrys. 2008. *White Weddings: Romancing Heterosexuality in Popular Culture*. NY: Routeledge.
- Johnson, Allan G. 2005. *The Gender Knot: Unraveling Our Patriarchal Legacy*. Philadelphia, PA: Temple University Press.
- Martin, Patricia Yancey. 2004. "Gender as a Social Institution." *Gender and Society* 18:429.

- Newport, Frank and Joy Wilke. 2013. "Most in U.S. Want Marriage but Importance Has Dropped" Retrieved March 2, 2015 (<http://www.gallup.com/poll/163802/marriage-importance-dropped.aspx>).
- NOLO. 2015. "Marriage Rights and Benefits: Learn Some of the Legal and Practical Ways That Getting Married Changes Your Life." Retrieved March 23, 2015 (<http://www.nolo.com/legal-encyclopedia/marriage-rights-benefits-30190.html>).
- Richardson, Laurel. 1994. "Writing: a Method of Inquiry." Pp. 516-529 in *Handbook of Qualitative Research*, edited by N. K. Denzin, and Y.S. Lincoln. Thousand Oaks, CA: Sage Publications.
- Ridgeway, Cecelia, L. 2009. "Framed Before We Know It: How Gender Shapes Social Relations" *Gender and Society* 23(2): 145-60.
- Ridgeway, Cecelia, L. 2011. *Framed by Gender: How Gender Inequality Persists in the Modern World*. NY: Oxford University Press.
- Risman, Barbara. 2004. "Gender as a Social Structure." *Social Forces* 82:1249-73.
- Schwalbe, M. 1996. "The Mirrors in Men's Faces." *Journal of Contemporary Ethnography* 25:58-82.
- Stanley, Liz and Sue Wise. 1993. "Method, Methodology and Epistemology in Feminist Research Process." In Liz Stanley (Ed.), *Feminist Praxis: Theory and Epistemology in Feminist Sociology* (pp. 20-60). NY: Routledge.
- Therborn, G. 1980. *The Ideology of Power and the Power of Ideology*. London: Verso.
- West, C., and D. Zimmerman. 1987. "Doing Gender." *Gender and Society* 1:125-51.

CHAPTER FIVE-CONCLUSION: THE IMPORTANCE OF EMPIRICAL ANALYSIS OF FAMILY LAW MEDIATION

Family law courts in Florida process settlement agreements using mediation, an alternative dispute resolution tactic (Mayer 2013). Thousands of professionals are trained to become family law mediators annually (BLS 2015). The process of socialization trains and prepares mediators to conduct the work the courts require of them. Through analysis I found one way mediators are socialized is to utilize a narrative framework that enables them to process claims quickly. Another interesting finding centered on an examination of power in mediation where I argue mediators are socialized to see power as violence. The ways power is constructed and characterized in training ultimately are reflected in the ways mediators construct violence and affects the way they manage parties. Finally, I offered an example of analytic autoethnography where I explore how my own identity and relationship to marriage shifted through my fieldwork. All of these components create a picture of how divorce is managed in a court system in Florida. In this chapter I describe the larger sociological connections each chapter produced, the limitations of my work, future research ideas, and policy implications of this work.

With the incredible growth of mediation programs across the United States it is vital that we understand how mediators, through the courts, are managing families. Mediation has become so widespread it is institutionalized in many states (Mayer 2013). “It is having an impact on our lives as individuals and as members of organizations,

communities, and societies” (Mayer 2013). Yet, little research has been done in the mediation arena (Kelly 2004). As states increasingly move to use mediation as a tactic in dispute resolution, research illuminating the ways discourse, power, and violence are interpreted, enacted and managed is vital.

Throughout this dissertation I have been critical of the system of mediation and some of the strategies and approaches used by mediators, pointing out the unintended consequences of their enacted roles. I want to emphasize that I am in no way claiming mediation is not beneficial to individuals or courts. My critique is not an indictment of mediation programs, nor the specific mediators, or trainers with whom I spoke. While I do question several of the dimensions of mediation, I see the utility mediation offers many people. My hope in this project is for mediation professionals and scholars to understand some aspects of the ways mediators, and by default mediation, process divorcing couples in Florida.

In chapter two, I sought to understand the dominant narratives used in mediation that guided storylines used by mediators and mediated parties. To understand this, I analyzed the training, interviews and mediation observations using narrative analysis in order to recognize how mediators are trained to think about families and how the court’s discourse creates a framework that guides and manages mediators’ actions, thus creating a disciplinary discourse. I also saw the ways the court-imposed framework (P.E.A.C.E.) forced parties to fit their stories into narrow, often homogenous, storylines. Through this analysis I demonstrated that the courts reliance on a framework to process families with incredibly diverse lives creates a process whereby mediators search for cues to ensure the mediation continues. Using the P.E.A.C.E. framework mediators push parties to keep their stories in line with each of

the specific elements: parenting plan, equitable distribution, alimony, child support and everything else. By following this framework mediators actively work to make mediations neat and tidy, facilitating the success of the mediation process. While parties seek to use culturally circulating stories about good and bad parents, they learn in mediation to match what the mediator wants to hear. This ethnographic analysis offers unique insight into the ways parties construct their stories to fit culturally circulating stories about good and bad parents (Breger 2012), which seem to have little utility in the P.E.A.C.E. framework. This analysis adds to the literature about how the state and society construct narratives about families (Coltrane and Adams 2008) by incorporating narratives used by mediators.

In chapter three, I sought to understand the ways power and violence are constructed in family law mediation. I examined the way power and violence are defined in mediation training, the ways mediators characterize violence and the ways mediators manage claims of violence in mediation. I examined the ways mediators manage claims of violence and balance power in mediations where that is a concern. Foucault (1980) cautions researchers to pay particular attention to the way power is exercised in discourse. As Shapira (2009) discussed, power has multiple dimensions and flows in unexpected ways in mediations. For example, some parties pushed for certain conversations or information to be included even when mediators attempted to bypass the information. Mediators discussed feeling powerless in their ability to turn down cases as that may result in their lack of employment in the future, showing an interesting form of power not discussed in the training discourse. I found that mediators were often unsure how to process violence in mediation, and searched for clues that would suggest violence in the relationship existed at a level where adjustments to the

P.E.A.C.E. protocol needed to be taken, like reducing time-sharing to below 50/50. Of interest to scholars of gender and intimate partner violence, I also discovered that power was exercised in mediation in ways that could silence the voices of victims of violence. This silencing can create an environment where hegemonic processes that disempower victims are reified. Importantly, violence in relationships served to subvert the guiding discourse of P.E.A.C.E. in mediation sessions, thereby creating a discourse mediators often found difficult to manage in light of the training discourse that often did not account for this construction. But, importantly, such violence rarely stopped nor prevented the process of mediation from occurring.

In chapter four, I sought to understand the impact of marriage ideologies about the institution of marriage on my own life as well as the ways my fieldwork affected my own beliefs and understandings about marriage. I employed analytic autoethnographic techniques to analyze the institution of marriage. Through immersion in the family law mediation field I was unexpectedly confronted with my own beliefs and values in relation to marriage and divorce. Through my personal experiences I gained new insight into how popular culture, gendered expectations, and cultural ideologies shape my actions. From early childhood songs to Friday television viewing today, I trace my journey becoming a woman in a world where heteronormative expectations to find a partner, wed, and procreate become all-important organizing features for social life. Ultimately, the piece offers a critical examination of marriage as an institution through exposing the myth of marital success.

Drawing Larger Sociological Connections

Through an ethnographic examination of family law mediation in Florida a picture about how social order is regulated and managed emerged. Family law

mediation has become so ubiquitous with divorce most families that enter the court will be mandated to attempt mediation prior to arbitration or litigation.

The creation of mediation as an alternative dispute resolution tactic resulted in the establishment of mediation as a profession. Mediators are created in forty hours (plus continuing education requirements). Mediators work on important issues ranging from child custody to division of assets. The professionalization of mediation as a career, coupled with the widespread use and adoption of mediation as a viable dispute resolution tactic, has led to a rapid expansion of mediation. Despite the institutionalization of mediation there remains much diversity in the way states train mediators (Tondo et al. 2001). There also remains much diversity in the way mediation is regulated and overseen in states in the U.S. In a review of 37 states in the U.S. Tondo et al. (2001) found highly divergent techniques for mediation implementation and training including: how and when to screen for domestic violence, mandating mediation in all or some cases, providing mediators to parties who are indigent, legal representation, confidentiality and payment for mediation services. As the field is highly disparate in the implementation and regulation of mediation, and the training of mediators, research uncovering the ways these factors impact mediators and mediated parties is critical. In my own research, despite statutory regulations, implementation of protocol varied by county and individual mediator preference. In the mediations I observed some mediators used their own screening tool, some courthouse forms had a check box, and others relied on their own skills to decipher whether violence was a concern for mediation.

Mediation, as an institutionalized process, results in the creation of jobs and, as such, benefits certain individuals. Judges benefit as a result of mediation because their

dockets are less full and their job is made easier (Airey 1999). The creation of the field of mediation has led to a whole host of careers: mediators, trainers, continuing education providers, and mediation services advertisers. The courts often have separate mediation centers or offices, thereby creating a workforce dedicated to serving the mediation mission. The adoption of mediation as a viable dispute resolution tactic has led directly to a distinct field where much is at stake should the process be questioned. Therefore, it is important to understand the vested interest many of these professionals may have in the continuation of mediation as a state mandated practice. For instance, it has been argued that trainers have a vested interest in training mediators, even when the market is saturated (Levin 2008). In my work I noticed a distinct heralding of the practice of mediation. Throughout the training there were comparisons drawn between mediation and other dispute resolution tactics, like arbitration, often citing the advantages of mediation over alternatives.

In my observations I also noticed that parties are taught to adapt to the institution of mediation. Those who are willing to follow the rules and frame their stories in “appropriate” or formulaic ways, get their marriages dissolved in the mediation sessions. Those who fail to conform to the neat and tidy formula story, like a family experiencing “too much” violence, have to be processed differently, if at all. Most divorcing parties know they do not want to go to court to see a judge, and risk losing much agency in their divorce if they do end up in court, so they will often toe the line and follow the formula in mediation. Yet, what I have come to notice in my research is that many appear unhappy or dissatisfied with the divorce process as well as the outcome.

While I discovered clients who appeared to be dissatisfied with the process it may be, in part, due to changes in the nature of mediation services and mediators themselves. Berman and Alfini (2012) point to a trend where attorneys are dominating family law mediation, creating an environment where parties are less free to express themselves and attorneys are “directive or evaluative” (P. 922) rather than facilitative and where the core values of mediation, including “self-determination” are not followed. The fear is that, "family mediation is no longer client based mediation focused on party empowerment, but rather, it has become an attorney-driven process" (Berman and Alfini 2012, P. 922). My findings supports Kelly’s (2004) suggestion that parties often felt rushed by mediators or attorneys and agreed to things they did not necessarily want. Also, supporting Kelly (2004) my findings suggest that people are more satisfied when they reach an agreement than when they reach an impasse or a partial agreement.

Constructing Narratives

The courts, in ways that often do not recognize diversity and heterogeneity, carefully construct family. The nuclear family type was reinforced through the push for shared, equal, parenting time with children. Despite the growing number of families that fail to match this ideal type, the courts push for standardized two-parent parenting structures. People that enter mediation are diverse, and so too are their lives. Family life is a delicate balancing act where significant others, work, and different activities converge to create a complicated structure. Each family encountered had different needs, abilities, experiences, and desires for their future. In the mediations I observed there was a family with children from multiple partners, new significant others, low socioeconomic status, language barriers, and unsure paternity of children. These families seemed to challenge the normative family structure. When they enter a site like

mediation they must discuss the intimate details of their complicated lives and their failed relationship in order to create a new design for that life; not surprisingly, my observations suggest that this often left people to seem frustrated and confused. In making sense of their experiences to the mediator they often explored topics they thought were important, but they were met with a system that was structured in such a way that they had to discursively reconstruct their lives in order to fit the already available formula.

When parties' storylines neatly fell into the P.E.A.C.E. framework their cases were processed rather quickly, yet they still seemed frustrated with the process as illustrated by some parties that would say there was no reason to be in mediation, they would never settle there. One source of frustration may come from the court's push for equal, shared parenting (50/50), which often resulted in a logistical and mathematical nightmare. I observed one mediation where the parents fit neatly into the framework, yet the mediators and attorneys could not agree about the father's salary. It took two hours to agree on the person's salary. These types of instances created frustration and anxiety for the parties. So, even when the storyline fit the narrative, people's lives are complex, and their lives are deconstructed as mathematical formulas. Another problem that was frequently time consuming was in deciding exactly how and when the parents would share their agreed-upon equal time. Hours of mediation were spent calculating the hours and days with children in order to ensure the parents were as close to 50/50 as possible, because with parenting time there is also a financial calculation: child support obligations/receipts may be reduced when a parent's time drops below the 50% time share. This meant parents had to discuss their time with their children for weeks,

months and even years in advance. The focus reflects notions in research and media that focus on time with children without understanding the quality of that time.

Constructing Narratives When There is IPV

Families that experienced violence in their home life or whose lives were not easily reducible to P.E.A.C.E., were often met with increased scrutiny by the mediators and, occasionally, the formula failed to work entirely. Such families were typically mandated to attend mediation, yet the process did not work for them, in part because mediators were granted little time to manage a settlement, and in violent relationships there are important details and interactional dynamics-including power differentials-that may not be able to be uncovered in a two or three hour mediation session. Or, the formulaic processing of parties using P.E.A.C.E. left little room for these important observations or discussions to take place. The push for two-parent parenting structures, in particular, ignores the risks of shared parenting when violence has occurred in a family. Mediation that assumes collaborative parenting strategies and goals may presume dynamics that simply do not exist in such families.

Yet, families experiencing violence are often mediated in family courts. Despite screening procedures 90% of cases report IPV and only 7% are screened out and half of cases with IPV went unidentified by mediators (Maxwell et al. 1999). It remains unclear whether mediating cases with IPV is beneficial to families or detrimental. In my own ethnographic research I uncovered cases with IPV were handled unsystematically. Much of the screening was performed in mediations themselves and cues were often missed. And calls for collaboration with agencies to provide mediation professionals with specific training in IPV have been inconsistent or absent (Salem and Dunford-Jackson 2008). In my own research mediation did appear to be helpful to some families

experiencing violence though there were cases where victims appeared fearful and resistant to mediation.

Overall, the family court is an institutionalized process that regulates and manages families. Catherine Mackinnon (1993) argues that law is a masculine endeavor that fails to protect women and constructs identities of “man” and “woman” and of “mother” and “father,” identities that are constructed through the use of P.E.A.C.E. which discursively homogenizes family stories into easy to follow storylines. Mackinnon (1993) further contends that laws have long failed to protect women. While not all victims of family violence are women, the gendered nature of family violence clearly makes the inclusion of such cases in mediation a challenging and not inconsequential practice. Finally, as marriage is still, to a certain extent, a “compulsory institution” (Chesler 1991, P. 369), it is perhaps not surprising that I observed the dissolution of marriage institutionalized within mediation as characterized by formulas, frameworks, and a discursive negation of difference. When we grant institutions like law with the power to regulate families and their dissolution, it is imperative we observe, analyze, and critique the ways that this regulation occurs.

Limitations

I must acknowledge the limitations of my study. First, I am influenced by my own positionality as a white, middle-class, non-married, heterosexual woman. As such, my position and multiple identity markers influence my experience becoming a mediator, observing mediations and interviewing mediators. The study is not generalizable as it is ethnographic, though it offers an in-depth understanding of a relatively small group of people. The sample of mediators interviewed is rather homogenous, and a wider and more diverse group of mediators should be sampled in

order to extend the applicability of the findings. Also, the mediations I observed represent a small subsample of mediations in Florida and are not representative of the mediations nor of the couples that go through mediation. Specifically, the mediations I observed were all at courthouses, not private mediations, so I cannot make comments regarding those who seek services in private versus public mediation practices. Further, some of my data vary in depth and quality, as data from observed mediations were more thorough when audiotaping was allowed. Therefore, some observations without audio recordings offered less insight into the interactions that occurred in those mediations.

Future research

In order to generalize the findings from this study further it would be beneficial to gather a larger and more diverse sample from other states and counties. This would allow for a more inclusive picture of who mediators are, how they are trained, and how they perform mediations given their training. Additionally, a more diverse sample would allow for comparison regarding geographic location. It would be helpful to conduct a large-scale survey of mediation programs in the United States to uncover how, when, and why screening for intimate partner violence is performed prior to mediation. In order to understand the training of mediators it would be of interest to researchers to conduct a survey or interview mediators to discover how they experience their continuing education requirements. This would shed light on the ways narratives shift through time as well as what concerns family courts have about families at this time in history.

Mediators come from varied backgrounds including, “counseling, social psychology, communications, labor mediation negotiation, law, anthropology, and education” (Berman and Alfini 2012, P. 889). In my own training experience, there were

22 trainees total: 15 women and seven men. Out of the 22 trainees 15 are attorneys. We were told during training that mediators are not to give legal advice. Therefore, not being an attorney could be seen as a benefit. However, in the training we learned to perform duties of an attorney such as child support and alimony calculations, tax considerations, and equitable distribution. This begs the question, how does legal experience affect from the mediation process, as experienced by the mediator? Does legal background or training make impartiality more or less difficult for a mediator? While there remains a gap in research regarding mediators' experiences, there has been research that suggests mediator style is important in relation to outcomes and experiences of mediated parties (Berman and Alfini 2012). While there is no agreement on what mediator style is the best, evaluative mediation techniques have been critiqued. Future research should examine these questions to gain a deeper understanding of how mediator background, education and style preference impact mediation proceedings.

An empirical analysis of private mediations would benefit the practice as well. In my research I found no private mediators willing to be observed. In interviews and conversations with mediators, it became clear that practices in private mediations varied greatly from those with more oversight in the courthouse. It is important to ensure that the processes in both private and public mediations are followed in an ethical manner. The questions inherent in this type of examination will likely lead to class-based differences. It would be of sociological significance to understand how class operates in mediation, specifically in private versus public mediations.

Another area of inquiry that is under-examined is the training of mediators. The trainers must themselves be trained in order to serve as an instructor. There are few professionals who are certified to train mediators. The pool of trainers is small and

homogenous. Several mediators complained that the process is exclusionary and they were unable to enter into a training program to certify mediators. This results in a rapid dissemination of information from only a few individuals to a large field of mediators. It would be interesting to analyze how information is presented to trainees throughout the state or several states to understand the diversity or homogeneity of messages being presented. Trainers may fail to “provide accurate information” to trainees, whereby they spend large sums of money to enter a field that is saturated (Levin 2008).

I would like to examine the ways gender impacts mediation processes. Through a gendered examination of the data I currently have, an understanding of how notions of gender impact mediation is warranted. In interviews mediators were quick to discount the role gender may play in mediations. It would be interesting to understand how interactions vary depending on a mediator or parties’ gender.

Finally, I would like to understand what causes a case to be questioned by a grievance submitted to the court. Grievances are complaints issued by parties regarding the process or the mediator conduct in the course of a mediation. Are grievances efforts of resistance on the part of mediated parties? I would like to learn what occurs in mediation when a grievance is filed and the ways mediators manage cases when a grievance is mentioned. In relation to this topic, it would be important to understand how or if mediated parties are alerted to the grievance procedure. This analysis would add to our understanding about power dimensions within mediation.

Policy Implications

Overall, there remains a dearth of research in the family mediation field. More research is needed in order to understand the complicated ways that families are processed in family courts. I found that my research speaks to two main policy

suggestions for family mediation professionals. First, mediation training should employ more role-play, comediations and supervision. In my conversations with mediators it became clear that they did not feel ready to mediate upon completing training. It would benefit mediators and mediation programs to offer additional role-playing activities so experience dealing with multiple dimensions and complications of interactions can be better assessed. Mediation is one of the few careers that can be taught in a forty-hour training. The training would benefit from opportunities for mediators to gain hands on experience working with families with complicated cases.

Finally, my research suggests that there are inconsistent, variable, and inefficient ways that intimate partner violence is screened prior to mediation. Despite statutory regulations, my research indicates that mediators fail to adequately screen using the structures provided by the courts for intimate partner violence. When mediators did screen it was at their own impetus and often resulted in their exclusion from court mediation programs. Screening provides important information. First, screening allows for detection of violence. Screening alerts mediators to safety concerns in order to address their specific needs. Finally, screening allows for quantification of prevalence rates for victims seeking mediation services in order to understand the nature, scope and potential impact IPV may have on mediation processes. If accurate data are collected a more informed process could mitigate potential problems in mediating IPV cases and lead to improved processes for mediators and victims. I contend that if programs, private and public alike, screened every single case in a uniform fashion it would make the process less burdensome and more helpful for all involved. If it became a standardized part of the mediation process it would fail to be seen as a retributive or an individual issue.

References

- Airey, Pamela, L. 1999. "It's a Natural Fit: Expanding Mediation to Alleviate Congestion in Troubled Juvenile Court System" *Journal of the American Academy of Matrimonial Lawyers* 16(1): 275-97.
- Berman, Debra and James Alfini. 2012. "Lawyer Colonization of Family Mediation: Consequences and Implications" *Marquette Law Review* 95:887-924.
- Breger, Melissa L. 2012. "The (In)Visibility of Motherhood in Family Court Proceedings." *New York University Review of Law and Social Change*.36:555-91.
- Bureau of Labor Statistics. 2014. "Arbitrators, Mediators, and Conciliators: Occupational Outlook Handbook" Retrieved on June 11, 2015 from (<http://www.bls.gov/ooh/legal/arbitrators-mediators-and-conciliators.htm>).
- Chesler, Phyllis. 1991. *Mothers on Trial: The Battle for Children and Custody* NY: Harcourt.
- Coltrane, Scott and Michele Adams. 2008. *Gender and Families*, Lanham, MD: Rowman and Littlefield Publishers, Inc.
- Foucault. 1980. *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*. NY: Pantheon.
- Kelly, Joan B. 2004. "Family Mediation Research: Is There Empirical Support for the Field" *Conflict Resolution Quarterly* 22(1-2): Pp. 3-35.
- Levin, Diane. 2008. "Too Many Mediators, Not Enough Mediations: is it Fair to Keep Training Neutrals With Career Prospects So Grim?" Retrieved on June 11, 2015 from (<http://mediationchannel.com/2008/06/10/too-many-mediators-not-enough-mediations-is-it-fair-to-keep-training-mediators-with-career-prospects-so-grim/>).
- Mackinnon, Catherine, A. 1993. "Toward a Feminist Jurisprudence" Pp. 610-619 in *Feminist Jurisprudence* edited by Patricia Smith, NY: Oxford University Press.
- Maxwell, Jennifer P. 1999. "The Use of Performance Art and Q Methodology for Increasing Mediator Recognition of Trauma and Domestic Violence" *Mediation Quarterly*. (15):269.
- Mayer, Bernie. 2013. "Mediation: 50 Years of Creative Conflict" *Family Court Review* 51(1):34-41.

Salem, P, and B.L. Dunford-Jackson. 2008. "Beyond Politics and Positions: a Call for Collaboration Between Family Court and Domestic Violence Professionals" *Family Court Review* 46: 437-53.

Shapira, Omer. 2009. "Exploring the Concept of Power in Mediation: Mediators' Sources of Power and Influence Tactics" *Ohio State Journal on Dispute Resolution* 24(3):535-69.

Tondo, Carrie-Anne, Coronel, Rinarisa, and Bethany Drucker. 2001. "Mediation Trends: A Survey of the States" *Family Court Review* 39(4):431-53.

APPENDIX I-INTERVIEW GUIDE

Family Law Mediation

Date: _____

Location: _____

Time: _____

Met participant: _____

Participant Name _____

Approximate Age: _____

Gender: _____

Role: Current Mediator _____ Former Mediator _____

Type of Mediations performed: Appellate _____

Family _____ Circuit _____ Civil _____ Dependency _____

Attorney: _____ Non Attorney _____

Mediators-Current

1. What is your current occupation?

2. Do you do private or public mediations? How long do your mediations usually go? Do you charge by the hour or a set fee? Do you take pro se cases?

3. How long have you been a mediator?

4. Can you tell me about how you decided to become a mediator? Do you have any personal experiences or skills that made you want to work in family law mediation?

5. Have you been married? Divorced? Did you go through mediation? What did you think about your mediation/divorce process? Divorce? Mediation?

6. Has family law and what you do in family law changed over time? In what way?

(Or How would you describe your experience working in family law? Has this changed throughout your career? In what way?)

7. Do you enjoy working in family law? Why or why not?

8. Can you describe the mediation process? Walk me through a mediation? What is your role in the mediation? Do you do any prep work? Do you immediately caucus?
9. Sometimes there are cases that we cannot forget, as hard as we might try, is there a case that you remember vividly? Can you tell me about it? What was it about that case that stuck with you?
10. Can you describe a challenging part of your job? Can you describe a particularly difficult mediation that you remember? What made it difficult?
11. Do you think that your gender as a male or female ever impacts the interactions in mediation? (Maybe tell the story about my experience in training as a man paying alimony).
13. Even though we tell clients that we are neutral and have no personal interest in an outcome people often try to get you “on their side”. Can you tell me about the typical kinds of stories that husbands and wives might tell you about their marriage and their reasons for ending it? How do you approach these stories? Do you hear certain types of stories from moms or dads that maybe try to convince you to help them?
14. There are times in mediation where a mediator can have a significant impact. You can sort of push for one side to agree or not. Has there ever been a case where you thought the mother or father, husband or wife was doing something that would not be in the best interest of either themselves or their child so you didn’t push for agreement or did?
15. Are there certain types of people you think should or should not be mediators?
16. Have you ever had a case where you felt strongly about one person over the other, positively or negatively, and had a hard time maintaining neutrality?

17. Have you ever worked with a family that was experiencing violence? Can you walk me through a mediation where violence was involved? What kinds of factors are considered here? How might violence affect the mediation process?

Do you use a screening tool for IPV? Why or why not?

If not, what kinds of information suggest to you that violence has been an issue in the marriage?

18. Have you ever experienced any violence in your own life? Does that ever effect you in mediation?

19. How do you overcome the challenges when there is a power imbalance or violence in a relationship? Was there any formal training to help you deal with these issues?

20. Do you ever feel obligated to reach an agreement during mediations?

21. What kinds of expectations do you have for the mediation process? (Or-how do you feel successful as a mediator? When you leave a mediation what makes you feel like you did a good job?)

22. What kind of training did you go through to become a mediator? Did you think the training was adequate? Overkill? Do you think training prepared you to mediate?

23. What kinds of things would you like to change with mediation if you could? Why?

APPENDIX II-IRB HUMAN SUBJECTS APPROVAL



RESEARCH INTEGRITY AND COMPLIANCE
Institutional Review Boards, FWA No. 00001669
12901 Bruce B. Downs Blvd., MDC035 • Tampa, FL 33612-4799
(813) 974-5638 • FAX (813) 974-7091

7/22/2013
Elaina Behounek, M.A.
Sociology
4204 East Fowler Ave.
Tampa, FL 33620

RE: Full Board Approval for Initial Review

IRB#: Pro00010630

Title: Mediated relationships: gendered interactions in family law mediations

Study Approval Period: 6/21/2013 to 12/21/2013

Dear Ms. Behounek:

On 6/21/2013, the Institutional Review Board (IRB) reviewed and APPROVED the above application and all documents outlined below.

Approved Item(s):

Protocol Document(s):

Research Protocol V1 updated July 16 2013.doc

Consent/Assent Document(s)*:

Consent form attorney VI updated July 16, 2013.doc.pdf

Consent form mediated parties V1 updated July 16, 2013.doc.pdf

Consent form mediators VI updated July 16, 2013.doc.pdf

*Please use only the official IRB stamped informed consent/assent document(s) found under the "Attachments" tab. Please note, these consent/assent document(s) are only valid during the approval period indicated at the top of the form(s).

As the principal investigator of this study, it is your responsibility to conduct this study in accordance with IRB policies and procedures and as approved by the IRB. Any changes to the approved research must be submitted to the IRB for review and approval by an amendment.

We appreciate your dedication to the ethical conduct of human subject research at the University of South Florida and your continued commitment to human research protections. If you have any questions regarding this matter, please call 813-974-5638.

Sincerely,

A handwritten signature in black ink that reads "John A. Schinka, Ph.D." The signature is written in a cursive style with a clear, legible font.

John Schinka, Ph.D., Chairperson
USF Institutional Review Board